

City of Kodiak Regular Council Meeting Agenda for November 8, 2018
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

- I. Call to Order/Roll Call**
Invocation/Pledge of Allegiance

- II. Previous Minutes**
Approval of Minutes of the October 25, 2018, Regular Council Meeting1

- III. Persons to Be Heard**
 - a. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. Second Reading and Public Hearing, Ordinance No. 1382, Authorizing First Amendment of a Pier II Use and Upland Lease Agreement with American President Lines LLC8

- V. New Business**
 - a. First Reading, Ordinance No. 1383, Amending Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, And 19 of the City Personnel Rules And Regulations; Amending the Definitions in the City Personnel Rules And Regulations; and Amending Kodiak City Code 2.08.065 Deputy City Manager-Appointment, Powers, And Duties30
 - b. Authorization to Purchase a CAT 926M Wheeled Loader from NC Machinery108
 - c. Authorization of Bid Award to MicroAge for Nimble Adaptive Storage Array116
 - d. Authorization of City Clerk’s Merit Increase126

- VI. Staff Reports**
 - a. City Manager
 - b. City Clerk

- VII. Mayor’s Comments**

- VIII. Council Comments**

- IX. Audience Comments (limited to 3 minutes) (486-3231)**

- X. Executive Session**
 - a. Discussion With the City Attorney About Kodiak Public Broadcasting Corporation Litigation.....128

- XI. Adjournment**

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**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, OCTOBER 25, 2018
IN THE BOROUGH ASSEMBLY CHAMBERS**

I. MEETING CALLED TO ORDER/INVOCATION/PLEDGE OF ALLEGIANCE

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Daniel Mckenna-Foster, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. City Manager Mike Tvenge, City Clerk Debra Marlar, and Assistant Clerk Shannon Hamer were also present.

Salvation Army Major Dave Davis gave the invocation and the Pledge of Allegiance was recited.

II. PREVIOUS MINUTES

Councilmember Whiddon MOVED to approve the minutes of the October 11, 2018, regular meeting.

The roll call vote was Councilmembers, Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

III. PERSONS TO BE HEARD

a. Proclamation: Filipino American National History Month

Councilmember Bishop read the proclamation, which urges all citizens to celebrate the rich history and contributions of Filipino Americans in Kodiak.

b. Proclamation: Extra Mile Day

Councilmember Arboleda read the proclamation, which urges each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those around who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

c. Public Comments

None

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS

a. First Reading, Ordinance No. 1382, Authorizing First Amendment of a Pier II Use and Upland Lease Agreement with American President Lines LLC

Ordinance No. 1382 authorizes the City of Kodiak to modify the Pier II Use and Upland Lease Agreement with American President Lines, LLC (APL). The modifications include changes to volume discounts, billing, and the use of secondary berths.

Councilmember Davidson MOVED to pass Ordinance No. 1382 in the first reading and advance to second reading and public hearing at the next regular or special meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

b. Authorization of Bid Award for Vehicle Purchase for the Kodiak Police Department From Alaska Sales and Service

The FY2019 budget authorizes the purchase and up fitting of three new police department vehicles for the uniform patrol division. This purchase includes the addition of one police vehicle to the existing fleet and the replacement of a 2008 Ford Taurus and a 2006 Ford Expedition, which are recommended for replacement this year pursuant to the City's Vehicle Replacement Policy and the Long-Term Capital Improvement Plan.

Councilmember Walker MOVED to authorize the purchase and up-fitting of three new Chevrolet Tahoe police vehicles in an amount not-to-exceed \$165,000 as follows: \$108,576 to Alaska Sales and Service for vehicle purchase; \$32,340 to Alaska Safety Inc. for up-fitting, and authorize the City Manager to spend additional funds for shipping costs and additional accessories including reflective decals, cameras, and radios, with funds from the Uniform Patrol Machinery and Equipment greater than \$5,000 account and authorize the City Manager to execute all documents on behalf of the City.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

c. Authorization to Cancel the November 22, and December 27, 2018, Regular Meetings and Authorize the City Manager to Schedule Additional Special Meetings if Needed

The regularly scheduled Council meetings for November and December may be cancelled to reflect the holidays and elected official and staff travel schedules. Elected Officials and staff attend the Annual Alaska Municipal League Conference November 12 through November 16. Thanksgiving is on November 22 and December 27 is following the Christmas holiday; these are both regular meeting days.

Councilmember Bishop MOVED to cancel the November 22, and December 27, 2018, regular meetings and authorize the City Manager to schedule additional special meetings if needed.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

d. Certification of Election

The City of Kodiak held a regular election October 2, 2018, and voters cast ballots for the two three-year City Council positions. The Canvass Board met October 10, 2018, to tally the votes of the admissible questioned and absentee ballots, together with votes counted on election night. The final results of the October 2, 2018, Municipal City election were:

City Council—Two Three-Year Terms	
Terry J. Haines	294
Rich Walker	247
Write-Ins	26

Of the 4,013 registered City voters, 403 cast eligible City ballots, for a 10% voter turnout, which is 7% lower than last year.

Councilmember Davidson MOVED to certify the results of the October 2, 2018, regular election and declare Terry J. Haines and Rich Walker elected to the City Council for three-year terms.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

VI. STAFF REPORTS

a. City Manager

Manager Tvenge said that he and Finance Director Karl Swanson held two interviews for Finance Director and will conduct follow-up interviews with both applicants on November 2. He said that KPD officers will be downtown on Wednesday for trick-or-treating and welcomed people to stop by the satellite station from 3:30-5:30 p.m.

b. City Clerk

City Clerk Marlar congratulated Councilmembers Walker and Haines on their election and thanked Mr. Mckenna-Foster for stepping in. Clerk Marlar informed the public of the next scheduled City work session on November 6, regular Council meeting on November 8, and Fisheries Work Group meeting on November 28.

VII. MAYOR'S COMMENTS

Mayor Branson gave an overview of her trip to Washington, D.C. where she was invited to attend the White House Presentation on Intergovernmental Affairs. She said that the most exciting thing is the contact list of people she was given to call directly regarding issues from the EPA, FEMA, Army Corps, Interior Labor, and even the President. She met with Senator Sullivan's and Senator Murkowski's staff regarding the Ports and Harbors bill and the opioid bill, which were passed, and how this will affect those issues in Kodiak. Mayor Branson also discussed Coast Guard funding with senate staff as it is going to be renegotiated in the near future. She said she met with the Department of the Interior and she will be talking to Mayor Rohrer about what she learned about rural schools. Mayor Branson said she thinks it will be important for whoever is elected governor to form a coastal coalition group with other coastal communities because of fisheries and marine highway issues. She thanked Councilmember Mckenna-Foster for his service and wished him luck.

VIII. COUNCIL COMMENTS

Councilmember Mckenna-Foster pointed out again that he is always called on first. He said what most concerned him during his time on the City Council is there never seems to be authentic discussion or attempts to identify the real issues. He said he feels no one is interested in challenging the status quo. He said he wanted to get involved with downtown revitalization but was not chosen for the committee. He expressed that he has been disappointed with management and hasn't seen a lot of transparency. He said that he was told early on to be a "team player" but that he didn't think that was conducive to healthy public discourse. He mentioned that he asked about the manager's qualifications and wasn't given what he asked for. He said he asked about contracts, and he found that the City had more than one out of town consultant without a contract. He voiced his opinion that the Economic Development consultant was paid \$20,000 and the City did not receive anything, and it could have been much better used. He said the strangest thing is that each Councilmember can only speak twice per issue during regular meetings and wonders why they would want to limit discussion. He mentioned a trampoline on City property that he has discussed with the Manager because he feels it is a lawsuit waiting to happen. He said the Manager didn't give him an answer. He mentioned a delinquent water bill notice that was placed on his apartment door and questioned if he was being targeted. He reiterated that he is disappointed with his experience and hasn't seen any real leadership or vision. Councilmember Mckenna-Foster said that Kodiak has some real problems that no one is really addressing. He mentioned concerns about new infrastructure and the ability to maintain it. He said he would love to be proved wrong and just wants to see things move forward. He said good luck to City employees.

Councilmember Bishop congratulated Councilmembers Walker and Haines. He thanked Mr. Mckenna-Foster for stepping forward. He said he would like to see more people make time to serve as an elected official. Councilmember Bishop said the City has survived and will continue to survive, regardless of the perception by some, and this administration gets the job done. He said the Council does their best and encouraged more people to step forward. He thanked the Kodiak Chamber for putting on the trick-or-treating event and the businesses that get involved in the community trick-or-treating.

Councilmember Whiddon congratulated Councilmembers Haines and Walker. He thanked Mr. Mckenna-Foster for his time. He said he hasn't experienced the things mentioned by Mr. Mckenna-Foster and pointed out a long list of accomplishments of the City. He said it is all about perspective. He said they had a good Fisheries Work Group discussion yesterday and gave an overview of who was there and what was talked about. He said there was a presentation by Duncan Fields about the recent Regional Board of Fish meeting. He stated that Mike Litzow from UAF gave a presentation as well. Councilmember Whiddon said we have access and allocation issues that are coming up that we need to pay attention to. He mentioned that a group in the Cook Inlet is trying to put a cap on the number of salmon coming from hatcheries. He said with the new Governor, we will need to make sure fisheries stay on the forefront.

Councilmember Arboleda congratulated Councilmembers Walker and Haines. She thanked Mr. Mckenna-Foster for stepping in and giving his different perspective. She would like to see people get together to become informed and figure out how they can help with issues going on within the community. She mentioned the events coming up for Halloween and encouraged everyone to be safe and bear aware.

Councilmember Davidson encouraged people to get out and vote on November 6. He congratulated Rich Walker and Terry Haines, and he thanked Daniel Mckenna-Foster for serving. He mentioned the land swap in Woman's Bay and noted negative consequences of this deal to wildlife and fishing; he stated concern that tariffs will be lost from Pier III to the new dock being planned as a result of the land trade, which will make it difficult for the City to pay for the new pier.

Councilmember Walker thanked the voters for coming out. He congratulated Councilmember Haines. He thanked Councilmember Whiddon for the list of City accomplishments. He said he looks forward to pushing economic development this term and working for more jobs and affordable housing for young people. He said there will be a lot of federal funding coming our way if we keep after it. He encouraged everyone to vote on November 6.

IX. AUDIENCE COMMENTS

None

X. OATH OF OFFICE

KCC 2.28.080 requires elected officials to take and subscribe to the Oath of Office. Clerk Marljar administered the Oath of Office to Richard Walker and Terry Haines.

XI. EXECUTIVE SESSION

a. City Clerk's Annual Evaluation

Annually, the City Council reviews the performance of the City Clerk. In accordance with the Open Meetings Act, the City Clerk does not object to the evaluation being done in executive session.

Councilmember Davidson MOVED to enter into executive session, as authorized by Kodiak City Code Section 2.04.100(b)(2), to conduct the City Clerk’s annual performance evaluation.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

Councilmember Mckenna-Foster left the meeting.

The Council entered into executive session at 8:27pm.

The Mayor reconvened the regular meeting at 8:59 p.m.

XII. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Mckenna-Foster was not present. The motion passed.

The meeting adjourned at 9:00pm.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager *MT*

Date: November 8, 2018

Agenda Item: **IV. a. Second Reading and Public Hearing, Ordinance No. 1382, Authorizing First Amendment of a Pier II Use and Upland Lease Agreement With American President Lines LLC**

SUMMARY: Ordinance No. 1382 authorizes the City of Kodiak to modify the Pier II Use and Upland Lease Agreement with American President Lines, LLC (APL). The modifications include changes to volume discounts, billing, and the use of secondary berths. After initial review, a local APL representative has stated the amended wharfage rates, are not acceptable and they would like to continue to look at primary and secondary berthing for their barges and operations. Staff recommends Council postpone this amendment until Dispute Resolution and additional Termination Clauses are added.

PREVIOUS COUNCIL ACTION:

- At the April 24 and May 8 work sessions, Council received a briefing on the proposed agreements and operation plan for APL to work freight barges across Pier II and the need for upland staging and a Terminal Operating Contract that would allow APL to stevedore its own vessels.
- On May 24, 2018, Council passed Ordinance No. 1379 in the first reading at their regular meeting and advanced it to second reading and public hearing.
- On June 14, 2018, Council adopted Ordinance No. 1379, which authorized a Terminal Operation Contract and a Pier II Use and Upland Agreement.
- On October 23, 2018, Council reviewed Ordinance No. 1382, which amends Pier II Use and Upland lease with APL.
- On October 25, 2018, Council passed Ordinance No. 1382, in the first reading and advanced to second reading and public hearing at the next regular or special meeting.

DISCUSSION: The Pier II Use and Upland Lease Agreement grants APL non-preferential right to use Pier II for the handling of containerized freight across Pier II. The agreement designates 20,500 square feet of upland staging in van rows 13 and 14 for container staging and 3,000 square feet in van row 11 for a portable marine office. APL's "non-preferential right" means all preferential vessels such as NOAA, Cruise ships, Alaska Marine Highway ferries, and Kodiak Oil Sales fuel barges have first priority at Pier II. All commercial fishing vessels are secondary users after port vessels.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1382 in the second reading; this is not recommended because further modifications are required.
- 2) Postpone Ordinance No. 1382 until the City and APL further discuss the agreement modifications.

FINANCIAL IMPLICATIONS: Under the agreement, APL will pay warfage and dockage fees at 10 percent off tariff rates based on a minimum of 50,000 tons of cargo over the dock. If 50,000 tons are not met, full tariff rates apply for both wharfage and dockage. APL operations at Pier II are expected to generate significant and much needed revenue for the Port of Kodiak.

LEGAL: The City's attorney drafted the ordinance and lease amendment.

STAFF RECOMMENDATION: Staff recommends postponement of this ordinance to provide additional time to modify the Pier II Use and Upland lease agreement with American President Lines LLC.

CITY MANAGER'S COMMENTS: Now that APL has begun operations at Pier II and both parties (City and APL) realize the actual use and impact to the facility requires a need for modifications to the agreement. APL prefers the use of the SW section of Pier II when available, and the Harbormaster may grant that request with this amendment. The Tariff discounts (20/30%) for tonnage moved across the Pier have been removed. Provisions to protect the Pier asphalt have been included, and the payment schedule has been further clarified to avoid conflicting statements. Termination and Dispute Resolution clauses will also be added. The leased area remains unchanged.

ATTACHMENTS:

- Attachment A: Ordinance No. 1382
- Attachment B: First Amendment Pier II Use and Upland Lease Agreement
- Attachment C: Ordinance No. 1379 with Pier II Use and Upland Lease Agreement

PROPOSED MOTIONS:

1. Move to adopt Ordinance No. 1382.

After the main motion has been moved an seconded,

2. Move to postpone Ordinance No. 1382 to a future meeting to be determined by the City Manager.

**CITY OF KODIAK
ORDINANCE NUMBER 1382**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING FIRST AMENDMENT OF A PIER II USE AND UPLAND LEASE
AGREEMENT WITH AMERICAN PRESIDENT LINES LLC**

WHEREAS, the City of Kodiak operates port and harbor facilities including a dock suitable for shipment of ocean bound cargo commonly known as Pier II; and

WHEREAS, sound and prudent management of port facilities includes entering long term agreements providing preferential use of those facilities in return for guaranteed amounts of volume of cargo that will be loaded and unloaded thereby providing a guaranteed revenue stream which can be used to offset the City’s costs of owning and operating the port facilities; and

WHEREAS, by Ordinance No 1379, the Council approved a Terminal Operation Contract (“the Contract”) and a Pier II Use and Upland Agreement (“the Agreement”) with American President Lines, LLC (“APL”), both effective August 1, 2018; and

WHEREAS, it is in the public interest that those provisions of the Agreement relating to volume discounts, billing, and use of secondary berths be modified; and

WHEREAS, the Amendment attached hereto modifies those provisions of the Agreement; and

WHEREAS, no modification of the Agreement is effective unless agreed to by the parties in writing and approved by the Council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: Classification. This is a non-code ordinance.

Section 2: Approval of Amendment. The City Council hereby approves the Amendment in the form attached to this ordinance and authorizes the city manager and the harbor master to take all steps necessary to finalize and sign the Amendment.

Section 3: Effective Date. This ordinance shall be effective upon being passed.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: October 25, 2018
Second Reading:
Effective Date:

**FIRST AMENDMENT TO
PORT OF KODIAK
PIER II USE AND UPLAND LEASE AGREEMENT
City of Kodiak and American President Lines, LLC
City Contract No. 237652**

This First Amendment to Port of Kodiak Pier II Use and Upland Lease Agreement between the City of Kodiak and American President Lines, LLC (the “Amendment”) is entered into and made effective as of November 9, 2018 (“Amendment Effective Date”).

RECITALS

WHEREAS, the City of Kodiak, Alaska. (“City”) and American President Lines, LLC (“APL”), individually referred to as a “Party” and collectively referred to as the “Parties”, entered into the Port of Kodiak Pier II Use and Upland Lease Agreement dated effective August 1, 2018 (“Agreement”); and

WHEREAS, the City Council, by Ordinance No. 1379, approved the Agreement; and

WHEREAS, the Parties now wish to amend the Agreement to modify certain terms of the Agreement as provided below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing express premises and the mutual covenants hereinafter set forth, the Parties agree as follows:

1. Subsection II.B.1.d is deleted in its entirety and replaced and superseded with the following:
 - d. APL berths are depicted in attached Exhibit A. APL’s primary berth for cargo operations is Berth 1 on the NE end of Pier II. Berth 2 is the secondary berth on the SW end of Pier II, to be used when the Kodiak Harbormaster authorizes the request by APL. Containers may only be temporarily grounded during loading and unloading operations at Berth 2. APL shall place steel plates beneath Pass pass gear, and fork lift tires during “loaded” travel while loading and off-loading containers. Steel plates shall be 4’x8’x1’ minimum in dimension.

2. Section III.A is deleted in its entirety and replaced and superseded with the following:
 - A. APL shall pay to the City Wharfage and Dockage fees at the rates shown in the published City Port Tariff, except that discounted Wharfage and Dockage rates will apply based on a Minimum Quantity Commitment “MQC” of 50,000 short tons each year of the agreement. If the MQC is not met, full tariff rates will be due for all Wharfage less than 50,000 short tons and all dockage for the applicable

year. The rate for a year is effective commencing on August 1 of the year and for 12 months thereafter. Transshipped/transloaded cargo shall be subject to a single-move, one-time wharfage charge at the same rate.

<u>Tons per year</u>	<u>Discount off Tariff Rate</u>
50,000 or greater	10%

3. Section III.B is deleted in its entirety and replaced and superseded with the following:

B. APL shall submit to the City within ten days of the end of each month a statement detailing the vessel dockage and cargo tonnage handled during the previous month. Upon receipt of the billing statement from the City, APL shall remit payment within 30 days for dockage and wharfage and other fees and charges for the statement period submitted.

4. Section III.C is deleted in its entirety and replaced and superseded with the following:

C. APL shall pay the City for use of the upland lease depicted in attached Exhibit A, specified in this Agreement, the monthly payments due, plus City sales tax, on the first day of each month as shown in the table below. The monthly payment amount for a given year is effective commencing on August 1 of each year of the Agreement and for 12 months thereafter. Rate is based on 23,500 SF leased area at \$2.00 per square foot, for year one, and with a three percent increase each year thereafter:

<u>Year</u>	<u>Monthly Payment</u>	<u>Year</u>	<u>Monthly Payment</u>
1	\$3,917.00	4	\$4,280.21
2	\$4,034.51	5	\$4,408.61
3	\$4,155.54		

5. The Agreement remains in full force and effect, modified only by this Amendment as expressly provided in the preceding paragraphs 1, 2, 3, and 4.

6. Capitalized terms in this Amendment that are not defined herein have the same meaning given those terms in the Agreement.

7. The Amendment may be executed in several counterparts, each of which will be considered an original for all purposes, and all of which when taken together constitute one and the same instrument. It is unnecessary that any single counterpart be executed by all Parties. The Amendment shall be deemed effective as of the Amendment Effective date upon the later of the Amendment being executed by both Parties and approval of the Amendment by the Kodiak City Council.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date or dates indicated beneath the signature of their respective officers or agents.

City of Kodiak

American President Lines, LLC

Mike Tvenge, City Manager Date

Edward Aldridge Date
President North America

ATTEST:

ATTEST:

Debra L. Marlar Date
City Clerk

Shirley Wang Date
Executive Assistant

**CITY OF KODIAK
ORDINANCE NUMBER 1379**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK APPROVING A
TERMINAL OPERATION CONTRACT AND A PIER II USE AND UPLAND
AGREEMENT WITH AMERICAN PRESIDENT LINES LTD**

WHEREAS, the City of Kodiak operates port and harbor facilities including a dock suitable for shipment of ocean bound cargo commonly known as Pier II; and

WHEREAS, sound and prudent management of port facilities includes entering long term agreements providing preferential use of those facilities in return for guaranteed amounts of volume of cargo that will be loaded and unloaded thereby providing a guaranteed revenue stream which can be used to offset the City’s costs of owning and operating the port facilities; and

WHEREAS, the harbor master and city manager have negotiated a Terminal Operation Contract (“the Contract”) and a Pier II Use and Upland Agreement (“the Agreement”) with American President Lines LTD. (“APL”); and

WHEREAS, it is in the public interest that the terms of the Contract and the Agreement be approved; and

WHEREAS, the Agreement includes provisions leasing city property with a value of more than thirty thousand dollars (\$30,000); and

WHEREAS, the Contract has an initial term of five (5) years and provides two options for renewal upon mutual agreement for a potential term of fifteen (15) years; and

WHEREAS, Section V-17 of the Charter of the City of Kodiak requires any contract which by its terms will not be fully executed within five (5) years and any lease of city property valued at more than thirty-thousand dollars (\$30,000) be approved by ordinance adopted either by voter initiative or by the city council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: Classification. This is a non-code ordinance.

Section 2: Exception to Kodiak City Code Provisions Pertaining to Leases of Property.

The City Council recognizes that Chapters 18.12 and 18.20 of the Kodiak City Code contain provisions requiring that leases of tidelands and city property be offered at public auction after public notice and provisions requiring an appraisal of the property proposed to be leased. The Council hereby excepts the Agreement and the Contract from all such provisions. The use of city

property under a lease is only an incidental component of the Agreement and the Contract whose primary purpose is establishing terms and conditions of the use and operation of Pier II as a port facility of the City. The Council further finds that there is only a very small number of potential users of Pier II and that it is not in the public interest to open the variety of terms and conditions in the Contract and the Agreement to public auction.

Section 3: Approval of Contract and Agreement. The City Council hereby approves the Agreement and the Contract in the form attached to this ordinance and authorizes the city manager and the harbor master to take all steps necessary to finalize and sign the Agreement and the Contract.

Section 4: Effective Date. As provided in Section V-17 of the Charter of the City of Kodiak, if one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

First Reading: May 24, 2018
Second Reading: June 14, 2018
Effective Date: July 20, 2018



**PORT OF KODIAK
PIER II USE AND UPLAND LEASE AGREEMENT
City of Kodiak and American President Lines, LLC
City Contract No. 237652**

This Pier II Use and Upland Lease Agreement (“Agreement”) is made and entered into as of August 1, 2018, between the City of Kodiak, an Alaska municipal corporation (“City”), and American President Lines, LLC (“APL”), a limited liability company organized under the laws of the state of Delaware.

WHEREAS, APL and the City have entered into a Terminal Operation Contract dated August 1, 2018, which together with this Agreement provide for APL’s use and occupancy of Premises at Port of Kodiak Pier II.

WHEREAS, APL has agreed herein to use Pier II dock and uplands for container operations and leases a 20,500 square foot portion of van rows 13 and 14 for container storage and handling, and 3000 square foot of van row 11 for a portable office building, it is therefore appropriate that the City grant APL the use of the Pier II Terminal as provided herein.

NOW, THEREFORE, in consideration of the premises, and the terms, covenants, conditions, and agreements contained herein and further stated in the Terminal Operation Contract, APL and the City hereby agree as follows:

I. DESCRIPTION OF PREMISES

The premises that are the subject of this Agreement consist of the dock and adjacent property at Pier II as depicted in attached Exhibit A.

II. USE OF PREMISES

A. The City hereby grants APL the right to use and occupy the Premises in connection with its transportation business and related activities during the term of this Agreement.

B. APL vessels calling to load and discharge containerized cargo on a scheduled basis shall be entitled to non-preferential berthing rights at Pier II in accordance with the terms and conditions set forth in this Agreement.

1. Non-Preferential Berthing Rights.

- a. APL shall have the non-preferential right to use the Pier II dock for purposes of mooring, docking, and loading or discharging cargo on or from APL vessels, including ships, barges, or other watercraft which are owned, operated, or chartered by or for APL or any affiliated or related company, or which are used in connection with any APL freight operations, or a vessel owned or operated by an entity with which APL has a connecting carrier, consortium, or rationalization agreement, if, and to the extent that, said vessel is carrying cargo on APL’s behalf (collectively “APL Vessel”).
- b. The non-preferential right of use provided by this paragraph is defined to mean that APL shall be accorded the right, after furnishing a vessel

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10/17/18

schedule at least 12 hours in advance to the City Harbormaster, to berth a vessel at Pier II.

- c. It is agreed that the berths and facilities at Pier II are public berths and subject to the provisions of Preferential Use Agreements and contracts between the City and others. APL agrees the NOAA vessel Oscar Dyson, State of Alaska ferries, Petro Star fuel barges and cruise ships will have priority use of Pier II berths. APL's vessels will be accommodated at Pier II on a space available basis.
- d. APL berths are depicted in attached Exhibit A. APL's primary berth for cargo operations is Berth 1 on the NE end of Pier II. Berth 2 is the secondary berth on the SW end of Pier II, to be used only when berth 1 is not available. Containers may only be temporarily grounded during loading and unloading operations at berth 2.
- e. APL shall make a reasonable effort to vacate the berth within two (2) hours after working cargo; provided however, should weather conditions prevent the vessel from leaving safely, an extension may be granted by the City Harbormaster if not a conflict with previously scheduled vessels.
- f. APL agrees that during the term of this Agreement its Kodiak representative, will furnish the City Harbormaster with information as to the position, estimated time of arrival in Kodiak, and estimated port time of any vessel desiring to berth at Pier II at least 12 hours in advance of the estimated time of arrival.

2. Use of Storage, Marshaling Areas, and Facilities Other than the Dock.

APL shall have exclusive right to use and occupy the APL Upland Lease area depicted in attached Exhibit A, including without limitation the operations of loading, unloading, working, parking, and storage of cargo, vans, chassis, trucks, and other equipment; provided that the City reserves the right to maintain access for all users via the public rights-of-way and dock area adjacent to any APL vessel berthed at Pier II when not actively engaged in loading or unloading operations.

3. Reservation of Rights.

The City specifically reserves to itself and for non-APL vessels rights to use and occupy the Pier II Terminal, or portions thereof, subject to the priorities of use accorded to APL under this Agreement. The City agrees that it will issue tariffs governing the rates, charges, and conditions for the use of the Pier II Terminal by others, and shall assess reasonable rates and charges to users of the facility.

4. Berthing of APL Vessels.

In addition to non-preferential berthing for loading and unloading cargo as provided above, barges owned, chartered, or operated by APL shall be allowed to berth at Pier II while not engaged in cargo operations, unless the City Harbormaster requests their removal to allow the use of Pier II by other vessels.

In such event, the City Harbormaster will notify the vessel captain as early as possible of the time the vessel must clear the pier.

III. PAYMENTS

A. APL shall pay to the City Wharfage and Dockage fees at the rates shown in the published City Port Tariff, except that discounted Wharfage and Dockage rates will apply based on a Minimum Quantity Commitment “MQC” of 50,000 short tons each year of the agreement. If the MQC is not met, full tariff rates will be due for all Wharfage less than 50,000 short tons and all dockage for the applicable year. The rate for a year is effective commencing on August 1 of the year and for 12 months thereafter. Transshipped/transloaded cargo shall be subject to a single-move, one-time wharfage charge at the same rate.

<u>Tons per year</u>	<u>Discount off Tariff Rate</u>
• 0-50,000	10%
• 50,001 – 75,000	20%
• 75,001 – and up	30%

B. APL shall submit to the City within ten days of the end of each month a statement detailing the vessel dockage and cargo tonnage handled during the previous month.

C. APL shall pay the City for use of the upland lease depicted in attached Exhibit A, in addition to wharfage, dockage, and other fees or charges elsewhere specified in this Agreement, the monthly payments due, plus City sales tax, on the first day of each month as shown in the table below. The monthly payment amount for a given year is effective commencing on August 1 of each year of the Agreement and for 12 months thereafter. Rate is based on 23,500 SF leased area at \$2.00 per square foot, for year one, and with a three percent increase each year thereafter:

<u>Year</u>	<u>Monthly Payment</u>	<u>Year</u>	<u>Monthly Payment</u>
1	\$3,917.00	4	\$4,280.21
2	\$4,034.51	5	\$4,408.61
3	\$4,155.54		

D. Amounts payable by APL for facilities or services under this Agreement supersede any charges for the same facilities or services under the Tariff for the Port of Kodiak Cargo Terminal. Nothing in this Agreement reduces or modifies the liability of APL for fees or charges for other facilities or services set out in the Tariff for the Port of Kodiak Cargo Terminal.

E. Upland lease payments are due with or without invoice on the date specified in subparagraph C above. City shall issue monthly invoices for all other amounts due. Invoices are due and payable within thirty days. All amounts due under this Agreement that are not paid within thirty days of the date due shall bear interest at the rate of 12% per annum for as long as the delinquency continues.

IV. TERM OF AGREEMENT

A. Initial Term. The term of his Agreement is for five years and shall commence on August 1, 2018, and shall continue in full force and effect until midnight July 31, 2023, unless earlier terminated pursuant to this section.

