

Proposed by:	Civic Affairs Committee
Attorney Review:	03/11/2016
First Reading:	03/17/2016
Second Reading:	04/07/2016
Vote: 6 Aye 0 Nay 0 Absent	

**MUNICIPALITY OF SKAGWAY, ALASKA**  
**ORDINANCE NO. 16-08**

**AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC 3.01.035 AND 3.01.040 TO DEFINE EXCUSED ABSENCES FOR THE MAYOR AND ASSEMBLY FOR THE PURPOSE OF DETERMINING VACANCIES, AND AMENDING SMC 3.01.070 TELECONFERENCING TO SPECIFY THAT THIS SECTION ONLY APPLIES TO REGULAR ASSEMBLY MEETINGS.**

**WHEREAS**, it is unclear in SMC 3.01.035 and SMC 3.01.040 how the absence of the mayor or an assembly member is determined to be “excused” or “unexcused”; and

**WHEREAS**, SMC 3.01.070 Teleconferencing regulates the use of teleconferencing at assembly meetings, but does not specify between regular, special and Assembly of the Whole Committee meetings; and

**WHEREAS**, a teleconferencing section was first added to municipal code with Ordinance No. 2000-09, which specified that teleconferencing “for purposes of attendance and participation in regular and special council meetings is prohibited”; and

**WHEREAS**, passage of Ordinance No. 09-21 determined that for the first time, “the mayor or a member of the assembly may participate by telephone in an assembly meeting”; however the type of meeting was not specified, and there was no discussion in the minutes regarding the intent of this language; and

**WHEREAS**, special meetings can be called with 24-hours’ notice and are therefore unpredictable, and despite careful planning the mayor or an assembly member could use all of his or her teleconferencing options attending special meetings that he or she was unable to anticipate, leaving no options available for regular meetings; and

**WHEREAS**, facilitating attendance by the mayor and assembly members at regular meetings is crucial to ensuring that regular municipal business is dealt with in a timely manner;

**NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:**

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

**Section 2. Purpose.** To amend SMC 3.01.035 and SMC 3.01.040 to define “excused” absences for the purpose of determining vacancies; and to amend SMC 3.01.070 to

specify that this section applied only to regular assembly meetings. The Skagway Municipal Code is hereby amended (~~strike through~~) indicates text to be deleted from, and **bold** indicates text added to the current code as follows:

**Section 3. Amendment.** SMC 3.01.035 is hereby amended as follows:

3.01.035 Vacancies on the Assembly.

- A. The assembly shall declare an assembly seat vacant when the person elected
1. fails to qualify or take office within 30 days after election or appointment;
  2. is physically absent from the municipality for 90 consecutive days unless excused by the governing body **pursuant to SMC 3.01.035(E)**;
  3. resigns and the resignation is accepted;
  4. is physically or mentally unable to perform the duties of office as determined by two-thirds vote of the governing body;
  5. is convicted of a felony or of an offense involving a violation of the oath of office;
  6. is convicted of a felony or misdemeanor described in AS 15.56, Election Offenses and Corrupt Practices and two-thirds of the members of the assembly concur in expelling the person elected;
  7. is convicted of a violation of AS 15.13, State Election Campaigns;
  8. no longer physically resides in the municipality and the assembly by two-thirds vote declares the seat vacant; this paragraph does not apply to a member who forfeits office under Section 3.01.030, Qualifications; or
  9. if a member of the assembly, misses three consecutive regular meetings and is not excused **pursuant to SMC 3.01.035(E)**.
- B. If a vacancy occurs in the assembly, the remaining members shall, within 30 days appoint a qualified person to fill the vacancy. If less than 30 days remain in a term, a vacancy may not be filled.
- C. Notwithstanding (A) of this section, if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall, within seven days, appoint a number of qualified persons to constitute a quorum.
- D. A person appointed under this section serves until the next regular election, when a successor shall be elected to serve the balance of the term.
- E. If a member is absent from a meeting, the Assembly shall vote to determine if the member is excused; except that a member who is absent due to municipal business shall be considered excused.**

**Section 4. Amendment.** SMC 3.01.040 is hereby amended as follows:

3.01.040 Vacancy in the office of mayor.

- A. The assembly shall, by two-thirds concurring vote, declare the office of mayor vacant only when the person elected
1. fails to qualify or take office within 30 days after election or appointment;
  2. unless excused by the assembly **pursuant to SMC 3.01.040(C)**, is physically absent for 90 consecutive days;

