

ANCHORAGE, ALASKA
AO No. 2022-60(S)

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE**
2 **MUNICIPAL CODE CHAPTERS 3.10, *GENERAL PROVISIONS*, AND 27.20,**
3 ***SUPERVISORY BOARDS*, AND SECTIONS 2.70.030 AND 29.10.060 TO**
4 **FULFILL THE REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER**
5 **SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH**
6 **SPECIFIC PROCEDURES FOR REMOVAL OF AN ELECTED OFFICIAL FOR**
7 **BREACH OF THE PUBLIC TRUST.**

8
9 **WHEREAS**, Anchorage Municipal Charter section 7.01(b) provides, in part, “[t]he
10 assembly by ordinance shall establish procedures for removal of elected officials for
11 breach of the public trust, including provision for notice, a complete statement of the
12 charge, a public hearing conducted by an impartial hearing officer, and judicial
13 review”; and

14
15 **WHEREAS**, the requirements of section 7.01(b) have only been partly fulfilled; and

16
17 **WHEREAS**, the Assembly has by ordinance established procedures by which an
18 assembly member or school board member may be removed for a breach of the
19 public trust in Anchorage Municipal Code section 2.70.030, *Removal from office*,
20 and AMC section 29.10.060, *Removal of members from office*, which could be
21 updated for efficiency; and

22
23 **WHEREAS**, the Charter requires enactment of similar provisions applicable to other
24 elected officials, including supervisory boards of service areas and the mayor; and

25
26 **WHEREAS**, this Ordinance would apply to these elected officials provisions similar
27 to those currently applicable to assembly and school board members; and

28
29 **WHEREAS**, this ordinance will not have significant economic effects; now,
30 therefore,

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32 **THE ANCHORAGE ASSEMBLY ORDAINS:**

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34 **Section 1.** Anchorage Municipal Code section 27.20.070 is hereby amended as
35 follows (*the remainder of the section is not affected and therefore not set out*):

36
37 **27.20.070 Vacancies generally; unexcused absences.**

38
39 A. The office of an elected member of a supervisory board established
40 under this chapter shall become vacant in the same manner as an
41 elected office becomes vacant as provided in section 7.01(a) of the
42 Charter. In addition, a [A] vacancy shall occur on the failure of a

member to:

- 1. Attend three consecutive regular or special meetings without excuse; or
- 2. Attend a two-thirds majority of the regular and special meetings during any calendar year without excuse.

*** *** ***

(CAC 2.64.060)

Section 2. Anchorage Municipal Code chapter 27.20, *Supervisory Boards*, is hereby amended to add a new section 27.20.085 to read as follows:

27.20.085 Removal from office.

An elected member of a supervisory board established under this chapter may be removed from office for breach of the public trust following the procedures set forth in this section.

A. **Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.** For the purposes of this section actions constituting a breach of the public trust shall include, **but are not limited to:**

- 1. Acceptance of cash gifts from one doing business with the municipality;
- 2. Violation of chapter 1.15;
- 3. Perjury;
- 4. Falsification of records;
- 5. Filing false reports;
- 6. Nepotism;
- 7. Making personal use of municipal or school district property;
- 8. Destruction of municipal or school district property;
- 9. Official oppression;
- 10. Actual or attempted official misconduct, as defined by state law;
- 11. Ordering a municipal employee or contractor employed by the supervisory board to undertake an unlawful act;
- 12. Substantial breach of a statutory-, Code- or Charter-imposed duty.

B. Proceedings for removal from office **may only [shall]** be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics. An accusation document may be submitted to the municipal clerk only by a majority vote of the assembly or decision

1 of the municipal board of ethics and must allege specific actions by
 2 the member that breach the public trust.

3
 4 C. After a successful vote to submit it, the municipal clerk shall cause a
 5 copy of the accusation document to be served on the member in the
 6 same manner as service of process under Alaska Rules of Civil
 7 Procedure, and a copy delivered to the municipal attorney.

8
 9 D. The municipal attorney shall review the accusation document for legal
 10 sufficiency. The municipal attorney shall determine the legal
 11 sufficiency of the allegations within ten days of receipt of the
 12 accusation document. If the municipal attorney determines that the
 13 allegations are legally insufficient, the removal action shall be
 14 discontinued. The municipal attorney's determination, if it rejects the
 15 accusation document, may be appealed to the superior court within 30
 16 days. No interlocutory appeal is permitted from a determination by the
 17 municipal attorney that the accusation document is legally sufficient.
 18 Following a determination by the municipal attorney that the
 19 accusation document is legally sufficient, it shall be delivered to the
 20 municipal administrative hearings office established by Title 14, and
 21 the municipality shall employ an attorney of the member's choice,
 22 subject to the limitations of this subsection, to defend the charges. The
 23 attorney selected must be engaged in the active practice of law in the
 24 state. The fees charged by the attorney must be reasonable in both
 25 the rate and the amount of time expended. Reasonableness shall be
 26 evaluated in accordance with Alaska Bar Rule 35 and shall be subject
 27 to fee arbitration under the Alaska Bar Rules if the municipality
 28 disputes the reasonableness of the fees claimed.

29
 30 E. A hearing conducted by the municipal administrative hearing officer
 31 shall be held no later than 30 days following appointment of the
 32 hearing officer. The hearing shall be open to the public and, unless
 33 otherwise provided in this section, shall be conducted in accordance
 34 with the procedures set forth in chapter 3.60, **however the hearing**
 35 **officer shall expedite the matter within the required times set**
 36 **forth in this section and chapter 3.60 and shall grant extensions**
 37 **only for good cause. Good cause must be based upon matters**
 38 **either beyond the control of the party making application or**
 39 **conditions which would create a significant hardship if a**
 40 **continuance is not granted.** Within ten days following the conclusion
 41 of the public hearing the hearing officer shall submit written findings
 42 and recommendations to the assembly. The recommendations shall
 43 include whether the member should be removed.

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 45 F. The standard of proof of the allegations in the accusation document to
 46 be applied by the hearing officer is proof by a preponderance of the

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1. Acceptance of cash gifts from one doing business with the municipality;
2. Violation of chapter 1.15;
3. Perjury;
4. Falsification of records;
5. Filing false reports;
6. Nepotism;
7. Making personal use of municipal or school district property;
8. Destruction of municipal or school district property;
9. Official oppression;
10. Actual or attempted official misconduct, as defined by state law;
11. Ordering, or knowingly allowing a person appointed by the mayor to order, a municipal employee to undertake an unlawful act;
12. Substantial breach of a statutory-, Code- or Charter-imposed duty;
13. Failure to faithfully execute the directives of a duly enacted ordinance.

B. Proceedings for removal from office **may only [shall]** be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics. An accusation document may be submitted to the municipal clerk only by a majority vote of the assembly or decision of the municipal board of ethics and must allege specific actions by the mayor that breach the public trust.

C. After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to be delivered by personal service to the mayor and a copy delivered to the municipal attorney.

D. The municipal attorney, or an impartial third-party attorney retained by the Assembly to serve as special counsel, shall review the accusation document for legal sufficiency. An accusation approved by the assembly shall specify whether the accusation shall be reviewed for legal sufficiency by the municipal attorney or special counsel. The municipal attorney, or the retained special counsel, shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney, or special counsel, determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's or special counsel's determination, if it rejects the accusation document, may be appealed to the superior court within 30 days. No interlocutory appeal is permitted from a determination by the municipal attorney or special counsel that the accusation document is legally sufficient. Following a determination by the municipal attorney or special counsel that the

1 accusation document is legally sufficient, the municipality shall employ
 2 an attorney of the mayor's choice, subject to the limitations of this
 3 subsection, to defend the charges. The attorney selected must be
 4 engaged in the active practice of law in the state. The fees charged by
 5 the attorney must be reasonable in both the rate and the amount of
 6 time expended. Reasonableness shall be evaluated in accordance
 7 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
 8 the Alaska Bar Rules if the municipality disputes the reasonableness
 9 of the fees claimed.

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 11 E. Within two weeks following the service of an accusation document, the
 12 municipal clerk shall request that six names be submitted as potential
 13 hearing officers by the American Arbitration Association unless
 14 otherwise mutually agreed to by the assembly and the mayor. Three
 15 of the names submitted should be from the state and three from out-
 16 of-state. From these names the assembly and the mayor shall agree
 17 upon a hearing officer who shall conduct the hearing concerning the
 18 allegations in the accusation document. If no agreement is reached
 19 within ten days of distribution of the list of potential hearing officers,
 20 the hearing officer shall be selected by each side exercising
 21 preemptory challenges to the six potential names in turn until only one
 22 remains.

23
 24 F. A hearing conducted by the appointed hearing officer shall be held no
 25 later than 30 days following appointment of the hearing officer. The
 26 hearing shall be open to the public and, unless otherwise provided in
 27 this section, shall be conducted in accordance with the procedures set
 28 forth in chapter 3.60, **however the hearing officer shall expedite the**
 29 **matter within the required times set forth in this section and**
 30 **chapter 3.60 and shall grant extensions only for good cause.**
 31 **Good cause must be based upon matters either beyond the**
 32 **control of the party making application or conditions which**
 33 **would create a significant hardship if a continuance is not**
 34 **granted.** Within ten days following the conclusion of the public hearing
 35 the hearing officer shall submit written findings and recommendations
 36 to the assembly. The recommendations shall include whether the
 37 mayor should be removed.

