



ASSEMBLY LEADERSHIP

DATE November 16, 2023

TO Assembly Members, Members of the Public

FROM Christopher Constant, Assembly Chair
Meg Zaletel, Assembly Vice Chair

SUBJECT **Report of Assembly Inquiry Concerning the April 11 Election Complaint and Creation of an ITD Policy**

The creation of policies after a properly conducted election that enable complaints with the power to alter or overturn those election results is hugely destabilizing to voters' faith that the administration can be trusted to keep its thumb off the scale when it comes to overseeing future elections. At the least, the policy and complaint appear to be a tandem effort to sow doubt in election results; at worst, they are a means by which the sitting administration could use its administrative power to try and throw out the results of a duly conducted election. It's a playbook that is seeing increasingly frequent use across the U.S., as partisans who are unable to convince voters seek instead to change the rules — sometimes after the fact — in a desperate bid to change or disqualify the outcome of election contests.

That's about as undemocratic as it gets. And Anchorage residents deserve a full accounting of any attempt to make it happen here.

ANCHORAGE DAILY NEWS Editorial: *Anchorage Residents Deserve To Know: What Was That Shady Municipal Election Complaint About?* (June 17, 2023)¹

Residents of Anchorage were rightly concerned by reports that an election complaint was filed in the April 2023 Anchorage Regular Municipal Election that: (1) quoted, verbatim, the language of an "ITD Policy Statement," not readily available to the public, that had been posted to an internal website shortly before the complaint was submitted; (2) alleged that the "policy"

¹ Available at: <https://www.adn.com/opinions/editorials/2023/06/17/editorial-anchorage-residents-deserve-to-know-what-was-that-shady-municipal-election-complaint-about/>

had been violated; and (3) asserted that the alleged violation could “change the outcome of the election,” possibly “nullifying the results.”

As the body vested by the Anchorage Municipal Charter, Article XI, with the duty and responsibility to run municipal elections; as the body whose employees are delegated the task of conducting municipal elections; and as the body vested by the Municipal Charter with the legislative power to create and revise the ordinances that apply to—and safeguard—our local elections, the Assembly thereafter took up the call to obtain the “full accounting” of what happened here.

This Report outlines the substance of the Assembly’s inquiry. It includes a timeline of key actions and activities, and outlines findings and proposed legislative responses related to: (1) use of municipal resources to interfere with an election; (2) election complaint forms; (3) the processing of election complaints by the municipal Election Commission, and (4) the Assembly’s Subpoena Power. Key documents are provided in appendices.

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EXECUTIVE SUMMARY

At the outset of the Assembly's inquiry, records provided by the Ombudsman and the Administration established:

- that on April 11, 2023 then-director of the IT department Marc Dahl instructed IT staff to publish an "ITD Policy Statement" document regarding "Removable Storage (USB) drives" to an internal municipal webpage, not available to the public,²
- that, shortly after the policy was posted, Marc Dahl emailed a copy of that policy to Sandra "Sami" Graham, a former chief of staff to the mayor, who was then also serving as an election observer,³ and
- that, after receiving the email from Mr. Dahl, Ms. Graham filed on behalf of herself, Daniel Smith and John Henry, an election complaint that quoted the ITD policy statement verbatim; alleged that it had been violated; and listed in the section of the complaint form that called for the complainant to explain how the allegations "would change the outcome of the election if found to be true," that "it is completely possible" that violation of the policy could have led to "altering data . . . thereby nullifying the results of the election."⁴

For its part, the ITD Policy statement:

- was not a valid municipal-wide policy, in as much as it was not adopted in accordance with Municipal Policy and Procedures Document 1-1 (P&P 1-1),⁵
- consisted of language taken from other draft IT policies, never finalized, that months earlier had failed to pass through the official Municipal Attorney, Office of Management

² See Appendix A-4, ITD Policy Statement: Access to or connection of Removable Storage (USB) devices.

³ See Appendix A-3, Email of Marc Dahl to Sami Graham (April 11, 2023 at 2:37pm).

⁴ See Appendix A-5, Sami Graham, Daniel E. Smith, John Henry, Renewed Complaint *Election Commission – Failure to Comply with Law or Alleged Illegal Election Practices* (April 11, 2023).

⁵ See Municipal Operating Policies and Procedures, P&P 1-1 (effective April 8, 1997), available at: <https://www.muni.org/Departments/Assembly/Documents/P%26P%2001-01.pdf>

and Budget, Municipal Manager, and Mayoral reviews that must be completed before a document becomes an official and valid “policy and procedure” document,⁶ and

- even if finalized as a valid Municipal Policy and Procedures Document would not have applied to operations at the MOA Election Center, given the Assembly’s long-standing position that, under the principle of separation of powers, the policies, procedures, and directives of the executive branch are only advisory to the legislative branch; and the particular rule, codified in local law, that Election Administrator, who is not an executive-branch employee, is responsible for election-related computer equipment.⁷

The known facts prompted questions regarding whether and to what degree a high-ranking municipal employee, possibly in collaboration with a former high-ranking municipal employee, may have used municipal resources to attempt to influence, or undermine public confidence in, a municipal election and its results—and whether Anchorage’s existing laws are adequate to address such a scenario. The Assembly undertook to further explore those questions.

To advance its inquiry, Assembly leadership: (1) requested and reviewed public documents,⁸ (2) requested public comment from individuals involved with or likely to have knowledge of the ITD policy or election complaint;⁹ (3) after witnesses declined to voluntarily provide testimony, issued subpoenas to individuals involved with the election complaint and/or

⁶ See Appendix B, Municipality of Anchorage, Ombudsman, *Final Investigative Report Concerning Ombudsman Complaint 2023-0550*. Of note, the IT Department completed the P&P 1-1 process as recently as March 14, 2022, when the Mayor signed P&P 28-7, addressing password management.

⁷ See AMC 28.10.020 *Powers and duties of municipal clerk*:

...

- C. Pursuant to Charter § 11.02(a) and notwithstanding any other provision of this Code, the election administrator shall be responsible for the overall administration of municipal elections, including, but not limited to: application of election related information systems, election related systems standards and procedures, acquisitions of election related computer equipment, and related products and services. The election administrator shall receive municipal resources and support from executive branch departments in accordance with subsection 3.20.070G.

⁸ See Appendix E.

⁹ See Appendices G, H, I and J.

ITD Policy: Marc Dahl, Sami Graham, Daniel Smith and John Henry¹⁰; and (4) received testimony from Ms. Graham, Mr. Smith and Mr. Henry.¹¹ Mr. Dahl never testified.

As outlined in fuller detail below, the inquiry resulted in the following proposed findings and policy recommendations:

Finding 1. **The public may be inadequately protected from the possibility of municipal resources being used to interfere with an election.**

The Ombudsman concluded that the “timing of events . . . supports the conclusion that Dahl initiated and directed the revision and posting of the OIT USB policy to provide support for a challenge to the April 4, 2023 Municipal election.”¹² Because Mr. Dahl refused to testify, the Assembly was unable to further test the Ombudsman’s conclusion. It remains uncontroverted and, in the absence of any evidence to the contrary, the Ombudsman’s conclusion is persuasive.

