

ANCHORAGE, ALASKA
AO No. 2022-60

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

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

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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

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

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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*):

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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
41 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;
- 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 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.

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- 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.

- 1 9. Official oppression;
- 2 10. Actual or attempted official misconduct, as defined by state law;
- 3 11. Ordering, or knowingly allowing a person appointed by the
- 4 mayor to order, a municipal employee to undertake an unlawful
- 5 act;
- 6 12. Substantial breach of a statutory-, Code- or Charter-imposed
- 7 duty;
- 8 13. Failure to faithfully execute the directives of a duly enacted
- 9 ordinance.

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11 B. Proceedings for removal from office shall be initiated by delivery of an
12 accusation document to the municipal clerk setting forth the grounds
13 for removal and specifying if delivery is to the assembly or the board
14 of ethics. An accusation document may be submitted to the municipal
15 clerk only by a majority vote of the assembly or decision of the
16 municipal board of ethics and must allege specific actions by the
17 mayor that breach the public trust.

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19 C. After a successful vote to submit it, the municipal clerk shall cause a
20 copy of the accusation document to be delivered by personal service
21 to the mayor and a copy delivered to the municipal attorney.

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23 D. The municipal attorney, or an impartial third-party attorney retained by
24 the Assembly to serve as special counsel, shall review the accusation
25 document for legal sufficiency. An accusation approved by the
26 assembly shall specify whether the accusation shall be reviewed for
27 legal sufficiency by the municipal attorney or special counsel. The
28 municipal attorney, or the retained special counsel, shall determine
29 the legal sufficiency of the allegations within ten days of receipt of the
30 accusation document. If the municipal attorney, or special counsel,
31 determines that the allegations are legally insufficient, the removal
32 action shall be discontinued. The municipal attorney's or special
33 counsel's determination, if it rejects the accusation document, may be
34 appealed to the superior court within 30 days. No interlocutory appeal
35 is permitted from a determination by the municipal attorney or special
36 counsel that the accusation document is legally sufficient. Following a
37 determination by the municipal attorney or special counsel that the
38 accusation document is legally sufficient, the municipality shall employ
39 an attorney of the mayor's choice, subject to the limitations of this
40 subsection, to defend the charges. The attorney selected must be
41 engaged in the active practice of law in the state. The fees charged by
42 the attorney must be reasonable in both the rate and the amount of
43 time expended. Reasonableness shall be evaluated in accordance
44 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
45 the Alaska Bar Rules if the municipality disputes the reasonableness
46 of the fees claimed.

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- 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 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

1 removal pending appeal, the fact that another individual may be
2 seated as acting mayor shall not constitute irreparable harm. During a
3 stay, unless otherwise ordered by the court the seat is considered
4 vacant and shall be filled in accordance with Charter 7.02(c) pending
5 the outcome of the court case. If, after exhaustion of appeals, the final
6 ruling reverses the removal, the removed mayor shall be reseated for
7 the remainder of the term for which the mayor was elected, and the
8 acting mayor shall return to the person's prior position.

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10 **Section 4.** Anchorage Municipal Code section 2.70.030, *Removal from office*, is
11 hereby amended as follows (*the remainder of the section is not affected and*
12 *therefore not set out*):

13
14 **2.70.030 - Removal from office.**

15
16 A member of the municipal assembly may be removed from office for breach
17 of the public trust following the procedures set forth in this section:

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

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22 12. Substantial b[B]reach of a statutory or Charter-imposed duty.

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24 B. Proceedings for removal from office shall be initiated by delivery of an
25 accusation document to the municipal clerk setting forth the grounds
26 for removal and specifying if delivery is to the assembly or the board
27 of ethics. An accusation document may be submitted to the municipal
28 clerk only by a majority [TWO-THIRDS] vote of the assembly or [TWO-
29 THIRDS MAJORITY] decision of the municipal board of ethics and
30 must allege specific actions by the assembly member in question
31 which breach the public trust.

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

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38 D. The municipal attorney shall review the accusation document for legal
39 sufficiency. The municipal attorney shall determine the legal
40 sufficiency of the allegations within ten days of receipt of the
41 accusation document. If the municipal attorney determines that the
42 allegations are legally insufficient, the removal action shall be
43 discontinued. The municipal attorney's determination, if it rejects the
44 accusation document, may be appealed to the superior court within 30
45 days. No interlocutory appeal is permitted from a determination by the
46 municipal attorney that the accusation document is legally sufficient.

1 for which elected, and any replacement, whether appointed or elected
2 at a special election, shall be displaced.

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

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

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10 **29.10.060 - Removal of members from office.**

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12 A member of the school board may be removed from office for breach of the
13 public trust following the procedures set forth in this section.

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

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18 12. Substantial b[B]reach of a statutory-, Code- or Charter-imposed
19 duty.

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21 B. Proceedings for removal from office shall be initiated by delivery of an
22 accusation document to the municipal clerk setting forth the grounds
23 for removal and specifying if delivery is to the school board or the
24 board of ethics. An accusation document may be submitted to
25 municipal clerk only by a majority [TWO-THIRDS] vote of the school
26 board or a [TWO-THIRDS MAJORITY] decision of the municipal board
27 of ethics and must allege specific actions by the school board member
28 in question which breach the public trust.

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

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36 D. The municipal attorney shall review the accusation document for legal
37 sufficiency. The municipal attorney shall determine the legal
38 sufficiency of the allegations within ten days of receipt of the
39 accusation document. If the municipal attorney determines that the
40 allegations are legally insufficient, the removal action shall be
41 discontinued. The municipal attorney's determination, if it rejects the
42 accusation document, may be appealed to the superior court within 30
43 days. No interlocutory appeal is permitted from a determination by the
44 municipal attorney that the accusation document is legally sufficient.
45 Following a determination by the municipal attorney that the
46 accusation document is legally sufficient, the school board shall

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

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

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

Municipal Clerk