

City of Kodiak Regular Council Meeting Agenda for March 28, 2019
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 March 14, 2019, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Proclamation: Week of the Young Child.....6
 - b. Proclamation: Choose Respect8
 - c. Public Hearing: Marijuana Retail Store Application No. 20113 for High Rise LLC.....10
 - d. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. Second Reading and Public Hearing, Ordinance No. 1384, Repealing and Re-enacting Chapter 2.36 of the Kodiak City Code Pertaining to Management of Records and Amending Chapters 13.04, 13.16, 18.28, and 18.36.....11

- V. New Business**
 - a. Resolution No. 2019-07, Accepting a Department of Public Safety Crime Prevention and Response and Equipment Grant for Radios for the Kodiak Police Department.....38
 - b. Consideration of Marijuana Retail Store Application No. 20113 for High Rise LLC.....47
 - c. Authorization of Amendment to City Manager’s Employment Agreement.....73

- 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. Adjournment**

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**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, MARCH 14, 2019
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:31 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Richard H. Walker, and John B. Whiddon, were present and constituted a quorum. Councilmember Terry J. Haines was absent. City Manager Mike Tvenge, City Clerk Debra Marlara, and Assistant Clerk Annika Woods 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 February 28, 2019, regular meeting as presented.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

III. PERSONS TO BE HEARD

a. Public Comments

None

IV. UNFINISHED BUSINESS

a. Executive Session for the City Manager's Annual Performance Review

Annually, the City Council reviews the performance of the City Manager. In accordance with the Open Meetings Act, the City Manager does not object to the evaluation being done in executive session. The motion to enter into executive session for this review was originally made and postponed at the December 13, 2018, regular meeting.

Councilmember Davidson MOVED to suspend the rules and perform the Manager's annual performance review following Executive Session item a.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

V. NEW BUSINESS

a. First Reading, Ordinance No. 1384, Repealing and Re-enacting Chapter 2.36 of the Kodiak City Code Pertaining to Management of Records and Amending Chapters 13.04, 13.16, 18.28, and 18.36

Ordinance No. 1384 repeals and re-enacts the records management ordinance, and it amends chapters 13.04 (Water System Regulations), 13.16 (Sewer Regulations), 18.28 (Port and Harbor Facilities) and 18.36 (Kodiak Municipal Airport). Over the last five years a substantial increase in public records requests has occurred. The Clerk's office and City Manager's office have worked with the City Attorney to develop this draft ordinance, which was prepared by our City Attorney, Brooks Chandler. The focus of the revisions was to assure that the ordinance covered applicable state law for records, and that there is a balance between public access and an individual's right to privacy.

Councilmember Walker MOVED pass Ordinance No. 1384 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

Councilmember Whiddon thanked Deputy Clerk Michelle Shuravloff-Nelson for her hard work on the ordinance and overall management of City records.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

b. Resolution No. 2019–06, Adopting the Federal Fiscal Year 2019 Supported Federal Issues List and Fiscal Year 2020 Federal Projects Capital List

The City identifies capital improvement projects (CIP) important to the maintenance and/or improvement of the City's infrastructure as well as issues that are important to the City or greater community. Staff worked closely with the City's federal lobbyist, Brad Gilman, of Robertson, Monagle & Eastbaugh to articulate the list of projects and issues, which the Mayor will promote in Washington, D.C. The Prioritized Federal Capital Project Lists include: Fire Station Phase II in the amount of \$14,000,000 (Priority 1); Waste Water Treatment Plant Ultraviolet (UV) System in the amount of \$4,500,000 (Priority 2); St. Herman Harbor Infrastructure Replacement in the amount of \$28,000,000 (Priority 3); Waste Water Treatment Plant Facility \$19,000,000 (Priority 4); Shelikof Street \$1,950,000 (Priority 5). The issues included the EPA's "Waters of the U.S. Rule" and the Pink Salmon Disaster Assistance.

Councilmember Arboleda MOVED to adopt Resolution No. 2019-06.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

c. Reappointment of Wayne Donaldson

The City of Kodiak has a dedicated seat for a representative on the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC). Wayne Donaldson has served as the City's representative since January 8, 2015, and he has requested re-appointment. While serving as the City's representative, Mr. Donaldson has served as PWSRCAC Treasurer and on the Scientific Advisory Committee.

Councilmember Bishop MOVED to re-appoint Wayne Donaldson to a two year term as the City of Kodiak representative on the Prince William Sound Regional Citizens' Advisory Council.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

VI. STAFF REPORTS

a. City Manager

The City Manager shared that the Kodiak Tsunami Operations Workshop presented by Alaska Division of Homeland Security and Emergency Management finished today. Other presenters were National Weather Service, Alaska Division of Geological and Geophysical Surveys, United States Coast Guard, and Kodiak Public Safety Chiefs. Information specific to tsunami-related threats to Kodiak Island were provided over the last two and a half days.

The City authorized two community permits. Beginning March 15, the Philippine American Association of Kodiak will host the Consular Outreach at the Kodiak Teen Center to assist with legal documents, passport renewal and extensions. Kodiak Relay for Life is hosting a Saint Patrick’s Day “snowball fight” at Sargent Park from 3-5 p.m. this Sunday. Both events are allowable under KCC 5.04.050 Permits for community festivities.

Parks & Recreation will close the ice rink to skating March 26. Approximately 30,000 skaters (including those who skated multiple days) utilized the facility over the course of last winter.

The Crime Prevention and Response and Equipment Funding grant the Council previously discussed during the February 26 work session was submitted and the City was notified last week of the grant’s approval. The \$100,000 grant will purchase 20 new radios for the Kodiak Police Department.

The Kodiak Public Works Department will hold a Pillar Mountain road cleanup on March 26. Interested volunteers are encouraged to contact Public Works Director Craig Walton at 486-8062. The road is intended to re-open following the clean up on April 1.

b. City Clerk

Clerk Marlar reminded everyone of the upcoming March meetings. She shared there will be a Town Hall Meeting March 30 at Afognak Building to discuss the Governor’s proposed budget.

VII. MAYOR’S COMMENTS

Mayor Branson thanked Deputy Clerk Michelle Shuravloff-Nelson for her hard work on the records ordinance. She also thanked Wayne Donaldson for volunteering again. She stated the Governor was invited to the town hall. Representative Louise Stutes and Senator Gary Stevens will be attending. Mayor Branson thanked the public for testifying on behalf of the Alaska Marine Highway, and reminded everyone there will be a committee hearing lead by Senator Click Bishop regarding the fisheries tax next week.

VIII. COUNCIL COMMENTS

Councilmember Walker echoed Mayor Branson’s thanks to Wayne Donaldson volunteering again. He also thanked Michelle Shuravloff-Nelson for a great job updating the City Code.

Councilmember Bishop said he is glad about the town hall meeting and stressed the importance of the public attending. He thanked Craig Walton for coordinating the cleanup of Pillar Mountain.

Councilmember Davidson thanked the Deputy Clerk for her work on records. He wished Mike Rostad a speedy recovery. In regards to the government budget, he encouraged the public to call Governor Dunleavy and his staff about the State budget to make sure Kodiak is represented.

Councilmember Whiddon recognized Chief Putney for the approval of the grant and stated he is glad the Kodiak Police Department is getting new radios. He reminded everyone about the Fisheries Work Group on March 20. He listed some of the topics that will be discussed.

Councilmember Arboleda thanked Michelle Shuravloff-Nelson and staff for the hard work on City records management. She stated that at the Tuesday Work Session a lengthy discussion was held about the placement of the fire station. She encouraged community members to give their opinions at the upcoming work Session on March 26. The Near Island Plan will also be discussed at the upcoming work session. She reminded everyone about Comfish.

IX. AUDIENCE COMMENTS

None

X. EXECUTIVE SESSION

a. Legal Advice re Chiesa v. City of Kodiak

Councilmember Davidson MOVED to enter into Executive Session to receive legal advice about Chiesa v the City of Kodiak.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

The Council entered into executive session at 7:56 p.m.

The Mayor reconvened the regular meeting at 8:28 p.m.

b. City Manager’s Annual Performance Review

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

The Council entered into executive session at 8:29 p.m.

The Mayor reconvened the regular meeting at 9:34 p.m.

XI. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Haines was absent. The motion passed.

The meeting adjourned at 9:35 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

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PERSONS TO BE HEARD

MEMORANDUM TO COUNCIL

Date: March 28, 2019

Agenda Item: III. a. Proclamation: Week of the Young Child

SUMMARY: This proclamation encourages all citizens to work to make a good investment in early childhood education.

ATTACHMENTS:

Attachment A: Proclamation: Week of the Young Child

PROCLAMATION

Declaring Week of the Young Child

WHEREAS, the Kodiak Early Childhood Coalition and other local organizations, in conjunction with the National Association for the Education of Young Children, are celebrating the Week of the Young Child, April 8 through April 12; and

WHEREAS, these organizations are working to improve early learning opportunities, including early literacy programs, that can provide a foundation of learning for children in Kodiak, Alaska; and

WHEREAS, teachers and others who make a difference in the lives of young children in Kodiak, Alaska deserve thanks and recognition; and

WHEREAS, public policies that support early learning for all young children are crucial to young children's futures.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak do hereby proclaim April 8 through April 12 as the Week of the Young Child in Kodiak, Alaska and encourage all citizens to work to make a good investment in early childhood in Kodiak, Alaska.

Dated this 28th day of March 2019.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: March 28, 2019

Agenda Item: III. b. Proclamation: Choose Respect

SUMMARY: This proclamation encourages all citizens to stand up against sexual assault, domestic violence, and child sexual abuse.

ATTACHMENTS:

Attachment A: Proclamation: Choose Respect

PROCLAMATION

“CHOOSE RESPECT”

WHEREAS, every Alaskan is precious and has the right to freedom, safety, and dignity; and

WHEREAS, the Choose Respect initiative is a call to action to break the silence and stand up against sexual assault, domestic violence, and child sexual abuse; and

WHEREAS, the rates of sexual assault, domestic violence, and child sexual abuse in our state are staggering and unacceptable; and

WHEREAS, domestic violence not only devastates the primary victims; it harms children exposed to these crimes as well; and

WHEREAS, the Choose Respect initiative promotes respect for ourselves and others and encourages Alaskans to speak out when witnessing acts of or the results of domestic and sexual violence; and

WHEREAS, through focused education and prevention efforts, increased law enforcement and criminal penalties, and enhanced service provider networks, we will better protect victims and hold offenders accountable for their actions; and

WHEREAS, together we can send a strong message of hope and healing to victims and survivors and prevent future suffering and create a safer, stronger Alaska.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim March 28, 2019, as

Choose Respect Day

in Kodiak and ask all residents to join with me in standing up against sexual assault, domestic violence, and child sexual abuse.

Dated this 28th day of March 2019.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: March 28, 2019

Agenda Item: III. c. Public Hearing: Marijuana Retail Store Application No. 20113 for High Rise LLC

SUMMARY: The City received notice from the State of Alaska on February 28, 2019, of a new application from High Rise, LLC for a retail marijuana store license at 104 Center Ave., Suite 102. As part of the license application review process established by Ordinance No. 1378, this hearing allows the public to comment before the Council considers the application later in the agenda.

UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, ^{MT}City Manager and Debra Marlar, City Clerk
Thru: Michelle Shuravloff-Nelson, Records Manager ^{MS}
Date: March 28, 2019

Agenda Item: IV. a. Second Reading and Public Hearing, Ordinance No. 1384, Repealing and Re-enacting Chapter 2.36 of the Kodiak City Code Pertaining to Management of Records and Amending Chapters 13.04, 13.16, 18.28, and 18.36

SUMMARY: Ordinance No. 1384 repeals and re-enacts the records management ordinance, and it amends chapters 13.04 (Water System Regulations), 13.16 (Sewer Regulations), 18.28 (Port and Harbor Facilities) and 18.36 (Kodiak Municipal Airport). Over the last five years a substantial increase in public records requests has occurred. The Clerk's office and City Manager's office have worked with the City Attorney to develop this draft ordinance, which was prepared by our City Attorney, Brooks Chandler. His memo outlining the revisions are included (Attachment B). The focus of the revisions were to assure that the ordinance covered applicable state law for records, and that there is a balance between public access and an individual's right to privacy. Staff recommends Council adopt Ordinance No. 1384 in the second reading after the public hearing.

PREVIOUS COUNCIL ACTION:

- 1975, Ordinance No. 432 amended KCC 2.36 by providing for the retention, disposal, and microfilming of public records
- 1990, Ordinance No. 887 amended KCC 2.26 by the addition of a section on confidentiality of personnel records
- 2003, Ordinance No. 1160 enacted KCC 2.36.030 through 2.36.030, which clarified public access to law enforcement records
- 2006, Ordinance No. 1203 repealed KCC 2.36 Public Records and enacted KCC 2.36 Management of Records
- 2009, Ordinance No. 1254 amended KCC 2.36 to prohibit public access to City harbor and utility customer records
- January 10, 2013, Ordinance No. 1303 was passed in the first reading
- January 24, 2013, Ordinance No. 1303 was postponed in the second reading
- April 23, 2013, the City's Attorney discussed Ordinance No. 1303 with the Council at the work session
- May 9, 2013, Council adopted Ordinance No. 1303, during their regular Council meeting.

- February 12, 2019, Council reviewed the draft records ordinance.
- February 26, 2019, Council received an introduction of the draft ordinance from Brooks Chandler, City Attorney.
- March 14, 2019, Council passed Ordinance No. 1384 in the first reading and advanced to second reading and public hearing at the next regular or special meeting.

DISCUSSION: This ordinance will help the City staff effectively communicate with the public and identify which records are available and are not available for public disclosure. Mr. Chandler also indicates in his memo that some decisions were policy decisions for Council, which, were further discussed and determined on February 26, 2019.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1384 after the public hearing, which is staff's recommendation.
- 2) The Council may amend or postpone Ordinance No. 1384.

LEGAL: The City Attorney drafted Ordinance No. 1384. He made further revisions as directed at the February 26, 2019, work session, which were included in the ordinance presented.

CITY CLERK'S COMMENTS AND RECOMMENDATION: Our Records Manager has worked for months with our City Attorney to remedy inadequacies in the City's records code. Ordinance No. 1384 incorporates state law provisions that are only generally referenced in current code and makes specific and public the way current code provisions and the state public records statute are administered.

CITY MANAGER'S COMMENTS AND RECOMMENDATION: I appreciate the initiative shown by our Records Manager to update and clarify language throughout several chapters of city code. The intent of these efforts will allow the Clerk's office to respond to public information requests with a clearer understanding by both parties of each record release. All ordinances need periodic review to determine the applicability to Alaska Statute.

NOTES/ATTACHMENTS:

- Attachment A: Ordinance No. 1384
- Attachment B: Attorney memo re: ordinance dated January 11, 2019
- Attachment C: Current Kodiak City Code Management of Records

PROPOSED MOTION:

Move to adopt Ordinance No. 1384.