B. Renewal Terms. This Agreement may be renewed for two consecutive additional five-year periods (each a "Renewal Term"), by mutual agreement of the parties. At least ninety (90) days' prior to the expiration of the term then in effect, APL shall provide written notice to the City of its desire to renew or not renew this Agreement for the next succeeding Renewal Term. The City will then reply to APL within fifteen (15) days whether it wishes to renew this Agreement. If both parties agree to renew this Agreement, they shall then enter good faith negotiations to address any modifications to this Agreement requested by either party. The failure of the parties to agree upon a renewal of this Agreement shall cause this Agreement to terminate at the end of the current term.

C. The City may declare a default hereunder and terminate this Agreement, in addition to exercising any other available remedy, upon the occurrence of any of the following:

1. The failure of APL to pay any sum of money due under this Agreement within ten (10) days after the due date.
2. The failure of APL to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money described in Section **IV.C.1**, which is not cured within thirty (30) days after notice thereof from the City to APL, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as APL shall commence the curing of the default within such thirty (30) day period and thereafter shall diligently and continuously prosecute the curing of same.
3. The commencement of a case under any chapter of the federal Bankruptcy Code by or against APL, or the filing of a voluntary or involuntary petition proposing the adjudication of APL as bankrupt or insolvent, or the reorganization of APL, or an arrangement by APL with its creditors, unless the petition is filed or case commenced by a party other than APL and is withdrawn or dismissed within ninety (90) days after the date of its filing.
4. The admission in writing by APL of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of APL, unless such appointment shall be vacated within ten (10) days after its entry; APL making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of APL.
5. If APL is in default under the Terminal Operation Contract.

V. USE OF PREMISES

- A.** APL shall not use the Premises or any facilities for any unlawful purposes.
- B.** APL shall use the Premises solely for freight transportation purposes.

VI. MAINTENANCE AND REPAIR OF PREMISES

A. The City shall maintain and repair, at its own expense, the utilities (water, sewer or septic system, storm drainage, and electrical), common roadbeds and pier structures. In no event shall the City be obligated to repair or otherwise mitigate or respond to damages resulting from APL's use of the pier and pavement pursuant to this Agreement; except that the City shall be obligated to repair or otherwise attempt to mitigate or respond to damages resulting from an act or omission by the City or a third party. The City shall insure that other users of Pier II keep it clean and orderly.

B. Specifically in APL leased areas as depicted in attached Exhibit A, APL shall, at its own expense, provide all routine preventive maintenance, repairs, and replacements to any APL structures, including: any APL buildings, container cranes, container handling equipment, APL installed electric systems and equipment, and the container storage area.

C. Asphalt: APL will maintain and repair all asphalt pavement in good condition. APL will provide all snow removal and de-icing of the APL leased areas at Pier II. APL shall keep the Premises clean, orderly, and free of rubbish. If APL fails to adequately remove snow, ice, or debris, the City may furnish the necessary equipment and manpower to provide this service in which event APL shall promptly pay the City's billings for such services.

D. APL shall provide the City Harbormaster a semi-annual maintenance and repair report on any single incident of damage or repair over ten thousand dollars (\$10,000).

E. Within thirty (30) days after each anniversary of the date of this Agreement, APL and the City agree to inspect the Premises and prepare a report describing the condition of the Premises and specifying any items in need of repair. The party responsible for those repairs shall start those repairs within thirty (30) days after the report is prepared and shall promptly complete them.

F. If, at any time during the term of this Agreement, the Premises are damaged or destroyed by fire or other casualty, due to any cause other than an act or omission solely of APL, the City may elect to either (i) at its expense, repair, rebuild, replace and restore the Premises to a condition comparable to that which existed immediately prior to the fire or other casualty, or (ii) terminate this Agreement. In the event the City elects to repair, rebuild, replace or restore the Premises, payments under this Agreement shall be abated in proportion to the extent that the Premises are not usable by APL during the time the unusable areas remain unrepaired or unrestored.

G. APL shall make no alterations, additions, or improvements to the Pier II Terminal without the prior written approval of the City. At the expiration of this Agreement, or any renewal thereof, any such improvements not removed by APL in accordance with Paragraph XVI(B) shall become the property of the City.

H. APL acknowledges having inspected or having been given a full opportunity to inspect the Premises and hereby accepts them in their present condition, and shall at the termination of this Agreement surrender said Premises in as good a condition and repair to the City.

VII. INDEMNITY

A. APL shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages,

demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of APL use, occupancy and maintenance of the Premises, and/or exercise of its rights under this Agreement or APL breach of this Agreement. APL shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney's fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which APL's obligations under this paragraph shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.

B. This indemnity provision specifically includes all environmental damage that may result from APL operations under this Agreement and any penalties or fines which may be assessed in connection therewith.

C. Claims arising in whole or in part out of any incident or event occurring during the term of this Agreement or any extension or renewal of it shall be covered by the provisions of this section IX even though they may not have been asserted or discovered until after the expiration of said term.

VIII. UTILITIES

A. During the term of this Agreement, APL shall pay the providers directly for all utility bills and accounts for utility services used or consumed by APL on or in connection with the Premises.

C. APL shall be responsible for obtaining its own janitorial services for APL facilities on the Premises, if any.

IX. INSURANCE

A. APL shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Agreement, the following policies of insurance:

1. Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$5,000,000.
2. Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.
4. Pollution Insurance, \$10,000,000 combined single limit per loss applicable to bodily injury, property damage, including loss of use of damaged property or of

property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of petroleum products, smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants.

B. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability and Pollution
 - a. City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.
 - b. APL's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of APL's insurance and shall not contribute to it.
 - c. APL's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by APL for City.
2. Worker's Compensation and Employer's Liability. APL's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by APL for City.
3. All Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.

C. Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in Alaska having a Best's rating of no less than A-.

D. Verification of Coverage. APL shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies at any time.

X. RIGHT OF INSPECTION-RECORD KEEPING REQUIREMENT

A. The City shall have the right to inspect the Premises without prior notice to ensure compliance with the terms of this Agreement.

B. The City shall have the right to audit APL's records and to require APL to prepare summaries or reports from its records to determine compliance with the payment terms of this Agreement.

C. APL shall prepare or cause to be prepared bills of lading detailing all cargo loaded on or from each container on any APL Vessel using the Premises. AML shall preserve all bills of lading and other records evidencing APL's use of the Premises for not less than three (3) years after expiration of this Agreement.

XI. TAXES

A. In addition to the fees and charges provided in this Agreement, APL shall pay when due all taxes and other charges which are levied at any time during the term of this Agreement upon the leasehold interest and any improvements on the Premises. If the City receives a notice of assessment from any taxing jurisdiction claiming that the City or APL is liable for any tax or charge for which APL has agreed to make payment under this paragraph, the City shall notify APL in writing no later than thirty (30) days after receipt of the claim. If the City fails to provide APL such notice, APL shall have no obligation to pay the tax or charge.

B. If APL has a reasonable basis to contest, protest, or appeal (the "Appeal") the imposition or amount of any tax or charge, APL, at its own expense, may prosecute the Appeal, in which case the City shall cooperate fully with APL including, but not limited to, providing documentation and other information as required for APL to settle or sustain the Appeal. If APL prosecutes the Appeal, and if, but only if, such proceedings suspend enforcement and collection of the tax or charge, and no part of the Premises or any interest therein is or will be in danger of being sold or forfeited, APL shall have no obligation to pay the tax or charge until the taxing jurisdiction's decision that the City or APL is liable for the tax or charge becomes final. If any of the Premises is subjected to a lien which is not discharged within thirty (30) days after APL receives notice of such lien, APL shall deposit with the City cash, a sufficient corporate surety bond or other security satisfactory to the City in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of such contest.

XII. ASSIGNMENT

The parties stipulate and agree that the services rendered under this Agreement are of such a nature that the rights and duties of APL hereunder shall not be assignable without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of APL, after thirty (30) days' prior notice to the City. APL shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply. Should the City consent to an assignment APL shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of APL's continuing liability. A change of control of APL other than from the parent entity of APL to an affiliate shall constitute an assignment for purposes of this provision.

XIII. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

At all times during the term of this Agreement, APL shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances.

XIV. SEVERABILITY

If any part, term or provision of this Agreement is declared null or unenforceable by a court or other tribunal of competent jurisdiction, the validity and enforceability of the rest of this Agreement shall not be affected.

XV. WAIVERS

No waiver by APL or the City of any covenant or condition of this Agreement shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered as a waiver of any other breach.

XVI. SURRENDER

A. APL agrees not to encumber the Premises at any time during the term of this Agreement. APL agrees that the Premises shall not be subject to any liens, charges or encumbrances and agrees that at the expiration of the term of this Agreement it will deliver to the City or its designee, the Premises in good condition (ordinary wear and tear excepted) and without liens, charges, or encumbrances.

B. Unless required for the performance by APL of its obligations hereunder, APL shall have the right at any time during the Term to remove from the Premises all its equipment, removable fixtures and other personal property, and all property of third persons for which APL is responsible, and on or before the expiration or earlier termination of this Agreement it shall remove all of the same from the Premises, repairing all damage caused by any removal; provided, however, if APL shall fail to remove all such property within forty-five (45) days after the expiration or earlier termination of this Agreement, the City may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction; provided, further, that the City shall have given APL ten (10) days' notice of the City's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by APL to the City, with any balance remaining to be paid to APL. If the expenses of such removal, repair, storage, and sale shall exceed the proceeds of sale, APL shall pay such excess to the City upon demand. Without limiting any other term or provisions of this Agreement, APL shall indemnify and hold harmless the City, its officers, agents, employees, and contractors from all claims of third persons arising out of the City's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise, excluding only claims based on the City's sole negligence.

XVII. MODIFICATIONS AND NOTICES

A. No modification of this Agreement shall be effective unless agreed to by APL and the City in writing and approved by the Kodiak City Council. No modification of one

provision of this Agreement shall be considered a waiver, breach or cancellation of any other provision.

B. All notices required to be given under this Agreement shall be in writing, and shall be effective on the date of receipt and shall be mailed to the parties at the following addresses:

American President Lines, LLC
727 Shelikof Street
Kodiak, AK 99615
Attn: Mike Mizell

City Manager
City of Kodiak
710 Mill Bay Road
Kodiak, Alaska 99615

Any notice or document delivered by facsimile transmission to a facsimile machine at which the recipient routinely receives such transmissions shall be effective upon the date of receipt of the complete and fully legible document (so long as the original is also mailed in accordance with this paragraph) unless the transmission occurred outside of the usual business hours of the recipient, in which event the document shall be deemed to have been received on the next business day.

XVIII. ANTI-DISCRIMINATION

During the performance of this Agreement, APL agrees:

- A.** In connection with its performance under this Agreement including construction, maintenance, and operation of or on the Premises, APL will not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, or national origin.
- B.** APL and its employees shall not discriminate, by segregation or otherwise, against any person on the basis of race, color, ancestry, religion, sex, or nationality by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally.
- C.** APL shall include and require compliance with the above nondiscrimination provisions in any subletting or subcontract made with respect to use of the Premises under this Agreement.

XIX. ALASKA LAW

The parties agree that this Agreement was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Agreement shall be in the Superior Court for the State of Alaska Third Judicial District unless a nonwaivable state or federal law requires otherwise.

XX. BINDING ON SUCCESSORS AND ASSIGNS

All provisions of this Agreement shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

XXI. COMPLETE AGREEMENT

This Agreement, including Exhibit A hereto, and the Terminal Operation Contract, both dated August 1, 2018, between APL and the City, constitutes the final agreement between

the parties. They are the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by the aforementioned agreements.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date or dates indicated beneath the signature of their respective officers or agents.

City of Kodiak

American President Lines, LLC

Mike Tvengen 8-9-2018
Mike Tvengen, City Manager Date

Edward Aldridge 8/4/2018
Edward Aldridge Date
President North America

ATTEST:

ATTEST:

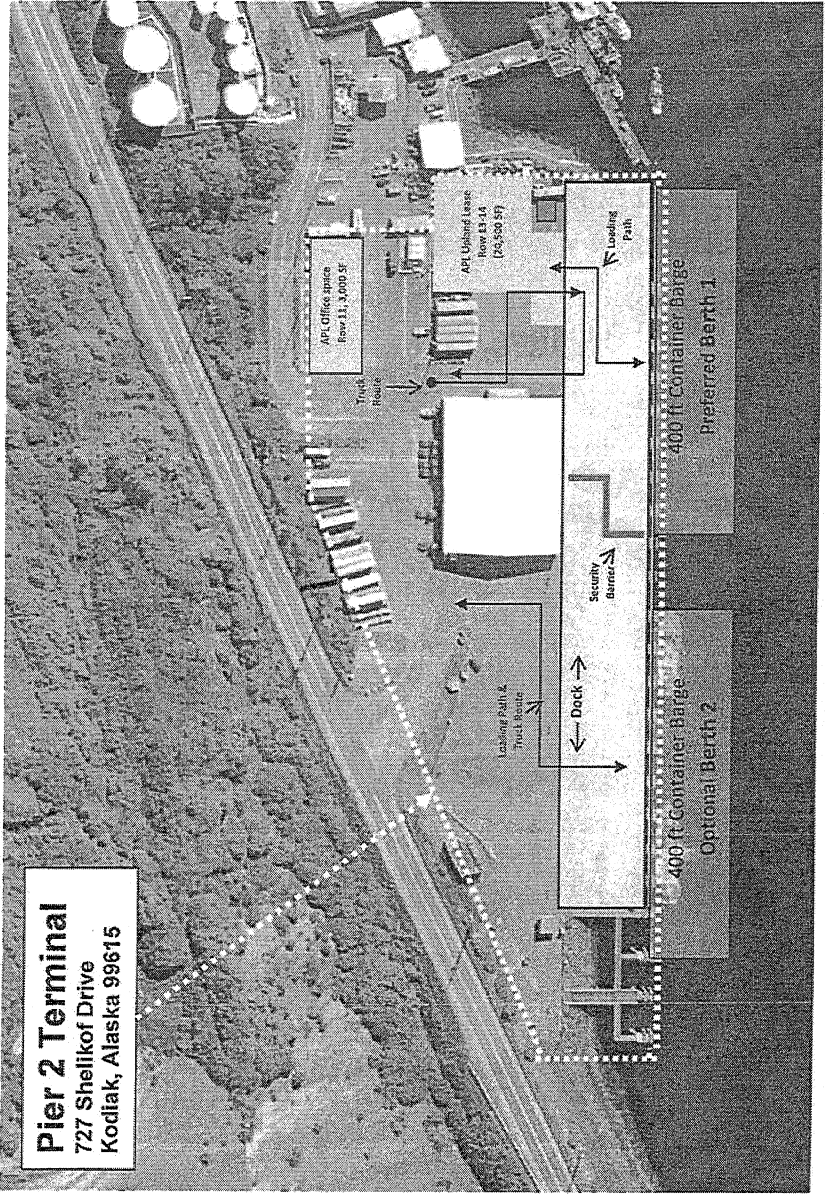
Debra L. Marljar 8/9/18
Debra L. Marljar Date
City Clerk

Shirley Wang 8-2-2018
Shirley Wang Date
Executive Assistant

Pier II Use and Upland Lease Agreement,
Exhibit-A: Terminal Operation Contract, American President Lines, LLC

10/17/18 MS

Pier 2 Terminal
 727 Shellkof Drive
 Kodiak, Alaska 99615



NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager *MT*

Thru: Nanci Sharratt, Human Resource Manager

Date: November 8, 2018

Agenda Item: **V. a. First Reading, Ordinance No. 1383, Amending Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, And 19 of the City Personnel Rules And Regulations; Amending the Definitions in the City Personnel Rules And Regulations; and Amending Kodiak City Code 2.08.065 Deputy City Manager-Appointment, Powers, And Duties**

SUMMARY: For the last few years, a comprehensive review and update to the City of Kodiak's Personnel Rules and Regulations Manual (the PR&R) has been consistently identified by employees and department heads alike as being a critical need. City staff with attorney Leslie Longenbaugh began drafting the amendments to the PR&R manual. Council has reviewed the amendments, and at the October 23, 2018, work session, there was discussion of the final changes to be made and direction to introduce by ordinance at the next regular Council meeting.

PREVIOUS COUNCIL ACTION:

- On January 9, January 23, April 24, August 7, September 25, October 9, and October 23, 2018, Council reviewed PR&R amendments at their work session and made recommendations to staff for further and final amendments.

BACKGROUND: The first "Personnel Regulations" manual for the City of Kodiak was adopted in 1971, specifically to codify personnel policies and practices, and to make these available to the public upon request. This initial manual was significantly revamped in 1984 when the original Personnel Regulations Manual was rescinded and a new Personnel Rules and Regulations Manual adopted in its place. Since 1984 a total of 49 ordinances have made small changes to the PR&R. The most recent amendment (Ord. No. 1357) occurred in October 2016 after the affirmative public vote for City employees to organize under the Public Employment Relations Act.

It is important for the City of Kodiak to maintain an up-to-date personnel manual, both in terms of revising the PR&R to clarify sections for ease of interpretation and applying these regulations in a consistent manner across City departments, and to stay up-to-date with changing Federal and State laws and regulations as well.

DISCUSSION: Personnel Rules and Regulations amendments include changes to the following Chapters:

- Chapter 2, Responsibility and Authority
- Chapter 3, Position Classification
- Chapter 4, Salary Administration
- Chapter 5, Recruitment
- Chapter 6, Selection
- Chapter 7, Performance Evaluation
- Chapter 8, Employee Development
- Chapter 9, Grievance Procedure
- Chapter 10, Annual and Combined Personal Leave
- Chapter 11, Leave for Illness or Injury
- Chapter 12, Holidays with Pay
- Chapter 13, Separations
- Chapter 14, Special Provisions
- Chapter 15, Safety and Health Protection
- Chapter 16, Fire Department Shift Personnel
- Chapter 17, Employee Organizations
- Chapter 18, Federally Mandated Alcohol and Drug Testing
- Chapter 19, General Alcohol and Drug Testing

All the PR&R Chapter changes are identified in Microsoft Word track changes (~~Deleted Language~~, Added Language) to Ordinance No. 1383 (Attachment A):

CITY MANAGER'S COMMENTS: As stated above, there have been numerous changes to the previous PR&R; however, this is an update of a greater magnitude. This employee manual includes input by attorneys, council, and staff. I believe we have addressed each chapter in detail and are proud to move this forward.

ATTACHMENTS:

Attachment A: Ordinance No. 1383

PROPOSED MOTION:

Move to pass Ordinance No. 1383 in the first reading and advance to second reading and public hearing at the next regular or special meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1383**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING CHAPTERS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, AND 19 OF THE CITY PERSONNEL RULES AND REGULATIONS; AMENDING THE DEFINITIONS IN THE CITY PERSONNEL RULES AND REGULATIONS; AND AMENDING KODIAK CITY CODE 2.08.065 DEPUTY CITY MANAGER-APPOINTMENT, POWERS, AND DUTIES

WHEREAS, per the Kodiak City Code, it is necessary to amend the Personnel Rules and Regulations through an ordinance of the Council of the City of Kodiak; and

WHEREAS, the City has established the position of Deputy City Manager; and

WHEREAS, the Deputy City Manager position has been clarified to provide consistency in both the City Code and Personnel Rules and Regulations.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: The following sections in Chapter 2 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 2 of the Personnel Rules and Regulations is retained in its current form.

101 AUTHORITY

The following policies and procedures are promulgated under the authority of Ordinance Number 734 of the City of Kodiak, pursuant to Personnel Rules and Regulations are adopted by Ordinance and in compliance with Article IV, Section 1 of the City Charter.

102 PURPOSE

It is the purpose of this manual to establish a system of uniform personnel policies and procedures that shall improve the quality of personnel administration consistent with such merit principles as:

- (a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills including open consideration of qualified applicants for initial appointment;
- (b) providing equitable and adequate compensation;
- (c) training employees, as needed, to assure high quality performance;
- (d) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
- (e) assuring fair treatment of applicants and employees in selection, promotion, training, and all other aspects of personnel administration without regard to political

affiliation, race, color, religion, sex, national origin, ~~gender~~, age, disability, genetic information, or ~~religious creed~~ any other protected class provided for in federal, state, and local laws and with proper regard for their privacy; and

- (f) assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

103 SCOPE

The scope of this manual includes a compilation of policies and procedures for personnel administration of all non-elected employees of the City, except the City Manager and City Clerk if under agreement or other provisions approved by Council. (Ord. 1307, 2013; Ord. 1038, 1996)

104 AMENDMENTS

Amendments to this manual of personnel policies and procedures shall be made by ordinance only. The pages so affected shall be typed by the City Clerk, upon passage of each ordinance, and copies distributed to each employee for insertion and/or replacement in their copies of the personnel regulations manual.

203 RESPONSIBILITY AND AUTHORITY

203.1 Personnel Board. The Personnel Board shall have the responsibility and authority to:

- (a) elect a chairman at the time prescribed for the beginning of the term of a newly-appointed member;
- (b) meet as often as necessary to hear grievances filed by City employees (see Section 904);
- (c) following the hearing of a grievance, render an advisory opinion based on its findings to the City Manager, with a copy to the aggrieved employee;
- (d) when requested by the City Manager, review and make recommendations on other personnel issues; and
- (e) submit an annual report to the City Council.

(Ord. 958, 1993)

203.2 City Council. The City Council shall have overall responsibility and authority through the City Manager for personnel matters including, but not limited to, the following:

- (a) appoint members of the Personnel Board;
- (b) assign such additional duties to the Personnel Board as it deems appropriate;
- (c) approve the City's budget, including requests for personnel management funds; and
- (d) approve, disapprove, or amend personnel policies and procedures.

(Ord. 958, 1993)

203.3 City Manager. The City Manager or designee shall have the responsibility and authority to:

- (a) administer the personnel policies and procedures as approved by the City Council;

- (b) establish and maintain records of all employees in the City service, which shall include all pertinent personnel records (departments may retain copies of those personnel records necessary to comply with regulatory agencies, but originals of all records shall be maintained in the City Manager's office, and upon employee termination, all departmental records shall be forwarded immediately to the primary file);
 - (c) administer the employee performance evaluation program, and advise and assist employees, rating officers, and reviewing officers to assure that performance evaluation procedures follow the provisions of Chapter 7;
~~develop and administer an affirmative action program to provide for equal opportunity in all aspects of City personnel administration;~~
 - (d) foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employees' effectiveness and productivity, including training, safety, health, counseling, and welfare;
 - (e) maintain the classification and pay plans;
 - (f) administer the City's recruitment and selection program except for staff identified below under heading 203.6 City Clerk; (Ord. 1090, 1999)
 - (g) ~~ensure~~ ~~insure~~ insure uniformity in the application of discipline and processing of employee grievances;
 - (h) appoint and dismiss all employees under the department heads' jurisdiction other than staff identified below under heading 203.6 City Clerk;
 - (i) prepare and adopt such forms, reports, and procedures as may be necessary to carry out the City's personnel program;
 - (j) establish personnel policies and procedures where needed ~~in order~~ to ensure consistency with state and federal requirements, and to provide a more precise and consistent execution of the Personnel Rules and Regulations, and develop and administer an affirmative action program to provide for equal opportunity in City personnel administration;
 - (k) appoint and dismiss all City personnel except those appointed by the Council as stated in the Charter and those identified below under heading 203.6 City Clerk;
 - (l) notwithstanding any of these policies and procedures may, in an emergency, request interdepartmental assistance be provided; and see that adopted changes to the Personnel Rules and Regulations and changes to position descriptions are distributed in writing to all affected employees in a timely manner.
- (Ord. xxxx, 2018; Ord. 1322, 2014; Ord. 1307, 2013; Ord. 958, 1993)

~~—203.4 Deputy City Manager. The Deputy City Manager shall have the responsibility and authority to:~~

~~—(a) serve as the deputy chief administrative officer and , senior manager, and department head of the administrative branch of the City government, who reports to the City Manager;~~

~~—(b) oversee all human resource functions and assist the City Manager in administering all aspects of the City’s human resources program including the maintenance of personnel records;~~

~~—(c) enforce the Personnel Rules and Regulations;~~

~~—(d) assist department heads and the City Manager in making all hiring, **termination,** and disciplinary recommendations;~~

~~—(e) perform functions of the City Manager when assigned.~~

(a) There shall be a deputy city manager who shall be appointed for an indefinite term by the city manager.

(b) The deputy city manager shall:

(1) Serve as the deputy chief administrative officer who reports to the city manager;

(2) Assist the city manager in providing administrative oversight of daily operations of the city, ensuring implementation of and adherence to policies;

(3) Ensure organizational compliance with applicable laws, codes, regulations and standards and provide direct management and oversight of assigned functional areas;

(4) Assist the city manager in administering the city’s human resources program;

(5) Assist department heads and the City Manager in making hiring, dismissal, and disciplinary recommendations;

(6) Provide oversight and participate in the development and implementation of short and long range strategic plans, programs, policies and procedures for the city;

(7) Research, analyze, prepare and present management studies, reports, plans, resolutions, ordinances and other information as directed by the city manager;

(8) Manage and participate in project activities as assigned by the city manager; and

(9) Perform functions of the city manager and other duties when assigned.

(Ord. xxxx, 2018; Ord. 1322 §2, 2014)

203.5 Department Heads. Department heads shall have the responsibility and authority to:

(a) enforce the Personnel Rules and Regulations;

(b) keep employees in their departments informed of current personnel policies and procedures;

- (c) participate in the grievance procedures as specified (see Chapter 9);
 - (d) if approved by the City Manager, appoint employees to vacant positions within their respective departments in accordance with established personnel rules, and procedures;
 - (e) develop training programs for employees within their respective departments;
 - (f) under the supervision of the City Manager, administer discipline within their respective departments;
 - (g) conduct orientation for all new employees in their departments, and ~~have issued to each a copy of~~ the current personnel regulations and position description ~~which~~ that outlines job duties; ~~such~~ the orientation shall include topics such as introductions to fellow workers, work standards, safety regulations, break periods, supplies, etc.; and
 - (h) under the direct supervision of the City Manager, be involved in the appointment or dismissal of departmental employees ~~under the department head's jurisdiction.~~
- (Ord. xxxx, 2018; Ord. 1322, §2, 2014; Ord. 1307, 2013)

203.6 City Clerk. As the head of the Clerk's department, the City Clerk shall have the responsibility and authority for all personnel matters pertaining to employees in the Clerk's department, including to:

- (a) enforce the Personnel Rules and Regulations;
 - (b) keep employees in the Clerk's department informed of current personnel policies and procedures;
 - (c) participate in the grievance procedures as specified (see Chapter 9);
 - (d) recruit and appoint employees to vacant positions within the Clerk's department in accordance with established personnel rules and procedures;
 - (e) develop training programs for employees within the Clerk's department;
 - (f) administer discipline within the Clerk's department and delegate such authority to supervisory personnel as deemed appropriate;
 - (g) conduct orientation for all new employees, and have issued to each a copy of current personnel regulations and position description which outlines job duties; such orientation shall include introductions to fellow workers, work standards, safety regulations, break periods, supplies, etc.;
 - (h) exercise ~~have~~ discipline and dismissal authority over all-employees in the Clerk's department;
 - (i) classify positions in the Clerk's department, subject to approval of the City Council.
- (Ord. xxxx, 2018; Ord. 1322, §2, 2014; Ord. 1268(SUB) §3, 2013; Ord. 1090, 1999)

203.7 Supervisory Personnel. Supervisory personnel shall have the responsibility to:

- (a) implement personnel policies, rules and regulations in the units under their supervision;
- (b) supervise the administration of discipline to employees under their supervision and recommend dismissal ~~termination~~ when appropriate (see Sections 708 and 1303);
- (c) train new employees and participate in the development of other employees;
- (d) evaluate employee performance and participate in the development of position descriptions (see Chapter 7); and
- (e) participate in the grievance procedures as specified (see Chapter 9).

(Ord. 1322, §2, 2014; Ord.1307, 2013)

203.8 All Employees. Employees of the City shall receive ~~be presented with,~~ and sign for, a copy of the personnel rules in effect on the hiring date, and ~~subsequently~~ shall have the responsibility to:

- (a) read and understand these rules and ask the immediate supervisor to explain these rules if questions arise;
- (b) understand the function of the department assigned and how that function relates to the total mission of the City and all of its departments;
- (c) discuss with the immediate supervisor any questions relating to the interpretation or application of these rules either informally or formally through the grievance procedure;
- (d) bring to the attention of the immediate supervisor any change in duties as outlined in the position description form given to the employee at hiring;
- (e) submit in writing recommended changes to the rules through the appropriate supervisory channels to the City Manager; and
- (f) ~~all employees shall~~ have access to their personnel files.

(Ord. xxxx, 2018; Ord. 1322 §2, 2014; Ord. 1307, 2013; Ord. 958, 1993)

Section 2: The following sections in Chapter 3 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 3 of the Personnel Rules and Regulations is retained in its current form.

302 PURPOSE OF THE CLASSIFICATION PLAN

The Classification Plan is a management tool that consistently facilitates pay determination decisions with regard to the mission, philosophy, and needs of the organization. It is critical to the effective administration of personnel activities such as:

- (a) workforce ~~manpower~~ planning and budgeting;
- (b) establishing job performance standards; and
- (c) establishing fair and equitable pay.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038 §3, 1996)

303 DEVELOPMENT AND ADMINISTRATION

The City Manager shall have authority for the overall administration of the classification plan except for staff identified under the heading 203.6 City Clerk.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1268(SUB) §4, 2013; Ord. 1090, 1999)

303.1 Allocation of Positions. The City Manager shall analyze and evaluate the duties, responsibilities and qualifications required of each position in the classified service and then allocate each position to the appropriate band, grade, and sub-grade. Any employee who is dissatisfied with the allocation of ~~his~~ their position may ~~shall be given the opportunity to~~ appeal the allocation.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038 §4, 1996)

303.2 Maintenance of the Classification Plan. The City Manager shall periodically review the entire classification plan or any part thereof. The purpose of such review shall be:

- (a) to ascertain whether ~~or not~~ the plan accurately reflects existing conditions;
- (b) to determine the accuracy of position specifications; and
- (c) to assure that positions are properly graded.

