

Anchorage Votes - MOA Elections
619 East Ship Creek Avenue, Suite 100, Door D
Anchorage, AK 99501
www.muni.org/elections



Mailing Address:
PO Box 196659
Anchorage, AK 99519-6659
(907) 243-VOTE (8683)

September 2, 2020

Russell Biggs
3910 Geneva Place
Anchorage, AK 99508

Via US Mail and Email

RE: Recall Petition 2020-01

Dear Mr. Biggs:

The recall petition you submitted on August 3, 2020, regarding recalling Assembly Member Zaletel, is denied. The Municipal Clerk's Office has relied upon the Municipal Attorney's opinion that the recall proposed in the application does not satisfy the legal standards required for recall. The Municipal Attorney's memorandum is attached for your review and information.

The Municipal Clerk's Office verified that the application's two contact persons and at least 10 sponsors are qualified voters of the Municipality.

If you have any questions, please contact me at erika.mcconnell@anchorageak.gov or 343-4320.

Sincerely,

Erika McConnell
Deputy Clerk - Elections

Concur,

Barbara A. Jones
Municipal Clerk

Cc: Julie Brophy, juliedbrophy@gmail.com
Assembly Member Zaletel, meg.zaletel@anchorageak.gov



Municipality of Anchorage
Office of the Municipal Attorney
Memorandum

DATE: September 1, 2020

TO: **BARBARA A. JONES, MUNICIPAL CLERK**
ERIKA MCCONNELL, DEPUTY CLERK – ELECTIONS

THROUGH: **KATHRYN R. VOGEL, MUNICIPAL ATTORNEY** 

FROM: **JESSICA WILLOUGHBY, ASSISTANT MUNICIPAL ATTORNEY**

SUBJECT: **RECALL APPLICATION 2020-01**
Law Matter No. 20-1792

QUESTION PRESENTED

Does Recall Application 2020-01, seeking to recall Anchorage Assembly Member Meg Zaletel, satisfy the statutory requirements for issuing a recall petition?

BRIEF ANSWER

No, Recall Application 2020-01 does not satisfy the legal standards required for recall, and we therefore recommend that the application for a recall petition be denied.

THE RECALL APPLICATION

On August 3, 2020, the Clerk's Office received an application for a recall petition identified as 2020-01 and attached as Exhibit A ("Recall Application"). The proposed recall is for Assembly Member Meg Zaletel based on misconduct in office. The Recall Application provided the following statement as grounds for recall (verbatim):

Assembly member Megan Zaletel committed removable misconduct by violating the Alaska Public Meetings Statute at the Anchorage Assembly meeting July 28th by engaging in willful, flagrant, and obvious collusion to limit public testimony inside the assembly chambers. Zaletel conducted municipality business after the public presence had been prohibited within the chambers except to those approved by the assembly through means not disclosed to the public prior to the meeting. This misconduct occurred with and despite video evidence of ample physical space and availability to

comply with the Mayor's emergency powers proclamation which, regardless of merit, would not over-ride AS 44.62.31's proscription of actions limiting public participation in Assembly meetings. Zaletel disenfranchised the economically disadvantaged who lacked the electronic means to view the assembly proceedings, the 70+ members of the public outside the chambers desiring to be admitted, and the hearing and visually impaired public left without proper modes of participation.

The application included a primary sponsor, alternate sponsor, and thirteen names of purported qualified voters.

APPLICABLE LAW

The Clerk's Office is tasked with reviewing recall applications to determine whether the requirements of AS 29.26.260 are satisfied. The statute does not specify a timeframe in which the application review process must take place. The Clerk's Office has asked the Municipal Attorney's Office to provide an opinion on the legal sufficiency of the petition.¹

Alaska law places both procedural and substantive limitations on the right to recall. Alaska Statute 29.26.260 requires each application to include: "(1) the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition; (2) the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and (3) a statement in 200 words or less of the grounds for recall stated with particularity." Recall is permitted only for cause, and there are three substantive statutory grounds for recall of an elected municipal official: (1) misconduct in office, (2) incompetence, or (3) failure to perform prescribed duties.²

The seminal case on recall in Alaska is *Meiners v. Bering Strait School Board*,³ where a recall petition was filed against all eleven members of the Bering Strait School Board for

¹ AMC 2.50.030A. applies to initiative and referendum petitions and requires the municipal clerk's office to "immediately remit a copy of the [petition] application to the municipal attorney for review"; it also provides that in making a sufficiency determination, "the municipal clerk may rely upon the legal counsel of the municipal attorney."