**CITY OF KODIAK
ORDINANCE NUMBER 1384**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK REPEALING AND RE-ENACTING CHAPTER 2.36 OF THE KODIAK CITY CODE PERTAINING TO MANAGEMENT OF RECORDS AND AMENDING CHAPTERS 13.04,13.16, 18.28 AND 18.36

WHEREAS, Chapter 2.36 of the Kodiak City Code governs requests for public records maintained by the City of Kodiak; and

WHEREAS, Chapter 2.36 was last updated in 2013; and

WHEREAS, available technology has significantly increased the number of records maintained by the City and the form in which such records are maintained since 2013 and;

WHEREAS, the number of requests for copies of public records submitted to the City Clerk’s office has tripled since 2013 and;

WHEREAS, responding to requests for public records frequently requires balancing the individual right to privacy reflected in Article I, Section 22 of the Alaska Constitution with the state policy promoting access to public records reflected in Chapter 40.25 of the Alaska Statutes and;

WHEREAS, it is in the public interest to specify in greater detail the circumstances and procedures to be applied in both managing and providing access to public records maintained by the City of Kodiak

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

Section 1: Section 2 of this ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

Section 2: Chapter 2.36 of the Kodiak City Code is hereby repealed in its entirety and re-enacted to read as follows:

Chapter 2.36
MANAGEMENT OF RECORDS

Sections

- 2.36.010 Definition of city records
- 2.36.020 Ownership of city records
- 2.36.030 City record management roles and responsibilities
- 2.36.040 Disposition of city records
- 2.36.050 [Reserved]
- 2.36.060 Access to public records
- 2.36.070 Administration of access to public records
- 2.36.080 Electronic Services

2.36.010 Definition of city records

(a) “City records” means any document, paper, book, letter, drawing, map, plat, photograph, video recording, electronic record, or other item, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved by the city, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of the informational value in them.

City records do not include, and this chapter does not apply to, individual personal information contained in a city record or proprietary, trademark or copyrighted material received by the city from third parties or developed for the city by third parties including software programs, library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes, materials maintained by any non-profit association, reference documents, or transitory documents. In this section:

(1) “Reference document” means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes, without limitation, notes, calculations, and working papers other than drafts required to be retained according to the records retention schedule.

(2) “Transitory document” means:

- (i) a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests.; and
- (ii) all documents not required to be retained for any period of time according to the record retention schedule.

(c) “Electronic records” means records that are created or stored in an electronic or magnetic storage medium, and that are retrieved or read by a computer or other electronic device.

(d) “Personal Information” means:

- (i) an individual’s passport number, driver’s license number, state identification number, bank account number, credit card number, debit card number, other payment card number, financial account information, or information from a financial application; or
- (ii) a combination of an individual’s
 - (a) name; and
 - (b) medical information, insurance policy number, employment information, or employment history

2.36.020 Ownership of city records

No city official or employee has, by virtue of his or her position, any personal or property right in city records.

2.36.030 City record management roles and responsibilities

(a) Accountability. The overall accountability for the city's records management program lies with the city clerk.

(b) Responsibilities.

(1) City council.

(i) Approve all city records retention schedules and any amendments thereto.

(ii) Review the records management framework and identify any suggested changes thereto. The records management framework includes guiding principles and directives, policies and procedures, standards and best practices, core competencies, the training program, and the strategic plan.

(2) City manager. Ensure that all departments comply with the records retention schedule and records management framework.

(3) City clerk.

(i) Approve all changes to the records management framework.

(ii) Approve all records disposition requests based on records retention schedules approved by the city council.

(iii) Appraise and identify records of enduring value, i.e., historical records, during the preparation and submission of records retention schedules.

(iv) Assess compliance of city departments with the records management framework and report the status of the records management program to the city council annually.

(v) Identify the city's vital records and develop and implement related policies and procedures.

(vi) Plan and allocate central storage facilities for the city's inactive records (i.e., city records center).

(vii) Develop and implement policies, standards, and procedures for the transfer of archival/historical records during the final records disposition process from individual departments to the city clerk's custody.

(4) Department heads.

(i) Implement records management within the department according to the record retention schedule, and standards, policies, and best practices as outlined in the records management framework, including creating departmental electronic records in new software systems only as approved by the records retention schedule.

(ii) Designate a departmental records management coordinator who shall represent the department on matters related to records management.

(5) City employees. Retain and organize city records of transactions undertaken in business processes according to the city's records management program.

2.36.040 Disposition of city records

(a) Record retention program.

(1) The city clerk shall prepare a record retention program and record retention schedule specifying the records to be:

(i) Retained permanently;

(ii) Destroyed;

(iii) Microfilmed or electronically scanned and imaged according to industry standards.

(2) The records retention schedule shall be adopted by resolution.

(b) Disposal.

(1) The city clerk shall approve all records disposition requests based on the current records retention schedule approved by the city council.

(2) The city clerk or the city clerk's designee shall certify the disposal of city records by means determined to be appropriate by the city clerk.

(3) Upon disposal of city records, the city clerk shall file in the city clerk's office a descriptive list of the records disposed of and a record of the disposal itself. The city clerk shall transmit copies of the list and record of disposal to the city council, and the filing in the office of the city clerk of the list and record of disposal shall constitute a filing and preservation by the council of these documents.

(4) The city clerk shall include in the annual records management report to the city council a description of all record disposal activities taken during the year.

2.36.060 Access to city records

(a) Open to inspection. All city records shall be open to public inspection under reasonable rules during regular office hours, except as provided in subsections (b) through (l) of this section.

(b) Confidential or privileged public records. Public records containing information which is accorded confidential or privileged status under this code, AS 40.25.120(a) or under state or federal law. Confidential or privileged public records include but are not limited to:

- (1) records or portions of records which if released would constitute an unwarranted invasion of an individual right to privacy set forth in Article 1 Section 22 of the Alaska Constitution.
 - (2) records or portions of records which, if released would violate rights of crime victims set forth in Article 1, Section 24 of the Alaska Constitution.
 - (3) records or portions of records which contain protected health information as defined by the Health Insurance Portability and Accountability Act (“HIPAA”) privacy rule including records related to the provision of emergency medical services and patient transportation unless the party making the request for the records has provided the city with written authorization from the patient or a qualified protective order that satisfies the requirements of 45 CFR 164.512(e)(1)(v).
 - (4) records or portions of records which qualify for the deliberative process exemption from disclosure established by the Alaska Supreme Court including, but not limited to, drafts of decisional documents.
 - (5) records or portions of records which are an attorney-client communication of the city attorney unless the attorney client privileged is waived by the city manager, city clerk or the city council.
 - (6) records or portions of records which are the work product of the city attorney unless the attorney work product privilege is waived by the city manager, city clerk or the city council.
 - (7) records or portions of records which contain the residence or business addresses or telephone numbers of a victim of a crime or a witness to a crime or which if released would violate the rights of a victim of a crime or a witness to a crime set forth in AS 12.61.110.
 - (8) images made confidential by AS 18.65.903(b).
 - (9) records or portions of records that identify a minor release of which would violate the privacy rights of the minor set forth in AS 47.10.090, 47.10.093, 47.10.340 and 47.10.396.
 - (10) personal information contained in driver records required to be confidential as set forth in AS 28.10.505.
 - (11) records or portions of records pertaining to juveniles unless disclosure is authorized by law including AS 47.10.093(c).
 - (12) records of vital statistics or adoption proceedings
 - (13) medical records
 - (14) public health records related to individual medical records
 - (15) records of fire department investigations while the investigation is ongoing.
- (d) Inspection of city records involved in litigation.

(1) City records sought by a party involved in civil or criminal litigation, including administrative adjudications, with the city, the State of Alaska or a public agency of the city or State of Alaska shall be disclosed in accordance with the rules of procedure applicable in a court or administrative adjudication. Rules of procedure applicable to civil litigation in court include Alaska Rules of Civil Procedure 26 and 34. Rules of procedure applicable to criminal court proceedings include Alaska Rules of Criminal Procedure 16 and 17.

(2) In this subsection, “involved in litigation” means a party to litigation or a party representing a party to litigation, including a person who is obtaining records for the party.

(e) Law enforcement records. Public records including video and audio recordings compiled or maintained for law enforcement purposes are open to inspection and disclosure, except that such disclosure shall not be made if disclosure of the records:

(1) Could reasonably be expected to interfere with enforcement proceedings including records relating to ongoing, open investigations unless required to be released to a crime victim by Article I, Section 24 of the Alaska Constitution;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness. In evaluating whether release would constitute an unwarranted invasion of personal privacy the city clerk in consultation with the police chief as necessary may consider:

i) whether the information contained in the record was secured pursuant to a search warrant or arrest warrant.

ii) the rights of victims and witnesses set forth in AS 12.61.110 including the right to keep residence or business addresses or telephone numbers of a victim of a crime or a witness to a crime private and the right of victims and witnesses of certain crimes to keep their identity private

iii) the rights of crime victims set forth in Article I, Section 22 of the Alaska Constitution including the right to be treated with dignity, respect and fairness during all phases of the criminal and juvenile justice process

iv) whether the person identified as a suspect was charged or convicted of a violation

v) whether the person requesting the record is a crime victim

vi) whether the suspect, defendant, victim or witness is a minor

vii) whether the information contained in the record was speculative, unsubstantiated, defamatory or irrelevant to a law enforcement investigation

viii) whether the law enforcement agency elicited the information in exchange for a promise of confidentiality

ix) if charges were dismissed or not brought; (i). the length of time that has transpired since conclusion of the investigation; (ii) the severity of the allegations; (iii) the probable truthfulness of the allegations; (iv) whether the suspect is or was a public figure; and (v) whether the allegations involved a potential breach of the public trust

x) the right of citizens to question, investigate and monitor a public law enforcement agency

(4) Could reasonably be expected to disclose the identity of a confidential source;

(5) Would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(6) Would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law;

(7) Could reasonably be expected to endanger the life or physical safety of an individual;

(8) Are criminal history records obtained from state or federal criminal justice databases such as the Alaska Public Safety Information Network unless disclosure is specifically authorized by law including AS 12.62.160;

(f) Identity of complainants.

(1) The name, address, telephone number, or other identifying information about complainants in actions to enforce building, environmental, or other city ordinances or regulations and state statutes or regulations are not open to public inspection.

(2) This subsection does not prohibit disclosure of the contents of the complaint, so long as the complainant is not identifiable.

(3) This subsection does not prohibit the disclosure of the name of the complainant when such disclosure becomes necessary to the fair and just disposition of the charge or complaint in enforcement proceedings.

(g) Personnel records.

(1) Personnel records, including employment applications and examination materials, and records pertaining to employment disciplinary investigations and actions are confidential and are not open to public inspection except as provided in this section or by court order.

(2) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(i) The names and position titles of all city employees;

(ii) The position held by a city employee;

- (iii) Prior positions held by a city employee;
- (iv) Whether a city employee is in the classified or exempt service;
- (v) The date of appointment and separation of a city employee;
- (vi) The compensation authorized for a city employee.

(3) A city employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(4) An applicant for city employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(5) Notwithstanding subsection (g)(1) of this section, employment applications for the positions of city manager and police chief shall be open to public inspection. For purposes of this subsection an employment application consists of; 1) all documents submitted by the applicant for the position being advertised and; 2) all documents submitted with an application for the current city position or previous held by the applicant, if any.

(h) Accident Records. Accident reports or portions thereof are subject to disclosure after completion of any law enforcement investigation or proceeding to persons involved in the accident or whose property was involved in the accident or their authorized agent (such as their insurer or attorney) unless excepted from disclosure under subsection (d) (litigation with city or state); or (b)(iii) (medical records) or (b)(vii) (crime victim or witness). Accident reports are otherwise considered within the scope of an individual's constitutional right to privacy.

(i) Individual Privacy Rights. The city council finds that individuals regardless of age who are outside on or adjacent to a public space including a city facility or a public street do not have a reasonable expectation of privacy. Video images of persons outside on or adjacent to a public space including a city facility or a public street are ordinarily subject to disclosure in response to a public records request unless excepted from disclosure; 1) by reason of the rights of crime victims to be treated with dignity, respect and fairness set forth in Article 1, Section 24 of the Alaska Constitution or; 2) under another subsection of this section including subsection (e) (law enforcement records).

(j) Redactions. When some of the information in a public record is not subject to disclosure such information shall be redacted after a request for the document has been received. The person requesting the record shall be provided a copy of to the redacted record.

(k) Manipulation of Information or Creation of Record. Nothing in this section obligates the city to create a city record by assembling electronic information. Any request for a city record which requires a record to be created by assembling electronic information or extracting information from city records may be denied.

2.36.070 Administration of access to public records

(a) Requests for access to public records may be made directly to the concerned department(s) or to the city clerk's office on city approved records request forms. Requests for records may be approved by either the city clerk or the designated records manager of the concerned department. The city clerk is the city

official designated to review any denial of access to public records. The city clerk or the clerk's designee shall, consistent with the orderly conduct of City business, make a good faith and reasonable effort to locate records that are adequately identified in the request. The City will provide a reasonably prompt response to each request within the ten (10) business day time limit set for state agencies by 2 AAC 96.325(a).

(b) If a request is denied or the requested records cannot be identified or promptly located with good faith and reasonable effort, a brief written explanation will be given.

(c) The council by resolution from time to time shall prescribe the standard unit charge for copies of public records.

(d) If the production of records for one requester in a calendar month exceeds five person-hours, the city shall require the requester to pay all the personnel costs required during the month to complete the search and copying tasks.

(e) The fee to search for and duplicate a public record shall consist of:

(1) Actual costs for copying the record in the requested format, including costs for paper, tapes, microfiche, disks, or other media;

(2) Costs incurred by the city to duplicate the record, including computer processing time;

(3) Salary and benefits costs for the city employees performing the work, including computer programming work required to extract or copy the records, as provided in AS 40.25.110.

(f) If the time required for production of public records for one requester in a calendar month is less than five hours no fee shall be charged.

(g) If the person is unable to pay a required fee, and signs an affidavit to the effect that he or she is unable to do so, the City Manager may waive the fee.

2.36.080 Electronic Services

(a) The City has elected not to provide electronic services and products involving public records to the public except for; (1) providing copies of requested records by electronic mail; and (2) copying requested public records onto a CD, DVD or flash drive device.

(b) The public may access records the city links to or posts on the city internet site without submitting a public records request and without payment of any portion of the costs incurred by the city in making the records available on or through the city internet site.

Section 3: Amendment of Section 13.04.030. Section 13.04.030 of the Kodiak Code of Ordinances is hereby amended by adoption of new subsections (c) and (d) to read as follows:

13.04.030 Water accounts—delinquency—penalty-confidentiality of customer records

(a) All accounts for water will be kept in the name of the owner, who will be liable for payment of all city of Kodiak water utility accounts, and must be paid on or before the fifteenth day of each

current month. All accounts not paid by the fifteenth day of each month are defined as delinquent accounts and subject to the penalty for delinquency.