38
 39 G. The standard of proof of the allegations in the accusation document to
 40 be applied by the hearing officer is proof by a preponderance of the
 41 evidence. The hearing officer shall evaluate the evidence relating to
 42 the accusations set forth in the accusation document and evaluate
 43 both whether the allegations are supported and whether those actions
 44 alleged constitute a breach of the public trust as set forth in subsection
 45 A. of this section. Wrongful acts or admissions occurring while the
 46 mayor was acting in a private capacity as opposed to in a capacity as

a public officer shall not constitute a breach of the public trust. ~~[Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.]~~

H. Within ten days of receiving the hearing officer's recommendations, the assembly shall vote on whether to remove the mayor. Removal shall occur only on the concurrence of two-thirds of the fully constituted body.

I. The decision of the assembly acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the assembly's decision. If the assembly's decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal, the fact that another individual may be seated as acting mayor shall not constitute irreparable harm. During a stay, unless otherwise ordered by the court the seat is considered vacant and shall be filled in accordance with Charter 7.02(c) pending the outcome of the court case. If, after exhaustion of appeals, the final ruling reverses the removal, the removed mayor shall be reseated for the remainder of the term for which the mayor was elected, and the acting mayor shall return to the person's prior position.

Section 4. Anchorage Municipal Code section 2.70.030, *Removal from office*, is hereby amended as follows (*the remainder of the section is not affected and therefore not set out*):

2.70.030 - Removal from office.

A member of the municipal assembly may be removed from office for breach of the public trust following the procedures set forth in this section:

A. **Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.** For the purposes of this section actions constituting a breach of the public trust shall include, **but are not limited to:**

- 9. Official oppression;
- 10. **Actual or attempted official misconduct, as defined by state law;**
- 11. Unexcused absence from three consecutive meetings;
- 12[11]. Failure to attend 75 percent of meetings in a 24-month period;
or
- 13[12]. **Substantial b[B]reach of a statutory-, Code- or Charter-**

1 imposed duty.
2

- 3 B. Proceedings for removal from office **may only [SHALL]** be initiated
4 by delivery of an accusation document to the municipal clerk setting
5 forth the grounds for removal and specifying if delivery is to the
6 assembly or the board of ethics. An accusation document may be
7 submitted to the municipal clerk only by a majority [TWO-THIRDS]
8 vote of the assembly or [TWO-THIRDS MAJORITY] decision of the
9 municipal board of ethics and must allege specific actions by the
10 assembly member in question which breach the public trust.
11
- 12 C. After a successful vote to submit it, the municipal clerk shall cause a
13 copy of the accusation document to [MUST] be delivered by personal
14 service to the member of the assembly who is the subject of the
15 accusation document and a copy delivered to the municipal attorney.
16
- 17 D. The municipal attorney shall review the accusation document for legal
18 sufficiency. The municipal attorney shall determine the legal
19 sufficiency of the allegations within ten days of receipt of the
20 accusation document. If the municipal attorney determines that the
21 allegations are legally insufficient, the removal action shall be
22 discontinued. The municipal attorney's determination, if it rejects the
23 accusation document, may be appealed to the superior court within 30
24 days. No interlocutory appeal is permitted from a determination by the
25 municipal attorney that the accusation document is legally sufficient.
26 Following a determination by the municipal attorney that the
27 accusation document is legally sufficient, the municipality shall employ
28 an attorney of the accused's choice, subject to the limitations of this
29 subsection, to defend the charges. The attorney selected must be
30 engaged in the active practice of law in the state. The fees charged by
31 the attorney must be reasonable in both the rate and the amount of
32 time expended. Reasonableness shall be evaluated in accordance
33 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
34 the Alaska Bar Rules if the municipality disputes the reasonableness
35 of the fees claimed.
36
- 37 E. Within two weeks following the delivery of an accusation document,
38 the municipal clerk shall request that six names be submitted as
39 potential hearing officers by the American Arbitration Association.
40 Three of the names submitted should be from the state and three from
41 out-of-state. From these names the assembly and the accused shall
42 agree upon a hearing officer who shall conduct the hearing concerning
43 the allegations in the accusation document. If [, OR, IF] no agreement
44 is reached within ten days of distribution of the list of potential hearing
45 officers, the hearing officer shall be selected by each side exercising
46 preemptory challenges to the six potential names in turn until only one

1 remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING
2 OFFICER FROM THE LIST WHO SHALL CONDUCT A HEARING
3 CONCERNING THE ACCUSATIONS CONTAINED IN THE
4 DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL
5 PROVIDE A RECOMMENDATION TO THE ASSEMBLY]. If more
6 than one assembly member is the subject of the accusation document
7 or the alleged breach arises out of the same event, the same hearing
8 officer shall hear those matters and may hold one consolidated
9 hearing.

10
11 F. A hearing conducted by the appointed hearing officer shall be held no
12 later than 30 days following appointment of the hearing officer. The
13 hearing shall be open to the public and, unless otherwise provided in
14 this section, shall be conducted in accordance with the procedures set
15 forth in chapter 3.60, however the hearing officer shall expedite the
16 matter within the required times set forth in this section and
17 chapter 3.60 and shall grant extensions only for good cause.
18 Good cause must be based upon matters either beyond the
19 control of the party making application or conditions which
20 would create a significant hardship if a continuance is not
21 granted. Within ten days following the conclusion of the public hearing
22 the hearing officer shall submit written findings and recommendations
23 to the assembly. The recommendations shall include whether the
24 officer should be removed.

25
26 G. The standard of proof of the allegations in the accusation document to
27 be applied by the hearing officer is proof by a preponderance of the
28 evidence. The hearing officer shall evaluate the evidence relating to
29 the accusations set forth in the accusation document and evaluate
30 both whether the allegations are supported and whether those actions
31 alleged constitute a breach of the public trust as set forth in subsection
32 A of this section. Wrongful acts or admissions occurring while the
33 officer was acting in a private capacity as opposed to his capacity as
34 a public officer shall not constitute a breach of the public trust.
35 **[WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE**
36 **INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A**
37 **BREACH OF THE PUBLIC TRUST.]**

38 *** **
39 I. The decision of the assembly acting upon the recommendations of the
40 hearing officer may be appealed to the superior court within 30 days
41 of the assembly's decision. If the assembly's decision is for removal,
42 the office shall be considered vacant beginning at 12:01 a.m. seven
43 days following the decision unless the appellate court issues a stay of
44 the removal pending appeal. In evaluating whether to grant a stay of
45 removal pending appeal the facts that the removed member could
46 miss important votes and that another individual may be seated to

1 replace the removed member shall not constitute irreparable harm.
 2 During a stay, unless otherwise ordered by the court the seat is
 3 considered vacant and shall be filled in accordance with Charter
 4 7.02(b) and section 2.70.020 pending the outcome of the court case.
 5 If, after exhaustion of appeals, the final ruling reverses the removal,
 6 the removed member shall be resealed for the remainder of the term
 7 for which elected, and any replacement, whether appointed or elected
 8 at a special election, shall be displaced.
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10 (AO No. 93-54(S-1), 5-5-93)

11
 12 **Section 5.** Anchorage Municipal Code section 29.10.060, *Removal of members*
 13 *from office*, is hereby amended as follows (*the remainder of the section is not*
 14 *affected and therefore not set out*):
 15

16 **29.10.060 - Removal of members from office.**

17
 18 A member of the school board may be removed from office for breach of the
 19 public trust following the procedures set forth in this section.
 20

21 A. **Willful and knowing breach of duty or culpable indifference to**
 22 **official duties may constitute a breach of the public trust.** For the
 23 purposes of this section, actions constituting a breach of the public
 24 trust shall include, **but are not limited to:**

- 25 *** **
- 26 9. Official oppression;
 - 27 10. **Actual or attempted official misconduct, as defined by**
 28 **state law;**
 - 29 **11.** Unexcused absence from three consecutive meetings;
 - 30 **12[11].** Failure to attend 75 percent of meetings in a 24-month period;
 - 31 or
 - 32 **13[12].** **Substantial b[B]reach of a statutory-, Code- or Charter-**
 33 **imposed duty.**

34
 35 B. Proceedings for removal from office **may only [SHALL]** be initiated
 36 by delivery of an accusation document to the municipal clerk setting
 37 forth the grounds for removal **and specifying if delivery is to the school**
 38 **board or the board of ethics.** An accusation document may be
 39 submitted to municipal clerk only by a **majority [TWO-THIRDS]** vote of
 40 the school board or a **[TWO-THIRDS MAJORITY]** decision of the
 41 municipal board of ethics and must allege specific actions by the
 42 school board member in question which breach the public trust.
 43

44 C. **After a successful vote to submit it, the municipal clerk shall cause a**
 45 **copy of the accusation document to [MUST]** be delivered by personal
 46 service to the members of the school board who are the subjects of

1 the accusation document and a copy delivered to the municipal
2 attorney.

3
4 D. The municipal attorney shall review the accusation document for legal
5 sufficiency. The municipal attorney shall determine the legal
6 sufficiency of the allegations within ten days of receipt of the
7 accusation document. If the municipal attorney determines that the
8 allegations are legally insufficient, the removal action shall be
9 discontinued. The municipal attorney's determination, if it rejects the
10 accusation document, may be appealed to the superior court within 30
11 days. No interlocutory appeal is permitted from a determination by the
12 municipal attorney that the accusation document is legally sufficient.
13 Following a determination by the municipal attorney that the
14 accusation document is legally sufficient, the school board shall
15 employ an attorney of the accused's choice, subject to the limitations
16 of this subsection, to defend the charges. The attorney selected must
17 be engaged in the active practice of law in the state. The fees charged
18 by the attorney must be reasonable in both the rate and the amount of
19 time expended. Reasonableness shall be evaluated in accordance
20 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
21 the Alaska Bar Rules if the school district disputes the reasonableness
22 of the fees claimed.

