

**ANCHORAGE, ALASKA
AO No. 2022-60(S)**

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.**

8
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

14
15 **WHEREAS**, the requirements of section 7.01(b) have only been partly fulfilled; and

16
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

22
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

28
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*):

36
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. **Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.** For the purposes of this section actions constituting a breach of the public trust shall include, **but are not limited to:**

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 **may only [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

1 of the municipal board of ethics and must allege specific actions by
2 the member that breach the public trust.

3
4 C. After a successful vote to submit it, the municipal clerk shall cause a
5 copy of the accusation document to be served on the member in the
6 same manner as service of process under Alaska Rules of Civil
7 Procedure, and a copy delivered to the municipal attorney.

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9 D. The municipal attorney shall review the accusation document for legal
10 sufficiency. The municipal attorney shall determine the legal
11 sufficiency of the allegations within ten days of receipt of the
12 accusation document. If the municipal attorney determines that the
13 allegations are legally insufficient, the removal action shall be
14 discontinued. The municipal attorney's determination, if it rejects the
15 accusation document, may be appealed to the superior court within 30
16 days. No interlocutory appeal is permitted from a determination by the
17 municipal attorney that the accusation document is legally sufficient.
18 Following a determination by the municipal attorney that the
19 accusation document is legally sufficient, it shall be delivered to the
20 municipal administrative hearings office established by Title 14, and
21 the municipality shall employ an attorney of the member's choice,
22 subject to the limitations of this subsection, to defend the charges. The
23 attorney selected must be engaged in the active practice of law in the
24 state. The fees charged by the attorney must be reasonable in both
25 the rate and the amount of time expended. Reasonableness shall be
26 evaluated in accordance with Alaska Bar Rule 35 and shall be subject
27 to fee arbitration under the Alaska Bar Rules if the municipality
28 disputes the reasonableness of the fees claimed.

29
30 E. A hearing conducted by the municipal administrative hearing officer
31 shall be held no later than 30 days following appointment of the
32 hearing officer. The hearing shall be open to the public and, unless
33 otherwise provided in this section, shall be conducted in accordance
34 with the procedures set forth in chapter 3.60, **however the hearing**
35 **officer shall expedite the matter within the required times set**
36 **forth in this section and chapter 3.60 and shall grant extensions**
37 **only for good cause. Good cause must be based upon matters**
38 **either beyond the control of the party making application or**
39 **conditions which would create a significant hardship if a**
40 **continuance is not granted.** Within ten days following the conclusion
41 of the public hearing the hearing officer shall submit written findings
42 and recommendations to the assembly. The recommendations shall
43 include whether the member should be removed.

44
45 F. The standard of proof of the allegations in the accusation document to
46 be applied by the hearing officer is proof by a preponderance of the

1 evidence. The hearing officer shall evaluate the evidence relating to
2 the accusations set forth in the accusation document and evaluate
3 both whether the allegations are supported and whether those actions
4 alleged constitute a breach of the public trust as set forth in subsection
5 A. of this section. Wrongful acts or admissions occurring while the
6 member was acting in a private capacity as opposed to in a capacity
7 as a public officer shall not constitute a breach of the public trust.
8 ~~**[Willful and knowing breach of duty or culpable indifference to**~~
9 ~~**official duties may constitute a breach of the public trust.]**~~

10
11 G. Within ten days of receiving the hearing officer's recommendations,
12 the assembly shall vote on whether to remove the member who is the
13 subject of the accusation document. Removal shall occur only on the
14 concurrence of two-thirds of the fully constituted body.

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16 H. The decision of the assembly acting upon the recommendations of the
17 hearing officer may be appealed to the superior court within 30 days
18 of the assembly's decision. If the assembly's decision is for removal,
19 the office shall be considered vacant beginning at 12:01 a.m. seven
20 days following the decision unless the appellate court issues a stay of
21 the removal pending appeal. In evaluating whether to grant a stay of
22 removal pending appeal, the fact that another individual may be
23 seated as acting member shall not constitute irreparable harm. During
24 a stay, the seat may be temporarily filled pending the outcome of the
25 court case using the procedures in section 27.20.080. If, after
26 exhaustion of appeals, the final ruling reverses the removal, the
27 removed member shall be reseated for the remainder of the term for
28 which the member was elected, and the acting member shall be
29 displaced.