(b) All accounts for water will be kept in the name of the owner, and must be paid on or before the fifteenth day of each current month. Accounts that have not been paid by the twentieth day of each month will be placed on the delinquent list and will be subject to being disconnected. All disconnected water service shall be charged in accordance with the required fee(s) established by resolution or motion of the city council. "Disconnect" shall mean a physical or interrupted service disconnection or an administrative disconnect, which is a finance department shut-off notice transmitted to the public works department for interruption of service to delinquent accounts.3.08.220 Returns confidential

(c) Except in connection with official investigations or proceedings of the city, whether judicial or administrative, involving delinquent accounts, or as otherwise authorized by subsection (d) of this section, no officer, employee, or agent of the city may divulge any information disclosed in customer account records kept under this chapter. The prohibition of this section shall not prohibit the preparation and use of statistical summaries of customer data that do not disclose customer identities.

(d) Notwithstanding the foregoing subsection (c) of this section, the following information, but not personal information, shall be made available to the public upon request: whether or not an individual or business is a customer; whether or not a customer is current in paying for water, the amount delinquent, and how long an account has been delinquent. The city manager or his or her designee may from time to time publish the names of customers on the delinquent list and the amount of the delinquency; provided, that the name of a customer who has signed a confession of judgment for delinquent charges, penalties, and interest, and a stipulation to postpone execution against such judgment, and who is current in the payments to be made and all other obligations arising as a result of such stipulation as of the date on which the names are submitted to the publisher, will not be published

Section 4: Amendment of Section 13.16.150. Section 13.16.150 of the Kodiak Code of Ordinances is hereby amended by adoption of new subsections (b) and (c) to read as follows:

13.16.150 Billing and payment -confidentiality of records

(a) Sewer service accounts shall be maintained in the name of the property owner and each account shall be billed monthly after the service has been rendered. Accounts shall be paid on or before the fifteenth day of the month during which the charges are billed. Accounts not paid by the close of business on the fifteenth day are delinquent.

(b) Except in connection with official investigations or proceedings of the city, whether judicial or administrative, involving delinquent accounts, or as otherwise authorized by subsection (c) of this section, no officer, employee, or agent of the city may divulge any information disclosed in customer account records kept under this chapter. The prohibition of this section shall not prohibit the preparation and use of statistical summaries of customer data that do not disclose customer identities.

(c) Notwithstanding the foregoing subsection (b) of this section, the following information, but not personal information, shall be made available to the public upon request: whether or not an

individual or business is a customer; whether or not a customer is current in paying for water, the amount delinquent, and how long an account has been delinquent. The city manager or his or her designee may from time to time publish the names of customers on the delinquent list and the amount of the delinquency; provided, that the name of a customer who has signed a confession of judgment for delinquent charges, penalties, and interest, and a stipulation to postpone execution against such judgment, and who is current in the payments to be made and all other obligations arising as a result of such stipulation as of the date on which the names are submitted to the publisher, will not be published

Section 5: Amendment of Chapter 18.28. Chapter 18.28 of the Kodiak Code of Ordinances is hereby amended by adoption of a new subsection 18.28.430 to read as follows:

18.28.430 Billing and payment -confidentiality of records

(a) Port and harbor accounts shall be maintained in the name of the vessel owner. Unless otherwise specified in the port tariff, accounts shall be paid on or before the fifteenth day of the month during which the charges are billed. Accounts not paid by the close of business on the fifteenth day are delinquent.

(b) Except in connection with official investigations or proceedings of the city, whether judicial or administrative, involving delinquent accounts, or as otherwise authorized by subsection (c) of this section, no officer, employee, or agent of the city may divulge any information disclosed in customer account records kept under this chapter. The prohibition of this section shall not prohibit the preparation and use of statistical summaries of customer data that do not disclose customer identities.

(c) Notwithstanding the foregoing subsection (b) of this section, the following information, but not personal information, shall be made available to the public upon request: whether or not an individual or business is a customer; whether or not a customer is current in paying for port or harbor charges, the amount delinquent, and how long an account has been delinquent. The city manager or his or her designee may from time to time publish the names of customers on the delinquent list and the amount of the delinquency; provided, that the name of a customer who has signed a confession of judgment for delinquent charges, penalties, and interest, and a stipulation to postpone execution against such judgment, and who is current in the payments to be made and all other obligations arising as a result of such stipulation as of the date on which the names are submitted to the publisher, will not be published.

Section 6: Amendment of Chapter 18.36. Chapter 18.36 of the Kodiak Code of Ordinances is hereby amended by adoption of new sections 18.36.200 to read as follows:

18.36.200 Billing and payment -confidentiality of records

(a) Accounts shall be maintained in the name of the airport user and each account shall be billed monthly. Accounts shall be paid on or before the fifteenth day of the month during which the charges are billed. Accounts not paid by the close of business on the fifteenth day are delinquent.

(b) Except in connection with official investigations or proceedings of the city, whether judicial or administrative, involving delinquent accounts, or as otherwise authorized by subsection (c) of this section, no officer, employee, or agent of the city may divulge any information disclosed in account records kept under this chapter. The prohibition of this section shall not prohibit the

preparation and use of statistical summaries of customer data that do not disclose customer identities.

(c) Notwithstanding the foregoing subsection (b) of this section, the following information, but not personal information, shall be made available to the public upon request: whether or not an individual or business is a customer; whether or not a customer is current in paying for airport fees, the amount delinquent, and how long an account has been delinquent. The city manager or his or her designee may from time to time publish the names of customers on the delinquent list and the amount of the delinquency; provided, that the name of a customer who has signed a confession of judgment for delinquent charges, penalties, and interest, and a stipulation to postpone execution against such judgment, and who is current in the payments to be made and all other obligations arising as a result of such stipulation as of the date on which the names are submitted to the publisher, will not be published

Section 7: Effective Date. This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: March 14, 2019

Second Reading:

Effective Date:

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MEMORANDUM

To: Deborah Marlar
Kodiak City Clerk



From: Brooks Chandler

Date: January 11, 2019

Re: Records Management Ordinance

This memorandum is intended to summarize the changes to the Kodiak City Code proposed in the draft records management ordinance and to provide additional explanation to assist the City Council and the public as the ordinance is considered. In general, the changes are designed to reflect existing practices and legal rules applicable to requests for public records in a more precise and detailed manner than contained in the existing Chapter 2.36. The ordinance also contains some policy choices inherent in balancing the right of the public to access information about the functioning of the City against rights of privacy contained in the Alaska Constitution and state statutes. We have separately prepared a redline showing how the language in the proposed ordinance differs from the current language of Chapter 2.36. The memorandum is organized on a section by section basis. The draft ordinance leaves the remaining numbering the same in order to make comparisons between the new ordinance and existing code easier. When the ordinance is codified it is possible the numbering will change.

2.36.010 Definition of city records

(a) City Records - The changes delete outdated references to storage media all of which fit under the definition of “electronic record” and uses the more current words “photograph” and “video recording”. This is not a substantive change.

(b) This subsection of city code currently identifies records that are not available for public inspection because they are not “city records”. The proposed changes add a specific reference to “individual personal information”. This term is defined in subsection (d) of this

section discussed below. A specific exception for copyright, trademark or proprietary material received from third parties is included. A typical example of this is a customized piece of software like a city-specific GIS system or city-specific payroll processing software. The intent is to prevent the City from being sued by whoever developed the software if it is made available in response to a records request. Copyright and trademark are objective terms. Either something has been copyrighted or it has not. “Proprietary” is more subjective. This could apply to software or a technical process included in a response to an RFP for a public works project that had not been copyrighted or trademarked but had been developed by a specific company for use in its own projects.

“reference document” - the definition has been narrowed to exclude fewer materials.

“transitory document” - the definition has been made more specific to include records identified in the records retention schedule as not needing to be preserved at all. This is a more precise way of understanding what documents are meant by the phrase “preserved by the city” used in the definition of “city record”. The reference to “elected officials’ correspondence” has been deleted. This is not an accurate description of the law. Emails (and correspondence) of elected officials which discuss public business are public records subject to disclosure.

“electronic records” - this definition is the same as used in state statute.

“personal information” - this definition derives from AS 45.48.090(7). This is more specific than the definition contained in AS 40.25.350.

2.36.020 Ownership of city records - The deleted sentence was not strictly accurate. Some records that come into the city’s possession might be copies of something owned by another person. The city might own the copy but not the original.

2.36.030 City record management roles and responsibilities - The changes use more precise and consistent wording than existing code provision.

2.36.040 Disposition of city records - Minor changes not substantive to improve wording of this code section.

2.36.050 Annual Records Management Report to Council - the requirement for an annual report is in 2.36.030(b)(3)(iv) so this duplicative language is deleted

2.36.060 Access to city records

(a) the language in this section was moved to 2.36.010 the definitional section.

(b) relettered as (a). Slight wording change to specify regular office hours and “reasonable” rules for examining city records.

(c) relettered as (b). Extensive changes to this section are intended to be much more specific about what are considered “confidential and privileged” records. The generic reference to state law has been supplemented with a specific reference to a section of the state public records statute AS 40.25.120(a). An alternative approach for this ordinance is to cut and paste these state law exceptions. We did not do that because a fair number of the exceptions would not regularly be relevant to requests for city records. As for the specifics:

(1) references the section of the Alaska Constitution which elevates the right of privacy to an individual constitutional right. As such, this right is subject to being fleshed out by decisions of the Alaska Supreme Court. This means the parameters of the right to privacy can change over time making it impossible to anticipate and describe every scenario in this ordinance.

(2) same concept as (1). This section of the Alaska Constitution was added by the voters.

(3) specific reference to the federal statute and regulation relevant to records containing medical information. The most common request to which this would apply are requests for ambulance transport records.

(4) deliberative process exemption. This is a court made exception to disclosure. The case explicitly holding this exemption applies to local government is Fuller v. Homer, 75 P.3rd 1059 (Alaska 2003). Because this is a court made exception it is not possible to set forth in detail in this ordinance all situations where it will apply. In general it would apply to internal city communications about an issue on which a decision is required up until the point the decision is actually made (even if the request is made long after the decision has been made). The legal concept accepted by the Alaska Supreme Court is that city staff participating in those discussions will provide more forthright opinions about what to do if they do not have to “worry” that what they say will be released to the public. One could debate the merits of this legal rule but it is the law of the land in Alaska. It is theoretically possible for the city council to decide as a matter of local policy that the City will waive this privilege. The privilege also could be waived on a request by request basis.

(5) attorney-client communications. This is also a court made privilege. Not every communication by a municipal attorney is privileged. This memorandum is an example of a communication that is not privileged. It is not possible to describe in an ordinance all situations to which the privilege applies.

(6) attorney work product. Similar considerations to those discussed above apply to this privilege.

(7) crime victim rights – This is governed by the referenced state law.

(8) AS 18.65.903(b) - this is a state law relating to images obtained by drones used in law enforcement activity.

(9) minor privacy rights - the referenced state statutes must be followed. This is the information made confidential under state law: 1) the name and picture of a child involved in a CINA (child in need of aid) court case; 2) all information and records about a child involved in a CINA case; 3) records relating to a minor participating in a state licensed program for runaways, or who stayed at a state licensed shelter for runaways. The most likely instances where this exception would come into play involves contact between the police department and the minor or the minor's family.

(10) confidential driving records - under state law the release of "personal information" contained in driving records is restricted. This impacts the frequent requests received for accident reports. State law limits who may see the "personal information" in such records. Those with a "need to know" (such as an insurance company for a person involved in an accident) can see the personal information but a curious citizen or member of the news media may not. This usually will result in having to provide a redacted record rather than not providing any record at all.

(11) records pertaining to juveniles - This is also contained in AS 40.25.120(a)(2). AS 47.10.093 contains a list of people authorized to be provided city records pertaining to juveniles. The list does not include persons without a specific "connection" to the juvenile (school, parent, medical provider, law enforcement, child support agency, person who has filed what is called a "report of harm" in order to follow up on the report). This state law will require denial of a request for such records by the news media or general public.

(12) vital statistics or adoptions. This is also contained in AS 40.25.120(a)(1).

(13)(14) medical records/public health records - this is from AS 40.25.120(a)(3).

(15) fire department investigations- this is not specifically addressed by state law except to the extent such an investigation has law enforcement implications. So it is a policy choice for the city council whether to include this exception.

(d) Litigation records - the changes limit the scope of this exception to match the Alaska Supreme Court decision that those involved in litigation with federal agencies or in private lawsuits can ask for city or state public records using a public records request rather than court rules.

(e) Law Enforcement records- this is another section with substantial changes. The ordinance specifically recognizes that audio and video recordings are frequently law enforcement records.

(1) enforcement proceedings – the added language recognizes the amendment to the Alaska Constitution (Art I, sec. 24) which allows crime victims "the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present" and the right to be treated with "dignity, respect and fairness". This means crime victims will be able to receive law enforcement records other persons would not be allowed to receive in response to a public records request.

(2) this section identifies factors to consider in determining whether the release of requested information is an “unwarranted invasion of privacy”. This is a balancing test. The concept is to provide guidelines to the city clerk and the public as to what considerations will be balanced when responding to requests for law enforcement records. Here is the thinking behind the factors.

i) warrant - a warrant is issued only after a judge or magistrate has concluded there is probable cause to issue a warrant. Therefore someone has already balanced constitutional issues in authorizing the search for the information making it less likely to be an unwarranted invasion of privacy to release the record.

ii) AS 12.61.110 states “The residence and business addresses and telephone numbers of a victim of a crime or witness to a crime are confidential.” The city must comply with this state law.

iii) crime victims - discussed above.

iv) charged or not charged - if a person was not charged with a crime the release of law enforcement records identifying that person as a suspect are more likely an unwarranted invasion of privacy than if the person was charged with a crime. This can vary based on the circumstances.

v) crime victim - if the person asking for the record is a crime victim (and the record pertains to the crime) is it more likely the record will be released.

vi) minor - discussed above.

vii) speculative, defamatory etc. - this category of information is more likely to be an unwarranted invasion of privacy and therefore not released.

viii) promise of confidentiality - if someone was promised confidentiality it is more likely to be an unwarranted invasion of privacy to release the identity of that person in response to a request for law enforcement records.

ix) charges dismissed or not brought - this exception itself has identified subfactors to consider. In general release of older records about alleged misdemeanor criminal offenses of a private nature by ordinary citizens are more likely to be an unwarranted invasion of privacy. But release of more recent records of alleged serious offenses (like sexual assault) committed by, for example, someone that used to be the Mayor of Kodiak but now is a vice presidential candidate or Supreme Court nominee would be less likely to be an unwarranted invasion of privacy. The “probable truthfulness” of the allegations reflects the fact that sometimes charges are dismissed or not brought due to statutes of limitations, technical violations of court rules, death or unavailability of a witness rather than because the charges are not true. In such instances it is less likely release of law enforcement records pertaining to the allegations or charges would be an unwarranted invasion of privacy.

x) right of citizens to monitor a law enforcement agency - this has been recognized by the Alaska Supreme Court as an important right and will always weigh in favor of disclosure of law enforcement records even those implicating an individual's privacy rights.

