

*** DRAFT ***

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.

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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

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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

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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,

31
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

1 elected office becomes vacant as provided in section 7.01(a) of the
2 Charter. In addition, a [A] vacancy shall occur on the failure of a
3 member to:
4

- 5 1. Attend three consecutive regular or special meetings
6 without excuse; or
7
- 8 2. Attend a two-thirds majority of the regular and special
9 meetings during any calendar year without excuse.

10 *** **
11 (CAC 2.64.060)
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13 **Section 2.** Anchorage Municipal Code chapter 27.20, *Supervisory Boards*, is
14 hereby amended to add a new section 27.20.085 to read as follows:
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16 **27.20.085 Removal from office.**
17

18 An elected member of a supervisory board established under this chapter
19 may be removed from office for breach of the public trust following the
20 procedures set forth in this section.
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22 A. **Willful and knowing breach of duty or culpable indifference to**
23 **official duties may constitute a breach of the public trust.** For the
24 purposes of this section actions constituting a breach of the public trust
25 shall include, **but are not limited to:**
26

- 27 1. Acceptance of cash gifts from one doing business with the
28 municipality;
- 29 2. Violation of chapter 1.15;
- 30 3. Perjury;
- 31 4. Falsification of records;
- 32 5. Filing false reports;
- 33 6. Nepotism;
- 34 7. Making personal use of municipal or school district property;
- 35 8. Destruction of municipal or school district property;
- 36 9. Official oppression;
- 37 10. Actual or attempted official misconduct, as defined by state law;
- 38 11. Ordering a municipal employee or contractor employed by the
39 supervisory board to undertake an unlawful act;
- 40 12. Substantial breach of a statutory-, Code- or Charter-imposed
41 duty.
42

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

1 the municipal clerk only by a majority vote of the assembly or decision
2 of the municipal board of ethics and must allege specific actions by
3 the member that breach the public trust.

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

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

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

45

1 purposes of this section actions constituting a breach of the public trust
2 shall include, **but are not limited to:**
3

- 4 1. Acceptance of cash gifts from one doing business with the
5 municipality;
- 6 2. Violation of chapter 1.15;
- 7 3. Perjury;
- 8 4. Falsification of records;
- 9 5. Filing false reports;
- 10 6. Nepotism;
- 11 7. Making personal use of municipal or school district property;
- 12 8. Destruction of municipal or school district property;
- 13 9. Official oppression;
- 14 10. Actual or attempted official misconduct, as defined by state law;
- 15 11. Ordering, or knowingly allowing a person appointed by the
16 mayor to order, a municipal employee to undertake an unlawful
17 act;
- 18 12. Substantial breach of a statutory-, Code- or Charter-imposed
19 duty;
- 20 13. Failure to faithfully execute the directives of a duly enacted
21 ordinance.
22

23 B. Proceedings for removal from office **may only [shall]** be initiated by
24 delivery of an accusation document to the municipal clerk setting forth
25 the grounds for removal and specifying if delivery is to the assembly
26 or the board of ethics. An accusation document may be submitted to
27 the municipal clerk only by a majority vote of the assembly or decision
28 of the municipal board of ethics and must allege specific actions by
29 the mayor that breach the public trust.
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31 C. After a successful vote to submit it, the municipal clerk shall cause a
32 copy of the accusation document to be delivered by personal service
33 to the mayor and a copy delivered to the municipal attorney.
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35 D. The municipal attorney, or an impartial third-party attorney retained by
36 the Assembly to serve as special counsel, shall review the accusation
37 document for legal sufficiency. An accusation approved by the
38 assembly shall specify whether the accusation shall be reviewed for
39 legal sufficiency by the municipal attorney or special counsel. The
40 municipal attorney, or the retained special counsel, shall determine
41 the legal sufficiency of the allegations within ten days of receipt of the
42 accusation document. If the municipal attorney, or special counsel,
43 determines that the allegations are legally insufficient, the removal
44 action shall be discontinued. The municipal attorney's or special
45 counsel's determination, if it rejects the accusation document, may be
46 appealed to the superior court within 30 days. No interlocutory appeal

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

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

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

41
42 G. The standard of proof of the allegations in the accusation document to
43 be applied by the hearing officer is proof by a preponderance of the
44 evidence. The hearing officer shall evaluate the evidence relating to
45 the accusations set forth in the accusation document and evaluate
46 both whether the allegations are supported and whether those actions

1 assembly or the board of ethics. An accusation document may be
 2 submitted to the municipal clerk only by a majority [TWO-THIRDS]
 3 vote of the assembly or [TWO-THIRDS MAJORITY] decision of the
 4 municipal board of ethics and must allege specific actions by the
 5 assembly member in question which breach the public trust.
 6