23
24 E. Within two weeks following the service [DELIVERY] of an accusation
25 document, the municipal clerk shall request six names be submitted
26 as potential hearing officers by the American Arbitration Association.
27 Three of the names submitted should be from the state and three from
28 out of state. From these names the school board and the accused
29 shall agree upon a hearing officer who shall conduct the hearing
30 concerning the allegations in the accusation document. If [, OR, IF] no
31 agreement is reached within ten days of distribution of the list of
32 potential hearing officers, the hearing officer shall be selected by each
33 side exercising preemptory challenges to the six potential names in
34 turn until only one remains [THE MUNICIPAL CLERK SHALL
35 SELECT A HEARING OFFICER FROM THE LIST, WHO SHALL
36 CONDUCT A HEARING CONCERNING THE ACCUSATIONS
37 CONTAINED IN THE DOCUMENT FILED WITH THE MUNICIPAL
38 CLERK AND SHALL PROVIDE A RECOMMENDATION TO THE
39 SCHOOL BOARD]. If more than one school board member is the
40 subject of the accusation document or the alleged breach arises out
41 of the same event, the same hearing officer shall hear those matters
42 and may hold one consolidated hearing.

43
44 F. A hearing conducted by an appointed hearing officer shall be held no
45 later than 30 days following appointment of the hearing officer. The
46 hearing shall be open to the public and, unless otherwise provided in

1 this section, shall be conducted in accordance with the procedures set
 2 forth in chapter 3.60, **however the hearing officer shall expedite the**
 3 **matter within the required times set forth in this section and**
 4 **chapter 3.60 and shall grant extensions only for good cause.**
 5 **Good cause must be based upon matters either beyond the**
 6 **control of the party making application or conditions which**
 7 **would create a significant hardship if a continuance is not**
 8 **granted.** Within ten days following the conclusion of the public
 9 hearing, the hearing officer shall submit written findings and
 10 recommendations to the school board. The recommendations shall
 11 include whether the official should be removed.

12
 13 G. The standard of proof of the allegations in the accusation document to
 14 be applied by the hearing officer is proof by a preponderance of the
 15 evidence. The hearing officer shall evaluate the evidence relating to
 16 the accusations set forth in the accusation document and evaluate
 17 both whether the allegations are supported and whether those actions
 18 alleged constitute a breach of the public trust. Wrongful acts or
 19 admissions occurring while the officer was acting in a private capacity
 20 as opposed to his capacity as a public officer shall not constitute a
 21 breach of the public trust as set forth in subsection A of this section.
 22 **WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE**
 23 **INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A**
 24 **BREACH OF THE PUBLIC TRUST.]**

25 *** **

26 I. The decision of the school board acting upon the recommendations of
 27 the hearing officer may be appealed to the superior court within 30
 28 days of the school board's decision. If the school board's decision is
 29 for removal, the office shall be considered vacant beginning at 12:01
 30 a.m. seven days following the decision unless the appellate court
 31 issues a stay of the removal pending appeal. In evaluating whether to
 32 grant a stay of removal pending appeal the facts that the removed
 33 member could miss important votes or that another individual may be
 34 seated to replace the removed member shall not constitute irreparable
 35 harm. During a stay, unless otherwise ordered by the court the seat is
 36 considered vacant and shall be filled in accordance with Charter
 37 7.02(a) pending the outcome of the court case. If, after exhaustion of
 38 appeals, the final ruling reverses the removal, the removed member
 39 shall be reseated for the remainder of the term for which elected, and
 40 any replacement, whether appointed or elected at a special election,
 41 shall be displaced.

42
 43 (AO No. 93-54(S-1), 5-5-93)

44
 45 **Section 6.** This ordinance shall be effective immediately upon passage and
 46 approval by the Assembly.

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PASSED AND APPROVED by the Anchorage Assembly this _____ day
of _____, 2022.

Chair

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 326-2022

Meeting Date: June 1, 2022

1 **FROM:** Assembly Vice Chair Constant

2
3 **SUBJECT:** AO 2022-60(S): AN ORDINANCE OF THE ANCHORAGE
4 **ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE**
5 **CHAPTERS 3.10 GENERAL PROVISIONS (RESERVED)**
6 **AND 27.20 SUPERVISORY BOARDS, AND SECTIONS**
7 **2.70.030 AND 29.10.060, TO FULFILL THE REQUIREMENT**
8 **OF ANCHORAGE MUNICIPAL CHARTER SECTION 7.01(b)**
9 **THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH**
10 **SPECIFIC PROCEDURES FOR REMOVAL OF ELECTED**
11 **OFFICIALS FOR BREACH OF THE PUBLIC TRUST.**
12

13
14 The S-version makes some changes that improve the ordinance and the
15 existing code sections for removal of elected Assembly and School Board
16 members. The significant changes from the original Ordinance, and identical in
17 each of the sections for each type of elected official, include:
18

- 19 • Moving the mental state element language—"willful and knowing breach of
20 duty or culpable indifference to official duties"—from the subsection
21 establishing the standard of proof for the hearing officer to the first
22 subsection that lists the actions which constitute grounds for a breach of the
23 public trust accusation. This change improves Code integrity by setting
24 forth the elements and grounds in one subsection, rather than buried later
25 in the subsections outlining procedural steps. Assembly Counsel
26 recommended this change. (p. 2 line 22; p. 4 line 44; p. 7 line 37; p. 10 line
27 24)
- 28 • Include the phrase "but are not limited to" as a lead-in to the list of actions
29 that may constitute a breach of the public trust. Assembly Counsel advises
30 that the real offense is the breach of the public trust and as a matter of law
31 there may be other action not listed which may, based on precedent,
32 common law, or the nature and severity of the action, be found by the
33 hearing officer to also be a breach of the public trust although not listed. (p.
34 2 line 25; p. 5 line 2; p. 7 line 40; p. 10 line 27)
- 35 • Changes "shall be initiated" to "may only be initiated" to more accurately
36 reflect that initiating a removal process is not a mandate, but rather that



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 327-2022

Meeting Date: June 1, 2022

1 **FROM: Assembly Counsel**

2
3 **SUBJECT: RESPONSE TO LEGAL QUESTIONS RE: AO 2022-60(S), AN**
4 **ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING**
5 **ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10 GENERAL**
6 **PROVISIONS (RESERVED) AND 27.20 SUPERVISORY BOARDS,**
7 **AND SECTIONS 2.70.030 AND 29.10.060, TO FULFILL THE**
8 **REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER**
9 **SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST**
10 **ESTABLISH SPECIFIC PROCEDURES FOR REMOVAL OF**
11 **ELECTED OFFICIALS FOR BREACH OF THE PUBLIC TRUST.**
12

13
14 At the May 20, 2022 work session Assembly Members requested more information
15 regarding the common law jurisprudence on removal of an elected official, and to
16 provide the code or statute for the offenses listed as actions that constitute a
17 breach of the public trust.

18
19 **Common law jurisprudence on removal of an elected official.** Assembly
20 Counsel indicated at the work session that the attorney conducting a legal
21 sufficiency review of the accusation (the first step after a vote to initiate
22 proceedings), and any hearing officer presiding over the removal hearing, would
23 recognize that as a matter of law it requires a high standard of proof of egregious
24 conduct or serious pattern of conduct in order to find cause for removal. One of
25 the initial steps in the legal sufficiency review by the municipal attorney or third-
26 party attorney (subsection D. of each removal Code section) and for the hearing
27 officer if the accusation proceeds further is to determine what the applicable legal
28 standard is, and apply it to the facts alleged in the accusation, or as presented at
29 the hearing as the case may be.

30
31 *McQuillin: The Law of Municipal Corporations* is one of the leading legal treatises
32 on municipal law in the nation and provides the common law premise for Counsel's
33 statements at the work session. Although the law may vary among states and
34 municipal jurisdictions, where removal of elected officials for cause is provided for,
35 "there must be strong proof of willful and knowing wrongdoing."¹ The removal

¹ 4 McQuillin Mun. Corp. § 12:322, *Cause-Elective officers*, (3d ed., Sept. 2021)

1 proceedings are deemed to be penal in nature, similar to criminal prosecutions,
2 and are “to be strictly construed as in derogation of the common law.”² Mere failure
3 to perform just one duty required by law is not sufficient cause; there must be a
4 general failure to perform the official duties alleged, or a general abandonment of
5 office.³ A property or liberty interest in the position can be shown, so due process
6 requires a hearing to determine whether there is cause.

