

City of Kodiak Regular Council Meeting Agenda for May 10, 2012
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

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

- II. Previous Minutes**
Approval of Minutes of the April 26, 2012, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Proclamation: Emergency Medical Services Week12
 - b. Proclamation: Police Week and Peace Officers’ Memorial Day14
 - c. Proclamation: Older Americans Month16
 - d. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. Second Reading and Public Hearing, Ordinance No. 1297, Amending Kodiak City Code 3.08.010(B), Levy of Sales Tax, to Increase the Rate of Sales Tax From Six Percent to Seven Percent on All Sales, Rentals, and Services Made Within the City Other Than Rentals of Transient Rooms; Amending Kodiak City Code 3.08.110(B), Tax Schedule, to Reflect the Increase in the Sales Tax Rate; and Amending Kodiak City Code 3.08.120(A), Maximum Taxable Sale, to Increase the Maximum Amount of a Single Transaction Subject to Taxation From \$750.00 To \$3,500.0020

- V. New Business**
 - a. Resolution No. 2012–13, Authorizing the Issuance of a Permit to the Kodiak Garden Club for Use of Public Property for its Annual Plant Sale48
 - b. Authorization of Extension of the Professional Services Contract With Birch, Horton, Bittner and Cherot for Legal Services.....52

- 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, APRIL 26, 2012
 IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Randall C. Bishop, Charles E. Davidson, Terry J. Haines, Gabriel T. Saravia, Mark Anthony G. Vizcocho, and John B. Whiddon were present and constituted a quorum. City Manager Aimée Kniazowski, City Clerk Debra L. Marlar, and Deputy Clerk Matthew Gandel were also present.

After the Pledge of Allegiance, Salvation Army Sergeant Major Dave Blackater gave the invocation.

II. PREVIOUS MINUTES

Councilmember Whiddon MOVED to approve the minutes of the April 12, 2012, regular meeting as presented.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

III. PERSONS TO BE HEARD

a. Proclamation: Municipal Clerks Week

Mayor Branson read the proclamation, which recognizes Municipal Clerks for the vital services they perform and their dedication to our community.

Mayor Branson presented the proclamation to City Clerk Marlar, who thanked the Mayor and Council for recognizing the office of municipal clerk and said it was an honor and pleasure to serve the citizens of Kodiak and the Council.

b. Public Comments

Chris Lynch spoke in opposition to Ordinance No. 1297 and said it would have an adverse affect on small business owners and renters.

Pat Tabon spoke in opposition to Ordinance No. 1297 and the effect it would have on fuel costs for commercial fisherman.

Joe Floyd spoke about Ian Fulp, Director of the Parks and Recreation Department, who had recently announced his retirement after almost 40 years working for the City. He said Fulp had made great contributions to the community and thanked him for his years of service. He encouraged the Council to support naming a recreation facility after Ian Fulp.

Latoya Lukin, via telephone, spoke in opposition to Ordinance No. 1297 and encouraged the Council to search for other options to bridge the budget gap.

Lisa Kostelecky, via telephone, spoke in opposition to Ordinance No. 1297, in particular the raising of the sales tax cap.

Janet Wente spoke in opposition to Ordinance No. 1297 and said it would be detrimental to small businesses and would encourage people to shop online rather than locally.

Rod Murdock spoke in opposition to Ordinance No. 1297 and said local citizens couldn't sustain any further taxation.

Lale Gurer, Economic Development Specialist for the Kodiak Chamber of Commerce, provided the Council with the results of a survey from retailers on the 2012 Sales Tax Free Day.

Jay Hartley, via telephone, spoke in opposition to Ordinance No. 1297.

Anne Kalcic spoke in opposition to Ordinance No. 1297 and said raising the sales tax cap would have a significant effect on commercial fisherman and local renters.

Marya Nault spoke in opposition to Ordinance No. 1297 and said that it was poor timing to raise the sales tax rate because property taxes had recently gone up and funds still needed to be raised for the new high school. She also congratulated Councilmember Vizcocho on his recent appointment and said she was happy to see young people enter the political process.

Dan Rohrer spoke in opposition to Ordinance No. 1297 and encouraged the Council to find ways to cut expenses rather than raising revenues and encourage an economically sustainable Kodiak.

Danielle Ringer, via telephone, spoke in opposition to Ordinance No. 1297 and said she was concerned with the effect it would have on young professionals in Kodiak who already have a difficult time affording rental prices.

Debora Refior spoke in opposition to Ordinance No. 1297.

Dawn Acosta spoke in opposition to Ordinance No. 1297, in particular raising the sales tax cap, and said many other communities have exceptions to a sales tax cap for rentals.

Michelle Weekly pleaded with the public to not dump trash and other debris on Pillar Mountain.

Lindsay Howell, Crab Festival Manager for the Kodiak Chamber of Commerce thanked the Council for letting them use city property for the Crab Festival. She also thanked the Council for its support of local nonprofit organizations.

Timothy Howland, via telephone, spoke in opposition to Ordinance No. 1297 and said it would encourage people to shop off-island or on the internet.

Kim Davidson spoke in opposition to Ordinance No. 1297 and said it was already difficult for small business to compete, and that raising the sales tax rate and cap would have many repercussions throughout the community.

Tony Lara spoke in opposition to Ordinance No. 1297 and asked the Council to consider who they were targeting with the proposed sales tax increase.

Patrick O'Donnell spoke in opposition to Ordinance No. 1297, particularly the increase in the sales tax cap.

Gene Mueller spoke in opposition to Ordinance No. 1297 and said Kodiak currently has one of the highest sales tax rates in the state, and shouldn't be raised any higher.

Jesse Glamann, via telephone, spoke in opposition to Ordinance No. 1297 and said raising the sales tax would make it hard for local retailers to keep a competitive edge over off-island or online business.

Jack Mann spoke in opposition to Ordinance No. 1297 and said the Council needed to rein in spending rather than raise taxes.

Keosaengsay Souriyasong, via telephone, spoke in opposition to Ordinance No. 1297.