² AS 29.26.250.

³ 687 P.2d 287 (Alaska 1984).

failure to perform prescribed duties. The *Meiners* court held that statutes relating to recall “should be liberally construed so that the people [are] permitted to vote and express their will.”⁴ The court did not want to create “artificial technical hurdles” blocking exercise of the recall power, noting that “the recall process is fundamentally a part of the political process.”⁵

At issue in *Meiners* was whether the asserted grounds for recall were sufficient to meet the statutory requirements. The court emphasized that it was up to the voters and not the court or certifying officer to assess the validity of the petition’s allegations.⁶ Instead, the sufficiency reviewer must determine whether the allegations, if true, are sufficient to meet one of the three grounds for recall under AS 29.26.250.⁷

The court additionally held that inaccurate legal statements or lack of statutory citation would not invalidate the application.⁸ The court wanted to avoid “wrapping the recall process in such a tight legal straitjacket that a legally sufficient recall petition could be prepared only by an attorney who is a specialist in election law matters.”⁹ If an assertion in the application were untrue, the court reasoned that the targeted school board member could address the charge in their rebuttal, which would be placed on the ballot.¹⁰

In *von Stauffenberg v. Committee for an Honest and Ethical School Board*,¹¹ another school board recall case, again the issue before the court was whether the asserted grounds for recall were sufficient to meet the statutory requirements. Among other things, petitioners alleged that school board members violated Alaska law by entering executive session for consideration of whether to retain an elementary school principal.¹² Applying *Meiners*, the court held that elected officials cannot be recalled for legally exercising the discretion granted to them by law, such as the discretion that AS 44.62.310 gives a city

⁴ *Id.* at 296 (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974) (alteration in original)).

⁵ *Meiners*, 687 P.2d at 296.

⁶ *Id.* at 300 n.18.

⁷ *Id.*

⁸ *Id.* at 301.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 903 P.2d 1055 (Alaska 1995).

¹² *Id.* at 1057.

council to move into executive session.¹³ The court also found that the petition lacked sufficient particularity because it failed “to state why entering into the executive session was violative of Alaska law.”¹⁴ Because the Open Meetings Act allowed the council the discretion to move into executive session, “there [was] no law which precludes public officials from discussing sensitive personnel matters in closed door executive session.”¹⁵ The stated grounds for the recall thus were insufficient because they “allege a violation of a totally nonexistent law.”¹⁶

From these two cases, we conclude that a recall petition need not be perfectly asserted, but still must be legally and factually sufficient. Legally, the stated grounds for recall cannot be based on “violations of totally non-existent laws” or target an authorized exercise of discretion.¹⁷ Petitions must also be factually sufficient: articulate enough that the grounds for recall are understandable and that the elected official may appropriately respond in 200 words.

SUFFICIENCY ANALYSIS

(1) Signature and residence addresses.

The first two statutory requirements, names and addresses, appear to be fulfilled.

(2) Contact and alternate.

The first two statutory requirements, names and addresses, appear to be fulfilled.

(3) Statement of grounds.

The third statutory requirement for a recall petition is that it must contain “a statement in 200 words or less of the grounds for recall stated with particularity.”¹⁸ Petitioners’ statement is 150 words, made up of four sentences in one paragraph, alleges “misconduct,” and makes no other allegations under the statute. As discussed above, this

¹³ *Id.* at 1060.

¹⁴ *Id.*

¹⁵ *Id.* at 1060 n.13.

¹⁶ *Id.*

¹⁷ *Id.* (citing *Meiners*, 687 P.2d at 301).

¹⁸ AS 29.26.260(a)(3).

office does not weigh in on the factual accuracy of the petition's allegations. Rather, assuming that the allegations are true, this office must determine whether the statement is legally and factually sufficient.

We conclude that the recall application is factually sufficient; it is sufficiently particular to allow the reader to understand the allegations, and to permit Assembly Member Zaletel to respond in 200 words. Determining the legal sufficiency of the application is more complex, and requires analysis of the governing law on open meetings in Alaska as well as factual context of the allegations in the application.

