

Submitted by: ASSEMBLY MEMBER STARR
Prepared by: Assembly Counsel
For reading: March 3, 2009

ANCHORAGE, ALASKA

AR NO. 2009-66

Postponed Indefinitely 6/9/09
A RESOLUTION OF THE ANCHORAGE ASSEMBLY ON THE MOTION TO RESCIND
ASSEMBLY ACTION APPROVING ASSEMBLY RESOLUTION 2008-307 RATIFYING
A FIVE YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE
MUNICIPALITY OF ANCHORAGE AND THE ANCHORAGE POLICE DEPARTMENT
EMPLOYEES ASSOCIATION.

WHEREAS, certification and confirmation of available funding is mandatory
under AMC 6.30.050, which in substance requires as follows:

*"No contract, agreement or other obligation involving the expenditure of money
shall be entered into, nor shall any ordinance, resolution or order for expenditure
of money be passed by the assembly or be authorized by any officer of the
municipality, **unless the chief fiscal officer shall first certify to the assembly
or to the proper officer, as the case may be, that the money required for such
contract, obligation or expenditure has been appropriated to the credit of the fund
from which it is to be drawn, and not appropriated for any other purpose.**" ****;*

and

WHEREAS, prior verification of the Municipality's ability to pay contractual
obligations is for the public's protection and where code provisions exist to protect the
citizens and taxpayers of the municipality from ill-considered contracts, the provisions
must be followed; and

WHEREAS, in a case decided against the Municipality of Anchorage (*Stuart v.
Municipality of Anchorage*, Case No 3AN-07-4155 CI, written decision dated February
1, 2008), the Superior Court ruled that the Anchorage Assembly does not have the
discretion or authority to waive the protections afforded to the public in code, and this
decision was not appealed by the Municipality; and

WHEREAS, prior to Assembly action on AR 2008-307, the fiscal environment of
the municipality was represented in various reports on the status of revenue and
spending under the FY 2008 Budget which described the anticipated year-end fund
balances as intact, with no forecast or reference to deficit spending needs for FY 2008;
and

WHEREAS, beginning in January 2009 and continuing to date, the
Administration is confirming projected municipal fund deficits, with estimates of the
projected deficit in General Government at \$21.3 Million, before any spending cuts; and

WHEREAS, increases to municipal revenue from property taxes are not available, due the "tax cap" provision in the Charter; and

WHEREAS, the data available to the Assembly and the Internal Auditor prior to action on AR 2008-307 fails to reflect the Municipality's financial situation for FY 2009 and forward, and items in the financial analysis referenced in the Summary of Economic Effects may be significantly understated due to limitations in the information available for review by the Internal Auditor and the Assembly; and

NOW, THEREFORE, the Anchorage Assembly makes findings and resolves:

Section 1. AR 2008-307 was approved by the Assembly based on a material mistake in that the balance between 2008 spending and 2008 revenue was not projected to require deficit spending from fund balances for FY 2008 at the time of Assembly action on AR 2008-307.

Section 2. AMC 6.30.050 prohibits the assembly from passing any resolution authorizing the expenditure of money ". . . ***unless the chief fiscal officer shall first certify to the assembly . . . that the money required for such contract, obligation or expenditure has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose.***"

Section 3. Financial data available to the Assembly and the Internal Auditor prior to action on AR 2008-307 fails to reflect the Municipality's financial situation for FY 2009 and forward, and items in the financial analysis referenced in the Summary of Economic Effects may be significantly understated due to limitations in the information available for review by the Internal Auditor and the Assembly.

Section 4. Beginning in January 2009 and continuing to date, the Administration is confirming projected municipal fund deficits, with estimates of the projected deficit in General Government as of February 13, 2009 at \$21.3 Million, before any spending cuts.

Section 5. The public was not served by premature termination of the collective bargaining agreement in place with APDEA, in favor of a new contract for which the certification required by code in advance of Assembly action is absent, and the information necessary to comply with code requirements remains outstanding or unresolved.

Section 6. Public safety is important enough to this community for the Assembly to ensure that all necessary information is before the Assembly prior to Assembly ratification.

Section 7. Assembly action approving AR 2008-307 is hereby rescinded.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2009.

