

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2018-11

AN ORDINANCE AMENDING UNALASKA MUNICIPAL CODE TITLE 2 BY ADDING CHAPTER 2.46 CREATING THE DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES; TO AMEND VARIOUS SECTIONS OF 2.44 TO UPDATE THE DEPARTMENT OF PUBLIC SAFETY, CHIEF OF POLICE AND DEPUTY CHIEF OF POLICE PROVISIONS; TO AMEND SECTIONS 2.96.050 AND 2.96.060 TO UPDATE TITLES IN REGARD TO EMERGENCY MANAGEMENT COORDINATION AND SUCCESSION; TO AMEND SUBSECTION 13.04.060(E) TO MAKE THE DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES RESPONSIBLE FOR THE ISSUANCE OF BURN PERMITS; TO AMEND SUBSECTION 2.04.010(C) TO UPDATE THE LIST OF CITY MANAGER APPOINTEES; TO AMEND SECTION 2.04.020 TO UPDATE THE LIST OF CITY OFFICERS REQUIRED TO TAKE AN OATH OF OFFICE; TO AMEND SECTIONS 2.20.110, 9.12.010(G), 12.04.010(D) AND 14.04.010(E) TO UPDATE THE TITLE OF CHIEF OF POLICE; AND TO AUTHORIZE THE TRANSFER OF FY2019 APPROPRIATIONS FROM THE DEPARTMENT OF PUBLIC SAFETY TO THE DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES

BE IT ENACTED by the City Council of the City of Unalaska:

Section 1: Form. Sections 2-21 of this Ordinance contain Code Ordinances; Section 22 is a Non-Code Ordinance.

Section 2: Amendment of Title 2. Title 2 of the Unalaska Code of Ordinances is hereby amended by the addition of a new Chapter 2.46 to read as follows:

2.46.010 DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES.

There is created a Department of Fire and Emergency Medical Services, the head of which shall be the Fire Chief.

2.46.020 FIRE CHIEF.

The City Manager shall hire and supervise a Fire Chief to administer the Department of Fire and Emergency Medical Services.

2.46.030 DUTIES OF THE FIRE CHIEF.

Under the supervision of the City Manager, the Fire Chief shall have the following duties:

(A) Develop and manage the budget, operation and personnel of the Department of Fire and Emergency Medical Services;

(B) Appoint and supervise fire officers as needed for effective operation of the Department;

(C) Maintain adequate volunteer membership in the Department;

(D) Direct and manage all activities of the Department;

(E) Direct and manage the investigation of the cause, origin and circumstances of all fires;

(F) Establish Standard Operating Guidelines necessary to govern the discipline, training, and operation of the Department.

(G) Report Department status and activities to the City Manager; and

(H) Perform other such duties as may be necessary to ensure compliance with the requirements of applicable Alaska Statutes and Alaska Administrative Code including but not limited to 13 AAC 52.030, or as required by the City Manager.

2.46.040 DUTIES OF THE DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES.

It shall be the duty of the Department of Fire and Emergency Medical Services to do the following:

(A) Provide fire suppression, fire prevention, rescue, and emergency medical services;

(B) Enforce ordinances relating to fires, fire prevention, and safety of persons from fire;

(C) Investigate fires to determine cause and origin as required by 13 AAC 52.030;

(D) Coordinate emergency response to hazardous materials incidents and natural or manmade disasters;

(E) Coordinate and perform search and rescue functions undertaken by the City of Unalaska;

(F) Provide fire safety, fire prevention, health, and safety education to attempt to reduce the risk and consequences of emergencies;

(G) Assist in the review of building plans and permits to include code inspections as requested by the Planning Director or the Alaska State Fire Marshal;

(H) Provide other services intended to protect life and property;

(l) Perform such other duties as shall be required of the Department by the City Manager.

2.46.050 OATH OF OFFICE.

The following members of the Department of Fire and Emergency Medical Services will be required to take and sign an Oath of Office prior to assuming duties of the position:

- (A) Fire Chief;
- (B) Fire Officers.

2.46.060 CODE OF ETHICS.

The fire and EMS service is founded on mutual respect and trust between responders and the citizens they serve. To ensure the continuing integrity of the fire and EMS service, the highest standards of ethical conduct must be maintained at all times. Therefore, all members of the Department of Fire and Emergency Medical Services must attest and subscribe to the Firefighter/EMT Code of Ethics as adopted by the Department.