The bulk of the petition's allegation is that Assembly Member Zaletel's "misconduct in office" violated Alaska law at the July 28 Assembly meeting by not allowing public testimony inside the Assembly chambers; by conducting municipal business after the public had been excluded; by permitting people to remain in chambers through a means not disclosed to the public prior to the meeting; and by "disenfranchising people" who wanted to attend the meeting in person. The petition alleges that Assembly Member Zaletel's misconduct violated both Alaska's Public Meetings statute, AS 29.20.020, and Open Meetings Act, AS 44.62.310-.312.¹⁹

Alaska's Public Meetings statute, AS 29.20.020(a), refers to and incorporates the Open Meetings Act, codified at AS 44.62.310-.312. Alaska Statute 29.20.020(a) requires that meetings of municipal bodies should be public, and also requires the governing body to "provide a reasonable opportunity for the public to be heard at regular and special meetings," but it does not create an absolute right to public testimony or provide specific direction about how the logistics of allowing public testimony should be handled. Alaska Statutes 44.62.310-.312 provide more detail, but similarly do not create an absolute right for the public to attend or testify. Nor are there requirements that the public must be able to attend meetings in person, as opposed to telephonically or virtually. Instead, AS 44.62.310(a) specifically permits remote testimony: "Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing." These statutes do not require that if municipal staff attend in person, then the public must also attend in person. Taken as a whole, this statutory scheme requires reasonable public access to and participation in Assembly meetings, but does not suggest that members of the public have a right to any particular method of participation. This conclusion is not just one taken by the Municipality; the State of Alaska has similarly concluded that the Alaska Open Meetings Act does not require in-person

¹⁹ That the application mis-cites AS 44.62.31 rather than AS 44.62.310 is not relevant or determinative. Petitions for recall may make misstatements and still be found sufficient.

testimony opportunities.²⁰

Because reasonableness is the touchstone of this statutory scheme, and because no particular type of access is required by law, we must look to the factual context in which Assembly meetings occurred as part of the reasonableness inquiry, in order to determine whether the public was given “a reasonable opportunity” to be heard within the meaning of AS 29.20.020(a). This analysis requires looking at the opportunities, if any, that the recall applicants and other members of the public had to observe and participate in the July 28 Assembly meeting. While the law requires us to accept as true the applicants’ assertion that they were denied in-person access to the Assembly chamber while municipal business was conducted, the law does not require in-person access and permits the Assembly to satisfy its public access responsibilities by providing for other types of access to the deliberative body. In order to determine whether the public had reasonable access to the proceedings despite the lack of opportunity to participate in person, we must also consider other ways the public may have been able to view and participate in Assembly meetings to determine if they were sufficient under the law.

Regular meetings of the Anchorage Assembly are held Tuesday evenings at Loussac Library and are generally open to the public.²¹ Since at least 2000, meetings have been aired live on public access television, with closed captioning for the hearing impaired. Also, since around 2000, meetings have been live streamed via the MOA’s website. Anchorage Municipal Code provides that at all meetings, the public may (1) submit written comments or testimony on a specific item on the agenda; (2) provide comments on any topic by making an appearance request, or (3) provide verbal comments or testimony during the meeting.²² A citizen may testify during the meeting, or submit written testimony in writing beforehand.

²⁰ See State of Alaska Department of Commerce, Community, and Economic Development, *Open Meetings Act & COVID-19 Memorandum* (March 18, 2020) (concluding that “[t]he Open Meetings Act does not prohibit teleconference meetings, nor does it require council/assembly members to be present in order to count towards a quorum or vote. Indeed, both council/assembly members and the public may participate from remote locations.”) (attached as Exhibit B).

²¹ AMC 2.30.030; AS 29.20.020. Though meetings are generally open to the public, the Assembly may conduct some types of business in executive session, which is not public. AMC 2.30.030B.; AS 44.62.310(a)-(c); see also, e.g., *von Stauffenberg*, 903 P.2d at 1060.

²² AMC 2.30.035A., 2.30.040, 2.30.055.