But whatever Mr. Dahl’s actual motivation, Assembly Leadership believes it must be clear in the local Election Code that municipal resources cannot be used to advance partisan electoral purposes. Doing so is currently prohibited by Anchorage’s Code of Ethics,¹³ but penalties for violating the prohibition are not explicitly defined, and may be inadequate.

Recommendation 1. ***The Assembly should make misuse of municipal resources for partisan purposes, including to interfere with an election, a misdemeanor crime.***

Finding 2. **Existing election-complaint forms can lead to ambiguity about whether a complainant is seeking to overturn an election.**

The “renewed complaint” at issue in this inquiry was filed on a form that required complainants to provide an “explanation of how the concern would change the outcoming the election if found to be true.” The form did not require the complainants to specify the relief they were requesting from the Election Commission or Assembly. This led to significant

¹⁰ See Appendix F; *id.*

¹¹ See Appendix K.

¹² See Appendix C, Ombudsman’s Final Investigative Report at 4.

¹³ See AMC 1.15.110 *Political activity.*

discussion at the Election Commission about what, precisely, the Election Commission was being asked to do.¹⁴ Before the Election Commission, the lead complainant repeatedly indicated that she believed that the outcome of the election *could* have been affected,¹⁵ but reported to the Assembly that she “never stated that [she] wanted the election to be overturned.”¹⁶

Recommendation 2. ***The Assembly should approve revised complaint forms that require a complainant to specify with particularity the grounds for the complaint, and the relief they are requesting.***

Finding 3. **The Election Commission’s role in hearing complaints has evolved beyond Code provisions and should be clarified.**

Formally, the April 11 election complaint was a “renewed complaint” that was filed with the Election Commission in accordance with the Election Observer’s handbook, which was first adopted by municipal ordinance, and later updated by Assembly resolution; the “renewed complaint” process was created in December 2022. Traditionally, the Election Commission has, in accordance with Anchorage’s local Election Code, adjudicated whether particular ballots should be counted, and generally recommended to the Assembly whether an election should be certified.¹⁷ The Code also anticipates that the Commission may, “[i]f requested by the assembly,” investigate election contests and report to the assembly its findings¹⁸; and the Code anticipates that the Commission might “report [to the Assembly] a failure to comply with the provisions of law or illegal election practices . . . sufficient to change the outcome of the election,” and thereby empower the Assembly to take remedial action.¹⁹ But the Assembly has not clearly established what the Commission is to do with “renewed complaints” and the Commission has

¹⁴ See, e.g., Appendix B, Recording of Anchorage Election Commission, Public Session of Canvas at 58, 1:04 (April 20, 2023) https://youtu.be/xl4b96_ZKCs?si=ztdmPyoSYo0lYWJd&t=3525

¹⁵ See *id.* at https://youtu.be/xl4b96_ZKCs?si=ztdmPyoSYo0lYWJd&t=3525 and https://youtu.be/xl4b96_ZKCs?si=gE7x32CntENVjIZ_&t=3944

¹⁶ See Appendix K, Worksession re Assembly Inquiry Concerning April 11 Election Complaint and Creation of ITD Policy (Sept. 29, 2023), available at: <https://www.youtube.com/live/Qgh9w6Xl1ts?si=XBKZr7iAJ-tJly2e&t=4248>

¹⁷ See, e.g., AMC 28.120.060 *Duties*; AMC 28.85 *Public Session of Canvass*.

¹⁸ See AMC 28.120.060A.4.

¹⁹ See AMC 28.85.030D.

only the powers conferred upon it by Code; moreover, the Commission is not well positioned to serve as an effective fact-finder if it is required to do so on the same timeline on which it must adopt its separate “report of the results of the commission’s ballot review.”²⁰

Recommendation 3. ***The procedures governing the Election Commission’s review of election concerns and complaints should be clarified to make clear that, prior to election certification and absent a specific “request” from the Assembly to investigate a particular issue, the Election Commission’s task is to recommend to the Assembly whether the Clerk’s resolution of complaint or concern leaves unanswered a genuine issue of such significance and immediacy that the Assembly should not certify the election, or should delay doing so.***

Finding 4. **The scope of the Assembly’s subpoena power should be clarified to eliminate any argument that the power can be exercised for only for a subset of valid purposes.**

The Assembly’s power to issue subpoenas was codified in 1991, and was intended at the time, and is understood today, to be similar in scope to the subpoena power possessed by the Alaska State Legislature.²¹ Members who originally adopted the ordinance wished to clarify that the Assembly had no intent of issuing subpoenas related to purely private matters, and consequently codified that the Assembly may compel by subpoena testimony “relating to a matter involving municipal funds and policy being considered.” In the course of its inquiry, the Assembly authorized, and Assembly leadership issued, four subpoenas, recognizing that the inquiry could and did inform both annual budgeting decisions, and numerous legislative policy considerations. Nevertheless, one of the subpoena recipients, through counsel, questioned whether the testimony sought by the Assembly actually related to “a matter involving municipal funds and policy,” and filed an action in Alaska Superior Court to quash the subpoena.²² That action was later withdrawn when the attorney’s client voluntarily agreed to answer questions at

²⁰ Cf. AMC 28.85.030 *Completion of canvass; report on results.*

²¹ See AO 91-15(S).

²² See Appendix H-3.

an Assembly worksession, but the dispute certainly could have led to additional delay and unwelcome legal expense.

Recommendation 4. Municipal Code should be amended to state more clearly that the Assembly may exercise its subpoena powers for any valid legislative purpose.

Legislative language to implement these recommendations is provided in the subsequent chapters of the report. Key documents are provided in Appendices.

TIMELINE AND SCOPE OF INQUIRY

Concerns about the apparent involvement of the Municipality’s Director of the Office of Information Technology in an election complaint surfaced at the April 20, 2023 Public Session of Canvass conducted by the Anchorage Election Commission, and were reported publicly on May 20, 2023.²³ The Assembly’s inquiry began shortly thereafter.

In response to a complaint received by his Office, the Municipal Ombudsman also conducted an investigation and issued a Final Investigative Report on August 17, 2023.²⁴ The issuance of the report brought renewed interest in the topic.²⁵

The Assembly’s inquiry consisted of: (1) obtaining and reviewing public records; (2) convening public worksessions, and (3) soliciting and compelling testimony, as detailed below.

I. Invitations to Appear

July 5, 2023	Advanced Notice of Questions to be Addressed at July 21 worksession, and invitation for members of the Administration to participate ²⁶
August 24, 2023	Invitation to Marc Dahl to participate in September 8 worksession on Municipal Ombudsman Investigative Report ²⁷
August 30, 2023	Through his attorney, Mr. Dahl declines to participate because “the Ombudsman has invoked the possibility of potential criminal allegations” ²⁸

²³ See, e.g. Emily Goodykoontz, *Former Top Aide To Mayor Challenged Anchorage Election Using Policy Quietly Added That Day By City IT Director*, ANCHORAGE DAILY NEWS (May 20, 2023), available at: <https://www.adn.com/alaska-news/anchorage/2023/05/20/former-top-aide-to-mayor-challenged-anchorage-election-using-policy-quietly-added-that-day-by-city-it-director/>

²⁴ See Appendix C.