Candace Ozols spoke in opposition to Ordinance No. 1297 and said a tax increase would make off-island and online shopping more attractive to local people.

Tina Fairbanks, Production/Operations Manager for the Kodiak Regional Aquaculture Association, thanked the Council for considering Resolution No. 2012-12.

Bob McGarry spoke in opposition to Ordinance No. 1297 and said that the City was overspending and shouldn't burden taxpayers with an increased sales tax.

Jim Emerson spoke in opposition to Ordinance No. 1297.

Laurie Murdock, via telephone, spoke in opposition to Ordinance No. 1297, particularly the increase in the sales tax cap.

William Bacus spoke in opposition to Ordinance No. 1297 and asked if the Council had considered how a sales tax increase would affect the community.

Ken Dunn spoke in opposition to Ordinance No. 1297 and said it was the job of the Council to be fiscally responsible and find a way to bridge the budget gap that didn't increase taxes.

IV. UNFINISHED BUSINESS

- a. **Second Reading and Public Hearing, Ordinance No. 1296, Establishing Supplemental Appropriation No. 2 to the Budget for the Fiscal Year Commencing on the First Day of July 2011 and Ending On the Thirtieth Day of June 2012**

Mayor Branson read Ordinance No. 1296 by title. It is customary for the City Council to approve at least one supplemental budget annually to authorize the adjustments of current revenues and expenses. This is the second supplemental for FY2012 and totals \$165,086. These adjustments are for operating funds as well as additions to project funds for grant revenues received and additional expenditures needed since the first supplemental budget amendment was passed in February 2012. This amendment also reverses the transfer of \$2.5 million in capital project funds from the fund balance of the General Fund and authorizes the capital funds to be taken from the Enhancement Fund.

Councilmember Saravia MOVED to adopt Ordinance No. 1296.

Mayor Branson closed the regular meeting, opened and closed the public hearing when no one came forward to testify, and reopened the regular meeting.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

V. NEW BUSINESS

- a. **First Reading, Ordinance No. 1297, Amending Kodiak City Code 3.08.010(b), Levy of Sales Tax, to Increase the Rate of Sales Tax From Six Percent to Seven Percent on All Sales, Rentals, and Services Made Within the City Other Than Rentals of Transient Rooms; Amending Kodiak City Code 3.08.110(b), Tax Schedule, to Reflect the Increase in the Sales Tax Rate; and Amending Kodiak City Code 3.08.120(a), Maximum Taxable Sale, to Increase the Maximum Amount of a Single Transaction Subject to Taxation From \$750.00 To \$3,500.00**

Mayor Branson read Ordinance No. 1297 by title. Council and staff have discussed how to bridge the substantial annual revenue shortfalls of \$3 to \$4 million since early 2011. The City has been using fund balance to cover the gap between revenues and increased expenses since about 2007. The fund balance continues to diminish, which will limit the City's ability to maintain its fiscal obligations. After many months of work, Council and staff held a special planning meeting in January 2012 to discuss how the City could meet current operational obligations, maintain existing services and infrastructure, manage investments and debt capacity, and cover unexpected or emergency expenses. They also discussed how to plan for and afford the replacement of aging infrastructure. Council recognized that the City could not continue to defer action and had to either increase revenues or cut services to balance the budget and meet required General Fund reserves. Council decided to increase revenues by raising the sales tax and the sales tax cap in order to fund current needs without dipping in to the fund balance each year.

Councilmember Davidson MOVED to pass Ordinance No. 1297 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

Councilmember Davidson said he understood that people didn't want to see an increase in sales tax and challenged the public to offer suggestions to the Council on a better alternative to bridge the current budget gap. He said the cost of operating the City had gone up and that necessitated an increase in revenues. He said the Council was trying to do what was best for the community and maintain the current level of services.

Councilmember Haines said he appreciated everyone's comments, and it was clear that raising the sales tax would affect local businesses and renters. He said the Council had taken that into account when proposing the tax increase, but that the City could not operate with the present revenue levels. He said many of the large projects that the City had undertaken in the last few years had been financed largely by the state and federal governments and had not been paid for by the City for the most part. He said in order to maintain the City's infrastructure and provide citizens with the same class of community and level of services, it was necessary to raise revenues. He said the only fair tax cap would be no tax cap, but said he was sensitive to the effects raising the sales tax cap would have on rentals.

Councilmember Haines MOVED to amend Ordinance No. 1297 by inserting the words "with the exception of rental properties, which shall be capped at the level of \$1,000" to the end of Section 3.

Councilmember Whiddon said he was not in favor of the amendment, but felt it was prudent to look at other options for the tax cap.

Councilmember Davidson said he was not in favor of the amendment, and reminded the public that this was only the first reading of Ordinance No. 1297.

The roll call vote on the amendment was Councilmember Haines in favor; Councilmembers Bishop, Davidson, Saravia, Vizcocho and Whiddon opposed. The amendment failed.

Councilmember Whiddon said he appreciated all the comments from members of the public and said they were not taken lightly. He said the Council was trying to find a way to maintain the current quality of life for Kodiak's citizens in the face of rising operating and personnel costs. He said all the members of the Council were heavily invested in Kodiak and wanted the community to be economically sound.

Councilmember Davidson commented that over fifty-percent of General Fund revenues came from the sales tax. He said the City had been delaying infrastructure repairs to save money, but that those repairs end up costing more money to fix in the long run.

Councilmember Saravia invited the public to make recommendations to the Council on the best ways to cut expenses and keep the same services. He said the Council was elected to make hard decisions and he believed they were doing what is best for the City.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

b. Resolution No. 2012-11, Authorizing the Assignment of the Lease of Tract C-1, Alaska Tideland Survey 1408, Plat No. 92-41 From Ocean Beauty Seafoods, Inc. to Ocean Beauty Seafoods LLC

Mayor Branson read Resolution No. 2012-11 by title. The Council adopted Ordinance No. 1294 on January 12, 2012, which authorized a lease between the City of Kodiak and Ocean Beauty Seafoods, Inc. for property located in Gibson Cove. When the City Clerk sent the lease to Ocean

Beauty for signature, the Chief Financial Officer and Secretary of Ocean Beauty requested the lease name be changed to Ocean Beauty Seafoods LLC. After consultation with the City's attorney, it was determined the requested name change required Council authorization in accordance with Kodiak City Code 18.20.240 Assignments: "The rights of a lessee or purchaser under a lease or under contract of sale may not be assigned unless the assignment is first approved by the council. The assignee shall be subject to all of the provisions of the lease or sales contract." The City's Attorney drafted Resolution No. 2012-11, which authorizes the requested name change.

