

RECALL SPECIAL ELECTION FACT SHEET

What is a recall election?

A recall election is a process by which citizens can remove elected officials from office before their term is completed. Per AS 29.26.250: Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

Why is the special recall election being held in Thorne Bay on June 30, 2020?

Misconduct and incompetence by a group of current city council members is alleged. There were verbal admissions and written evidence that they made decisions outside the legal structure defining Open Meetings. In this case a decision was made without a public meeting, and in fact without the knowledge of three of the seven city council members.

What are the specifics?

On Monday, February 24, 2020, City Council members Rhodes and Longbotham went to Thorne Bay City Hall and served the city administrator with two letters dated that day. The first was a suspension letter, the second was notice of a discussion to be held in Executive Session. The suspension order was signed: "Eric L. Rhodes, Vice Mayor Pro Tem, Acting Mayor, Thorne Bay, Alaska." They walked the city administrator from the building after taking his keys.

Can an individual city council member or the mayor suspend a city administrator?

No. The procedure for the suspension of the city administrator is specifically defined in the Thorne Bay Municipal Code, as follows:

2.14.030 SUSPENSION AND REMOVAL.

The city administrator serves at the pleasure of the council. Subject to the terms of any employment contract with the city administrator, the council may suspend or remove the city administrator at any time for any reason the council deems appropriate.

(Ord. 01-11-15-02 § 6, 2001; Ord. 98-01 § 3(part), 1998)

Did the city council meet and decide to suspend the city administrator?

No, not legally. There was no announced meeting. There was no public meeting as required by statute. There was not a meeting of all of the council members, nor were all the council members involved or notified. Note that multiple courts have held that a group does not have to physically be together for a meeting. One on one polling in person, by telephone or emails for example still violate the Open Meetings Act.

The appropriate law reads in part:

AS 44.62.310. Government Meetings Public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at

meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

In other words, the open meetings act is a set of laws intended to hold ALL persons seated as City Council members to the same standard. Its designed to keep all the City Council members operating as a single informed unit. After election, City Council Members receive training to explain, and help them understand the Open Meetings Act.

Who decided to suspend the city administrator?

According to witnesses during the suspension on that Monday, Rhodes indicated that a group from the council had decided to suspend him. At Tuesday's staff meeting, Rhodes indicated that some of the council members "got together," that the majority of the city council from the south side (Rhodes, Longbotham, Hert and Stram) had determined the city administrator should be suspended.

Why is councilman Stram not being recalled?

Councilman Stram was appointed after elections and apparently did not attend the training. He had not been a council member long enough.

Are there other grounds for recall?

Yes. Besides the misconduct and incompetence noted above, the council members violated their Oath of Office:

2.04.040 OATH OF OFFICE.

A. All officers elected or appointed before entering upon the duties of office shall affirm in writing the following oath and affirmation:

B. I . . . do solemnly swear that I will support the Constitution of the United States and State of Alaska and the laws and ordinances of the City of Thorne Bay, State of Alaska, and that I will honestly, faithfully and impartially perform the duties of the office of So help me God.

Besides the witnesses, is there other evidence?

Yes, there are emails to and from the Local Government Specialist who advises the City of Thorne Bay. They were obtained by a Records Request to the City of Thorne Bay. Excerpts follow. Some parts are highlighted in bold to make the reading easier.

On Fri, Feb 21, 2020, 11:46 AM Leahu, Iura S (CED) <iura.leahu@alaska.gov> wrote:

Good morning Eric,

Thank you for your letter. It is good to hear from you.

This is an interesting situation. **Based on the provisions found in your code regarding the appointment, suspension and removal of the city administrator [TBMC 2.14.010; TBMC 2.14.030], it appears that only the council has the authority to appoint, suspend, or remove the**

city administrator. The word appoint, as defined by Black's Law Dictionary, means "to choose or designate (someone) for a position or job, esp. in government." The word remove is defined by Black's Law Dictionary as "the immediate termination of an officeholder's privilege to serve in that office, usually after a vote." So as TBMC 2.14.010 provides, only the council has the power to choose or designate a candidate and the power to immediately terminate anyone holding the administrator's position.

As far as suspension and removal of the city administrator, TBMC 2.14.030 clearly states that "the city administrator serves at the pleasure of the council. Subject to the terms of any employment contract with the city administrator, the council may suspend or remove the city administrator at any time for any reason the council deems appropriate."

In conclusion, as written into your code, the city administrator cannot be removed by the mayor, vice-mayor, or vice mayor pro temp. Only the council has that power. The terms and conditions of the employment contract must be reviewed by the city council should the council consider suspending or removing the city administrator. The council is bound by the terms and conditions of the contract. I have not seen the contract, but the council must review the terms and conditions of the contract before they make any decision regarding the current position of the city administrator.

As far as the mayor and the city administrator relationship is concerned, the city code allows the mayor to be the supervisor of the city administrator under TBMC 2.14.050, as follows "... and acting at all time under the delegation and supervision of the mayor..." **But the mayor cannot appoint, suspend, or remove the city administrator.**

Some options the council has at its disposal are as follows:

1. Hold an executive session to discuss the current situation with the city administrator; however, the city administrator will have to be contacted in advance and in writing and informed that his position as the city administrator will be discussed in an executive session and that the administrator has the legal right to demand that his position be discussed in an open meeting of the council.
2. The council could immediately remove the city administrator for any reason, subject to the terms of any employment contract; offer a severance package and negotiate an exit plan ect...; and
3. The council could do nothing, wait until the contract expires and then not renew the contract.