²⁵ See, e.g., Emily Goodykoontz, *Ombudsman Refers Investigation Of Anchorage Election Challenge To State Office Of Special Prosecutions, Recommends Firing IT Director*, ANCHORAGE DAILY NEWS (August 19, 2023), available at: <https://www.adn.com/alaska-news/anchorage/2023/08/18/ombudsman-refers-investigation-of-an-anchorage-election-challenge-to-state-office-of-special-prosecutions-recommends-firing-it-director/>

²⁶ See Appendix D.

²⁷ See Appendix G-1.

²⁸ See Appendix G-2.

September 1, 2023 Invitation to Sami Graham to participate in September 8 worksession on Municipal Ombudsman Investigative Report²⁹

II. Assembly Action

September 12, 2023 Assembly adopts AR 2023-305 *A Resolution Of The Anchorage Assembly Approving The Use Of Subpoenas To Compel Testimony And Document Production Pursuant To Anchorage Municipal Code Section 2.30.085 And Authorizing Litigation To Enforce Compliance With Those Legislative Subpoenas*³⁰

III. Subpoenas

September 21, 2023 Letters and Subpoenas issued to Marc Dahl, Sami Graham, Daniel Smith and John Henry³¹

September 27, 2023 Attorney for Marc Dahl indicates that Mr. Dahl cannot attend the Sept. 29 worksession because he is out of the country³²

September 29, 2023 Attorney for Ms. Graham files action to quash subpoena; petition is withdrawn by end of day³³

IV. Worksessions

July 21, 2023 First Worksession re April 11 Election Complaint and Creation of ITD Policy Statement Regarding Removable Storage Devices; the Mayor's Chief of Staff and Municipal Manager participate³⁴

September 8, 2023 Worksession re Findings of Municipal Ombudsman's Final Investigative Report; the Municipal Ombudsman and Municipal Attorney participate³⁵

September 29, 2023 Additional Worksession; Daniel Smith and Sami Graham participate, and the municipal HR director participate³⁶

²⁹ See Appendix H-1.

³⁰ See Appendix F.

³¹ See Appendices G-3, H-2, I and J.

³² See Appendix G-4.

³³ See Appendix H-3.

³⁴ See Appendix K, <https://www.youtube.com/watch?v=yrejN64cMJM>

³⁵ See Appendix K, <https://www.youtube.com/watch?v=xB1RBVNbLQ>

³⁶ See Appendix K, <https://www.youtube.com/watch?v=Qgh9w6Xl1ts>

October 6, 2023

Final worksession; John Henry participates³⁷

V. Records Requests³⁸

July 10, 2023

Chair requests copies of records the Administration provided to the Ombudsman³⁹

July 17, 2023

Administration provides responsive documents, with significant redactions⁴⁰

August 18, 2023

Assembly counsel objects to the redactions⁴¹

September 6, 2023

Assembly Leadership issues a second public records request (dated September 5) to the Administration⁴²

September 7, 2023

The Mayor's office requests a narrowing and clarification of the public records request⁴³

September 7, 2023

Assembly counsel clarifies and narrows the public records request⁴⁴

September 11, 2023

The Mayor's offices instructs Assembly Counsel to submit separate records requests to the HR and IT departments⁴⁵

September 11, 2023

In response to July 10 request, Administration waives claims of deliberative process privilege and provides mostly unredacted documents⁴⁶

September 25, 2023

Assembly counsel confirms that counsel complied with the request to submit additional records requests⁴⁷

October 6, 2023

Records from the Mayor's office are provided to Assembly Counsel in the form of a 1,993-page pdf; many of the records appear unrelated to the original request

³⁷ See Appendix K, <https://www.youtube.com/watch?v=mEakcvL79m8>

³⁸ See generally Appendix E.

³⁹ See Appendix E-1.

⁴⁰ See *id.*

⁴¹ See Appendix E-2.

⁴² See Appendix E-3.

⁴³ See Appendix E-4.

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See Appendix E-5.

⁴⁷ See Appendix E-6.

October 10, 2023	Human Resources Department informs Assembly counsel that it has no responsive records
October 17, 2023	Assembly counsel flags apparent deficiencies in the production and asks follow-up questions ⁴⁸
October 24, 2023	The Mayor's office responds to the follow-up questions ⁴⁹
October 26, 2023	Assembly counsel responds to the Mayor's office with renewed requests for information
As of October 31, 2023	The Municipal IT Department continues to review the records request
TBD	Should the Municipal IT Department fail to produce records as requested, the Assembly may take additional action

⁴⁸ See Appendix E-4.

⁴⁹ See *id.*

PROPOSED LEGISLATIVE RESPONSES BY FINDING

I. Use of Municipal Resources to Interfere with an Election

The Ombudsman’s Final Investigative Report noted that the ITD Policy quoted verbatim in the April 11 complaint was: (1) derived from an earlier policy drafting effort that had stalled as of January 2023; (2) renewed on the morning April 11, 2023 at the specific instigation of Marc Dahl, the then-Director of the Municipality’s Office of Information Technology; and (3) transmitted to the primary author of the April 11 election complaint by Marc Dahl approximately one hour after the policy was posted to an internal municipal website, inaccessible to the public.

As shown below, public records confirm this timeline.



Figure 1.0: The January draft is recirculated on the morning of April 11, 2023

From: Dahl, Marc <marcus.dahl@anchorageak.gov>
Sent: Tuesday, April 11, 2023 8:59 AM
To: Merchant, Mark A. <mark.merchant@anchorageak.gov>
Subject: Re: Draft Round 2

I don't see any reference to thumb drives and data exchange on critical infrastructure

Get [Outlook for iOS](#)

Figure 1.1: Marc Dahl inquires about references to thumb drives

From: Merchant, Mark A. <mark.merchant@anchorageak.gov>
Sent: Tuesday, April 11, 2023 9:31 AM
To: Dahl, Marc <marcus.dahl@anchorageak.gov>
Subject: RE: Draft Round 2

This is all that's on there...

- a. Access to or connection of Removeable Storage (USB) devices
 - i. Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Department (ITD) and only after devices have been scanned for malware.
 1. USB devices includes any external device that utilizes a USB connection type (i.e., Type-A, Type-B, Mini USB, Micro USB, Type-C, USB 2.0, 3.0, etc.)

Figure 1.2: Language regarding thumb drives is highlighted for Mr. Dahl

Date : 4/11/2023 10:09:58 AM
From : "Dahl, Marc" marcus.dahl@anchorageak.gov
To : "Merchant, Mark A." mark.merchant@anchorageak.gov
Subject : RE: Draft Round 2
Attachment : image001.png;

Please update to be specific on who performs the scan. For critical infrastructure the scanning needs to be limited to Security, Infrastructure or Network team or pre-registered technically capable delegate

Would also put a requirement for submittal of a formal change management(emergency if needed) and follow IT Change management process if the thumb drive content is to deliver system updates, patches, malware remediation.

Figure 1.3: Mr. Dahl directs that the language be updated to require scans to be performed only by members of the OIT department

Date : 4/11/2023 12:16:00 PM
From : "Merchant, Mark A."
To : "Dahl, Marc" marcus.dahl@anchorageak.gov
Subject : Latest Draft for website.
Attachment : image001.png;

Getting close...