30
31 **Section 3.** Anchorage Municipal Code chapter 3.10, *General Provisions*,
32 (*Reserved*) is hereby amended to rename the chapter and to add a new section
33 3.10.050 to read as follows:

34
35 **Chapter 3.10 - GENERAL PROVISIONS [(RESERVED)]**

36 *** **

37 **3.10.050 Removal from office.**

38
39 The mayor may be removed from office for breach of the public trust following
40 the procedures set forth in this section:

41
42 A. **Willful and knowing breach of duty or culpable indifference to**
43 **official duties may constitute a breach of the public trust.** For the
44 purposes of this section actions constituting a breach of the public trust
45 shall include, **but are not limited to:**
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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, or knowingly allowing a person appointed by the mayor to order, a municipal employee to undertake an unlawful act;
12. Substantial breach of a statutory-, Code- or Charter-imposed duty;
13. Failure to faithfully execute the directives of a duly enacted ordinance.

B. Proceedings for removal from office **may only [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 mayor that breach the public trust.

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

D. The municipal attorney, or an impartial third-party attorney retained by the Assembly to serve as special counsel, shall review the accusation document for legal sufficiency. An accusation approved by the assembly shall specify whether the accusation shall be reviewed for legal sufficiency by the municipal attorney or special counsel. The municipal attorney, or the retained special counsel, shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney, or special counsel, determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's or special counsel'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 or special counsel that the accusation document is legally sufficient. Following a determination by the municipal attorney or special counsel that the

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

10
11 E. Within two weeks following the service of an accusation document, the
12 municipal clerk shall request that six names be submitted as potential
13 hearing officers by the American Arbitration Association unless
14 otherwise mutually agreed to by the assembly and the mayor. Three
15 of the names submitted should be from the state and three from out-
16 of-state. From these names the assembly and the mayor shall agree
17 upon a hearing officer who shall conduct the hearing concerning the
18 allegations in the accusation document. If no agreement is reached
19 within ten days of distribution of the list of potential hearing officers,
20 the hearing officer shall be selected by each side exercising
21 preemptory challenges to the six potential names in turn until only one
22 remains.

23
24 F. A hearing conducted by the appointed hearing officer shall be held no
25 later than 30 days following appointment of the hearing officer. The
26 hearing shall be open to the public and, unless otherwise provided in
27 this section, shall be conducted in accordance with the procedures set
28 forth in chapter 3.60, **however the hearing officer shall expedite the**
29 **matter within the required times set forth in this section and**
30 **chapter 3.60 and shall grant extensions only for good cause.**
31 **Good cause must be based upon matters either beyond the**
32 **control of the party making application or conditions which**
33 **would create a significant hardship if a continuance is not**
34 **granted.** Within ten days following the conclusion of the public hearing
35 the hearing officer shall submit written findings and recommendations
36 to the assembly. The recommendations shall include whether the
37 mayor should be removed.

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39 G. The standard of proof of the allegations in the accusation document to
40 be applied by the hearing officer is proof by a preponderance of the
41 evidence. The hearing officer shall evaluate the evidence relating to
42 the accusations set forth in the accusation document and evaluate
43 both whether the allegations are supported and whether those actions
44 alleged constitute a breach of the public trust as set forth in subsection
45 A. of this section. Wrongful acts or admissions occurring while the
46 mayor was acting in a private capacity as opposed to in a capacity as

1 imposed duty.