Section 3: Amendment of Section 2.44.010. Section 2.44.010 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.44.010 DEPARTMENT OF PUBLIC SAFETY.

There is created a Department of Public Safety, the head of which shall be the Chief of Police ~~Director of Public Safety~~.

Section 4: Amendment of Section 2.44.020. Section 2.44.020 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.44.020 CHIEF OF POLICE ~~DIRECTOR OF PUBLIC SAFETY~~.

The Chief of Police ~~Director of Public Safety~~ shall be appointed by the City Manager and shall hold office at the discretion of the City Manager. The Chief of Police ~~Director of Public Safety~~ shall also ~~hold the title of Chief of Police and~~ serve as the Sergeant at Arms during City Council meetings.

Section 5: Amendment of Section 2.44.030. Section 2.44.030 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.44.030 DUTIES OF THE CHIEF OF POLICE ~~DIRECTOR OF PUBLIC SAFETY~~.

Under the supervision of the City Manager, the Chief of Police ~~Director of Public Safety~~ shall have the following duties:

(A) Supervise all activities of the Department;

(B) Establish a set of rules and regulations governing the discipline, training, and operation of the Department, including Standard Operating Guidelines necessary to govern the discipline, training, and operation of the Division of Police Services;

(C) Direct and manage dispatch services;

(D) Direct and manage the community contract jail;

(E) Direct and manage contract DMV services;

(F) Report Department status and activities to the City Manager;

~~(G)~~ Perform other such duties as may be specified in this Code or by the City Manager.

Section 6: Amendment of Section 2.44.040. Section 2.44.040 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.44.040 SUCCESSION TO THE ~~DIRECTOR OF PUBLIC SAFETY~~ CHIEF OF POLICE.

Should the Chief of Police ~~Director of Public Safety~~ position become vacant or should the Chief of Police ~~Director~~ be absent or unable to perform the duties of the office, the order of interim succession of the Chief of Police ~~Director of Public Safety~~ shall be as follows:

(A) The Deputy Chief of Police;

~~(B) The Fire Chief~~

~~(C)~~ The Police Sergeants in order of seniority.

Section 7: Amendment of Section 2.44.060. Section 2.44.060 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.44.060 DEPUTY CHIEF OF POLICE.

The Chief of Police ~~Director of Public Safety~~ shall hire and supervise a Deputy Chief of Police to administer the Division of Police Services.

Section 8: Amendment of Section 2.44.070. Section 2.44.070 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]:

2.44.070 DUTIES OF THE DEPUTY CHIEF OF POLICE.

Under the supervision of the Chief of Police ~~Director of Public Safety~~, the Deputy Chief of Police shall have the following duties:

- (A) Manage the budget, operation and personnel of the Division of Police Services;
- (B) Direct and manage all activities of the Division;
- ~~(C) Direct and manage the community contract jail;~~
- ~~(D) Direct and manage Animal Control;~~
- ~~(E) Direct and manage contract DMV services;~~
- ~~(F) Establish Standard Operating Guidelines necessary to govern the discipline, training, and operation of the Division;~~
- (G) Report Division status and activities to the Chief of Police ~~Director of Public Safety~~; and
- (H) Perform other such duties as may be necessary to ensure compliance with the requirements of applicable Alaska Statutes and Alaska Administrative Code, or as required by the Chief of Police ~~Director of Public Safety~~.

Section 9: Amendment of Subsection 2.44.080(J). Subsection 2.44.080(J) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

(J) Perform such other duties as shall be required of the Division by the Chief of Police Director.

Section 10: Repeal of Sections 2.44.100-2.44.130. Sections 2.44.100, 2.44.110, 2.44.120, and 2.44.130 are hereby repealed and deleted in their entirety.

Section 11: Amendment of Section 2.44.140. Section 2.44.140 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.44.140 OATH OF OFFICE.