Access to or connection of Removeable Storage (USB) devices

Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Department (ITD) and only after the USB devices have been scanned for malware by ITD. All insertions into MOA critical infrastructure technology must also be approved and/or observed by ITD management and must follow ITD Change management processes and procedures regarding patch management and malware remediation.

1. USB devices includes any external device that utilizes a USB connection type (i.e., Type-A, Type-B, Mini USB, Micro USB, Type-C, USB 2.0, 3.0, etc.)
2. Critical Infrastructure includes any MOA service that if compromised would pose a great risk or cause significant impact to Municipal operations and/or resources.

(Link to Change Management Procedures)

Figure 1.4: The change directed by Mr. Dahl is implemented

From: Merchant, Mark A. <mark.merchant@anchorageak.gov>
Sent: Tuesday, April 11, 2023 1:20 PM
To: Holland, Heather M. <heather.holland@anchorageak.gov>
Cc: Dahl, Marc <marcus.dahl@anchorageak.gov>
Subject: ITD Policy Statements

Good afternoon, Heather.

Can you please add a new link on this page....

<https://anchorageak.sharepoint.com/sites/CyberSecurity> called "ITD Policy Statements."

Then on the ITD Policy Statements page I would like to add this language to start off and then we can add other IT policy statements as well. All statements must be approved by the Director prior to posting. This is one Marc would like to put up as soon as possible.

Access to or connection of Removeable Storage (USB) devices

Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Department (ITD) and only after the USB devices have been scanned for malware by ITD. All insertions into MOA critical infrastructure technology must also be approved and/or observed by ITD management and must follow ITD Change management processes and procedures regarding patch management and malware remediation.

1. USB devices includes any external device that utilizes a USB connection type (i.e., Type-A, Type-B, Mini USB, Micro USB, Type-C, USB 2.0, 3.0, etc.)
2. Critical Infrastructure includes any MOA service that if compromised would pose a great risk or cause significant impact to Municipal operations and/or resources.

Figure 1.5: Staff is instructed to post the revised policy as "Marc would like this put up as soon as possible"

From: Holland, Heather M. <heather.holland@anchorageak.gov>
Sent: Tuesday, April 11, 2023 1:31 PM
To: Merchant, Mark A. <mark.merchant@anchorageak.gov>
Cc: Dahl, Marc <marcus.dahl@anchorageak.gov>
Subject: RE: ITD Policy Statements

Good afternoon Mark,
Sure thing, the new page is at

<https://anchorageak.sharepoint.com/sites/CyberSecurity/SitePages/ITD-Policy-Statements.aspx>

I have added a link in the Additional Information and External Sites listing, please let me know what you would like to have adjusted.

Thank you!

Figure 1.6: The ITD Policy is posted to an internal website by no later than 1:31pm April 11

Date : 4/11/2023 2:37:00 PM
From : "Dahl, Marc"
To : "alaskansam@yahoo.com" alaskansam@yahoo.com
Subject : IT USB Policy
Attachment : image001.png

Published on the internal IT Security web page [ITD Policy Statements \(sharepoint.com\)](https://anchorageak.sharepoint.com/sites/CyberSecurity/SitePages/ITD-Policy-Statements.aspx)

ITD Policy Statements

Access to or connection of Removeable Storage (USB) devices

Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Department (ITD) and only after the USB devices have been scanned for malware by ITD. All insertions into MOA critical infrastructure technology must also be approved and/or observed by ITD management and must follow ITD Change management processes and procedures regarding patch management and malware remediation.

1. USB devices includes any external device that utilizes a USB connection type (i.e., Type-A, Type-B, Mini USB, Micro USB, Type-C, USB 2.0, 3.0, etc.)
2. Critical Infrastructure includes any MOA service that if compromised would pose a great risk or cause significant impact to Municipal operations and/or resources.

Figure 1.7: Marc Dahl emails the internally posted ITD policy to Sami Graham at 2:37pm

The Ombudsman concluded that timing of the ITD Policy’s development and publication, coupled with the interactions between Mr. Dahl and Ms. Graham, suggested Mr. Dahl was “directing the development and posting of the policy to provide support for [an] impending election challenge.”⁵⁰ Indeed, Ms. Graham subsequently filed a renewed election complaint that quoted the language Mr. Dahl provided to her verbatim.

EXPLANATION OF EVENTS	<p>EXPLANATION OF ALL EVENTS CREATING THE CONCERN:</p> <p>As an appeal to comments received on Apr. 6, 2023, from Jamie Heinz, and references to MOA ITD practices, according to MOA ITD policy statement</p> <p>Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Dept (ITD) and only after the USB devices have been scanned for malware by ITD. All insertions into MOA critical infrastructure technology must also be approved and/or observed by ITD management and must follow ITD change management processes and procedures regarding patch management & malware remediation.</p> <p>We believe the clerk's current practices in relation to Thumb drive statement is a clear violation of the MOA ITD USB Policy Statement</p>
CODE CITATIONS	<p>CITATIONS TO APPLICABLE PROVISIONS OF ANCHORAGE MUNICIPAL CODE WHICH WERE NOT COMPLIED WITH:</p> <p>MOA ITD USB Policy Statement - regarding election clerk's response #2, dated April 7, '23</p>

Figure 1.8: April 11 renewed complaint, quoting language provided by Mr. Dahl verbatim

Mr. Dahl refused to participate in the Inquiry or otherwise to clarify his motivations, leaving unrebutted the Ombudsman’s reasonable inference that Mr. Dahl intentionally used his position and municipal resources to support a challenge to the April 2023 regular municipal election.

⁵⁰ See Ombudsman’s Report at 5, Appendix C.

Further, in doing so, Mr. Dahl would have, or should have known that the “ITD policy statement” he provided to the complainant was not actually a policy that applied to operations at the MOA Election Center. During his tenure, the Office of Information Technology had, following the requirements of the Municipality’s policy on polices,⁵¹ promulgated at least one policy that genuinely applied to the whole of the municipality,⁵² and the “ITD policy statement” was not so-promulgated. Moreover, local law contains the codified rule that Election Administrator, not ITD, is responsible for election-related computer equipment.⁵³

⁵¹ See P&P 1-1 Municipal Operating Policies and Procedures (effective April 8, 1997).

⁵² See P&P 28-7 Password Management (effective March 14, 2022).

⁵³ See AMC 28.10.020 *Powers and duties of municipal clerk*:

...

- C. Pursuant to Charter § 11.02(a) and notwithstanding any other provision of this Code, the election administrator shall be responsible for the overall administration of municipal elections, including, but not limited to: application of election related information systems, election related systems standards and procedures, acquisitions of election related computer equipment, and related products and services. The election administrator shall receive municipal resources and support from executive branch departments in accordance with subsection 3.20.070G.

Of additional concern, in her statement to the Assembly, Ms. Graham stated that she had contacted Mr. Dahl by phone after April 9 to ask what the “Muni [IT] policy” regarding thumb drives was:

Ms. Graham: The USB policy—when I filed my complaint on the sixth, it was answered on the seventh by Jamie Heinz, saying that she –they were following IT policy.⁵⁴ I don't have the complaint exactly in front of me or the response—but she said she's following—they follow Muni IT policy. But she didn't cite the policy that they followed.

