

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MAYOR DAVE BRONSON, in his)
official capacity,)
)
Plaintiff,)
vs.)
)
THE ANCHORAGE MUNICIPAL)
ASSEMBLY,)
Defendant.)
_____)

Case No. 3AN-21-08881 CI

ORDER REGARDING CASE MOTIONS ## 1 & 2

I. Introduction

Before the court are cross-motions for summary judgment regarding the legality of Anchorage Ordinance 2020-79(S), As Amended (“AO 2020-79(S)”), which creates the Office of Equity and Justice in the Municipality of Anchorage. In Case Motion #1, Defendant, the Anchorage Municipal Assembly (“the Assembly”), argues that AO 2020-79(S) does not violate the Anchorage Municipal Charter (“Charter”) nor does it violate the separation of powers doctrine. Plaintiff, Mayor Dave Bronson (“Bronson”), argues in his opposition, and in Case Motion #2, that AO 2020-79(S) is in direct conflict with the Charter by limiting the mayor’s powers of removal, and therefore, the ordinance is invalid. Bronson also contends that the ordinance infringes upon the executive branch of Anchorage’s municipal government and thus violates the separation of powers doctrine.

The court held oral argument on June 24, 2022. For the reasons set forth below, the court DENIES Case Motion #1 and GRANTS Case Motion #2.

II. Background

On August 26, 2020, the Assembly passed AO 2020-79(S), creating the Office of Equity and Justice.¹ The office is led by a Chief Equity Officer who serves for a term of four years.² The Chief Equity Officer is appointed “by the mayor with the concurrence of a majority of the assembly” and “may be dismissed by the mayor only for cause shown, and only with the concurrence of a majority of the assembly.”³ The Municipality’s executive branch organizational chart places the Office of Equity and Justice under both the mayor and the Assembly.⁴ The Assembly intended to structure the Office of Equity and Justice similarly to the Office of Internal Audit, where an appointee is approved by the Assembly, reports to the mayor, and may only be dismissed by the mayor for cause with concurrence from the majority of the Assembly.⁵ Under the Anchorage Municipal Code (“AMC”), the Office of Equity and Justice is placed directly within the office of the mayor and reports to the mayor.⁶ The Office of Internal Audit is not placed directly within the mayor’s office.⁷

¹ Def.’s Ex. 1.

² Anchorage Municipal Code (AMC) 3.20.140(b).

³ AMC 3.20.140(a), (c).

⁴ AMC 3.20.010.

⁵ Def.’s Ex. 1 at page 8; AMC 3.20.100(A)(2)–(3).

⁶ AMC 3.20.070(A)(2).

⁷ *See* AMC 3.20.100.

In April 2021, the then-mayor hired the first Chief Equity Officer. Bronson began his term as mayor on July 1, 2021. Then, on October 7, 2021, Bronson terminated the Chief Equity Officer without seeking Assembly concurrence or providing cause to support the termination. The instant lawsuit followed. Bronson, in his official capacity as mayor, raises two challenges to the legality of AO 2020-79(S): (1) the ordinance violates the mayor’s removal powers set forth in the Charter; and (2) the ordinance violates the separation of powers doctrines by encroaching upon the mayor’s executive powers.

III. Legal Standard

Both parties seek summary judgment in this case. Summary judgment is appropriate when “there is no genuine issue as to any material” and “the moving party is entitled to judgment as a matter of law.”⁸ The burden begins with the moving party, who must make a prima facie showing that it is entitled to judgment on the established facts as a matter of law.⁹ Upon such a showing, the non-moving party must demonstrate that there is a genuine issue of fact by showing that it can produce admissible evidence reasonably tending to dispute the movant's evidence.¹⁰ All reasonable inferences—or inferences that a reasonable fact finder could draw from the evidence—are drawn in favor of the non-movant.¹¹

//

//

⁸ *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska R. Civ. P. 56(c)).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Alakayak v. British Columbia Packers, Ltd.*, 48 P.3d 432, 449 (Alaska 2002).

