



MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MAYOR

MEMORANDUM

DATE: August 23, 2022

TO: Anchorage Assembly
Suzanne LaFrance, Assembly Chair

FROM: Mayor Dave Bronson

SUBJECT: Veto of Resolution No. AR 2022-xx (Homeless Task Force)

Pursuant to Section 2.30.100 of the Anchorage Municipal Code (AMC) and Section 5.02 of the Municipal Charter, I hereby veto AR 2022 – xx for the establishment of a Homeless Task Force, which was introduced and passed at the Assembly's special meeting of August 17, 2022.

The Alaska Supreme Court has repeatedly made clear that resolutions adopted by legislative bodies differ from ordinances and other laws. In this regard, "A mere resolution is not a competent method of expressing the legislative will, where that expression is to have the force of law".¹ Thus, when a so-called "resolution" mandates action by anyone other than members of the Assembly itself, "it is not a resolution" but rather is an ordinance in disguise.² Alaska law is clear in recognizing that where – as here – an assembly or other legislative body is effectively attempting "to metamorphose a resolution into an ordinance" but fails to follow the procedures required to pass an ordinance, the enactment is invalid.³

The Assembly recently went to court to argue that any time it called a Municipal Department an "Office" (or indeed anything other than a "Department"), the Assembly could circumvent the requirements of the Municipal Charter that govern Departments and the Heads of Departments. On July 20, 2022, less than one month before the Assembly passed its "Resolution", the Superior Court resoundingly rejected the Assembly's argument, holding that it is the plain meaning of the Charter that governs the Assembly's legislative enactments, without regard for any vocabulary games that the Assembly may choose to play.⁴ Apparently, the Assembly failed to learn its lesson.

¹ Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173, 1182 n.4 (Alaska 1985); quoting State v. A.L.I.V.E. Voluntary, 606 P.2d 769, 773 (Alaska 1980).

² Id.; see also Swetsov v. Philemonoff, 203 P.3d 471, 476 (Alaska 2009) (reaffirming Yute Air's holding "because the proposal mandated action by the governor, it was a law rather than merely an aspirational resolution").

³ Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals, 904 P.2d 373, 377 (Alaska 1995).

⁴ Bronson v. Anchorage Assembly, 3AN-21-08881 Civ. (Anch. Super. Ct.) (Jul. 20, 2022).

Without actually naming her, the "Resolution" appoints Assembly member Zaletel (in her capacity as the head of the Anchorage Coalition to End Homelessness, but not in her capacity as a member of the Assembly), to "convene" an advisory body representing "a broad array of providers, stakeholder organizations, and Municipal agencies" who will meet publicly as a Municipal body to consider homelessness in Anchorage and advise the Assembly on that topic, including specifically the development of an Emergency Sheltering Plan under Title 16 and corresponding appropriation requests. As the Assembly should have learned from the recent court ruling, this is impermissible.

Anytime the Assembly creates a public advisory body to "make recommendations to the assembly" on matters specified in the ordinance that creates the advisory body, it is creating a board or a commission under the plain meaning of Charter Section 5.07. It does not matter that the Assembly chooses to call the board a "task force" or any other name it may adopt. The creation of the advisory body can only be accomplished by ordinance in accordance with Charter Section 5.07, and the members of that body must be appointed by the Mayor subject to confirmation by the entire Assembly. If the "Resolution" was not already invalid for the Assembly's failure to follow the procedures necessary for enacting an ordinance, the creation of an advisory body in violation of Charter Section 5.07 would be unconstitutional.

"The executive and administrative power of Anchorage is vested in the mayor" under Charter Section 5.01. The role of the executive branch in formulating budgets and appropriations is governed by Charter Section 13. The "Resolution" suggests that the Assembly and/or its "task force" will bypass the Administration to implement Title 16. Accordingly, we must heed the admonition of the Alaska Supreme Court that "an ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative".⁵ If the "Resolution" was not already invalid for the Assembly's failure to follow the procedures necessary for enacting an ordinance, the intrusion into executive powers and duties by the legislative branch that is embodied by the "Resolution" would be an unconstitutional violation of the separation of powers incorporated within the Anchorage Charter.

I am compelled to veto AR 2022 -xx (Homeless Task Force) for all of the reasons identified above.



DAVE BRONSON, MAYOR OF ANCHORAGE

⁵ Municipality of Anchorage v. Holleman, 321 P.3d 378, 385 (Alaska 2014).