So I contacted Mr Dahl and said, “What's the policy?” And then he said, I'll get back to you.⁵⁵

⁵⁴ In fact, the April 9 response to Ms. Graham’s April 6 complaint had *not* referenced IT “policies,” but rather simply noted that the thumb drive used at the MOA Election Center is “encrypted and reformatted each year according to Municipal IT *practices.*” See Appendix A (emphasis added):

RESPONSE TO COMPLAINT DATED APRIL 6, 2023, FILED BY SAMI GRAHAM:

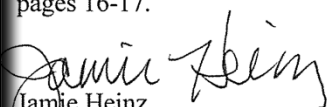
An encrypted thumb drive is inserted in the tabulations computer to download the election results which are thereafter uploaded to another computer for printing.

That thumb drive:

1. Is stored in a wall safe inside a locked room which requires a code and thumb print to open;
2. Is encrypted and reformatted each year according to Municipal IT practices; and
3. Requires a password in order to receive any download of election results.

The printed election results may be compared to the displayed computer results to ensure those results have not been changed.

The Complaint cites AMC Title 28 as authority for the alleged “misconduct.” AMC Title 28 grants authority, and responsibility, for the “overall administration of municipal elections” to the election administrator, including the “application of election related information systems, election related systems standards and procedures . . .” AMC 28.10.020C, *see* AO 2022-98, As Amended, Section 1. There is no “misconduct,” and this Complaint is treated as a suggestion related to administrative or management concerns, *see* Observer’s Handbook (12/6/2022) at pages 16-17.


Jamie Heinz

⁵⁵ See Appendix K, https://www.youtube.com/live/Qgh9w6Xl1ts?si=J_t6BZQXWw99w0Dc&t=3632

Ms. Graham stated that she believed that the ITD Policy Statement she received from Mr. Dahl *was* a valid municipal policy, and it was not until the April 20 Public Session of Canvass that she learned of its provenance.⁵⁶

To the extent that Mr. Dahl provided to Ms. Graham a policy that *he knew or should have known*: (a) did *not* apply to operations at the MOA Election Center, but (b) *would be understood by Ms. Graham* to be a municipal-wide policy that applied to election operations, and (c) thereafter would be used by Ms. Graham to submit to the municipal Election Commission a formal *challenge* to election operations, his actions could be understood as deliberately misleading.

Indeed, Ms. Graham's filing of a subsequent complaint on April 14, 2023, based on another email from Mr. Dahl which was wholly unrelated to any IT matter, lend further support to the reasonable inference that Mr. Dahl's actions were motivated by a partisan desire to find any justification to challenge the 2023 regular election.

⁵⁶ *Id.*

Date : 4/14/2023 11:31:00 AM
From : "Dahl, Marc"
To : "alaskansam@yahoo.com" alaskansam@yahoo.com
Subject : FW: 04182023S Municipal Assembly Agenda - FINAL

See this proposed code update being introduced at the next assembly.

5.A. Ordinance No. AO 2023-45, an ordinance of the Anchorage Assembly amending Anchorage Municipal Code Section (AMC) 2.30.020 to recognize the decision making authority of the assembly with respect to uncodified mayoral directives, policies and procedures, and other uncodified policies and administrative practices as applied to the legislative branch, and amending AMC section 3.50.010 accordingly, Assembly Vice-Chair Constant.

-----Original Message-----

From: Sleppy, Karissa M. <karissa.sleppy@anchorageak.gov>
Sent: Friday, April 14, 2023 10:41 AM
Subject: 04182023S Municipal Assembly Agenda - FINAL
Importance: High

Your message is ready to be sent with the following file or link attachments:

04182023S_Final

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Figure 1.9: *Second email of Dahl to Graham*

Mr. Dahl's non-participation in the Inquiry precluded further clarification of this issue, leaving the Ombudsman's conclusion undisputed. This is an area that may warrant further investigation by other authorities.

But the known facts highlight a legislative imperative to ensure: (a) that municipal employees do not use municipal resources for partisan purposes, and (b) that efforts to deliberately mislead election officials are appropriately prohibited.

Today, the Municipal Code of Ethics, codified at AMC 1.15, generally prohibits the use of municipal resources for political or partisan activity:

- C. *Use of municipal resources for political or partisan activity prohibited:* A public servant shall not use or authorize the use of municipal resources for political or partisan activity with the following exceptions and subject to independent APOC requirements:

1. The mayor, school superintendent, member of the assembly, and member of the school board, or their executive designee, may:
 - a. Appear before the assembly, the school board, appointed bodies of the municipality, community councils, civic organizations, and media representatives in support or in opposition to any ballot measure coming before the voters in a municipal election; and
 - b. Incur associated but limited expenses, such as employee time, use of municipal vehicle, and clerical costs.
2. Elected officials may voice their opinions as part of their usual and customary duties with similar limited use of municipal resources.⁵⁷

Persons who believe the provision to have been violated may submit a complaint to the municipal Board of Ethics, which may hold a hearing, and “make recommendations for corrective action.”⁵⁸

Assembly Leadership believes the existing law inadequately protects the public interest in the integrity of municipal elections, and that the consequences for violations may be inadequately specific, given the seriousness of the issue.

Moreover, Assembly Leadership notes the specific absence of local laws to address efforts to deliberately mislead election officials.

A potential legislative response follows. The proposal would make the improper use of municipal resources for political or partisan activity a class A misdemeanor.

Section 1. Anchorage Municipal Code chapter 8.30 could be amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

8.30.180 Election violations.

*** ** *

C. Public employee violations. It shall be a unlawful for any person employed by, or retained under contract with, the municipality to intentionally:

⁵⁷ AMC 1.15.110 *Political Activity.*

⁵⁸ AMC 1.15.160 *Ethics complaint for potential violation.*

1. Use or authorize the use of municipal resources for political or partisan activity subject to exceptions provided under 1.15.110C; or
2. Engage in political activity while at the workplace or in the performance of work duties beyond the extent allowed under 1.15.110E.

D. Violation of this section is a class A misdemeanor.

(AO No. 2017-29(S) , § 57, 6-1-17)

II. Election Complaint Forms

The April 11, 2023 renewed election complaint was submitted on a form entitled "Election Commission –Failure to Comply with Law or Alleged Illegal Election Practices," which was set out in the Assembly-adopted Election Observer's handbook.⁵⁹

The form provided a space for a complainant to explain how the concern raised in the complaint "would change the outcome of the election if found to be true." Although the lead complainant, Ms. Graham, later asserted that she never asked to change the outcome of the election, her April 11, 2023 complaint strongly implied that the results should be called into doubt, stating that failure to follow the quoted ITD Policy may have resulted in data alteration, "thereby nullifying the results of the election":

AFFECTS TO OUTCOME OF ELECTION	EXPLANATION OF HOW THE CONCERN WOULD CHANGE THE OUTCOME OF THE ELECTION IF FOUND TO BE TRUE: It is completely possible that the USB device is depositing or altering data, intentionally or unintentionally, not simply retrieving data, thereby nullifying the results of the election. "Critical infrastructure includes any MOA service that if compromised would pose a great risk or cause significant impact to municipal operations and or resources."
--------------------------------	---

Figure 2.0: April 11 renewed complaint, addressing "nullifying the results of the election" (highlights added)

In its review of the renewed complaint, Election Commissioners noted that it was unclear what they were being asked to do, and identified deficiencies with the form.

