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**MEMORANDUM**

**TO:** Unalaska City Council

**FROM:** Brooks W. Chandler  
City Attorney

**RE:** Eligibility of Doanh Thi Tran for Appointment to City Council

**DATE:** March 20, 2013

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This is written in response to a request for a legal opinion regarding whether Ms. Tran is eligible for appointment to a vacant city council seat. Based on our review of relevant portions of the Unalaska Code of Ordinances, the Alaska Statutes and Alaska court decisions in our opinion the answer is NO. The reasons for this conclusion are set forth in greater detail below.

**FACTS<sup>1</sup>**

Ms. Tran first lived in Unalaska in about 2003. She lived in Sitka while attending Mr. Edgecumbe and returned to Unalaska in 2008 where she registered to vote. She then moved to Anchorage to attend UAA voting absentee in Unalaska in the 2008 presidential election. She remained registered to vote in Unalaska until October 2012 when she changed her voter registration to Anchorage anticipating further absences from Unalaska to pursue higher education. In February 2013 she changed her voter registration from Anchorage to Unalaska having decided to return to live in Unalaska in the near future. She is currently working during the legislative

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<sup>1</sup>These facts are based on information provided by Ms. Tran in response to a request from Mayor Marquardt and on Ms. Tran's March 4, 2013 letter of interest submitted to the City Clerk.

session in Juneau as a legislative aide to Representative Herron.

## **LAW**

### **Unalaska City Code.**

UCO 2.12.020(A) states "[n]o person shall hold the elective office of City Council or be eligible to seek election thereto unless at the time of declaration of candidacy they are a voter in the city who has resided within the city for a period of no less than one (1) year. A member of the City Council who ceases to be a voter in the city immediately forfeits office.

Section 4.04.020 of the Unalaska code of ordinances (UCO) states "[a] person may vote in a city election only if qualified to vote in state elections under AS 15.05.010, has been a resident of the city for 30 days immediately preceding the election, is registered to vote in state elections at a residence address within the city at least 30 days before the city election at which the person seeks to vote, and is not disqualified under Article V of the State Constitution".

UCO 4.12.010 states in part<sup>2</sup>:

- (A) No person shall hold the elective office of Mayor or member of the City Council, or be eligible to seek election thereto, unless at the time of filing the declaration of candidacy, the person is a qualified voter of the city who has resided within the city for a period of no less than one year.
- (B) No person shall hold any elective office, with the exception of Mayor and member of the City Council, or be eligible to seek election thereto, unless the person is a qualified voter of the city and has been resident of the city for a period of not less than 30 days preceding election day.

"Resident" is not specifically defined in the city code. The meaning of "resided within the city" is also not defined in the code.

### **Alaska Statutes**

There are state laws used to determine the residency of a voter. AS 15.05.010, referenced in UCO 4.04.020 states:

A person may vote at any election who

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<sup>2</sup>UCO 4.10.010( C) is not relevant to this opinion.

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and

(4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.

AS 15.05.020(2) states "[t]he residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. . . [t]emporary work sites do not constitute a dwelling place." AS 15.05.020(8) states "[t]he address of a voter as it appears on the official voter registration record is presumptive evidence of the person's voting residence. This presumption is negated only if the voter notifies the director in writing of a change of voting residence".

These laws apply only to voting qualifications in state election. The City of Unalaska has not incorporated state election laws by referenced into the Unalaska's city code. The City did refer to these state standards in deciding a previous election challenge based on residency of seasonal workers employed in local seafood processing plants.

#### **Alaska Court Decisions**

The Alaska Supreme court favors interpreting ambiguous candidate qualification rules in favor of finding a person eligible to run for office:

Statutes dealing with the right of voters to choose public officials and the right of citizens to aspire to and hold public office, should receive a liberal construction in favor of assuring the right to exercise freedom of choice in selecting public officials and also the right to aspire to and hold public office.

63C Am.Jur.2d *Public Officials and Employees* cited with approval in Anchorage v. Mjos, 179 P.3d 941, 943 n.1; see also, O'Callaghan v. State, 826 P.2d 1132,1137 (Alaska 1992)(admittedly ambiguous statute interpreted in favor of finding candidate eligible). Mjos is the most recent Alaska Supreme Court candidate eligibility decision. The court held "[i]n cases where there is a statutory ambiguity as to whether or not a candidate is eligible to run for office, the statute should be construed in favor of eligibility, so long as it may be reasonably so read". Mjos, supra, 179 P.3d at 943. The Alaska Supreme Court has also previously held a nearly identically worded predecessor to AS 15.05.020(8) which stated that the address used on a voter registration card "is presumptive

evidence of the person's voting residence", "does not apply to municipal elections". Miller v. North Pole, 532 P.2d 1013, 1017(1975)(applying AS 15.05.020(10)(former)).