7
8 If grounds are specified in the charter or law for removal, some states have held
9 that no other grounds may be invoked, but is also usually left to the agency vested
10 with removal power to determine what is sufficient cause.⁴ While this is not clearly
11 settled in Alaska or Anchorage, Counsel’s sense is a court would not find itself
12 limited to the listed grounds in the proposed ordinance if the alleged conduct
13 satisfies the common law description of the types of conduct that provide sufficient
14 cause for removal of an elected official. And, other law provisions exist where no
15 list of grounds is provided so a hearing officer or court would need to determine if
16 the alleged conduct satisfies the provided definition of “breach of the public trust.”
17 For example, AMC section 4.05.065 applies for removal “for breach of the public
18 trust” of a municipal board or commission member and does not have a list of
19 specific actions, but describes that such actions “may include factors that
20 materially and adversely affect the performance of the board or commission
21 member or adversely affect the reputation or performance of the board or
22 commission or the municipality.”⁵ This language or precedents before the Ethics
23 Board may be useful reference for the initial sufficiency review and by the hearing
24 officer in a proceeding under the provisions of this proposed ordinance. While the
25 S-version includes the prefatory phrase “but are not limited to” so the list of actions
26 is open-ended, removal of that phrase may not necessarily mean actionable
27 grounds are limited to the list. That could become a legal argument to make in
28 proceedings if the phrase is omitted: whether the list is definitive and closed, or
29 merely illustrative.

30
31 “Sufficient cause” in the removal context means “legal cause as distinguished from
32 discretion, and is a cause which specifically relates to and affects the proper
33 administration of the office involved.”⁶ The cause must not be

² *Id.*

³ *Id.*

⁴ 4 McQuillin Muni. Corp. § 12:330, *Sufficiency of cause*, (3d ed., Sept. 2021).

⁵ AMC subsection 4.05.065A.1. states:

A. A member of a board or commission may be removed from service for breach of the public trust following the procedures set forth in this section:

1. For purposes of this section, actions constituting a breach of the public trust may include factors that materially and adversely affect the performance of the board or commission member or adversely affect the reputation or performance of the board or commission or the municipality.

1
2 ...mere whim or subterfuge, or indefinite as to time, place or nature,
3 or remote or indirect, but must be of substance, relating to the
4 character, neglect of duty, or fitness of the person removed. It must
5 be reasonable. If the cause assigned is a reasonable one, then the
6 question whether there is sufficient basis to suspend or remove is for
7 the administrative agency; whether the assigned cause, of itself,
8 constitutes a proper ground for removal or suspension is for the court
9 to determine.

10
11 It is obvious that mere political bias or personal dislike of the officer
12 having the power of removal is not a cause. It has been declared,
13 however, that a municipal executive officer or executive board upon
14 whom alone the removal power has been conferred is not prevented
15 by reason of bias or prejudice from removing anyone whose conduct
16 has merited his severance from public service.

17
18 Elected municipal officers may be removed from office only upon a
19 showing of perverseness amounting to criminality or culpable
20 indifference to official duties. In addition, particular acts of usurpation
21 of power on the part of the mayor, which have no legal effect on the
22 affairs of the city, are ordinarily not sufficient grounds for removal.

23
24 To warrant removal of a public officer for a town or village for
25 unscrupulous conduct, gross dereliction of duty, or conduct that
26 connotes a pattern of misconduct and abuse of authority, an official's
27 misconduct must amount to more than minor violations and must
28 consist of self-dealing, corrupt activities, conflict of interest, moral
29 turpitude, intentional wrongdoing, or violation of a public trust.⁷

30
31 In 1975 when crafting Charter § 7.01, the Anchorage Charter Commission
32 discussed the importance of the removal process having a "for cause" or
33 reasonable cause element, and appeared to settle on "breach of the public trust"
34 language to prevent arbitrary reasons for removal and to require sufficient cause.⁸
35 Municipal Attorney Richard Garnett opined that an attempted arbitrary removal
36 would be a violation of basic due process.⁹ The inclusion of the mental state
37 language "[w]illful and knowing breach of duty or culpable indifference to official

⁶ *Id.*

⁷ *Id.* (internal footnotes and citations omitted).

⁸ Anchorage Charter Commission Meeting, July 18, 1975, transcript pp. 27-35. (pp. 5280-5288 of 6285 compiled transcripts of Charter Commission meetings), *attached hereto*.

⁹ Anchorage Charter Comm'n, July 18, 1975 at 30 (p. 5283 of 6285), *attached hereto*.

1 duties” in the 1993 ordinance for the assembly and school board member removal
2 tracks this due process concern of using minor violations, by requiring proof of
3 such mental state by a preponderance of the evidence. The proposed ordinance
4 carries the same standard forward to the new sections for the mayor and service
5 area board members.

6
7 **Inclusion of the mayor in “elected official” removal.** The Charter Commission
8 also discussed how the vacancies provisions would be organized, determining a
9 single Charter section could cover it for “the mayor, the school board, and the
10 assembly”¹⁰ and clearly deciding towards the conclusion of the Commission’s work
11 that the removal of the mayor would be included in the term “elected official.”¹¹
12 Overall, while other jurisdictions may not have provided the legislative branch or
13 municipal government the ability to remove a mayor for cause, the Charter
14 Commission included that authority and the voters eventually approved.

15
16 **Definitions of the listed actions constituting grounds for removal.** Another
17 request at the May 20 work session is for the statute or Code definitions of the
18 offenses listed as actions constituting grounds for removal. The list of actions was
19 first created by Assembly Member John Wood’s submission of AO 93-54(S), and
20 his attached statements in AM 426-93 merely stated:

21
22 AO 93-54(S), like AO 93-54, would implement Charter Section
23 7.01 and establish a clear procedure for the removal of an
24 assemblymember or school board member from office for breach of
25 the public trust. AO 93-54(S) differs in that it defines what
26 actions will constitute a breach of the public trust.

27
28 The Administration at the time submitted AM 427-93 which concurred with AO 93-
29 54(S) and stated in relevant part: “AO 92-54(S) [stet] is the preferred version due
30 to the fact that it lists specific items which will constitute a breach of the public
31 trust.”

32
33 The implication is the 1993 Assembly was uncertain about merely resting on the
34 language “breach of the public trust” and desired a list of actions to define it.
Without legislative history to more specifically refer to statute or ordinances
existing at that time that define each of the listed actions, Counsel can only
speculate based on current statutes and research but cannot guarantee the below
are the precise definitions of the actions the 1993 body intended. The use of “public

¹⁰ Anchorage Charter Comm’n, May 8, 1975 at 40 (p. 3073 of 6285), *attached hereto*.

¹¹ Anchorage Charter Comm’n, June 26, 1975 at 51-53 (pp. 4494-4496 of 6285), *attached hereto*,
(discussing Committee Report No. 9’s recommendation to combine vacancy and removal provisions of the
mayor, school board, and assembly and put in one place, with removal of an “elected official” for breach of
the public trust and the safeguards required for how to proceed placed in subsection (b)).

1 trust” in other provisions of the Code,¹² in state law, and in other jurisdictions may
2 provide persuasive argument for how to interpret and apply the standard and the
3 listed grounds in a specific case.

4
5 That said, provided below from the list in new section 3.10.050A. is each action
6 with Counsel’s remarks or reference to the law it most closely incorporates:

7
8 1. Acceptance of cash gifts from one doing business with the municipality;

9 - This is action is most similar to the elements of Receiving unlawful gratuities, AS
10 11.56.120,¹³ a class A misdemeanor, or Receiving a bribe, AS 11.56.110,¹⁴ a class
11 B felony. Anchorage’s Ethic’s Code prohibits accepting a gift valued over \$50, and
12 includes supplemental rules for elected officials giving consideration to campaign
13 contributions that are properly reported and sponsor-provided cost coverage for
14 events related to government business. AMC subsection 1.15.050F. reserves
15 review by the Ethics Board or municipal ethics officer to “approve a gift which is
16 consistent with the public policy concerns underlying limitations on gifts to public
17 servants (influence, appearance of influence, conflict of interest, **public trust.**)”
18 (emphasis added).

19
20 2. Violation of chapter 1.15; - this incorporates by reference the Ethics Code,
21 AMC chapter 1.15. It is too lengthy for reprinting here.

22
23 3. Perjury; - this is defined at AS 11.56.200¹⁵ and is a class B felony.
24

¹² See AMC section 4.05.065A., *supra* n. 5.

¹³ AS § 11.56.120. Receiving unlawful gratuities.

(a) A public servant commits the crime of receiving unlawful gratuities if, for having engaged in an official act which was required or authorized and for which the public servant was not entitled to any special or additional compensation, the public servant

- (1) solicits a benefit, regardless of value; or
- (2) accepts or agrees to accept a benefit having a value of \$50 or more.

¹⁴ AS § 11.56.110. Receiving a bribe.

(a) A public servant commits the crime of receiving a bribe if the public servant

- (1) solicits a benefit with the intent that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced; or
- (2) accepts or agrees to accept a benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced.

¹⁵ AS § 11.56.200. Perjury.

(a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.

(b) In a prosecution under this section, it is not a defense that

- (1) the statement was inadmissible under the rules of evidence; or
- (2) the oath or affirmation was taken or administered in an irregular manner.

1 4. Falsification of records: - there are several state criminal offenses related
2 to falsifying records, which may be applicable depending on the facts and context.
3 AS 11.56.820, Tampering with public records in the second degree,¹⁶ is a class A
4 misdemeanor and a good example. Also possibly within this category is AS
5 11.56.815, Tampering with public records in the first degree (with a specific intent
6 mental state elements and for certain contexts); AS 11.56.505 Forgery, AS
7 11.56.550 Offering a false instrument for recording, AS 11.56.630 Falsifying
8 business records.

9
10 5. Filing false reports: - may be referring to AS 11.56.800, False information
11 or report,¹⁷ a class A misdemeanor, or the nearly identical municipal offense in
12 AMC section 8.30.020, False information or report,¹⁸ also a class A misdemeanor.