The following members of the Department of Public Safety will be required to take and sign an Oath of Office prior to assuming duties of the position:

- (A) ~~Deputy~~ Chief of Police;
- (B) ~~Fire~~ Deputy Chief of Police;
- (C) Police Officers;
- (D) Corrections Officers;
- ~~(E) Fire Officers.~~

Section 12: Amendment of Section 2.44.150. Section 2.44.150 is hereby amended to read as follows: [deletions are overstruck]

2.44.150 CODE OF ETHICS.

Certain members of the Department of Public Safety will be required to attest and subscribe to a Code of Ethics:

(A) In accordance with 13 AAC 85.040 members required to hold a basic, intermediate, or advanced police certificate must attest and subscribe to the law enforcement Code of Ethics.

(B) In accordance with 13 AAC 85.235 members required to hold a basic, municipal correctional officer certificate must attest and subscribe to the municipal correctional officer Code of Ethics.

~~(C) The fire and EMS service is founded on mutual respect and trust between responders and the citizens they serve. To ensure the continuing integrity of the fire and EMS service, the highest standards of ethical conduct must be maintained at all times. Therefore, all members of the Division of Fire and EMS must attest and subscribe to the Firefighter/EMT Code of Ethics as adopted by the City of Unalaska Department of Public Safety.~~

Section 13: Amendment of Section 2.96.050. Section 2.96.050 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.96.050 EMERGENCY MANAGEMENT COORDINATOR.

(A) The City Manager shall appoint an Emergency Management Coordinator who shall be a person well versed and trained in planning operations involving the activities of many different agencies which will operate to protect the public health, safety, and welfare in the event of danger from enemy action or disaster as defined in this Chapter.

(B) If the City Manager elects to appoint someone other than the Chief of Police ~~Director of Public Safety~~ as Emergency Management Coordinator, the Chief of Police ~~Director of Public Safety~~ will assist the appointed individual in the planning operations of Emergency Management including mitigation, preparedness, response, and recovery procedures.

(C) The Emergency Management Coordinator shall be responsible to the City Manager in regard to all phases of emergency preparedness activity in the city. Under the supervision of the City Manager, the Emergency Management Coordinator shall maintain liaison with the state and federal authorities and the authorities of other nearby political preparedness plans, and, during a proclaimed disaster emergency, shall maintain operational control of emergency activities from an Emergency Operations Center.

Section 14: Amendment of Section 2.96.060. Section 2.96.060 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.96.060 SUCCESSION TO OFFICE OF EMERGENCY MANAGEMENT COORDINATOR.

Should the Office of Emergency Management Coordinator become vacant or should the Coordinator be absent or unable to perform their duties, the order of interim succession of the office of Emergency Management Coordinator shall be determined as follows:

- (A) The Chief of Police ~~Director of Public Safety~~;
- (B) The Deputy Chief of Police ~~of the Department of Public Safety~~;
- (C) The Fire Chief ~~of the Department of Public Safety~~;
- (D) Such other person as may be designated by the City Council or the City Manager.

Section 15: Amendment of Subsection 13.04.060(E). Subsection 13.04.060(E) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

(E) Permits may be obtained from the Department of Fire and Emergency Medical Services ~~Public Safety located at 29 Safety Way, in Unalaska.~~

Section 16: Amendment of Subsection 2.04.010(C). Subsection 2.04.010(C) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

(C) The following employees shall be appointed by the City Manager and shall serve at the discretion of the City Manager:

- (1) Assistant City Manager;
- (2) City Clerk;
- (3) Director of Finance;
- (4) Director of the Department of Planning;
- (5) Chief of Police ~~Director of the Department of Public Safety~~;
- (6) Director of the Department of Public Works;
- (7) Director of the Department of Parks, Culture and Recreation;
- (8) Director of Public Utilities;
- (9) Fire Chief
- (~~9~~10) Port Director; and
- (~~10~~11) Such other employees as may be authorized by the City Council.

Section 17: Amendment of Section 2.04.020. Section 2.04.020 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.04.020 OATH OF OFFICE.

City officers, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath shall be filed with the City Clerk. The following city officials are required to sign the oath:

- (A) All elected officials;
- (B) Planning Commission members;
- (C) City Manager;
- (D) Assistant City Manager;
- (E) City Clerk;
- (F) Director of Finance;
- (G) Public Safety employees identified in 2.44.140 ~~Director of the Department of Public Safety;~~
- (H) Fire and Emergency Medical Services employees identified in 2.46.050
- (~~H~~) City Attorney.

