
MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marjie Veeder, City Clerk
Through: Chris Hladick, City Manager
Date: September 13, 2022
Re: Work Session - Amending code to remove the prohibition of Council Members participating in executive session by telephone; and expanding telephonic participation in meetings to include “other electronic means”

SUMMARY: Since 2017, Unalaska’s Code of Ordinances has prohibited participation in executive session by telephone. At the direction of the former City Manager, the City Clerk prepared a draft ordinance amending code to allow participation in executive session by telephone as well as “other electronic means”; and expanding participation in regular meetings to include “other electronic means”, such as online platforms like Zoom. This is a work session item for discussion this evening to determine if Council is in favor of such an amendment. A proposed ordinance is attached. If Council is in favor, perhaps a directive to the City Manager would be in order to bring forth the ordinance for consideration and action at a future meeting.

PREVIOUS COUNCIL ACTION: Previous Council action related to this section of code includes the following:

1. Ordinance 2006-10, adopted on May 23, 2006: This ordinance added § 2.20.075 to the code and specifically allowed telephonic participation in executive session by mayor and council members, but limited the number of council members participating by telephone to two.
2. Ordinance 2015-09, adopted May 12, 2015: This ordinance added language to § 2.20.075, paragraph (A), but maintained in paragraph (B) the language allowing telephonic participation in executive session.
3. Ordinance 2015-20, adopted November 10, 2015: Again, § 2.20.075(A) was amended, but telephonic participation in executive session was maintained.
4. Ordinance 2017-11, adopted December 12, 2017: Subparagraph (D) was added to § 2.20.075, stating “Council member telephonic participation in executive sessions is prohibited.” This change was made, along with many others, in a comprehensive update of Title 2 in 2017.

BACKGROUND AND DISCUSSION: UCO §2.20.075 is set out below, reflecting the changes proposed by the City Clerk. New language is underlined; and deleted language is ~~overstruck~~.

§ 2.20.075 TELEPHONIC PARTICIPATION BY TELEPHONE OR OTHER ELECTRONIC MEANS

(A) A Council member or the Mayor may participate ~~via~~ by telephone or other electronic means, in any meeting or work session, including executive session, up to six times annually. Additional meetings by telephone or other electronic means

may be considered by the Mayor or Mayor pro-tem depending on the circumstances which prevent the person's physical attendance at the meeting. A City Council meeting or executive session must have at least three members physically present. Any member participating by telephone or other electronic means shall be considered present at the meeting or session for all purposes under this chapter. In order to participate by telephone or other electronic means, the member or the Mayor must declare in advance to the City Clerk that out of town travel or other circumstances prevents physical attendance at the meeting. If the Mayor chooses to participate via telephone or other electronic means, the Council shall appoint a Mayor pro tem to preside in the Mayor's stead.

(B) Notice under this section is acceptable, if provided in writing or via electronic mail, and must include a short description of the circumstances which prevent the person's physical attendance at the meeting.

(C) Telephonic participation shall be refused by the Mayor if, at any time, it appears that technical capabilities or other interference does not allow all persons, whether physically present or not, to hear and engage in discussion. Where practicable, any written materials or other information presented during the meeting should be made available to persons participating via telephone or other electronic means.

~~(D) Council member telephonic participation in executive sessions is prohibited.~~

There are two basic changes proposed: (1) removing the prohibition of participation executive session by telephone; and (2) adding participation by "other electronic means". The changes are discussed separately below.

PROHIBITION OF TELEPHONIC PARTICIPATION IN EXECUTIVE SESSION

The changes to Title 2 adopted in 2017 with Ordinance 2017-11, when the prohibition to telephonic participation in executive session was added, were part of a comprehensive update to Title 2. The pertinent language from Ordinance 2017-11 read as follows:

Section 4: Subsection 2.20.075(D) of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

2.20.075 TELEPHONIC PARTICIPATION.

~~(D) Council member telephonic participation in executive sessions is prohibited. If a motion to hold an executive session is made during a publicly noticed Council meeting, and any member of the Council is absent and that absence is excused, the City Clerk shall attempt, but is not required, to contact the absent member to determine if he or she desires to participate in the executive session.~~

The ordinance containing the comprehensive update of Title 2 was discussed at several council meetings over a number of months in 2017. The staff memos from that time do not shed any light on the reason behind the prohibition of telephonic participation in executive session. The memos simply state that the ordinance prohibits telephonic participation in executive session. The

recommendation for the prohibition came from an Ad-Hoc Committee consisting of the then-Mayor and two Council Members, along with the former City Clerk and City Manager. None of the committee members are presently an elected official or employee of the city. At that point in time, our City Attorney was very concerned about the security and confidentiality of executive sessions because anyone who had the number could call in and listen, potentially undetected.

I listened to the audio recordings of the council meetings when this topic was discussed and the security and confidentiality of executive session was a stated concern. One council member stated they were in favor of this prohibition because there was no control over who might be listening to the executive session by telephone, either another party in the room with a council member, or someone calling into the telephone conference line who was not a council member. This concern has been partially addressed by obtaining a new executive session telephone conference number which is not disclosed to anyone but the authorized participants. Also, we can change the executive session call in number as frequently as we choose to do so. Further, if we begin using the Zoom platform for executive session, there are additional security features to prevent uninvited participants listening in on executive session.

If elected officials are to be trusted to maintain the confidentiality of matters discussed in executive session, they should also be trusted not to allow others to listen to the discussion in executive session. The City Attorney has advised elected officials to ensure they are in a private setting while participating remotely, and to take steps to prevent others from overhearing the discussion. Anyone participating in executive session remotely should take these steps.