Councilmember Haines MOVED to adopt Resolution No. 2012-11.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

c. Resolution No. 2012-12, Supporting the Implementation of Lake Fertilization of Karluk, Frazer, and Spiridon Lakes by the Kodiak Regional Aquaculture Association as a Salmon Rehabilitation and Enhancement Method

Mayor Branson read Resolution No. 2012-12 by title. The Kodiak Regional Aquaculture Association has been leading an effort to obtain support to fertilize several Kodiak Island lakes to increase sockeye salmon production. This resolution, which is similar to the one the Kodiak Island Borough Assembly recently adopted, provides a clear statement of support for the project. The City-Borough fisheries workgroup discussed the project at their April 16, 2012, meeting and requested the City consider adopting a resolution because increased salmon production benefits the community and economy.

Councilmember Whiddon MOVED to adopt Resolution No. 2012-12.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

d. Authorization of Emergency Replacement of Water Main on Rezanof Drive, Project No. 7032

On the morning of April 5, 2012, the water main on Rezanof Drive broke at the intersection of the Near Island Bridge. This main is roughly 3.5 feet deep and froze this past winter. The failure was a linear crack on the underside of the main from having been frozen and broken, caused by expanding ice. The section of frozen pipe is slightly over 800 feet long and is asbestos cement pipe that has become fragile due to age. The Alaska Department of Transportation (ADOT) is repaving this section of Rezanof Drive this summer, so it is critical that this line be replaced before the new pavement is installed. Due to the critical timing and urgency of this unplanned work, staff recommends Council authorize the emergency replacement of the water main and authorize the emergency work to Brechan/Pruhs JV (ADOT/Rezanof Drive resurfacing contractors) per Kodiak City Code section 3.12.070(b), Exceptions to Bidding Requirements.

Councilmember Haines MOVED to authorize the transfer of \$450,000 from the Pillar Creek Dam Spillway Repair project, Project No. 7033, to the newly created project, Emergency Replacement of Water Main on Rezanof, Project No. 7032/12-06; and authorize the award of a con-

tract to Brechan/Pruhs JV in the amount of \$366,100, with funds coming from Water Capital Improvement Fund new project number 7032/12-06.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

VI. STAFF REPORTS

a. City Manager

City Manager Kniazowski informed the Council that Director of Parks and Recreation Ian Fulp has submitted his resignation effective September 30, 2012. She said Fulp was the only Parks and Recreation Director in the history of the City, and everyone appreciated his years of devoted service. She said City staff were currently working on the FY2013 budget and that a work session was scheduled for May 5, 2012, for staff to review the budget with Council. She encouraged members of the public to attend the work session so they were informed throughout the budget process. She said the budget currently did not reflect the proposed sales tax increase, and was showing a \$2.5 million deficit. She acknowledged the service of Kodiak Police Department employee Debra Buckey who was retiring after 20 years of service to the City. She also acknowledged Kodiak Fire Department employees Lieutenant Dave Billings for 15 years of service and Deputy Fire Chief Jim Mullican for ten years of service. She said she had attended a memorial for the two victims of the recent shooting at the Coast Guard base and had been struck by the quality of the leadership displayed.

b. City Clerk

City Clerk Marlar informed the public of the next scheduled Council budget work session, work session, and regular meeting. She invited the public to contact the Clerk's Office if they needed assistance locating the City budget documents online.

VII. MAYOR'S COMMENTS

Mayor Branson wished Wilma Finley a happy 100th birthday. She said she attended the memorial for the two victims of the recent shooting at the Coast Guard base and said it was very moving. She thanked everyone who had come to offer comments on the proposed sales tax increase, and said that budget decisions were never taken lightly. She said it was a fine balance between maintaining infrastructure and the current quality of life. She invited the public to offer their opinions to herself and the Council.

VIII. COUNCIL COMMENTS

Councilmember Vizcocho congratulated the Clerk's Office on the proclamation of Municipal Clerks Week. He thanked all the community members for voicing their concerns with Ordinance No. 1297. He said the Kodiak community was a family and needed to work together to solve problems.

Councilmember Bishop congratulated the Clerk's Office. He said the memorial service for the two people killed in a shooting at the Coast Guard base had been very touching. He said the City

couldn't keep conducting business without increasing revenues, and that changes had to be made to ensure a viable community in the future. He said the Council was considering all available options for increasing revenues.

Councilmember Haines thanked all the members of the public who had made comments, and said the only thing the City couldn't afford to do was not do anything. He thanked Parks and Recreation Director Fulp for his years of service to the City and community.

Councilmember Saravia thanked Parks and Recreation Director Fulp for his service to the community. He expressed his condolences to the families of the two victims of the shooting at the Coast Guard base. He said that the public was always welcome to offer their opinion on the best way to get the funding required for City services. He said the Council was elected to make hard choices, and people were always welcome to run for office if they didn't like the choices that were being made.

Councilmember Davidson extended his condolences to families of the victims of the shooting at the Coast Guard base. He said nobody liked to pay increased taxes but that something had to be done, and he felt the Council would be able to come up with a solution that everyone would accept.

Councilmember Whiddon thanked Parks and Recreation Director Fulp for his service. He said he had attended the memorial at the Coast Guard base and, as a retired member of the Coast Guard, was very proud of the leadership and character that was displayed. He congratulated Fire Department Lt. Billings and Deputy Chief Mullican on reaching milestones in their years of service to the City. He said the Council was elected to make hard decisions but that it would never make any decision without considering the wishes of the people. He said it was necessary to consider outside impacts to our economy, such as state and federal fisheries regulations, as well as local impacts such as the sales tax. He thanked everyone who had offered their comments and said the public process was democracy at work.