Section 18: Amendment of Section 2.20.110. Section 2.20.110 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.20.110 DUTIES OF THE SERGEANT AT ARMS AT CITY COUNCIL MEETINGS.

The Sergeant At Arms shall maintain order during City Council meetings at the direction of the Mayor. If Council members or meeting attendees are disruptive, the Sergeant may warn them and, in extreme cases, escort them out of the meeting. The Sergeant At Arms is also responsible for security during the meeting. The Chief of Police ~~Director of Public Safety~~ shall serve as the Sergeant At Arms during Council meetings.

Section 19: Amendment of Subsection 9.12.010(G). Subsection 9.12.010(G) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

(G) “Director of Department of Public Safety” or “Director” means the Chief of Police ~~Director of the Unalaska Department of Public Safety~~ or their his or her designee.

Section 20: Amendment of Subsection 12.04.010(D). Subsection 12.04.010(D) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

12.04.010 DEFINITIONS.

In this chapter, unless the context otherwise requires:

(D) “Director” means the Chief of Police ~~Director of the Unalaska Department of Public Safety~~ or his or her designee

Section 21: Amendment of Subsection 14.04.010(E). Subsection 14.04.010(E) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

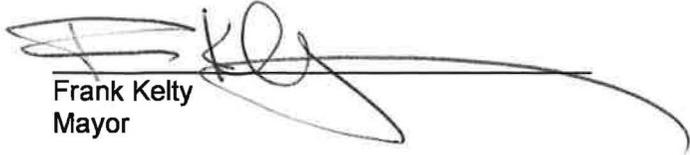
(E) “DIRECTOR OF PUBLIC SAFETY” means the Chief of Police ~~Director of Public Safety~~ and any designee of the Chief of Police ~~Director of Public Safety~~.

Section 22: Authorization for Transfer of FY2019 Appropriations.

Pursuant to Section 6.12.050 of the Unalaska Code of Ordinances, the City Council authorizes and approves the transfer of previously appropriated money from the Department of Public Safety to the Department of Fire and Emergency Medical Services to the extent necessary to fund the Department of Fire and Emergency Medical Services for the balance of FY2019 without increasing the total amount of the FY2019 appropriation for the Department of Public Safety. The City Manager shall submit a more specific proposed budget amendment for the balance of FY2019 reflecting the amount of funds transferred to the Department of Fire and Emergency Medical Services for Council approval no later than January 31, 2019.

Section 23: Effective Date. This ordinance shall be effective upon adoption.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 11, 2018.


Frank Kelty
Mayor

ATTEST:


Marjie Veeder
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Thomas Thomas, City Manager
Date: November 27, 2018
Re: Ordinance 2018-11, Public Safety Organizational Structure

SUMMARY: Ordinance 2018-11 amends Title 2, creating a Fire and EMS Department separate from the Department of Public Safety, with the Fire Chief and Police Chief reporting directly to the City Manager. The City Manager recommends approval.

PREVIOUS COUNCIL ACTION: City Council has discussed various options for the future of the Department Public Safety over the last few years. City Council took formal action at their meeting on July 24 to move forward with creating a standalone Fire Department.

BACKGROUND: The Director of Public Safety position, who also serves as the Police Chief, is vacant. A vacancy in this position provides an opportunity to analyze the organizational structure of DPS and the role of the director.

Over the last few months the City Manager has discussed various organizational options for the Department of Public Safety internally with the Assistant City Manager, Acting Public Safety Director and Fire Chief. City Council's involvement is required for related code changes and amendments to existing plans and agreements (Emergency Operations). The City Manager and Assistant City Manager then met with members of Council to review the options and garner feedback.

DISCUSSION: The City Attorney prepared Ordinance 2018-11 amending Title 2 to create a Fire Department separate from the Department of Public Safety with the Fire Chief and Police Chief reporting directly to City Manager. Specifically, this Ordinance:

- 1) Adds Section 2.46 to form a Department of Fire and Emergency Medical Services, the head of which will be the Fire Chief;
- 2) Amends Section 2.44 to state that the Police Chief is the head of Public Safety, and updates the Public Safety Department, Police Chief and Deputy Chief of Police provisions;
- 3) Amends Sections 2.96.050 and 2.96.060 to update titles in regard to emergency management coordination and succession;
- 4) Amends Section 13.04.060 to make the Department of Fire and Emergency Medical Services responsible for the issuance of burn permits;
- 5) Amends Subsection 2.04.010(C) to update the list of City Manager appointees;
- 6) Amends Section 2.04.020 to update the list of city officers required to take an oath of office;

- 7) Amends Sections 2.20.110, 9.12.010(G), 12.04.010(D) and 14.04.010(E) to update the title to Chief of Police; and
- 8) Authorizes the transfer of FY19 appropriations from the Department of Public Safety to the Department of Fire and Emergency Medical Services.