¹⁶ AS § 11.56.820. Tampering with public records in the second degree.

- (a) A person commits the crime of tampering with public records in the second degree if the person
- (1) knowingly makes a false entry in or **falsely** alters a public **record**;
 - (2) knowingly destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record, knowing that the person lacks the authority to do so; or
 - (3) certifies a public record setting out a claim against a government agency, or the property of a government agency, with reckless disregard of whether the claim is lawful, or that payment of the claim is not authorized in the budget of the government agency.
- (b) In this section,
- (1) “certifies” means attesting to the existence, truth, or accuracy of facts, or that one holds an opinion, stated in a public record; the term includes the responsibilities for state officials set out in [AS 37.10.030](#);
 - (2) “falsely alters” has the meaning ascribed to it in [AS 11.46.580](#); and
 - (3) “makes a false entry” means to change or create a public record, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that the record so changed or created states or implies a fact that the maker knows is not true, or states or implies an opinion that the maker does not hold.
- (c) Tampering with public records in the second degree is a class A misdemeanor.

¹⁷ AS § 11.56.800. False information or report.

- (a) A person commits the crime of false information or report if the person knowingly
- (1) gives false information to a peace officer
 - (A) with the intent of implicating another in an offense; or
 - (B) concerning the person's identity while the person is
 - (i) under arrest, detention, or investigation for a crime; or
 - (ii) being served with an arrest warrant or being issued a citation;
 - (2) makes a false report to a peace officer that a crime has occurred or is about to occur;
 - (3) makes a false report or gives a false alarm, under circumstances not amounting to terroristic threatening in the second degree under AS 11.56.810, that a fire or other incident dangerous to life or property calling for an emergency response has occurred or is about to occur;
 - (4) makes a false report to the Department of Natural Resources under AS 46.17 concerning the condition of a dam or reservoir; or
 - (5) gives false information to a public employee relating to a person's eligibility for a permanent fund dividend under AS 43.23 and the false information does not also violate AS 11.56.205.

¹⁸ **AMC 8.30.020 - False information or report.**

- A. person commits the crime of false information or report if the person knowingly:
1. Gives false information to a peace officer:
 - a. With the intent of implicating another person in an offense; or

1
2
3
4
5

6. Nepotism: - this is making a hiring decision based on kinship with the hired employee. It is codified in AMC section 3.30.168, *Employment of relatives*, which allows an employee's relative to be hired and their performance reviewed, but with prohibitions and safeguards in place.¹⁹ The comparable state statute AS

b. Concerning the person's identity while the person:

- i. Is under arrest, detention or investigation for a crime; or
- ii. Has an outstanding arrest warrant or is being issued a citation;

2. Makes a false report to a peace officer that a crime has occurred or is about to occur; or

3. Makes a false report or gives a false alarm that a fire or other incident dangerous to life or property calling for an emergency response has occurred or is about to occur.

¹⁹ **AMC 3.30.168 - Employment of relatives**, states in pertinent part:

...

B. Policy. Except as otherwise provided in this section, an applicant who is otherwise qualified may not be denied appointment to a municipal position or continued employment with the municipality because the applicant's primary or secondary relative is employed by the municipality.

C. Management.

1. *Employment decisions.*

a. A related employee may not participate in a decision involving a primary or secondary relative.

b. A related employee may not participate in a decision if a related employee is a decision maker.

c. The director shall participate in a decision involving a primary relative of the agency head. The final decision requires approval of the director.

d. The director's approval shall be required in a final employment decision involving a secondary relative of the agency head.

2. *Performance decisions.*

a. For purposes of this subsection, participation shall include (i) when the primary or secondary relative is the subject of the performance decision, or (ii) when the primary or secondary relative is a witness in a performance decision.

b. A related employee may not participate in a decision involving a primary or secondary relative.

c. A related employee may not participate in a decision if a related employee is a decision maker.

d. The director shall participate in a final performance decision involving a primary relative of the agency head. The final decision shall require the approval of the director.

e. The director's approval shall be required in a performance decision involving a secondary relative of the agency head.

f. In a performance decision involving a law enforcement investigation, the senior employee shall not participate in the investigative process, including:

(1) The decision to initiate an investigation;

(2) Management oversight of the investigation;

(3) Determination of findings;

(4) Participation in disciplinary hearings including Loudermill or other proceedings under AMC 3.30; and

(5) The final decision shall be made by the agency head, or if the agency head is the related relative, by another employee higher than the agency head in the chain of command established by Chapters 3.20 and 3.30.

3. *Supervision.*

a. There may not be less than two intermediate supervisors between a senior employee and a subordinate employee, whether primary or secondary relatives.

b. Current relative employee relationships that would be prohibited under subsection 3.a are grandfathered; however, related employees must meet the requirements of subsection 3.a. for a new assignment, appointment, or position.

4. *Temporary appointment, assignment, or continued employment.*

1 39.90.020 prohibits nepotism but is made specifically applicable to state
2 employment. It may be a persuasive legal resource.

3
4 7. Making personal use of municipal or school district property; - this is an
5 offense in the Ethics Code, at AMC section 1.15.040, *Use of municipal*
6 *resources*.²⁰

7
8 8. Destruction of municipal or school district property; - this is self-explanatory,
9 and is comparable to the crimes of criminal mischief which has five degrees of
10 severity to the offense. AMC section 8.20.010, *Criminal mischief*,²¹ is

a. The director may authorize in writing a temporary appointment or assignment to or continued employment in a position directly supervised by a relative, if the director finds the appointment, assignment, or continued employment is of short duration and no reasonable alternative is available.
5. *Management of conflicts*....

²⁰ **AMC 1.15.040 - Use of municipal resources.**

A. Municipal resources include, but are not limited to funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and employee time. Municipal resources shall be used for municipal public purposes, which shall be defined to include:

1. The performance of municipal duties, including educational and outreach programs;
2. Occasional and limited use of municipal resources for community service or charitable fundraising purposes if duly authorized by the chair of the assembly, the mayor, or the mayor's designee;
3. Use of municipal resources as further addressed in the mayoral directives (policies and procedures), as well as an annual umbrella charitable fundraising program designated by the mayor for participation by public servants.

B. De minimus personal use of municipal resources is permitted and is defined as use that is infrequent or occasional and that results in little or no actual cost to the municipality. No personal use, however, may be for political activities, lobbying, or outside business interests.

C. Except to the extent the general public has the same access to or as otherwise authorized, a municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an employee's personal endeavors, including contemporaneous service or employment.

²¹ **8.20.010 - Criminal mischief.**

A. It is unlawful for any person, having no right to do so or any reasonable ground to believe the person has such a right, to:

1. Damage property of another in an amount of \$50.00 or more; or
2. Tamper with a fire protection device in a building that is in a public place; or
3. Knowingly access a computer, computer system, computer program, computer network, or part of a computer system or network; or
4. Uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or
5. Knowingly remove, relocate, deface, alter, obscure, shoot at, destroy, or otherwise tamper with an official traffic control device or damage the work upon a highway under construction; or
6. With reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, tamper with the property of another; or
7. Damage property of another in an amount of less than \$50.00; or
8. Ride in a propelled vehicle with criminal negligence that it has been stolen or that it is being used in violation of AS 11.46.360 or AS 11.46.365(a)(1).

B. Violation of subsections A.1. through A.5. above is a class A misdemeanor.

C. Violation of subsections A.6. through A.8. above is a class B misdemeanor.

1 representative of the elements of such an offense. In our Code it is a class A or B
2 misdemeanor depending on the mental state of the offender and degree and type
3 of damage or destruction.

4
5 9. Official oppression; - This is a common law offense that, according to a
6 American Law Reports treatise section, encompasses extortion as well as a public
7 official under color of authority of his office and with improper motive inflicting
8 physical harm on a person.²²

9
10 10. Actual or attempted official misconduct, as defined by state law; - this was
11 provided in AM 278-2022 submitted with the original proposed ordinance.

12
13 11. Ordering, or knowingly allowing a person appointed by the mayor to order,
14 a municipal employee to undertake an unlawful act; - this means what it says and
15 will depend on what unlawful act is at issue in the accusation document that
16 initiates the proceedings. There would need to be a finding of the mayor's mental
17 state and action, or knowledge of a subordinate's action and allowing it.

18
19 12. Substantial breach of a statutory-, Code- or Charter-imposed duty; - Similar
20 to #11, this is plain language that will depend on the duty alleged to have been
21 breached as detailed in the accusation document. As noted in the *McQuillin*
22 treatise, a single breach of a simple duty is not sufficient, thus this requires the
23 breach to be "substantial." Black's Law Dictionary (11th Ed. 2019) has a multitude
24 of definitions, most relevant in this context are: "... **2.** Real and not imaginary;
25 having actual, not fictitious, existence. **3.** Important, essential, and material; of real
26 worth and importance. ... **6.** Considerable in extent, amount, or value; large in
27 volume or number. **7.** Having permanence or near-permanence; long-lasting ..."

28
29 13. Failure to faithfully execute the directives of a duly enacted ordinance. –
30 This refers to the mayor's overall duty as the head of the executive branch,
31 incorporating the separation of powers doctrine and its description of the duty and
32 responsibility of the executive power. It relates to the oath of office taken by the

²² 83 A.L.R.2d 1007, *What constitutes offense of official oppression*, (Originally published in 1962), states in relevant part:

The common-law crime, in general, consists in the inflicting upon any person, from an improper motive, of any illegal bodily harm, imprisonment, or any injury other than extortion, by a public officer while exercising, or under color of exercising, his office. 10 Halsbury's L of Engl 3d ed p 615. The crime has also been defined as the abuse of any discretionary power invested by law in a public officer committed in the exercise of, or under color of exercising, the duties of his office with an improper motive. 2 Wharton, Criminal Law 12th ed § 1898.