IX. AUDIENCE COMMENTS

Jack Mann said he took exception to the comments of some Councilmembers. He said he felt that cuts could be made to City services without affecting public safety and that the Council needed to carefully consider what it was doing before making any decisions.

X. ADJOURNMENT

Councilmember Whiddon **MOVED** to adjourn the meeting.

The roll call vote was Councilmembers Bishop, Davidson, Haines, Saravia, Vizcocho, and Whiddon in favor. The motion passed.

The meeting adjourned at 9:56 p.m.

APRIL 26, 2012

7560

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

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PERSONS TO BE HEARD

MEMORANDUM TO COUNCIL

Date: May 10, 2012

Agenda Item: III.a. Proclamation: Emergency Medical Services Week

SUMMARY: This proclamation urges residents to recognize the value and the accomplishments of emergency medical services providers.

ATTACHMENTS:

Attachment A: Proclamation

PROCLAMATION
Declaring Emergency Medical Services Week
May 20 – May 26, 2012

WHEREAS, emergency medical services are a vital public service; and

WHEREAS, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

WHEREAS, the emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, educators, administrators and others; and

WHEREAS, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

WHEREAS, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week.

NOW, THEREFORE, I, Pat Branson, do hereby proclaim the week of May 20 through May 26, 2012, as

EMERGENCY MEDICAL SERVICES WEEK

in Kodiak and with the theme, “EMS: More Than a Job, A Calling” I encourage the community to observe this week with appropriate programs, ceremonies, and activities.

Dated this 10th day of May 2012.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 10, 2012

Agenda Item: III.b. **Proclamation: Peace Officers' Memorial Day and Police Week**

SUMMARY: This proclamation encourages all citizens to honor those law enforcement officers who have made the ultimate sacrifice in service to their community, and to recognize all police officers, past and present, who have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

ATTACHMENTS:

Attachment A: Proclamation

PROCLAMATION
Declaring May 15, 2012, Peace Officers' Memorial Day and
May 13 through 19, 2012, Police Week

WHEREAS, the Congress and President of the United States have designated May 15 as Peace Officers' Memorial Day, and the week in which May 15 falls is National Police Week; and

WHEREAS, the members of the Kodiak Police Department play an essential role in safeguarding the rights and freedoms of Kodiak citizens; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of the Kodiak Police Department, and that members of the Department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, the men and women of the Kodiak Police Department unceasingly provide a vital public service, and it is appropriate that we recognize their accomplishments and sacrifices.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim May 15, 2012, as

PEACE OFFICERS' MEMORIAL DAY

in Kodiak and encourage all citizens to honor those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

I further proclaim the week of May 13 through 19, 2012, as

POLICE WEEK

in Kodiak and urge all citizens and patriotic, civic, and educational organizations to recognize police officers, past and present, who by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

Dated this 10th day of May 2012.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 10, 2012

Agenda Item: III.c. **Proclamation: Older Americans Month**

SUMMARY: This proclamation urges all citizens to celebrate this year's theme "Never Too Old to Play!" and take time this month to engage with our older citizens through enjoyable social interactions such as sports, games, contests, and other forms of play.

ATTACHMENTS:

Attachment A: Proclamation

PROCLAMATION Declaring Older Americans Month

WHEREAS, Kodiak is committed to helping all individuals maintain their health and independence in later life; and

WHEREAS, the older adults in Kodiak have an important role in sharing knowledge, wisdom, and understanding of the history of our community through interactions with children, youth, and adults from other generations; and

WHEREAS, the fruits of knowledge and experience can be effectively transferred from generation to generation through meaningful social interactions; and

WHEREAS, their interactions with family, friends, and neighbors across generations enrich the lives of everyone involved; and

WHEREAS, our community can provide opportunities to enrich citizens young and old by:

- Emphasizing the value of including our elders in public and family life;
- Creating opportunities for older Americans to interact with people of different generations; and
- Providing services, technologies, and support systems that allow older adults to participate in social activities in the community.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim May 2012 as

OLDER AMERICANS MONTH

in Kodiak and urge every citizen to celebrate this year's theme "Never Too Old to Play!" and take time this month to engage with our older citizens through enjoyable social interactions such as sports, games, contests, and other forms of play.

Dated this 10th day of May 2012.

City of Kodiak


Pat Branson, Mayor

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UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniazowski, City Manager 

Date: May 10, 2012

Agenda Item: IV.a. **Second Reading and Public Hearing, Ordinance No. 1297, Amending Kodiak City Code 3.08.010 (B), Levy of Sales Tax, to Increase the Rate of Sales Tax From Six Percent to Seven Percent on All Sales, Rentals, and Services Made Within the City Other Than Rentals of Transient Rooms; Amending Kodiak City Code 3.08.110 (B). Tax Schedule, to Reflect the Increase in the Sales Tax Rate; and Amending Kodiak City Code 3.08.120 (A), Maximum Taxable Sale, to Increase the Maximum Amount of a Single Transaction Subject to Taxation From \$750.00 to \$3,500.00**

SUMMARY: Council and staff have discussed how to bridge the substantial annual revenue shortfalls of \$3 to \$4 million since early 2011. The City has been using fund balance to cover the gap between revenues and increased expenses since about 2007. The fund balance continues to diminish, which will limit the City's ability to maintain its fiscal obligations. After many months of work, Council and staff held a special planning meeting in January 2012 to discuss how the City could meet current operational obligations, maintain existing services and infrastructure, manage investments and debt capacity, and cover unexpected or emergency expenses. They also discussed how to plan for and afford the replacement of aging infrastructure. Council recognized that the City could not continue to defer action and had to either increase revenues or cut services to balance the budget and meet required General Fund reserves. Council decided to increase revenues by raising the sales tax and the sales tax cap in order to fund current needs without dipping into the fund balance each year. Ordinance No. 1297 amends Kodiak City Code 3.08 and reflects the direction of Council discussion in January 2012.