The City Manager shall recommend to the Council updates to ~~changes needed in the~~ classification plan ~~to the Council~~ as needed ~~to keep it up to date.~~

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038 §4, 1996)

303.3 Position Descriptions. Position descriptions shall be developed and finalized by the City Manager and supplied to City departments for all authorized positions.

303.4 New Positions. When a new position is proposed, the department head shall ~~be required to~~ provide the City Manager with a written proposal to include ~~with financial information on~~ the cost to fill the proposed ~~such a~~ position. The City Manager, ~~who~~ shall determine the proper band, grade, and sub-grade, and ~~prepare a new~~ develop a corresponding position description, ~~if an appropriate description does not exist.~~

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038 §4, 1996)

303.5 Reorganization of Department. Whenever reorganization of a department or action of the City Council causes the duties of a position to change or a position appears to have been incorrectly allocated the City Manager shall, at the request of the department head or a regular employee affected by the reclassification, investigate the duties of the position in question. After conferring with department officials and the employee involved, and reviewing all relevant data, the City Manager shall recommend to the Council any major reclassification of the position to the appropriate salary grade. Reclassification shall not be used to avoid the provisions of the personnel rules dealing with layoffs, demotions, promotions, or dismissals.

(Ord. 1038 §4, 1996)

303.6 Position Review. Each position in the City service shall be reviewed by the City Manager at intervals to ascertain whether it is correctly classified. ~~When a review results in a recommended change in the grade for a position, the evaluation of the position shall be made part of the public record when the recommendation is submitted to the Council.~~

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1275, 2010)

303.7 Effective Date of Change. Classification changes shall take ~~become~~ effective on the effective date of the enacting ordinance.

(Ord. xxxx, 2018; Ord. 1307, 2013)

Section 3: The following sections in Chapter 4 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 4 of the Personnel Rules and Regulations is retained in its current form.

401 PAY PLAN

The pay plan shall include schedules of pay for ~~twenty~~ pay bands, grades, and sub-grades ~~from A11 through E84~~, each with a ~~minimum, midpoint, and maximum~~ rate of pay for all positions in the classified service. The objectives of the pay plan shall be to:

- (a) provide an appropriate salary structure to recruit and retain an adequate number of competent employees; and
 - (b) provide appropriate pay incentives for high employee productivity.
- (Ord. xxxx, 2018; Ord. 1322 §3, 2014; Ord. 1307, 2013; Ord. 1038, 1996)

405 ENTRANCE PAY RATE

The entrance pay rate for regular full- and part-time employees shall be the minimum rate in the corresponding band and grade for the position. At the City Manager's discretion, advertising and hiring for positions above the minimum rate of the corresponding band and grade for such positions may occur. Approval of appointments above the minimum pay rate may be granted only when a recommended applicant exceeds the minimum requirements for the position with regard to directly related education and/or experience. In such instances, the department head shall provide a written hiring recommendation to the City Manager, ~~in writing~~ documenting the applicant's qualifications for a higher starting pay rate. ~~In no instance, shall an entrance pay rate exceed the first quartile of the band and grade except at the department head level.~~ The pay rate for temporary employees shall be the minimum point for the appropriate band and grade of the position in which the temporary worker is being hired. All temporary appointments are subject to the approval of the City Manager.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

406 MERIT STEP INCREASE

406.1 Regular Merit Step Increases. Regular full-time employees will be eligible for an annual merit increase based on satisfactory performance on their anniversary date of ~~2-~~ 2.5%, or as authorized in the adopted fiscal year budget. An employee who has transferred or been promoted to a new position must serve a probationary period and will be eligible for a merit based increase on the anniversary date in the new position. If a department head ~~feels~~ finds that an employee has not demonstrated satisfactory service of a progressively greater value to the City during the annual performance review period, the department head may, upon approval of the City Manager, suspend the merit step increase for a period of time during which certain specific improvements must be made. Notice of such deferral and reasons for it shall be given to the employee in writing ~~prior to~~ before the end of the anniversary year. The suspended step increase may be approved at any time during the extended period if the department head believes the employee has achieved satisfactory improvement and the City Manager agrees. ~~The~~ A suspended merit step increase is *not* retroactive when finally given (see Section 705).
(Ord. 1307, 2013)

406.2 Special Merit Increase. A ~~s~~Special ~~m~~Merit ~~i~~increase may be granted to an employee for outstanding performance ~~in recognition of extraordinary service to the City of Kodiak and/or its residents outside the employee's normal or expected job duties, when~~

documented in writing by ~~their~~ the employee's department head and approved by the City Manager. ~~—when justified in writing by the department head to the City Manager. This increase is in addition to normal merit increases and does not affect the anniversary date. Department heads may recommend employees for special merit increases in recognition of extraordinary service to the City of Kodiak and/or its residents that is outside the employee's normal or expected job duties.~~ Additionally, employees will be eligible for special merit increases when they receive eligible certifications and/or qualifications. ~~— A list of these~~ such eligible certifications and qualifications will be maintained by the Human Resource office and reviewed and approved annually by the City Manager.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1061, 1998)

407 REGULAR PART-TIME EMPLOYMENT

Regular part-time employees shall be compensated on an hourly basis equivalent to the hourly rate established for regular full-time employment for the actual number of hours worked in each period. ~~Appointment~~ A Part-time employee shall be in probationary status until the employee has worked a total of 1,040 hours ~~or the equivalent number of probationary hours for that position have been worked.~~
A merit step increase shall be awarded (if performance is satisfactory) when hours worked have a cumulative total equivalent to the intervals listed in Section 406.1, based on an equivalence of 2,080 to a full-time employment year. If work performance is unsatisfactory, management shall take action as described in Section 406.
(Ord. 1307, 2013; Ord. 1038, 1996; Ord. 1008, 1995)

408 TEMPORARY EMPLOYMENT

Temporary employment is for short-term periods, not to exceed six ~~(6)~~ months, or for work on an irregular basis. A person appointed to a temporary position or hired temporarily to replace an absent employee, is not eligible for any ~~fringe~~ benefits and the Personnel Rules and Regulations do not apply to temporary employees. ~~Probationary periods shall not be served, and such persons are not eligible for special merit increases, do not have access to the grievance process, nor will temporary employees be considered as internal applicants.~~
(Ord. xxxx, 2018)

409 PAY RATE ADJUSTMENTS

The following personnel actions shall affect the pay status of an employee in the manner described.

409.1 Transfers. When an employee is transferred from one position to another in the same band and grade in which the employee has never held regular status, the City Manager will decide probationary status ~~and step placement.~~
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

409.2 Promotion. When an employee is promoted from one position to another having a higher salary band and grade, the employee shall receive 5% ~~an~~ increase in pay ~~of not less~~

~~than~~ 5%. If the employee's current rate of pay is below the minimum for the higher salary grade, the pay shall be increased 5% or the minimum of the higher salary band and grade, whichever is greater. If the employee's current rate of pay falls within the matrix of the higher salary grade, the pay shall be increased 5% above the current pay rate. The anniversary date shall change to the effective date of promotion.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

409.3 Demotion and Demotion for Cause.

- (a) When an employee is demoted for administrative purposes, the department head will work with the City Manager to decide probationary and pay status ~~and step placement~~.
- (b) When an employee is demoted for cause, the City Manager will decide probationary and pay status ~~and step placement~~.
- (c) When an employee accepts a voluntary demotion, the employee's pay will be adjusted according to the band and grade for the new position.

(Ord. xxxx, 2018)

409.4 Reinstatement.

- (a) Reinstatement of regular ~~full-time~~ employees who have resigned: no preferential pay treatment will be given to reinstated employees. The principles of job classification and equal pay for equal work which includes work experience, shall apply as if to a new employee.
- (b) Resignations of a special nature such as, but not limited to, family illness or education leave (up to two ~~(2)~~ years with prior approval of the City Manager) have reinstatement rights according to arrangements in writing at the time of resignation, and if the position is available. Probationary periods will apply as described in Section 606.3.

409.5 Reinstatement of Veteran. A regular ~~full-time~~ City employee who returns from military leave shall be reappointed in accordance with ~~the United States Code Annotated Title 50, War and National Defense Military Selective Service Act of 1967; Section 459, Separation from Service (a),(b),(c),(f), and (g)~~ the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. 4301 et seq. If the return is in accordance with USERRA ~~the Act~~, the employee is entitled to reinstatement into the position held ~~prior to~~ before military leave, or into one as nearly like it as possible.

409.6 Layoff. When a regular ~~full-time~~ employee following layoff is re-employed in the same position from which the layoff occurred, re-employment shall be in the same pay status ~~step~~ occupied at the time of layoff. When the employee is re-employed in a position ~~having~~ with a different salary band and grade, the rate of pay shall be assigned accordingly.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

410 COMPENSATION DURING TEMPORARY ASSIGNMENT

A regular ~~full-time~~ employee who is temporarily assigned to a position with a higher paid band and grade for a period of ~~fifteen (15)~~ calendar days or more shall be granted a ~~five (5%)~~

percent pay increase for the full period worked in the temporary assignment. A regular full-time employee who is temporarily assigned to a position with a lower pay band and grade for any period shall not receive a reduction in pay. No temporary assignment shall exceed six (6) months.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1008, 1995)

411 HOURS OF WORK

Unless a different schedule is established in accordance with the second paragraph of this section, regular working hours of City employees shall consist of 40 hours a week on a consistent schedule. The standard work week shall consist of the period from midnight Sunday to the following midnight Sunday. The standard work day shall consist of the period from midnight to midnight. Unless otherwise provided, the hours of regular employment for City employees shall be from 8 a.m. to 5 p.m., with an hour for lunch. For absence from an employee's regular work duties for training purposes, see Subsection 1014.3. For Fire Department employees working the platoon system see Subsection 1605(a).

Different schedules may be established and altered by department heads with approval of the City Manager. Temporary shifting of employees' working hours and/or locations to meet routine needs shall be done as necessary and approved by the department head. The department head will inform the employee of shift changes at least one week prior in advance; provided that ~~I in unforeseen or unavoidable circumstances, the department head may inform employees of upcoming changes may occur less than one week prior to before their new shift change. , or as far in advance as possible.~~

(Ord. xxxx, 2018; Ord. 1061, 1998; Ord. 804, 1987)

412 OVERTIME

An employee classified as non-exempt under the federal Fair Labor Standards Act, 29 USC §201 *et seq.*, shall be paid for overtime hours as provided in Section 412.1. Hours not worked during a City holiday, or while an employee is on annual leave or sick leave, are not considered hours worked for the purpose of determining whether the employee is entitled to overtime pay. All overtime worked must have the approval of the department head prior to before its performance ~~except in emergencies which prevent prior authorization, and shall be paid in accordance with applicable state or federal laws. If emergency overtime is worked, the department head shall see that it is accurately and timely recorded.~~ Emergency overtime constitutes emergency call-outs that occur outside normally-scheduled shift hours due to critical life, health, safety, and/or asset protection issues that require a physical response to a scene and must be addressed immediately. ~~Any such emergency call-outs will result in a mandatory minimum of two hours of overtime pay. If an employee is called back a second time while still being paid under the minimum call back, the employee will not be entitled to additional compensation until the minimum call back time has been completed.~~

All overtime records are subject to review by the City Manager. Overtime shall be scheduled as fairly and equally as practical among employees, based first on qualifications to perform the work and, secondly, on seniority.

(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1061, 1998; Ord. 869, 1989)

412.1 Overtime Pay. An employee shall receive overtime pay as follows:

- (a) except as provided in (b) and (c) below, an employee is paid at one and one-half times the employee's regular pay rate for hours worked in excess of ~~forty (40)~~ hours in a standard work week, or in excess of eight ~~(8)~~ hours in a standard work day, as each is defined in Section 411;
- (b) ~~while working in the Fire Department platoon system under Section 1605, an~~ employee will receive overtime pay only as provided in subsection 1605(c); and
- (c) an employee is paid for hours worked on a City holiday only as provided in Section 412.2, "Holiday Pay."

(Ord. 1275, 2010)

412.2 Holiday Pay. For purposes of calculating compensation, a holiday is an eight ~~(8)~~-hour period. All regular employees shall receive eight ~~(8)~~ hours of regular pay for each day designated a holiday by the City and shall, in addition, be compensated for all hours of scheduled and unscheduled work on a holiday, at their regular rate of pay (see Chapter 12). (For application to Fire Department platoon system, see Section 1604.)

412.3 Exceptions for Shift Rotation. An exception to overtime pay for work over eight hours in a ~~twenty-four (24)~~ hour period is that no overtime will be paid for shift rotation, provided the employee has had ~~there has been time off of~~ at least ~~twelve (12)~~ hours off work between the shifts.

412.4 Shift Differential.

- (a) "Shifts" apply only to those departments that work "around the clock" or ~~twenty-four (24)~~ hours a day.
- (b) For shifts that are normally scheduled to be eight hours per day, the term "swing shift" is hours worked between 4:01 p.m. and 12:00 a.m. ~~defined as one that starts between 12:01 p.m. and 7 p.m.~~ The term "graveyard shift" is hours worked between 12:01 a.m. and 8:00 a.m. ~~defined as one that starts between 7:01 p.m. and 5 a.m.~~ The term "regular shift" is hours worked between 8:00 a.m. and 4 p.m. ~~defined as one that starts between 5 a.m. and noon.~~
- (c) For shifts that are normally scheduled to be twelve hours per day, the term "overnight shift" is hours worked between 6:00 p.m. and 6:00 a.m. ~~defined as one that starts between 5:01 p.m. and 5:00 a.m.~~ The term "regular shift" is hours worked between 6 a.m. and 6 p.m. ~~defined as one that starts between 5:01 a.m. and 5:00 p.m.~~
- (d) ~~The~~ An employee who works ~~the~~ a swing shift shall receive ~~four (4) percent~~ 4% additional pay, plus ~~to~~ the regular salary, for the hours worked on swing shift.
- ~~—(e)The~~ An employee who works ~~the~~ an overnight shift shall receive ~~five (5) percent~~ 5% additional pay, plus ~~to~~ the regular salary, for the hours worked on overnight shift.
- (f) ~~The~~ An employee who works ~~the~~ a graveyard shift shall receive ~~six (6) percent~~ 6% additional pay, plus ~~to~~ the regular salary, for the hours worked on graveyard shift.
- (g) For ~~twenty-four (24)~~ hour shifts (platoon system) see Chapter 16.

(Ord. 1082, 1998)

413 CHANGING PAY GRADE ASSIGNMENTS

When a position is re-evaluated and changed to a different band and grade, the base rate of employees occupying positions of that salary grade shall be adjusted as follows:

413.1 Reclassified to Higher Grade. If the position is re-evaluated and assigned to a higher salary grade, all employees in positions affected shall have their base rates increased 2.5% or the minimum of the new band and grade placed at the first step of the higher grade, whichever is greater, ~~not to exceed the maximum of the new band and grade.~~

414 RETIREMENT

The City has in effect a retirement plan for all eligible City employees as set forth ~~under~~ by City Council Resolution ~~Number 11-70~~.

415 INSURANCE AND MEDICAL BENEFITS

415.1 Group Life Insurance. The City of Kodiak will pay all City group life insurance premiums for its regular, ~~full-time~~ employees working 30 or more hours per week.

415.2 Group Health Insurance. The City of Kodiak will pay City group health insurance premiums for its regular, ~~full-time~~ employees working 30 or more hours per week at the coverage costs in effect July 1 each year, as provided for in the adopted budget.

~~(a) Any increases in premium costs over prior year amounts which are attributable to medical inflation or other factors apart from claims experience and so identified by the insurer will be borne by the City.~~

~~(b) Any increases in premium costs over prior year amounts which are attributable to claims experience and so identified by the insurer will be borne by the employees as a group.~~

~~(c) The intent of this section is to abolish a two-tier system that formerly provided different levels of coverage for employees hired before or after April 1, 1992.~~

(Ord. xxxx, 2018; Ord. 1130, 2001; Ord. 1088, 1999; Former Section 419 repealed and replaced by Ord. 1061, 1998; Ord. 959, 1993; Ord. 931, 1992)

416 EFFECTIVE DATE OF CHANGES IN PAY

Effective date of personnel actions implementing classification, reclassification, regular and special merit increases, promotions, demotions, and reinstatements shall be the effective date of change. Nothing in this section shall prohibit retroactive pay approved by Council, or required because of administrative oversight or error and approved by the City Manager.

(Ord. 1061, 1998; Ord. 1024 §2, 1996.)

417 STAND-BY DUTY

~~See Subsection 1605(d).~~ Any ~~non-exempt~~ employee who is assigned standby duty status before any ~~scheduled normal-shift day~~ shall be paid at a rate equal to ~~five (-5) percent~~% of the employee's base hourly rate for every hour of such assigned standby duty. Standby pay will not be paid for regular hours worked, overtime, or call-out hours. Notwithstanding such standby pay, the ~~payment of compensations for time spent on standby duty status,~~ such time shall not be treated as hours worked within the meaning of the Fair Labor Standards Act and the associated regulations. (Ord. xxxx, 2018)

Section 4: The following sections in Chapter 5 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 5 of the Personnel Rules and Regulations is retained in its current form.

501 POLICY

It ~~shall be~~ the policy of the City of Kodiak to recruit and select the most qualified persons for positions in the City's service. To ensure that the policy is carried out, it shall be the responsibility of the City Manager (or, for staff identified in Section 203.6, the City Clerk) to:

- (a) conduct recruitment and selection ~~in an affirmative manner~~ to ensure open competition;
- (b) provide equal employment opportunity;
- (c) prohibit discrimination because of race, age, politics, religion, gender, national origin, mental or physical handicap, color, marital status, changes in marital status, pregnancy, parenthood, or any other non-merit factors; and
- (d) give preference to local hire when legally permissible ~~ever possible~~.

~~In the case of staff identified under the heading 203.6 4.5 City Clerk, responsibilities identified in this chapter shall be assumed by the City Clerk.~~
(Ord. xxxx, 2018; Ord. 1090, 1999)

502 RECRUITMENT

The City Manager shall develop and conduct an active recruitment program designed to meet current and projected staffing ~~manpower~~ needs. Recruitment will be tailored to the ~~various~~ salary grades of positions to be filled, and will be directed to all sources likely to yield qualified candidates.

(Ord. xxxx, 2018; Ord. 1038, 1996)

503 JOB ANNOUNCEMENTS AND PUBLICITY

~~In order to~~ With the goal of attracting an adequate number of candidates for present or anticipated vacancies and to permit successful competition with other employers, the City Manager will issue job announcements and otherwise publicize vacancies. ~~Job announcements shall be made clear and readable. They~~ Job announcements shall include the job title, salary range, job qualification requirements, and examination information (including

the time, place, manner of completing applications, and other pertinent information). Publicity for job vacancies shall be conducted for a sufficient period of time to ensure reasonable opportunity for persons to apply and be considered for employment. In any event, job vacancies shall be formally announced and posted on one or more public bulletin boards maintained by the City at least ~~ten~~ (10) working days ~~prior to~~ before the closing date for filing applications. The City Manager may also initiate continuous recruitment programs for ~~any number of~~ positions as appropriate. All job announcements shall be publicized first to all City employees at least five (5) working days ~~prior to~~ before being advertised publicly. If, in the judgment of the City Manager, an adequate number of candidates have applied for a given vacancy ~~prior to~~ before expiration of the period within which the job announcement is publicized first to all City employees, the vacancy shall be posted on one or more public bulletin boards maintained by the City, but need not be advertised through local newspapers or other public media. Nothing in this section shall be interpreted as limiting the City Manager's discretion or authority to advertise job vacancies in such public media as deemed appropriate, however. Furthermore, if, after expiration of the deadline for the submission of applications for any vacancy, the City Manager determines that it would be in the City's best interest to re-advertise the vacancy and extend the application period, the City Manager may do so. In such an event, the position need not be re-publicized first only to City employees and it shall be advertised through one or more local newspapers, and such other public media as the City Manager selects (see Section 603). (Ord. xxxx, 2018; Ord. 1038, 1996; Ord. 834, 1988)

504 APPLICATION FORM

All applications for employment shall be made on forms prescribed by the City Manager. Such forms shall require background information to include training, experience, and other pertinent information. All applications must be signed, and **accompanied by all requested supporting documentation.** ~~may be requested. and the City Manager shall require proof of statements.~~ The application shall state that the applicant understands that the signature constitutes certification of the accuracy of all information provided in the application, and false or misleading statements or information may result in rejection of the application or dismissal. Application forms shall comply with Equal Employment Opportunity Commission regulations.

(Ord. xxxx, 2018)

~~505 REJECTION OF APPLICANTS~~

~~The City Manager may reject any application which indicates that the applicant does not have the minimum qualifications established for the position. Applications may also be rejected if the applicant:~~

- ~~—(a) has deliberately falsified any information on the application form;~~
- ~~—(b) does not meet the legal age limits or other requirements established by State law; and~~
- ~~—(c) has established an unsatisfactory employment record of such a nature as to demonstrate unsuitability for the position.~~

Section 5: The following sections in Chapter 6 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 6 of the Personnel Rules and Regulations is retained in its current form.

601 DEVELOPMENT EVALUATION CRITERIA

The City Manager, or for staff identified in Section 203.6, the City Clerk, shall be responsible for developing realistic job-related evaluation criteria, in addition to the ~~requirements~~ criteria listed in Section 602, to provide a basis for determining a candidate's potential for successful ~~or highly successful~~ performance in the position. ~~Once established for a particular position, the evaluation criteria will remain the same for subsequent filling of that position, unless there is a change in duties or if placement follow-up indicates need for revision. In the case of staff identified under the heading 203.6 4.5 City Clerk, responsibilities identified in this chapter shall be assumed by the City Clerk.~~
(Ord. xxxx, 2018; Ord. 1090, 1999)

602 MINIMUM EVALUATION CRITERIA

All of the following methods, and any designated by the City Manager ~~as described in~~ pursuant to Section 601, will be used in making meaningful distinctions among candidates:

- (a) evaluation of training and experience;
- (b) supervisory appraisals of performance and assessments of employee potential;
- (c) written and/or performance tests, if applicable;
- (d) awards presented to employees; and
- (e) self-development efforts ~~of employees which~~ that are job related and enhance the employee's potential.

Supervisory appraisals of performance will be obtained for all candidates, if they can be obtained in a timely manner. All applicants will be ranked according to the following categories:

- (a) ineligible;
- (b) qualified; and
- (c) best qualified. Best qualified ~~will consist of~~ are candidates who rank at the top when compared with other eligible candidates.

Normally, three to five of the best qualified group will be referred to the appointed selecting official. The selecting official will not refuse to make selections from this list without justifying such actions, indicating specific reasons for non-selection for each referred candidate. ~~Each candidate's~~The justification for selecting or not selecting each candidate ~~actions shall be kept~~ available for inspection and/or duplication, for a period ~~which need not exceed thirty~~ (up to 30) days, ~~in a file kept~~ in the City Manager's office. Each candidate will ~~only~~ be able to review ~~their~~ ~~his~~ only that candidate's own such justification ~~actions~~. All applicants shall be notified by the City of selection or non-selection within five (5) working days, if possible, after the decision has been made.

Upon the non-selection of all qualified applicants, the City Manager may decide to re-advertise or hold the position open for an indefinite time.

604 METHOD OF RATING

In all selection procedures, the minimum ratings with which eligibility may be achieved shall be set by the City Manager. A minimum or passing rating shall be established for all devices used in the selection process. The final rating shall be determined for applicants with passing ratings in accordance with the weight established for each device as ~~contained~~-set out in the job announcement.

605 RE-EMPLOYMENT LISTS

A ~~Regular~~-regular employees who is ~~are~~ involuntarily separated from the City service, as a result of layoff or reduction in force, shall be placed on a re-employment list for two years for the position they employee occupied at the time of separation. The order of ~~Names~~-names shall be placed on re-employment lists based, all other things being equal, shall be governed first ~~on~~ by performance and secondly ~~on~~ by length of classified service with the City. ~~The eligibility of an individual to remain on the re-employment list shall expire two (2) years from the date of separation from the City.~~
(Ord. 1038, 1996)

606 PROBATIONARY PERIOD

All employees, upon hiring, promotion, or demotion, shall serve a probationary period of at least six ~~(6)~~ months, but no more than ~~twelve (12)~~ months. Under unusual circumstances, exceptions may be authorized by the City Manager. If an employee takes leave without pay during the probationary period, the probationary period shall be extended by the length of leave without pay. Probationary employees must ~~obtain~~-receive at least a satisfactory performance rating at the completion of their probationary period in order to ~~obtain~~-attain regular status. New hires, not including promoted employees in probationary status, may be ~~terminated~~-dismissed at any time during their probationary period; Section 1307 does not apply to any such dismissal **with no recourse to the grievance procedure.**
(Ord. xxxx, 2018; Ord. 1008, 1995)

606.1 Promoted Employee Probationary. When it becomes clear that a regular ~~full- or part-time~~-employee serving a promotional probationary period is not performing adequately, the department head, in consultation ~~will work in conjunction~~-with the City Manager, will ~~to~~ inform the employee in writing of the performance issues. If demotion is found to be ~~necessary~~appropriate, the employee shall be demoted to a position in the previously held band and grade, and the employee's anniversary date shall remain unaffected;; ~~and the~~ such as demotion shall not be grievable. If no such position is available when it becomes clear that such promoted employee is not performing adequately, the employee may be treated as a post-probationary employee, including dismissal.

606.2 Demoted Employee Probationary. When a regular ~~full- or part-time~~ employee is demoted to a position where regular status was held previously, the employee returns to the ~~pay status step~~ previously held and no probationary period will be served. Where an employee is demoted to a position not held before, the department head shall decide subject to approval of the City Manager whether a probationary period shall be served. The employee ~~concerned~~ shall be notified in writing whether the appointment will be probationary ~~of the decision, in writing,~~ before demotion is ~~accomplished~~ occurs, and in either case the employee's anniversary date shall remain unaffected; such decision whether to make a demotion appointment ~~and the probationary demotion~~ is not grievable.
(Ord. xxxx, 2018)

606.3 Reinstated Employee Probationary. A regular ~~full-time~~ employee reinstated within two years ~~of~~ after separation may not be required to serve a probationary period unless rehired into a different position than previously served, or unless the employee did not complete the earlier ~~previous~~ probationary period ~~was not completed~~ in the position.
(Ord. 1307, 2013; Ord.1038, 1996)

606.4 Regular Part-Time Probationary. See statement in Section 407.

607 TEMPORARY EMPLOYMENT

Temporary employment ~~may~~ does not be counted toward a probationary period, and is not nor shall time be credited ~~for such~~ as time in service toward anniversary length of service dates, if temporary employees are later appointed to regular ~~full- or part-time~~ positions. Persons serving in temporary positions shall not be considered ~~as eligible~~ internal candidates when applying for a regular full- or part-time position. However, time served in a temporary capacity may be counted toward experience requirements in minimum qualifications for ~~the~~ a position ~~concerned~~.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

608 EMERGENCY EMPLOYMENT

Emergency employment, not to exceed ~~thirty~~ (30) calendar days, may be authorized by the City Manager without recourse to usual hiring procedures. Such appointments shall be made only in case of an unforeseen emergency and when necessary to prevent impairment of City services. Emergency hires are not entitled to any ~~fringe~~ benefits.

Section 6: The following sections in Chapter 7 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 7 of the Personnel Rules and Regulations is retained in its current form.

701 PURPOSE

The ~~primary purpose of the~~ employee performance evaluation program for regular ~~full- and part-time~~ employees is intended to inform employees how well they are performing and to

provide direction or advice on how work performance can be improved or corrected. Performance evaluations shall also be considered in decisions affecting salary advancement, promotions, demotions, dismissals, orders of layoff, orders of re-employment, placements, and training needs.

(Ord. xxxx, 2018; Ord. 1307, 2013)

702 PERIODS OF EVALUATION

Each regular employee in the classified service shall have performance evaluated at the following periods.

702.1 End of Probationary Period. Each regular employee shall be evaluated approximately ~~ten (10)~~ days ~~prior to the~~ before ~~completion~~ completing of the probationary period. The employee must ~~have~~ receive an overall evaluation of at least "satisfactory" ~~in order to~~ before becoming a classified employee (see also Section 406).

702.2 Annual. Each regular employee shall receive an annual performance evaluation approximately one ~~(1)~~ month ~~prior to~~ before the date of each potential merit step increase as scheduled in Subsection 406.1.

702.3 Special. A special performance evaluation shall be completed whenever:

- (a) there is a significant change either upward or downward in the employee's performance; and
- (b) a supervisor ~~permanently~~ leaves their ~~his~~ position. The supervisor shall complete a performance report on each employee under their ~~his~~ supervision who has not been evaluated within six ~~(6)~~ months ~~prior to~~ before the date the supervisor is to leave ~~their his~~ position.

(Ord. xxxx, 2018)

703 PERFORMANCE EVALUATORS

703.1 Rating Officer. The rating officer ~~shall be~~ is the employee's direct supervisor and ~~will~~ must have supervised the employee for not less than six ~~(6)~~ months. The rating officer shall be responsible for completing a performance evaluation report, which shall be reviewed and approved by the department head and City Manager or designee at the time prescribed for each employee supervised.