These are factors to be considered not black and white rules. Including this level of detail in the ordinance provides guidance to those asking for documents, those whose rights to privacy are impacted by a request and to the city clerk and police chief. When responding to a request which involves privacy rights it is anticipated the city will identify what factors were considered and what role the consideration of the factors played in the conclusion about providing the requested law enforcement records.

4) disclose identity of confidential source - this is from AS 40.25.120(a)(6)(D).

5) disclose confidential techniques - this is from AS 40.25.120(a)(6)(E).

6) disclose guidelines for investigations - this is from AS 40.25.120(a)(6)(F).

7) endanger person - this is from AS 40.25.120(a)(6)(G).

8) criminal history records from state or federal databases - the city's use of and access to the state database APSIN is governed by state law and regulation. AS 12.62.160(b) severely limits the persons to whom this information can be released. It is not available to the general public. Similar restrictions apply to records generated from the federal criminal justice information database.

9) video recordings - the draft ordinance proposes a 30 day waiting period prior to release of video recordings not otherwise exempt from disclosure. The 30 days starts on the date of the video recording. For example, if a video was exempt from disclosure while a criminal investigation was ongoing but the investigation was completed with a decision not to file charges 7 days after the video was made the recording would not be released for an additional 23 days. This is not mandated by state law and is a policy decision for the city council. It recognizes the potential the recording could be relevant to an internal administrative investigation while avoiding using this as an excuse to unduly delay access to the video recording to the public.

(g) Personnel Records

(1) - the added language is not a substantive change it just makes specific the more general code language "personnel records". The reference to a court order recognizes that a court may issue a subpoena requiring production of personnel records.

(5) - no change has been made to this language, however, whether applications of employees for a lower city position who are subsequently promoted to the city manager or police chief position should be considered a public record is a current issue. This is a policy decision for the city council.

(h) Accident Reports - to the extent accident reports pertain to motor vehicle accidents the proposed language is consistent with the restrictions on disclosure of “personal information” contained in state law. (AS 28.10.505 referenced in proposed section 2.36.060(b)(10)). To the extent this section pertains to information in such reports other than “personal information” and pertains to non-motor vehicle accidents the provisions are not specifically mentioned in state law but are a policy decision for the city council requiring council to balance individual privacy against the public’s interest in access to city documents.

(i) Individual Privacy Rights - this subsection is intended to make the public aware of the current practice regarding requests for release of security camera footage. This is not a policy change.

(j) Redactions – this is also intended to make the public aware of the current practice. Just because some parts of a record may not be disclosed does not prevent other parts of the record from being disclosed.

(k) Creation of Record - this subsection also reflects the current practice.

2.36.070 Administration of access to public records - the new language adopts the deadline for a response followed by state agencies and puts into code the current practice of explaining (briefly) why records or portions of records requested are not being made available. Subsection (d) is from AS 40.25.110 (c). Subsection (f) specifies when records are made available at no charge and subsection (g) provides the option for the city manager to waive fees.

2.36.080 Electronic Services - this is an entirely new section specifying the city is deciding not to provide databases or to assemble information from multiple sources within an existing database. This is a policy choice allowed by AS 40.25.115. This dovetails with proposed KCC 2.36.060 (k) (city will not create a record). The language reflects current policy.

Section 3 - this allows the city to make information regarding delinquent water bills public. This is a policy choice.

Section 4 - this allows the city to make information regarding delinquent sewer bills public. This is a policy choice.

In summary: 1) many of the changes incorporate specifically state law provisions that are only generally referenced in current code or reflect court decisions; 2) some of the changes make specific and public the way current code provisions and the state public records statute are administered; and 3) some of the changes (and some of the language not proposed to be changed) reflect policy choices.

We are happy to answer questions about any of the proposed changes or existing Chapter 2.36.

Chapter 2.36 MANAGEMENT OF RECORDS

Sections

- 2.36.010 Definition of city records**
- 2.36.020 Ownership of city records**
- 2.36.030 City record management roles and responsibilities**
- 2.36.040 Disposition of city records**
- 2.36.050 Annual records management report to council**
- 2.36.060 Access to public records**
- 2.36.070 Administration of access to public records**

For the resolution adopting the retention schedule, see Res. No. 08-26.

For ordinances regarding public records prior to the adoption of Ord. 1203, see Ord. 432 §1, 1975; Ord. 887, 1990; and Ord. 1160, 2003.

2.36.010 Definition of city records

(a) City records include any document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, electronic record, or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by the city, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of the informational value in them.

(b) City records do not include, and this chapter does not apply to, library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes, Kodiak Public Library Association materials, those items identified as reference materials by the city clerk, stocks of publications, and processed documents, reference documents, or transitory documents. In this section:

(1) "Reference document" means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes, without limitation, notes, calculations, and working papers.

(2) "Transitory document" means a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests.

(c) Elected officials' correspondence not received at City Hall is excluded from the provisions of this chapter. [Ord. 1303 §1, 2013; Ord. 1219 §1, 2007; Ord. 1203 §2, 2006]

2.36.020 Ownership of city records

All city records defined in KCC 2.36.010(a) are the sole property of the city. No city official or employee has, by virtue of his or her position, any personal or property right to city records. [Ord. 1203 §2, 2006]

2.36.030 City record management roles and responsibilities

(a) Accountability. The overall accountability for the city's records management program lies with the city clerk.

(b) Responsibilities.

(1) City council.

(i) Approve all city records retention schedules and any amendments thereto.

(ii) Endorse the records management framework. The records management framework includes guiding principles and directives, policies and procedures, standards and best practices, core competencies, the training program, and the strategic plan.

(2) City manager. Ensure that all departments comply with the records management framework.

(3) City clerk.

(i) Approve all changes to the records management framework.

(ii) Approve all records disposition requests based on records retention schedules approved by the city council.

(iii) Appraise and identify records of enduring value, i.e., historical records, during the preparation and submission of records retention schedules.

(iv) Assess compliance of city departments with the records management framework and report the status of the records management program to the city council annually.

(v) Identify the city's vital records and develop and implement related policies and procedures.

(vi) Plan and allocate central storage facilities for the city's inactive records (i.e., city records center).

(vii) Develop and implement policies, standards, and procedures for the transfer of archival/historical records during the final records disposition process from individual departments to the city clerk's custody.

(4) Department heads.

(i) Implement and ensure compliance with the records management program within the department according to the city standards, policies, and best practices as outlined in the records management framework.

(ii) Designate a departmental records management coordinator who shall represent the department on the city's records management advisory committee.

(5) City employees and contracted agents. Create, capture, and organize records of transactions undertaken in business processes according to the city's best practices and procedures. [Ord. 1203 §2, 2006]

2.36.040 Disposition of city records

(a) Record retention program.

(1) The city clerk shall prepare a record retention program and record retention schedule specifying the records to be:

(i) Retained permanently;

(ii) Destroyed;

(iii) Microfilmed or electronically scanned and imaged according to industry standards to ensure their legal admissibility.

(2) The records retention schedule shall be adopted by resolution.

(b) Disposal.

(1) The city clerk shall approve all records disposition requests based on the current records retention schedule approved by the city council.

(2) The city clerk or the city clerk's designee shall witness and certify the disposal of city records by means determined to be appropriate by the city clerk.

(3) Upon disposal of city records, the city clerk shall file in the city clerk's office a descriptive list of the records disposed of and a record of the disposal itself. The city clerk shall transmit copies of the list and record of disposal to the city council, and the filing in the office of the city clerk of the list and record of disposal shall constitute a filing and preservation by the council of these documents.

(4) The city clerk shall include in the annual records management report to the city council a description of all record disposal activities taken during the year. [Ord. 1219 §2, 2007; Ord. 1203 §2, 2006]

2.36.050 Annual records management report to council

The city clerk shall report the status of the management of city records to the city council annually. [Ord. 1203 §2, 2006]

2.36.060 Access to public records

(a) Definition of public records. Public records include books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by the city, or by a private contractor for the city, and that are preserved for their informational value or as evidence of the organization or operation of the city; public records do not include proprietary software programs, reference documents, or transitory documents. In this section:

(1) "Reference document" means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes, without limitation, notes, calculations, and working papers.

(2) "Transitory document" means a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests.

(b) Open to inspection. All public records shall be open to public inspection, except as provided in subsections (c) through (h) of this section.

(c) Confidential or privileged public records. Public records containing information which is accorded confidential or privileged status under this code, or under state or federal law and which has been provided on a condition that the information retain its privileged or confidential nature, are open to public inspection only in a manner that does not disclose such confidential or privileged information.

(d) Inspection of public records involved in litigation.

(1) Public records sought by a party involved in litigation shall be disclosed in accordance with the rules of procedure applicable in a court or administrative adjudication.

(2) In this subsection, "involved in litigation" means a party to litigation or a party representing a party to litigation, including a person who is obtaining records for the party.

(e) Law enforcement records. Public records compiled or maintained for law enforcement purposes are open to inspection and disclosure, except that such disclosure shall not be made if disclosure of the records:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

(4) Could reasonably be expected to disclose the identity of a confidential source;

(5) Would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(6) Would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law.

(f) Identity of complainants.

(1) The name, address, telephone number, or other identifying information about complainants in actions to enforce building, environmental, or other city ordinances or regulations and state statutes or regulations are not open to public inspection.

(2) This subsection does not prohibit disclosure of the contents of the complaint, so long as the complainant is not identifiable.

(3) This subsection does not prohibit the disclosure of the name of the complainant when such disclosure becomes necessary to the fair and just disposition of the charge or complaint in enforcement proceedings.

(g) Personnel records.

(1) Personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

(2) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(i) The names and position titles of all city employees;

(ii) The position held by a city employee;

(iii) Prior positions held by a city employee;

(iv) Whether a city employee is in the classified or exempt service;

(v) The date of appointment and separation of a city employee;

(vi) The compensation authorized for a city employee.

(3) A city employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(4) An applicant for city employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(5) Notwithstanding subsection (g)(1) of this section, employment applications for the positions of city manager and police chief shall be open to public inspection.

(h) Harbor and utility customer records. Information in records maintained for city harbor facilities and city utilities regarding a specific identifiable customer, including without limitation the customer's address, telephone number, account balance, and payment history, is not open to public inspection. [Ord. 1303 §2, 2013; Ord. 1254 §2, 2009; Ord. 1203 §2, 2006]

2.36.070 Administration of access to public records

(a) Requests for access to public records may be made directly to the concerned department(s) or to the city clerk's office. The city clerk is the city official designated to review any denial of access to public records.

(b) The council by resolution from time to time shall prescribe the standard unit charge for copies of public records.

(c) The fee to search for and duplicate a public record shall consist of:

(1) Actual costs for copying the record in the requested format, including costs for paper, tapes, microfiche, disks, or other media;

(2) Costs incurred by the city to duplicate the record, including computer processing time;

(3) Salary and benefits costs for the city employees performing the work, including computer programming work required to extract or copy the records, as provided in AS [40.25.110](#). [Ord. 1203 §2, 2006]

[Web Version](#)

NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge^{MA}, City Manager
Thru: Timothy Putney, Chief of Police
Date: March 28, 2019
Agenda Item: V. a. **Resolution No. 2019-07, Accepting a Department of Public Safety Crime Prevention and Response and Equipment Grant for Radios for the Kodiak Police Department**

SUMMARY: On February 27, 2019, the Kodiak Police Department submitted two funding requests to the Department of Public Safety (DPS) Crime Prevention and Response and Equipment Funding for \$126,350. On March 6, 2019, the Kodiak Police Department received notification that one of the funding requests was approved. The approved request would authorize the City to be reimbursed for purchasing 20 portable radios and accessories in the amount of \$100,000. Guidelines from DPS require the radios to be ordered by June 30, 2019, and staff would submit itemized receipts for reimbursement by December 31, 2019.

PREVIOUS COUNCIL ACTION: Council voiced a consensus to seek funding for this equipment at their work session on February 26, 2019.

BACKGROUND/DISCUSSION: This funding will replace obsolete Motorola portable radios that are more than 15 years old and are no longer supported by the manufacturer. The new portable radios will integrate with the current Motorola radio system and allow Kodiak Police Officers to communicate directly with the Alaska State Troopers utilizing the Alaska Land Mobile Radio (ALMR) Communications System.

ALTERNATIVES:

- 1) Authorize the adoption of this resolution, which will allow staff to move forward with purchasing 20 Motorola portable radios and accessories to be reimbursed by DPS. This is the recommendation of staff.
- 2) Do not authorize this resolution.

FINANCIAL IMPLICATIONS: Attached is a quote for 20 Motorola portable radios through Motorola Solutions, an approved NASPO Value Point vender in Alaska, for \$97,810.35. The City would be reimbursed by DPS after submitting an itemized invoice. This funding alleviates some of the City's financial burden to replace aging mobile and portable radios City-wide. New Motorola portable radios would not increase annual maintenance costs.

STAFF RECOMMENDATION: Staff recommends Council adopt Resolution No. 2019–07.

CITY MANAGER’S COMMENTS: I applaud our Police Chief, working in conjunction with our Fire Chief to identify the need of radio replacement and working together to identify potential grant sources to relieve the financial burden on the city. These radios will be used in the protection of life and safety of our community and will meet the integral requirements of our department.

NOTES/ATTACHMENTS:

Attachment A: Resolution No. 2019–07

Attachment B: Motorola Solutions Quote #QU0000470310

Attachment C: Acceptance Letter from DPS

PROPOSED MOTION:

Move to adopt Resolution No. 2019–07.

**CITY OF KODIAK
RESOLUTION NUMBER 2019-07**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK
ACCEPTING A DEPARTMENT OF PUBLIC SAFETY CRIME PREVENTION
AND RESPONSE AND EQUIPMENT GRANT FOR RADIOS FOR THE KODIAK
POLICE DEPARTMENT**

WHEREAS, the State of Alaska Department of Public Safety was allotted funds for Crime Prevention and Response and Equipment; and

WHEREAS, the City was awarded \$100,000 for eligible equipment purchases; and

WHEREAS, the City has previously identified the need to replace aging equipment;
and

WHEREAS, Article V of the City of Kodiak Charter provides that an appropriation of funds separate from the budget document may be made by resolution.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska:

Section 1. Accepts the State of Alaska Department of Public Safety Crime Prevention and Response and Equipment Grant for \$100,000.