PREVIOUS COUNCIL ACTION:

- 1956, Council initiated a 2% sales tax.
- Sales tax rate was increased to 3% in 1961, 5% in 1969, and 6% in 1993.
- 2004, Council raised the sales tax cap from \$500 to \$750 on eligible purchases.
- Council discussed possible options to raise revenues at the February 26, 2011, annual planning meeting and again at a work session on July 26, 2011.
- January 14, 2012, Council held a special planning meeting to discuss financial preconditions necessary to develop a five-year capital improvement plan/asset management plan to care for the existing infrastructure and resources and to plan for the future. Council reviewed multiple scenarios which led to the establishment of policy to increase revenues.
- April 24, 2012, work session, Council reviewed the outcome of the January planning meeting and introduced the plan to increase revenues.

- April 26, 2012, regular meeting, Council passed Ordinance No. 1297 in the first reading and advanced to second reading and public hearing.

DISCUSSION: The City's General Fund revenues have remained relatively stable over the years and are used to pay for government services like police, fire, finance, library, parks and recreation, public works, administrative functions, and other primary governmental functions. The major source of revenue in the General Fund is the local sales tax, which makes up approximately 54% of the fund revenues. The next largest source comes from various state revenue sources and contributes about 12% of General Fund revenues. This source is unpredictable, and the City has no control over revenue received from these external sources. Property taxes make up only 5% of the General Fund revenues. The City's mill rate has been set at two mills since 1985, and while the tax is predictable, it provides only minimal revenues to the General Fund.

The City has not increased its primary source of revenue, sales tax, in almost 20 years, but the cost of doing business for the City has risen dramatically since 1993, as it has for local residents and businesses. The adjusted CPI has risen over 50% since 1993, meaning the City pays that much more for services, supplies, personnel costs, and equipment now than in 1993. It costs more to maintain, repair, upgrade or replace important infrastructure like roads, buildings, airports, utility systems, parks, and docks. It costs more to meet unfunded state and federal mandates like the UV treatment plant and the wastewater discharge permits and regulatory requirements like OSHA, EPA stormwater treatment and prevention plans, and spill prevention plans and systems.

The City is conservative and careful in developing operating budgets every year to contain and absorb as many cost increases as possible. However, it simply costs more to operate and manage the City than it takes in in revenues each year. Rather than increase revenues or reduce services, the City has deferred action and has been using fund balance to offset cost increases and meet matching grant requirements and capital needs since at least 2007. The General Fund balance is being relied on to balance the budget each year and is not being replenished because revenues remain static. Revenue decisions cannot be deferred much longer because the fund balance continues to diminish, and the City is required to maintain adequate operating reserves. The City cannot continue to use up the fund balance and still meet reserve requirements of between two to six months of operating funds and have adequate funds available to make necessary budget adjustments to cover unexpected cost increases, make emergency repairs, and meet governmental mandates and regulatory requirements.

Starting in January 2011, the Council began to discuss the need to increase revenues and reviewed options for doing so. Staff identified a series of revenue options for Council and presented them at a meeting in July 2011. Council wanted to discuss revenue generating options further and asked staff to identify sources and scenarios to bridge the annual revenue shortfalls of \$3 to \$4 million.

The Council held a planning session in January 2012 to identify what financial preconditions would be necessary to develop a five-year capital improvement plan/asset management plan to care for the

existing infrastructure and resources and to plan for the future. Council identified the goal of maintaining Kodiak as a viable community with a solid future. This discussion resulted in Council's policy decision to increase revenues to cover current costs and meet current needs, to avoid the use of fund balance to balance the budget each year, and to take steps to replenish the fund balance before it fell below the required operational reserves. The most effective way to meet current needs and cover the large annual shortfalls without using fund balance requires an increase in the sales tax and increasing or eliminating the sales tax cap. After reviewing several revenue scenarios, Council decided to move forward with an increase of 1% to the sales tax and an increase to the sales tax cap to \$3,500 which is estimated to generate an additional \$3 million per year.

Staff worked with the City Attorney to draft the proposed amendments to sections of KCC 3.08 as follows:

- An amendment to Section 3.08.010(b) is proposed to increase the sales tax to seven percent for all sales, rentals, and services within the City except for transient room rentals.
- The tax table in Section 3.08.010 is also proposed to change to reflect the proposed 1% sales tax increase.
- Section 3.08.120(a) is amended to reflect an increase in the sales tax cap from \$750 to \$3,500.

ALTERNATIVES:

1. Adopt Ordinance No. 1297 in the second reading following public hearing, which is staff's recommendation. This is consistent with the direction given to staff at the January 14, 2012, planning meeting and it meets the financial needs of the City as discussed over the course of several years.
2. Amend the ordinance, which is not recommended if it results in a continuing shortfall in revenues and continued reliance on fund balance.
3. Postpone the ordinance to provide time for more analysis and/or operational reductions as needed.
4. Do nothing, which is not recommended, because it does not address rising costs and prevents Council from reaching its long-term goals. This alternative will result in reduced services to offset continuing cost increases.

FINANCIAL IMPLICATIONS: When the ordinance is adopted and becomes effective, the City estimates it can generate an additional \$3 million per year, which should cover all or most of the annual shortfall and no longer need to use fund balance to balance the budget. This will allow the City to meet its current obligations and allow the fund balance to grow again for the first time in many years.

LEGAL: The City Attorney discussed the required actions necessary to introduce the code changes and prepared the ordinance.

STAFF RECOMMENDATION: Staff recommends Council support the amendments as identified in this memo and the attached ordinance to ensure the City can continue to meet its fiscal obligations, protect and restore the fund balance, and continue to deliver the services the community expects.