703.2 Review Officer. The reviewing officer shall be the rating officer's immediate supervisor or department head. The reviewing officer shall review the draft performance evaluation report before the report is sent to the City Manager and before it is presented to the employee. The reviewing officer shall consider the performance evaluations completed by the rating officer when evaluating the rating officer's performance.

~~In the case where~~ When the rating officer is the department head, the reviewing officer shall be the City Manager. ~~In the case where~~ When the City Manager or City Clerk is the rating officer, there shall be no review.

(Ord. 1307, 2013; Ord. 1090, 1999)

704 REVIEW OF PERFORMANCE REPORT

The rating officer shall discuss the performance evaluation report with the employee before the report is made part of the employee's ~~permanent record~~ personnel file. If the rating officer plans to recommend the denial of a merit step increase the report must be discussed and approved with the reviewing officer and the City Manager ~~prior to~~ before review with the employee (see Section 406).

(Ord. 1307, 2013)

705 UNSATISFACTORY EVALUATION

A regular employee who receives an overall rating of "unsatisfactory" on their annual evaluation shall not be eligible to receive a merit step increase until the employee successfully completes the assigned performance improvement plan- (see Section 406).

(Ord. 1307, 2013)

706 EMPLOYEE APPEAL PROCEDURE

Performance evaluations are not grievable.

(Ord. 1307, 2013)

707 KNOWLEDGE OF DISCIPLINARY ACTION REGULATIONS

All employees shall be informed of standards of performance and ~~personal~~ conduct, as well as ~~of City employees in various positions. Employees shall be acquainted with the various provisions of~~ for disciplinary ~~action regulations~~ ~~ense~~. All regular city employees shall be ~~given~~ receive a copy of the updated Personnel Rules & Regulations. A copy is always available in the Human Resource Manager's office and the City Clerk's office (~~see Sections 105 and 203.6~~).

(Ord. xxxx, 2018; Ord. 1307, 2013)

708 DISCIPLINARY ACTION ~~PROCEDURE~~

Whenever possible, disciplinary actions shall be a progressive system to maximize the opportunity for employees to correct adverse, incorrect, or inappropriate conduct and performance. Examples of behaviors and actions warranting disciplinary actions include but are not limited to: any conduct detrimental to the best interests of the City; inefficiency or unwillingness to perform duties; tardiness or absenteeism; neglect or failure to perform duties at an acceptable level of performance; insubordination; dishonesty, theft, or falsification of any report, record, or document; assault, fighting, threats, or horseplay; sleeping on the job or taking unauthorized breaks; possession or use of intoxicants or illegal drugs while on duty;

conviction of a felony for a crime that is job-related; reckless or willful damage to or loss of City property; violation of departmental rules of conduct or safety regulations; disrespectful conduct toward the public, or use of profane, abusive, or threatening language toward coworkers; sexual harassment; the use of racial or sexual slurs or innuendoes; and any other conduct that reasonably justifies the proposed form of discipline, up to and including dismissal.

When an employee's department head or supervisor determines disciplinary action is necessary for any employee, the department head or supervisor may begin discipline at any of the steps listed below. Steps 1 and 2 may be completed entirely within the department; steps 3 through 6 must involve and be approved by the City Manager.

- 1) Verbal Warning
- 2) Verbal Reprimand, with written note to personnel file
- 3) Disciplinary Action Memorandum
- 4) Suspension Without Pay
- 5) Demotion
- 6) Dismissal

The City Manager may begin with any step 1-6 depending on the severity of the offense committed. No dismissal may occur without written approval of the City Manager.

~~All disciplinary actions, oral admonitions and verbal warnings, shall be documented in writing in a Disciplinary Action Memorandum to the employee and placed in the employee's personnel file.~~ The employee shall be given an opportunity to read Verbal Reprimands and Disciplinary Action Memoranda. These documents ~~it~~ shall ~~then~~ be reviewed with the employee and a sincere effort shall be made to obtain agreement of the employee that the facts are stated correctly, that the inappropriate or incorrect behavior did occur, that it did represent behavior that should be disciplined, that the discipline is appropriate, and that the behavior will not be repeated. If errors are found, the Verbal Reprimand or Disciplinary Action Memorandum ~~Memoranda~~ shall be revised ~~done~~ and again reviewed with the employee. Comments of the employee shall be entered under that heading. The employee shall be requested to sign the memorandum and informed that the signature ~~only~~ indicates only agreement that the memorandum accurately reflects the discussion. If the employee refuses to sign the memorandum, the following statement shall be entered:

"(Employee's name) read the contents on (date) and refused to sign."

The Disciplinary Action Memorandum shall be reviewed and approved by the City Manager before being presented to the employee and placed in the employee's personnel file. A copy shall be given to the employee. The supervisor may, if necessary, complete reviews of the employee's progress in correcting the cause of the original action at three, six, and nine months (see Sections 406 and 702.2). These reports shall be made on the Performance Evaluation Report form. Twelve months after the Disciplinary Action Memorandum is approved ~~from date of the action concerned~~, the City Manager shall review the disciplinary action, and if no subsequent report of ~~similar~~ violations has been made, the department head

shall be notified to return departmental copies to the employee. The original shall be placed in a confidential folder and put in the employee's personnel file. It shall not be referred to again unless the employee is later subject to discipline again~~there is further trouble~~. All appeals from disciplinary action shall be initiated at Step 3 of the grievance procedure.

If it becomes necessary at any time to inform a regular ~~full or part-time~~ employee of impending demotion or dismissal ~~termination~~, such notice shall be in accordance with the disciplinary action procedure outlined above and coordinated through the City Manager's office. The notice shall be in writing with copies to the City Manager and the employee. ~~Such notice shall be for action other than a verbal admonition or verbal warning.~~
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 834, 1988)

709 RELIEF OF DUTIES

- (a) Upon approval of the City Manager, a department head may at any time suspend a regular ~~full or part-time~~ employee without pay for cause for a period not to exceed thirty (30) calendar days in any calendar year. ~~When an employee is behaving in an unsafe manner or creating an unsafe work environment, the department head may suspend the employee immediately, with pay, to maintain a safe working environment before consulting with the City Manager, and the department head shall inform and consult the City Manager as soon as the situation permits regarding this suspension.~~
- (b) Employees against whom charges are preferred may, at the discretion of the City Manager and department head, be suspended from duty with or without pay pending final disposition of charges. ~~No employee may be suspended without pay in the absence of a pre-decisional hearing.~~
- (c) A suspension under this section shall be recorded on a Disciplinary Action Memorandum. A Performance Evaluation Report form documenting the performance improvement plan shall be completed for any employee suspended without pay. Both documents shall be reviewed with the employee as soon as possible. Following the review, a copy shall be given to the employee and the original forwarded ~~immediately~~ to the personnel file.

(Ord. xxxx, 2018; Ord. 1307, 2013)

710 DEMOTION FOR DISCIPLINARY REASONS

An appointing authority may demote a regular ~~full or part-time~~ employee for disciplinary reasons in accordance with other provisions of these regulations. Demotion is considered as a more moderate penalty than dismissal and may be offered in lieu thereof, as approved by the City Manager, when mitigating circumstances warrant such leniency (see Section 409.3(b)).

(Ord. 1307, 2013)

711 DEMOTION WITHOUT PREJUDICE

Demotion without prejudice ~~shall~~ is not be considered a disciplinary action. With approval of the City Manager, an appointing authority may demote an employee in accordance with other provisions of these regulations for any of the following reasons:

- (a) ~~Despite appropriate effort, the employee does not demonstrate capacity to perform the essential functions of the position, with or without reasonable accommodation if indicated; and inability to perform duties adequately for reasons that are not the fault of the employee, such as, physical or functional disability, lack of necessary qualifications, or lack of aptitude;~~
- (b) Lack ~~layoff because of lack of work or funds, or~~ lead to abolition of position (when regular employees are laid off, the appointing authority shall consider the advisability of demoting to vacant positions at lower salary grades for which they are qualified); ~~and.~~
- (c) ~~personal reasons. There are a variety of reasons why an employee may wish to work in a position at a lower salary grade, such as personality conflicts, or transferring into another department where new experience and greater likelihood of advancement are available.~~

(Ord. xxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

~~712 ADMINISTRATION~~ *(this has been moved to Section 203.3 (c))*

~~The City Manager shall be responsible for overall administration of the employee performance evaluation program and shall advise and assist employees, rating officers, and reviewing officers to assure that performance evaluation procedures are handled in accordance with the provisions stated in this Chapter.~~

Section 7: The following sections in Chapter 8 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 8 of the Personnel Rules and Regulations is retained in its current form.

801 PURPOSE

The ~~purpose of~~ the employee development program ~~shall be~~ is intended to foster and promote the training and development of employees in order to:

- (a) improve the quality of services rendered to the City;
- (b) equip employees for career advancement within the City service; and
- (c) -provide a reservoir of occupational skills necessary to meet current and future employment needs.

802 DEVELOPMENT AND ADMINISTRATION

802.1 City Manager/City Clerk. The City Manager and City Clerk shall have overall responsibility for the development, administration, and coordination of the employee development programs under their respective supervision, and shall:

- (a) (in the case of the City Manager) assist the department heads in development and implementing employee development programs to meet the current and future needs of their departments and to increase employee efficiency;
- (b) conduct or coordinate employee development programs to meet the common needs of all departments;
- (c) maintain a file of current information and materials on job requirements, training opportunities, employee development manuals, and other employee development literature;
- (d) maintain a record of all training conducted and ensure that authorized employee development programs are properly administered;
- (e) periodically analyze and evaluate the ~~overall~~ development needs of employees within the City service;
- (f) assure that all employees receive equal consideration for appropriate training opportunities; and
- (g) assure that employee personnel files are updated upon successful completion of any employee development activities to ~~insure maximum~~ ensure fair consideration for placements, transfers, and promotions.

~~In the case of employee development relating to staff identified under the heading 203.4.5 City Clerk, these responsibilities shall be assumed by the City Clerk.~~ (Ord. xxxx, 2018; Ord. 1090, 1999)

802.2 Department Head. Department heads shall provide active leadership in developing the employees under their supervision. In this capacity, they shall:

- (a) cooperate closely with the City Manager in determining the current and future employee development needs in the department;
- (b) participate with the City Manager in developing and implementing employee development programs;
- (c) budget sufficient funds to secure needed career development programs;
- (d) assess the effectiveness of completed career development programs and make recommendations for improvement where appropriate; and
- (e) assure that employees ~~are provided with~~ have sufficient time to participate in career development programs.

Section 8: The following sections in Chapter 9 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 9 of the Personnel Rules and Regulations is retained in its current form.

901 POLICY

It is the policy of the City of Kodiak to treat all employees equitably and fairly in matters affecting their employment. Each employee of the City will be provided ample opportunity to understand and resolve matters affecting employment ~~which~~ that the employee documents as ~~being~~ a violation of rules and regulations. The presentation of any grievance shall be the right of each employee without fear of reprisal.

902 DISCUSSION OF A PROBLEM WITH SUPERVISOR

Ordinance No. 1383
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~~Deleted Language, Added Language~~

903 DEFINITION OF A GRIEVANCE

A grievance is a ~~specified~~ specific complaint by an employee or group of employees that has not been resolved, alleging a violation of one or more specific ~~a~~ section(s) of the City Charter, ordinances, Personnel Rules and Regulations, or department rules and regulations ~~which~~ that pertain to the terms or conditions of ~~such employment by the City of Kodiak~~. Performance evaluation is not grievable; nor is ~~Dismissal~~ dismissal, ~~or~~ consideration of dismissal, ~~is not a matter that may be grieved~~ or suspension without pay; see Chapter 13 for the procedure established for a pre-decisional hearing in the case of potential dismissals and unpaid suspension.

904 GRIEVANCE PROCEDURE STEPS

A grievance shall be handled in the following manner:

904.1 Steps of the Grievance Procedure.

Step 1. The aggrieved employee, or group of employees, shall present the problem orally as a specific grievance to the immediate supervisor within ~~ten (10)~~ working days ~~of~~ after its occurrence, not including the day of the occurrence. The supervisor shall give a written reply within five ~~(5)~~ working days ~~of the date of~~ after presentation of the grievance, not including the date of presentation.

Step 2. If the grievance is not settled in Step 1, the grievant(s) may pursue it by writing the grievance ~~it shall be prepared in detail, shall be reduced to writing, including a summary~~ on a form designated by the City Clerk. ~~which~~ The written grievance shall ~~provide space for~~ specify the grievant's name, the specific authority and section alleged to have been violated, and the nature of the perceived violation. The summary form shall be dated, shall be signed by the ~~aggrieved employee or group of employees~~ grievant or grievants and shall be presented along with any supplementary information or other relevant material to the department head within five ~~(5)~~ working days after the supervisor's written reply is given, not including the day the reply is given. The department head shall reply in writing to the grievant(s) within five ~~(5)~~ working days ~~of~~ after the date of the presentation of the written grievance, not including the day of presentation.

Step 3. If the grievance is not settled in Step 2, the ~~employee~~ grievant(s) ~~shall~~ may pursue it by presenting the written grievance ~~along~~ with copies of all pertinent correspondence, records, and information to the City Manager within five ~~(5)~~ working days after the department head's written response ~~was~~ is delivered to the ~~employee~~ grievant(s). The City Manager shall reply in writing to the grievant(s) within ~~five (5)~~ 15 working days of the date of the presentation of the written

grievance, not including the day of presentation.

Step 4. (a) If the grievance is not settled in Step 3, the ~~employee~~ grievant(s) ~~shall~~ may pursue it by presenting the written grievance along with copies of all pertinent correspondence, records, and information to the City Clerk within five ~~(5)~~ working days after the City Manager's written response was delivered to the employee(s). The City Clerk shall promptly forward copies of the written grievance and supporting materials filed by the grievant(s) to the Personnel Board, the department head, and the City Manager. The department head and City Manager ~~then~~ have five ~~(5)~~ working days to file any additional pertinent correspondence, records, and information pertaining to the grievance with the City Clerk, who shall promptly forward copies of the same to the Personnel Board and other involved parties. ~~If the grievance relates to disciplinary action exceeding ten day suspension without pay, the Personnel Board may request independent counsel.~~

(b) The Personnel Board will convene when a quorum is established and will determine whether the premise of the grievance is valid. If the grievance is accepted, the grievant(s) and City Manager will be notified in writing. The board shall conduct a hearing involving all parties involved (Section 906).

(c) After conducting a hearing (Section 906) and reviewing the written evidence, the Personnel Board shall submit its recommendation in writing to the City Manager with a copy to the grievant(s) within five ~~(5)~~ working days of receiving the grievance. The deadline for rendering a recommendation may be extended by the Personnel Board or the chairman of the Personnel Board when necessary due to the absence of a quorum or the difficulty of scheduling a hearing reasonably convenient to board members or witnesses.

Step 5. Within five ~~(5)~~ working days after receiving the Personnel Board's recommendation, the City Manager will respond to the Personnel Board's recommendation, with a copy to the grievant(s).

If the Personnel Board determines through a majority vote that the Manager's final determination violates the letter or intent of the City of Kodiak Personnel Rules and Regulations, other City Department regulations, or a point of law, the Board shall submit a report to the City Council identifying the nature of its concern. The Personnel Board's report shall ~~be composed so as to~~ preserve the separation of the Council from participation in personnel matters, as provided in the City Charter, Article II, and no other material relating to the grievant(s) or the grieved action shall accompany the report.

904.2 Grievance Steps Not Exclusive. The grievance steps described in Section 904 do not exclude the possibility of a mutually agreeable arbitration or legal action; nor are they intended to limit the constitutional rights of an employee in any way. A grievance may be withdrawn at anytime with the consent of all parties.

(Ord. 1098, 1999; Ord.1008, 1995)

905 REPRESENTATION

905.1 Employee Representation. Each employee shall be afforded an opportunity to be represented at each of the above steps. At Steps 1 and/or 2 of the grievance procedure, the employee may be accompanied by a representative of the employee's choice who shall be any other regular employee of the City. At Steps 3 and/or 4 of the grievance procedure, the employee may be accompanied by any representative of the employee's choice. Employees shall contact and discuss ~~their~~ ~~problems~~ grievances with their representative only during break periods, lunch hour, before or after work, or at any other time when they are not on duty. However, grievance hearings may be held during work hours.

905.2 Legal Counsel for Personnel Board. The Personnel Board will obtain, following approval of the expenditure by the City Manager or City Council, legal counsel from the City's legal staff, except the Board will be authorized to select a lawyer outside the City staff when the Board by majority vote determines that legal advice and counsel from the City legal staff may present a conflict of interest to the Board. The cost to the City shall not exceed what is customary and reasonable for such services.

906 PERSONNEL BOARD AND GRIEVANCE HEARINGS

Grievance hearings may be conducted by the Personnel Board pursuant to KCC 2.08.180(b)(c). The composition of the personnel board as defined by KCC 2.08.170 will review the grievance hearings. In the event the personnel board is not available an adhoc panel for employee issues will be appointed pursuant KCC 2.08.165;

- (a) Should an employee grievance or any other matter requiring action by or a hearing before the personnel board arise or be filed at a time when, due to lack of qualified volunteers or for any other reason beyond the control of the council, no person is serving on the personnel board, then the council may appoint an ad-hoc panel of no more than five persons to hear such grievance or other matter and carry out the responsibilities of the personnel board with respect to it. The decision regarding whether to appoint a panel shall be within the council's sole discretion.
- (b) Should an employee grievance or any other matter requiring action by or a hearing before the personnel board arise or be filed at a time when, due to a lack of qualified volunteers or for any other reason beyond the control of the council, the personnel board consists of one or more persons but less than a quorum, then the council may appoint that number of other individuals which is sufficient to complete a quorum and those other individuals shall serve as ad-hoc members of the personnel board for purposes of that matter only.
- (c) Any person appointed by the council in accordance with this section shall meet the minimum qualifications then applicable to permanent members

of the personnel board. Appointment preference shall be given to applicants with human resource experience.

The location, procedures, and agenda of all hearings will be determined by the Board. The Board may request that any or all those expected to testify remain in a designated area outside the meeting at all times other than when their testimony is being entered into the record.

The Personnel Board may choose to meet with the ~~aggrieved employee~~ grievant(s), the immediate supervisor, the department head, and the City Manager individually and/or as a group in order to investigate circumstances pertinent to the grievance. The grievant(s) may be accompanied by a representative (Section 905). Either party may make a change in representation at any time, however, such a change will not affect the time limits except as provided in Section ~~909~~908.

~~907~~ — **VIOLATION OF GRIEVANCE PROCEDURE**

~~Any employee who attempts to resolve employment problems outside of the City government, without first attempting to resolve said problem(s) in accordance with the grievance procedure, shall be subject to disciplinary action. However, nothing in this Chapter shall be deemed to revoke any legal means of redress to the courts.~~

(Repealed by Ord. xxxx, 2018)

~~908~~907 **TIME LIMITS**

If the grievance procedures are not initiated within the time limits established by this Chapter, the employee ~~shall be considered as having~~ has waived his the right to grieve ~~that particular~~ the violation and initiation of a grievance for that act or omission is thereafter barred. As used in this chapter, the term "working day" shall mean any day from Monday through Friday ~~which~~ that is not observed as a recognized City holiday (see Chapter 12). For purposes of this definition, ~~however,~~ an employee's birthday is not ~~considered a recognized~~ City holiday. (Ord. 1008, 1995)

~~9089~~ **EXTENSION OF TIME LIMITS**

The time limits prescribed in this Chapter for the initiation and completion of the steps of the grievance procedure may be extended by mutual consent of the parties ~~so involved~~. Likewise, any step in the grievance procedure may be eliminated by mutual consent. Mutual consent shall be indicated in writing, ~~and shall be signed by all parties and then presented to the Personnel Board chairman or secretary.~~

~~90910~~ **CITY MANAGER**

The City Manager shall be responsible for overseeing the handling of all employee grievances to ensure that they are processed in accordance with ~~the procedure stated in~~

this Chapter. Supervisors shall keep the department head informed of all grievances in progress; ~~who, in turn,~~ the department head shall keep the City Manager so informed.

Section 9: The following sections in Chapter 10 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 10 of the Personnel Rules and Regulations is retained in its current form.

1001 LEAVE ENTITLEMENT

Classified employees shall be entitled to leave accrual benefits. Leave provisions of these regulations ~~are also applicable~~ apply to the two appointive officers, the City Manager and the City Clerk, if not under agreements or other special provisions approved by the City Council.

1001.1 Leave Program. The City shall provide its classified employees ~~with~~ Annual Leave and Sick Leave benefits.

(a) Annual Leave and Sick Leave ~~will~~ accrue at separate rates.

(b) Employees enrolled in the Combined Personal Leave Program within ~~thirty~~ 30 days ~~of~~ after the effective date of this ordinance may remain in the Combined Personal Leave Program, subject to the cap for payment established in Section 1006. Terms of the Combined Personal Leave Program shall be identified in an agreement signed by the employee and retained in the employee's personnel file.

(c) Requests for annual leave shall be made no later than one week before the start of the desired leave. In unforeseen or unavoidable circumstances, annual leave requests may be made as little as one working day before the requested start of leave.

(d) Authorization of Annual Leave and Sick Leave is the responsibility of department heads.

(Ord. xxxx, 2018;

Ord. 1058, 1998; Ord. 1008, 1995)

1002 ANNUAL LEAVE ACCRUAL RATE

Annual Leave accrues according to the following schedule for classified employees not enrolled in the Combined Personal Leave Program, except Fire Department personnel on the platoon system (*see Section 1603*). ~~✗~~ The City Manager may increase the initial ~~annual~~ Annual leave—Leave accrual rate of 4.62 hours per pay period when appointing new department heads, but movement to the next accrual rate must be consistent with required time in service.

4.62 hours per pay period—first through twenty-fourth month

6.47 hours per pay period—twenty-fifth through sixtieth month

7.39 hours per pay period—sixty-first through one hundred twentieth month

8.31 hours per pay period—after ~~the~~ one hundred twentieth month

(Ord. 1322 §4, 2014; Ord. 1058, 1998; Ord. 1008, 1995)

1003 LEAVE ACCRUAL WHILE EMPLOYEE IS ON PAID LEAVE

Leave continues to accrue ~~during the period of time~~ while an employee is on paid leave. Leave **does not** accrue during periods of leave without pay and unpaid suspension. (Ord. 1058, 1998)

1004 COMPUTATION OF LEAVE ACCRUAL FOR REGULAR PART-TIME EMPLOYEES

Regular part-time employees ~~shall~~ accrue leave at the same rate as regular full-time employees, except that leave for such employee is ~~shall be~~ computed on the proportion of actual hours worked to the number of normal duty hours in a pay period. (Ord. 1058, 1998)

1005 TEMPORARY EMPLOYMENT LEAVE ACCRUAL

Temporary employees ~~shall~~ do not accrue leave.

1006 MAXIMUM CARRY-OVER OF ACCRUED LEAVE

The maximum amount of accrued unused leave that ~~can~~ may be carried over from one calendar year to the next is indicated below:

Leave Program	Maximum Leave Hours Carried over to Next Calendar Year	
	Regular Employee	Fire Department Personnel on Platoon System
Non-Combined Leave	480	638
Combined Leave	587	779

If an employee's accrued personal leave on the last pay period each December exceeds the maximum hours that may be carried over to the next calendar year, the employee shall be paid for the excess hours in the employee's paycheck for the last pay period in December. This payment for unused leave in excess of the maximum accrual rate allowed does not affect the twice-yearly leave cash-in provisions outlined in Section 1010.

~~The value of unused accrued leave will be paid out in a lump sum to employees upon termination up to the maximum accrued hours available in the employee's leave program as listed above.~~

~~Cash in lieu of leave taken shall be subject to all taxation and contributions required of all payroll compensation.~~

(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1061, 1998; Ord. 1058, 1998; Ord. 1008, 1995)

1008 USE OF LEAVE

1008.1 Timing of Use. Employees who ~~are entitled to~~ accrue Annual Leave shall receive credit for leave accrued from the date of appointment. Leave shall be ~~due and~~ usable upon ~~satisfactory~~ completion of at least three (3) months of the probationary period following the ~~original~~ date of hire (see Section 1103 for exception). ~~Any accrued leave credited to a newly~~

~~hired employee who separates prior to the completion of the probationary period shall be forfeit.~~

1008.2 Regular Use of Annual Leave. Annual Leave may be used for any purpose ~~desired by the employee.~~ The employee has the right to use accrued leave, but not the right to determine when it shall be used. The employee ~~shall be allowed to~~ may use any amount of accrued leave at the time desired, if it is not detrimental to departmental operations as determined by the department head. The longer the period of leave requested, the longer should be the advance notice to enable scheduling.

1008.3 Amount of Annual or Combined Personal Leave that Must Be Taken Yearly

Repealed by Ord. 1058, 1998

1008.4 Recognized Holiday Occurring in Leave Period. A recognized holiday occurring during an employee's ~~annual~~ Annual Leave, ~~combined~~ Combined Personal Leave, or ~~sick~~ Sick leave shall not be counted as a day of leave.
(Ord. 1058, 1998; Ord. 1008, 1995)

1010 LEAVE CASH-IN

1010.1 Accrued Leave Hours. Upon successful completion of the probationary period, a regular full-time employee may cash-in accrued leave hours ~~two times per~~ twice in each calendar year, provided that the employee retains a balance of at least 80 accrued leave hours. Upon successful completion of the probationary period, a regular part-time employee may cash in accrued leave hours ~~two times per~~ twice in each calendar year, provided that the employee retains a balance of accrued leave hours equal to 80 hours multiplied by the percentage of full time hours that the employee has worked. In addition to the two leave cash-ins per year permitted above, cash in lieu of accrued leave may be obtained under emergency conditions when requested by the employee in writing and approved in advance by the City Manager. "Emergency" as used in this section means a critical situation over which neither the employee nor the City has control.

1010.2 Separation and Leave. The value of unused accrued leave will be paid in a lump sum to employees upon separation from City service. Any unused accrued leave credited to a newly-hired employee who separates before the completion of the probationary period shall be forfeited.

1010.3 Accrued Leave and Taxes. Cash paid for accrued leave shall be subject to all taxation and contributions required of all payroll compensation.
(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1058, 1998; Ord. 1008, 1995)

1013 REINSTATED EMPLOYEE LEAVE

Reinstated employees hired within two ~~(2)~~ years of ~~termination~~ after separation, who have successfully completed ~~their~~ a probationary period in previous City service, shall be permitted to use ~~their~~ accrued leave at any time after reinstatement.

1014 ADMINISTRATIVE LEAVE

Administrative Leave is time off an employee's regular work duties for reasons within the scope and purpose of these rules and regulations. Administrative Leave must be approved in advance by the employee's supervisor, department head, or the City Manager. An employee on Administrative Leave shall be compensated for each day of leave on which the employee would otherwise have been at work at the same rate as for the employee's regular work day, regardless of the number of hours spent in active military service **or training**, jury duty, witness service, training, or related activities. Administrative leave is separate and apart from other kinds of leave, and shall not reduce an employee's accrued annual or sick leave or other benefits.

1014.1 Administrative Leave for Military Service. Absence from City duty for **required attendance at military training, and/or active duty in military service, will be in accordance with relevant State and Federal laws, including AS 39.20.340 and 38 U.S.C. 4301 et seq.** ~~the purpose of participating as a member of the National Guard, the United States armed forces or United States Coast Guard reserve component may be authorized to employees who have completed probationary service. The employee will be authorized a leave of absence status (see Definitions) and shall not suffer a loss of pay or benefits. A maximum of fifteen calendar days during any calendar year may be granted to eligible members of the Alaska National Guard, a reserve component of the United States armed forces or United States Coast Guard to perform active duty. An employee's request for military leave shall be made as far in advance as possible in order to permit proper allowance for their absence. An employee's request for military leave shall be supported by a copy of official military orders for active duty. Employees shall be required to submit a certified copy of their military orders for active duty indicating completion of the duty. Wages paid by the Military (other than travel and subsistence allowances) will be turned in for deposit to the City, except that fees paid for duty that occurs on the employee's normal non-work days may be retained by the employee.~~ (Ord. xxxx, 2018; Ord. 1112 §2, 2000)

1014.2 Administrative Leave for Jury or Witness Duty. ~~Absence from City duty when~~ Employees will receive Administrative Leave when summoned for jury duty, when subpoenaed as a witness on behalf of the City, or when called as an expert on a matter of City concern or relating to a municipal function; provided that such an employee must provide ~~shall be authorized. In order to be entitled to administrative leave for jury or witness duty,~~ written proof of the ~~required number of hours shall be submitted to the City by the employee making the claim~~ subpoena or jury duty notice. Fees paid by the court (other than travel and subsistence allowances) will be turned in for deposit to the City, except that fees paid for court duty that occur on the employee's normal non-work days may be retained by the employee. Witness service for a purpose other than just described will be covered by annual or combined personal leave, or leave without pay, and employee may retain any fees received ~~in this connection with such witness service may be retained by the individual.~~

1014.3 Administrative Leave for Training. Absence from an employee's regular work duties, not to exceed 120 days, may be authorized to allow the employee to complete advanced training programs providing the work situation permits a temporary absence

without serious effect on the department's schedule of activities. Employees taking administrative leave for training may be required to sign an agreement, before the leave is granted, spelling out the employee's obligations of repayment of the training costs to ~~repay any and all costs paid by the City relating to the training.~~ Such costs may include, but are not limited to, ~~salary paid to the employee during the training program,~~ the fees paid by the City for tuition or enrollment, travel and lodging, meal allowances, and other expenses paid or reimbursed; and the employee will be subject to forfeiture of accumulated leave and salary in an amount sufficient to effect this repayment.