Chair

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
NO. AM 145-2009

Meeting Date: March 3, 2009

From: ASSEMBLY MEMBER STARR
Subject: **AR 2009-66 – Motion to Rescind Assembly Action Approving
AR 2008-307 (Ratification of APDEA Contract)**

By notice dated February 24, 2008, I gave notice of intent, as provided in the Rules of Procedure for the Assembly, AMC 2.30.080.H, to move to rescind the Assembly's December 16, 2008 action on AR No. 2008-307. My motion to rescind Assembly action approving AR 2008-307 (ratification of a 5-year contract with APDEA) is based on the following factors, nonconformities, and material mistakes:

- **Certification required by code is absent:** Certification and confirmation of available funding is mandatory under municipal code. AMC 6.30.050 requires prior certification and confirmation of funding availability and the absence and unavailability of mandatory certification and confirmation nullifies the Assembly's passage of AR 208-307.
 - **AMC 6.30.050 is mandatory:** *"No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for expenditure of money be passed by the assembly or be authorized by any officer of the municipality, **unless the chief fiscal officer shall first certify to the assembly** or to the proper officer, as the case may be, that the money required for such contract, obligation or expenditure has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose."* ****
 - **The public is protected by certification:** Prior verification of the Municipality's ability to pay contractual obligations is for the public's protection. Where code provisions exist to protect the citizens and taxpayers of the municipality from ill-considered contracts, the provisions must be followed, or ratification by the Assembly is invalid.
 - **There is no authority or discretion to waive:** As this Assembly experienced in *Stuart v. Municipality of Anchorage*, Case No 3AN-07-4155 CI (Wal-Mart decision dated February 1, 2008, page 17 of 26), the Assembly does not have the discretion or authority to waive the protections afforded to the public in code.
- **Fiscal health as measured by status of fund balance:** Prior to Assembly action on AR 2008-307, the fiscal environment of the municipality was represented in various reports on the status of revenue and spending under the FY 2008 Budget. The fund balance forecast report distributed on November 17, 2008 described the anticipated year-end fund balances as intact, with no forecast or reference to deficit

1 spending needs for FY 2008. AR 2008-307 was approved by the Assembly based
2 on a material mistake: That the balance between 2008 spending and 2008 revenue
3 was not projected to require deficit spending from fund balances for FY 2008.
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- 5 • **Extent of FY 2008 Budget shortfall unavailable to Assembly:** The biennial
6 General Government Operating Budget, adopted in November 2007 and setting
7 forth projected annual budget requirements for FY 2008 and 2009, was reviewed
8 and updated for FY 2008 under AO 2008-102(S), as amended and approved by the
9 Assembly on November 25, 2008. Beginning in January 2009 and continuing to
10 date, the Administration is confirming projected municipal fund deficits. As of Friday,
11 February 13, 2009, the Administration confirmed projected municipal fund deficits in
12 excess of \$17 Million for 2008 Issues and \$11 Million for 2009 Revenue shortfall
13 issues, leading to a subtotal of nearly \$29 Million in potential shortfall, before any
14 spending cuts. Of this subtotal, the projected deficit in General Government is \$21.3
15 Million, before any spending cuts. Increases to municipal revenue from property
16 taxes are not available, due the "tax cap" provision in the Charter.
17
- 18 • **Deficiencies in the Summary of Economic Effects:** The Summary of Economic
19 Effects (SEE) that accompanied AR 2008-307 includes minimal financial data,
20 deferring to an analysis prepared by the Internal Auditor at the request of the
21 Assembly. The referenced analysis was completed by the Internal Auditor and
22 presented to the Assembly under cover memorandum dated December 12, 2008.
23 However, the data available to the Assembly and the Internal Auditor prior to action
24 on AR 2008-307 fails to reflect the Municipality's financial situation for FY 2009 and
25 forward, and items in the financial analysis now appear significantly understated due
26 to limitations in the information available for review by the Internal Auditor and the
27 Assembly.
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- 29 • **The public interest warrants rescission of Assembly ratification:** The public
30 was not served by premature termination of the collective bargaining agreement in
31 place with APDEA, in favor of a new contract for which the certification required by
32 code in advance of Assembly action is absent, and the information necessary to
33 comply with code requirements remains outstanding or unresolved. Premature
34 action by the Assembly in these circumstances was not authorized in code and will
35 lead to unnecessary adverse consequences for all concerned. Public safety is
36 important enough to this community for the Assembly to ensure that all necessary
37 information is before the Assembly prior to Assembly ratification.
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40 Respectfully submitted:

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42 Bill Starr, Assembly Member, Section 2
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