Another stated concern in 2017 was when council reconvenes to regular session to vote on an issue discussed in executive session. If a council member was out of town and unable to participate in executive session remotely, they are being asked to vote on a matter without the benefit of hearing and participating in the executive session discussion with their fellow council members. Council may recall a recent example of this when two council members participated by telephone in the May 24 council meeting, which was continued on May 26, 2022. These council members were not allowed to participate by telephone in the executive session discussion of three collective bargaining agreements either evening. Following executive session, those council members voted on three resolutions, without the benefit of hearing and participating in that discussion with their fellow council members and staff. This is not an ideal situation.

The Mayor, attorneys, consultants and staff are allowed to participate in executive session by telephone. Council members should be provided the same opportunity.

It would be ideal if all Council Members are physically present at every meeting. The best discourse is had when all participants are present in person with one another, in the same room and able to hear and observe the other participants. There are many nuances of communication that are nonverbal, and this is lost in part during remote participation in meetings, especially since local internet bandwidth doesn't presently support video. For this reason, we propose keeping the restriction to remote participation to six times per year; and keeping the requirement that at least three council members must be physically present.

OTHER ELECTRONIC MEANS

During the COVID-19 pandemic emergency and related social distancing measures, the City Manager issued an Emergency Order suspending the provisions of UCO §2.20.075 regarding council member participation in meetings by telephone. This allowed Council Members to attend

by telephone more than six meetings per year, and also allowed telephonic participation in executive session during the declared emergency.

During this time, the city began using the online meeting platform Zoom for remote participation in council meetings. Online platforms are an improvement over simple telephone conferences, due to the security features and controls available. These features include the ability to mute participants to prevent disruption; displaying documents; virtual waiting rooms (participants must be added to a meeting by the host); and other controls to provide a better experience for all participants, both in chambers and remotely.

The COVID-19 pandemic and associated societal changes demonstrate that remote participation in meetings, including Unalaska City Council meetings, is generally more accepted and expected. Both in business and our personal lives, more and more meetings of all kinds are held electronically. The time has come to amend code to allow participation in City Council meetings by “other electronic means”, including executive sessions.

ALTERNATIVES: Council may choose not to proceed with the proposed ordinance, which means telephonic participation in executive session by council members will continue to be prohibited; and code will not be updated to include participation in meetings by “other electronic means”.

FINANCIAL IMPLICATIONS: None.

LEGAL: City Attorney Brooks Chandler reviewed the proposed ordinance and this memo. Mr. Chandler said he has participated in many, many executive sessions by telephone and a growing number by Zoom; and if he can participate in that manner, it makes sense for council members to as well. His main concern is confidentiality and security: “Members participating by telephone or Zoom need to be careful they are in a private setting. When on a speakerphone or computer speaker, steps to prevent others from overhearing should be taken. ... On balance I think the security concerns are outweighed by the convenience of having more people able to participate. If the ordinance is adopted, I suggest you research whether there are security issues with Zoom and what steps could be taken to limit potential eavesdropping on an executive session held by Zoom.”

STAFF RECOMMENDATION: Staff recommends that code be amended as proposed.

PROPOSED MOTION: If Council is in agreement, we suggest a motion to direct the City Manager to bring the proposed ordinance to Council for consideration at a future meeting.

CITY MANAGER COMMENTS: I support the staff recommendation.

ATTACHMENTS: Proposed ordinance

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2022-__

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING SECTION 2.20.075 OF THE UNALASKA CODE OF ORDINANCES, REMOVING THE PROHIBITION OF COUNCIL MEMBERS PARTICIPATING IN EXECUTIVE SESSION BY TELEPHONE AND INCLUDING PARTICIPATION IN MEETINGS BY OTHER ELECTRONIC MEANS

BE IT ENACTED BY THE UNALASKA CITY COUNCIL, as follows:

Section 1: Classification. This is a Code Ordinance.

Section 2: Amendment of Section 2.20.075. Section 2.20.075 of the Unalaska Code of Ordinances is hereby amended to read as follows, with new language underlined; and deleted language ~~overstruck~~:

§ 2.20.075 TELEPHONIC PARTICIPATION BY TELEPHONE OR OTHER ELECTRONIC MEANS

(A) A Council member or the Mayor may participate ~~via~~ by telephone or other electronic means, in any meeting or work session, including executive session, up to six times annually. Additional meetings by telephone or other electronic means may be considered by the Mayor or Mayor pro-tem depending on the circumstances which prevent the person's physical attendance at the meeting. A City Council meeting or executive session must have at least three members physically present. Any member participating by telephone or other electronic means shall be considered present at the meeting or session for all purposes under this chapter. In order to participate by telephone or other electronic means, the member or the Mayor must declare in advance to the City Clerk that out of town travel or other circumstances prevents physical attendance at the meeting. If the Mayor chooses to participate via telephone or other electronic means, the Council shall appoint a Mayor pro tem to preside in the Mayor's stead.

(B) Notice under this section is acceptable, if provided in writing or via electronic mail, and must include a short description of the circumstances which prevent the person's physical attendance at the meeting.

(C) Telephonic participation shall be refused by the Mayor if, at any time, it appears that technical capabilities or other interference does not allow all persons, whether physically present or not, to hear and engage in discussion. Where practicable, any written materials or other information presented during the meeting should be made available to persons participating via telephone or other electronic means.

~~(D) Council member telephonic participation in executive sessions is prohibited.~~

Section 3: Effective Date. This ordinance shall take effect upon adoption.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on _____
____, 2022.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Marjie Veeder, CMC
City Clerk