This memo highlights the benefits, the challenges, and outlines some of the necessary actions associated with the implementation of this Title 2 change.

The development of a new or improved facility will help address the challenges associated with the current building and improve the effectiveness of the departments and security requirements. The new or improved building could be designed to better meet the unique needs of all divisions and provide for the efficient use of shared resources.

Benefits. The Director of Public Safety (Police Chief) and Fire Chief would be on equal footing organizationally. This reporting structure would provide a direct line of communication from both Police and Fire to the City Manager. The potential exists for cost savings if the reorganization results in reclassification of the pay scale of the Director of Public Safety (Police Chief) due to shifting supervisory responsibility for the Fire Department. The Fire Department would be able to specifically set goals, budget and CMMP Projects with the City Manager catered to the Department's needs.

Challenges. This option would need to address the reporting structure for the Office Manager, who currently reports to the Director of Public Safety (Police Chief) and has the DMV agent reporting to the Office Manager. The reporting structure of Dispatch and Communications, currently under the Fire Division but mostly handling enforcement calls, would be better suited in the Police Division.

Actions. Suggested refinements and necessary actions associated with implementing these Title 2 changes include:

- 1) Address Security Issues
 - a. Consider additional technical or physical limitations to restrict access to certain computer systems.
 - b. Assist Fire Department full time employees to have individual security clearances from the State.
 - c. Coordinate escorts for Fire personnel and volunteers without security clearance with the Police Chief when necessary.
- 2) Revise Organization Chart
 - a. Director of Public Safety (Police Chief) and Fire Chief reporting to City Manager.
 - b. Office Manager technically reporting to the Director of Public Safety (Police Chief). For evaluation purposes, this would be the same as the Office Manager for DPU and DPW. That Officer Manager technically reports to the DPW Director.
 - c. Dispatch/Communications Division shifts from the Fire Division to the Police Division.
- 3) Revise and Develop Job Descriptions
 - a. Update who the Dispatch Sergeant and the Office Manager report to in their job descriptions.

FINANCIAL IMPLICATIONS: The costs associated with the development of a new or improved facility would be determined on the specific needs and a defined scope of work. Attorney fees for assistance in drafting, interpreting and reviewing documents, programs and agreements are likely. The Finance Director will provide a proposed budget amendment regarding creating a standalone Fire Department.

LEGAL: The City Attorney prepared the proposed Ordinance, and has provided legal opinions regarding the City's obligations to PERS and security issues. The City Attorney will assist with the development, interpretation, and review of related documents and agreements.

PROPOSED MOTION: I move to approve Ordinance 2018-11 and schedule it for a second reading and public hearing on December 11, 2018.

CITY MANAGER'S COMMENTS: I recommend approval of Ordinance 2018-11.

ATTACHMENTS:

City Attorney's memo of October 2, 2018 regarding security issues

City Attorney's memo of July 11, 2018 regarding impact on city's obligation to PERS

Proposed Organizational Chart

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MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

TO: Thomas Thomas
Unalaska City Manager



FROM: Brooks W. Chandler
City Attorney

RE: Security Issues Related to Potential Title 2 Amendments

DATE: October 2, 2018 [update of September 18, 2018 memorandum]

In response to general concerns about “security” raised during consideration of proposed amendments to Title 2 you asked whether there were any legal impediments to reorganizing fire/EMS services from a division of the public safety department to an independent city department. Provided dispatch services are transferred from the fire division to the police department (as proposed by the current draft ordinance), in our opinion, the answer is NO. The reasons for this conclusion are set forth in greater detail below.

Facts

The City of Unalaska currently combines firefighting, EMS and police services within a single public safety department. The director/police chief supervises the fire department and hires the fire chief. The fire chief is responsible for dispatch services covering both police services and fire/EMS services.