- 2
- 3 B. Proceedings for removal from office **may only [SHALL]** be initiated
- 4 by delivery of an accusation document to the municipal clerk setting
- 5 forth the grounds for removal and specifying if delivery is to the
- 6 assembly or the board of ethics. An accusation document may be
- 7 submitted to the municipal clerk only by a majority [TWO-THIRDS]
- 8 vote of the assembly or [TWO-THIRDS MAJORITY] decision of the
- 9 municipal board of ethics and must allege specific actions by the
- 10 assembly member in question which breach the public trust.
- 11
- 12 C. After a successful vote to submit it, the municipal clerk shall cause a
- 13 copy of the accusation document to [MUST] be delivered by personal
- 14 service to the member of the assembly who is the subject of the
- 15 accusation document and a copy delivered to the municipal attorney.
- 16
- 17 D. The municipal attorney shall review the accusation document for legal
- 18 sufficiency. The municipal attorney shall determine the legal
- 19 sufficiency of the allegations within ten days of receipt of the
- 20 accusation document. If the municipal attorney determines that the
- 21 allegations are legally insufficient, the removal action shall be
- 22 discontinued. The municipal attorney's determination, if it rejects the
- 23 accusation document, may be appealed to the superior court within 30
- 24 days. No interlocutory appeal is permitted from a determination by the
- 25 municipal attorney that the accusation document is legally sufficient.
- 26 Following a determination by the municipal attorney that the
- 27 accusation document is legally sufficient, the municipality shall employ
- 28 an attorney of the accused's choice, subject to the limitations of this
- 29 subsection, to defend the charges. The attorney selected must be
- 30 engaged in the active practice of law in the state. The fees charged by
- 31 the attorney must be reasonable in both the rate and the amount of
- 32 time expended. Reasonableness shall be evaluated in accordance
- 33 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
- 34 the Alaska Bar Rules if the municipality disputes the reasonableness
- 35 of the fees claimed.
- 36
- 37 E. Within two weeks following the delivery of an accusation document,
- 38 the municipal clerk shall request that six names be submitted as
- 39 potential hearing officers by the American Arbitration Association.
- 40 Three of the names submitted should be from the state and three from
- 41 out-of-state. From these names the assembly and the accused shall
- 42 agree upon a hearing officer who shall conduct the hearing concerning
- 43 the allegations in the accusation document. If [, OR, IF] no agreement
- 44 is reached within ten days of distribution of the list of potential hearing
- 45 officers, the hearing officer shall be selected by each side exercising
- 46 preemptory challenges to the six potential names in turn until only one

1 remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING
2 OFFICER FROM THE LIST WHO SHALL CONDUCT A HEARING
3 CONCERNING THE ACCUSATIONS CONTAINED IN THE
4 DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL
5 PROVIDE A RECOMMENDATION TO THE ASSEMBLY]. If more
6 than one assembly member is the subject of the accusation document
7 or the alleged breach arises out of the same event, the same hearing
8 officer shall hear those matters and may hold one consolidated
9 hearing.

10
11 F. A hearing conducted by the appointed hearing officer shall be held no
12 later than 30 days following appointment of the hearing officer. The
13 hearing shall be open to the public and, unless otherwise provided in
14 this section, shall be conducted in accordance with the procedures set
15 forth in chapter 3.60, however the hearing officer shall expedite the
16 matter within the required times set forth in this section and
17 chapter 3.60 and shall grant extensions only for good cause.
18 Good cause must be based upon matters either beyond the
19 control of the party making application or conditions which
20 would create a significant hardship if a continuance is not
21 granted. Within ten days following the conclusion of the public hearing
22 the hearing officer shall submit written findings and recommendations
23 to the assembly. The recommendations shall include whether the
24 officer should be removed.

25
26 G. The standard of proof of the allegations in the accusation document to
27 be applied by the hearing officer is proof by a preponderance of the
28 evidence. The hearing officer shall evaluate the evidence relating to
29 the accusations set forth in the accusation document and evaluate
30 both whether the allegations are supported and whether those actions
31 alleged constitute a breach of the public trust as set forth in subsection
32 A of this section. Wrongful acts or admissions occurring while the
33 officer was acting in a private capacity as opposed to his capacity as
34 a public officer shall not constitute a breach of the public trust.
35 **[WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE**
36 **INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A**
37 **BREACH OF THE PUBLIC TRUST.]**

38 ***

39 I. The decision of the assembly acting upon the recommendations of the
40 hearing officer may be appealed to the superior court within 30 days
41 of the assembly's decision. If the assembly's decision is for removal,
42 the office shall be considered vacant beginning at 12:01 a.m. seven
43 days following the decision unless the appellate court issues a stay of
44 the removal pending appeal. In evaluating whether to grant a stay of
45 removal pending appeal the facts that the removed member could
46 miss important votes and that another individual may be seated to

1 replace the removed member shall not constitute irreparable harm.
2 During a stay, unless otherwise ordered by the court the seat is
3 considered vacant and shall be filled in accordance with Charter
4 7.02(b) and section 2.70.020 pending the outcome of the court case.
5 If, after exhaustion of appeals, the final ruling reverses the removal,
6 the removed member shall be resealed for the remainder of the term
7 for which elected, and any replacement, whether appointed or elected
8 at a special election, shall be displaced.

9
10 (AO No. 93-54(S-1), 5-5-93)

11
12 **Section 5.** Anchorage Municipal Code section 29.10.060, *Removal of members*
13 *from office*, is hereby amended as follows (*the remainder of the section is not*
14 *affected and therefore not set out*):

15
16 **29.10.060 - Removal of members from office.**

17
18 A member of the school board may be removed from office for breach of the
19 public trust following the procedures set forth in this section.