(Ord. xxxx, 2018)

1016 HEALTH AND FAMILY LEAVE

1016.1 Definitions. For the purposes of this Section the following definitions apply.

- (a) "Child" means the employee's biological, adopted or foster child, stepchild, or legal ward who is under ~~eighteen (18)~~ years of age, or who is ~~eighteen (18)~~ years of age or older and incapable of self-care because of mental or physical disability.
- (b) "Eligible employee" means an employee who has been employed for at least ~~thirty-five (35)~~ hours a week for at least six ~~(6)~~ consecutive months, or for at least ~~seventeen and a half (17.5-1/2)~~ hours a week for at least ~~twelve (12)~~ consecutive months immediately preceding the leave; provided, however, that with respect to any benefits or provisions of the Section 1016 ~~which~~ that are mandated solely by the Family and Medical Leave Act of 1993 (P.L. 103-3) and not also by the Alaska Family Leave Act, then "eligible employee" shall mean an employee who has been employed for at least ~~twelve (12)~~ months and for at least 1,250 hours of service during the ~~twelve (12)~~ consecutive months immediately preceding the leave.
- (c) "Health-care provider" means a dentist licensed under AS 08.36, a physician licensed under AS 08.64, or a psychologist licensed under AS 08.86.
- (d) "Parent" means a biological or adoptive parent, a parent-in-law, or a step-parent.
- (e) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- (f) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility or continuing treatment, or continuing supervision by a health-care provider.
- (g) "Spouse" means a husband or wife, as the case may be.

1016.2 Leave Requirements.

—(a) **In General.**

- (1) An eligible employee is entitled to a maximum of ~~twenty-four (24)~~ workweeks of leave during any ~~twenty-four (24)~~ month period for a serious health condition of the employee or the employee's spouse, child, or parent, but no more than ~~eighteen (18)~~ workweeks in any ~~twelve (12)~~ month period;
- (2) If necessary to care for the child, an eligible employee is entitled to ~~eighteen (18)~~ workweeks of family leave for pregnancy and birth of a child of the

employee, or the placement of a child (other than a child or stepchild of the employee) for adoption or foster care. The entitlement to leave for birth or placement of a child expires at the end of the ~~twelve~~(12) month period beginning on the date of such birth or placement.

(b) Leave Taken Intermittently or on a Reduced Leave Schedule.

(1) In general. Leave for a birth or placement of a child ~~shall not~~may be taken intermittently, or on a reduced leave schedule, ~~unless~~if the employee and the City Manager agree ~~otherwise~~in advance. Leave taken in order to care for the employee's spouse, child, or parent, or because of the employee's own health condition may be taken intermittently, or on a reduced leave schedule, when medically necessary. The taking of leave intermittently, or on a reduced leave schedule, pursuant to this paragraph will not reduce the total amount of leave to which the employee is entitled under Subsection 1016.2(a).

(2) Alternative position. If an employee requests intermittent leave or leave on a reduced leave schedule, the City Manager may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which accommodates recurring periods of leave better than the regular position of the employee.

(c) Paid/Unpaid Leave. Leave authorized under Section 1016 shall be charged first against such accrued paid leave as the employee has available and then to leave without pay. When the employee has both accrued ~~sick~~Sick Leave and accrued ~~annual~~Annual Leave or ~~combined~~Combined ~~personal~~Personal Leave available, and when the leave authorized under Section 1016 is for a purpose ~~which~~ that would otherwise entitle the employee to use accrued sick leave under the standards ~~set forth~~in Section 1104, then the Section 1016 leave shall be charged first against accrued ~~Ssick~~ Leave, then against accrued ~~A~~Annual Leave or ~~C~~Combined ~~P~~Personal Leave, and then to leave without pay. Nothing in this Section 1016 shall be construed, however, as entitling an employee to use ~~Ssick~~ Leave because of an illness of or injury to a child, spouse or other family member or for any other purpose not specified by Section 1104. An employee requesting leave pursuant to Section 1016 is ~~not~~eligible to apply for withdrawals from the Sick Leave Bank authorized by Section 1107 ~~unless~~their leave is ~~being~~requested because of a serious health condition of the employee.

(d) Foreseeable Leave.

(1) Requirement of notice. In any case in which the necessity for leave is foreseeable based on an expected birth or placement, the employee shall provide not less than ~~thirty~~(30) days notice, before the date the leave is to begin, of the employee's intention to take leave; ~~except~~ provided, when the date of the birth or placement requires leave to begin in less than ~~thirty~~(30) days, the employee shall provide notice as soon as is practicable.

(2) Duty of employee. In any case in which the necessity for leave is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the City, subject to the approval of the health-care provider of the employee or that of the child, spouse, or parent. If the date of the treatment requires leave to begin in less than ~~thirty~~(30) days, the employee shall provide such notice as soon as is practicable.

(e) **When Both Spouses are Employed by City.** ~~When both spouses are~~ **In any case in which the husband and wife are** both employed by the City, the rights of those employees with respect to the amount, timing and coordination of leave authorized by Section 1016 shall be no greater or more extensive than required by otherwise applicable state or federal law.

1016.3 Certification.

(a) **In General.** Unless a written waiver is obtained from the employee's department head or, if the employee is a department head, from the City Manager, a request for leave under Subsection 1016.2(a)(1) shall be accompanied by a certification issued by the patient's health-care provider.

(b) **Sufficient Certification.** Certification provided under Subsection (a) of this Section shall be sufficient ~~if it~~ **when provided by the City Human Resources office.**

~~(1) the date on which the serious health condition commenced;~~

~~(2) the probable duration of the condition;~~

~~(3) the appropriate medical facts within the knowledge of the health-care provider regarding the condition;~~

~~(4) in the case of leave requested because of a serious health condition of the employee's spouse, child or parent, a statement that the eligible employee is needed to care for the spouse, child, or parent, and an estimate of the amount of time that such employee is needed for that purpose, or, in the case of a serious health condition of the employee, a statement that the employee is unable to perform the functions of the employee's position;~~

~~(5) in the case of certification of intermittent leave, or leave on a reduced leave schedule for planned medical treatment, the dates which such treatment is expected to be given and duration of such treatment;~~

~~(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, because of a serious health condition of the employee, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and~~

~~(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, because of a serious health condition of a spouse, child, or parent of the employee, a statement that the employee's intermittent leave or leave on a reduced schedule is necessary for the care of the spouse, child, or parent who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.~~

(c) **Second Opinion.** ~~In any case in which~~ If the City has reason to doubt the validity of ~~the~~ a certification provided under Section 1016.3, the City may, at the City's option and expense, require a second opinion from a health-care provider designated by the City.

(d) **Resolution of Conflicting Opinions.** ~~In any case in which the~~ If second opinion differs from the opinion in the original certification, the City may, at the City's option and expense, require a third opinion from a health-care provider designated or approved jointly by the City and the employee. The opinion of ~~the~~ such third health-care provider shall be binding on the City and the employee is final.

(e) **Subsequent Recertification.** The City may require **an the eligible** employee to

provide ~~obtain subsequent~~ recertification no more often than every 30 days or the duration noted in the operative certification, whichever is longer, during the employee's use of Health and Family Leave; provided, the City may require recertification in less than 30 days if (a) the employee requests an extension of Health and Family Leave, (b) the circumstances described by the operative certification have changed significantly, or (c) the City has received information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the operative certification. ~~on a reasonable basis.~~

1016.4 Employment and Benefits Protection.

(a) Restoration to Position.

(1) In general. Except as provided in subsection (b) below, any eligible employee who takes leave for its intended purpose under Section 1016 shall be entitled on return from such leave to be restored to the position of employment held by the employee when

leave commenced, or, at the City's option, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

(2) Retention of benefits. The taking of leave under Section 1016 shall not result in the loss of any employment benefits accrued ~~prior to~~ before the date ~~of~~ on which the leave commenced.

(3) Limitation. Nothing in this Section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) Certification. As a prerequisite to restoration to the employee's previous position or one equivalent to it, the City may require an employee who has taken leave for the employee's serious health condition to submit certification from the employee's health-care provider that the employee is able to resume work.

(b) Exemption Concerning Certain Highly Compensated Employees. Restoration otherwise required by this Section 1016.4 may be denied to any salaried eligible employee who is among the highest paid 10% of City employees if:

(1) such denial is necessary to prevent substantial and grievous economic injury to City operations;

(2) the City notifies the employee of ~~this~~ the intent not to restore the employee to the position when at the time the City determines that such injury would occur; and

(3) in any case in which the leave has commenced, the City gives the employee a reasonable opportunity ~~elects not~~ to return to work after providing ~~receiving~~ such notice.

(c) Maintenance of Health Benefits.

(1) Coverage. During any period that an eligible employee takes leave under Section 1016, the City will maintain the group health benefits to which the employee is otherwise entitled. ~~If the employee had been employed less than twelve (12) months or had less than 1,250 hours of service during the twelve (12) consecutive months immediately preceding the leave, the employee shall reimburse the City for the cost of maintaining health insurance coverage during any period of unpaid leave.~~

(2) Failure to return from leave. If ~~the~~ an employee fails to return from leave after the

period to which the employee is entitled has expired and the reason for not returning is other than (i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under 1016.2 (a)(1), or (ii) other circumstances beyond the control of the employee, the City may take steps to recover the premiums ~~that the City~~ paid for maintaining group health plan benefits during any period of unpaid leave. In this instance, the City reserves the right to require any and all such certification or recertification as may be authorized by law.

1016.5 Employee Transfer.

- ~~—(a) A pregnant employee may request a transfer to a suitable position under this Section. All such requests shall be in writing and shall be directed to the employee's department head or, if the pregnant employee is a department head, to the City Manager. Upon the receipt of such a request, the City will not fill the position with a person other than the requesting employee until the position has been offered to and refused by the employee. Failure of the employee to accept an offered position by a deadline or in a manner established by the offer shall be deemed a rejection of the offer. A position is suitable if:~~
- ~~(1) it is an existing unfilled position in the same department in which the employee is currently employed, and is less strenuous or less hazardous than the employee's current position;~~
 - ~~(2) transfer to the position is recommended by a licensed health care provider; and~~
 - ~~(3) the employee is qualified and immediately able to perform the duties of the position.~~
- ~~(b) The City will compensate the employee who receives a transfer under this Section at a rate at least equal to the lesser of the rate, as adjusted by changes to compensation that apply generally to the work force, at which:~~
- ~~(1) the employee was compensated immediately before requesting the transfer; or~~
 - ~~(2) the position into which the employee transfers is compensated.~~

1016. 5 Intent and Interpretation.

Section 1016 is intended merely to memorialize and interpret the requirements imposed upon the City by the Family and Medical Leave Act of 1993 and by the Alaska Family Leave Act. Therefore, nothing herein shall be construed or interpreted as granting to City employees greater or more extensive rights than they otherwise are accorded under the foregoing laws.

(Ord. xxxx, 2018; Ord. 1008, 1995)

1017 LEAVE WITHOUT PAY

1017.1 Purpose and Conditions. Leave without pay may be granted to an employee upon recommendation of the department head and approval of the City Manager, **and must be requested no later than two weeks before the requested start of leave without pay. In unforeseen or unavoidable circumstances, leave without pay requests may be made as little as one working day before the requested start of leave.** Each request for such leave shall be considered in ~~the~~ light of the circumstances ~~involved~~ and the needs of the organization. Leave without pay shall not be ~~requested nor~~ granted until such time as all accrued annual or

combined personal leave has been exhausted, except when an employee is absent and drawing workers compensation benefits, or when an employee is on leave pursuant to Section 1016. Other than when required under Section 1016, Normally, not more than sixty (60) calendar days leave without pay may be granted for personal reasons. No benefits other than health insurance will accrue while on leave without pay, except insurance which will continue to be paid until the employee terminates (see Sections 419 and 1016).

1017.2 Education Leave Without Pay. Leave without pay may be authorized to include time to complete formal undergraduate or advanced degree requirements. Employees who have demonstrated above average performance with the City for a minimum of two (2) years shall be considered for such leave, providing the work situation permits a temporary absence without serious effect upon the department's schedule of activities. A maximum of one year's absence for college work, or an equivalent thereof, may be granted in such cases. No benefits shall accrue while on this type of education leave without pay.

1017.3 Workers' Compensation Leave. Workers' compensation payments shall be forwarded to the employee (claimant) as full and just compensation for the period stated therein. During periods when an employee is not working, the employee may an individual can use leave only for the appropriate waiting period as determined by the insurance carrier. The employee (claimant) will retain the workers' compensation payment and will not receive any supplemental compensation from the City, other than except the compensation for leave during the appropriate waiting period.

~~No contributions to the retirement plan specified in Section 418 of these regulations shall be made by the City for the period during which the employee receives workers' compensation payments. AS 39.35.330(e) allows an employee to establish an indebtedness with the retirement plan to obtain credit for the employee's workers' compensation time.~~
(Ord. xxxx, 2018; Ord. 1008, 1995)

1018 CHANGE OF ANNIVERSARY DATE BECAUSE OF LEAVE WITHOUT PAY

With the exception of Workers' Compensation Leave or Family and Medical Leave, if an employee uses more than thirty (30) calendar days total leave without pay during the leave year, the anniversary and length of service dates shall be advanced by the number of days such leave without pay exceeds thirty (30) days. (Ord. 1024 §4, 1996; Ord. 1008, 1995)

1023 DONATION OF ANNUAL OR COMBINED PERSONAL LEAVE

An employee may donate accrued annual or combined personal leave to another employee. The leave will be credited to the donee-recipient based on the dollar value of the donation.
(Ord. 1008, 1995)

Section 10: The following sections in Chapter 11 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 11 of the Personnel Rules and Regulations is retained in its current form.

1101 PURPOSE OF SICK LEAVE

The City provides Sick Leave to eligible employees as a benefit ~~which~~ to provides compensation during times of illness or injury. The decision to approve or disapprove requests for Sick Leave from eligible employees may be made by the department head in consultation with the City Manager or Manager's designee and must be consistent with current federal and state laws and City policies.

(Ord. 1275, 2010; Ord. 1058, 1998; Ord. 1008, 1995)

1102 SICK LEAVE ACCRUAL

Sick Leave accrues separately from Annual Leave at the rate of ~~three and seven tenths (3.74)~~ hours per pay period, ~~per employee~~, except Fire Department personnel on the platoon system (see Section 1603). Sick Leave accrued, but not used, shall remain credited to the employee until separation from employment with the City. Annual Leave may always be used as Sick Leave when the employee's Sick Leave account balance is zero.

Regular part-time employees shall accrue Sick Leave at the same rate as regular full-time employees, except that leave shall be computed on the proportion of actual hours worked to the number of normal duty hours in a pay period.

(Ord. 1275, 2010; Ord. 1008, 1995)

1103 USE OF LEAVE DURING PROBATIONARY PERIOD

Employees accrue and may use sick leave during the probationary period. Probationary employees must use all accrued sick leave hours before taking accrued annual leave is taken, if accrued annual leave is necessary to cover an approved absence consistent with the provisions of this section. (Ord. 1275, 2010; Ord. 1008, 1995)

1104 USE OF SICK LEAVE

1104.1 Sick leave. An employee may use accrued annual, sick, or combined personal leave when sick, or injured and not ~~in work status~~ on duty. Accrued sick or combined personal leave shall also be granted for medical, dental, or optical examinations or treatment. Except in an emergency ~~situations~~ when an employee is unable to submit a signed leave request form in advance, an employee shall submit a leave request for approval ~~in advance of~~ before the appointment. Employees shall make every effort to make appointments at hours that will result in the least possible disruption to their department and their work schedules. Leave taken for ~~the~~ such an appointment should not exceed the time necessary for examinations or treatment. Employees are expected to return to work upon completion of such appointments. Exceptions may be made at the department head's discretion. (Ord. 1275, 2010)

1104.2 Illness of Spouse or Dependent Children. Sick leave may be used to care for a sick or injured spouse, dependent child, or a resident of the household for which the employee is responsible. Employees who qualify for and are placed on approved family and medical

leave may use sick leave, or combined leave if applicable, to attend a seriously ill or injured family member in accordance with Section 1016. (Ord. 1275, 2010) (Reinstated by Ord. 1058, 1998, following repeal by Ord. 764, 1985)

1104.3 Imminent Death or Death in Immediate Family. In the event of death or the imminent death in an employee's immediate family, accrued sick leave may be used as follows:

- (a) Up to seven (7) ~~five (5)~~ days for persons employees traveling outside of the Kodiak Archipelago ~~Island Borough for funeral or memorial services~~ per immediate family member;
- (b) Up to five (5) ~~three (3)~~ days within the Kodiak Archipelago ~~Island Borough~~ per immediate family member.

(Ord. xxxx, 2018; Ord. 1058, 1998; Ord. 1008, 1995)

1104.4 Requiring the Use of Sick Leave. When an employee's health care provider limits the employee to light duty, and no such light duty is available, ~~Ordinarily there is no reason for placing an employee on sick leave without the employee's consent. There are, however, situations in which an employee is found unable to perform the normal duties, for either mental or physical reasons. In such cases, it may be possible to temporarily assign different duty which is within the employee's limitations. No employee is entitled to such "light duty" as a matter of right. If the employee cannot be assigned other work,~~ the employee may be placed on sick leave even if the employee refuses.

(Ord. 1058, 1998; Ord. 1008, 1995)

1105 BEREAVEMENT LEAVE

In the event of death in an employee's immediate family, up to five (5) days of non-accumulative paid leave days may be allowed for an absence by an employee. In cases of travel outside the Kodiak Archipelago, an additional two (2) days of non-accumulative paid leave may be allowed.

Non-accumulative paid leave may be combined with Section 1104.3 for additional death in the immediate family leave.

(Ord. xxxx, 2018)

1106 REPORTING AND REQUESTING LEAVE FOR ILLNESS OR INJURY

1106.1 Reporting.

- (a) An employee who is unable to report to work because of illness or injury shall notify their immediate supervisor, or if not available the department head no later than one hour ~~prior to~~ before the start of the employee's assigned shift ~~or within thirty (30) minutes following the beginning of the assigned shift.~~ If the City has been properly notified, the employee will be placed on sick or combined personal leave by submitting a completed sick leave form.
- (b) The employee is expected to provide the supervisor or department head ~~with~~ as much information as possible as to the reason and length of time he/she expects to be absent from work to allow the department to staff for the absence.

- (c) ~~Employees are expected to provide the City with advance notice of absence. If an employee fails to provide the required notice of absence due to illness or injury, the employee will be placed on unauthorized leave status until the employee contacts the supervisor or department head with the required information. If an employee who fails to report to work and does not contact the City for three (3) consecutive days, they will be considered to have resigned the job through “abandoned abandonment” their job which may result in disciplinary action up to and including termination.~~
(Ord. xxxx, 2018; Ord. 1275, 2010)

1106.2 Requesting Leave for Illness or Injury.

- (a) The City may require a ~~medical~~ certification from an employee’s health care ~~medical~~ provider for an absence of five (5) or more consecutive work days or as a result of excessive absence. Employees who qualify for Family and Medical Leave or leave resulting from Worker’s Compensation injury must provide any additional medical information required by the City.
- (b) Employees absent for illness or injury are expected to use sick leave if available, or combined leave, if applicable. Employees must use annual leave if they do not have enough sick or combined leave accrued. If neither sick leave, annual leave, nor combined leave is available, employees will be ~~placed in~~ on leave without pay status. Leave without pay must be approved by the City Manager or Manager’s designee.
- ~~(c) The employer may counsel an employee any time there is evidence the employee is abusing the City’s sick leave policy or in the event there is a pattern of leave abuse and may require medical certification for future instances of sick leave.~~
(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1008, 1995)

~~**1107 ABUSE OF LEAVE FOR ILLNESS OR INJURY**~~

~~**1107.1 Employee Responsibility.** Employees are expected to report for work as scheduled, and when unable to do so because of illness or injury, or as the result of the use of qualified Family and Medical Leave or leave as the result of a Worker’s Compensation injury, must follow the City’s requirements to provide adequate and timely notification of absence, to supply medical certification if required, and to use the appropriate type of leave as described in Section 1104.
(Ord. 1275, 2010)~~

~~**1107.2 Responsibility of Management.** It is the responsibility of management to monitor employee attendance to ensure operational requirements are met and maintained. Managers and supervisors have the authority to approve sick leave requests and, when necessary, to counsel or discipline employees with a documented pattern of leave abuse after consultation with the City Manager or Manager’s designee.~~

~~If it is necessary to counsel or discipline an employee for documented misuse or abuse of sick leave, the department head shall complete a **Disciplinary Action Memorandum** and submit it to the City Manager or Manager’s designee for review prior to presenting the~~

~~document to the employee. The signatures of the supervisor, department head, City Manager or designee, and the employee are required and the signed disciplinary action form will be retained in the personnel files. A documented pattern of absenteeism or proof of continued or escalating abuse of sick leave may result in further disciplinary action, up to and including termination.~~

~~The employer retains the right to request medical certifications from an employee when necessary as described in Section 1106.2.~~

~~(Ord. xxxx, 2018; Ord. 1275, 2010)~~

~~**1107.3 Medical Certification.** A written notice requiring a medical certification for leave for illness or injury absences shall be signed by the employee and retained in the employee's personnel file and may be required in the following circumstances:~~

~~(a) When an employee has been counseled and has received a disciplinary action form as a result of problem attendance and/or the abuse of sick leave, the employer may also require the employee to provide medical certification for future absences. If required, the employer will issue a written notice of the need for medical certification, which will be reviewed and approved by the City Manager or designee in advance, and signed by the employee, supervisor and department head and shall be retained in the employee's personnel file.~~

~~(b) Any employee who is known to be leaving City employment for any reason other than retirement shall not be granted sick leave during the last thirty (30) days of service unless the employee produces an acceptable medical certificate for any absences due to sick leave.~~

~~(Ord. 1275, 2010; Ord. 1008, 1995)~~

11078 SICK LEAVE BANK

11078.1 Administration of Bank. The Sick Leave Bank shall be administered by the City Manager or designee. ~~a Sick Leave Bank Committee. The Committee shall be elected employees consisting of one member from each of the following departments: Administrative (City Manager, City Clerk, and Finance), Engineering, Fire, Harbor, Library, Parks and Recreation, Police, and Public Works. At least four members shall be non-supervisory employees. It is the Committee's responsibility to approve or deny requests for Sick Leave Bank usage. The decisions of the Committee are final. The Committee shall formulate guidelines for operation of the Sick Leave Bank. The guidelines shall be subject to Council review.~~ The Sick Leave Bank is an employee benefit intended to be used in cases of catastrophic or unusually lengthy illnesses.

11078.2 Enrollment and Mandatory Contributions. All regular classified employees who have completed at least three months of employment ~~satisfactory service~~ shall be eligible to enroll in the Sick Leave Bank. Each employee enrolling in the Bank shall donate sixteen hours (twenty-one hours for Fire Department employees on the platoon system) leave to the Bank upon enrollment. Thereafter, no more days will be added to the Bank until it is depleted to 300 days, except for the initial contribution of new participants within 30 days ~~of~~ after eligibility, at which time participating employees will be required to donate eight hours

(eleven hours for Fire Department employees on the platoon system) to rebuild the Bank. Open enrollment will be in ~~the month of~~ January.

11078.3 Additional (Voluntary) Contributions. ~~In the event that~~ If the Bank becomes totally depleted, each employee enrolled in the Bank may, but shall not be required to, donate up to a maximum of sixteen hours leave (twenty-one hours for Fire Department employees on the platoon system) per year.

11078.4 Withdrawal from Membership. An employee may withdraw from membership in the Bank at any time. An employee withdrawing from membership in the Bank shall not be entitled to withdraw the contributed hours.

11078.5 Requests for Additional Sick Leave from Bank. An employee enrolled in the Sick Leave Bank who is faced with an extended major illness or incapacity of their own ~~which~~ that is not covered by Worker's Compensation benefits may request additional sick leave from the Bank by submitting an application to the City Manager ~~showing or including~~ at least the following:

- (a) A physician's statement briefly describing the nature of the employee's illness or incapacity, and including an estimate of the date ~~upon which~~ when the employee will be able to return to work;
- (b) The date ~~upon which~~ when the employee's accrued annual, sick, and/or combined personal leave was, or is expected to be, fully expended;
- (c) The number of days of sick leave withdrawn from the Sick Leave Bank and applied to the benefit of the employee within the immediately preceding twelve months; and
- (d) The number of days of additional sick leave ~~which~~ the employee seeks from the Sick Leave Bank;

Upon verification of the information on the application, the City Manager will decide whether to grant ~~consider~~ the request ~~forward the request to the Committee for its determination.~~

11078.6 Number of Available Sick Leave Bank Days. The number of Sick Leave Bank days available to an employee shall be equal to twice the number of days of annual, sick, and/or combined personal leave accumulated by that employee on the first day of ~~month in which the illness or incapacity upon which the~~ request is ~~initiated based.~~

11078.7 Maximum Withdrawal of Sick Leave Bank Days. In no event shall an employee be granted more than six consecutive months of additional sick leave from the Sick Leave Bank during any period of twelve consecutive months, and in no event shall any sick leave be withdrawn from the Bank and applied to the benefit of an employee so long as the employee has available any accrued annual, sick, or combined personal leave.

11078.8 Replacement of Sick Leave. An employee who is granted additional days of sick leave from the Sick Leave Bank shall not be required to replace the days used, except as a regular contributing member of the Bank.

11078.9 Eligibility. Only employees enrolled in the Sick Leave Bank are entitled to request sick leave from the Bank ~~it~~.
(Ord. xxxx, 2018; Ord. 1008, 1995)

Section 11: The following sections in Chapter 12 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 12 of the Personnel Rules and Regulations is retained in its current form.

1201 RECOGNIZED CITY HOLIDAYS

The following days shall be recognized as holidays with pay for all employees in regular full-time, regular part-time, and trainee positions who are employed by the City ~~in pay status~~ the day before and the day after the following such days:

- (a) January 1, New Years Day
- (b) January (3rd Monday), Martin Luther King Jr.'s Birthday (Ord. 1112§1, 2000)
- (c) February, (3rd Monday), Presidents' Day
- (d) March (last Monday), Seward's Day
- (e) May (last Monday), Memorial Day
- (f) July 4, Independence Day
- (g) September (1st Monday), Labor Day
- (h) October 18, Alaska Day
- (i) November 11, Veterans Day
- (j) November (4th Thursday), Thanksgiving Day
- (k) December 25, Christmas Day
- (l) Employee's Birthday, ~~which must be taken on a date approved by the department head within the calendar month of the birthday~~ the actual date occurs, ~~on a date approved by the department head.~~ (Ord. 1024 §5, 1996)

1202 HOLIDAY FALLING ON A SATURDAY OR SUNDAY

When a recognized holiday falls on a Saturday, the preceding Friday shall be recognized in lieu thereof, and treated as a holiday with respect to overtime computation and holiday pay. When a recognized holiday falls on a Sunday, the Monday following shall be recognized in lieu thereof, and treated as a holiday with respect to overtime computation and holiday pay: (See Section 412.2-).

1203 HOLIDAY DURING LEAVE

A recognized City holiday, ~~that occurring~~ occurs during an employee's paid leave shall not be counted as a day of leave. (Ord. 1008, 1995)

1204 HOLIDAY IN RELATION TO LEAVE WITHOUT PAY

An employee shall not receive holiday pay for a holiday that occurring immediately preceding or immediately following a **full working** day of leave without pay. (Ord. xxxx, 2018; Ord. 931, 1992)

Section 12: The following sections in Chapter 13 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 13 of the Personnel Rules and Regulations is retained in its current form.

1301 NOTICE OF RESIGNATIONS AND RETIREMENTS

To resign or retire in good standing, an employee must present a written resignation to the appointing authority at least ~~fourteen (14)~~ calendar days ~~in advance of~~ before the resignation date, except ~~in the case of~~ that department heads, ~~assistant harbor masters~~ deputy position, and ~~police sergeants~~ lieutenant, and ~~fire marshals~~ who should give at least one (1) month's notice. This requirement may be waived, in writing, by the department head when adequate provisions can be made for a successor in that period of time (if one is needed right away), as well as under extenuating circumstances; e.g., sudden need to go out -of -state for medical reasons, change of residence ~~by~~ due to unexpected military orders of the spouse, etc. A copy of the employee's resignation shall be supplied by the appointing authority to the City Manager as well as any waiver by the department head. The City Manager may investigate ~~as is deemed warranted~~ for the purpose of verifying the ~~facts as to the~~ reason for such resignation.

~~1301.1 Withdrawal of Resignation.~~ Upon approval of the appointing authority, an employee may withdraw a resignation at any time prior to the effective date of resignation.

1301.2 Failure to Give Adequate Notice. If the requirement is not waived, failure to give adequate notice shall be noted in a Disciplinary Action Memorandum (sSee Section 708). This shall prevent the employee from ~~receiving preferential rehire.~~ It may also be cause for ~~denial of any future employment with the City~~ eligibility for rehire.

1302 LAYOFFS

Examples of circumstances that lead to layoffs are:

- (a) ~~Abolishment~~ Abolition of a position or shortage of work or funds.
- (b) Completion of seasonal work for seasonal employees.
- (c) End of temporary appointment because of reinstatement of regular employee returned from military or other approved leave, and when transfer to another position in the same salary grade has not been achieved.

