
MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Erin Reinders, City Manager
Date: May 25, 2021
Re: City Manager Report

Local State of Emergency: The State's emergency declaration has now officially ended, and the States Unified Command is stepping down at the end of the month. The current local state of emergency is set to expire on June 30, 2021. Council will need to take action if there is a need to extend that state of emergency, and we will need to contemplate what that means in terms of operations and protective measures. We are exploring the future the Isolation Site after June 30, 2021, as this site is identified in the B-Season COVID-19 mitigation plans for industry. The Fire Chief has already met with local shore based processors on the topic, and we have a meeting planned for Monday, May 24, 2021 with fishing associations to discuss the matter further. If we keep the Isolation Site operational after June 30, 2021, which is likely, then we will be recommending a continued local emergency declaration to help support that effort.

Unalaska's EOC is evaluating how to step down other programs that are no longer deemed necessary, what can be scaled back some, and what operational initiatives we plan to continue regardless of the local declaration. We will continue doing Nixel Alerts when necessary and we will continue with wastewater surveillance. Local clinics will continue caring for patients, testing and providing vaccines. We do not anticipate future mass vaccination events at PCR. So long as there are local mandates or related Council resolutions in place, we plan to continue staffing the airport to greet arriving passengers to inform them of the mandates and garner information to help with contact tracing.

Covid-19 Safety Improvements: In our immediate efforts to combat the spread of Covid-19, the City of Unalaska rapidly responded to the CARES Act opportunity by implementing a wide spectrum of safety improvements. The Public Works Director provided this overview of the more notable efforts made by City staff, which will remain in place to provide increased protection from Covid-19 and other viruses. These improvements benefit all users of city facilities.

- UV Disinfecting Lights. UV light air purification grid systems were installed in the air handling units in City Hall, Library, PCR, Aquatics Center, and Airport Terminal. These buildings were selected because of their high level of use by the public and the large size air handlers that would accommodate a UV field lighting grid. The Library, PCR, and Aquatics Center also had the smaller UV air purifiers installed in the duct work along with Public Works and DPS.
- Advanced Air Filtration. The above mentioned buildings also had advanced air filters installed. Our MERV-8 filters were replaced with MERV-13 filters. MERV-13 is designed to trap microscopic particles down to 0.3 microns. They remove fine dust, allergens, pollen, pet dander, bacteria, certain viral particles and other airborne irritants. MERV-13 material is made out of polypropylene and is considered commercial, industrial, and medical grade. Prior to receiving the MERV-13 air filters, our maintenance staff adjusted the air intakes so only fresh outside air entered the buildings rather than recirculate the air

as is normal practice. This resulted in additional boiler use to heat the cooler air but did not affect human comfort. Air intakes have since been readjusted for optimum efficiency and includes some percent warmer recirculated air thru the MERV-13 filters. Six free standing Conway HEPA air purifiers were purchased and installed in DPS as an interim measure before the above noted MERV-13 and UV air purifiers could be installed.

- Plexiglas Barriers. Maintenance staff were especially busy cutting, shaping, and installing a wide variety of Plexiglas barriers throughout City buildings.

Initiative Ordinances: Two petitions for ballot initiative ordinances were submitted on April 27, 2021; and the City Clerk certified both petitions on May 5. This certification was communicated to the City Council as well as the petition sponsors. Since that time, City Attorney Sam Severin has been evaluating the process and effect of the initiatives. He provided the [attached memo](#) for City Council. Clerk's staff is working now to place the petitions on the ballot for the October regular election. No action is required by Council at this time unless, in the best interest of the municipality, Council orders a special election.

Geothermal PPA: As I mentioned previously, per Resolution 2021-14, I signed Amendment 1 to the Power Purchase agreement with OCCP extending the deadline for OCCP to obtain financing and the dates associated with interconnection and integration. We have now received a signed copy from OCCP. OCCP is still reviewing the details of the Heat Pump Study, and I do not have an update on that. OCCP and the City continue working on a MOU detailing how to proceed with the projects and improvements identified in EPS's Interim Intertie Study. This is so that we can get started on these projects in keeping with the overall timeline of the Geothermal Project, which remains unchanged. This MOU will address how the timing of the funding for these improvements might work. For some context, the PPA requires that the first \$2 million of these upgrades be covered by OCCP, and the next \$10 million to be shared equally between the City and OCCP. This is what the City considered when we developed our related CMMP funding request approach. The conversation continues.