Commissioner Leman⁶⁰: My question is, Sami, "what remedy are you seeking?"

... If your remedy is 'quit doing that,' you know I can understand that, you know. But I don't see any other, you know—in fact I don't see any other box

⁵⁹ See AR 2022-328 A Resolution Of The Anchorage Municipal Assembly Updating And Amending The Election Observer's Handbook And Associated Forms, available at: <http://www.muni.org/Lists/AssemblyListDocuments/Attachments/855750/AR%202022-328.pdf>

⁶⁰ Commissioner Leman served as Alaska's Lieutenant Governor from 2002-2006.

in there that says what the remedy—what the proposed remedy is.⁶¹

The discussion was not limited to a single Commissioner.

Commissioner Treadwell⁶²: In terms of the direct answer to Loren’s question, you're asking us to declare that this was not properly done, and not to do it again next time?

Or are you asking us to overturn the election or not certify the election?

What are you asking us to do?⁶³

At its October 25, 2023 meeting the Election Commission again discussed that the forms could be helpfully amended to require a complainant to specify the relief the complainant is seeking.

Assembly Leadership concurs, and recommends that the Clerk’s office incorporate the requested change into a proposed update to the Election Observer’s Handbook, for Assembly review and approval.

⁶¹ See Appendix B, https://youtu.be/xl4b96_ZKCs?si=G3UQXfi95hwyaCFY&t=3589

⁶² Commissioner Treadwell served as Alaska’s Lieutenant Governor from 2010-2014.

⁶³ See Appendix B, https://youtu.be/xl4b96_ZKCs?si=9w11Ejjyc58XKP3u&t=3876

III. Processing of Election Complaints by the Election Commission

The Anchorage Election Commission received the April 11, 2023 renewed complaint at its April 20, 2023 Public Session of Canvass.

The Anchorage Election Commission is a five-member volunteer commission, whose primary function has been to, “on or before the third Friday after an election” at the Public Session of Canvass, “declare which ballots will be rejected and which shall be counted.”⁶⁴ In that capacity, the Commission adjudicates the validity of individual ballots, rejecting those ballots submitted by persons not qualified to vote, whose identities cannot be confirmed, or for other reasons set out in law.⁶⁵

At the conclusion of its work, the Election Commission approves and transmits to the Assembly a “report [of] the results of the commission’s ballot review and election results,”⁶⁶ which informs the Assembly’s decision whether to certify the election.

In conducting its work, local Code also invites the Commission or municipal clerk to report to the assembly if it becomes aware of “a failure to comply with the provisions of law or illegal election practices,” that are of sufficient magnitude to “change the outcome of the election”; in that circumstance, the Assembly may “exclude the votes cast where such failure or illegal practices occurred,” or “may declare the entire election invalid and order a new election.”⁶⁷

Using language of that Code provision, the Municipal Clerk’s office in 2022 proposed the creation of the form: “Election Commission – Failure to Comply with Law or Illegal Election Practices.”⁶⁸ The form and associated Election Observer Handbook provisions newly invited individuals to present to the Election Commission administrative concerns or allegations of

⁶⁴ See AMC 28.85.010 *Public Session of Canvass*.

⁶⁵ See AMC 28.80 *Counting of Ballots*

⁶⁶ See AMC 28.85.040 *Certification of election*.

⁶⁷ *Id.* at .040D.

⁶⁸ See AR 2022-328 *A Resolution Of The Anchorage Municipal Assembly Updating And Amending The Election Observer’s Handbook And Associated Forms* (Dec. 6, 2022), available at: <https://www.muni.org/Lists/AssemblyListDocuments/Attachments/855750/AR%202022-328.pdf>

election official misconduct that the individual did not believe had been adequately addressed by the Municipal Clerk or Election Administrator.

Observer Concerns with Election Administration and Management

Observers are entrusted with challenges to the critical issues of voting and counting. In the course of this primary duty, Observers may raise other concerns:

1. Administrative concerns and management concerns.
 - a. ~~Administrative~~Administrative concerns include matters such as storage of supplies, empty boxes, and signage.
 - b. ~~Management ,while management~~ concerns include practices such as issuing special needs ballots requests, improvements in witness verification, staffing concerns, and election volunteers following Election Center protocols.

—Informal Resolution.
 - a. ~~Both administrative concerns and management concerns are often addressed informally between observers and the Election Officials. As a result, administrative concerns and management concerns may be handled informally and/or submitted on a suggestion form.- To ensure adequate and timely response, -suggestions and concerns should be filed immediately after the events giving rise to the concern.~~ ~~should~~
 - c.
 - d. Administrative and management concerns that are not resolved by the Municipal Clerk or Election Administrator and that would change the outcome of the election, if found to be true, may be renewed by the observer or candidate. The renewed concern shall

be submitted to the Election Administrator in writing on a form entitled – “Election Commission – Alleged Failure to Comply with Law or Alleged Illegal Election Practices”. The form must be submitted forty-eight (48) ~~five~~ hours prior to the Public Session of Canvass and requires a) an explanation of all events creating the concern; b) citation(s) to applicable provisions of Anchorage Municipal Code or other law; and c) an explanation of how the concern would change the outcome of the election. This information on the form ensures that, in addition to the observers’ challenges on voting and counting, matters that could change the outcome of the election are available for the Commission’s review.

Figure 3.0: Language added to the Observer’s Handbook in December 2022

Election Official Conduct and Misconduct

Outside of challenging voter eligibility, signature verification, ballot adjudication, observers do not have the right to challenge an act of an election official, yet may file a complaint about election official conduct or alleged misconduct. When an observer witnesses a perceived administrative error or irregularity by an election official, the observer should courteously call it to the Municipal Clerk or designee's attention, or if at a polling location or vote center, to the attention of the chair of the location. Election officials may be removed from the election location for misbehavior or neglect of duty. The observer may be asked to submit a written complaint signed by the candidate, campaign manager, or chairperson of the organization/organized group, using the form provided at the end of this handbook.

~~If unresolved, copies of complaints will be shared with all candidates or organizations/organized groups who have registered observers for a particular race or issue, or if copies are requested.~~

~~Complaints that are not resolved by the Municipal Clerk or Election Administrator~~ ~~if the observer is not satisfied with the action of the Municipal Clerk regarding the complaint, the observer may request that the complaint be brought to the Anchorage Election Commission at the Public Session of Canvass, held on or before the third Friday after Election Day.~~ ~~Administrative and management concerns, which are not resolved by the Municipal Clerk or Election Administrator and that would change the outcome of the election, if found to be true, may be renewed by the observer or candidate. The renewed complaint shall be submitted to the Election Administrator in writing on a form entitled – "Election Commission – Alleged Failure to Comply with Law or Alleged Illegal Election Practices". The form must be submitted forty-eight (48) hours prior to the Public Session of Canvass and requires a) an explanation of all events creating the complaint; b) citation(s) to applicable provisions of Anchorage Municipal Code or other law; and c) an explanation of how the complaint would change the outcome of the election. This information on the form ensures that, in addition to the observers' challenges on voting and counting, matters that could change the outcome of the election are available for the Commission's review.~~ ~~forty-eight (48)~~

Figure 3.1 Language added to the Observer's Handbook in December 2022

The 2022 changes expanded on an earlier change in 2021, which for the first time, invited individuals with unresolved concerns about election-official conduct to submit the concerns to the Election Commission at the public session of canvass:

If the observer is not satisfied with the action of the Municipal Clerk regarding the complaint, the observer may request that the complaint be brought to the Anchorage Election Commission at the Public Session of Canvass, held on or before the third Friday after Election Day.