It should be noted that the common-law crime of extortion, that is, the taking of money or other valuable thing when it is not due, by a public officer acting under color of his office and with an improper motive¹ is embraced by the wording of many of the statutory definitions of official oppression;² therefore, the taking of money or property illegally by a public officer acting under color of his office has in some instances been held to be official oppression.

1 mayor, to “faithfully perform the duties of [mayor] to the best of my ability.”²³ The
2 U.S. and Alaska Constitutions both contain a “faithful execution” clause for the
3 President and Governor, respectively.²⁴ One legal scholar engaged in a historical
4 analysis prefacing and leading to the framers crafting that clause in Article II of the
5 federal constitution and concluded there are three core meanings behind it: to
6 prevent ultra vires acts and keep presidential action within his authorization, to
7 proscribe self-dealing and demand the president “act for reasons associated
8 primarily with the public interest rather than [] self-interest,” and an affirmative
9 command to act diligence, care and good faith to pursue what is in the best interest
10 of the constituency.²⁵ Some of the historical examples reviewed involved
11 impeachments and “reflect a public trust theory of impeachment, in which acting
12 contrary to oath, duty, and office are key elements.”²⁶ As used in this section of
13 the proposed ordinance, the clause is specific to executing directives in an
14 ordinance passed by the Assembly. Again, turning to common law jurisprudence
15 for removal, if the allegations against the mayor are failure to carry out political or
16 discretionary actions directed by ordinance, such a complaint is unlikely to pass
17 the initial legal sufficiency review, or the hearing officer’s determinations as a
18 matter of law.²⁷ And, the mental state elements apply, so a mayor’s good faith
19 refusal to take an action directed in an ordinance because there are, in fact,
20 reasonable grounds for such refusal means the allegation is unlikely to pass
21 muster in a removal proceeding. This phrase, however, supports the validity of a
22 removal proceeding if the allegations and facts demonstrate the mayor’s willful and
23 knowing refusal to carry out a directive-that is not directing a political or
24 discretionary action- in an ordinance, or culpable indifference to that directive.
25 Would a single instance suffice? The common law in this area discussed in the
26 first part of this memorandum suggests the answer is “no,” and a pattern or
27 repeated instances of failure to execute an ordinance’s directives within the
28 legislative power to so direct, shown by a preponderance of the evidence, may be
29 necessary for a successful removal action.

30
31 The main point to bear in mind is that “breach of the public trust” is to be interpreted
32 in light of the common law and precedents whether in Alaska or other jurisdictions
33 related to the removal of a public elected official. With the requirement to prove a
34 mental state element, it is a high bar and cannot be arbitrarily based on minor
35 violations, isolated missteps, discretionary actions, or political differences. But it is
36 not a bar set as high as a criminal proceeding, the standard of proof in the current
37 Code and the new sections proposed by the ordinance is a “preponderance of the

²³ Anchorage Municipal Charter Art. XVII, § 17.07.

²⁴ U.S. Const. Art. II, § 3; and Alaska Const. Art. III, § 16.

²⁵ Andrew Kent et. al., *Faithful Execution and Article II*, 132 Harv. L. Rev. 2111, 2178–79 (2019).

²⁶ *Id.* at 2171.

²⁷ For example, the power of appointment of department heads is vested in the mayor and a clear executive function. If the Assembly passed an ordinance directing the mayor to appoint John Smith to head a certain department, and the Mayor does not and appoints someone else, that would not provide sufficient grounds for removal under subsection 13.

1 evidence,” and not the “proof beyond a reasonable doubt” standard in criminal law.
2 The foregoing explanation of the actions listed are not intended to be
3 comprehensive or absolute, they are demonstrative of the complexity of the
4 process for removal and an effort to iterate some statutory and common law
5 offenses that are encompassed by the phrase “breach of the public trust.”
6

7 **No state law preemption.** Another legal point that has been asked is whether
8 enacting this removal process is preempted by state statute. Section 3 of the
9 proposed ordinance for a process for mayoral removal is clearly different than AS
10 29.20.280(a), the comparable state statute:

11
12 **AS § 29.20.280. Vacancy in the office of mayor.**

13 (a) The governing body shall, by two-thirds concurring vote, declare the
14 office of mayor vacant only when the person elected

15 (1) fails to qualify or take office within 30 days after election or
16 appointment;

17 (2) unless excused by the governing body, is physically absent for 90
18 consecutive days;

19 (3) resigns and the resignation is accepted;

20 (4) is physically or mentally unable to perform the duties of office;

21 (5) is convicted of a felony or of an offense involving a violation of the
22 oath of office;

23 (6) is convicted of a felony or misdemeanor described in AS 15.56;

24 (7) is convicted of a violation of AS 15.13;

25 (8) no longer physically resides in the municipality; or

26 (9) if a member of the governing body in a second class city, misses
27 three consecutive regular meetings and is not excused.

28 ...

29 This provision of Title 29, Municipal Government, is not a prohibition on a home
30 rule municipality from enacting an ordinance that approaches declaring a vacancy
31 in the mayor’s office, including by removal, differently. AS 29.10.200 identifies the
32 specific sections of Title 29 that “apply to home rule municipalities as prohibitions
33 on acting otherwise than as provided.” AS 29.20.280 is not in the listed sections.²⁸
34 Therefore, as a home rule municipality the MOA is not preempted from enacting
35 the proposed ordinance.
36

²⁸ AS 29.10.200 lists sections of Title 29 in numerical order, and AS 29.20.280, if it were included, would be between subsections (15) and (16):

(13) AS 29.20.150 (term of office);

(14) AS 29.20.220 (executive power);

(15) AS 29.20.270(e) (ordinance veto by mayor);

(16) AS 29.20.630 (prohibited discrimination);

1 Assembly Members may contact me with any further legal questions or concerns.

2
3 Respectfully submitted: Dean T. Gates, Assembly Counsel

4
5 Attachments: Excerpts from Anchorage Charter Commission meeting
6 transcripts:

- 7 • May 8, 1975, pages 38-42.
- 8 • June 26, 1975, pages 51-53.
- 9 • July 18, 1975, pages 27-35.

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ANCHORAGE CHARTER COMMISSION MEETING

ALASKA METHODIST UNIVERSITY

DATE: May 8, 1975
(Evening meeting)

Members present:

Fred Chiei, Vice Chairman
Jane Angvik
Dick Fischer
Mary Frohne
Shari Holmes
Lisa Parker
Jim Parsons
Arliss Sturgulewski
Rick Garnett, Attorney
Evy Walters, Executive Secretary

Members Absent:

Frank Reed, Chairman
William Sheffield
Joe Josephson

Others Present:

Margaret Schmidt
Jan Hansen
Randy Johnson
Millett Keller

Hearing opened at 7:30 p.m.

1 MR. GARNETT: Yeah.

2 MS. STURGULEWSKI: Question.

3 MR. CHIEI: The question has been called.

4 (Simultaneous speech)

5 MR. CHIEI: Is there anyone opposed to the motion?
6 Motion's carried.

7 MS. HOLMES: Mr. Chairman, the insertion of -- in line
8 six beginning with vacancies, that sentence is something
9 that we had inadvertently omitted from the school section.
10 I would move inclusion of that sentence.

11 MS. STURGULEWSKI: Second.

12 MR. CHIEI: State the motion again, Shari.

13 MS. HOLMES: The sentence that you see in your
14 (indiscernible) vacancies in the school board shall be
15 filled in the manner provided for vacancies under the
16 assembly was inadvertently omitted from the school section
17 and we'd have to (indiscernible). I would therefore move
18 for its inclusion.

19 MR. CHIEI: All right, it's been seconded by Arliss.
20 Is there any discussion by the Commission on it?

21 MS. STURGULEWSKI: Question.

22 MR. FISCHER: Yeah, Mr. Chairman?

23 (Simultaneous speech)

24 MR. FISCHER: I can't remember how vacancies are
25 provided by (indiscernible).

1 (Simultaneous speech)

2 MR. FISCHER: Page four?

3 MR. GARNETT: Yes, at 3.05.

4 (Simultaneous speech)

5 MR. FISCHER: What do we do, Mr. Chairman, with the
6 last sentence of that?

7 MR. CHIEI: The last sentence of which?

8 MR. FISCHER: Well, the -- if we're doing it the same
9 way as we're doing it by the assembly, it says that the
10 assembly member shall be reduced to fewer than six members
11 and the remaining members should be filled by vacancies
12 (indiscernible). And then (indiscernible) seven days.

13 MS. FROHNE: Mr. Chairman?

14 MR. CHIEI: Mary?

15 MS. FROHNE: In as much as it is a different number, I
16 guess we shouldn't reuse the reference, but have Rick fill
17 in a similar wording with a majority of five being the
18 number.

19 MR. PARSONS: I would so move, Mr. Chairman. What
20 we're doing (indiscernible).

21 MR. FISCHER: Mr. Chairman?

22 MS. FROHNE: I'll second it.

23 MR. CHIEI: Now wait a minute, wait a minute. It's
24 been moved (indiscernible).

25 (Simultaneous speech)

1 MR. GARNETT: No, there was an order, there was a
2 motion before us.

3 (Simultaneous speech)

4 MS. FROHNE: May we substitute motion rather than
5 original motion with this?

6 MR. FISCHER: Mr. Chairman, I would move that a
7 substitute motion to the one before us for Mr. Garnett to
8 draw up an article to -- the wording to include here similar
9 to the assembly (indiscernible) number being five.