In March 2020, as the spread of the COVID-19 virus became a pressing issue, the Assembly made several changes intended to ensure that Assembly meetings and municipal business could continue in ways that prioritized public health. The Assembly amended the Municipal Code to permit, in limited circumstances, its members participating telephonically to count for purposes of establishing a quorum.²³ Meetings continued to be aired live on television and live streamed via the MOA's website. In a March 19, 2020, press release, the Assembly cautioned that while in-person testimony would continue to be accepted, the situation was dynamic and could change, and encouraged citizens to participate in writing or telephonically.²⁴ On March 23, the Assembly announced that the Loussac Library, which houses the Assembly Chambers, was closed to the public by emergency order.²⁵ People were reminded that they could continue to submit testimony or comments either in writing or telephonically.

On May 29, the Assembly announced limited reopening of the Assembly chambers for in-person comments and testimony beginning on June 2.²⁶ The public was allowed to attend and testify in-person, but persons wishing to attend in person were required to undergo temperature checks, complete a contact tracing log, and wear masks.²⁷ The Assembly continued to allow public testimony from June 2 through its meeting on July 21.

²³ AO 2020-31, As Amended (passed March 20, 2020).

²⁴ Assembly Press Release, *Public Encouraged to Provide Public Testimony to the Assembly by Email or Phone* (March 19, 2020), available at: <http://www.muni.org/Departments/Assembly/PressReleases/SiteAssets/Pages/default/Assembly%20Recommends%20Public%20Testimony%20be%20Given%20by%20Email%20or%20Phone%20-%20March%2019,%202020.pdf>.

²⁵ Assembly Press Release, *Municipal Clerk Announces Emergency Update for the Anchorage Vote Centers Due to the COVID-19 Pandemic* (March 23, 2020), available at: <http://www.muni.org/Departments/Assembly/PressReleases/SiteAssets/Pages/default/Municipal%20Clerk%20Update%20re%20Municipal%20Election%20and%20Anchorage%20Vote%20Centers%20COVID-19%20Response%20-%20March%202023,%202020.pdf>.

²⁶ Assembly Press Release, *Anchorage Assembly Chambers Reopening Plan* (May 29, 2020), available at (continued next page): <http://www.muni.org/Departments/Assembly/PressReleases/SiteAssets/Pages/default/Anchorage%20Assembly%20Chambers%20Reopening%20Plan%20-%20May%2029,%202020.pdf>.

²⁷ *Id.*

On July 22, 2020, the Mayor issued Emergency Order EO-14, which prohibited indoor gatherings of more than 25 people within the Municipality. To comply with this mandate, the Assembly again closed the Assembly Chambers to the public beginning July 23 and until further notice.²⁸ People were again instructed that they could submit testimony or comments either in writing or telephonically. The agenda for the July 28, 2020 Assembly meeting reminded the public that “[d]ue to current federal, state, and local health department guidance and emergency measures, the number of people allowed in the Assembly Chambers will be limited,” encouraging interested citizens to submit telephonic or written testimony and explaining how to do so.²⁹

From the end of July through most of August, the Assembly Chambers remained closed to in-person participation.

We conclude that despite the lack of in-person participation opportunity at the July 28, 2020 Assembly meeting, these alternative methods of public access and participation satisfy the statutory requirement that the Assembly “provide a reasonable opportunity for the public to be heard at regular and special meetings.”³⁰ On July 24, the Assembly had included in its public notice that in-person testimony would be limited because of COVID-19 health restrictions, and encouraged people to submit written testimony via email or testify telephonically. Thus, although in-person testimony was limited, the meeting remained open to the public and citizens had alternative ways both to observe the proceedings and to submit testimony. Persons without access to high-speed internet could observe the Assembly meeting on television, which included closed captioning for the hearing impaired. And anyone could submit testimony in writing or testify by telephone.

Although we believe that these alternative avenues for participation would satisfy the reasonableness requirement at any time, we also note that the additional context on July 28 of the COVID-19 epidemic and the Municipality’s Emergency Order 14—limiting

²⁸ Assembly Press Release, *Assembly Aligns Meeting Participation with Mayor’s Latest Emergency Order, EO-14* (July 22, 2020), available at: <http://www.muni.org/Departments/Assembly/PressReleases/SiteAssets/Pages/default/20200722%20Assembly%20Aligns%20Meeting%20Participation%20with%20Mayor%27s%20Latest%20Emergency%20Order,%20EO-14.pdf>.