When it is necessary to reduce the number of employees because of lack of work or funds, or abolition of positions, the department head concerned shall make a thorough investigation of the matter and report the findings and recommendations to the City Manager, who shall decide which employees shall be laid off. Analysis of proposed layoffs shall consider first the types of activities to be curtailed and the positions thereby affected. The department head shall then ~~proceed to the selection of individual~~ employees to be released. Employee performance shall be the major factor in determining the order of layoffs; the second factor

shall be ~~in which employees shall be released, and considerations shall then be given to the~~ employee's qualifications and longevity. Advisability of demoting employees in higher salary grades to lower salary grades for which they are qualified, and laying off those in lower salary grades shall also be considered. Employees laid off ~~through no fault of their own~~ shall be given preference when new appointments are made (see Section 605 regarding re-employment lists for rehire in the same position). In the event of layoffs in the City Clerk's department, the City Clerk is ~~responsibility~~ responsible for deciding which employees to layoff and the order of layoffs ~~shall be laid off shall be assumed by the City Clerk.~~ (Ord. 1090, 1999; Ord. 1038, 1996)

1303 DISMISSAL FOR DISCIPLINARY REASONS

A department head may recommend ~~dismissal~~ dismissing an employee for any just cause, including but not limited to documented inefficiency, failure to perform competently, insubordination, habitual tardiness, Chapter 7 reasons ~~excessive use of sick leave~~ and violation of the alcohol and drug policies or other provisions of these Personnel Rules and Regulations. Such a recommendation shall be in writing and shall describe the facts ~~or~~ and circumstances upon which it is based. The City Manager shall have the sole authority for ~~any~~ dismissal actions (other than in the City Clerk's department) and may take such action with or without a recommendation for dismissal from a department head.

1304 DISMISSAL WITHOUT PREJUDICE

A department head may recommend ~~dismissal~~ dismissing an employee without prejudice when the employee demonstrates a ~~for reasons that are not directly the fault of the employee but do lower the service or accomplishment of the employee below the acceptable level.~~ Examples ~~are~~ lack of necessary knowledge, skill, ability, understanding or aptitude for the position, despite the employee's and supervisor's efforts, or in the event of nepotism (see Section 1404).

~~(b) Physical or functional sickness that may interfere directly with successful performance of duties, or that may cause so much absence from the job that work is seriously impaired.~~

The City Manager ~~shall have~~ has the sole authority for ~~any dismissal action~~ to dismiss without prejudice.

1305 DISMISSAL NOTICE AND SEVERANCE PAY (LAYOFF AND DISMISSAL WITHOUT PREJUDICE)

~~In cases where~~ When an employee is laid off or dismissed without prejudice, the City ~~shall~~ gives the employee two ~~(2)~~ weeks' notice or severance pay not to exceed two ~~(2)~~ weeks pay. (Ord. 1008, 1995)

1307 PRE-DECISIONAL HEARING AND REVIEW OF DECISION (DISMISSAL FOR DISCIPLINARY REASONS)

Before the City Manager (or City Clerk, in the case of a Clerk's department employee) ~~any decision to~~ decides whether to dismiss an employee for disciplinary reasons ~~is made~~, the employee ~~shall be~~ is afforded an opportunity for a hearing on the matter; ~~and in the event that a decision is made to dismiss an employee for disciplinary reasons, the City Council shall be given a legal opinion of the decision before it becomes final, as provided below.~~

1307.1 Notice to Employee. An employee considered for dismissal under this section is given a written statement of the facts and circumstances the City Manager (or City Clerk) believes may justify the employee's dismissal. The written statement includes a copy of the department head's written recommendation, if applicable, notifies the employee that dismissal for cause is under consideration, and notifies the employee of the date, time, and place set for the pre-decisional hearing as provided below.

~~An employee who is being considered for dismissal under this section shall be given a clear and concise written statement of the facts and circumstances which the City Manager believes may justify the employee's dismissal. If the employee's department head has submitted to the City Manager a written recommendation that the employee be dismissed, the employee shall also be given a copy of it. If the department head's recommendation adequately describes the facts and circumstances upon which it is based, the City Manager may adopt it by reference with or without supplementing it through an additional statement and supporting materials. In describing the facts and circumstances believed to justify the employee's dismissal, the City Manager is not restricted to matters addressed by the employee's department head and may take action without first receiving a recommendation from the department head. The City Manager's notice to the employee shall state that the employee's dismissal for cause or disciplinary reasons is being considered and shall notify the employee of the date, time and place set for a pre-decisional hearing as provided below.~~

1307.2 Pre-Decisional Hearing. (a) The City Manager or designee shall conduct a pre-decisional hearing at the time and place specified in the notice to the employee. The employee's department head may attend the pre-decisional hearing, which shall not ordinarily be held earlier than five calendar days after delivery to the employee of the notice, unless the employee concurs ~~in~~ with an earlier date. The City Manager shall create a record ~~which~~ that identifies all documentary and other evidence reviewed or relied upon and shall conduct the hearing in such a manner as to afford the employee a full and fair opportunity to present a defense by testimonial and other evidence. The employee may be accompanied and assisted by legal counsel or any other representative of the employee's choice. The employee may testify, present other witnesses, and offer other relevant evidence into the record. ~~Unless a court reporter is present, The~~ hearing shall ~~ordinarily~~ be recorded and the audio record kept for at least six months. ~~If requested by either the City Manager or the employee, the testimony of a witness (including the employee) shall be under oath.~~

(b) If the employee wishes to question another City employee who has relevant knowledge or information, the City Manager shall arrange for the attendance of that other employee. If so requested by the employee, the City Manager shall also make reasonable efforts to secure the attendance of any complaining witness or individual who is not a current City employee and whose statement or testimony is a significant focus of the charges against the employee. The City Manager may recess the hearing from time to time in order to

schedule the testimony of such an individual or for any other reason. The failure of a complaining witness or other individual to honor a request of the City Manager to appear at the pre-decisional hearing shall not preclude the City Manager from relying upon other testimony or statements made or information provided by such individual so long as the City Manager finds such other testimony or information to be relevant and credible.

(c) If the employee alleges that the dismissal or any other related actions would violate or have violated the City Charter, City Code, Personnel Rules and Regulations, or department rules and regulations pertaining to the dismissal ~~action being contemplated~~ under consideration, the employee shall specify the alleged violation with particularity no later than the close of the pre-decisional hearing.

(d) If the employee declines or fails to attend a pre-decisional hearing, the employee shall be deemed to have waived the right to a hearing.

(e) After considering the submissions and argument at the pre-decisional hearing and reviewing the record as a whole, the City Manager shall prepare written findings of fact and a final decision. If the decision is to ~~for~~ dismissal, it shall specify an effective date, subject to the provisions below.

~~**1307.3 Review of Decision to Dismiss.** If the City Manager's decision is for dismissal, —eConfidential copies of the findings of fact and the notice of dismissal ~~termination~~ shall immediately be provided to the employee, the City Attorney and City Insurance Provider, the Mayor, and the City Council,; and the termination shall not be made effective earlier than the first day after the next regular meeting of the Council, or the first day after a special meeting of the Council called to consider the issue, whichever is earlier.~~

(Ord. xxxx, 2018)

Section 13: The following sections in Chapter 14 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 14 of the Personnel Rules and Regulations is retained in its current form.

1401 EMPLOYEE DEVELOPMENT

1401.1 Tuition Reimbursement In the event an employee successfully completes course work considered to be of benefit to the City, consideration shall be given toward reimbursement of ~~up to \$2,000.00 one hundred (100) percent~~ of the tuition expense ~~per calendar year~~. In order to receive consideration for this reimbursement of tuition, the employee must obtain the written concurrence of the department head that the proposed course is related to the employee's present duties, and that successful completion of the course will ~~be of mutual benefit to both the City and employee involved~~. This concurrence shall be obtained in each case before beginning the pertinent course of study. The employee may also be required to sign an agreement that the tuition and other costs ~~borne by the City~~ will be returned to the City in accordance with the repayment provisions of Subsection 1014.3, Administrative Leave for Training.

Upon successful completion of the course ~~involved~~, the employee shall furnish ~~his~~ the department head with evidence of successful completion and amount of course fee. Upon

approval of the City Manager, the reimbursed cost is made from funds available in the appropriate employee's department's budget. The City shall pay direct billings from colleges or universities for courses approved in advance by the department head and the City Manager as part of a curriculum leading to a specific college degree, but only if specifically related to the employee's position ~~job-oriented~~. The approval will include a stipulation that the employee will repay the cost of the course to the City if the course is not ~~satisfactorily~~ completed with a passing grade or notation. In the event of tuition reimbursement to staff identified in subsection 203.64.5 City Clerk, responsibility for approving the reimbursement shall be assumed by the City Clerk.

(Ord. xxxx, 2018; Ord. 1090, 1999; Ord. 1008, 1995)

1401.2 Required Training If by City direction, or under the direction of a State and/or Federal requirement, an employee is sent to a formalized course of training (other than short workshops or seminars) the City shall pay all direct billings from the agency providing the training. The employee attending training lasting seven or more training days (not including travel time) ~~also shall sign an agreement specifying the obligation for repayment of that the full cost of such training will be returned to the City in the event of separation from City employment within twelve (12) months from date of course completion.~~ (Ord. 909, 1991)

1402 GIFTS AND GRATUITIES

It shall be the responsibility of each City employee to remain free from indebtedness or favors ~~which~~ that would tend to create a conflict of interest between personal and official interests, or might reasonably be interpreted as affecting the impartiality of the individual employee. ~~Employees may not accept a gift, loan, gratuity, or other valuable consideration, or a promise of any of them, with the understanding or agreement, expressed or implied, that the employee will act to produce or prevent a particular result. If an employee is tendered or offered a gift or gratuity which would, in the eyes of the public or in the eyes of public officials, be construed to be an attempt to bribe, influence or to encourage special consideration with respect to municipal operations, such offer shall be reported without delay to the employee's immediate superior who in turn will inform the department head.~~

~~If there should be any doubt whether a gift or gratuity is of such significance as to create undue influence upon the employee, the matter shall be reported to the department head concerned. If any employee shall knowingly accept any gift or gratuity that is construed by his department head to have created undue influence, or resulted in special consideration benefitting the giver then, with the approval of the City Manager, that employee shall be disciplined up to and including dismissal from City service. In the event of such acceptance by staff identified in sub-section 203.4.5 City Clerk, responsibility for disciplining the employee shall be assumed by the City Clerk.~~ (Ord. xxxx, 2018; Ord. 1090, 1999)

1403 OUTSIDE EMPLOYMENT

No employee shall engage in any ~~other~~ outside employment, whether public, private, or self-employment during scheduled work hours, nor outside scheduled work hours if such

employment conflicts with the City's interests or adversely affects the employee's availability and usefulness. Management personnel are responsible for informing all employees under their supervision of the provisions of this Section and for ~~the enforcement~~ enforcing of it.

For the guidance of all management personnel and employees, the following types of ~~other~~ outside employment are considered contrary to the City's interests and to adversely affect the availability and usefulness of employees.

- (a) Preparing financial reports subject to City audit, or review.
- (b) For department or division heads, or comparable level positions, ~~to~~ serving as an officer or director of any union or association of City employees. This provision shall not apply to any employee holding such office at the time of adoption of this provision.
- (c) Actively participating in management of any business organization that obtains, or is attempting to obtain, funds or business from the City.
- (d) Other employment that could involve the use of ~~wherein~~ data or information to which access is provided by City employment ~~could be used~~.

In administering this Section, all management personnel shall encourage their employees to obtain informal clearance from the City Manager, or designee, before accepting ~~other~~ outside employment.

1404 ~~EMPLOYMENT OF FAMILY MEMBERS~~ NEPOTISM

No person may be employed in a position ~~directly~~ supervised by an immediate family member, ~~by someone who shares the employee's household, or by someone with whom the employee is in a romantic relationship.~~ If such supervision occurs, and reassignment or assignment to different shifts is feasible, at the discretion of the department head the employee may be assigned to a different supervisor. If such reassignment is not possible, the City Manager shall decide which employee must leave the department, by transfer (if available), or dismissal without prejudice. ~~Additionally, immediate family members shall not be placed in a position such that one member is required or authorized to review the work, personnel documents, expense account, or time records of another immediate family member.~~ An immediate family member is defined in the Definitions section of these Personnel Rules and Regulations.

1405 ~~MOVING EXPENSES~~ RELOCATION STIPEND FOR NEW EMPLOYEES

Whenever a newly hired employee is required to relocate ~~person changes his place of residence, outside the local commuting area,~~ for the purpose of accepting employment with the City, they may be eligible for a relocation stipend. ~~such person shall be reimbursed for actual and necessary expenses under the following conditions:~~

- (a) The employee must be appointed to a position or salary grade for which the City Manager certifies that such expenditure is necessary to recruit qualified employees. (Ord. 1038, 1996)
- (b) The allowable employee relocation stipend ~~maximum amount reimbursable to the employee for actual and approved moving expenses for household effects shall not~~

exceed is \$2,000.00. The allowable employee with family relocation stipend is \$34,000.00. The allowable relocation stipend for a newly hired employee at the department head level must be authorized by the City Manager not to exceed \$7,500.00. Any amount above \$7,500.00 will require Council approval.

- (c) ~~The amount of one-way air fare reimbursable to the employee shall be computed from the point of actual hire directly to Kodiak by the least expensive fare. Dependents covered for actual one-way air fare will be the employee's immediate family who have resided with the employee for the last six (6) months, and who derive over 50% of their total subsistence from the employee. To be eligible for reimbursable travel expenses, all claimed and approved dependents must accompany or join the employee within one (1) year of the date of employment.~~
- (d) ~~If the employee elects to travel to Kodiak by other means reimbursement shall be only for actual and approved travel expenses incurred by direct travel from point of hire directly to Kodiak for an amount not to exceed that of direct air fare (see subsection (c)).~~
- (e) ~~New employees who are assisted with their moving expenses shall be required to sign a Transportation Agreement prior to employment. The Transportation Agreement shall stipulate that the employee will reimburse the City for all or part of such expenditures in the event the employee voluntarily leaves City service, or is discharged for cause, within a period of two (2) years according to the following schedule:~~
 - ~~_____ 100% less than **thirteen (13)** months;~~
 - ~~_____ 50% more than twelve (12) but less than **twenty-five (25)** months;~~
 - ~~_____ 0% **more than** twenty-four (24) months.~~
- (cf) ~~A nNew employees may not receive be given an advance relocation stipend. The relocation stipend will be processed through payroll and shall be subject to all required taxation. against moving expenses without prior written approval of the City Manager.~~
- (g) ~~New employees shall be advised by the appointing authority of dollar limitations, the need for itemized receipts of invoices, the meaning of the transportation agreement and other pertinent matters prior to their move.~~
- (h) ~~Moving expenses for newly hired persons at department head level will be determined by the Council on an individual basis.~~

Section 14: The following sections in Chapter 15 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 15 of the Personnel Rules and Regulations is retained in its current form.

1501 PURPOSE

~~Alaska Statutes 18.60.010 .105 provides job safety and health protection for workers through protection of safe and healthful working conditions throughout the State. The City shall abide by the State Division of Occupational Safety and Health regulations. Department heads are shall be responsible for posting safe practice and operations posters and safety and health protection on the job posters distributed by the State Division of Occupational Safety and Health. Department heads will promote and encourage safety~~

and health protection on the job and require that supervisors review ~~the provisions of~~ ASAlaska Statutes 18.60.010—105.

A copy of applicable occupational, health, and safety regulations ~~shall be~~ available for review by any employee upon request, ~~providing the request is deemed reasonable by the supervisor in regard to frequency of review and permission to be away from the work site.~~

Employees must use ~~will not be~~ required **Personal Protective Equipment** to work in ~~unsafe~~ the conditions **experienced in the course of their duties**. Supervisors ~~have the~~ are ~~responsibility~~ responsible for ~~to~~ determining safe and unsafe working conditions in accordance with Alaska Occupational Safety and Health statutes.

~~No established safety and health procedures or programs established by the City shall preclude the right of any employee to file a grievance at the appropriate step of the grievance procedure.~~

(Ord. xxxx, 2018)

1502 SAFETY EQUIPMENT

The City supplies all ~~any~~ safety equipment required by the Division of Occupational Safety and Health statutes to ~~insure~~ ensure job safety ~~shall be supplied by the City.~~

Section 15: The following sections in Chapter 16 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 16 of the Personnel Rules and Regulations is retained in its current form.

1601 PERSONNEL SHIFT ASSIGNMENTS

(a) Fire Department employees assigned to the platoon system shall work a ~~twenty-four~~ (24) hour shift schedule within a ~~twenty-eight~~ (28) day work period as determined by the Fire Chief. Within any ~~one twenty-eight~~ (28) day work period the Fire Chief may designate as off-duty time any period, ~~time which~~ a Fire Department shift employee otherwise would have spent on duty. ~~and~~ The employee ~~shall~~ is not ~~be~~ subject to stand-by duty requirements during the hours so designated; provided, however, that in no event shall such designation of off-duty hours result in a shift employee ~~having~~ working fewer than 212 hours ~~worked~~ during any given ~~twenty-eight~~ (28) day work period.

(b) Employees on such a shift schedule, referred to herein as “the platoon system” shall be subject to this chapter.

(Ord. 804, 1987)

1603 LEAVE - ACCRUAL AND USE

Every employee subject to the platoon system shall accrue leave at a multiplier of 1.33 hours, accrued to the nearest tenth of an hour, times the normal rate for a ~~forty~~ (40) hour

work week. Leave shall be taken hour-for-hour in accordance with the employee's normally scheduled duty cycle. (Ord. 1008, 1995; Ord. 804, 1987)

1605 WAGES FOR FIRE DEPARTMENT PLATOON SYSTEM WORKERS

- (a) Employees working the platoon system shall be paid according to a modified pay schedule based upon 2,764 hours per year. (sSee Schedule III.)
- (b) Straight time shall be paid to employees who work up to 212 hours during a ~~twenty-eight~~ (28) day work period.
- (c) One-and-one-half times the employee's hourly pay rate shall be paid to any employee who is required to work in excess of 212 hours in any twenty-eight (28) day work period.
- ~~(d) Any employee who is assigned standby duty status prior to any normal shift day shall be paid at a rate equal to five (5) percent of the employee's base hourly rate for every hour of such assigned standby duty except for those hours where straight time or time and one-half is paid under subsections (b) or (c) above. Notwithstanding the payment of compensation for time spent on stand-by duty status, such time shall not be treated as hours worked within the meaning of the Fair Labor Standards Act and the associated regulations.~~
- ~~(e) Any employee who responds to a call-back request shall be compensated for a minimum of one hour worked for calls originating between the hours of 6:00 a.m. and 10:00 p.m., and for two hours worked for calls originating between the hours of 10:00 p.m. and 6:00 a.m. If an employee is called back a second time while still being paid under the minimum call back, he will not be entitled to additional compensation until the minimum call back time has been completed.~~
(Ord. xxxx, 2018; Ord. 1008, 1995; Ord. 804, 1987)

~~1606 SPECIAL MERIT INCREASE FOR EMT III TRAINING~~

~~An employees who becomes certified as an Emergency Medical Technician III in the State of Alaska may be eligible for a special merit increase. (Ord. 1033, 1996)~~

Section 16: The following sections in Chapter 17 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 17 of the Personnel Rules and Regulations is retained in its current form.

~~1701 EMPLOYEES' RIGHTS OF ASSOCIATION~~

~~Employees of the City of Kodiak and representatives of employee organizations shall be accorded the same rights and privileges as citizens in general with respect to the exercise of First Amendment rights. This includes the right of a city employee to join or associate with employee organizations of his or her choice without fear of discrimination, retaliation, or other adverse action. The policies and procedures set forth in these personnel rules shall not, however, be construed as imposing upon the City of Kodiak an obligation to meet and confer with employee organizations or any other obligation not already imposed by state or federal law with respect to the recognition of such organizations. (Ord. xxxx, 2018; Ord. 834, 1988)~~

17032 STAFF MEETINGS

Department heads are encouraged to meet with their employees on a regularly basis ~~and to institute appropriate policies and procedures designed~~ to promote free and open communication of information relevant to employee concerns. ~~This section is precatory only.~~ (Ord. xxxx, 2018; Ord. 834, 1988)

Section 17: The following sections in Chapter 18 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 18 of the Personnel Rules and Regulations is retained in its current form.

~~Chapter 18 was enacted by Ordinance Number 1054, 1997.~~

1801 POLICY

The City of Kodiak is committed to providing a safe, effective and productive work environment, which meets state and federal mandates, including the provisions of the Code of Federal Regulations, 49 CFR Part 382, et. al. Subpart F, “Drug And Alcohol Use And Testing” Federal Highway Administration (FHWA) and the Omnibus Transportation Employee Testing Act of 1991. ~~The City provides information about the federally-mandated alcohol and drug testing to all affected employees and applicants. In the event of any conflict between the provisions of this chapter and any other policy of the City, the provisions of this chapter shall apply unless the conflicting policies are more stringent and meet the requirements of the federal regulations cited above, in which case the more stringent policy shall apply.~~

~~1802 AFFECTED INDIVIDUALS~~

~~All employees and job applicants whose job requires them to possess a commercial driver’s license or perform a safety sensitive function on a commercial motor vehicle (CDL/CMV employees) are subject to this policy. Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle~~

- ~~— (a) has a gross vehicle weight rating of 11,794 kilograms (26,001 pounds) or more, inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or~~
- ~~— (b) has a gross vehicle weight rating of 11,794 kilograms (26,001 pounds) or more; or~~
- ~~— (c) is designed to transport 16 or more passengers, including the driver; or~~
- ~~— (d) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.~~

~~Affected employees and applicants include but are not limited to operators who drive commercial motor vehicles as:~~

- ~~— (a) their primary duty; or~~

- ~~— (b) mechanics who drive commercial motor vehicles for test purposes; or~~
- ~~— (c) operators of licensed or unlicensed “heavy equipment” if the vehicle they are operating is a commercial motor vehicle as defined above and this vehicle is operated on a public road or roads.~~

- ~~— Certain employees are required to have Alaska Commercial Drivers Licenses to operate vehicles meeting the above specifications. Others may work on servicing such vehicles. Employees in the job classifications listed below are CDL/CMV employees subject to all of the provisions of this chapter:~~

Maintenance Worker	Heavy Mechanic	WWTP Supervisor
Utility Worker	Shop Supervisor	Public Works Director
Equipment Operator	WWTP Operator	Deputy Harbormaster
Public Works Supervisor	WWTP Senior Operator	P&H Maintenance
Auto Mechanic	WWTP Mechanic	Mechanic Senior
		Harbor Officer

~~**1803 PROGRAM ADMINISTRATOR**~~

~~— The City Manager is designated as the City’s CDL Alcohol and Drug Testing Administrator, in which capacity he is also responsible for the overall operation of this program as the Program Administrator.~~

~~— **1803.1 Counseling and Recovery Resources List.** A list of alcohol and drug counseling and recovery resources shall be maintained by the Program Administrator, and shall be available to all employees. Use of these resources is at the employee’s expense.~~

~~— **1803.2 Testing Resources.** The Program Administrator shall make arrangements with qualified individuals and organizations to serve in the following capacities:~~

- ~~— (a) Drug and Alcohol Testing Collection Site;~~
- ~~— (b) Testing Laboratory;~~
- ~~— (c) Medical Review Officer(s); and~~
- ~~— (d) Substance Abuse Professional(s).~~

~~**1804 SELF-REFERRAL AND EMPLOYEE ASSISTANCE**~~

~~— **1804.1 Self-Referral Prior to Testing.** An employee subject to testing under this chapter who acknowledges having an alcohol or drug problem before being selected for testing shall be permitted to take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City’s leave policies for the purpose of undergoing an approved dependency treatment program. To be eligible, the employee must deliver her or his signed, written request for leave to her/his supervisor. This referral program is only allowed once. Prior to returning~~

to duty, the employee shall be subject to return to duty and follow up testing as described in this chapter. Employees are advised to contact the City Manager's office for details regarding any insurance benefits that may be available.

~~1804.2 Employee Assistance Program. The City of Kodiak offers an Employee Assistance Program (EAP) through the Kodiak Mental Health Center designed to assist employees and their families who are experiencing personal or job-related problems, including employees who need assistance in dealing with alcohol or drug problems. Employees are encouraged to contact the EAP for assistance in early detection and referral for substance abuse problems and treatment. Employees who would like more information on benefits of the Employee Assistance Program should contact the City Manager's office.~~

~~1805 GENERAL PROHIBITIONS~~

~~1805.1 Prohibited Drugs. For the purposes of this policy, prohibited drugs include marijuana (THC), amphetamines, opiates, cocaine, and phencyclidine (PCP).~~

~~1805.2 Employees Not to Work Under the Influence of Alcohol or Drugs. No employee shall, while under the influence of alcohol or drugs or within 4 hours of using alcohol or a prohibited drug, operate a commercial motor vehicle, perform a safety sensitive function, nor report for or remain on duty when the employee's job responsibilities require the employee to be prepared to operate a commercial motor vehicle or perform a safety sensitive function. Employees are cautioned that refraining from drug or alcohol use for 4 hours prior to reporting for duty does not in and of itself assure an acceptable blood alcohol level or a negative drug test.~~

~~1805.3 Employees Not to Use Alcohol Prior to Post-Accident Test. No employee required to take a post-accident alcohol or drug test shall use alcohol for 8 hours following an accident, unless the test has been completed.~~

~~1805.4 Employees May Not Refuse Test. No employee may refuse to submit to a lawfully required test. If an employee does so, the refusal will be considered equivalent to a positive test and shall carry the consequences specified in this chapter.~~

~~1805.5 Employees to Report Alcohol/Drug Convictions. CDL/CMV employees must report all convictions for driving while intoxicated or other illegal use or possession of alcohol and all convictions for illegal use or possession of prohibited drugs or other controlled substances to their supervisors no later than the first working day after the conviction is entered. A conviction is considered entered at the time a jury verdict or court finding of guilty is returned or at the time of a guilty or nolo contendere plea even though sentencing is delayed or deferred.~~

~~1805.6 City's Right to Search.~~ CDL/CMV employees must provide access to lockers and all other city-owned areas which may be provided for their use. They may not contest the City's right to search or inspect such areas or items stored in them by claiming an expectation of privacy with respect to them.

~~1805.7 Possession of Alcohol and Drugs Prohibited.~~ No employee shall possess or carry alcohol or prohibited drugs in a commercial motor vehicle. The only exception is for drugs meeting the requirements of Section 1805.9 below (i.e., they are prescribed, approved as safe, and the employee's immediate supervisor receives a copy of the employee's doctor's written certification).