10 MR. CHIEI: Does that have the second by Mary?

11 MS. FROHNE: Yes.

12 MR. CHIEI: Mary, did you second that?

13 MS. FROHNE: I did.

14 MR. CHIEI: Discussion, Lisa?

15 MS. PARKER: (Indiscernible) vacancy and.....

16 (End of side A)

17 MS. STURGULEWSKI: Mr. Chairman, we had on this
18 particular one, discussed, I thought earlier, and that's
19 probably why it is not in the school session, that we wanted
20 a section drawn up that would cover this matter for the -- I
21 thought the Mayor, the school board and the assembly.

22 MR. GARNETT: We did it for the Mayor, we didn't do it
23 for the school board.

24 MS. STURGULEWSKI: We did it for the Mayor and we did
25 it for the assembly in their sections, did we not?

1 MR. GARNETT: Right, yes.

2 MS. STURGULEWSKI: Well, then I think this is what
3 we're saying and is an appropriate method to follow is we'll
4 have to be self standing here then. Can we do that, require
5 by ordinance by the assembly?

6 MR. GARNETT: I suppose so. I don't -- another way
7 you can say -- or preempt just on the matter of determining
8 vacancies on (indiscernible).

9 MR. FISCHER: Well, the '71 charter indicated
10 vacancies of the office of school board members shall be
11 determined as provided by ordinance.

12 MS. HOLMES: So we can reconcile, Mr. Chairman, we can
13 reconcile the school language to follow the assembly
14 language except with the (indiscernible).

15 MR. GARNETT: (Indiscernible) yeah.

16 MS. HOLMES: And including the (indiscernible).

17 MS. STURGULEWSKI: Uh-huh.

18 MR. GARNETT: Evy, why don't you do that in full or by
19 the use of the phrase such as vacancies on the school board
20 shall be determined and filled and then vacancies on
21 (indiscernible).

22 MS. HOLMES: I think it would be more proper, from my
23 point of view, to include the whole thing.

24 MAN 1: Here.

25 MS. FROHNE: We -- we're trying to avoid references

1 where we can.

2 MS. HOLMES: I would withdraw my original motion then
3 to include a sentence on vacancies.

4 MR. CHIEI: Wait a minute now, I'm.....

5 (Simultaneous speech)

6 MR. CHIEI: There's a substitute motion on the table
7 (indiscernible) and we're discussing that motion. Any
8 further discussion on Jim's motion? If not, we'll call for
9 the question.

10 MR. FISCHER: Question.

11 MS. ANGVIK: In relation to Lisa's point, will we also
12 then include a section on determining vacancies along with
13 following your suggestion?

14 MR. FISCHER: I would think so.

15 MS. STURGULEWSKI: I thought that was your intent.

16 MS. FROHNE: I think that's the intent.

17 MS. STURGULEWSKI: It would, it would take care of
18 that.

19 MS. ANGVIK: Just the whole ball of wax for this to
20 (indiscernible) to the others.

21 MS. STURGULEWSKI: Right.

22 MS. ANGVIK: All right.

23 (Simultaneous speech)

24 MS. ANGVIK: I just wanted to make sure that's what we
25 were doing.

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ANCHORAGE CHARTER COMMISSION MEETING

COMMISSION OFFICE

DATE: June 26, 1975

Members present:

Frank Reed, Chairman
Lisa Parker
Joe Josephson
Jane Angvik
Mary Frohne
William Sheffield
Shari Holmes
Fred Chiei
Jim Parsons
Rick Garnett, Attorney
Pat Parnell, Executive Director

Members absent:

Dick Fischer
Arliss Sturgulewski

Others present:

John Parks
Mike Rose
Mike Rowan
Carl Whitson
Judy Whitson
Walt Parker
Pat Parker

Hearing opened at 7:30 p.m.

1 MR. CHIEI: Yeah.

2 MR. REED: Motion by Chiei, seconded by Holmes for the
3 adoption of the Committee Report number 8.

4 MR. CHIEI: I make a move we don't (indiscernible) for
5 the Borough.

6 MR. REED: If there are no -- all those in favor?

7 ALL: Aye.

8 MR. REED: Those opposed? Hearing no opposition,
9 Committee Report number 8 (indiscernible - simultaneous
10 speech).

11 MR. CHIEI: For the (indiscernible - simultaneous
12 speech).

13 (Simultaneous speech)

14 MR. REED: And the secretary instructed to cast a
15 unanimous vote.

16 (Simultaneous speech)

17 MR. CHIEI: The city should be investigated also.

18 MS. FROHNE: The city did it first and then the
19 legislature did it and then (indiscernible).

20 MR. REED: Now (indiscernible - voice lowered).

21 (Simultaneous speech)

22 MR. JOSEPHSON: Okay, on number 9, there are a couple
23 things. In the original first draft Charter, Mr. Chairman,
24 vacancies are treated in different articles. There's a
25 vacancy provision under Article III for the Assembly.

1 There's a vacancy provision under the Mayor, there's a
2 vacancy provision under the School Board. And they're very
3 broad, they simply say, for example, in terms of the Office
4 of the Mayor, that the Assembly, by ordinance, shall adopt
5 standards and procedures for removal of the Mayor from
6 office. The philosophy of Committee Report number 9 is to
7 collect all the vacancy material into one place and to set
8 out some specific criteria, specific causes where a vacancy
9 would exist. The only one which is not clear or not
10 definite is breach of the public trust, case number six.

11 Subsection (b), however, provides safeguards on that
12 question as to how to proceed to remove an elected official
13 for the breach of the public trust would be initiated and
14 provides for notice, statements of charges and public
15 hearing within impartial person and that the removal would
16 be accomplished only by extraordinary two-thirds vote.

17 The matter of filling vacancies has changed by making
18 sure -- and this was Mayor Sullivan's suggestion that the --
19 that if a person is appointed to fill a vacancy, that he's
20 qualified, meaning that he has the same Charter
21 qualifications as he would have had to have if he had stood
22 for election.

23 I don't know if any member of the Committee wants to
24 add something to that or Mr. Garnett?

25 MR. GARNETT: (Indiscernible) Mr. Chairman, except

1 that in terms of length, we save four or five areas,
2 substantial sections (indiscernible) on the words of
3 (indiscernible).

4 MR. CHIEI: I'll move for its adoption.

5 MR. SHEFFIELD: Second.

6 MR. REED: Moved by Mr. Chiei, seconded by Mr.
7 Sheffield, adoption of Committee Report number 9.

8 MS. ANGVIK: Mr. Chairman?

9 MR. REED: Ms. Angvik.

10 MS. ANGVIK: I just have to point out to everybody who
11 wasn't there at that meeting that when section (a) in the
12 filling of vacancies, we talked about if, in an
13 extraordinary situation, that the number of members on the
14 Assembly should be reduced to less than a quorum if they all
15 get killed in a plane accident, that you fill, by
16 appointment, up to quorum and then you -- so that you can
17 conduct business, this section. And then the remaining
18 vacancies will be filled by that group and then
19 (indiscernible) but that you immediately fill (indiscernible
20 - mic noise) within seven days.

21 MR. REED: Any other discussion? Lisa?

22 MS. PARKER: Go ahead.

23 MR. GARNETT: Well, Lisa pointed out, correct me, that
24 we'll have to change the reference to paragraph (a) of this
25 section. The reason we're vacant on section numbers and so

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ANCHORAGE CHARTER COMMISSION MEETING

DATE: July 18, 1975

Members present:

Frank Reed, Chairman
Jim Parsons
Mary Frohne
Joe Josephson
Fred Chiei
Arliss Sturgulewski
Jane Angvik
Lisa Parker
Rick Garnett, Attorney
Pat Parnell, Executive Director
Patti Zantek, Executive Secretary

Other persons present:

Ken Spray, Alaska Public Employees
Association
Jim Babb, Anchorage Daily News
Don Sherwood, Bargaining Team, APEA

1 would certainly be one of the major rights. That -- that
2 gets into a legislative thing. We're not trusting our other
3 body if we don't.....

4 MR. REED: Is there any further discussion regarding
5 the amendment?

6 MS. STURGULEWSKI: Question.

7 MS. FROHNE: This improves it a whole lot.

8 MR. REED: That question's been called. All those in
9 favor?

10 All: Aye.

11 MR. REED: Those opposed?

12 (No audible response)

13 MR. REED: Hearing no opposition, it's unanimous.

14 MS. STURGULEWSKI: Mr. Chairman, two little nit-
15 pickings, is 12, is proceedings not.....

16 MR. REED: Yeah.

17 UNIDENTIFIED FEMALE SPEAKER: Should be
18 (indiscernible).....

19 MS. STURGULEWSKI: Okay, and down in line 22, a comma
20 after School Board.

21 MS. FROHNE: Mr. Chairman.

22 MR. REED: Mary.

23 MS. FROHNE: I would like to add on line 19, "or
24 School Board, as the case may be, on the basis of facts
25 found." In other words, they would have to -- the facts

1 were proved in a judicial review, the Assembly's action or
2 the School Board's action would have to be on the basis of
3 the facts found, and not on an arbitrary basis.