Figure 3.2 Language added to the Observer's Handbook in 2021

These changes expanded the role of the Election Commission beyond its traditional functions of adjudicating individual ballots, but without providing direction to the Commission about what it is supposed to do with the “renewed [concerns]” and “renewed complaints” it receives. Notably, this expansion took place in the context of a nationwide increase in lawsuits seeking to limit the number of votes counted in elections, with a particularly “marked increase in the number of lawsuits aimed at the minutiae of election administration — the logistical aspects of running an election.”⁶⁹

Moreover, the Election Commission has long had the power to “make such other studies and recommendations relating to elections and perform such other duties as the assembly may assign,” but its codified duties do not include any reference to hearing “renewed concerns” or “renewed complaints”:

AMC 28.120.060 Duties.

- A. The election commission shall have the following duties:
 - 1. Act in an advisory capacity to the assembly and municipal clerk in the conduct of elections;
 - 2. Study and recommend to the assembly and municipal clerk proposed ordinances relating to elections;
 - 3. Serve as the canvass board for municipal elections;
 - 4. If requested by the assembly, investigate election contests and report to the assembly its findings;

⁶⁹ See, e.g., *2022 Litigation Report: How Republicans Lost and Voters Won in Court*, (Jan. 9, 2023), <https://www.democracydocket.com/analysis/2022-litigation-report-how-republicans-lost-and-voters-won-in-court/>. The study found that 2020 and 2022 were particularly litigious years for elections, during which it tracked 150 and 175 lawsuits related to voting respectively. The study determined that of the 175 suits filed in 2022, 93 sought to either limit access to the vote or the number of votes counted. Of those 93, 44 challenged Vote by Mail procedures, and 40 challenged Election Administration procedures.

5. Make such other studies and recommendations relating to elections and perform such other duties as the assembly may assign;
6. Review and adjudicate the preliminary rejection of questioned and absentee ballots; and
7. Review the results of the election tabulation provided by the municipal clerk's office.

Of note, the Commission may also, "if requested by the Assembly," investigate AMC 28.100 "election contests," which must be submitted by a candidate or at least ten qualified voters, and allege one or more of the following "grounds":

1. Malconduct, fraud or corruption on the part of an election official sufficient to change the result of the election.
2. The person certified as elected is not qualified as required by law.
3. Any corrupt practice as defined by law sufficient to change the result of the election.⁷⁰

Election contests are not submitted to the Election Commission, but to the Municipal Clerk, who routes them to the Assembly; after an election contest, the Assembly must vote "whether to hear [the] contest" and, if so, "it may appoint one or more persons to take evidence concerning the grounds for the contest and report to the assembly."⁷¹ Consistent with AMC 28.120.060A.4., above, the Assembly, presumably, could enlist the Election Commission to undertake the anticipated investigation.

But the "renewed concerns" or "renewed complaints" addressed in the Election Observer Handbook are not themselves "election contests," and must be addressed *at the Public Session of Canvass*, where it will generally be infeasible to engage in a prolonged factfinding or "tak[ing of] evidence."

Assembly Leadership believes the role and procedures governing the Election Commission's review of election contests should be clarified to make clear that, prior to election certification and absent a specific "request" from the Assembly to investigate a particular issue,

⁷⁰ AMC 28.100.010.

⁷¹ AMC 28.100.020C.

the Election Commission’s task when presented with a complaint or concern is to advise the Assembly whether the Clerk’s response to the complaint or concern leaves unresolved an issue that, more likely than not, is both: (a) *genuine*, and (b) *of such significance and immediacy* that the Assembly should not certify the election, or should delay doing so.

Language to that effect could be incorporated into the next approved revision of the Election Observer’s Handbook, or codified as follows.

Section 1. Anchorage Municipal Code section 28.120.160 could be amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

AMC 28.120.060 Duties.

- A. The election commission shall have the following duties:
 - 1. Act in an advisory capacity to the assembly and municipal clerk in the conduct of elections;
 - 2. Study and recommend to the assembly and municipal clerk proposed ordinances relating to elections;
 - 3. Serve as the canvass board for municipal elections;
 - 4. If requested by the assembly, investigate election contests and report to the assembly its findings;
 - 5. In accordance with the Election Observer’s Handbook, advise the Assembly prior to the certification of an election’s results, whether the Clerk’s response to an election concern or complaint leaves unresolved an issue that, more likely than not, is:
 - a. genuine, and
 - b. of such significance and immediacy that the Assembly should not certify the election, in whole or in part, or should delay doing so, in whole or in part.
 - 6[5.] Make such other studies and recommendations relating to elections and perform such other duties as the assembly may assign;
 - 7[6.] Review and adjudicate the preliminary rejection of questioned and absentee ballots; and
 - 8[7.] Review the results of the election tabulation provided by the municipal clerk's office.

IV. Assembly Subpoena Power

The power to investigate has been recognized as an inherent component of “legislative power.”⁷²

For its part, the Assembly formally codified its ability to issue subpoenas in 1991, by enacting AMC 2.30.085 *Subpoena powers*:

- A. Subject to the privileges which witnesses have in courts of this state, the chairman of the assembly, with the approval of a majority vote of the assembly, may:
 - 1. Compel by subpoena, at a specified time and place, the appearance and sworn testimony of a person whom the assembly reasonably believes may be able to give information relating to a matter involving municipal funds and policy being considered; and
 - 2. Compel a person, by subpoena, to produce documents, papers or objects which the assembly reasonably believes may relate to the matter under consideration.
- B. If a person refuses to comply with a subpoena issued under subsection A of this section, the superior court may, on application of the chairman of

⁷² See, e.g., *McGrain v. Daugherty*, 273 U.S. 135, 161, 174 (1927) (emphasis added):

[T]here is no provision expressly investing either house with power to make investigations and exact testimony, to the end that it may exercise its legislative function advisedly and effectively. So the question arises whether this power is so far incidental to the legislative function as to be implied.

In actual legislative practice, power to secure needed information by such means has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the colonial Legislatures before the American Revolution, and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state Legislatures.

...

The state courts quite generally have held that the power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power, and to employ compulsory process for the purpose.

...

We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American Legislatures before the Constitution was framed and ratified.

the assembly, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court for refusal to testify in the court.