Utility Infrastructure Tax: Staff recommended that Council create a Utility Infrastructure Fund, to be funded through a 1% increase in the City's Sales Tax levy, in order to supplement the Utility Proprietary Funds. As we have discussed since February, utility rates (even if they are increased) do not meet the full revenue requirement. Council appeared generally supportive of this approach during past Council Meetings.

Any increase in sales tax, which is adopted by ordinance, will require ratification of Unalaska's voters.

Pursuant to Code, the City Clerk must give no less than 30 days' public notice of the October 5 General Election, containing all propositions to be voted upon, along with other required information. Therefore, an ordinance adopting an increase in the City's Sales Tax levy must be adopted no later than the 2nd meeting in August, which is August 24, 2021.

This would be a cooperative effort between Clerks, Utilities and Finance on the staff side, and would require consultation with the City Attorney and City Council. To be respectful of everyone's time and resources, if Council is interested in pursuing this approach, I ask for clear direction this evening. A sample directive to the City Manager is proved below.

Proposed language for a Directive to City Manager: I move to direct the City Manager to work with the City Attorney to prepare an ordinance amending Chapter 6.40 of the Unalaska Code of Ordinances to increase the sales tax levy by one percent (1%) for the purpose of funding a Utility Infrastructure Fund to supplement the Utility Proprietary Funds.

Technology Upgrades: We continue our efforts to employ technology that reduces the need for exchanging paper and increases efficiencies. We have rolled out Employee Self Service that allows employees to access pay stubs, leave accruals and W2's electronically. We are currently implementing ExecuTime, an electronic time keeping system. This is not an easy task, and requires a coordinated effort throughout the organization. The rollout is beginning at City Hall and will expand out to other locations in the coming months.

Finance Director: Jim Sharpe has agreed to serve as Interim Finance Director following the resignation on Ed Keough. Much of Jim's work can be done remotely, but we will soon discuss the frequency and duration of onsite visits. For sure this will include visits in August and September for audit preparation and the actual audit. The Administration Department is currently setting up a meeting with the search firm that assisted us previously to set the stage for a new recruitment effort. They are honoring their guarantee, so we do not anticipate additional fees associated with their assistance this round.

Fireworks: City staff has finalized the contact for the Independence Day fireworks show. As usual city staff will assist in the setup, the show itself, and the cleanup. As mentioned at the last meeting, Council has funding in the budget to pay for this show, but will need to determine what you would want to do for New Year's Eve. Currently, there is only enough in the budget to cover one show a year. Costs have gone up considerably in the past few years, nearly double. When we discussed this previously, there was general consensus to focus one show a year. No need for a decision at this point, but I will bring this topic up again after this show when we know more about how much remains in the budget.


July Legislators Visit to Unalaska: The Mayor, Administrative Coordinator and I had another call with Dianne Blumer on Friday, May 21, 2021 to continue working out the details of a visit to Unalaska on July 29 and 30. We are blocking seats on flights and rooms, and putting the schedule together. This will include community tours and a public reception. We are also looking into potential sponsorships to help support this visit.

Current Directives to the City Manager:

- *Cost Benefit Analysis for Captains Bay Road Project (March 30, 2021). Initiated.* The directive reads, "Implement a cost-benefit analysis for the proposed road improvements and utility expansion for Captains Bay Road." The Public Works Director continues working on a scope of work for this effort. We will be sure to work in potential funding opportunities. Given the magnitude of this Captains Bay Road project, this analysis will serve us well. However, also given the magnitude of the project, we are unsure of the cost of this sort of study and plan to issue an RFP at this point.
- *CC Seat D Vacancy (May 11, 2021). Initiated.* The directive reads, "Assign staff to advertise the vacancy of Council Seat D; to accept letters of interest through 10am on Friday, June 4, 2021 from persons who desire to be appointed to Council Seat D; and to invite such interested persons to the council meeting to be held on Tuesday, June 8, 2021, at 6:00 p.m., at which time council will make an appointment to fill the vacancy." The City Clerk has begun advertising and we have added this action to the agenda for the June 8th Council meeting.

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TO: Unalaska City Council
FROM: Sam Severin, City Attorney 
RE: Summary of Effects of Initiatives to Modify UCO 2.96.030 and UCO 2.96.040
DATE: May 18, 2021

Two petitions for initiative ordinances were certified on April 27.