3. resigns and the resignation is accepted;
  4. is physically or mentally unable to perform the duties of office;
  5. is convicted of a felony or of an offense involving a violation of the oath of office;
  6. is convicted of a felony or misdemeanor described in AS 15.56, Election Offenses and Corrupt Practices;
  7. is convicted of a violation of AS 15.13, State Election Campaigns;
  8. no longer physically resides in the municipality.
- B. A vacancy in the office of mayor occurring **within** six months ~~before~~ **of** a regular election shall be filled by the assembly. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the assembly is appointed mayor, the member shall resign the seat on the assembly. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the unexpired term.
- C. If the mayor is absent from a meeting, the Assembly shall vote to determine if the mayor is excused; except that a mayor who is absent due to municipal business shall be considered excused.**

**Section 5. Amendment.** SMC 3.01.070 is hereby amended as follows:

3.01.070 Teleconferencing.

- A. The use of teleconferencing at assembly meetings is for the purpose of serving the public and the convenience of government officials and in addition, to allow whenever necessary, the convening of emergency assembly meetings despite the lack of a physically present quorum. Teleconference participation by the mayor, assembly members is authorized by AS 44.62.310(a) and 44.62.312. While physical presence of the mayor, assembly members is the preferred method of participation at assembly meetings, the mayor, assembly members are allowed to participate at assembly meetings in the following manner:
1. The mayor or a member of the assembly may participate by telephone in an assembly meeting. If the mayor chooses to participate by telephone, the Vice Mayor shall preside.
  2. The mayor and each member of the assembly may attend four (4), two consecutive, **regular** assembly meetings by teleconference during the 12-month period commencing January 1 of each year. If the mayor or assembly member has participated telephonically in four (4) **regular** meetings, and requests to participate telephonically in one or more additional **regular** meetings, a majority of the quorum of the assembly present may, by roll call vote at the beginning of a **regular** meeting, grant further telephone participation for use only during that **regular** meeting to the mayor or to any assembly member who has exhausted their teleconferencing. The mayor or assembly member requesting the additional telephonic participation does not count toward a quorum and may not vote on whether the assembly will allow the telephonic participation. Requests for additional telephonic participation by the mayor or an assembly member beyond the permitted

four (4) shall be prioritized in the order that they are received by the borough clerk in writing.

- 3.** **The mayor and each member of the assembly may attend special assembly meetings and assembly of the whole committee meetings by teleconference with no limit as to number.**
  - 34.** Participating in a meeting by teleconference while out of town on municipal business does not count toward the four (4) **regular** meetings permitted in section 2.
  - 45.** No more than three (3) members of the assembly and the mayor may participate by telephone at any one **regular, special or assembly of the whole committee** meeting, including participation of the mayor or assembly member requesting additional telephonic participation beyond the four (4) permitted in section 2.
  - 56.** A minimum of 48 hours' notice shall be given to the clerk regarding telephonic participation in a particular meeting, except in the case of an emergency assembly meeting.
  - 67.** All members of the assembly may participate telephonically in emergency assembly meetings, and need not be physically present to establish a quorum of four (4).
  - 78.** The mayor or a member of the assembly participating by telephone shall be counted as present for purposes of discussion, voting and attendance.
  - 89.** The meeting packet is loaded on the municipal website and a member participating by telephone shall review all materials provided. The member shall provide the telephone number and any available facsimile, email, or other document transmission service to the clerk and to the extent reasonably practicable, the clerk shall provide backup materials to members participating by telephone.
  - 910.** The mayor or members participating by telephone shall make every effort to participate in the entire meeting, including any executive session scheduled. From time to time during the meeting the borough clerk shall confirm the connection.
  - 101.** The clerk shall provide the mayor or member participating by telephone with the municipality's conferencing number. At the meeting, the clerk shall establish the telephone connection when the call to order is imminent. If the telephone connection cannot be made or is made then lost, the meeting shall commence or continue as scheduled and the clerk shall attempt to establish or restore the connection.
  - 112.** Meeting times shall be expressed in Alaska time regardless of the time at the location of any member participating by telephone.
- B. Cost of teleconference participation. The mayor or any member of the assembly who participates by telephone shall not be charged for any telephone costs associated with the teleconference participation.
- C. Determination of emergency conditions. A determination of emergency under this section may be made by the mayor or the manager if any of the following conditions are present:

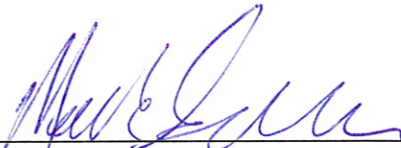
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1. fire, flood, epidemic, riot, environmental accident, or a similarly compelling reason;
2. events for which immediate action is necessary to protect public health, welfare, or safety, or to protect public or private property.


**Section 6. Severability.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

**Section 7. Effective Date.** This ordinance shall become effective immediately upon adoption.

**PASSED AND APPROVED** by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 7<sup>th</sup> day of April, 2016.

  
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Mark Schaefer, Mayor

ATTEST:

  
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Emily A. Deach, Borough Clerk

(SEAL)