Section 2. The Fiscal Year 2019 Capital Budget is amended by establishing Project No. 4056, KPD Department of Public Safety Equipment Grant, in the General Capital Projects Fund:

<u>Account Description</u>	<u>Amount</u>
State Grants	\$100,000

<u>Account Description</u>	<u>Amount</u>
General Capital Projects Fund - KPD Department of Public Safety Equipment Grant	\$100,000

Section 3. This resolution shall become effective upon adoption.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:



Quote Number: QU0000470310
Effective: 07 MAR 2019
Effective To: 06 MAY 2019

Bill-To:
 KODIAK, CITY OF
 P O BOX 1397
 KODIAK, AK 99615
 United States

Ultimate Destination:
 KODIAK, CITY OF
 2160 MILL BAY RD
 KODIAK, AK 99615
 United States

Attention:
Name: Chief Putney
Phone: (907)486-8000

Sales Contact:
Name: Angela Parker
Email: aparker@procommak.com
Phone: 907-563-1176

Contract Number: NASPO ValuePoint
Freight terms: FOB Destination
Payment terms: Net 30 Due

Item	Quantity	Nomenclature	Description	List price	Your price	Extended Price
1	20	H98KGD9PW5BN	APX6000 VHF MHZ MODEL 1.5 PORTABLE	\$2,705.00	\$1,974.65	\$39,493.00
1a	20	Q58AL	ADD: 3Y ESSENTIAL SERVICE	\$110.00	\$110.00	\$2,200.00
1b	20	H38BT	ADD: SMARTZONE OPERATION	\$1,200.00	\$876.00	\$17,520.00
1c	20	Q361AR	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$219.00	\$4,380.00
1d	20	QA01648AA	ADD: ADVANCED SYSTEM KEY - HARDWARE KEY	\$5.00	\$3.65	\$73.00
1e	20	Q498AY	ENH: ASTRO 25 OTAR W/ MULTIKEY	\$740.00	\$540.20	\$10,804.00
1f	20	Q629AK	ENH: AES ENCRYPTION	\$475.00	\$346.75	\$6,935.00
1g	20	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$375.95	\$7,519.00
2	20	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	\$165.00	\$120.45	\$2,409.00
3	3342	SVC03SVC0115D	SUBSCRIBER PROGRAMMING	\$1.00	\$1.00	\$3,342.00
(Notes)Codeplug Development, Programming and Freight						
4	1	NNTN8844A	CHARGER, MULTI-UNIT, IMPRES 2, 6-DISP, NA/LA-PLUG, ACC USB CHGR	\$1,375.00	\$1,003.75	\$1,003.75
5	20	PMNN4485A	BATT IMPRES 2 LIION R IP68 2550T	\$146.00	\$106.58	\$2,131.60
(Notes)spare batteries						

Total Quote in USD \$97,810.35

Q2437

- PO Issued to Motorola Solutions Inc. must:
- >Be a valid Purchase Order (PO)/Contract/Notice to Proceed on Company Letterhead. Note: Purchase Requisitions cannot be accepted
 - >Have a PO Number/Contract Number & Date
 - >Identify "Motorola Solutions Inc." as the Vendor
 - >Have Payment Terms or Contract Number
 - >Be issued in the Legal Entity's Name
 - >Include a Bill-To Address with a Contact Name and Phone Number
 - >Include a Ship-To Address with a Contact Name and Phone Number

- >Include an Ultimate Address (only if different than the Ship-To)
- >Be Greater than or Equal to the Value of the Order
- >Be in a Non-Editable Format
- >Identify Tax Exemption Status (where applicable)
- >Include a Signature (as Required)



THE STATE
of ALASKA

GOVERNOR MICHAEL J. DUNLEAVY

Department of Public Safety

DIVISION OF ALASKA STATE TROOPERS
Office of the Director

5700 East Tudor Road
Anchorage, Alaska 99507-1225
Main: 907.269.5641
Fax: 907.269.5079

March 11, 2019

Chief Putney
2160 Mill Bay Road
Kodiak, AK 99615

Dear Chief Putney:

During the last legislative session and as part of SB 142 (Capital Budget) the Department of Public Safety (DPS) was allotted \$2 million for Crime Prevention and Response and Equipment. The money was intended to be used to coordinate with local law enforcement agencies statewide to help local communities prevent and respond to crime in an effort to reduce drug related crimes, car thefts, and violent crimes.

DPS established a process to collect and evaluate requests from the local law enforcement agencies. The process established that the funds would be distributed as reimbursement and that upon approval your agency would have to make the purchase and DPS would reimburse the preapproved cost when an itemized receipt was provided to DPS.

Your submitted request(s) for reimbursement funding was reviewed and the following was approved for reimbursement:

- 1) \$100,000 for the purchase of P-25 Compliant Portable Radios and accessories

The approved items must be to be ordered no later than June 30, 2019.

The itemized receipts verifying purchase will need to be submitted to Lt. Sims by December 31, 2019.

If you will not be able to meet the above deadlines, please contact Lt. Sims.

Send all itemized receipts for reimbursement to Alaska State Troopers, 5700 East Tudor Road, Anchorage, AK 99507 Attention: Lt. Cornelius Sims

Crime Prevention and Response Reimbursement

Page 2

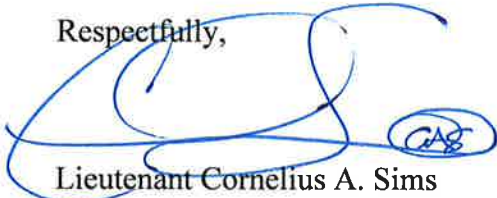
March 11, 2019

If you have any questions, please contact Lt. Sims (cornelius.sims@alaska.gov) or 907-375-7761.

Any equipment/purchases subject to reimbursement under SB 142 must be used for lawful purposes only and reimbursement by the state is not intended to impose any duty or responsibility on the state to monitor or supervise the use of the equipment or to maintain or replace it.

Please review, sign, and return the attached Agreement of Reimbursement.

Respectfully,

A handwritten signature in blue ink, consisting of several loops and a small circle containing the initials 'CAS'.

Lieutenant Cornelius A. Sims
Director's Staff
Division Planning

**ALASKA DEPARTMENT OF PUBLIC SAFETY
AGREEMENT OF REIMBURSEMENT**

The Alaska Department of Public Safety agrees to pay reimbursement to the City of Kodiak Police Department as follows:

- 1) \$100,000 for the purchase of P-25 Compliant Portable Radios and accessories

The approved items must be to be ordered no later than June 30, 2019.

The itemized receipts verifying purchase will need to be submitted to Lt. Sims by December 31, 2019.

Send all itemized receipts for reimbursement to Alaska State Troopers, 5700 East Tudor Road, Anchorage, AK 99507 Attention: Lt. Cornelius Sims

*** Any equipment/purchases subject to reimbursement under SB 142 must be used for lawful purposes only and reimbursement by the state is not intended to impose any duty or responsibility on the state to monitor or supervise the use of the equipment or to maintain or replace it.***

IN WITNESS OF THIS AGREEMENT, the undersigned duly authorized officers have subscribed their names on behalf of the Department and the City respectively.

For the City of Kodiak:

For the Department of Public Safety:

By _____

By _____

Printed Name _____

Printed Name _____

Official Title _____

Official Title _____

Date _____

Date _____

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager and Debra Marlar, City Clerk

Date: March 28, 2019

Agenda Item: V. b. Consideration of Marijuana Retail Store Application No. 20113 for High Rise LLC

SUMMARY: The City received notice from the State of Alaska on February 28, 2019, of a new application from High Rise, LLC for a retail marijuana store license at 104 Center Ave., Suite 102.

Alaska voters approved Ballot Measure 2 on November 4, 2014, which provided for general legalization of marijuana. Alaska Administrative Code 306 stipulates the conditions under which licenses for marijuana establishments will be issued. AS 17.38.210 provides that a local government may designate a local regulatory authority that is responsible for processing applications submitted to operate a marijuana establishment within the boundaries of the local government. Ordinance No. 1365 established the Kodiak City Council as the City's Local Regulatory Authority on Marijuana.

Ordinance No. 1378 established the license application review process for the City Council in Section 4. (This ordinance is included as Attachment B for your reference.) As required by Section 4 of Ordinance No. 1378, the City Clerk sent inquires to the Chief of Police, Fire Chief, Finance Director, and Building Official asking if any had concerns about the proposed license. None expressed concerns that would require the Council to object to the issuance of the license. This section also stipulates, for the purpose of public hearing and Council action, that the clerk place the matter of the application upon the agenda for a regular or special meeting of the Council held not less than fifteen or more than 50 days from receipt of the notice from the Alcohol and Marijuana Control Office. A public hearing was held earlier in the meeting.

Section 5 of Ordinance No. 1378 prohibits a licensed premises within 500 feet of any school ground.

Section 6 of Ordinance No. 1378 prohibits the manufacture and sale of marijuana edible products.

Application documents are included as (Attachment A).

PREVIOUS COUNCIL ACTION:

- 2015-2016, received information at work sessions from Cynthia Franklin, Director of the Alaska Marijuana Control Office and City attorneys about State Ballot Measure 2 and other considerations regarding marijuana regulation in the City
- May 12, 2016, adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Committee
- May 26, 2016, adopted Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City (opt out expired January 1, 2017)
- November 10, 2016, Council postponed acceptance of the recommendations from the City Marijuana Advisory Special Committee
- June 27, 2017, Council discussed and finalized the final recommendations from the City Marijuana Advisory Special Committee
- November 4, 2017, Adopted Ordinance No. 1365, Amending Kodiak Municipal Code Title 7 Entitled “Health and Sanitation” to Adopt Chapter 7.40 Entitled “Marijuana Regulation,” and Designating the Kodiak City Council as the City’s Local Regulatory Authority on Marijuana
- November 4, 2017, Adopted Ordinance No. 1366, Amending Kodiak Municipal Code Title 8 Entitled "Public Peace, Safety, And Morals" to Adopt Kodiak City Code 8.40, "Prohibited Acts Regarding Marijuana," to Prohibit the Extraction of Tetrahydrocannabinol ("THC") or Any Cannabinoid By Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted By Law
- July 20, 2018, Adopted Ordinance No. 1378, Amending Title 5 With the Renumbering of KCC Chapter 7.40 to Chapter 5.24 and the Addition of New Sections for Marijuana Businesses, and Amending Chapter 8.48 to Reflect Alaska Marijuana Law

ALTERNATIVES: Now that the Council has received this administrative report and held a public hearing, the Council may take one of the following actions:

- 1) Non-objection. Upon finding that the permit satisfies all legal requirements, the Council may authorize the Clerk to issue a letter of non-objection to the Marijuana Control board.
- 2) Non-objection with conditions. If any requirements or obligations are not satisfied, but could be satisfied through further action of the licensee(s), the council may authorize the Clerk to issue a letter of conditional non-objection setting forth the City’s conditions for non-objection.
- 3) Protest. Upon determining the existence of one or more of the grounds contained in subsection (d, which stipulates reasons for protest), the Council may direct the clerk to cause a protest to be filed.

FINANCIAL IMPLICATIONS: The City will collect 7% sales tax on marijuana products sold inside the City limit. The City also receives \$500 from the State, which is one half of the application fee

CITY MANAGER'S COMMENTS: Administration does not see any objectionable issues with this license application. As a condition of the license approval I would suggest the City remind the applicant, the City does not currently allow the manufacture and sale of edible marijuana products. Section 6 of Ordinance No. 1378 prohibits the manufacture and sale of marijuana edible products.

ATTACHMENTS:

- Attachment A: Application Materials
- Attachment B: Ordinance No. 1378

PROPOSED MOTION:

Move to direct the City Clerk to issue a letter of non-objection with conditions that prohibit the sale of edible marijuana products to the Marijuana Control Board for Marijuana Retail Store Application No. 20113 for High Rise LLC.



Department of Commerce, Community,
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

February 28, 2019

City of Kodiak

Attn: City Clerk

VIA Email: akniazowski@city.kodiak.ak.us
mtvenge@city.kodiak.ak.us
mshuravloff-nelson@city.kodiak.ak.us
dmarlar@city.kodiak.ak.us

Kodiak Island Borough

Attn: Borough Clerk

Via Email: njavier@kodiakak.us
clerks@kodiakak.us

License Number:	20113
License Type:	Retail Marijuana Store
Licensee:	High Rise, LLC
Doing Business As:	HIGH RISE, LLC
Physical Address:	104 Center Ave. Suite 102 Kodiak, AK 99615
Designated Licensee:	Jack Schactler
Phone Number:	541-961-2778
Email Address:	j.schactler@gmail.com

New Application

AMCO has received a completed application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.025(d)(2).

To protest the approval of this application(s) pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

3 AAC 306.010, 3 AAC 306.080, and 3 AAC 306.250 provide that the board will deny an application for a new license if the board finds that the license is prohibited under AS 17.38 as a result of an ordinance or election conducted under AS 17.38 and 3 AAC 306.200, or when a local government protests an application on the grounds that the proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the marijuana establishment, unless the local government has approved a variance from the local ordinance.

This application will be in front of the Marijuana Control Board at our May 1-3, 2019 meeting.

Sincerely,

Erika McConnell

Erika McConnell, Director

amco.localgovernmentonly@alaska.gov



Alaska Marijuana Control Board

Form MJ-00: Application Certifications

What is this form?

This application certifications form is required for all marijuana establishment license applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306.

This form must be completed and submitted to AMCO's main office by each proposed licensee (as defined in 3 AAC 306.020(b)(2)) before any license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	High Rise, LLC	License Number:	20113		
License Type:	Retail Marijuana Store				
Doing Business As:	High Rise, LLC				
Premises Address:	104 Center Ave. Suite. 102				
City:	Kodiak	State:	AK	ZIP:	99615

Section 2 – Individual Information

Enter information for the individual licensee.

Name:	Jack Schactler
Title:	Owner/Operator

Section 3 – Other Licenses

Ownership and financial interest in other licenses:

Yes No

Do you currently have or plan to have an ownership interest in, or a direct or indirect financial interest in another marijuana establishment license?

If "Yes", which license numbers (for existing licenses) and license types do you own or plan to own?



Alaska Marijuana Control Board

Form MJ-00: Application Certifications

Section 4 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that I have not been convicted of a felony in any state or the United States, including a suspended imposition of sentence, for which less than five years have elapsed from the time of the conviction to the date of this application.

I certify that I am not currently on felony probation or felony parole.

I certify that I have not been found guilty of selling alcohol without a license in violation of AS 04.11.010.

I certify that I have not been found guilty of selling alcohol to an individual under 21 years of age in violation of 04.16.051 or AS 04.16.052.

I certify that I have not been convicted of a misdemeanor crime involving a controlled substance, violence against a person, use of a weapon, or dishonesty within the five years preceding this application.

I certify that I have not been convicted of a class A misdemeanor relating to selling, furnishing, or distributing marijuana or operating an establishment where marijuana is consumed within the two years preceding this application.

I certify that my proposed premises is not within 500 feet of a school ground, recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility, as set forth in 3 AAC 306.010(a).

I certify that my proposed premises is not located in a liquor licensed premises.

I certify that I meet the residency requirement under AS 43.23 for a permanent fund dividend in the calendar year in which I am initiating this application.

I certify that all proposed licensees (as defined in 3 AAC 306.020(b)(2)) have been listed on my online marijuana establishment license application. Additionally, if applicable, all proposed licensees have been listed on my application with the Division of Corporations.

I certify that I understand that providing a false statement on this form, the online application, or any other form provided by AMCO is grounds for denial of my application.



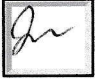
Alaska Marijuana Control Board

Form MJ-00: Application Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify and understand that I must operate in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.



I certify and understand that I must operate in compliance with each applicable public health, fire, safety, and tax code and ordinance of this state and the local government in which my premises is located.



