

**ANCHORAGE, ALASKA
AO No. 2024-25**

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING**
2 **ANCHORAGE MUNICIPAL CODE CHAPTER 2.60 TO UPDATE PROVISIONS**
3 **FOR THE OFFICE OF THE OMBUDSMAN TO PROVIDE CLEAR AUTHORITY**
4 **TO INVESTIGATE COMPLAINTS WITHIN THE OMBUDSMAN'S JURISDICTION**
5 **AS ARTICULATED IN CHARTER.**

6
7 **WHEREAS**, the Anchorage Municipal Charter guarantees the people the "right to
8 the assistance of a municipal ombudsman in dealing with grievances and abuses"¹;
9 and

10
11 **WHEREAS**, the jurisdiction of the Ombudsman includes the "acts and omissions of
12 employees and agents of the school district, as well as employees and agents of
13 the municipality"²; and

14
15 **WHEREAS**, while the provisions of Code governing the ombudsman may properly
16 prescribe the office's "term, powers and duties,"³ it in no way can be construed as
17 placing limits upon their jurisdiction; and

18
19 **WHEREAS**, the Administration has historically recognized the critical importance of
20 the Office of the Ombudsman as a means of addressing matters of public concern
21 and, through a Mayor's directive adopting a written policy and procedure as far back
22 as 1997 explicitly instructing municipal employees to report matters of public
23 concern to the Ombudsman particularly if they fear reprisal for doing so⁴; and

24
25 **WHEREAS**, the Charter's intent was to create an office "independent from the
26 Mayor and . . . protected from the legislative body"⁵ to ensure the office could be
27 more objective and free from influence from either branch of government; and

28
29 **WHEREAS**, the people's right to the assistance of the Ombudsman can only be
30 ensured so long as the Ombudsman's independence and freedom from outside
31 influence is preserved; now, therefore,

32
33 **THE ANCHORAGE ASSEMBLY ORDAINS:**

34
35 **Section 1.** Anchorage Municipal Code section 2.60.020 is hereby amended to
36 read as follows (*the remainder of the section is not affected and therefore not set*
37 *out*):

38
39 **2.60.020 Definitions.**

¹ Anchorage Municipal Charter, Article II, Section (6).

² *Id.* at §4.07.

³ *Id.*

⁴ See Policy and Procedure 40-14 (April 8, 1997).

⁵ Transcript of Anchorage Charter Commission Meeting, Pg. 57 (702) (March 27, 1975).

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative act means an action, omission, decision, recommendation, practice, policy, or procedure done or adopted by an agent of the municipality on its behalf, within the scope of employment or under the apparent authority of a municipal body, office, or individual.

*** *** ***

(AO No. 77-94; AO No. 89-45; AO No. 92-20; AO No. 2017-40 , § 4, 3-21-17)

Section 2. Anchorage Municipal Code section 2.60.110 is hereby amended to read as follows:

2.60.110 Jurisdiction.

- A. The ombudsman may investigate the administrative acts of employees and agents of the municipality.
- B. The ombudsman may investigate the administrative act of an employee or agent of the municipality on the ombudsman's own motion if the ombudsman reasonably believes that it is an appropriate subject for review.
- C. An appropriate subject for investigation by the ombudsman is an administrative act which the ombudsman has reason to believe might be:
 - 1. Contrary to law;
 - 2. Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, an abuse of authority, or unnecessarily discriminatory even though in accordance with law;
 - 3. Based on a mistake of fact;
 - 4. Based on improper or irrelevant grounds;
 - 5. Unsupported by an adequate statement or reasons;
 - 6. Performed in an inefficient or discourteous manner; [OR]
 - 7. Otherwise erroneous; or
 - 8. A matter of public concern which has failed to be or could not be addressed by other means.

1 D. The ombudsman shall be barred from inquiry into acts of the Mayor,
2 the assembly or the school board.

3
4 E. The ombudsman may decline jurisdiction as described in other
5 sections of this chapter.

6
7 (AO No. 77-94; AO No. 91-173(S); AO No. 92-20; AO No. 2015-23(S), § 3,
8 3-24-15; AO No. 2017-40 , § 4, 3-21-17)

9
10 **Section 3.** Anchorage Municipal Code section 2.60.125 is hereby amended to
11 read as follows:

12
13 **2.60.125 Decline of jurisdiction; cease investigation.**

14
15 A. The ombudsman may decline review and investigation, or cease
16 investigation of a complaint, when the ombudsman determines any of
17 the following in writing:

18
19 1. The agency action complained about may be more
20 appropriately resolved by hearing or appeal for which the
21 complainant may make timely application;

22
23 2. The complaint relates to an action which the complainant has
24 known about for more than a year before filing the complaint;

25
26 3. The complaint involves the grievance of an employee covered
27 by a collective bargaining agreement, if the agreement provides
28 a method for settling disputes arising under the agreement.