~~1805.8 Prohibitions Specific to Alcohol.~~

~~(a) Any CDL/CMV employee with a blood alcohol level of 0.02% to 0.04% is prohibited from operating commercial motor vehicles or performing any safety sensitive function, but such an individual is not, by reason of such a reading alone, considered to have tested "positive" for the purpose of this policy. The employee may be allowed to return to driving duty or duties requiring the performance of a safety sensitive functions once his or her blood alcohol level tests below 0.02%, but no sooner than 24 hours after the test which indicated a level of 0.02% to 0.04%. With the exception of the test or tests required to confirm that the employee's blood alcohol level is below 0.02%, the employee will not be subject to mandatory follow up testing or substance abuse professional (SAP) evaluation but shall be subject to such disciplinary action as the City deems appropriate under the circumstances.~~

~~(b) Alcohol test results are considered positive if they are greater than 0.04%. No CDL/CMV employee shall report for duty nor remain on duty with a blood alcohol level of greater than 0.04%.~~

~~1805.9 Prohibitions Specific to Prohibited Drugs.~~ No CDL/CMV employee shall report for duty or remain on duty with any level of a prohibited drug in her or his blood, breath or urine unless:

~~(a) the drug was medically prescribed by a state licensed medical doctor; and~~

~~(b) this doctor has certified in writing that use of the drug(s) will not affect the employee's ability to safely operate a commercial motor vehicle.~~

~~A CDL/CMV employee who is taking a prohibited drug in accordance with a prescription shall report this fact to the employee's immediate supervisor. The employee shall, before attempting to operate a commercial motor vehicle or undertake a safety sensitive function, provide the supervisor with a copy of the doctor's certification of the employee's ability to safely operate a commercial motor vehicle notwithstanding use of the drug as prescribed.~~

~~1806 TESTING~~

~~All affected individuals as identified in Section 1802 are subject to alcohol and drug testing as described below. Should an employee refuse to be tested or fail to cooperate with testing procedures, or should the test results be positive, the employee will be taken home, if still on duty, and will be subject to the consequences specified in this chapter.~~

~~**1806.1 Pre-Employment Testing.** All applicants offered a job, whether by new hire or transfer, which may require the operation of a commercial motor vehicle or the performance of a safety-sensitive function shall be tested for drug use prior to final hire or transfer. No applicant shall be hired or transferred into the covered position unless the test result is negative (i.e., any offer of employment for such a position is a conditional offer of employment and shall be withdrawn or rescinded if the prospective employee fails to return a negative test result). Each potential new hire shall complete and sign a pre-employment drug testing consent form.~~

~~If a positive drug test results in the City's retracting a conditional offer of employment the individual who failed the drug test shall not be eligible to re-apply for a position covered by this policy for six months after the testing date. Employees seeking a transfer or promotion to, or who are subject to demotion to a position covered by this policy, and who return a positive drug test result will be denied the change and the test results may be considered by the City in determining what disciplinary action, if any, is appropriate.~~

~~**1806.2 Random Testing.** At least 25% of the City's CDL/CMV employees will be required to submit to random alcohol tests in any given calendar year. At least 50% of CDL/CMV employees will be required to submit to random drug tests in any given calendar year.~~

~~Testing will occur at random times throughout the year. An employee will not receive notice until immediately before testing. Random alcohol testing will occur immediately prior to, during, or after the employee operates or is on duty and available to operate a commercial motor vehicle. Random drug tests can occur anytime, since use of prohibited drugs is unlawful.~~

~~The employee will be asked to sign an Employee Notification and Consent of Drug/Alcohol Test which acknowledges the employee's consent to testing. The employee must present the collection site with a copy of the form and a picture identification at the time of testing. (A copy of all forms will be kept by the employer.)~~

~~After notification of selection for a drug or alcohol test, the employee must proceed directly to the collection site. The City may require that the employee be accompanied by a supervisor or another designee.~~

~~If the test does not occur within 2 hours of the employee's notification, the supervisor shall document the facts and circumstances giving rise to the delay, following the procedures specified below in Section 1807 Delays in Testing.~~

~~**1806.3 Reasonable Suspicion Testing.** If a supervisor has reasonable suspicion that an employee may be under the influence of alcohol or a prohibited drug, which suspicion is supported by current and specific information concerning the employee's behavior, appearance, speech or body odor, immediately before, during, or after the employee has operated or is scheduled to operate a commercial motor vehicle or has performed or is scheduled to perform a safety-sensitive function, or has been on duty in any job, the supervisor shall:~~

~~(a) immediately stop the employee's work; and~~

~~(b) inform the employee of the suspicion of alcohol and/or drug use and of the supervisor's determination that a drug or alcohol test should be administered. (If possible, the supervisor will arrange for the presence of a second supervisor. It is also recommended that the supervisor complete the Supervisor Reasonable Suspicion Checklist); and~~

~~(c) contact the program administrator to arrange for the employee to be tested; and~~

~~(d) have the employee transported directly to and from the testing facility. If the employee is found to be under the influence of drugs or alcohol, he or she should be driven home after the test. The employee may request a confirmation test. If the test results are not immediately known the employee will be placed on paid administrative leave until the test results are available.~~

~~Supervisors should complete a Reasonable Suspicion Checklist within 24 hours of the supervisor's initial determination that an employee appears to be under the influence of alcohol or drugs, or before the results of the test are released, whichever is later.~~

~~If the test does not occur within 2 hours of the supervisor's initial determination, the supervisor shall document the facts and circumstances giving rise to the delay, following the procedures specified below in Section 1807 Delays in Testing.~~

~~To ensure the safety of others, any employee who knows or suspects that another employee is under the influence of drugs or alcohol shall report this suspicion to the observing employee's supervisor immediately.~~

~~**1806.4 Post Accident Testing.** A CDL/CMV employee involved in an accident shall submit to alcohol and drug testing within 2 hours after the accident if the accident resulted in~~

~~(a) a loss of human life; or~~

- ~~(b) the CDL/CMV employee's receipt of a traffic citation for a moving violation and~~
- ~~(1) a person was injured to the extent of requiring medical attention away from the scene; or~~
- ~~(2) one or more vehicles involved in the accident required towing from the scene.~~

~~Notwithstanding the foregoing, the requirement of post-accident testing does not apply to an occurrence~~

- ~~(a) involving only boarding or alighting from a stationary motor vehicle; or~~
- ~~(b) involving only the loading or unloading of cargo; or~~
- ~~(c) in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR §571.3) unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR §177.823.~~

~~The fact that an accident does not meet the criteria mandating Post-Accident Testing does not, however, preclude the employee's being required to submit to reasonable suspicion testing if the facts otherwise warrant such testing.~~

~~A CDL/CMV employee who is involved in an accident requiring the employee to submit to post-accident testing shall notify his or her supervisor as soon as possible. (Employees are permitted to leave the scene of the accident to obtain necessary emergency medical care, or to assist others in responding to the accident, but unnecessary delay will be considered a positive test.) The supervisor will arrange for immediate testing.~~

~~Employees who are subject to post-accident testing shall remain readily available for the test. An unexcused failure to remain readily available for a post-accident test may be equated with a refusal to submit to testing.~~

~~The results of alcohol or drug tests administered by federal, state, or local officials having independent authority for testing may be used, provided the tests comply with applicable federal, state, and local requirements and the results of the test are obtained by the City. A CDL/CMV employee who tests positive on a post-accident drug or alcohol test required by this section shall be discharged.~~

~~**1806.5 Return-to-Duty Testing.** CDL/CMV employees who engage in conduct prohibited by Subpart B of 49 CFR 382 will be evaluated by a Substance Abuse Professional (SAP) to determine what type of assistance he/she needs to resolve the problem. If the City plans to consider reinstating the employee, the SAP and the supervisor will develop a return-to-duty contract. This document shall outline specific objectives that the employee in question must complete in order to be considered for reinstatement. Prior to reinstatement, employees will be re-tested.~~

~~This return-to-duty test must register below 0.02% for alcohol and negative for drugs. A CDL/CMV employee who tests positive on a return-to-duty drug or above 0.04% on a return-to-duty alcohol test required by this section shall be discharged. A CDL/CMV employee whose test result on a return-to-duty alcohol test is between 0.02% and 0.04% blood alcohol content may be subject to discharge.~~

~~**1806.6 — Follow-up Testing.** An employee will receive at least 6 unannounced tests during the first 12 months after returning to duty following a positive test. Further testing may continue for up to 60 months, if recommended by the SAP. A CDL/CMV employee who, after returning to duty following a positive test, tests positive on a follow-up drug or alcohol test required by this section shall be discharged.~~

~~**1806.7 — Confirmation Testing.** All positive drug and alcohol tests shall be verified via approved confirmation test methods, as required.~~

~~1807 — DELAYS IN TESTING~~

~~If a required test is not administered within 2 hours following notice of a random, reasonable suspicion, or follow-up test or an accident, the supervisor, in cooperation with the administrator, shall document the reason the test was not administered within that time.~~

~~If a required alcohol test is not administered within 8 hours, or a required drug test is not administered within 32 hours, the test in question shall not be conducted. The administrator shall document the reason(s) the test(s) were not conducted within the required time.~~

~~1808 — TYPE OF TESTING REQUIRED~~

~~Drug testing is required for each of the above test types. Alcohol testing is also required for each test type, except Pre-Employment Testing. Note that an original alcohol test reading below 0.04% excuses the employee from the alcohol testing requirement of the return-to-duty and follow-up tests.~~

~~**1808.1 — After Hours Testing.** If testing is needed outside normal hours of operation of the designated collection site, a supervisor or manager will be responsible for following the procedures established by the testing lab.~~

~~**1808.2 — Refusal To Be Tested.** The regulations require the City to treat a refusal to be tested as a positive test. Each of the following constitutes refusal to submit to testing:~~

~~(a) Failure to provide adequate breath for testing without a valid medical excuse from a state licensed medical doctor; or~~

- ~~(b) Failure to provide adequate urine for testing within a reasonable time without a valid medical explanation from a state licensed medical doctor; or~~
- ~~(c) Failure to report on time, or to sign or initial testing documents, as required.~~

~~A CDL/CMV employee who refuses to submit to a drug or alcohol test mandated or authorized by these policies shall be discharged.~~

~~**1809 CONSEQUENCES OF A POSITIVE TEST OR PERFORMANCE OF A PROHIBITED ACT**~~

~~The following table summarizes the consequences of a CDL/CMV employee's having a positive drug or alcohol test or refusing to be tested under the specified circumstances.~~

Type of Test	Positive Test Consequences	Refusal to Test Consequences
Pre-Employment	Not hired/transferred	Not hired/transferred
Random	Discharged/rehabilitation*	Discharged
Reasonable Suspicion	Discharged/rehabilitation*	Discharged
Post-Accident	Discharged	Discharged
Return-to-Duty	Discharged	Discharged
Follow-up	Discharged	Discharged

~~*(Indicates a potential opportunity for rehabilitation, subject to the limitations set out in this chapter.)~~

~~**1809.1 Immediate Removal from Duty.** An employee who tests positive or performs an act prohibited under this chapter will be removed from duty immediately. The employee will be placed on leave without pay pending the determination of the appropriate discipline.~~

~~**1809.2 Referral for Evaluation.** An employee who tests positive (regardless of whether terminated or retained) will then receive a referral to a substance abuse professional (SAP) for evaluation. The employee will also receive a copy of the Counseling and Recovery Resources List specified in Section 1803.1.~~

~~**1809.3 City's Option for Rehabilitation and Retention.** The City may choose to work with the SAP to rehabilitate an employee who has tested positive or otherwise committed one or more acts prohibited by this policy; however, it is under no obligation to retain the employee, even if the rehabilitation is successful. An employee who participates in a rehabilitation plan approved by the SAP and Program Administrator may take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies for the purpose of undergoing the approved dependency treatment program. No other form of paid leave will be allowed for this purpose. Other than the Employee Assistance Program defined in Section 1804.2, no rehabilitation program or~~

~~treatment services will be paid by the City for the purposes outlined in this section.~~

~~1809.4 Blood Alcohol Level Between 0.02% to 0.04%. An employee whose test results indicate a blood alcohol concentration of 0.02% to 0.04% shall be prohibited from driving a commercial motor vehicle until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following the administration of the test. Other disciplinary actions may apply.~~

~~1809.5 Prerequisites for Return to CMV Driving. If the employee is retained as a commercial driver, he/she may not return to commercial motor vehicle driving or the performance of safety-sensitive functions until~~

~~(a) the SAP determines that the employee has completed all necessary treatment in accordance with the return-to-duty contract; and~~

~~(b) the employee's return-to-duty test results are below 0.02% for alcohol and negative for drugs. Follow-up tests will then occur.~~

~~1810 TRAINING FOR SUPERVISORS~~

~~Every individual who is in the position of determining "reasonable suspicion" of alcohol misuse or drug abuse will receive a minimum 120 minutes of annual training (60 minutes alcohol related and 60 minutes drug related). The training must cover the physical, behavioral, speech, and performance indicators of alcohol misuse and drug abuse. Supervisors shall sign a sheet acknowledging training.~~

~~1811 NOTIFICATION AND TRAINING OF AFFECTED EMPLOYEES~~

~~Prior to testing, employees and job applicants shall receive a copy of this policy. Employees shall sign forms acknowledging receipt of this policy and participation in any required training. Job applicants shall sign a testing consent form which includes acknowledgment that they understand the drug testing requirement.~~

~~1812 RECORD RETENTION AND REPORTING~~

~~1812.1 Security of Records All records pertaining to employee and applicant drug testing shall be maintained in a secure location, and access shall be controlled in the same manner as other confidential personnel records.~~

~~1812.2 Records Available to Future Employers. Records will be made available to future employers upon written request by the employee.~~

- ~~1812.3 Employee's Right to Copies. Upon written request, employees are allowed to receive copies of the drug and alcohol records pertaining to them.~~
- ~~1812.4 Records Available to Transportation Investigations. All documents relating to this program which are within the City's possession or control will be made available to state and federal transportation investigation officials, upon written request.~~
- ~~1812.5 Disclosure of Records in Lawsuit, Grievance, Etc. The City may disclose information pertaining to an employee that is required to be maintained under this policy to the decision makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.~~
- ~~1812.6 Disclosure of Records to Federal Highway Administration. The Federal Highway Administration (FHWA) may request an annual report for the previous year's drug and alcohol testing activities. If requested, the City will provide it.~~

Section 18: The following sections in Chapter 19 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 19 of the Personnel Rules and Regulations is retained in its current form.

Chapter 19 was enacted by Ordinance Number 1054, 1997, and xxxx.

1902 AFFECTED INDIVIDUALS

1902.1 Reasonable Suspicion. Supervisors are responsible for monitoring employees for alcohol and drug use. If a supervisor has reasonable suspicion that any employee may be under the influence of alcohol or a prohibited drug, which suspicion is supported by current and specific information concerning the employee's behavior, appearance, speech, communication, or ~~body~~ odor, immediately before, while, or immediately after the employee ~~has been~~ is on duty, the employee shall be subject to the provisions for reasonable suspicion testing included in this chapter.

1902.2 Job Applicants Nominated for Hire. Any person who is offered regular, classified employment with the City shall be subject to the Pre-Employment Testing provisions of this chapter. Each potential new hire shall complete and sign a pre-employment drug testing consent form.

1903 PROGRAM ADMINISTRATOR

The City Manager is ~~designated as the City's CDL Alcohol and Drug Testing Administrator, in which capacity he is also~~ responsible for the overall operation of this program as the Program Administrator.

1904 SELF-REFERRAL AND EMPLOYEE ASSISTANCE

1904.1 Self-Referral ~~Prior to~~Before Testing. An employee subject to testing under this chapter who acknowledges having an alcohol or drug problem before being selected for testing shall be permitted to take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies for the purpose of undergoing an approved dependency treatment program. To be eligible, the employee must deliver ~~her or his~~ the signed, written request for leave to ~~her/his~~their supervisor. This referral program is ~~only~~allowed once. ~~Prior to~~ Before returning to duty, the employee shall be subject to return-to-duty and follow-up testing as described in this chapter. Employees are advised to contact the City Manager's office for details regarding ~~any~~insurance benefits that may be available for participation in such a treatment program.

1904.2 Employee Assistance Program. The City of Kodiak offers an Employee Assistance Program (EAP) ~~through the Kodiak Mental Health Center~~ designed to assist employees and their family members ~~ies~~ who are experiencing personal or job-related problems, including employees who need assistance in dealing with alcohol or drug problems. Employees are encouraged to contact the EAP for assistance in early detection and referral for substance abuse problems and treatment. Employees who would like more information on benefits of the Employee Assistance Program should contact the City Manager's office.

1905 GENERAL PROHIBITIONS

1905.1 Prohibited Drugs. For the purposes of this policy, prohibited drugs include marijuana (THC), amphetamines, methamphetamine, opiates, cocaine, ~~and~~ phencyclidine (PCP), and propoxyphene.

1905.2 Employees Not to Work Under the Influence of Alcohol or Drugs. No employee shall, while under the influence of alcohol or drugs or within 4 hours ~~of~~ after using alcohol or a prohibited drug, report for or remain on duty in any capacity. Employees are cautioned that refraining from drug or alcohol use for 4 hours ~~prior to~~before reporting for duty does not ~~in and of itself~~ assure an acceptable blood alcohol level or a negative drug test.

1905.3 Employees Not to Use Alcohol ~~Prior to~~Before Post-Accident Test. No employee required to take a post-accident alcohol or drug test shall use alcohol for 8 hours following an accident, unless the test has been completed.

1905.4 Employees May Not Refuse Test. No employee may refuse to submit to a lawfully required alcohol or drug test. If an employee does so, the refusal will be considered equivalent to a positive test and shall carry the consequences specified in this chapter.

1905.5 Possession of Alcohol and Drugs Prohibited. No employee shall possess or carry alcohol or prohibited drugs in a City-owned motor vehicle ~~nor~~ in a City office, shop, or other workplace. The only exception is for drugs that meeting the requirements of Section 1905.9-7 below (*i.e.*, ~~they are~~ prescribed, approved as safe, and the employee's immediate supervisor receives a copy of the employee's doctor's written certification).

1905.6 Prohibitions Specific to Alcohol.

(a) Any employee with a blood alcohol level of 0.02% to 0.04% is prohibited from operating City-owned motor vehicles, but such an individual is not, by reason of such a reading alone, considered to have tested "positive" for the purpose of this policy. The employee may be allowed to return to driving once ~~her or his~~ the employee's blood alcohol level tests below 0.02%. With the exception of the test or tests required to confirm that the employee's blood alcohol level is below 0.02%, the employee will not be subject to mandatory follow-up testing or substance abuse professional (SAP) evaluation but shall be subject to such disciplinary action as the City deems appropriate under the circumstances.

(b) Alcohol test results are considered positive if they are greater than 0.04%. No employee shall report for duty ~~nor~~ remain on duty with a blood alcohol level of greater than 0.04%.

1905.7 Prohibitions Specific to Prohibited Drugs. No employee shall report for duty or remain on duty with any level of a prohibited drug is in ~~her or his~~ their blood, breath or urine unless:

- (a) the drug was medically prescribed by a state licensed medical doctor; and
- (b) ~~this~~ the prescribing doctor has certified in writing, provided to the City, that use of the drug(s) will not adversely affect the employee's ability to perform ~~her or his~~ the employee's job duties.

1906 TESTING

All affected individuals as identified in Section 1902 are subject to alcohol and drug testing as described below. Should an employee refuse to be tested or fail to cooperate with testing procedures, or should the test results be positive, the employee will be taken home, if still on duty, and will be subject to the consequences specified in this chapter.

1906.1 Pre-Employment Testing. Any person not already employed by the City who is offered regular, classified employment with the City shall be tested for drug use ~~prior to~~ before ~~final~~ hire. No applicant shall be hired unless the test result is negative (*i.e.*, any offer of employment to a person not already employed by the City ~~for such a position~~ is a conditional offer of employment and shall be

withdrawn or rescinded if the prospective employee refuses a test or fails to return a negative test result). Each potential new hire shall complete and sign a pre-employment drug testing consent form.

If a positive drug test results in the City's retracting a conditional offer of employment, the individual who failed the drug test shall not be eligible to re-apply for a position covered by this policy for six months after the testing date.

- 1906.2 Reasonable Suspicion Testing.** If a supervisor has reasonable suspicion that an employee ~~may be~~ is under the influence of alcohol or a prohibited drug, which suspicion is supported by current and specific information concerning the employee's behavior, appearance, speech or ~~body~~ odor, immediately before, during, or immediately after the employee has been on duty in any job, the supervisor shall
- (a) immediately stop the employee's work; and
 - (b) complete the Supervisor Reasonable Suspicion Checklist; and
 - ~~(c)~~ inform the employee of the suspicion of alcohol and/or drug use and of the supervisor's determination that a drug or alcohol test should be administered. (If ~~possible~~ practical, the supervisor will arrange for the presence of a second supervisor during this notification to the employee. ~~It is also recommended that the supervisor complete the Supervisor Reasonable Suspicion Checklist~~); and
 - (d) contact the program administrator to arrange for the employee to be tested; and
 - ~~(e)~~ have the employee transported directly to and from the testing facility, and, ~~if the employee is found to be under the influence of drugs or alcohol, he or she should be~~ driven home or, if the test is known to be negative, returned to the work site after the test.
- The employee may request a confirmation test. If the test results are not immediately known the employee will be placed on paid administrative leave until the test results are available.

Supervisors ~~should~~ shall complete a Reasonable Suspicion Checklist within 24 hours ~~of~~ after the supervisor's initial determination that an employee appears to be under the influence of alcohol or drugs, or before the results of the test are released, whichever is later.

If the test does not occur within 2 hours ~~of~~ after the supervisor's initial determination, the supervisor shall document the facts and circumstances giving rise to the delay, following the procedures specified below in Section 1907 Delays in Testing.

To ensure the safety of others, any employee who knows or suspects that another employee is under the influence of drugs or alcohol shall report this suspicion to the observing employee's supervisor immediately.

1906.3 Return-to-Duty Testing. An eEmployee who engages in conduct prohibited by this chapter will be evaluated by a Substance Abuse Professional (SAP) to determine the ~~what type of assistance he/she needs~~ to resolve the problem. If the City plans to consider reinstating the employee, the SAP and the supervisor will develop a return-to-duty contract. ~~This document shall~~ outline specific objectives ~~that the employee in question must complete~~ in order to be considered for reinstatement. ~~Prior to~~ Before reinstatement, the employees will be re-tested. This return-to-duty test must register below 0.02% for alcohol and negative for drugs. An employee who tests positive on a return--to--duty drug test or above 0.04% on a return--to--duty alcohol test required by this section shall be ~~discharged~~ dismissed. An employee whose test result on a return--to--duty alcohol test is between 0.02% and 0.04% blood alcohol content may be subject to discharge.

1906.4 Follow-up Testing. An employee will receive at least six ~~6~~ unannounced tests during the first 12 months after returning to duty following a positive test. Further testing may continue for up to 60 months, if recommended by the SAP. An employee who, after returning to duty following a positive test, tests positive on a follow-up drug or alcohol test required by this section shall be ~~discharged~~ dismissed.

1906.5 Confirmation Testing. All positive drug and alcohol tests shall be verified via approved confirmation test methods, as required.

1907 DELAYS IN TESTING:

If a required test is not administered within two~~2~~ hours ~~following~~ after notice of a reasonable suspicion or follow-up test, the supervisor, in cooperation with the administrator, shall document the reason the test was not administered within that time.

If a required alcohol test is not administered within eight ~~8~~ hours, or a required drug test is not administered within 32 hours, the test in question shall not be conducted. The administrator shall document the reason(s) the test(s) were not conducted within the required time.

1908 TYPE OF TESTING REQUIRED

Drug testing is required for each of the above test types. Alcohol testing is also required for each test type, except Pre-Employment Testing. ~~Note that A~~an original alcohol test reading below 0.04% excuses the employee from the alcohol testing requirement of the return-to-duty and follow-up tests.

1908.1 After--Hours Testing. If testing is needed outside normal hours of operation of the designated collection site, a supervisor or manager will be responsible for following the procedures established by the testing lab.

1908.2 Refusal to Be Tested. ~~The regulations require~~ The City will ~~to~~ treat a refusal to be tested as a positive test. Each of the following constitutes refusal to submit to testing:

- (a) Failure to provide adequate breath for testing without a valid medical excuse from a state-licensed medical doctor; or
- (b) Failure to provide adequate urine for testing within a reasonable time without a valid medical explanation from a state-licensed medical doctor; or
- (c) Failure to report on time, or to sign or initial testing documents, as required; or
- (d) Refusal to be tested; or
- (e) Leaving the scene of an accident without a valid reason, before tests are conducted.

An employee who refuses to submit to a drug or alcohol test mandated or authorized by these policies shall be dismissed ~~discharged~~.

1909 CONSEQUENCES OF A POSITIVE TEST OR PERFORMANCE OF A PROHIBITED ACT

The following table summarizes the consequences of an employee's ~~having a~~ positive drug or alcohol test or ~~refusing~~ to be tested under the specified circumstances.

Type of Reason for Test	Positive Test Consequences	Refusal to Test Consequences
Pre-Employment	Not hired/transferred	Not hired/transferred
Reasonable Suspicion	Dismissed discharged /rehabilitation*	Dismissed discharged
Return-to-Duty	Dismissed discharged	Dismissed discharged
Follow-up	Dismissed discharged	Dismissed discharged

*(Indicates a potential opportunity for rehabilitation, subject to the limitations set out in this chapter.)

1909.1 Immediate Removal from Duty. An employee who tests positive, refuses to be tested, or performs an act prohibited under this chapter will be removed from duty immediately. The employee will be placed on administrative leave ~~without pay~~ pending ~~the~~ determination of the appropriate discipline.

1909.2 Referral for Evaluation. An employee who tests positive (regardless of whether ~~terminated~~ dismissed or retained) will ~~then~~ receive a referral to a substance abuse professional (SAP) for evaluation. ~~The employee will also receive a copy of the Counseling and Recovery Resources List specified in Section 1803.1.~~

1909.3 City's Option for Rehabilitation and Retention. The City may choose to work with the SAP to rehabilitate an employee who has tested positive or otherwise committed one or more acts prohibited by this policy, ~~however it~~ but the City is under no obligation to retain the employee, even if the rehabilitation is successful. Determination whether to retain the employee will depend on the employee's history of conduct and performance. An employee who participates in a rehabilitation plan approved by the SAP and Program Administrator may take leave in accordance with Section 1016.2(a) and (c) ~~up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies~~ for the purpose of undergoing the approved dependency treatment program. ~~No other form of paid leave will be allowed for this purpose.~~

Other than any ~~the~~ City Employee Assistance Program, ~~defined in Section 1804.2~~, no rehabilitation program or treatment services will be paid by the City for the purposes outlined in this section.

1909.4 Blood Alcohol Level Between 0.02% to 0.04%. An employee whose test results indicate a blood alcohol concentration of 0.02% to 0.04% shall be prohibited from driving a City-owned motor vehicle until the start of the employee's next regularly scheduled duty period, but not less than 24 hours ~~following~~ after the administration of the test. Other disciplinary actions may apply.

1910 TRAINING FOR SUPERVISORS

Every individual who is in the position of determining "reasonable suspicion" of alcohol misuse or drug abuse will receive a minimum 120 minutes of annual training (60 minutes alcohol-related and 60 minutes drug-related). The training must cover the physical, behavioral, speech, and performance indicators of alcohol misuse and drug abuse. Supervisors shall sign a sheet acknowledging training.

1911 CONSENT AND TRAINING FOR AFFECTED EMPLOYEES

~~Prior to~~ Before testing, employees and job applicants, shall receive a copy of this policy. Employees shall sign forms acknowledging receipt of this policy and participation in any required training. Job applicants shall sign a testing consent form ~~which~~ that includes acknowledgment that they understand the drug testing requirement.

1912 RECORD RETENTION AND REPORTING

- 1912.1 Security of Records** All records pertaining to employee and applicant drug and alcohol testing shall be maintained in a secure location, and access shall be controlled in the same manner as other confidential personnel records.
- 1912.2 Records Available to Future Employers.** Records pertaining to an employee's drug and alcohol testing will be made available to future employers upon written request by the employee.
- 1912.3 Employee's Right to Copies.** Upon written request, employees will ~~are allowed to~~ receive copies of the drug and alcohol records pertaining to them.
- 1912.4 Disclosure of Records in Lawsuit, Grievance, Etc.** The City may disclose information pertaining to an employee that it is required to be maintained under this policy to the decision-makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.

DEFINITIONS

BREAK IN SERVICE. Means any period of absence of an employee from work as a result of resignation, retirement, ~~termination~~ dismissal, suspension without pay, or leave without pay for more than ~~thirty~~ (30) calendar days. See Sections 1017 and 1301 through 1304. (Ord. 1307, 2013)

CALENDAR YEAR. Twelve ~~(12)~~ month period beginning January 1 and ending December 31.

CDL/CMV Employee. An employee whose job requires possession of a commercial driver's license or performance of a safety sensitive function on a commercial motor vehicle. ~~See Section 1802.~~

CMV. Commercial motor vehicle. ~~See Section 1802.~~

DEPUTY CITY MANAGER. The deputy chief administrative officer ~~senior manager, and department head of the administrative branch of the City government~~ who reports to the City Manager and assists in the proper administration of all affairs of the City.

~~DISCHARGE OR DISMISSAL.~~ The involuntary ~~termination~~ dismissal of an employee from the City service by an appointing authority. See Sections 1303 and 1304.

DRUG, PROHIBITED. For the purposes of this policy, prohibited drugs include marijuana (THC), amphetamines, methamphetamine, opiates, cocaine, and phencyclidine (PCP), and propoxyphene. ~~See Section 1805.1~~ 1905.1.

FAMILY. See Immediate Family Member, below.

LAYOFF. The involuntary ~~termination~~ dismissal of an employee because of the lack of work, lack of funds, or abolition of a position. See Sections 409.6, 605, and 1302.

PART-TIME POSITION. A position requiring the services of a regular part-time employee for less than a regular work week on a continuous basis. (Ord. 1307, 2013)

PAY RANGE MATRIX. ~~The minimum, mid-point, and maximum~~ rates of pay established for each classification. See Chapter 4 and Schedules I, II and III. (Ord. 1307, 2013; Ord. 1038, 1996)

REGULAR FULL-TIME EMPLOYEE. A regular employee who is employed for 40 hours in a regular work week on a continuous basis and is eligible for benefits.

REGULAR PART-TIME EMPLOYEE. A regular employee who is employed for less than the regular number of working hours on a continuous basis and is eligible for benefits. See Sections 407, 417, 1004, 1101, 1201, and 1205. (Ord. 1307, 2013)

TERMINATION. ~~The involuntary cessation of employment with the City for just cause. See Chapter 13.~~

Addendum B to PR&R

CITY OF KODIAK

SEXUAL HARASSMENT POLICY

~~The Alaska Human Rights Law (AS18.80.220), Federal Law, and the City of Kodiak prohibit sexual harassment in the work place. Sexual harassment is:~~

~~UNWELCOME SEXUAL ADVANCES
REQUESTS FOR SEXUAL FAVORS~~

~~Verbal/physical/visual conduct of a sexual nature constitutes sexual harassment when:~~

- ~~1. submission to the conduct is made an explicit or implicit term or condition of employment~~
- ~~2. submission to or rejection of the conduct is used as the basis for an employment decision~~
- ~~3. the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or hostile work environment~~

~~Retaliation for complaining about sexual harassment is UNLAWFUL.~~

~~If you believe you have been sexually harassed, contact the City Manager's office, the Alaska State Commission for Human Rights, or the Equal Employment Opportunity Commission.~~

~~Alaska State Commission for Human Rights~~ ~~Equal Employment Opportunity Commission~~

Ordinance No. 1383

Page 72 of 76

~~Deleted Language, Added Language~~

~~800 A Street, Suite 204
Anchorage, AK 99501~~

~~Bay Vista Building
2815 Second Avenue, Suite 500
Seattle, WA 98121~~

~~Phone: 1-800-478-4692~~

~~Phone: 1-800-669-4000~~

~~Gary J. Bloomquist, City Manager~~

~~January 4, 1993~~

SEXUAL HARASSMENT AND ANTI-HARASSMENT POLICY

General

The City of Kodiak is committed to maintaining a work environment that is free of discrimination and harassment based on a person's race, color, religion, sex, national origin, age, disability, genetic information, political affiliation or any other protected class provided for in federal, state, and local laws.

All employees should respect the rights, opinions, and beliefs of others. Harassment of any person because of a person's race, color, religion, sex, national origin, age, disability, genetic information, political affiliation or any other protected class provided for in federal, state, and local laws is strictly prohibited. Any such harassment is prohibited by this policy whether or not it violates the equal employment opportunity laws. This policy applies to all employees (regular and temporary) of the City, up to and including Management.

Sexual Harassment

Sexual harassment is conduct based on sex, whether directed towards a person of the opposite or same sex. No one may threaten or imply that an employee's submission to or rejection of sexual advances will in any way influence any decision about that employee's employment, advancement, duties, compensation, or other terms and conditions of employment. No one may take any personnel action based on an employee's submission to or rejection of sexual advances.

