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

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

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

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

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

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

WHEREAS, this ordinance will not have significant economic effects; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

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

27.20.070 Vacancies generally; unexcused absences.

A. The office of an elected member of a supervisory board established under this chapter shall become vacant in the same manner as an
elected office becomes vacant as provided in section 7.01(a) of the
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.

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(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 of the municipal board of ethics and must allege specific actions by the member 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 served on the member in the same manner as service of process under Alaska Rules of Civil Procedure, and a copy delivered to the municipal attorney.

D. The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney'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 that the accusation document is legally sufficient. Following a determination by the municipal attorney that the accusation document is legally sufficient, it shall be delivered to the municipal administrative hearings office established by Title 14, and the municipality shall employ an attorney of the member's choice, subject to the limitations of this subsection, to defend the charges. The attorney selected must be engaged in the active practice of law in the state. The fees charged by the attorney must be reasonable in both the rate and the amount of time expended. Reasonableness shall be evaluated in accordance with Alaska Bar Rule 35 and shall be subject to fee arbitration under the Alaska Bar Rules if the municipality disputes the reasonableness of the fees claimed.

E. A hearing conducted by the municipal administrative hearing officer shall be held no later than 30 days following appointment of the hearing officer. The hearing shall be open to the public and, unless otherwise provided in this section, shall be conducted in accordance with the procedures set forth in chapter 3.60, however the hearing officer shall expedite the matter within the required times set forth in this section and chapter 3.60 and shall grant extensions only for good cause. Good cause must be based upon matters either beyond the control of the party making application or conditions which would create a significant hardship if a continuance is not granted. Within ten days following the conclusion of the public hearing the hearing officer shall submit written findings and recommendations to the assembly. The recommendations shall include whether the member should be removed.
F. The standard of proof of the allegations in the accusation document to be applied by the hearing officer is proof by a preponderance of the evidence. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions alleged constitute a breach of the public trust as set forth in subsection A. of this section. Wrongful acts or admissions occurring while the member 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.]

G. Within ten days of receiving the hearing officer's recommendations, the assembly shall vote on whether to remove the member who is the subject of the accusation document. Removal shall occur only on the concurrence of two-thirds of the fully constituted body.

H. 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 member shall not constitute irreparable harm. During a stay, the seat may be temporarily filled pending the outcome of the court case using the procedures in section 27.20.080. If, after exhaustion of appeals, the final ruling reverses the removal, the removed member shall be reseated for the remainder of the term for which the member was elected, and the acting member shall be displaced.

Section 3. Anchorage Municipal Code chapter 3.10, General Provisions, (Reserved) is hereby amended to rename the chapter and to add a new section 3.10.050 to read as follows:

Chapter 3.10 - GENERAL PROVISIONS [(RESERVED)]

3.10.050 Removal from office.

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

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

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

G. The standard of proof of the allegations in the accusation document to be applied by the hearing officer is proof by a preponderance of the evidence. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions
alleged constitute a breach of the public trust as set forth in subsection A. of this section. Wrongful acts or admissions occurring while the 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:

   12. Substantial breach of a statutory 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 [TWO-THIRDS] vote of the assembly or [TWO-THIRDS MAJORITY] decision of the municipal board of ethics and must allege specific actions by the assembly member in question which breach the public trust.

C. After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to [MUST] be delivered by personal service to the member of the assembly who is the subject of the accusation document and a copy delivered to the municipal attorney.

D. The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney'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 that the accusation document is legally sufficient. Following a determination by the municipal attorney that the accusation document is legally sufficient, the municipality shall employ an attorney of the accused's choice, subject to the limitations of this subsection, to defend the charges. The attorney selected must be engaged in the active practice of law in the state. The fees charged by the attorney must be reasonable in both the rate and the amount of time expended. Reasonableness shall be evaluated in accordance with Alaska Bar Rule 35 and shall be subject to fee arbitration under the Alaska Bar Rules if the municipality disputes the reasonableness of the fees claimed.

E. Within two weeks following the delivery of an accusation document, the municipal clerk shall request that six names be submitted as potential hearing officers by the American Arbitration Association. Three of the names submitted should be from the state and three from out-of-state. From these names the assembly and the accused shall agree upon a hearing officer who shall conduct the hearing concerning the allegations in the accusation document. If [OR, IF] no agreement is reached within ten days of distribution of the list of potential hearing officers, the hearing officer shall be selected by each side exercising preemptory challenges to the six potential names in turn until only one remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING OFFICER FROM THE LIST WHO SHALL CONDUCT A HEARING CONCERNING THE ACCUSATIONS CONTAINED IN THE DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL PROVIDE A RECOMMENDATION TO THE ASSEMBLY]. If more
than one assembly member is the subject of the accusation document
or the alleged breach arises out of the same event, the same hearing
officer shall hear those matters and may hold one consolidated
hearing.

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

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

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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 facts that the removed member could
miss important votes and that another individual may be seated to
replace the removed member 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(b) and section 2.70.020 pending the outcome of the court case.
If, after exhaustion of appeals, the final ruling reverses the removal,
the removed member shall be reseated for the remainder of the term for which elected, and any replacement, whether appointed or elected at a special election, shall be displaced.

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

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

29.10.060 - Removal of members from office.

A member of the school board 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:


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 school board or the board of ethics. An accusation document may be submitted to municipal clerk only by a majority [TWO-THIRDS] vote of the school board or a [TWO-THIRDS MAJORITY] decision of the municipal board of ethics and must allege specific actions by the school board member in question which breach the public trust.

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

D. The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney'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 that the accusation document is legally sufficient. Following a determination by the municipal attorney that the accusation document is legally sufficient, the school board shall employ an attorney of the accused’s choice, subject to the limitations of this subsection, to defend the charges. The attorney selected must be engaged in the active practice of law in the state. The fees charged by the attorney must be reasonable in both the rate and the amount of time expended. Reasonableness shall be evaluated in accordance with Alaska Bar Rule 35 and shall be subject to fee arbitration under the Alaska Bar Rules if the school district disputes the reasonableness of the fees claimed.

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

F. A hearing conducted by an appointed hearing officer shall be held no later than 30 days following appointment of the hearing officer. The hearing shall be open to the public and, unless otherwise provided in this section, shall be conducted in accordance with the procedures set forth in chapter 3.60, however the hearing officer shall expedite the matter within the required times set forth in this section and chapter 3.60 and shall grant extensions only for good cause. Good cause must be based upon matters either beyond the control of the party making application or conditions which would create a significant hardship if a continuance is not granted. Within ten days following the conclusion of the public hearing, the hearing officer shall submit written findings and recommendations to the school board. The recommendations shall include whether the official should be removed.
G. The standard of proof of the allegations in the accusation document to be applied by the hearing officer is proof by a preponderance of the evidence. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions alleged constitute a breach of the public trust. Wrongful acts or admissions occurring while the officer was acting in a private capacity as opposed to his capacity as a public officer shall not constitute a breach of the public trust as set forth in subsection A of this section. **WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A BREACH OF THE PUBLIC TRUST.**

I. The decision of the school board acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the school board’s decision. If the school board’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 facts that the removed member could miss important votes or that another individual may be seated to replace the removed member 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(a) pending the outcome of the court case. If, after exhaustion of appeals, the final ruling reverses the removal, the removed member shall be reseated for the remainder of the term for which elected, and any replacement, whether appointed or elected at a special election, shall be displaced.**

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

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

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

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Chair

ATTEST:
1. Municipal Clerk