Read each line below, and then sign your initials in the box to the right of only the applicable statement:

Initials

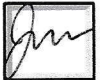
Only initial next to the following statement if this form is accompanying an application for a marijuana testing facility license:

I certify that I do not have an ownership in, or a direct or indirect financial interest in a retail marijuana store, a marijuana cultivation facility, or a marijuana products manufacturing facility.



Only initial next to the following statement if this form is accompanying an application for a retail marijuana store, a marijuana cultivation facility, or a marijuana products manufacturing facility license:

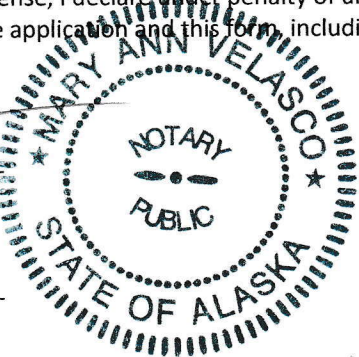
I certify that I do not have an ownership in, or a direct or indirect financial interest in a marijuana testing facility license.



All marijuana establishment license applicants:

As an applicant for a marijuana establishment license, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that the online application and this form, including all accompanying schedules and statements, is true, correct, and complete.

Jack Schachter
Signature of licensee



M. Velasco
Notary Public in and for the State of Alaska

Jack Schachter
Printed name of licensee

My commission expires: 04/01/2019

Subscribed and sworn to before me this 4th day of January, 2019.



Alaska Marijuana Control Board Form MJ-02: Premises Diagram

What is this form?

A detailed diagram of the proposed licensed premises is required for all marijuana establishment license applications, per 3 AAC 306.020(b)(8). **All areas designated as the licensed premises of a single license must be contiguous.**

What must be submitted with this form?

Applicants must attach multiple diagrams to this form, including (as applicable):

- **Diagram 1:**
a diagram showing only the licensed premises areas that will be ready to be **operational at the time of your preliminary inspection** and license issuance;
- **Diagram 2:**
if different than Diagram 1, a diagram outlining **all areas for which the licensee has legal right of possession** (a valid lease or deed), and clearly showing those areas' relationship to the current proposed licensed premises (*details of any planned expansion areas do not need to be included; a complete copy of Form MJ-14: Licensed Premises Diagram Change must be submitted and approved before any planned expansion area may be added to the licensed premises*);
- **Diagram 3:**
a **site plan or as-built of the entire lot**, showing all structures on the property and clearly indicating which area(s) will be part of the licensed premises;
- **Diagram 4:**
an **aerial photo of the entire lot and surrounding lots**, showing a view of the entire property and surrounding properties, and clearly indicating which area(s) will be part of the licensed premises (*this can be obtained from sources like Google Earth*); and
- **Diagram 5:**
a diagram of the **entire building in which the licensed premises is located**, clearly distinguishing the licensed premises from unlicensed areas and/or premises of other licenses within the building. If your proposed licensed premises is located within a building or building complex that contains multiple business and/or tenants, please provide the addresses and/or suite numbers of the other businesses and/or tenants (*a separate diagram is not required for an establishment that is designating the entire building as a single licensed premises*).

This form, and all necessary diagrams that meet the requirements on Page 2 of this form, must be completed and submitted to AMCO's main office before any new or transfer license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	High Rise LLC	MJ License #:	20113		
License Type:	Retail Marijuana Store				
Doing Business As:	High Rise, LLC				
Premises Address:	104 Center Ave. Suite. 102				
City:	Kodiak	State:	Alaska	ZIP:	99615



Form MJ-02: Premises Diagram

Section 2 – Required Information

For your security, do not include locations of security cameras, motion detectors, panic buttons, and other security devices.

The following details must be included in all diagrams:

- License number and DBA
- Legend or key
- Color coding
- Dimensions
- Labels
- True north arrow

The following additional details must be included in Diagram 1:

- Surveillance room
- Restricted access areas
- Storage areas
- Entrances, exits, and windows
- Walls, partitions, and counters
- Any other areas that must be labeled for specific license types

The following additional details must be included in Diagram 2:

- Areas of ingress and egress
- Entrances and exits
- Walls and partitions

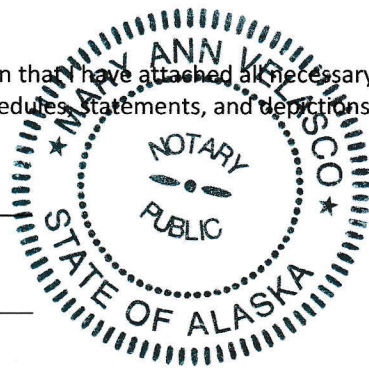
The following additional details must be included in Diagrams 3 and 4:

- Areas of ingress and egress
- Cross streets and points of reference

The following additional details must be included in Diagram 5:

- Areas of ingress and egress
- Entrances and exits
- Walls and partitions
- Cross streets and points of reference

I declare under penalty of unsworn falsification that I have attached all necessary diagrams that meet the above requirements, and that this form, including all accompanying schedules, statements, and depictions is true, correct, and complete.



[Signature]
Signature of licensee

Jack Schuetter
Printed name of licensee

[Signature]
Notary Public in and for the State of Alaska

My commission expires: 04/01/19

Subscribed and sworn to before me this 4th day of January, 2019.

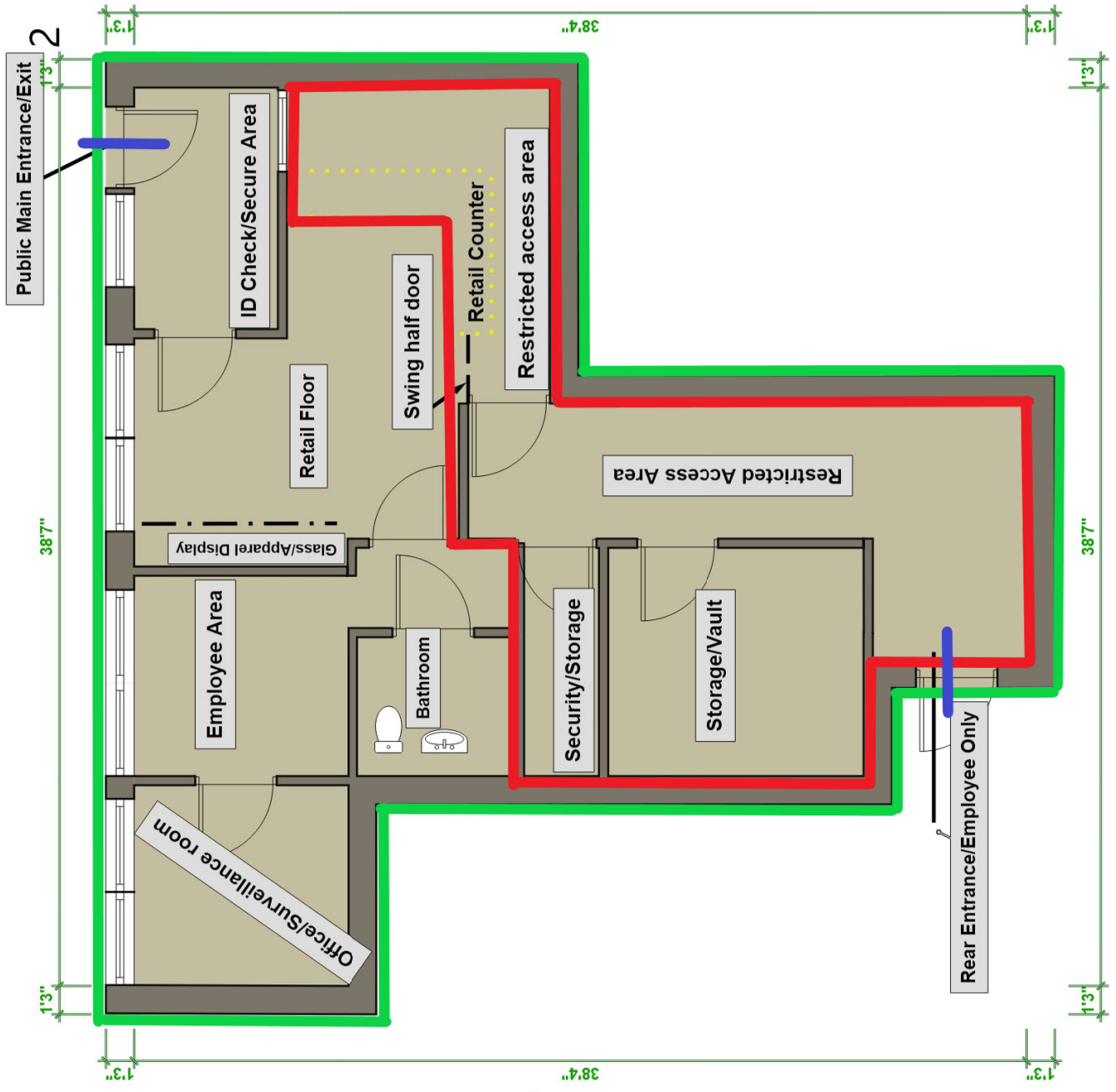
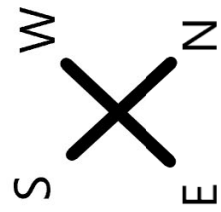
License #: 20113
DBA: High Rise, LLC

Legend

Restricted Access Area

Licensed Premises

Ingress/Egress



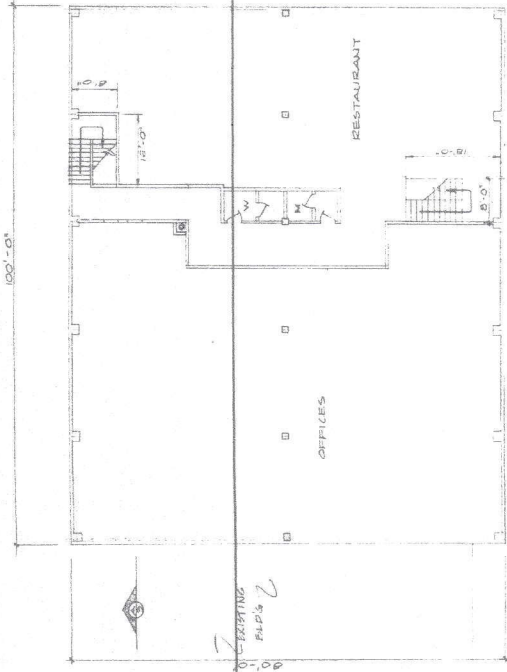
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License #: 20113
DBA: High Rise, LLC

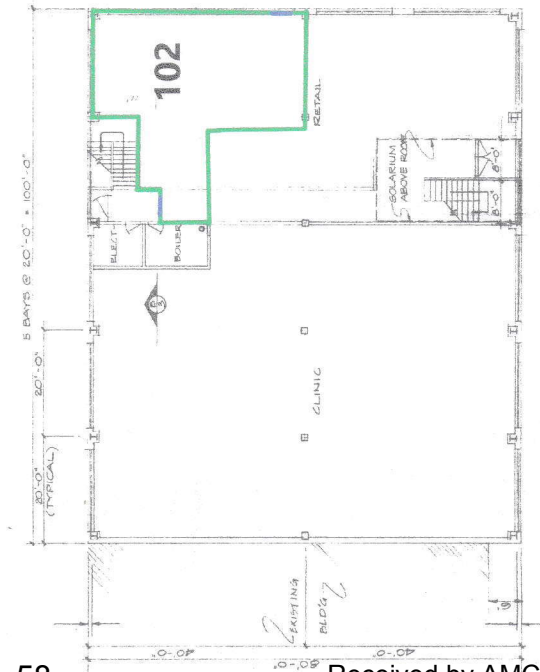
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Licensed Premises

Ingress/Egress

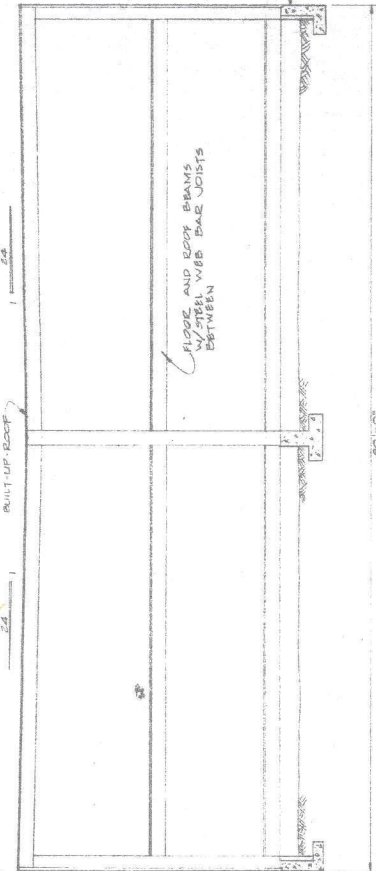


SECOND FLOOR PLAN
SECTION



FIRST FLOOR PLAN
SECTION

ROOF



SECTION
5/16" x 1'-0"

104 Center Avenue Kodiak AK 99615

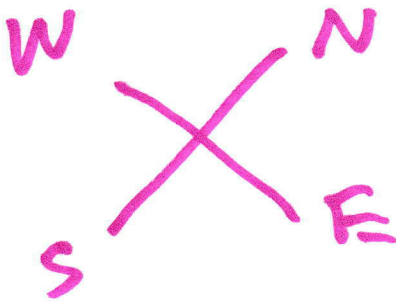
104 (

GILBERT & SELBY
KODIAK, ALASKA

Professional Seal
Professional Engineer
License No. 10000
State of Alaska

CENTER AVE

Rezanof DR





Rezanof

License #: 20113

DBA: High Rise, LLC

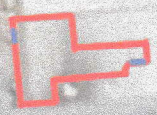
Legend

Licensed Premises 

Ingress/Egress 

Center AVE

W. Marine Way

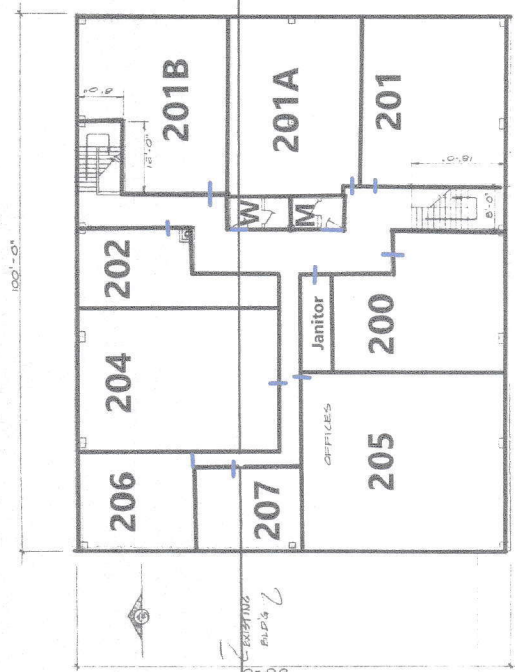


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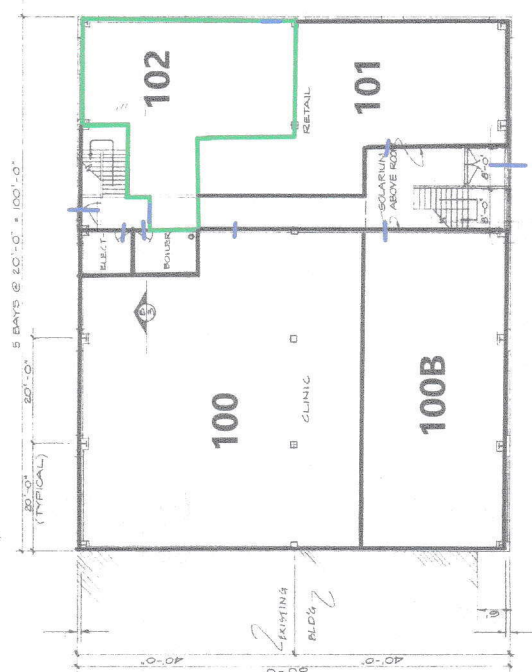
License #: 20113
DBA: High Rise, LLC