7 C. After a successful vote to submit it, the municipal clerk shall cause a
 8 copy of the accusation document to [MUST] be delivered by personal
 9 service to the member of the assembly who is the subject of the
 10 accusation document and a copy delivered to the municipal attorney.
 11

12 D. The municipal attorney shall review the accusation document for legal
 13 sufficiency. The municipal attorney shall determine the legal
 14 sufficiency of the allegations within ten days of receipt of the
 15 accusation document. If the municipal attorney determines that the
 16 allegations are legally insufficient, the removal action shall be
 17 discontinued. The municipal attorney's determination, if it rejects the
 18 accusation document, may be appealed to the superior court within 30
 19 days. No interlocutory appeal is permitted from a determination by the
 20 municipal attorney that the accusation document is legally sufficient.
 21 Following a determination by the municipal attorney that the
 22 accusation document is legally sufficient, the municipality shall employ
 23 an attorney of the accused's choice, subject to the limitations of this
 24 subsection, to defend the charges. The attorney selected must be
 25 engaged in the active practice of law in the state. The fees charged by
 26 the attorney must be reasonable in both the rate and the amount of
 27 time expended. Reasonableness shall be evaluated in accordance
 28 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
 29 the Alaska Bar Rules if the municipality disputes the reasonableness
 30 of the fees claimed.
 31

32 E. Within two weeks following the delivery of an accusation document,
 33 the municipal clerk shall request that six names be submitted as
 34 potential hearing officers by the American Arbitration Association.
 35 Three of the names submitted should be from the state and three from
 36 out-of-state. From these names the assembly and the accused shall
 37 agree upon a hearing officer who shall conduct the hearing concerning
 38 the allegations in the accusation document. If [, OR, IF] no agreement
 39 is reached within ten days of distribution of the list of potential hearing
 40 officers, the hearing officer shall be selected by each side exercising
 41 preemptory challenges to the six potential names in turn until only one
 42 remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING
 43 OFFICER FROM THE LIST WHO SHALL CONDUCT A HEARING
 44 CONCERNING THE ACCUSATIONS CONTAINED IN THE
 45 DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL
 46 PROVIDE A RECOMMENDATION TO THE ASSEMBLY]. If more

1 than one assembly member is the subject of the accusation document
2 or the alleged breach arises out of the same event, the same hearing
3 officer shall hear those matters and may hold one consolidated
4 hearing.

5
6 F. A hearing conducted by the appointed hearing officer shall be held no
7 later than 30 days following appointment of the hearing officer. The
8 hearing shall be open to the public and, unless otherwise provided in
9 this section, shall be conducted in accordance with the procedures set
10 forth in chapter 3.60, **however the hearing officer shall expedite the**
11 **matter within the required times set forth in this section and**
12 **chapter 3.60 and shall grant extensions only for good cause.**
13 **Good cause must be based upon matters either beyond the**
14 **control of the party making application or conditions which**
15 **would create a significant hardship if a continuance is not**
16 **granted.** Within ten days following the conclusion of the public hearing
17 the hearing officer shall submit written findings and recommendations
18 to the assembly. The recommendations shall include whether the
19 officer should be removed.

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

33 *** **

34 I. The decision of the assembly acting upon the recommendations of the
35 hearing officer may be appealed to the superior court within 30 days
36 of the assembly's decision. If the assembly's decision is for removal,
37 the office shall be considered vacant beginning at 12:01 a.m. seven
38 days following the decision unless the appellate court issues a stay of
39 the removal pending appeal. In evaluating whether to grant a stay of
40 removal pending appeal the facts that the removed member could
41 miss important votes and that another individual may be seated to
42 replace the removed member shall not constitute irreparable harm.
43 During a stay, unless otherwise ordered by the court the seat is
44 considered vacant and shall be filled in accordance with Charter
45 7.02(b) and section 2.70.020 pending the outcome of the court case.
46 If, after exhaustion of appeals, the final ruling reverses the removal,

the removed member shall be reelected 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:**

*** *** ***
12. **Substantial b[B]reach 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 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

1 municipal attorney that the accusation document is legally sufficient.
2 Following a determination by the municipal attorney that the
3 accusation document is legally sufficient, the school board shall
4 employ an attorney of the accused's choice, subject to the limitations
5 of this subsection, to defend the charges. The attorney selected must
6 be engaged in the active practice of law in the state. The fees charged
7 by the attorney must be reasonable in both the rate and the amount of
8 time expended. Reasonableness shall be evaluated in accordance
9 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
10 the Alaska Bar Rules if the school district disputes the reasonableness
11 of the fees claimed.
12

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

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

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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.]**

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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.

Chair

ATTEST:

1 | Municipal Clerk

DRAFT