20
21 A. **Willful and knowing breach of duty or culpable indifference to**
22 **official duties may constitute a breach of the public trust.** For the
23 purposes of this section, actions constituting a breach of the public
24 trust shall include, **but are not limited to:**

- 25 *** *** ***
- 26 9. Official oppression;
 - 27 10. **Actual or attempted official misconduct, as defined by**
28 **state law;**
 - 29 11. Unexcused absence from three consecutive meetings;
 - 30 **12[11]**. Failure to attend 75 percent of meetings in a 24-month period;
 - 31 or
 - 32 **13[12]**. Substantial b[B]reach of a statutory-, Code- or Charter-
33 imposed duty.

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35 B. Proceedings for removal from office **may only [SHALL]** be initiated
36 by delivery of an accusation document to the municipal clerk setting
37 forth the grounds for removal and specifying if delivery is to the school
38 board or the board of ethics. An accusation document may be
39 submitted to municipal clerk only by a majority [TWO-THIRDS] vote of
40 the school board or a [TWO-THIRDS MAJORITY] decision of the
41 municipal board of ethics and must allege specific actions by the
42 school board member in question which breach the public trust.

43
44 C. After a successful vote to submit it, the municipal clerk shall cause a
45 copy of the accusation document to [MUST] be delivered by personal
46 service to the members of the school board who are the subjects of

1 the accusation document and a copy delivered to the municipal
2 attorney.

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4 D. The municipal attorney shall review the accusation document for legal
5 sufficiency. The municipal attorney shall determine the legal
6 sufficiency of the allegations within ten days of receipt of the
7 accusation document. If the municipal attorney determines that the
8 allegations are legally insufficient, the removal action shall be
9 discontinued. The municipal attorney's determination, if it rejects the
10 accusation document, may be appealed to the superior court within 30
11 days. No interlocutory appeal is permitted from a determination by the
12 municipal attorney that the accusation document is legally sufficient.
13 Following a determination by the municipal attorney that the
14 accusation document is legally sufficient, the school board shall
15 employ an attorney of the accused's choice, subject to the limitations
16 of this subsection, to defend the charges. The attorney selected must
17 be engaged in the active practice of law in the state. The fees charged
18 by the attorney must be reasonable in both the rate and the amount of
19 time expended. Reasonableness shall be evaluated in accordance
20 with Alaska Bar Rule 35 and shall be subject to fee arbitration under
21 the Alaska Bar Rules if the school district disputes the reasonableness
22 of the fees claimed.

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

43
44 F. A hearing conducted by an appointed hearing officer shall be held no
45 later than 30 days following appointment of the hearing officer. The
46 hearing shall be open to the public and, unless otherwise provided in

1 this section, shall be conducted in accordance with the procedures set
2 forth in chapter 3.60, **however the hearing officer shall expedite the**
3 **matter within the required times set forth in this section and**
4 **chapter 3.60 and shall grant extensions only for good cause.**
5 **Good cause must be based upon matters either beyond the**
6 **control of the party making application or conditions which**
7 **would create a significant hardship if a continuance is not**
8 **granted.** Within ten days following the conclusion of the public
9 hearing, the hearing officer shall submit written findings and
10 recommendations to the school board. The recommendations shall
11 include whether the official should be removed.

12
13 G. The standard of proof of the allegations in the accusation document to
14 be applied by the hearing officer is proof by a preponderance of the
15 evidence. The hearing officer shall evaluate the evidence relating to
16 the accusations set forth in the accusation document and evaluate
17 both whether the allegations are supported and whether those actions
18 alleged constitute a breach of the public trust. Wrongful acts or
19 admissions occurring while the officer was acting in a private capacity
20 as opposed to his capacity as a public officer shall not constitute a
21 breach of the public trust as set forth in subsection A of this section.
22 **WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE**
23 **INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A**
24 **BREACH OF THE PUBLIC TRUST.]**

25 *** **

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

42
43 (AO No. 93-54(S-1), 5-5-93)

44
45 **Section 6.** This ordinance shall be effective immediately upon passage and
46 approval by the Assembly.

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PASSED AND APPROVED by the Anchorage Assembly this _____ day
of _____, 2022.

Chair

ATTEST:

Municipal Clerk