Legend

Licensed Premises
Ingress/Egress

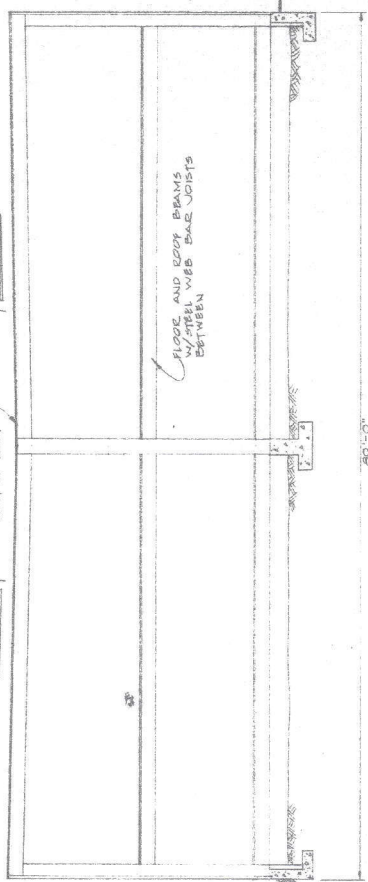


SECOND FLOOR PLAN
3,827.10'



FIRST FLOOR PLAN
3,827.10'

ROOF



SECTION
1/8" = 1'-0"

Table with columns for Title, Date, and Description. Includes a signature block for Gilbert & Selby.

GILBERT & SELBY
KODIAK, ALASKA

104 Center Avenue Kodiak AK 99615

104 (

Rezanof DR

Center Avenue



Alaska Marijuana Control Board Operating Plan Supplemental Form MJ-03: Retail Marijuana Store

What is this form?

This operating plan supplemental form is required for all applicants seeking a retail marijuana store license and must accompany **Form MJ-01: Marijuana Establishment Operating Plan**, per 3 AAC 306.020(b)(11). Applicants should review **Chapter 306: Article 3** of the **Alaska Administrative Code**. This form will be used to document how an applicant intends to meet the requirements of the statutes and regulations.

If your business has a formal operating plan, you may include a copy of that operating plan with your application, but all fields of this form must still be completed per 3 AAC 306.020 and 3 AAC 306.315(2).

What additional information is required for retail stores?

Applicants must identify how the proposed establishment will comply with applicable regulations regarding the following:

- Prohibitions
- Signage and advertising
- Displays and sales
- Exit packaging and labeling
- Security
- Waste disposal

This form must be completed and submitted to AMCO's main office before any new or transfer application for a retail marijuana store license will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	High Rise, LLC	MJ License #:	20113		
License Type:	Retail Marijuana Store				
Doing Business As:	High Rise, LLC				
Premises Address:	104 Center Ave. Suite. 102				
City:	Kodiak	State:	Alaska	ZIP:	99615



Section 2 – Overview of Operations

2.1. Provide an overview of your proposed facility's operations. Include information regarding the intake and flow of marijuana and marijuana product at your premises, and a description of what a standard customer visit to your establishment would entail:

All marijuana shipments will be recieved through the rear/employee entrance of the building. The shipment will be accepted by the licensee or on duty manager. Prior to accepting the shipment, it will be verified that a valid METRC manifest accompanies the shipment, that all marijuana is properly packaged and labeled, and that the marijuana weight matches the manifest. After accepting the shipment it will be logged into METRC and our inventory tracking system, then locked into the safe.
Upon entering the facility, retail customers will first enter into the ID entry area. In the ID entry area the customer will have their ID checked by a trained High Rise, LLC employee. The employee will scan the ID with an ID Visor Smart Scanner as well as visually inspect the ID. If further verification is needed there will be an ID book available providing security features and details pertaining to each individual state ID. After age is verified the customer will be "buzzed" into the retail store through a seperate door. After entering the retail area the customer will be able to select from various pre packaged marijuana and marijuana products as well as marijuana weighed to order. Any marijuana weighed to order will be weighed on a state certified scale & packaged/ labeled as required. Any marijuana weighed to order will be available for a scent and/or visual inspection by the customer, but will stay in the possession and control of a High Rise, LLC employee at all times. After making their selections the customer will be ID'd again before checkout. After check out the customer will promptly leave the premises.

Section 3 – Prohibitions






Review the requirements under 3 AAC 306.310.

3.1. Describe how you will ensure that the retail marijuana store will not sell, give, distribute, or deliver marijuana or marijuana product to a person who is under the influence of an alcoholic beverage, inhalant, or controlled substance:

In addition to the marijuana handlers course, High Rise, LLC employees will be trained on how to spot and discern if an individual is under the influence of alcohol, an inhalant, or controlled substance. Upon entering the ID entry area they will immediatley be analyzed by the trained High Rise, LLC employee checking their ID. If the customer is suspected of being under the influence of alcohol, an inhalant, or controlled substance, they will be denied entry to the retail store and be asked to leave the premises immediatley.

3.2. I certify that the retail marijuana store will not:

Initials

- a. sell, give, distribute, deliver, or offer to sell, give, distribute, or deliver marijuana or marijuana product in a quantity exceeding the limit set out in 3 AAC 306.355; 
- b. sell, give, distribute, deliver, or offer to sell, give, distribute, or deliver marijuana or marijuana product over the internet; 
- c. offer or deliver to a consumer, as a marketing promotion or for any other reason, free marijuana or marijuana product, including a sample; 
- d. offer or deliver to a consumer, as a marketing promotion or for any other reason, alcoholic beverages, free or for compensation; or 
- e. allow a person to consume marijuana or a marijuana product on the licensed premises. 

Answer "Yes" or "No" to the following question:

Yes No

3.3. Do you plan to request future approval of the Marijuana Control Board to permit consumption of marijuana or marijuana product in a designated area on the proposed premises?



Form MJ-03: Retail Marijuana Store Operating Plan Supplemental

Section 4 – Signage and Advertising

Review the requirements under 3 AAC 306.360 and 3 AAC 306.365. All licensed retail marijuana stores must meet minimum standards for signage and advertising.

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box: Initials

4.1. I understand and agree to follow the limitations regarding the number, placement, and size of signs on my proposed establishment, set forth in 3 AAC 306.360(a).

Ju

4.2. The retail marijuana store will not use giveaway coupons as promotional materials, or conduct promotional activities such as games or competitions to encourage the sale of marijuana or marijuana products.

Ju

4.3. All advertising for marijuana or marijuana product will contain the warnings required under 3 AAC 306.360(e).

Ju

4.4. I understand and agree to post, in a conspicuous location visible to customers, the notification signs required under 3 AAC 306.365.

Ju

4.5. I certify that no advertisement for marijuana or marijuana product will contain any statement or illustration that:

Ju

a. is false or misleading;

Ju

b. promotes excessive consumption;

Ju

c. represents that the use of marijuana has curative or therapeutic effects;

Ju

d. depicts a person under the age of 21 consuming marijuana; or

Ju

e. includes an object or character, including a toy, a cartoon character, or any other depiction designed to appeal to a child or other person under the age of 21, that promotes consumption of marijuana.

4.6. I certify that no advertisement for marijuana or marijuana product will be placed:

Ju

a. within 1,000 feet of the perimeter of any child-centered facility, including a school, childcare facility, or other facility providing services to children, a playground or recreation center, a public park, a library, or a game arcade that is open to persons under the age of 21;

Ju

b. on or in a public transit vehicle or public transit shelter;

Ju

c. on or in a publicly owned or operated property;

Ju

d. within 1,000 feet of a substance abuse or treatment facility; or

Ju

e. on a campus for postsecondary education.

Section 5 – Displays and Sales

5.1. Describe how marijuana and marijuana products at the retail marijuana store will be displayed and sold:

Marijuana and marijuana products will be displayed in retail counter displays as well as shelving behind the retail counter. Marijuana will be pre packaged as well as weighed-to-order, any marijuana weighed-to-order will be done on a state certified scale. Once the customer selects their product they will be directed to the point of sale/check out, if weighing to order the marijuana will be properly packaged and labeled. The customer will be ID'd one last time before the transaction is complete. The customer will promptly leave the premises after purchase.



Section 6 – Exit Packaging and Labeling

Review the requirements under 3 AAC 306.345.

6.1. Describe how the retail marijuana store will ensure that marijuana and marijuana products sold on its licensed premises will meet the packaging and labeling requirements set forth in 3 AAC 306.345(a):

All marijuana and marijuana products sold will be labeled with the following information. Retail store name, License Number, Logo, & total THC percentage, as well as the following statements: "Marijuana has intoxicating effects and may be habit forming and addictive.", "Marijuana impairs concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence.", "There are health risks associated with consumption of marijuana.", "For use only by adults twenty-one and older. Keep out of the reach of children.", "Marijuana should not be used by women who are pregnant or breast feeding."
All High Rise, LLC employees will be trained on the packaging and labeling standards set forth in 3 AAC 306.345. All marijuana or marijuana products will be packaged in opaque, resealable, child-resistant packaging prior to leaving the retail store.

6.2. Provide a sample label that the retail marijuana store will use to meet the labeling requirements set forth in 3 AAC 306.345(b):

Strain: Blue Dream
THC: x.x% **THCA:** x.x% **CBD:** x.x% **CBDA:** x.x%
Total THC: x.x%
Harvest Batch #: xxxxxx
Cultivator: ABCDEFG **License #:** xxxxx
Retailer: High Rise, LLC **License #:** 20113
Testing Facility: ABCDEFG **License #:** xxxxx
Fungicides, Pesticides, Herbicides: None
METRC #: xxxxxxxxxxxxxxxxxxxxxxxxxxxxx



Marijuana has intoxicating effects and may be habit forming and addictive - Marijuana impairs concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence There are health risks associated with consumption of marijuana - For use only by adults twenty-one and older. Keep out of the reach of children - Marijuana should not be used by women who are pregnant or breast feeding.

NET WEIGHT: 0.000oz



Section 7 – Security

Review the requirements under 3 AAC 306.350 and 3 AAC 306.720.

7.1. Describe the retail marijuana store’s procedures for ensuring a form of valid photographic identification has been produced before selling marijuana or marijuana product to a person, as required by 3 AAC 306.350(a):

The retail customer will be ID'd once upon entering the facility and once at check out. the first ID check will be with the ID visor smart ID scanner, as well as a visual inspection. There will also be an ID guide available to cross reference IDs & look for security features.

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

7.2. The video surveillance and camera recording system for the licensed premises covers each point-of-sale area.

Section 8 – Waste Disposal

Review the requirements under 3 AAC 306.740.

8.1. Describe how you will store, manage, and dispose of any marijuana waste, including expired marijuana or marijuana products, in compliance with any applicable laws. Include details about the material(s) you will mix with ground marijuana waste and the processes that you will use to make the marijuana waste unusable for any purpose for which it was grown or produced:

Marijuana waste, including expired marijuana or marijuana products, will be stored in a designated container in the storage/vault area. High Rise, LLC will notify AMCO 3 days prior to the disposal date. Before disposal, marijuana waste or expired marijuana or marijuana products will be mixed 50/50 with a soil waste or other compostable material, then ground together until rendered useless. Once mixed and ground, the waste will be recorded in METRC & disposed of at the Kodiak landfill.

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

8.2. The retail marijuana store shall give the board at least three days written notice required under 3 AAC 306.740(c) before making marijuana waste unusable and disposing of it.

I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Signature of licensee

Jack Schachter
Printed name of licensee



Notary Public in and for the State of Alaska

My commission expires: 01/18/2022

Subscribed and sworn to before me this 7 day of February, 2019.



(Additional Space as Needed):



Alaska Marijuana Control Board

Form MJ-08: Local Government Notice Affidavit

What is this form?

A local government notice affidavit is required for all marijuana establishment license applications with a proposed premises that is located within a local government, per 3 AAC 306.025(b)(3). As soon as practical after initiating a marijuana establishment license application, an applicant must give notice of the application to the public by submitting a copy of the application to each local government and any community council in the area of the proposed licensed premises. For an establishment located inside the boundaries of city that is within a borough, both the city and the borough must be notified.

This form must be completed and submitted to AMCO's main office before any new or transfer license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	High Rise, LLC	License Number:	20113		
License Type:	Retail Marijuana Store				
Doing Business As:	High Rise, LLC				
Premises Address:	104 Center Ave. Suite. 102				
City:	Kodiak	State:	AK	ZIP:	99615

Section 2 – Certification

I certify that I have met the local government notice requirement set forth under 3 AAC 306.025(b)(3) by submitting a copy of my application to the following local government (LG) official(s) and community council (if applicable):

Local Government(s): City of Kodiak / Kodiak Island Borough Date Submitted: 1/7/2019

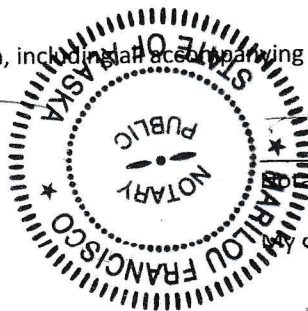
Name/Title of LG Official 1: Debra Marlar / City Clerk Name/Title of LG Official 2: Nova M. Javier, Borough Clerk

Community Council: Kodiak City Council / Borough Assembly Date Submitted: 01/07/2019
 (Municipality of Anchorage and Matanuska-Susitna Borough only)

I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Jack Schacter
 Signature of licensee

Jack Schacter
 Printed name of licensee



Marlon Francisco
 Notary Public in and for the State of Alaska
 My commission expires: 01/18/2022

Subscribed and sworn to before me this 7th day of January, 2019.

**CITY OF KODIAK
ORDINANCE NUMBER 1378**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
TITLE 5 WITH THE RENUMBERING OF KCC CHAPTER 7.40 TO CHAPTER 5.24
AND THE ADDITION OF NEW SECTIONS FOR MARIJUANA BUSINESSES, AND
AMENDING CHAPTER 8.48 TO REFLECT ALASKA MARIJUANA LAW**

WHEREAS, the Kodiak city council has been designated as the city's local regulatory authority on marijuana;

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

Section 1: This ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

Section 2: Chapter 7.40 Marijuana Regulation, of the Kodiak City Code, is hereby renumbered to Chapter 5.24, with Section 7.40.010 renumbered to 5.24.010 accordingly.