## ANALYSIS

### Residency

Based on the information provided by Ms. Tran and guided by the principles of state law applicable to voter residency we believe Ms. Tran ceased to become a resident of Unalaska when she registered to vote in Anchorage in 2012. This is the presumption under AS 15.05.020(8). More importantly, the conclusion is consistent with the commonly understood concept of residency which turns on a persons "intent" including an "intention to return" to Unalaska. By her own statement Ms. Tran did not form an intent to return to Unalaska until last month when she "changed her future life plans" and decided to return home to Unalaska. The implication is that she did not intend to make her home in Unalaska while registered to vote in Anchorage.

### "At the time of" vs. "Immediately preceding"

Ms. Tran had a break in her Unalaska residency at least between October 2012 (when she registered to vote in Anchorage) and February 2013 (when she changed her voter registration to Unalaska). The council eligibility requirement is that the council candidate have "resided within the city for a period of no less than one year." In this instance, the issue is whether the "period of no less than a year" covers any time prior to serving on the City Council (in which case Ms. Tran's previous residency while attending school in Unalaska would make her eligible) or applies to the year just before the date of appointment to fill the council vacancy (in which case the break in residency in 2012 would make her ineligible).

In our opinion, the one year residency requirement for service on the City Council applies to the period immediately prior to submitting a letter of interest to fill a vacancy (which is the functional equivalent of the declaration of candidacy for an election under UCO 2.12.020(A) and UCO 4.12.010(A)). The most likely reason for the one year residency requirement for service on the city council is the belief that familiarity with local issues will make a candidate a better public official. This purpose is not achieved if candidates for city council are able to "count" previous periods of residency (which theoretically could extend much further back in time than is the case with Ms. Tran) towards the one year residency requirement. For example, someone who went to school in Unalaska in the 1960's and then decides to return in 2013 to run for office is unlikely to have the same level of knowledge of local issues as does someone who has lived in Unalaska since 2012. That may not always be true but it will generally be true.

An alternative interpretation is possible. This alternative interpretation would be based on use of the phrase "immediately preceding" when discussing voter eligibility in UCO 4.04.020 and not using "immediately preceding" in the section on city council eligibility in UCO 2.12.020(A) and

UCO 4.12.010(A). We do not believe this is the better interpretation but it is an alternative interpretation. Under this interpretation the residency requirement is imposed merely to ensure that there is some connection with the community for a period of at least a year no matter how distant rather than to ensure "current" knowledge of city issues. When this alternative interpretation is suggested it is possible to claim UCO 2.12.020(A) and 4.12.010(A) are ambiguous as to whether the period of prior residency extends to the most recent year or some time in the past. Since ambiguous requirements are supposed to be interpreted in favor of eligibility, under this alternative interpretation (assuming it is considered "reasonably possible") Ms. Tran would be eligible to serve.

The candidate qualification provisions of Chapter 4.12 were adopted in 2001. The provisions of UCO 2.12.020 were adopted in 1999 and amended in 2004. It is possible city council minutes from the meetings where the ordinances were considered would shed light on whether the city council intended the residency requirement for city council apply just prior to filing a declaration of candidacy or to some earlier period of residency. I would look into this myself but I am out of the office and will not return until Monday and understand there is an immediate need for this opinion. I will examine this in greater detail Monday including researching the previous versions of these sections of the Unalaska code and update this memorandum.

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**MEMORANDUM**

**TO:** Unalaska City Council



**FROM:** Brooks W. Chandler  
City Attorney

**RE:** Eligibility of Doanh Thi Tran for Appointment to City Council

**DATE:** March 25, 2013

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This follows up my memorandum of March 20 on this topic. We have reviewed the history of the "who has resided in the city for no less than one year" language of UCO 2.12.020(A). This language dates at least from 1989. It formerly appeared in UCO 2.04.020 which was subsequently renumbered. There is no indication in the old code materials we reviewed that the "one year" period was intended to cover any time prior to service on the city council as opposed to the one year immediately prior to service on the city council.

We are not aware of any precedent on this issue during the time we have served as city attorney. The last time an eligibility question arose it pertained to "intent to return" to the community not the timing of the one year residency period.