No one may subject another employee to any unwelcome conduct of a sexual nature. This includes unwelcome physical conduct, such as touching, blocking, staring, making sexual gestures, and making or displaying sexual drawings or photographs, and unwelcome verbal conduct, such as sexual propositions, slurs, insults, jokes, and other sexual comments. An employee's conduct will be considered unwelcome and in violation of this policy when the employee knows or should know it is unwelcome to the person subjected to it.

Other Harassment

Harassment consists of unwelcome conduct, whether verbal, physical, or visual, that is based upon a person's protected status, such as sex, color, race, religion, national origin, age, physical or mental disability or other protected group status. The City will not tolerate harassing conduct that affects tangible job benefits, that interferes

unreasonably with an individual's work performance, or that creates an intimidating, hostile, or offensive working environment. Such harassment may include, for example, jokes about another person's protected status, kidding, teasing or practical jokes directed at a person based on his or her protected status.

Making Complaints and Reporting Violations

If you are the victim of harassment, you are requested and encouraged to make a complaint to the City. You are not required to complain first to the person who is harassing you. If you prefer, you may complain directly to your supervisor, the supervisor of the harasser, Human Resources, or the Department Head. Similarly, if you observe harassment of another employee, you are requested and encouraged to report this to one of the persons described above. No reprisal, retaliation, or other adverse action will be taken against any employee for making in good faith a complaint or report of harassment, or for assisting in good faith in the investigation of any such complaint or report. Any suspected retaliation or intimidation should be reported immediately to one of the persons described above.

Investigations of Complaints and Report

The City will impartially, promptly, and thoroughly investigate any complaint or report of a violation of this policy. An impartial and thorough investigation can take several weeks in some cases. To the fullest extent practicable, the City will keep the complaints and the terms of their resolution confidential. You may at any time ask the person you complained or reported to about the status of the investigation.

Penalties for Violations

The City will take prompt disciplinary and remedial action if its investigation shows a violation of this policy. Depending on circumstances, the disciplinary action may range from a warning to dismissal.

A complaint or report that this policy has been violated is a serious matter. Dishonest complaints or reports are also against the City policy, and the City will take appropriate disciplinary action if its investigation shows that deliberately dishonest and bad faith accusations have been made.

Additional Information

If you have any concerns or questions about this policy, or you have general questions about discrimination or harassment, please contact the City Human Resources Office or Department Head. You may also contact the nearest office of the Equal Employment Opportunity Commission or the Alaska Human Rights Commission with any questions about discrimination or harassment.

I certify that I have received and read the above policy explaining the City of Kodiak policy against sexual and other harassment and understand that discipline, up to and including dismissal may result from any violation of this policy.

Employee Printed Name

Employee Signature

Date

Section 19: Kodiak City Code 2.08.065 Deputy City Manager – appointment, powers and duties is hereby amended as follows:

2.08.065 Deputy city manager—appointment, powers and duties

(a) There shall be a deputy city manager who shall be appointed for an indefinite term by the city manager.

(b) The deputy city manager shall:

(1) Serve as the deputy chief administrative officer ~~and senior manager and department head of the administrative branch of the city government~~ who reports to the city manager;

(2) Assist the city manager in providing administrative oversight of daily operations of the city, ensuring implementation of and adherence to policies ~~established by the city council by functioning as head of the senior management team~~;

(3) Ensure organizational compliance with applicable laws, codes, regulations and standards and provide direct management and oversight of assigned functional areas;

(4) ~~Oversee all human resource functions and~~ Assist the city manager in administering all aspects of the city's human resources program ~~including the maintenance of personnel records~~;

(5) Assist department heads and the City Manager in making hiring, dismissal, and disciplinary recommendations;

(6) Provide oversight and participate in the development and implementation of short and long range strategic plans, programs, policies and procedures for the city;

(7) Research, analyze, prepare and present management studies, reports, plans, resolutions, ordinances and other information as directed by the city manager;

(8) Manage and participate in project activities as assigned by the city manager; and

(9) Perform functions of the city manager and other duties when assigned.

Section 20: This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK

MAYOR


ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Thru: Craig Walton, Public Works Director

Date: November 8, 2018

Agenda Item: V. b. Authorization to Purchase a CAT 926M Wheeled Loader from NC Machinery

SUMMARY: Council approved \$220,000 in funding to replace a 1996 CASE 621B wheeled loader for Public Works in the FY2019 budget. Staff requested information from Yukon Equipment for a new CASE 621G XT wheeled loader, and from NC Machinery for a new CAT 926M wheeled loader. Both quotes were for similarly outfitted equipment, FOB Kodiak, and included a general purpose 3.5 yard bucket, a 6.5 yard light material/snow bucket, 72" pallet forks, a spare wheel/tire and additional features. The Yukon Equipment Inc. (CASE) quote is \$203,613, plus \$1,486 for the manual (\$205,099 total) and the NC Machinery (CAT) quote is \$203,565, plus \$1,200 for manuals (\$204,765 total). NC Machinery offered more specified features required of the City than Yukon Equipment Inc. could offer. Staff recommends Council authorize the award to NC Machinery in an amount not-to-exceed \$204,765 for the CAT 926M loader.

PREVIOUS COUNCIL ACTION: Per Kodiak City Code 3.12.030(a), purchases having an estimated value of more than \$50,000 may be made only after a notice calling for bids. The exception to this is KCC 3.12.070(c) which states "contracts for property or services where other units of government, through their formal bidding process, have established the lowest responsible bidder and where the property or service meets or exceeds the city's specifications, when the best interests of the city would be served thereby, and the same is in accordance with the city and state law." The City recently made purchases for other heavy equipment (backhoe and trailer) using this procurement method at a great cost savings. NC Machinery offers NJPA (Sourcewell), USCC and CAT/NC discounts totaling \$73,795.

DISCUSSION: The City's vehicle replacement policy is based on 18 years of service for a wheeled loader. Staff has been doing annual evaluations since the loader's replacement date in 2014 and managed to get an additional four years of service out of the loader. The condition assessment of the loader is showing major wear on all components. CAT has a Fusion coupling system that reduces wear by applying constant pressure on attachments opposed to pin couplers, therefore reducing the changing of bushings and pins every four to five years.

Also, in the Long Range Plan for FY2020 is a larger wheeled loader. The State of Alaska has awarded NC Machinery the 950GC Loader base price for \$186,000, which is valid through 2019. We are looking to purchase a replacement for our CASE 821 in the FY2020 budget.

ALTERNATIVES:

- 1) Purchase of the CAT 926M loader per Kodiak City Code Section 3.12.070 (c) and (d). NC Machinery is the sole CAT dealer in the State of Alaska. With the Public Works Department need for a reliable loader, we request this purchase. This is staff's recommendation.
- 2) Do not purchase a loader, which would have a significant impact to our snow removal capability. With the change to upland snow disposal in the future, staff would not recommend that approach.

FINANCIAL IMPLICATIONS: The replacement of the existing CASE 621B wheeled loader is in the FY2019 budget in the amount of \$220,000. The remaining funds not used on the purchase will be for lighting and safety equipment as well as a 2-way radio. In addition, the annual contribution to the vehicle replacement fund based on a \$220,000 purchase will be \$12,222 annually for the 18-year expected life per the City's vehicle replacement policy.

LEGAL: This procurement procedure has been reviewed and approved by legal counsel.

STAFF RECOMMENDATION: Staff recommends Council approve the purchase of a 2019 CAT 926M wheeled loader from NC Machinery in the amount of \$203,565.

CITY MANAGER'S COMMENTS: I support the equipment request from the Public Works Department.

ATTACHMENTS:

- Attachment A: NC Machinery Quote
- Attachment B: Yukon Equipment Inc. Quote

PROPOSED MOTION:

Move to authorize the award to NC Machinery in an amount not-to-exceed \$204,765 for the CAT 926M loader from the Streets Improvement Fund Project No. 5003 Annual Sidewalk Curb & Gutter and authorize the City Manager to execute the documents on behalf of the City.

Quote 196576-01



October 23, 2018

CITY OF KODIAK

PO BOX 1397
KODIAK, Alaska 99615-6635

Attention: CHRIS DOLPH

RE: Quote 196576-01

We would like to thank you for your interest in our company and our products, and are pleased to quote the following for your consideration.

One (1) New Caterpillar Model: 926M Wheel Loader with all standard equipment in addition to the specifications listed below:

STOCK NUMBER: TBD - NEW

SERIAL NUMBER: TBD - NEW

YEAR: TBD - NEW

SMU: NEW

STANDARD EQUIPMENT

Quote 196576-01

POWERTRAIN - Axle seal guards - Auto Idle shut down feature - Cat C7.1 ACERT engine - Power modes (standard and performance) - Power by range (high power in range 4) - Tier 4 final compliant - Turbocharged and aftercooled - Filtered crankcase breather - Diesel particulate filter - Selective catalyst reduction - Differential lock in front axle - Dry type air cleaner - Enclosed wet disc full hydraulic brakes - Fuel priming pump, automatic - Fuel water separator - Hydraulically driven demand cooling fan - Hydrostatic transmission with electronic control - Operator modes (default, TC, hystat and ice) - Directional shift aggressiveness (fast, medium, slow) - Rimpull control, adjust wheel torque - Creeper control, adjust ground speed - Lubed for life driveshafts - Parking brake, electric - S-O-S port, engine, coolant, transmission oil

HYDRAULICS - Automatic lift and bucket kickouts, adjustable in-cab - Bucket and fork modes, adjustable in-cab - Cylinder damping at kickout and mechanical end stops - Fine mode control (fast, medium, slow) in Fork Mode - Hydraulic response setting (fast, medium, slow) - Hydraulic diagnostic connectors and - S-O-S ports - Hydraulic sight gauge - Load sensing hydraulics and steering - Seat mounted hydraulic joystick controls

ELECTRICAL - Alternator, 115-amp, heavy duty - 12V power supply in cab (2) - Batteries, 1,000 CCA (2) 24 volt system, disconnect switch - Back up alarm - Emergency shutdown switch - LED rear stop and turn lights - Heavy duty gear reduction starter - Remote jump start post - Resettable main and critical function breakers - Roading lights front and rear

OPERATOR ENVIRONMENT - 3 inch retractable seatbelt - Automatic temperature control - Cab, enclosed ROPS/FOPS pressurized and sound suppressed - Cup holders - External heated mirrors with lower parabolic - Ground level cab door release - Gauges - Digital hour meter, odometer and tachometer - Digital ground speedometer and direction indicator - Engine coolant temperature gauge - Fuel and diesel exhaust fluid level indicator - Hydraulic oil temperature gauge - Hydraulic control lockout - Interior cab lighting, door and dome - Interior rearview mirrors (2) - Lunch box storage - Operator warning system indicators - Radio ready speakers - Rear window defrost, electric - Seat mounted electronic implement controls, adjustable - Sliding glass on the side windows - Column mounted multi-function control-lights, wipers, turn signal - Suspension seat, fabric - Tilt and telescope steering wheel - Tinted front glass - Wet arm wiper/washer, 2-speed and intermittent, front - Wet arm wiper washer, rear -

OTHER STANDARD EQUIPMENT - Large-access enclosure doors with adjustable close/open force - Parallel lift loader linkage - Recovery hitch with pin - Remote mounted lubrication points - Vandalism protection-lockable compartments -

MACHINE SPECIFICATIONS**Quote 196576-01**

926M WHEEL LOADER	430-2805
STANDARD STEERING	430-2996
OPEN REAR DIFFERENTIAL	333-6528
COLD WEATHER PACKAGE W/ WEATHER, THERMAL BYPASS, 120V ENGINE COOLANT HEATER	452-0878
DELUXE CAB	521-3244
PREMIUM SEAT	423-7202
AUX LED PREMIUM LIGHT PACKAGE	494-7970
RADIO, BLUETOOTH, AUX, MIC	372-1868
PRODUCT LINK, SATELLITE PLE631	520-1721
TIRES, 20.5R25 BRIDGESTONE VJT * L3	357-8901
STANDARD FENDERS	366-8148
HEAVY COUNTERWEIGHT	348-2579
TOOLBOX	491-7922
RIDE CONTROL	430-2859
WINDSHIELD ACCESS STEPS	469-0647
REAR VIEW CAMERA	377-5635
LED STROBE	333-1425
SIDE MIRROR, RIGHT HAND	482-5167
FUSION QUICK COUPLER	430-2977
3RD FUNCTION JUMPER LINES	441-3367
2 EA. BOLT ON CUTTING EDGE FOR GP AND LM BUCKETS	345-2758
-58F ANTIFREEZE	0P-2407
4 VALVE HYDRAULICS, COUPLER READY, STANDARD LIFT	430-2824
3.2CYD GENERAL PURPOSE BUCKET	345-2784
72" PALLET FORKS	345-2750
6.5 CYD LIGHT MATERIAL BUCKET	345-2762
ON-SITE OPERATOR TRAINING - NO CHARGE	

NEW CAT 926M LIST PRICE	\$251,450.00
2018 NJPA CONTRACT DISCOUNT – 24% OFF LIST PRICE	-\$60,348.00
USCC DISCOUNT	-\$3,000.00
CAT/NC SMALL WHEEL LOADER ADDITIONAL 2018 DISCOUNT	-\$10,447.00
SUBTOTAL	\$177,655.00

NON-CAT PRICE LIST ITEMS

FREIGHT FOB KODIAK DOCK, AK	\$10,900.00
NEW MACHINE PREP / INSTALL AND TEST ATTACHMENTS	\$2,200.00
SPARE TIRE MOUNTED ON RIM – INCLD FREIGHT	\$10,850.00
ONE FUSION BLANK HOOK ADAPTER – INCLD FREIGHT	\$1,960.00
1 PAPER SET PARTS AND SERVICE MANUALS	\$1,200.00
TOTAL	\$204,765.00

WARRANTY

Standard Warranty: 1 YEAR CAT NEW MACHINE WARRANTY - TECHNICIAN TRAVEL TIME AND MILEAGE NOT INCLUDED

Extended Warranty: ADDITIONAL WARRANTY AVAILABLE, PLEASE ASK REP FOR CUSTOM QUOTE

F.O.B./TERMS: DOCKSIDE – KODIAK, AK

Accepted by _____ on _____

Signature

We wish to thank you for the opportunity of quoting your equipment needs. This quotation is valid for 14 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

Steven Fisher
Machine Sales Representative
Cell: 907-748-7540
SFisher@NCMachinery.com



Anchorage • Fairbanks • Wasilla ^{August 29th, 2018}
 Subsidiary of Calista Corporation

City of Kodiak
 Box 1397
 Kodiak, Ak 99615

Attn: Craig Walton
 NJPA PRICING

We are pleased to quote a Yr 2018 Case 621G XT Tier 4 loader.
 This loader has all the standard specs and the following options.

Case 621G XT with Cab , AM-FM Radio, Heater & AC, Reversing fan, 4 speed transmission, Sound suppression , Heated Air suspension seat with headrest, AM-FM Radio Bluetooth, Operator convenience pkg, Joystick control with 2ea aux functions, 23.5 R25 L3 radial tires, Locking hydraulics for coupler, 3 Yd bucket with CNH coupler to fit 521/621 loader, Axle oscillation stops, Rotating LED Amber beacon, Cold weather pkg, Rear view camera, fire extinguisher, Ride control, RH/ L/H Heated mirrors, LED light pkg, and Block heater.

Price Factory \$ 254,216.00

NJPA discount of 37% \$ -94,060.00

Your Price FOB Factory \$160,156.00

Reversible cutting edges \$ 2,580.00

6.5 cu yd snow bucket \$ 12,788.00

72" Forks with QC mtg \$ 7,180.00

Spare Tire \$ 4220.00

Weld on lugging for QC \$ 1985.00

Freight to Seattle, Wa \$ 5,065.00

Freight to Kodiak, AK \$ 7,019.00

PDI in shop \$ 2,620.00

Total FOB Kodiak, AK \$203,613.00

Sincerely

Yukon Equipment

Richard Kimball

2020 E. 3rd Avenue • Anchorage, AK 99501
 1-800-478-1541 • www.yukoneq.com

CASE

EQUIPMENT FOR CONTRACTING – UTILITY – GOVERNMENT



YUKON EQUIPMENT, INC.

2020 E. 3rd Avenue
Anchorage, AK 99501-2994

(907) 277-1541
FAX (907) 276-6795
www.yukoneq.com



SOLD TO
333393 CITY OF KODIAK
PO BOX 1397
KODIAK, AK 99615

SHIP TO
CITY OF KODIAK
ATTN CRAIG W
2410 MILL BAY RD
907-486-8060
KODIAK, AK 99615

Sold By: AJB PO #: 580SN/621G Date 11/02/18 QUOTE Q108120
Ship By: QUOTE ONLY Tax #: PRI: 2 Open

Tax	D	Qty	Description	Price	Amount
QUALITY PARTS					
00000		1	CAM 675726720PC	714.62	714.62
00000		1	CAM 47830958	1265.91	1265.91
00000		1	CAM 531641621PC	279.75	279.75
00000		1	CAM 51428265	1206.73	1206.73
** TOTAL QUALITY PARTS					3467.01
PARTS FREIGHT					
00000			SHIPPING & HANDLING		269.64
675726720PC 580SN T4B					
47830958 580SN T4B					
531641621PC 621G					
51428265 621G					

** SUBTOTAL 3736.65

X _____ Charge Sale

Phone: (907) 486-8067

PAY THIS AMOUNT \$3736.65

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Date: November 8, 2018

Agenda Item: V. c. Authorization of Bid Award to MicroAge for Nimble Adaptive Storage Array

SUMMARY: The City of Kodiak accepted sealed bids for one Hewlett Packard Enterprise (HPE) Nimble Adaptive Storage Array. The HPE Nimble SAN is a rack mounted Redundant Array of Hard Drives to be used by the City for virtual server storage; the design of the array allows for not only faster data access, but also increases the amount of data that can be stored (30+ Terabytes). As a primary storage device, it helps to protect data as it has multiple redundancies not only of the hard drives but of the controllers and network connection paths as well. The current systems that are providing that function are now at capacity and at/or beyond the supported life span. The bids were opened in the City Conference Room on October 15, 2018, and MicroAge was the only responsive bidder. Staff recommends Council authorize the bid award to MicroAge for Nimble Adaptive Storage Array in the amount of \$54,133.06.

PREVIOUS COUNCIL ACTION: None

ALTERNATIVES:

- 1) Authorize the bid award to MicroAge in the amount of \$54,133.06. Staff believes this alternative is the best option, and is recommended.
- 2) Do not authorize this purchase, which is not recommended.

FINANCIAL IMPLICATIONS: The HPE Nimble SAN was budgeted in this line item: 100.130.135.470.126 (Machinery and Equipment over \$5000)

LEGAL: Advertisement was in accordance to KCC 3.12.040.

STAFF RECOMMENDATION: Staff recommends Council authorize the award and purchase to MicroAge for a total of \$54,133.06 (Attachment A).

CITY MANAGER'S COMMENTS: I support staff's recommendation.

ATTACHMENTS:

Attachment A: Bid Summary/Bid Form Q

Attachment B: RFP for HPE Nimble Adaptive Storage Array

PROPOSED MOTION:

Move to authorize the bid award to MicroAge for Nimble Adaptive Storage Array for \$54,133.06 with funds coming from account 100.130.135.470.126 and authorize the City Manager to execute the documents on behalf of the City.

Invitation to Bid 2019-001

September 14, 2018

BID FORM

TO: Mike Tvenge, City Manager
 City of Kodiak
 710 Mill Bay Road, Rm #114
 Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 2019-001 for HPE Nimble Adaptive Storage Array dated September 14, 2018, the undersigned hereby proposes to provide the following:

Item	Total Bid amount
1. HPE Nimble Adaptive Storage Array configured as specified	1. <u>\$54,133.06</u>

HF20-2P-42T-K	Adaptive Flash Array Gen5	HF20, 2x10GbaseT, Dual 10GbE Optical (Qty. 1 pair), 21x2TB HDD, 6x480GB
HF20	HF20	HPE NS HF20 Adaptive Dual Controller 10GBASE-T 2-port Base Array
PCI-10SFPx1C	PCI-10SFPx1C	HPE NS 2x10GbE 2-port SFP+ Optical NIC
HEAD-HDD-42TBC	HEAD-HDD-42TBC	HPE NS 42TB (21x2TB, 33.27TB (30.26TiB) useable) HDD Bundle
HEAD-FLCX-2880GB-6C	HEAD-FLCX-2880GB-6C	HPE NS R2 2.88TB (6x480GB) Cache Bundle
SW-NOS-DEFAULT	SW-NOS-DEFAULT	Ship with current GA release
SP-PWR-C13-C14-0-G5	SP-PWR-C13-C14-0-G5	HPE NS C13 to C14 250V 10Amp 1.8m Universal Power Cord
SP-PCORD-US	SP-PCORD-US	US Power Cord
SLA-NBD	SLA-NBD	NBD Parts Del, SW Sup & InfoSight - NextGen Arrays 3 Yrs
SLA-NBD-HW	SLA-NBD-HW	NBD Parts Del, SW Sup & InfoSight - Ctlr & Networking 3 Yrs
SLA-NBD-DISK	SLA-NBD-DISK	NBD Parts Del, SW Sup & InfoSight - Cache & Capacity 3 Yrs

(Return Page 5 & 6 with Bid Submittal)

Invitation to Bid 2019-001

September 14, 2018

Business License and City Sales Tax Registration copies are included.

NOT Physically present in Alaska

Bid price valid for days. *Price subject to change per manufacturer.*

Terms NET 30 Dated time of INVOICE after shipment

Submitted by:

Dated: 10/5/18

*Nick Jackson
Robert Zaek*


Signature

Micro Age
Business Name

SALES EXECUTIVE
CFO
Title

8160 S Hardy Dr
Address

480-366-2153
Telephone

Tempe AZ 85284
City, State, Zip



Office of the City Manager

710 Mill Bay Road, Room 113, Kodiak, Alaska 99615

SECTION I – BID SPECIFICATIONS:

The City of Kodiak is accepting sealed bids for one (1) **HPE Nimble Adaptive Storage Array** configured as follows:

HF20-2P-42T-K	Adaptive Flash Array Gen5	HF20, 2x10GbaseT, Dual 10GbE Optical (Qty. 1 pair), 21x2TB HDD, 6x480GB
HF20	HF20	HPE NS HF20 Adaptive Dual Controller 10GBASE-T 2-port Base Array
PCI-10SFPx1C	PCI-10SFPx1C	HPE NS 2x10GbE 2-port SFP+ Optical NIC
HEAD-HDD-42TBC	HEAD-HDD-42TBC	HPE NS 42TB (21x2TB, 33.27TB (30.26TiB) useable) HDD Bundle
HEAD-FLCX-2880GB-6C	HEAD-FLCX-2880GB-6C	HPE NS R2 2.88TB (6x480GB) Cache Bundle
SW-NOS-DEFAULT	SW-NOS-DEFAULT	Ship with current GA release
SP-PWR-C13-C14-0-G5	SP-PWR-C13-C14-0-G5	HPE NS C13 to C14 250V 10Amp 1.8m Universal Power Cord
SP-PCORD-US	SP-PCORD-US	US Power Cord
SLA-NBD	SLA-NBD	NBD Parts Del, SW Sup & InfoSight - NextGen Arrays 3 Yrs
SLA-NBD-HW	SLA-NBD-HW	NBD Parts Del, SW Sup & InfoSight - Ctlr & Networking 3 Yrs
SLA-NBD-DISK	SLA-NBD-DISK	NBD Parts Del, SW Sup & InfoSight - Cache & Capacity 3 Yrs

No Alternates or Substitutions will be accepted.

Bids will be opened in the City Conference Room #116, 710 Mill Bay Road, Kodiak, Alaska on October 15th at 2:00 pm.

Bids received by the City Manager’s Office after Time/ Date specified for the opening of bids, will not be considered and will be returned unopened.

The City of Kodiak reserves the right to reject any and all bids, to waive informalities, and to reject non-conforming, non-responsive, or conditional bids.

Packaging Requirements:

All packages must be original manufacturer shipping packaging; additional packaging or consolidating smaller items is permitted as long as original packaging of the item(s) is intact.

Prices quoted must be FOB Kodiak, Alaska.

SECTION II – GENERAL REQUIREMENTS:

1. Bids shall be submitted on the “Bid Form” provided and must be manually signed by an authorized representative of the firm.
2. In order to ensure consideration, bids must be submitted in a sealed envelope, identified with the name “Bid No. 2019-001 ” and time and date of opening, and addressed as follows:

Mike Tvenge, City Manager
City of Kodiak
710 Mill Bay Rd. Room 114
Kodiak AK 99615

Bid No. 2019-001
2:00 PM, October 15th 2018

3. Bids must be mailed to the address indicated on the Bid Form or hand delivered to the person opening bids. Bids must be received at this address **BY THE DATE AND TIME SHOWN** for receipt of bids or hand delivered to the City Manager’s office at the City of Kodiak. It is the Bidder’s responsibility to ensure delivery of their bids to the City Manager’s office. The City will not be responsible for picking up parcels other than the daily mail delivery.
4. Any bid, amendment, or withdrawal which has not been actually received by the person opening bids prior to the time of the scheduled time for receipt of bids will not be considered. Questions of fact regarding circumstances such as weather, delay of mails, etc. that circumvent legitimate timely receipt of an otherwise responsive bid will be decided by the City of Kodiak.
5. Bids may be withdrawn by written or facsimile request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid does not confer the right for the withdrawal of the bid after it has been opened.
6. Bidder must submit a copy of its current Alaska Business License or Bidder’s application to obtain an Alaska Business License for the current year. Local bidders must be registered to collect City Sales Tax. Bidder shall be current with filing all City of Kodiak sales tax returns and shall not have any delinquent port or harbor fees owing to the City.
7. Inquiries or requests for information pertaining to these specifications should be directed to Lee Peterson or Dave Smith at (907) 486-8619 or emailed to isadmins@city.kodiak.ak.us.

SECTION III – GENERAL INFORMATION:

Processing of bids – Kodiak City Code Section 3.12.050 states: Notwithstanding other provisions of this chapter relating to the award after competitive bid for purchases, sales, and contracts, the city may:

- (a) Reject any defective or non-responsive bids;
- (b) Waive any irregularities in any and all bids;
- (c) Reject all bids;
- (d) Negotiate with two or more of the lowest bidders, if bid prices are in excess of the money available or authorized, for a reduction in the scope, quality, or quantity of the purchase, service, or contract;
- (e) Readvertise for bids with or without making changes in the plans or specifications.

Local bid preference – Kodiak City Code Section 3.12.060 states, in part:

- (a) Notwithstanding section 3.12.040, the council shall direct an award of a contract for the purchase of personal property or services or for the construction, repair, or improvement of city facilities after competitive bidding to a local bidder who is also a responsible bidder, if that bid does not exceed the otherwise lowest responsible bid by more than ten (10) percent or \$30,000, whichever is less.
- (b) For the purposes of this section “local bidder” shall mean a responsible bidder who had, at the time of the bid award, maintained a business office or store within the Borough of Kodiak Island, which was open for business on a substantially full-time basis and staffed by at least one full-time employee for at least one year.

Lowest responsible bidder – The bid may be awarded to the lowest responsible bidder. Kodiak City Code Section 3.12.080 states: In determining the lowest responsible bidder factors to be considered shall include, but not necessarily be limited to the following criteria:

- (a) The ability, capacity, and skill of the bidder to perform the contract;
- (b) Whether the bidder can perform the contract within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (d) The quality of performance of previous contracts;
- (e) The previous and existing compliance by the bidder with laws and ordinances related to the contract;
- (f) The sufficiency of the financial resources and ability of the bidder to perform the contract; and
- (g) Litigation by the bidder on previous orders or contracts with the city.

Bid Award. It is anticipated that bid results will awarded October 25th, 2018.

Bid Protest Procedure. Any bidder who believes the bid has been improperly awarded may file a bid protest, no later than five (5) calendar days from the date the Notice of Intent to award is issued. Any protest shall be in writing, shall be filed with the City Clerk, and shall specify the reasons the bidder feels the Notice of Intent to Award was improper. The City shall notify all bidders of the filing of the protest within two (2) working days after the protest is filed. The City Council shall hold an informal hearing at which all interested persons may participate no later than five (5) working days after the protest is filed. The City Council shall issue a written decision on the protest no later than twenty-four (24) hours after the conclusion of the informal hearing. The decision of the City Council shall be final.

Respectfully submitted
CITY OF KODIAK

Victoria Ellis
Purchasing Clerk

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Debra Marlar, City Clerk

Date: November 8, 2018

Agenda Item: V. d. Authorization of City Clerk's Merit Increase

SUMMARY: The City Clerk received a favorable employee evaluation on October 25, 2018. The Clerk is hired by contract, which is authorized by the City Council. The contract stipulates that the employer agrees to increase the Clerk's salary on the basis of a favorable annual employee review, and the increase shall be discussed in executive session and approved in an open meeting. Although the Clerk received a favorable evaluation in 2017, she neither requested nor received a merit increase for 2017. The Council voiced a consensus during the 2018 evaluation to grant the Clerk a 5% merit increase.

PROPOSED MOTION:

Move to grant a 5% merit increase to the City Clerk effective November 5, 2018.

NOVEMBER 8, 2018
Agenda Item V. d. Memo Page 1 of 1

EXECUTIVE SESSION

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Date: November 8, 2018

Agenda Item: **X. a. Discussion With the City Attorney About Kodiak Public Broadcasting Corporation Litigation**

SUMMARY: The City Council will enter into executive session for a discussion with the City Attorney about Kodiak Public Broadcasting Corporation litigation.

PROPOSED MOTION:

Move to enter into executive session pursuant to Kodiak City Code 2.04.100(b)(1) for a discussion with the City Attorney about Kodiak Public Broadcasting Corp. litigation, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.

NOVEMBER 8, 2018
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