CITY MANAGER'S COMMENTS: I recognize that raising taxes is a challenge for the City and the community. However, steps have to be taken to bridge the yearly gap in what it costs to run the City versus what is received in revenues. The need to address the shortfall has been discussed many times since 2007 and especially since early 2011. Council held a vigorous discussion at their January 2012 planning meeting and decided to set a policy to ensure Kodiak has a solid future by increasing revenues to meet cost increases and thereby protect the fund balance. I support Council's direction to increase the sales tax and the sales tax cap and will continue to work with staff to remain fiscally accountable. I also realize that Council may want to revisit the solutions they identified to address the ongoing shortfalls and delay adoption of the ordinance due to public comments received. If the majority of Council wants to amend or change the ordinance, I strongly recommend postponement and another review be held on what it will take to make up the shortfall in FY2013 and beyond.

ATTACHMENTS:

- Attachment A: Ordinance No. 1297
- Attachment B: City's five-year revenue projections
- Attachment C: Revenue increase calculations

PROPOSED MOTION:

Move to adopt Ordinance No. 1297.

**CITY OF KODIAK
ORDINANCE NUMBER 1297**

AN ORDINANCE AMENDING KODIAK CITY CODE 3.08.010(B), LEVY OF SALES TAX, TO INCREASE THE RATE OF SALES TAX FROM SIX PERCENT TO SEVEN PERCENT ON ALL SALES, RENTALS, AND SERVICES MADE WITHIN THE CITY OTHER THAN RENTALS OF TRANSIENT ROOMS; AMENDING KODIAK CITY CODE 3.08.110(B), TAX SCHEDULE, TO REFLECT THE INCREASE IN THE SALES TAX RATE; AND AMENDING KODIAK CITY CODE 3.08.120(A), MAXIMUM TAXABLE SALE, TO INCREASE THE MAXIMUM AMOUNT OF A SINGLE TRANSACTION SUBJECT TO TAXATION FROM \$750.00 TO \$3,500.00

BE IT ORDAINED by the Council of the City of Kodiak, Alaska, that:

Section 1: Subsection (b) of Kodiak City Code 3.08.010, Levy of sales tax, is hereby amended to read as follows:

(b) A sales tax of ~~six (6)~~ **seven (7)** percent of the sales price or charge is levied on all sales, rentals, and services made within the city, other than rentals of transient rooms.

Section 2: Subsection (b) of Kodiak City Code 3.08.110, Tax schedule, is hereby amended to read as follows:

(b) The amount of tax to be added to the purchase price, rental, or service charge, other than rentals of transient rooms, shall be determined in accordance with the following schedule:

Charge	Tax
Under 9 8 cents	None
\$.09-.08 through \$.24-.21	\$.01
.25-.22 through .41-.35	.02
.42-.36 through .58-.49	.03
.59-.50 through .74-.64	.04
.75-.65 through .91-.78	.05
.92-.79 through 1.08-.92	.06
1.09-.93 through 1.24-1.07	.07
1.25-1.08 through 1.41-1.21	.08
1.42-1.22 through 1.58-1.35	.09
1.59-1.36 through 1.74-1.49	.10
1.75-1.50 through 1.91-1.64	.11
1.92-1.65 through 2.08-1.78	.12
Over \$ 2.09 1.78	Continue on same scale.

Section 3: Subsection (a) of Kodiak City Code 3.08.120, Maximum taxable sale, is hereby amended to read as follows:

(a) If the sales price of an item or items or the charge for rental of any property or performance of any service exceeds three thousand five seven hundred ~~five~~ dollars for a single transaction, that portion of the price or charge in excess of three thousand five seven hundred ~~five~~ dollars shall be exempt from the tax levied by this chapter.

Section 4: This ordinance shall be effective one month after its final passage and publication in accordance with Kodiak Charter Section 2-13.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: April 24, 2012

Second Reading:

Effective Date:

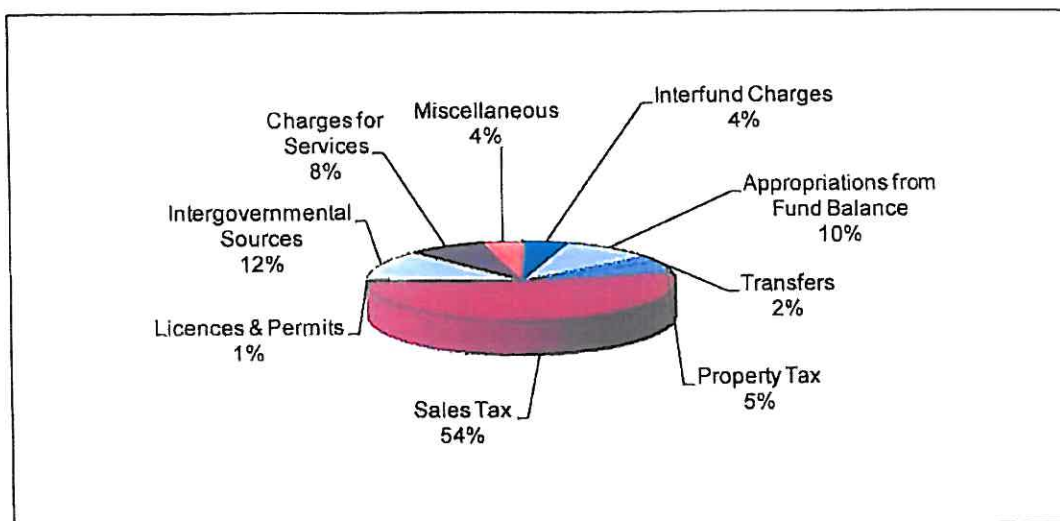
Fiscal Year 2013- 2016 Revenue & Expense Forecast

Governments find themselves in a difficult position when it comes to providing services and raising revenue; they seek to provide services while minimizing the apparent cost to the taxpayer. In order to develop the fiscal year 2013 budget, three major funds have been forecast to show the projected trends in revenues and expenses for fiscal years 2013 through 2016. The General Fund, Harbor Funds, and Water & Sewer Funds have been forecast based on a regression analysis forecasting method. This is a technique in which a straight line is fit to actual values from fiscal years 2007 through 2011, and the adopted budget for fiscal year 2012 to forecast the future. The forecasts seek to estimate the City's future positions if the status quo is maintained and to identify areas that may need to be addressed in order to protect the City's future ability to maintain adequate fund balance reserves.