The City of Unalaska is considering reorganizing the public safety department by making what is currently the fire division a separate fire department. Instead of being supervised by the public safety director, the fire chief would be supervised by the city manager. There could still be a public safety director who will serve as the department head of the public safety department. The public safety director may supervise up to four divisions (police, dispatch, animal control and corrections) depending on the final form of the reorganization ordinance. Alternatively, references to the public safety director could be deleted from the code. In either instance, the City will continue to employ a police chief, dispatchers and operate a community jail.

The City participates in the State of Alaska Public Safety Information Network (APSIN). APSIN stores criminal history and related information in a computer database application and also serves as a “portal” to access criminal justice information stored on databases maintained by other states. Nearly all of this information is treated as confidential in varying degrees.

Authorization to use APSIN is on an “employee by employee” basis. Employees authorized to use APSIN must be individually approved by the State. Once approved access requires an individual password.

Currently fire division personnel and police services division personnel share the same building. That would continue regardless of whether this ordinance was adopted. When entering the police station fire division personnel could theoretically have physical access to computer terminals used to access APSIN or could have an opportunity to see information printed out from the APSIN system.

Law

State Law. AS 12.62 provides authorization for the State of Alaska Department of Public Safety to operate and maintain a criminal justice information system “in a manner that protects victims of crime, allows the proper administration of justice, and avoids vigilantism.”¹ The Unalaska Public Safety Department is required to input information regarding crimes committed in Unalaska to the system (known as APSIN)². The department is required to:

provide adequate procedures and facilities to protect criminal justice information from unauthorized access and from accidental or deliberate damage by theft, sabotage, fire, flood, wind, or power failure;

¹ AS 12.62.005.

² AS 12.62.120(b).

provide procedures for screening, supervising, and disciplining agency personnel in order to minimize the risk of security violations;

provide training for employees working with or having access to criminal justice information

AS 12.62.150(3),(4),(5).

There are specific limitations on the use of this information and who may be provided criminal justice system information³. There is no specific prohibition on use of APSIN information in connection with non-criminal missions such as fire or EMS services, however, release in connection with life-saving activities is limited to situations involving “imminent danger to life or extensive damage to property”⁴.

State Regulation. In order to be able to directly access APSIN the city must agree “to abide by applicable state and federal statutes and regulations and other mandatory federal requirements relating to criminal justice information systems”⁵. A city employee cannot use APSIN unless the state has given the city “a security clearance for that person”⁶. In order to obtain the necessary security clearance the city employee must be an employee of “a criminal justice agency” of the city⁷. A “criminal justice agency” is defined under state law as a “subdivision of a government entity that allocates a substantial portion of its budget to a criminal justice activity”⁸. Criminal justice activity is defined as “investigation, identification, apprehension, detention, pretrial or post-trial release, prosecution, adjudication, or correctional supervision or rehabilitation of a person accused or convicted of a crime”⁹.

Federal Standards. Federal standards more specifically address physical security of criminal justice information. Federal standards reference a “physically secure location” under the

³ AS 12.62.160.

⁴ AS 12.62.160(b)(1).

⁵ 13 AAC 68.215(a). We presume Unalaska has signed such an agreement.

⁶ 13 AAC 68.215(b).

⁷ 13 AAC 68.215(a),(b).

⁸ AS 12.62.900(11)(b); 13 AAC 68.905(14).

⁹ AS 12.62.900(10)(a).

“control” of the police department which includes limited access¹⁰. The FBI policies have not been specifically adopted by the state via regulation. The federal standards envision separate rooms or “wings” of a building which may have restricted access to computers used to access APSIN even among employees of a police department.

In particular the following federal standards set “guidelines” which local law enforcement are expected to observe as a condition for obtaining access to a federal criminal database.

1. Access to Information- as previously mentioned the State administers who is granted access to what the federal government calls “CJI” (criminal justice information) which has multiple subparts. There is no additional federal requirement that would impact the City. (See pages 63-65 of federal guidelines). The federal standards also provide guidance regarding what types of CJI are considered public and what are protected. None of these guidelines impacts establishment of a separate fire department other than the dispatch function. In addition there are guidelines for the mechanical steps to be followed by authorized users to gain access to CJI. (see pages 31-34 of federal guidelines). Again none of these would ordinarily be applicable to firefighters who should have virtually no need currently to access CJI and would not suddenly have a need to do so because an independent fire department was established. Any issue related to access is addressed by having dispatchers remain within the police department. There are guidelines for passwords, personal identification numbers and advanced authentication. (see pages 34-46 of federal guidelines).