²⁹ Assembly Agenda Packet (July 28, 2020) at 1, available at: https://meetings.muni.org/AgendaOnline/Documents/Downloadfile/Assembly_-_Regular_1650_Agenda_Packet_7_28_2020_5_00_00_PM.pdf?documentType=5&meetingId=1650&isAttachment=True.

³⁰ AS 29.20.020(a).

gathering sizes in the Municipality to prevent spread of the virus—further support the reasonableness of the Assembly’s decisions. Limiting in-person access to the Assembly chambers on July 28 in order to comply with emergency public health mandates and protect the public health—including the health of members of the public who wished to observe or participate in the Assembly proceedings—from the spread of a deadly, contagious disease was reasonable.

The recall application also asserts that Assembly Member Zaletel “conducted municipality business after the public presence had been prohibited within the chambers except to those approved by the assembly through means not disclosed to the public prior to the meeting.” Assuming that it is true that some persons were permitted to stay inside the assembly chambers even though general public access was routed to telephonic and written means, this also does not violate the Open Meetings Act. As long as the body provides reasonable public access to the general public, it has satisfied its statutory duties. Allowing selected members of the public to participate in-person—for example, limiting in-person access to those testifying but not to spectators, allowing municipal staff to remain in the chamber, or allowing subject matter experts with detailed technical testimony to appear in person—does not diminish the reasonableness of the opportunities provided to other members of the public.

Because the Open Meetings Act does not require in-person testimony, therefore, even assuming the petition’s allegations are true, Assembly Member Zaletel did not violate AS 29.20.020, because the Assembly’s procedures “provide[d] a reasonable opportunity for the public to be heard.” The petition’s allegations are therefore not legally sufficient for recall because, as in *von Stauffenberg*, the petition alleges violations of nonexistent laws. The Assembly may limit both in-person testimony and in-person participation. Elected officials cannot be recalled for legally exercising the discretion granted to them by law.³¹

CONCLUSION:

For the above discussed reasons, the Clerk’s Office should decline to certify the petitioner’s recall application.

³¹ *von Stauffenberg*, 903 P.2d at 1060.



Municipality of Anchorage

Office of the Municipal Clerk

632 West Sixth Avenue Anchorage, Alaska 99501 Suite 250
Mailing Address: P.O. Box 196650 Anchorage, AK 99519-6650

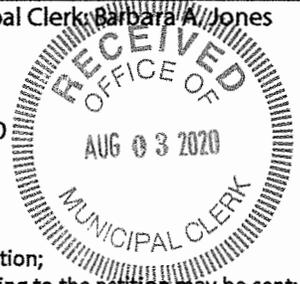
2020 - 01

Phone: 343-4311 Fax: 343-4313

Municipal Clerk: Barbara A. Jones

Recall Application

Anchorage Charter: Section 3.03 ~ Anchorage Municipal Code: Chapter 2.50
and Alaska State Statute 29.26.240-29.26.360



Alaska State Statute: 29.26.260 Application for a recall petition

- (a) An application for a recall petition shall be filed with the municipal clerk and must contain
 - (1) the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition;
 - (2) the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and
 - (3) a statement in 200 words or less of the grounds for recall stated with particularity.
- (b) An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk.

Primary Recall Petition Sponsor

Print Name: Russell Biggs

Phone Number: 907-550-6100

E-mail Address: doctor_feelgood@hotmail.com

Residence Address: 3910 Geneva Place, Anchorage, AK 99508

Mailing Address: 2440 E. Tudor RD PMB 1133, Anchorage, AK 99507

Identifier: [Redacted]
(Voter #, Social Security #, or Date of Birth)

Signature of Requestor: [Redacted] Date: 7-31-20

Alternate Recall Petition Sponsor

Print Name: Julie Brophy

Phone Number: 907-727-9265

E-mail Address: juliedbrophy@gmail.com

Residence Address: 3909 Geneva Place Anchorage, AK 99508

Mailing Address: same as above

Identifier: [Redacted]
(Voter #, Social Security #, or Date of Birth)

Signature of Requestor: [Redacted] Date: 7/31/20



Municipality of Anchorage Recall Application

2020 - 01

Anchorage Charter: Section 3.03 ~ Anchorage Municipal Code: Chapter 2.50~ Alaska State Statute 29.26.240-29.26.360

Phone: 343-4311 Fax: 343-4313

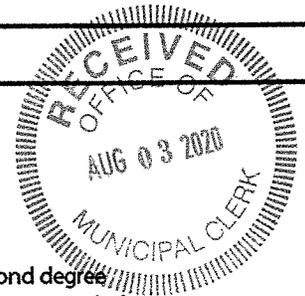
Municipal Clerk: Barbara A. Jones

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- (b) An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk.