GENERAL FUND

The General Fund is used to account for resources traditionally associated with government that are not required legally or by sound financial management to be accounted for in another fund. Principal sources of revenue are (Fig.1) sales tax, property tax, charges for services, and intergovernmental revenues. Primary expenditures (Fig.2) are for general government administration, public safety, public works, public recreation and transfers to other funds. The departments found within the General Fund include: Legislative/Legal, Executive, City Clerk, Finance, Police, Fire, Public Works, Engineering, Parks and Recreation, Library and Non-Departmental which is used for city wide expenses.

Figure 1: General Fund - FY 2012 Budgeted Revenues



The following applies to Fig.1 above:

Taxes - Includes property tax and sales tax. The real-property assessment role is final by June 1, causing tax revenue projections to be estimated prior to knowing the actual amounts of the assessment role. Sales tax revenues are collected on a quarterly basis, causing a lag time in annual projections.

Licenses and Permits – Includes permits for taxicabs, buildings, electrical, plumbing, animal licenses and other miscellaneous licenses.

Intergovernmental Sources –Includes State of Alaska Raw Fish Tax Sharing; Shared Fisheries Business Tax; Fuel, Alcohol and Utility Revenue Sharing; State grants and miscellaneous sources. The Alaska State legislative session coincides with the City's budgetary calendar, causing estimates to be based on historical data for the State funding levels to local governments. As the State budget is fine-tuned, adjustments are also made to the City's revenue estimates.

Charges for Services – Includes those services performed for the public associated with the following departments: police, fire, public works, parks and recreation, library, as well as miscellaneous administrative services.

Miscellaneous – Includes fines and forfeitures, interest, rents and royalties, judgments, restitutions, asset sales, and other revenues.

Interfund Charges – Includes the allocation of monies between funds to cover services rendered.

Transfers – Other Financing Sources (Uses). Includes the transfer of monies between funds to cover expenses without a requirement of repayment.

Use of Fund Balance – Relates to Net Change in Fund. This is the amount of fund balance used to balance the General Fund budget.

Figure 2: General Fund - FY 2012 Budgeted Expenditures by Function

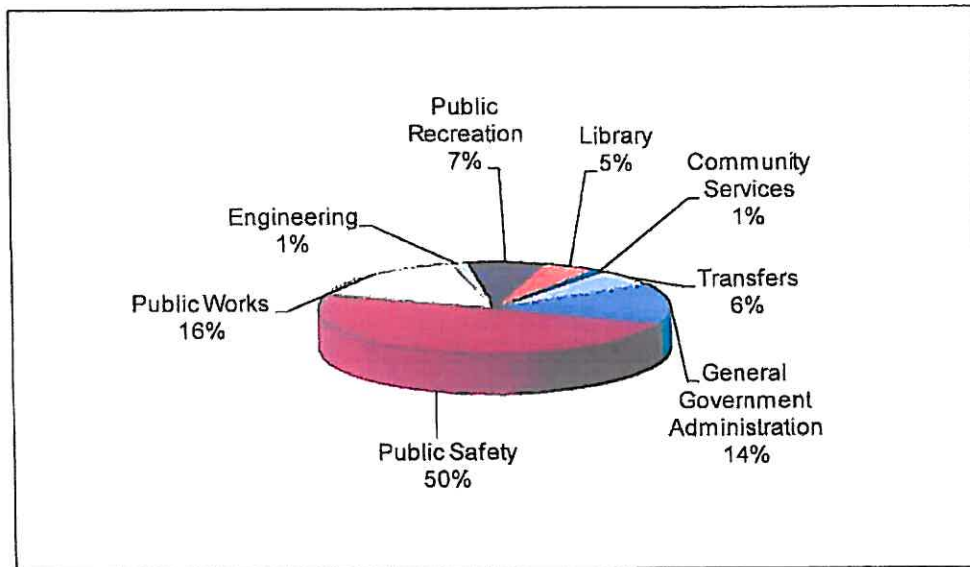
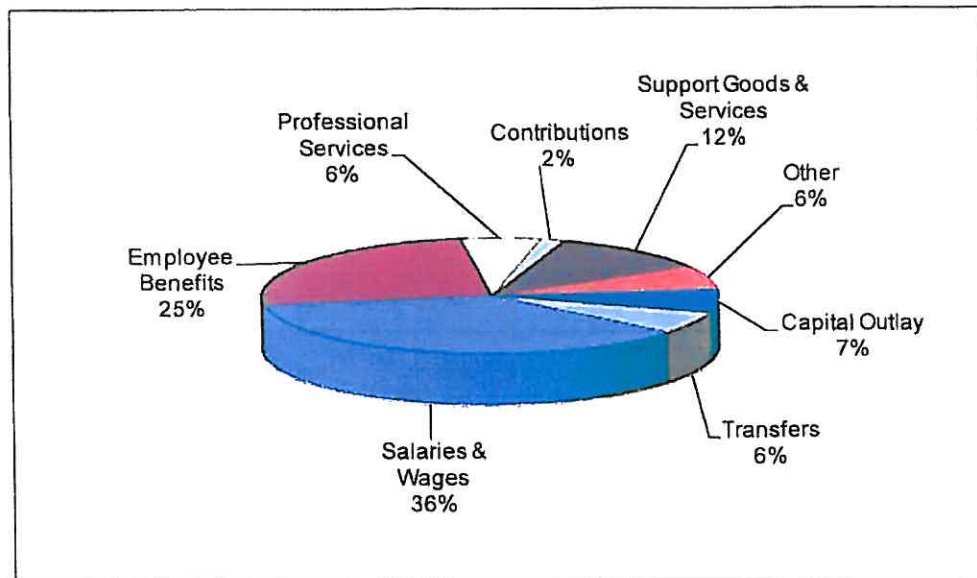


Figure 3: General Fund - FY 2012 Budgeted Expenditures by Account Classification



The following applies to Figure 3 above:

Salaries & Wages – Includes all wages paid to City employees for administrative and service delivery functions. Includes salaries and wages, temporary wages, overtime, holiday pay, sick and annual leave.