IV. Discussion

The court concludes that the placement of the Office of Equity and Justice directly in the mayor's office puts the Chief Equity Officer position squarely within the mayor's powers of appointment and removal under the Charter. The Ordinance's limitations on such powers violates the separation of powers set forth in the Charter.

A. AO 2020-79(S) violates Article V, Section 5.02(a) of the Charter

The parties dispute whether the Office of Equity and Justice is a municipal department under the Anchorage Municipal Code and whether the Chief Equity Officer is a municipal department head subject to the mayor's removal powers set forth in Article V, Section 5.02(a) of the Charter. The Assembly argues that the Office of Equity and Justice is not a municipal department and contends that no law prohibits it from establishing a non-departmental office head who serves for a fixed term subject to for cause dismissal. Bronson argues that the Office of Equity and Justice is a municipal department organized within the executive branch, and as a result, the mayor has exclusive authority under the Charter to remove the Chief Equity Officer.

The court concludes the following: the Office of Equity and Justice is a municipal department; the Chief Equity Officer is municipal department head subject to the mayor's removal powers under Article V, Section 5.02(a); and the Charter prohibits placing limitations on the mayor's at will removal power of municipal department heads. Thus, AO 2020-79(S) impermissibly conflicts with the Charter by adding for cause protection to the Chief Equity Officer position.

1. *The Office of Equity and Justice is a municipal department, and the Chief Equity Officer is a department head*

The interpretation of municipal charters, and the interpretation of ordinances, are governed by rules of statutory construction.¹² The starting point is with the language of the charter or ordinance itself, but reference to legislative history may provide insight that is helpful in determining its meaning.¹³ The general rule is that an ordinance is invalid if it conflicts with a city's charter.¹⁴ Chapter 3.20 of the Anchorage Municipal Code details executive branch organization. Municipal departments described in section 3.20.070 are within the office of the mayor and are under the mayor's supervision.¹⁵

Here, unlike the Office of Internal Audit, the Office of Equity and Justice is one of the organizations specifically placed within the office of the mayor under section 3.20.070 that reports directly to the mayor.¹⁶ By placing the Office of Equity and Justice within the office of the mayor, the Assembly created a municipal "department" under direct supervision of the mayor. Although it is labeled as an "office," the plain language of the pertinent ordinances indicate that the Office of Equity and Justice is a municipal department within the mayor's office. Because the Office is a municipal department, the Chief Equity Officer is a department head under the Charter.

¹² *City & Borough of Sitka v. Int'l Brotherhood of Elec. Workers, Local Union 1547*, 653 P.2d 332, 335–36 (Alaska 1982).

¹³ *L Street Investments v. Municipality of Anchorage*, 307 P.3d 965, 972 (Alaska 2013) (citation omitted).

¹⁴ *Canfield v. Sullivan*, 774 F.2d 1466, 1468–69 (9th Cir. 1985) (citations omitted).

¹⁵ AMC 3.20.040.

¹⁶ AMC 3.20.070(A)(2).

2. *The Charter prohibits limiting the mayor's removal power of municipal department heads*

As a home rule municipality, the Municipality of Anchorage has the “authority to exercise all legislative powers not prohibited by law or charter.”¹⁷ Article V, Section 5.02(a) of the Charter reads as follows: “[t]he mayor shall appoint all heads of municipal departments, subject to confirmation by the assembly, on the basis of professional qualifications. Persons appointed by the mayor serve at the pleasure of the mayor.” The plain language explicitly provides for the Assembly’s confirmation power of municipal department heads. It also expressly states that municipal department heads serve at the pleasure of the mayor, *i.e.*, they may be removed at any time. Moreover, this section expresses no limit on the mayor’s general removal power of heads of municipal departments and no other Charter provision limits such power.¹⁸ Therefore, the Charter prohibits any limitations on the mayor’s power to remove department heads.