Recall Statement

Assembly member Megan Zaletel committed removable misconduct by violating the Alaska Public Meetings Statute at the Anchorage Assembly meeting July 28th by engaging in willful, flagrant, and obvious collusion to limit public testimony inside the assembly chambers. Zaletel conducted municipality business after the public presence had been prohibited within the chambers except to those approved by the assembly through means not disclosed to the public prior to the meeting. This misconduct occurred with and despite video evidence of ample physical space and availability to comply with the Mayor's emergency powers proclamation which, regardless of merit, would not over-ride AS 44.62.31's proscription of actions limiting public participation in Assembly meetings. Zaletel disenfranchised the economically disadvantaged who lacked the electronic means to view the assembly proceedings, the 70+ members of the public outside the chambers desiring to be admitted, and the hearing and visually impaired public left without proper modes of participation.



Unsworn falsification in the second degree. "A person commits the crime of unsworn falsification in the second degree if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement that the person does not believe to be true... on a form bearing notice, authorized by law, that false statements made in it are punishable. Unsworn falsification in the second degree is a class A misdemeanor. A.S. 11.56.210(2) and (2)(b).



Municipality of Anchorage

2020 01

Recall Application

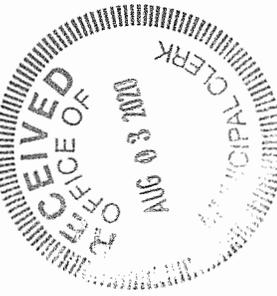
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Phone: 343-4311 Fax: 343-4313

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- (b) An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk.



Ten Qualified Voters

Printed Name	Residence Address	Mailing Address	*Identifier: Voter#, Social, or DOB	Signature	Date
Todd Held	2018 E 36 th Ave	2018 E 36 th Ave Anchorage, AK 99508			7/31/20
JAMES BROPHY	3909 Geneva Place	ANCHORAGE, AK 99508			7/31/20
Mrs Jimmie B. Russell	3909 Geneva Pl.	Anchorage, Ak 99508			7/31/20
ARN SALADO	3835 HELVETIA	ANCHORAGE, AK 99508			8/2/20
William Moseley	3936 Geneva Pl	Anchorage AK 99508			8/2/20
James L. Ferguson	3926 Geneva Pl	ANCH, AK 99508			
Paul Ferguson	" "	" "			
Alyssa Rizzuto	3919 Geneva Place	" "			
Cathy Robbins	3948 Geneva Pl	Anch AK 99508			8/2/20
William Ganto	1340 St. Gotthard Ave	1340 St Gotthard Ave			8/2/20



Municipality of Anchorage

2020 - 01

Recall Application

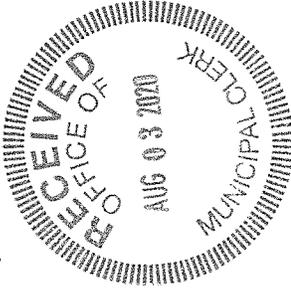
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Phone: 343-4311 Fax: 343-4313

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Ten Qualified Voters

Printed Name	Residence Address	Mailing Address	*Identifier: Voter#, Social, or DOB	Signature	Date
Poli Caiduk	1363 Staubbach Cir Anchorage AK 99508	3020 Rampart Dr Anchorage AK 99508	[REDACTED]	[REDACTED]	3/7/20
Beth Absorot	3562 Vassar Dr Anchorage AK 99508	3562 Vassar Dr Anchorage AK 99508	[REDACTED]	[REDACTED]	7/31/20
Laurie Savitt	1261 Annapolis Dr. Anchorage, AK 99508	1261 Annapolis Dr Anchorage, AK 99508	[REDACTED]	[REDACTED]	7/31/20



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce,
Community, and
Economic Development