From: Eric Rhodes [mailto:ericrhodesphoto@gmail.com]

Sent: Friday, February 21, 2020 1:32 PM

To: Leahu, Iura S (CED) <iura.leahu@alaska.gov>

Subject: Re: LGS Question

Wow Iura,

What an amazing resource you are to the state and municipalities. I am truly lucky to have you as an LGS. Such brilliant detail!

Great point regarding the apparent conflict of listed duties of mayor and city administrator both being assigned the duty of chief executive officer. That can be cleaned up and changed by the council. I would appreciate the examples you mentioned.

After emailing I got back in the code and looked for a work around in the event that your wisdom,

as I expected, says to take one of the three options you laid out.

Per TBC 2.08.010. B. (2.) One of the duties of the mayor is to:

Suspend or remove by written order city employees and administrative officers.

So the action would be to give the city administrator written notice like the one I drafted below:

Monday, February 24, 2020

Wayne Benner, you are hereby indefinitely suspended from your duties as City Administrator of Thorne Bay. The employment contract of Wayne Benner shall be paid in full.

It has come to my attention that there are great concerns with staff, department heads and the working relationship we have with the Organized Village of Kasaan as it relates to road maintenance and a collaborative grant opportunity.

In addition to these concerns, a grave error in judgement regarding our environment has caused for immediate action.

Respectfully,

Eric L. Rhodes

Vice Mayor Pro Tem

Acting Mayor

Thorne Bay, Alaska

Also I would have written approval individually handed in by council members in case the perceived authority is not there. That would be a simple form like this, printed signed and dated by a majority of the council.

I, as a Thorne Bay City Councilmember, hereby authorize Vice Mayor Pro Tem Eric L. Rhodes to suspend City Administrator Wayne Benner indefinitely.

Monday, February 24, 2020

Iura part of this is protection in managing his exit and a needed use of authority to show the employees that while they suffered under the current city administrator he was eventually suspended for it.

Wayne only has until Feb 28th on his contract, so while it seems ornamental it is quite important to secure his city property and access to it. Respectfully of course. The contract is paid in full and no official action was made except a suspension.

New city administrators already lined up, not very contentious to have him leave now while paying his last week of the contract but asking him to leave the office per suspension given by written notice from the acting Mayor.

The employees should know he is being suspended for his actions. Then praise and shower all employees and department heads with respect and apologize for any problems they have had. Let them know that going forward you will be treated fairly, trusted to perform your duties and not ridiculed or spoken down to with profanity and dishonor etc

It is a bold move but strategically is more beneficial to community than the special meeting and move to executive session way because he isn't truly being terminated and his contract will be

honored. He would merely be suspended.

This is most of the details of my work around.

Is there any problem you see with the work around?

Either way,

On Fri, Feb 21, 2020, 2:00 PM Leahu, Iura S (CED) <iura.leahu@alaska.gov> wrote:

Eric,

If you know that there is support among the council to indefinitely suspend the current city administrator, I would possibly take your approach, but there is risk that your decision gets overturned by the council. The provision that you refer to in your code under TBC 2.08.010.B(2.) applies to all other city employees but not the city administrator. **I believe TBC 2.14.030 has to be**

followed in the case of the city administrator. I think that the council could hold a special meeting,

even thus symbolic in nature since the administrator's last day is Fer. 28th and openly declare that

the city administrator is indefinitely suspended and a new contract will not be extended to the city

administrator. I am afraid the city administrator may file a complaint against the city for being

suspended for no good reason and the city not following its own code provisions. I hope the city

resolves this issue quickly. If you wish to discuss this further please let me know.

Eric, what if the city calls AMLJIA attorney and asks them for an answer? Thanks.

From: Eric Rhodes [<mailto:ericrhodesphoto@gmail.com>]

Sent: Friday, February 21, 2020 2:14 PM

To: Leahu, Iura S (CED) <iura.leahu@alaska.gov>

Subject: Re: LGS Question

Iura your insight was more than sufficient, I don't think I need any other information. Well researched and invaluable, I thank you for it!

I hope you would be willing to accept a certificate of appreciation from the City of Thorne Bay for your help over the years as a dedicated Local Government Specialist.

Have a great weekend!

From: Leahu, Iura S (CED)

Sent: Friday, February 21, 2020 2:17 PM

To: Eric Rhodes <ericrhodesphoto@gmail.com>

Subject: RE: LGS Question

Thank you Eric so much. I have not yet officially received an certificate of appreciation from a city.
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would be something invaluable to me personally. Thank you again.

All of this email string shows how Rhodes was trying to circumvent the Open Meetings Act and the Thorne Bay Municipal Code. He was trying to get rid of the city administrator illegally without all of the city council or the public knowing about it until after the fact. He disregarded the advice of the Local Government Specialist and apparently got three other council members to join him. They kept all of us in the dark, operating on their own.

Thank you for your consideration,

David Egelston, Gregory Kerkof

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