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.

(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. For the purposes of this section actions constituting a breach of the public trust shall include:

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;

B. Proceedings for removal from office 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. 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. For the purposes of this section actions constituting a breach of the public trust shall include:

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 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. 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 allegations 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. For the purposes of this section actions constituting a breach of the public trust shall include:

12. Substantial breach of a statutory or Charter-imposed duty.

B. Proceedings for removal from office 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 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.

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. For the purposes of this section, actions constituting a breach of the
public trust shall include:

12. Substantial breach of a statutory-, Code- or Charter-imposed
duty.

B. Proceedings for removal from office 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, 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 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.

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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.
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:

________________________________________
Municipal Clerk
FROM: Assembly Vice Chair Constant

SUBJECT: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY
AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10 GENERAL PROVISIONS (RESERVED) 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 ELECTED OFFICIALS FOR BREACH OF THE PUBLIC TRUST.

The ordinance submitted with this memorandum would fulfill a requirement of the Anchorage Municipal Charter that, to date, has been only partially addressed.

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.”

In 1994, Assembly adopted AO 93-54(S-1) to adopt Charter-required provisions for members of the Assembly and Anchorage School Board. See attached. The ordinance was codified at (for Assembly Members) Anchorage Municipal Code section 2.70.030 Removal from office, and (for School Board members) AMC 29.10.060 Removal of members from office.

The ordinance submitted with this memorandum applies like provisions to elected members of service area boards, and to the mayor. Provisions applicable to Assembly members, providing that “unexcused absence from three consecutive meetings” and “Failure to attend 75 percent of meetings in a 24-month period,” are “actions constituting breach of the public trust” would not apply to either service area board members (who must comply with the attendance requirements in AMC 27.20.070), or to the mayor. In lieu of those provisions, actual or attempted
“official misconduct,” which is defined Alaska Statute 11.56.850\(^1\) and, as to the mayor, ordering or knowingly allowing a person appointed by the mayor to order a municipal employee to engage in an unlawful act are enumerated as executive-specific actions that would constitute breach of the public trust.

Last, the ordinance also amends Title 2 and Title 29 to clarify potential procedural ambiguities, and to better conform to section 7.01(b) of the Charter, which provides that proceedings for removal of an elected official may be initiated by “a majority” of all members of the assembly (or the school board in the case of removal of a school board member), rather than a super-majority.

There are no anticipated economic effects from this Code change.

I request your support for the ordinance.

Prepared by: Assembly Counsel's Office

Respectfully submitted: Assembly Vice Chair Christopher Constant
District 1, Downtown Anchorage

\(^1\) See AS 11.56.850 *Official Misconduct*

(a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

1. performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

2. knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor

Criminal conviction under AS 11.56.850 requires proof beyond a reasonable doubt. As expressed in the ordinance, facts established by a preponderance of the evidence that a mayor engaged in actual or attempted official misconduct would establish breach of the public trust.
From: Chair LaFrance

Subject: MIDTOWN COMMUNITY COUNCIL RESOLUTION OPPOSING AO 2022-60

Please see the attached resolution from the Midtown Community Council for your review and information.

Prepared by: Jenna Brister, Executive Administrative Assistant

Approved by: Barbara A. Jones, Municipal Clerk

Respectfully submitted: Suzanne LaFrance, Chair
MIDTOWN COMMUNITY COUNCIL

Resolution in Opposition of AO No 2022-060

Resolved: The Midtown Community Council has reviewed the proposed above ordinance and find it to be in Violation of the Municipal Charter.

Resolved: Further is that the Current Provisions that are in Place gives the Authority to the Voters.

Resolved: Further that the Ordinance removes the Power of the Voters to decide on the position of the Mayor.

Resolved: The Ordinance is not necessary as it establishes a Totalitarian form of Government.

Approve by a Vote of Yes 10, No 0

Approved this 23 Day of April 2022.

Al Tamagni SR: President

Debbie Ryan Secretary: