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 11.56.850¹ 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.