When originally introduced, the Assembly member who sponsored the ordinance that led to AMC 2.30.085 noted that it was intended to recognize in the Assembly a subpoena power “similar to what the Alaska Legislature has under State Statutes.”⁷³ The Municipality’s Department of Law subsequently recognized that intent, and compared the provision to the statutes governing subpoenas issued by the Legislature, Alaska Statutes chapter 24.25.⁷⁴

After receiving the Department of Law’s memorandum, the sponsor of the ordinance revised his original proposal, which would have recognized the Assembly’s ability to compel testimony from a person “whom the Assembly reasonably believes may be able to give information relating to a municipal matter being considered.”⁷⁵ The revised version, ultimately passed, instead provided testimony may be compelled from any person “whom the assembly reasonably believes may be able to give information relating to a matter involving municipal funds and policy being considered.”⁷⁶ The sponsor explained that he had made the revision to preclude the Assembly from issuing subpoenas about “private business matters” that simply happen to arise in Anchorage:

I inserted the word ‘funds’ ... ‘involving municipal funds’—so [it] has to do with any matter that the city is involved in directly, and it would exclude, by that language, private business matters that happen to reside within the geographical area.⁷⁷

That legislative history is pertinent here. The Assembly authorized subpoenas in support of the Inquiry,⁷⁸ and Assembly Leadership ultimately issued four. The subpoenas plainly

⁷³ AM 131-91 (Memorandum of Fred Dyson).

⁷⁴ See AM 176-91.

⁷⁵ See AO 91-15.

⁷⁶ See AO 91-15(S) (emphasis added).

⁷⁷ Meeting of Feb. 12, 1991.

⁷⁸ See Appendix F, AR 2023-305 *A Resolution Of The Anchorage Assembly Approving The Use Of Subpoenas To Compel Testimony And Document Production Pursuant To Anchorage Municipal Code Section 2.30.085 And Authorizing Litigation To Enforce Compliance With Those Legislative Subpoenas.*

addressed “public” issues, and not “private business matters.” And, as noted in an Assembly worksession, the matters being considered in the Inquiry surely had funding and policy implications.⁷⁹

Nevertheless, the legitimacy of one of the issued subpoenas was briefly challenged by counsel for Ms. Graham. Prior to her voluntarily agreeing to appear and answer questions at the Assembly worksession of Sept. 29, 2023, Ms. Graham’s attorney filed a Petition to quash the subpoena that had issued to her.⁸⁰ The essential argument of the petition was: (a) that language in AMC 2.30.085 limits the scope of the Assembly’s power to issue subpoenas regarding public matters to only the subset of public matters that “involv[e] municipal funds and policy,” and (b) that, in the view of Ms. Graham’s counsel, the Inquiry did not do so.⁸¹

Ms. Graham’s agreement to voluntarily testify before the Assembly rendered the Petition moot, and it was subsequently withdrawn. But had Ms. Graham not agreed to participate, resolution of the Petition would almost certainly have led to additional delay and unwelcome legal expense as the matter moved through the courts.

To avoid a possible recurrence in the future, Assembly leadership believes the Assembly should clarify that its subpoena powers may be exercised to aid its investigation into any public matter it is considering.

Further, language should be codified to make clear that, when authorized, the Chair of the Assembly issues subpoenas in the Chair’s official capacity, on behalf of the Assembly—with the consequence that any legal challenge to a subpoena should be brought by filing suit against the Anchorage Municipal Assembly (and not, as possibly occurred in this instance, by filing suit against the Chair in the Chair’s personal capacity).

Language to accomplish these aims follows.

⁷⁹ See Appendix K, Assembly Worksession (Sept. 29, 2023) (introductory comments of Chair), <https://www.youtube.com/watch?v=Qgh9w6Xl1ts>

⁸⁰ See Appendix H-3.

⁸¹ See *id.*

Section 1. Anchorage Municipal Code section 2.30.085 could be amended to read as follows
(the remainder of the section is not affected and therefore not set out):

AMC 2.30.085 Subpoena powers.

- A. Subject to the privileges which witnesses have in courts of this state, the chair[MAN] of the assembly, with the approval of a majority vote of the assembly, may, in the chair's official capacity and on behalf and in the name of the assembly:
1. Compel by subpoena, at a specified time and place, the appearance and sworn testimony of a person whom the assembly reasonably believes may be able to give information relating to a public matter [INVOLVING MUNICIPAL FUNDS AND POLICY] being considered by the Assembly; and
 2. Compel a person, by subpoena, to produce documents, papers or objects which the assembly reasonably believes may relate to a public[THE] matter [under consideration] being considered by the Assembly.
- B. If a person refuses to comply with a subpoena issued under subsection A of this section, the superior court may, on application of the chairman of the assembly, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court for refusal to testify in the court.
- C. A person who seeks to quash or limit a subpoena issued pursuant to this section may file an action against the Anchorage Municipal Assembly in superior court.

CONCLUSION

This Report details the substance of the Assembly's inquiry. It includes a timeline of key actions and activities, and outlines findings and proposed legislative responses related to concerns raised about the potential risks identified through concerns raised during the 2023 regular municipal election. This report, its findings and recommendations, and proposed legislation are now submitted to the Assembly and to the Public to establish as complete a record of facts as possible using the authority granted under the Charter.

Respectfully submitted,



Assembly Chair Christopher Constant
District 1, North Anchorage



Assembly Vice Chair Meg Zaletel
District 4, Midtown

APPENDICES

- Appendix A: Key Documents
1. April 6, 2023 Election Complaint
 2. April 7, 2023 Response to Election Complaint
 3. April 11, 2023 Email of Dahl to Graham
 4. April 11, 2023 Printout of ITD Policy Statement Showing Time Last Modified
 5. April 11, 2023 Renewed Election Complaint
- Appendix B: April 20, 2023 Election Commission, Public Session of Canvass Recording
- Appendix C: August 17, 2023 Ombudsman’s Final Investigative Report
- Appendix D: July 5, 2023, Letter Requesting Administration Participation in July 21 Worksession
- Appendix E: Records requests and related correspondence
1. July 10, 2023 Records Request, and Redacted Documents produced in response
 2. August 18, 2023 Objection to Redactions
 3. September 5, 2023 Second Records Request
 4. September and October clarifications by email regarding September 5 Records Request
 5. September 11, 2023 Waiver of Privilege over Documents Produced In Response to July 10 Records Request
 - i. Updated Privilege Log
 - ii. Unredacted Documents Produced in Response to July 10 Records Request
 6. September 25, 2023 Resubmission of September 5 Records Request, Using MOA Form
- Appendix F: AR 2023-305: A Resolution Of The Anchorage Assembly Approving The Use Of Subpoenas To Compel Testimony And Document Production Pursuant To Anchorage Municipal Code Section 2.30.085 And Authorizing Litigation To Enforce Compliance With Those Legislative Subpoenas (Sept. 12, 2023)
- Appendix G: Letter to Marc Dahl, Response from Counsel for Dahl, Letter and Subpoena to Dahl, Response from Counsel
- Appendix H: Letter to Sami Graham, Letter and Subpoena to Graham, Petition to Quash Subpoena
- Appendix I: Letter and Subpoena to Daniel Smith
- Appendix J: Letter and Subpoena to John Henry
- Appendix K: Hyperlinks to Video Recordings of Assembly Worksessions (July 21, Sept 8, Sept. 26, Oct. 6)