Here, the Charter prohibits the Assembly’s ability to limit the mayor’s removal of municipal department heads. The Chief Equity Officer position was not created in a way to fall outside of the mayor’s exclusive removal power. Under AO 2020-79(S), the Officer may only be removed for cause, and with concurrence of a majority of the assembly. But the position is placed directly in the mayor’s office and consequently serves at the pleasure

¹⁷ *L Street Investments*, 307 P.3d at 970 (citing Alaska Const. art. X, § 11).

¹⁸ For example, Section 5.02(a) of the Charter does not include a clause limiting the mayor’s power such as “Persons appointed by the mayor serve at the pleasure of the mayor, *except as otherwise provided by law.*”

of the mayor, meaning the Chief Equity Officer may be removed at will. Thus, the Ordinance conflicts with the Charter and violates Section 5.02(a) by limiting the mayor's removal powers of municipal department heads.

B. AO 2020-79(S) violates the separation of powers provisions set forth in the Charter

The Assembly argues that AO 2020-79(S) does not preclude the mayor from exercising his executive powers. Bronson argues that the Ordinance violates the separation of powers doctrine by infringing upon executive authority vested in the mayor. The court concludes that AO 2020-79(S) violates the separation of powers set forth in Anchorage's Charter.

Anchorage's Charter sets forth local separation of power principles.¹⁹ The mayor is vested with executive authority²⁰ and the Assembly is vested with legislative authority.²¹ Specifically, the Charter vests legislative power to the Assembly to organize the functions, responsibility, and structure of each executive department.²² The mayor retains the

¹⁹ Constitutional separation of powers principles applicable to Federal and State governments do "not generally apply to municipal governments." MCQUILLIN: THE LAW OF MUNICIPAL CORPORATIONS § 13:1 (3d ed.) (footnote omitted). Alaska courts have not addressed the question as to whether the national constitutional doctrine of separation of powers is specifically applicable to local governments in Alaska. The Alaska Constitution does not appear to set forth a requirement that local, municipal governments have a separation of powers. Article X, Section 4 mandates that the "governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter." This implies that the State legislature or citizens within boroughs may determine what form of local government exists. Thus, there is no constitutional separation of powers requirement at the local level in Alaska.

²⁰ Anchorage Municipal Charter (Charter) art. V, § 5.01(a).

²¹ Charter art. IV, § 4.01.

²² Charter art. V, § 5.06(a).

executive power of appointment, subject to confirmation by the Assembly, and the executive power to remove municipal department heads, who serve at the pleasure of the mayor.²³ By comparison, the Charter states that members of boards and commissions are appointed by the mayor, subject to Assembly confirmation, but the Charter is silent as to the removal procedures for members of boards and commission.²⁴

Here, the Ordinance infringes upon the mayor's executive powers set forth in the Charter. While the Assembly is permitted to legislate the identity, functions, and responsibilities of departments, the Charter prohibits limiting the mayor's power to remove department heads. The Charter explicitly addresses the removal procedures of department heads, whereas the Charter is silent as to the removal power regarding other entities in the executive branch like boards and commissions. The for cause shown and with the concurrence of the Assembly requirements limit the mayor's executive authority to remove department heads who serve at his pleasure. Thus, AO 2020-79(S) is invalid and violates the Charter's separation of powers provisions because it permits interference with powers explicitly delegated to the mayor.

V. Conclusion

AO 2020-79(S) is invalid because it conflicts with the Charter provision granting the mayor removal power of municipal department heads, and the ordinance violates the separation of powers provisions of the Charter.


²³ Charter art. V, § 5.02(a).

²⁴ Charter art. V, § 5.07.

Case Motion #1 is DENIED, and Case Motion #2 is GRANTED.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 20 July 2022.



Dani Crosby
Superior Court Judge

I certify that on 7/21/22 a copy
of the above was mailed to each of the
following at their address of record:

COA W. Falsey
Judicial Assistant c. Rankin,