Division of Community and Regional Affairs

550 W 7th AVE, STE 1650
Anchorage, AK 99501-3510
Main: 907.269.4501
Toll free: 877.769.4539
Fax: 907.269.4563

To: State of Alaska Local Governments & Other OMA Compliant Entities

From: Lynn Kenealy, Local Government Specialist IV

Date: March 18, 2020

Re: Open Meetings Act & COVID-19

We have received many questions regarding how city councils and borough assemblies can continue meeting and conducting the business of their communities and regions during this time of COVID-19-related restrictions. This memo is intended to assist and provide information. This memo relates to all meetings required to comply with the Alaska Open Meetings Act, including, but not limited to, city council and borough assembly meetings, city and borough committee meetings, and advisory-only meetings and workshops.

The initial concern is how to meet while practicing social distancing while also meeting the requirements of the Open Meetings Act. The Open Meetings Act does not prohibit teleconference meetings, nor does it require council/assembly members to be present in order to count towards a quorum or vote. Indeed, both council/assembly members and the public may participate from remote locations.

The Open Meetings Act does prohibit polling, serial communications, and other actions of a council/assembly outside of a public forum. The public must be allowed to attend any venue in which the council/assembly is making decisions and actions.

A few particulars to consider:

- Materials that will be considered at the meeting need to be available to all participants. The best way to do this is likely by posting materials on a municipal website, posting on Facebook or some other online venue, or providing to all participants via email. Municipal staff could provide printed material to

council/assembly members, though this may be substantially more complicated depending on the community, and ensuring social distancing is vital.

- Votes at teleconference meetings must be taken by roll call to ensure all participants understand who has voted and how on each item.
- If a municipality typically records meetings, a means of recording teleconference meetings will need to be established, whether the regular recording device is used and the call is routed through speakerphone, or some other means of electronic recording is established through a cell phone or computer.
- Public notice must include sufficient information for the public to call in as well. While the Open Meetings Act does not require public participation, Alaska Statute 29.20.020 requires an opportunity for the public to be heard at regular and special meetings – though not at advisory-only meetings. Options such as allowing the public to provide comments via email which the clerk or other staff or council member read out loud during the meeting should be considered. The public can also provide public comment telephonically.
- It will be more important than ever that the presiding officer enforce rules of procedure such as: only one person speaking at a time, and only upon being addressed by the presiding officer; and naming each speaker explicitly so that all participants understand who is speaking at all times.
- Some municipalities have written a requirement into their charter or code that council/assembly members must be physically present in order to count toward a quorum or vote. A non-code ordinance (or emergency ordinance if necessary) may be passed in order to temporarily suspend such rules. DCRA is currently drafting a sample ordinance which can be provided upon request. This ordinance will need to be amended significantly to ensure it is congruent with each individual community.
- Consult your code for any other conflicts regarding the utilization of telephonic and remote meetings during this time. Many conflicts may be resolved with a temporary non-code ordinance or emergency ordinance. Municipal staff and attorneys, State of Alaska Division of Community and Regional Affairs (DCRA) Local Government Specialists (LGS), and the Alaska Municipal League (AML) can help.
- It is not advised to conduct executive sessions telephonically, as there is no way to ensure who else is on the line. If a telephonic executive session is absolutely necessary, please contact your attorney, AML, or your Local Government Specialist to discuss further.

Many municipalities that do not currently use teleconferencing in meetings in any form may struggle at first. There are several tools available, and multi-tool usage might be advisable, utilizing both telephone and internet-based tools. Here are a few suggestions:

- GCI and other telephone carriers provide a telephone conference line for cost which multiple individuals may call into at the same time.
- Zoom, WebEx, GoToMeeting, Skype, Microsoft Teams, ezTalks, Join.me, ReadyTalk and other online platforms for web-based connection. I suggest speaking with other communities and entities utilizing these platforms to learn which ones work best in your area and with your internet capabilities. Some require more bandwidth than others. Be sure to test the capabilities in-house of a new system before holding a meeting.

Please do not hesitate to contact the Division of Community and Regional Affairs Local Government Assistance section for further information and support. If you know who your Local Government Specialist is, please contact them directly. If not, you can contact the Local Government Resource Desk at Lynn.Kenealy@alaska.gov or 907-269-8122.