2. Access to Hardware and Software- there are federal guidelines regarding who has access to make software and hardware changes to a system used to access CJI. This should have no impact as we assume the City’s IT department would take the lead in these situations whether there is or is not an independent fire department. Other technical guidelines relate to “connectivity” between systems, spam and spyware protection, encryption, and drive partitioning and would similarly be within the expertise of the IT department. (Federal guidelines pages 53-60). There are also technical standards for mobile devices and tablets which again should be an IT issue and could possible require reconfiguration of such devices currently issued to employees of the fire division. (Federal guidelines pages 66-72).

3. Media Protection- there are guidelines for protection of digital and physical media. (Federal guidelines pages 49-50).

4. Physical layout- hardware used to access CJI must be located in a “physically secure location”. Assuming the city already meets this guideline establishing an independent fire department would not create noncompliance. But this “physically secure location” must be within the control of the police department not the fire department. So if the current system used

¹⁰ Policy 5.9.1, Criminal Justice Information Services Security Policy (FBI).

to access CJI is currently located in an area of the building shared by the fire and police divisions the city may need to install additional locks or otherwise restrict access within the shared physical space. (See federal guidelines pages 51-52).

Alternatively, or in addition to additional physical restrictions, the City will need to make sure individual fire department members who will frequently be entering the shared police station/fire station have been given security clearance by the State (which involves a background check), and participated in security training led by the State. Fire department personnel who will not frequent the police station should be made aware that when they do enter the police station they will need to be escorted by police department personnel. These requirements are not specified in regulation or statute but are part of the State's policy on security of APSIN information. We have forwarded the form used for the security clearance. These same requirements currently apply to city employees or contractors that clean the police station so should be familiar to DPS.

City Code. UCO 2.44.130(I) states the Division of Fire and Emergency Medical Services is responsible to "provide dispatch services for the Department, Alaska State Troopers, and other emergency response agencies". The fire chief is to "Direct and manage dispatch services".¹¹ There are no code provisions specific to APSIN.

Analysis

We do not believe a stand alone fire department meets the state law definition of a criminal justice agency. So if dispatchers are part of a stand alone fire department it is unlikely dispatchers will qualify for the necessary security clearance to use APSIN. If dispatchers currently employed by the City have been authorized to access APSIN we believe the dispatch function must be part of the police department.

We do not believe the requirement to provide "adequate facilities" or a "physically secure location" to protect criminal justice system information from unauthorized access presents a legal impediment to establishing a separate fire department. To the extent fire department members without APSIN security clearances continue to need to use police department facilities a proposed reorganization does not create a situation any different than exists today. The City is already required to limit access. But some consideration on either a technical level (restricting access to certain parts of a computer system which could be used to access APSIN to a broader range of persons or terminals) or a physical level (an additional locked room for instance) should be considered during any transition process if a stand alone fire department is created. And certain fire department employees who have not previously been provided individual security

¹¹ UCO 2.44.120(E).

Thomas Thomas
October 2, 2018
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clearances by the State should obtain security clearance. Finally, other fire department employees who infrequently enter the police station should be informed they will need to be escorted to the fire department “side” of the building by police personnel. This escort policy should be coordinated with the police chief.

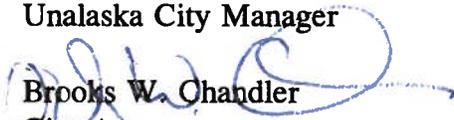
Let me know if you have any additional questions on this topic.

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MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

TO: Thomas Thomas
Unalaska City Manager

FROM: 
Brooks W. Chandler
City Attorney

RE: Impact of Potential Title 2 Amendments on City Obligations to PERS

DATE: July 11, 2018

You asked whether amending Title 2 to reorganize the fire department as a stand alone city department would result in the City being required to amend its participation agreement with PERS and conduct a “termination study” for the position of public safety director. In our opinion, the answer is NO. The reasons for this conclusion are set forth in greater detail below.