4 MS. STURGULEWSKI: Well, Mr. Chairman.

5 MR. REED: Arliss.

6 MS. STURGULEWSKI: Mary, what have we said up above?
7 I don't understand. Don't you read that in context?

8 MS. FROHNE: Well,.....

9 MR. REED: Well, this is (indiscernible).....

10 MS. FROHNE: I don't believe that is more than a
11 (indiscernible) unless we do add a phrase.

12 MS. STURGULEWSKI: I don't.

13 UNIDENTIFIED MALE SPEAKER: (Indiscernible).

14 MS. FROHNE: It says, "removal must -- must be
15 approved by 2/3 of the authorized membership, as the case
16 may be....."

17 MS. STURGULEWSKI: But it states what removal is.

18 MR. REED: Well, Mary -- Mary, doesn't this actually
19 state -- state that the -- the conditions of removal in
20 effect for a breach of public (indiscernible).....

21 UNIDENTIFIED MALE SPEAKER: Yes.

22 MS. FROHNE: It says the procedures to go through.

23 UNIDENTIFIED MALE SPEAKER: They're all through here
24 and (indiscernible).....

25 MS. FROHNE: It says, "procedures to go through,"

1 which supposedly are determining the facts, but.....

2 (Simultaneous speech)

3 MS. FROHNE: I want to be darn sure that this last
4 sentence means that their action has to be on the basis of
5 the facts found in the judicial review, you know, in the
6 whole proceeding above.

7 (Simultaneous speech)

8 MS. STURGULEWSKI: To me, I don't have any, you
9 know,.....

10 UNIDENTIFIED MALE SPEAKER: I think it's very
11 (indiscernible).....

12 (Simultaneous speech)

13 MR. REED: I don't have any qualms about the Assembly
14 having.....

15 MS. FROHNE: Doing those things, that's why it
16 (indiscernible).....

17 MR. REED:having that much sense, that they're
18 going to be based on the fact found anyway, and if they
19 aren't, they've probably got adequate underlying reasons. I
20 mean, if (indiscernible).....

21 MS. ANGVIK: Whether they're adequate or not, they
22 wouldn't (indiscernible).....

23 MR. JOSEPHSON: Mr. Chairman, Rick, when you wrote
24 down this casual phrase, as the case may be, what did you
25 have in mind?

1 MR. GARNETT: Well, I had in mind designating the
2 Assembly or the School Board,.....

3 MR. REED: The Assembly or the School Board.....

4 MR. GARNETT:depending on whether it was an
5 assemblyman or a School Board member who was being removed.

6 (Simultaneous speech)

7 MR. REED: That only refers to whether it's an
8 assemblyman or a School Board member.

9 MR. GARNETT: Now, on the case issue (indiscernible).

10 MS. FROHNE: In other words, each legislative body
11 would be the (indiscernible).....

12 MR. GARNETT: Yeah.

13 MR. REED: Yeah, right.

14 MS. FROHNE:its membership.

15 MR. REED: That's right.

16 MR. GARNETT: You know, I don't know, Joe, it seems to
17 me that the concept of removing a person from office would
18 include, by its nature, the idea of cause or reasonable
19 cause and.....

20 (Simultaneous speech)

21 MR. GARNETT: And if it were arbitrary, if an
22 arbitrary removal were attempted, I think it would be a
23 violation of basic due process and (indiscernible).

24 MS. FROHNE: If you're sure that would apply, I will
25 not try to add wording.

1 MR. JOSEPHSON: Well, Mr. Chairman.
2 MR. REED: Mr. Josephson.
3 MR. JOSEPHSON: It must be for breach of the public
4 trust.
5 MR. GARNETT: Yes.
6 MS. STURGULEWSKI: Sure.
7 MR. JOSEPHSON: It can't be because someone doesn't
8 like the.....
9 MS. STURGULEWSKI: (Indiscernible).
10 MS. FROHNE: Well, I wasn't so much fearful that
11 they.....
12 (Simultaneous speech)
13 MS. FROHNE:fearful that (indiscernible).....
14 (Simultaneous speech)
15 MS. FROHNE:unduly removed, but I would be more
16 fearful that they would leave them in, in spite of cause.
17 UNIDENTIFIED MALE SPEAKER: I see.
18 MR. REED: Is there any further discussion?
19 MS. FROHNE: Because they were part of the body.
20 MS. STURGULEWSKI: Call for the question on item
21 seven.
22 MS. FROHNE: I'm not scared of the other side. I'm
23 scared that they might even leave them in, even though there
24 was cause.
25 UNIDENTIFIED MALE SPEAKER: Yeah.

1 MS. ANGVIK: Did you drop the amendment?
2 MS. FROHNE: No, I have not. I'm not sure it
3 (indiscernible).....
4 MS. STURGULEWSKI: I didn't hear a second on that.
5 I'm sorry.
6 UNIDENTIFIED MALE SPEAKER: I did.
7 MS. STURGULEWSKI: Excuse me.
8 UNIDENTIFIED MALE SPEAKER: Yeah.
9 (Simultaneous speech)
10 MS. FROHNE: It certainly isn't. I shall
11 (indiscernible) to the far end of the table, Jane.
12 MS. ANGVIK: Would you rather I (indiscernible)?
13 MR. REED: There is no motion, except the main motion.
14 MR. CHIEI: There is a motion.
15 MS. STURGULEWSKI: Apparently, they did make a motion.
16 I didn't hear (indiscernible).....
17 MR. REED: They did make a motion?
18 MS. FROHNE: I love you, but (indiscernible).....
19 (Simultaneous speech)
20 MR. REED: On the basis of facts found, all right.
21 Question, who moved and who seconded?
22 UNIDENTIFIED MALE SPEAKER: Mary and (indiscernible).
23 UNIDENTIFIED FEMALE SPEAKER: Mary and Jane.
24 MR. REED: Mary -- Mary and Jane.
25 UNIDENTIFIED FEMALE SPEAKER: Who's a smoker?

1 UNIDENTIFIED FEMALE SPEAKER: I'm going
2 (indiscernible).....

3 UNIDENTIFIED FEMALE SPEAKER: Jane.

4 MR. REED: On the basis of the -- of facts found,
5 addition to the end of that paragraph, 7.01.....

6 MS. FROHNE: I'm not at all.....

7 (Simultaneous speech)

8 MS. FROHNE:scared that they'll remove them
9 without cause, I'm scared that they might not move -- remove
10 them even if there is.

11 MR. REED: Well, let's -- let's go to vote.

12 (Simultaneous speech)

13 MR. REED: All those in favor?

14 MS. ANGVIK: Aye.

15 MS. FROHNE: Aye.

16 UNIDENTIFIED MALE SPEAKER: No.

17 UNIDENTIFIED FEMALE SPEAKER: No.

18 MR. REED: Okay, rather (indiscernible) call role.

19 UNIDENTIFIED FEMALE SPEAKER: Did we (indiscernible).

20 MR. CHIEI: Read -- read the motion.

21 MR. REED: Okay. In the last sentence of 7.01,
22 removal must be approved by 2/3 of the authorized membership
23 of the Assembly or School Board, as the case may be, on the
24 basis of the facts found, would be added.

25 MR. CHIEI: Basis of the facts found would be added?

1 MR. REED: Yeah. Angvik?
2 MS. ANGVIK: Yes.
3 MR. REED: Chiei?
4 MR. CHIEI: No.
5 MR. REED: Frohne?
6 MS. FROHNE: Yes.
7 MR. REED: Josephson?
8 MR. JOSEPHSON: No.
9 (No audible response)
10 MR. REED: Parker?
11 MR. CHIEI: Parker, where's Lisa?
12 UNIDENTIFIED MALE SPEAKER: She's been out for a
13 couple of minutes.
14 MR. CHIEI: Well, she'll know what the issue is
15 anyway.
16 MR. REED: Parsons?
17 MR. PARSONS: No.
18 MR. REED: Reed? No. Sturgulewski?
19 MS. STURGULEWSKI: No.
20 MR. REED: The motion failed, one, two, three, four,
21 five.....
22 MS. STURGULEWSKI: Only because I think
23 (indiscernible), Mary.....
24 MR. REED: Five (indiscernible).....
25 MS. FROHNE: I hope it is.

1 MS. STURGULEWSKI: Yeah.

2 MS. FROHNE: I hope it is.

3 MR. REED: Well, the main motion.....

4 MS. STURGULEWSKI: We never have a personal chance
5 (indiscernible).....

6 MR. REED:before us to adopt Article VII in its
7 entirety as submitted and amended. Questions?

8 MS. STURGULEWSKI: Question.

9 MR. REED: The questions is called. We should -- will
10 I.....

11 UNIDENTIFIED MALE SPEAKER: Roll call?

12 UNIDENTIFIED MALE SPEAKER: Voice call.

13 MR. REED: All those in favor?

14 UNIDENTIFIED MALE SPEAKER: Aye.

15 UNIDENTIFIED FEMALE SPEAKER: Aye.

16 UNIDENTIFIED MALE SPEAKER: Aye.

17 MS. FROHNE: Mr. Chairman, I have one more. I'm
18 trying to find where it ended.

19 MR. REED: All those opposed?

20 MS. FROHNE: I opposed because I've got one more.

21 MR. REED: It's the sense of the Commission to.....

22 UNIDENTIFIED MALE SPEAKER: Yeah, I wasn't ready
23 either, to vote, Mr. Chairman.

24 MR. REED: The Chairman is trying to speed the thing
25 along.