Section 3: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.005 to read as follows:

5.24.005. Definitions.

As used in this chapter the following definitions shall apply:

“Edible marijuana product” means a marijuana product that is intended to be consumed orally, whether as food or drink.

“Licensed premises” means any or all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a marijuana establishment license is issued, and used, controlled, or operated by the marijuana establishment to carry out the business for which it is licensed.

“School ground” means any facility operated by a school board or private school, as defined by AS 14.45.200, to provide educational, athletic, or recreational activities for persons under 18 years of age and shall include facilities providing post-secondary education and child care facilities licensed under AS 47.32.010.

Section 4: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.020 to read as follows:

5.24.020. License Application Review.

(a) Upon receipt of notice from the Alcohol and Marijuana Control Office that a new, renewal, or transfer application for a marijuana business license has been deemed complete, the clerk shall forward the application to appropriate department heads to make investigations within their respective areas of responsibility. The city manager or designee shall compile the responses, and provide the council with the administration's recommended action.

(b) For the purpose of public hearing and council action, the clerk shall place the matter of the application upon the agenda for a regular or special meeting of the council held not less than fifteen or more than 50 days from receipt of the notice from the Alcohol and Marijuana Control Office.

(c) After receiving the administration report and public comment, the council, by motion, may take one of the following actions on the matter of the license:

(1) Non-objection. Upon finding that the permit satisfies all legal requirements, the council may authorize the clerk to issue a letter of non-objection to the Marijuana Control Board.

(2) Non-objection with conditions. If any requirements or obligations are not satisfied, but could be satisfied through further action of the licensee(s), the council may authorize the clerk to issue a letter of conditional non-objection to the Marijuana Control Board for the issuance, transfer, or renewal of the license setting forth the city's conditions for non-objection.

(3) Protest. Upon determining the existence of one or more of the grounds contained in subsection (d) of this section, the council may direct the clerk to cause a protest to be filed with the Marijuana Control Board.

(d) A marijuana license may be protested for one or more of the following reasons:

(1) Failure of the applicant to secure any required city permit, or if the applicant is in violation of any applicable city permit;

(2) That the applicant has violated a provision of AS 17.38 or regulations adopted by the state, or a condition imposed by the Alcohol and Marijuana Control Office on the license, or if issuance of the license would violate a provision of state law or regulations;

(3) The marijuana business operated under the license or any other business owned in whole or in part by any person named in the application as an applicant or on the permit is, on the date the council considers the matter, delinquent in the payment of any sales tax or penalty or interest on sales tax arising out of the operation of any business within the city;

(4) There are delinquent property taxes or local improvement district assessments or penalty or interest thereon arising out of real or personal property

owned in whole or in part by any person named in the application as an applicant or such property as is to be used in the conduct of business under the license;

(5) There is a delinquent charge or assessment owing to the city or borough by the licensee for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided or conducted by the city or borough at the request of or arising out of an activity of the business conducted under the license;

(6) The business operated or to be operated under the license is violating or would violate the Kodiak City Code;

(7) The business operated under the license is, on the date the council considers the matter, in violation of a state or municipal fire, health, or safety code, or for any concern identified by the building official, or police chief or fire chief (A conviction for a violation is not a prerequisite for a protest under this section);

(8) The concentration of other marijuana business or alcohol licenses in the area;

(9) Any factor identified by state statute or regulation as appropriate grounds for a protest; or

(10) Any other factor the council determines is generally relevant or is relevant to a particular application.

Section 5: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.030 to read as follows:

5.24.030. Licensed premises not less than 500 feet from schools.

(a) Licensed premises shall not be located within 500 feet of any school ground.

(b) The distance specified in this section shall be measured by a straight line from the public entrance of the building in which the licensed premises would be located to the lot line or real property boundary for the any lot or parcel containing a school ground.

(c) This section does not prohibit the renewal of an existing marijuana establishment license or the transfer of an existing marijuana establishment license to another person if the licensed premises were in use before the school ground began use of a site within 500 feet.

Section 6: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.040 to read as follows:

5.24.040. Manufacture and Sale of Marijuana Edibles Prohibited.

Manufacture of edible marijuana products on any licensed premises and all sale of edible marijuana products is unlawful.

Section 7: Section 8.48.010 of the Kodiak City Code is hereby amended to read as follows: [deleted text is ~~struck through~~; added text is underlined]

8.48.010 Use restrictions.

No person shall have possession of ~~or be addicted to the use of~~ a narcotic drug, or be under the influence of a narcotic drug in the city, except when such narcotic drugs are or have been prescribed or administered by or under the direction of a person licensed by the state of Alaska to prescribe and administer narcotics.

Section 8: Section 8.48.020 of the Kodiak City Code is hereby amended to read as follows: [deleted text is ~~struck through~~; added text is underlined]

8.48.020 Sale or possession of drug paraphernalia.

(a) No person may knowingly sell or possess drug paraphernalia.

(b) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture by the city of Kodiak.

(c) The term “drug paraphernalia” means any device, equipment, product, or material of any kind which is primarily intended or designed for use in processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body ~~marijuana, cocaine, hashish, hashish oil,~~ PCP, or amphetamines, or any other substance possession of which is unlawful under AS 11.71 except as provided by AS 17.38. It includes, but is not limited to, small metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, ~~hashish heads,~~ or punctured metal bowls which are commonly used for the ingestion of ~~marijuana, cocaine, or hashish.~~ substances described above.

(d) This section shall not apply to:

(1) Any person authorized by local, state, or federal law to manufacture, possess, or distribute such items; or

(2) Any item that is traditionally intended for use with tobacco products, including any pipe, paper, or accessory, unless residue or other evidence indicates that the item in question has in fact been used to process, prepare, inject, ingest, or inhale ~~marijuana, cocaine, hashish, hashish oil,~~ PCP, or amphetamines or otherwise in connection with a substance possession of which is unlawful under AS 11.71 except as provided by AS 17.38.

(e) A person charged with violating this section can dispose of the charge, by mail or in person, by paying a fine of \$75.00 plus any surcharge required to be imposed by AS 29.25.07 and checking the “no contest plea” box on the back of

the citation. Alternatively, the person may choose to appear in court and contest the citation. If found guilty, the maximum sentence which may be imposed is the fine amount plus any surcharge required to be imposed by AS 29.25.072. A person charged with a violation of this section does not have a right to a jury or to a court-appointed lawyer.

Section 9: This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK



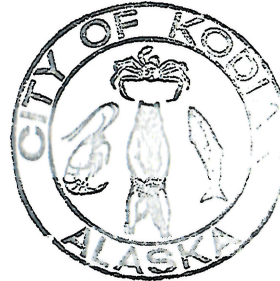
MAYOR

ATTEST:



CITY CLERK

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



MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager *MT*

Date: March 28, 2019

Agenda Item: V. c. Authorization of Amendment to City Manager's Employment Agreement

SUMMARY: The City Manager is hired by contract and works directly for the City Council. The Manager's contract contains a provision that the Council and Manager meet annually to discuss goals and objectives of both the past 12 month performance period as well as the upcoming 12 month performance period. The meeting to discuss goals and objectives was held March 14, 2019, at which time the Manager's contract was discussed and a consensus voiced to amend it.

PREVIOUS COUNCIL ACTION:

- February 9, 2017, Council authorized the City Manager's employment agreement
- November 9, 2017, Council provided the City Manager a six-month evaluation
- December 13, 2018, Council postponed the City Manager's annual review
- March 14, 2019, Mayor, Council, and City Manager met in executive session to discuss the Manager's annual performance and employment contract

MANGER'S COMMENTS: After discussion with the Mayor and Council I would like to make the following changes to my employment agreement. These changes are noted in Sections 3 and 6 of (Attachment A).

ATTACHMENTS:

Attachment A: City Manager's Employment Agreement

PROPOSED MOTION:

Move to amend the City Manager's Employment Agreement by rescinding Employment Agreement No. 229001 and authorizing Employment Agreement No. 242084.

Kodiak City Manager Employment Agreement

Introduction

This agreement is entered into on ~~the 10th day of February 2017~~ March 29, 2019 by and between the City Council of the City of Kodiak, Alaska, a municipal corporation, (hereinafter called "Employer") and Mike Tvenge, (hereinafter called "Employee") for the employment of Employee as the City of Kodiak City Manager ("Agreement").

Section 1: Term

The term of ~~the~~ this amended agreement shall be from May 1, 2018, for an initial period of three years from May 1, 2017, ("Effective Date") ~~to~~ until April 30, 2020 ("Termination Date"). This Agreement shall automatically renew on April 30, 2020, for one year unless either party submits written notice of termination to the other party at least thirty days before the Termination Date.

Section 2: Duties and Authority

- A. Employer agrees to employ Employee, Mike Tvenge, as City Manager to perform the functions and duties specified in Title 29 of the Alaska State Statutes, Articles I, II and III of the Charter of the City of Kodiak, Alaska ("City Charter"), and to perform other legally permissible and proper duties and functions.
- B. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, charter, state and federal law.
- C. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.
- D. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.
- E. The Employee shall perform the duties of City Manager of the Employer with reasonable care, diligence, skill and expertise.
- F. The Employee or designee shall attend, and shall be permitted to attend all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any

amendment thereto or the Employee's evaluation or otherwise consistent with state law.

Section 3: Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of ~~\$141,000 (\$67.79)~~ \$155,459 (\$74.74) effective on May 1, 2018, payable in installments at the same time as other employees of the Employer are paid.

The Employer agrees to increase the compensation, subject to a favorable annual review of Employee and the financial capacity of the City. The increase shall be discussed in executive session and approved in an open meeting.

- B. At any time during the term of the Agreement, Employer may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 3.A. of the Agreement except by mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant to a lawful governing body action. In such event, Employer and Employee agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

~~C. Employee shall receive a \$2,500 signing bonus no later than fifteen (15) days after the Effective Date of this Agreement.~~

Section 4: Health, Disability and Life Insurance Benefits

- A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his dependents, at a minimum, equal to that which is provided to all other employees of the City of Kodiak. In the event no such plan exists, Employer agrees to provide coverage for the Employee and dependents in a manner mutually agreed upon by Employer and Employee.
- B. The Employer agrees to put into force and to make required premium payments for Life Insurance coverage for the Employee equal to city regular full-time employees.

Section 5: Annual, Holiday and Sick Leave

- A. Upon commencing employment contract, Employee's accrued sick leave hours and annual leave hours shall carry over. In addition, beginning the first day of employment, Employee shall accrue sick leave and annual leave on an annual basis.

- B. Employee shall accrue 30 days annual leave at a rate of 9.23 hours per pay period and sick leave at a rate of 4 hours per pay period payable in equal installments during each pay period.
- C. The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued annual leave accrued on or before the Termination Date.
- D. The Employee shall annually be credited with 12 days of holiday leave.

Section 6: Automobile

The Employee's duties require exclusive and unrestricted use of an automobile to be mutually agreed upon and provided to the Employee at the Employer's cost, subject to approval by Employer which shall not be withheld without good cause. It shall be mutually agreed upon whether the vehicle is purchased by the Employer, provided under lease to the Employer or to the Employee. Any taxes incurred or resulting from this section shall be the responsibility of Employee.

The Employer shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase or lease, operation, maintenance, repair, and regular replacement of a full-size automobile including rental vehicle to be used while on travel for the city.

[The Employer may exercise the option to grant the Employee an automobile allowance not less than \\$400/ month or \\$4800 annually for use of his personal automobile as a substitution of Employer providing Employee an automobile.](#)

Section 7: Retirement

The Employer agrees to maintain enrollment of the Employee into the applicable state Public Employees Retirement System (PERS) and pay the Employer's contribution into PERS.

Section 8: General Business Expenses

- A. Employer agrees to budget and pay for professional dues necessary and required for Employee to retain any professional licensure or certification as a City Manager up to \$5,000.
- B. Employer agrees to budget and pay for other professional dues, subject to annual approval and appropriation by Employer, including but not limited to the International City/County Management Association, Alaska Municipal League, Alaska Municipal Manager's Association, Southwest Alaska Municipal Conference and subscriptions of the Employee necessary for continuation and

full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer. Employer agrees to budget and pay for travel and subsistence expenses of Employee, subject to annual approval and appropriation by Employer, for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee in his role as "City Manager" and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the state AML Conferences, and such other national, regional and local governmental groups and committees in which Employee serves as a member.

- C. Employer also agrees to budget and pay for, subject to annual approval and appropriations by Employer, travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer. This does not include courses and training necessary to obtain a bachelor, associate, master, or doctorate degree unless otherwise approved by Employer via motion.
- D. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
- E. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.
- F. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer, software, internet connection, mobile phone for business and personal use, required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee in accordance with municipal code at a properly posted and duly authorized public meeting.
- B. The Employer, citizens or legislature acts to amend any provisions of the City Charter, pertaining to the role, powers, duties, authority, responsibilities of Employee's position that substantially changes the form of government from a "Council-Manager Government", the Employee or Employer shall have the right to declare that such amendments constitute termination.
- C. The Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
- D. The Employer passes a motion to offer Employee the opportunity to resign, Employee may declare termination of this Agreement on the date the City Clerk receives Employee's written resignation.
- E. Either party breaches any provision of this Agreement and the party accused of the breach fails to cure the violation on or before 30 days after the breaching party received written notice of breach from the other party. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

- A. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to three (3) months salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at Employer's option.
- B. The Employee shall also be compensated for all accrued annual leave at the date of termination. Employee will be provided access to and Employer shall pay health insurance for Employee and Employee's dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA") for three months.

Section 11: Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of three (3) months notice unless Employer and Employee agree otherwise. Provided that such notice is given, Employer agrees to

compensate Employee any accrued annual leave effective the date of resignation, and such notice is without breach of this employment agreement.

Section 12: Performance Evaluation

Employee shall receive an initial six-month evaluation and annual evaluations thereafter. The annual evaluation process, at a minimum, shall include the opportunity for both parties to conduct a session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. The Employee may elect to accept volunteer opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 15: Residence

Employee agrees to maintain residence within the Kodiak City limits.

Section 16: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or no perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at

Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, local ordinance or any other law. The Employer has appropriated, set aside and encumbered of the City in an amount sufficient to fund and pay Employee's Base Salary and all other financial obligations pursuant to this agreement.

Section 19: Notices

This Agreement may contain similarities to the city's Personnel Rules and Regulations; however, Employee is not subject to such Personnel Rules and Regulations.

Section 20: General Provisions

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. **Effective Date.** This Agreement shall become effective on ~~May 1, 2017~~ May 1, 2018.
- D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

Name of Employer – City of Kodiak Alaska

By: _____

Pat Branson, Mayor

Executed this the ~~10th day of February 2017~~ 29th day of March 2019

Employee – Mike Tvenge

Signature: _____

Executed this the ~~10th day of February 2017~~ 29th day of March 2019