29
30 4. The resources of the ombudsman's office are insufficient for
31 adequate investigation.

32
33 5. The matter has been brought to the courts for resolution or is
34 the subject of a criminal investigation or prosecution, and the
35 ombudsman determines that investigation is not in best
36 interests of the municipality.

37
38 B. The ombudsman shall decline to review or investigate, and shall
39 cease investigation, upon written determination by the ombudsman
40 that any of the following factors apply:

41
42 1. The ombudsman lacks jurisdiction;[.]

43
44 2. The complainant has not given the agency an opportunity to
45 resolve the complaint;

46
47 3. Disclosure of the complainant's identity is necessary to enable
48 investigation of the complaint and the complainant refuses to
49 allow such disclosure;

50
51 4. It appears an applicable law or administrative procedure

- 1 provided an adequate remedy which the complainant did not
 2 pursue, with no reasonable justification for the failure to do so;
 3
 4 5. The complaint is presented anonymously and the ombudsman
 5 does not initiate investigation on the ombudsman's own motion;
 6
 7 6. The subject of the complaint was recently investigated, the
 8 complaint presents no new issue, and the ombudsman believes
 9 that further investigation would not advance the interests of the
 10 complainant or a significant public interest;
 11
 12 7. The information provided by the complainant provides no
 13 specific or credible evidence to indicate an investigation is
 14 warranted; or
 15
 16 8. The complainant has no tangible personal stake in the outcome
 17 and the investigation would not advance a significant public
 18 interest.];
 19
 20 9. THE MATTER HAS BEEN BROUGHT TO THE COURTS FOR
 21 RESOLUTION OR IS IN LITIGATION.]
 22

23 (AO No. 2017-40 , § 4, 3-21-17)
 24

25 **Section 4.** Anchorage Municipal Code section 2.60.165 is hereby amended to
 26 read as follows:
 27

28 **2.60.165 Grievance against the ombudsman.**
 29

30 A. Grounds for grievance against the ombudsman are:

- 31
 32 1. Objection to a decision to decline or discontinue a review or
 33 investigation;
 34
 35 2. An allegation of undue delay in the review or investigation of a
 36 complaint;
 37
 38 3. A specification of error or omission in the review or investigation
 39 of a complaint; or
 40
 41 4. An allegation of discourteous behavior by a member of the staff
 42 of the ombudsman's office during the course of an
 43 investigation.
 44

45 B. Any person may file a grievance against the ombudsman under this
 46 section within 45 days of the ombudsman declining, discontinuing or
 47 closing a review or investigation. The grievance must be filed in writing
 48 to the ombudsman, stating the grounds for grievance, and identifying
 49 specifics of the aggrieved person's concerns.
 50

51 C. The ombudsman will respond in writing to the aggrieved person within

1 15 days after receipt of the grievance. If the information necessary to
2 respond to the grievance is not readily available to the ombudsman,
3 the period for response may be extended in 15-day intervals at the
4 discretion of the ombudsman. Notice of any extension and the
5 supporting reason(s) shall be provided in writing to the aggrieved
6 person.

7
8 D. A copy of the grievance and the ombudsman's response will be
9 maintained for five years in a file that is open to public inspection. The
10 ombudsman's annual report to the assembly for the year in which the
11 grievance was filed will include reference to the grievance.

12
13 E. When a grievance is received which involves a complaint that is under
14 current review or investigation, or reveals confidential or privileged
15 information, the grievance and response will be available for public
16 inspection only after the review or investigation is completed, and
17 confidential information has been expunged.

18
19 F. To the fullest extent provided by state law, a[A] civil action for
20 damages may not be brought against the municipality, ombudsman,
21 or a member of the ombudsman's staff based upon the exercise or
22 performance of or the failure to exercise or perform a discretionary
23 function or duty by the office of the ombudsman.

24
25 G. Notwithstanding section 1.50.010, the municipality shall defend,
26 indemnify, and hold harmless the ombudsman and the ombudsman's
27 staff in an individual capacity against any claim filed in a civil or
28 administrative action based upon any conduct, act or omission of the
29 ombudsman's office. The municipality may only decline
30 indemnification of the ombudsman upon concurrence of both the risk
31 manager and the assembly counsel.