The first initiative ordinance asks City voters whether to add a subpart (E) to Unalaska Code of Ordinances Section 2.96.030. In summary, this initiative ordinance seeks to limit the authority of the Manager and Council to pass certain laws in the case of a declared epidemic disaster without first having obtained a court order authorizing the proposed action.

The other initiative ordinance would add a subpart (12) to Unalaska Code of Ordinances Section 2.96.040. It would prohibit the Director of Emergency Preparedness from issuing “statutes, ordinances, orders, laws, regulations, or proclamations” that authorize certain enumerated City actions without first having obtained a court order authorizing the proposed action.”

A. Procedural Steps.

If Council takes no action, the initiative ordinances will go before the voters at the next scheduled election on October 5, 2021. There are two potential actions Council can take in advance to change that.

First, the Council can set a special election at a sooner date by passing an ordinance which finds that it is in “the best interest of the municipality” to hold a special election sooner. A special election can be held no sooner than 60 days after the petitions were certified, which was April 27. Thus, a special election could be held as early as the end of June, or any time thereafter.

The other potential action is to “moot” the ballot question by Council adopting a substantially similar ordinance.¹

¹ Alaska Statute 29.26.170 (b).

If a majority of City voters favors the initiative ordinance at the election – whether regular or special election – the ordinance becomes effective upon certification of the election.²

An ordinance adopted by ballot question or the substantially same ordinance adopted by Council that “moots” the ballot question cannot be amended by the Council for a period of two years.³

B. Effect of the Initiative Ordinances.

1. Unenforceable Aspects. Sections (1) and (8) of both initiative ordinances contain requirements which are, at least in part, superfluous. Subsection (a)(1) prohibits “the seizure or quarantining of any person absent a court order.” The City’s resolutions have consistently required “self-quarantine.” Failure to adhere to the self-quarantine requirement would likely result in a minor offense violation, though citation for a misdemeanor is possible. To the extent the proposed ordinance envisions the City could currently forcibly quarantine someone without a court order, existing law already prohibits it. AS 18.15.385 permits the State to quarantine or isolate specific individuals, but requires detailed court findings.

Additionally, both initiative ordinances contain a subsection (8) which would prohibit passage of laws “impinging a citizen’s constitutional rights to peaceably assemble and to petition the government.” The City is already bound to follow the United States Constitution and the Constitution of the State of Alaska. The proposed subsection (8) states the status quo.

2. Separation of Powers. Both ordinances would prohibit the City Manager or the City Council from passing a law requiring, for example, “limiting the hours of business operations absent a court order.” It is not clear whether the intent is to require court authorization of the initial passage of the law or initial implementation of the order, or whether the law or order may be passed, but only may be enforced after obtaining a court order.

A court is unlikely to prospectively authorize the passage of a law. Thus, the proposed ordinances must mean that the law can be passed, but can only be enforced with a court order. There is no criteria for a court to make a decision that is more appropriately an executive, rather than judicial, decision. There is a similar difficulty with sections (1), (2), (3), (5), and (6) of each application. The imprecision creates a constitutional separation of powers issue.

Additionally, it is theoretically possible a court would invalidate the proposed ordinances because each proposed ordinance fails to include standards for a court to consider when deciding whether to authorize a specific action or limitation.

C. Going Forward.

If the initiatives become law, it may be possible to remedy the separation of powers issue by establishing standards by which a court is to make the decision to authorize enforcement of

² AS 29.26.170 (d).

³ AS 29.26.190.

the law. The Council could pass an ordinance stating that the court will grant an order permitting “limiting the hours of business operations” or “limiting the size of private gatherings,” for example, when a medical professional certifies such actions are likely to protect public health.

Courts recognize they are neither public health experts nor elected officials and would likely defer to the prescribed standards. Prescribing by municipal ordinance what a court is to do is not unusual. For example, UCO § 1.24.010 (B) states, in part: “An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of violation or threatened violation, the superior court shall grant the injunction.”

Even with standards for the court to authorize enforcement of certain emergency orders or ordinances, there is an additional hurdle. Courts do not have a process in place to authorize the City to enforce its emergency powers. The lack of procedural framework could cause delays in an emergency. It may be possible to work with the court system in advance to establish a procedure. Such discussions will take time and an efficient process to apply for emergency authorizations to enforce city laws cannot be guaranteed.