Facts

The City of Unalaska police chief has two titles. Police chief and director of the public safety department. The director/police chief supervises the fire department and hires the fire chief.

The City of Unalaska is considering reorganizing the public safety department by making what is currently the fire division a separate fire department. Instead of being supervised by the public safety director, the fire chief would be supervised by the city manager. There could still be a public safety director who will serve as the department head of the public safety department. The public safety director may supervise up to four divisions (police, dispatch, animal control and corrections) depending on the final form of the reorganization ordinance. Alternatively, references to the public safety director could be deleted from the code. In either instance, the City will continue to employ a police chief.

The City participates in the State of Alaska Public Employees Retirement System (PERS). The participation agreement between the City and PERS identifies employees in the

plan as all city employees who work at least 30 hours per week and are not seasonal employees¹.

In 2013, the City adopted a classification plan as part of a compensation study intended to evaluate the City's pay scale. The classification of positions in that study was organized using "Bands", "Grades" and "Subgrades". The public safety director is not specifically mentioned in the 2013 classification plan, however the DPS Director is classified as Band E, Grade 8, Subgrade 3. There are 5 city employees within this pay classification².

Law

State Law. AS 39.35.625 requires municipal employers to make a payment to PERS whenever the employer "terminates participation of a department, group, or other classification of employees in the plan". The amount of the payment is determined based upon a "study" and is a mechanism for PERS to reduce its unfunded liability for future payments to retirees. 2 AAC 35.235(a). The phrase "classification of employees" is not defined in either state statute or regulation.

City Code. UCO 2.44.020 states the Director of the Department of Public Safety "shall be appointed by the City Manager and shall hold office at the discretion of the City Manager. The Director of Public Safety shall also hold the title of Chief of Police . . .",

Chapter 3.16 establishes the city's classification plan described as the "grouping of positions into appropriate classes which are sufficiently similar with respect to duties and responsibilities." The classification plan is set by city council resolution and "shall be periodically updated"³.

UCO 3.56.010 requires executive positions to be "included in the classification plan and allocated to an executive pay level as defined in the pay plan". The code section also states, "Should the City Manager reassign the duties of an executive position in such a manner as to necessitate placement at a higher or lower executive pay level, such action shall require approval of the City Council."

Some positions are "wholly or partially exempt" from the "classified service". Whether a position is exempt depends on whether the person holding the position serves "at

¹ Amendment 1 to PERS Agreement - May 26, 1999; Resolution No. 99-01.

² 7/11/18 email from Ms. Reinders. The others are also department heads.

³ UCO 3.16.010

the discretion of the appointing authority” and whether the position has been established by ordinance⁴.

Analysis

The purpose of the AS 39.35.625 termination study requirement is to prevent increases in the PERS unfunded liability that would otherwise result from reducing the number of city employees covered by PERS. The most common examples are “contracting out” the functions of a city department or declaring that one particular position will no longer be covered by a city’s participation agreement.

The plan to reorganize the Department of Public Safety does not terminate the participation of the director of public safety in PERS. The DPS director has always served as the chief of police and will continue to do so. The City will have the same number of employees in PERS if the proposed reorganization takes place as it does today. Changing the duties of a chief of police is not the equivalent of the termination of a classification of employees under AS 39.65.625. Requiring a termination study when a city employee with two titles has their job description changed to hold one title would not be consistent with the purpose of AS 39.35.625.

In addition, the Director of Public Safety is not a distinct “classification” under the city’s pay plan. There are presently 5 employees in classification E(8)(3) in the executive pay plan. Even if the change in duties results in a reclassification to a lower pay scale at least 4 employees will remain in classification E(8)(3). Therefore the City is not terminating participation of the E(8)(3) employee classification in PERS. AS 39.35.625 is not applicable to this potential reorganization.

Recommendation

If the City remains concerned about possible termination study requirements resulting from reorganization it is possible to amend Chapter 2.44 in a manner that allows the police chief to retain two titles. This can be done by creating another division within the Department of Public Safety (such as the Dispatch Division or the Corrections Division). Proceeding in this fashion will add to what we believe is already an ironclad case should the PERS administrator assert a termination study is required.

Let me know if you have any additional questions on this topic.

⁴ UCO 3.16.010.

Proposed Organizational Structure