32
33 (AO No. 2017-40, § 4, 3-21-17; AO No. 2023-27 , § 1, 3-21-23)

34
35 **Section 5.** This ordinance shall be effective immediately upon passage and
36 approval by the Assembly.

37
38 PASSED AND APPROVED by the Anchorage Assembly this _____ day
39 of _____, 2024.

40
41
42
43
44 _____
45 Chair

46 ATTEST:

47
48 _____
49 Municipal Clerk
50



MUNICIPALITY OF ANCHORAGE ASSEMBLY MEMORANDUM

No. AM 203-2024

Meeting Date: February 23, 2024

1 **From: Assembly Chair Constant**

2
3 **Subject: AO 2024-25 – AN ORDINANCE OF THE ANCHORAGE MUNICIPAL**
4 **ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE**
5 **CHAPTER 2.60 TO UPDATE PROVISIONS FOR THE OFFICE OF**
6 **THE OMBUDSMAN TO PROVIDE CLEAR AUTHORITY TO**
7 **INVESTIGATE COMPLAINTS WITHIN THE OMBUDSMAN’S**
8 **JURISDICTION AS ARTICULATED IN CHARTER.**

9
10 The proposed ordinance makes several changes to the Anchorage Municipal Code
11 to clarify the independence and authority of the Ombudsman as established in the
12 municipal charter.

13
14 Specifically:

- 15
16 • Amending the definition of “administrative act” in section 2.60.020 to clarify
17 that it is not limited to the formal acts and policies of Municipal agencies, but
18 rather any act or omission done by any employee, agent, or agency of the
19 municipality under its apparent authority. This amendment is in keeping with
20 the jurisdiction of the ombudsman as established with broad language in
21 Charter to investigate the “acts and omissions of employees and agents of
22 the school district, as well as employees and agents of the municipality.”
- 23
24 • Amending section 2.60.110 to bring unity to the Code, Charter and the
25 Administration’s Policies & Procedures. Specifically, the proposed ordinance
26 amends the Ombudsman’s jurisdiction to investigate both “employees and
27 agents” to mirror the language of the charter. Additionally, the proposed
28 ordinance clarifies that the Ombudsman has authority to investigate abuses
29 of authority as well as any other matters of public concern which have failed
30 to be addressed through other means. This change is intended to align this
31 particular section of Code and P&P 40-14, which instructs Municipal
32 employees specifically to report any matter of public concern to the
33 Ombudsman.
- 34
35 • Amending section 2.60.125 to allow the Ombudsman to investigate matters
36 that may be involved in litigation, at their discretion. The provision of code
37 forbidding the Ombudsman from investigating matters “brought to the court
38 for resolution or in litigation” (subsection 2.60.125B.9) is a relatively new
39 limitation which was placed on the Ombudsman’s office in 2017. The
40 ordinance that introduced this language, AO 2017-40, was a large AO that
41 was part of an even larger effort by the Assembly to overhaul Title 2. This
42 particular portion was designed to bring all of the rules governing the
43 Ombudsman’s office (both in code and regulation) in one place. However,
44 the prohibition on the Ombudsman investigating matters that were the
45 subject of litigation existed nowhere previously. This change was introduced

1 at the request of the Ombudsman and was intended to be placed in
2 subsection 2.60.125A. The request was made so that the Ombudsman would
3 have the discretion to decline investigation of matters that may be the subject
4 of a criminal prosecution or instances where a complainant may have already
5 sought relief through the courts. It was not intended to forbid investigation of
6 any matter that may be tangentially involved in some other matter pending
7 litigation. This change brings the code into closer alignment with the
8 Ombudsman’s original request and removes an artificially imposed limitation
9 on the people’s right to the assistance of the Ombudsman.

- 10
11 • Amending section 2.60.165 to address concerns raised by the department of
12 law regarding the Ombudsman’s immunity to civil suit under AS 09.65.070(d)
13 by tying the language of this section of code closer to the language of the
14 Alaska statute. Further the proposed AO adds a new subsection intended to
15 further solidify the independence of the Ombudsman’s office by indemnifying
16 it by code, as opposed to leaving the decision at the discretion of the Risk
17 Manager.
18

19 **I request your support for the ordinance.**

20
21 Prepared by: Assembly Counsel’s Office

22
23 Respectfully submitted: Christopher Constant, Assembly Chair
24 District 1 - North Anchorage