Employee Benefits – Includes group insurance, Social Security and Medicare payments, retirement contributions, unemployment compensation, and workman's compensation.

Professional Services – Includes all services contracted out.

Contributions – Includes contributions made to various local non-profit agencies.

Support Goods & Services - Includes expenditures for communications, advertising, dues and subscriptions, training and travel, supplies, and equipment rental.

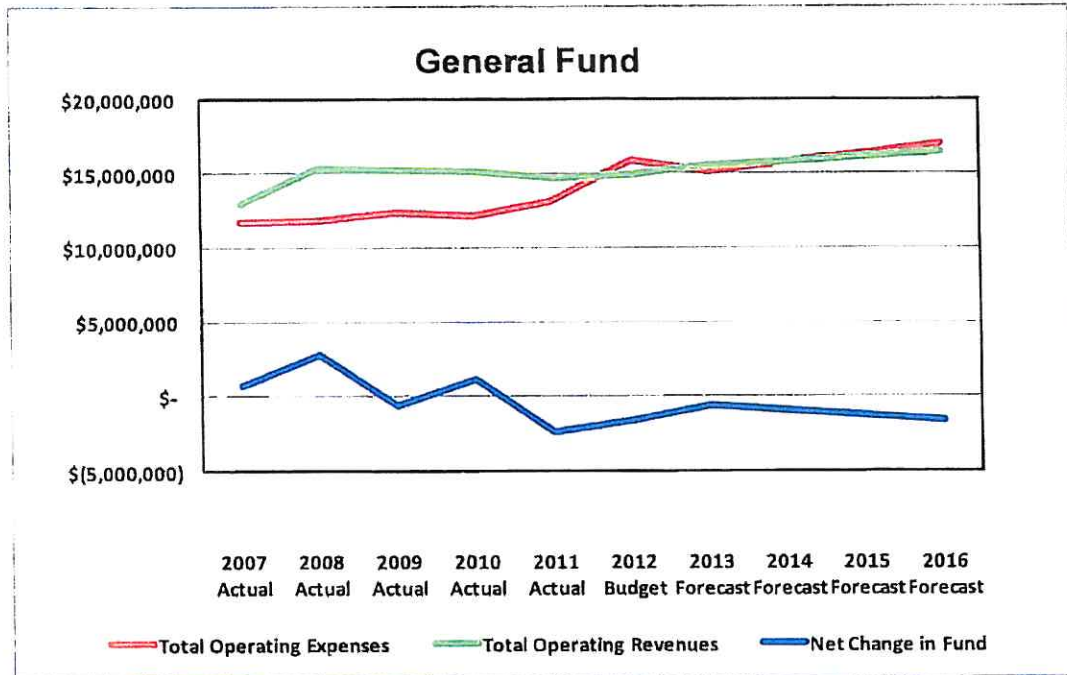
Public Utility Services – Includes electric, fuel oil, garbage, and any other utilities.

Other – Includes miscellaneous expenses.

Capital Outlay - Includes equipment purchases greater than \$5,000.

Transfers – Other Financing Sources (Uses). Includes transfers from the General Fund to other funds.

Figure 4: General Fund Forecast - Actual 2007-2011, Budgeted 2012, Forecast 2013-2016



Actual operating revenues have been greater than actual operating expenses from fiscal year 2007 through fiscal year 2011 (Fig.4). In fiscal year 2012, the adopted budget for operating revenues is less than the budget for operating expenses. This will result in a loss before any transfers are accounted for. Historically the City of Kodiak has used fund balance to balance the general fund budget. Over time the fund balance has been used without a plan to replenish it.

Under the City Sales Tax code 3.08.025, Allocation of Sales Tax, \$500,000 is allocated to harbor improvement capital projects, \$450,000 to street improvement capital projects, and \$50,000 to parks and recreation capital projects annually. This transfer contributes to the decline each year in fund balance forecasted from fiscal year 2013 through 2016.

The revenue sources for the general fund have been somewhat stable with sales tax (54%) (Fig.1) as the largest source of revenue. Sales tax can generate a great deal of revenue, it is relatively easy to collect, its costs to the taxpayer are opaque, and it is elastic (expands and contracts with the economy). In addition, because it is paid as a percentage of an item's cost, it automatically adjusts during inflationary periods. Unfortunately, it also is regressive, more volatile, and seasonal than property taxes, and relies on the cooperation of retailers.

Property tax makes up 5% of the total revenue for the general fund. The greatest advantage of property tax is its stability during economic downturns. It has been the most unpopular tax because unlike other taxes, it taxes an asset that may not generate any income for the taxpayer and is due in a lump sum.

The second largest revenue source is the intergovernmental revenues (12%) which are revenues received from the State. These revenues can be volatile and unpredictable. Unlike the sales and property tax that the City Council can control, the City has little control over the intergovernmental revenues received.

The trend for the general fund revenues is declining while the trend for expenses is increasing resulting in an increasing use of fund balance. The fund balance cannot sustain this decline and will decline to a point which will be below the recommended practice of two months of operating expense reserves.

Salaries and benefits are the largest expense in the General Fund, or 61% (Fig.3) of the total expense budget, with support goods and services at 12%. Continued increases in health insurance costs have caused significant increases in the benefit category. The City is faced with increased expenses due to inflation, increases in utilities, equipment replacement, and repairs and maintenance to an aging infrastructure. Overall expenses are estimated to increase at a greater rate than revenues beginning in fiscal year 2012 (Fig.4).

The trends and consequent projections indicate that the City will need to take action to increase revenues, decrease expenses, or some combination of both in order to maintain a viable financial position.

Table 1 on the next page shows the detail for the actual, budget and forecasted fiscal years. It is important to note that these forecasts do not include future planned capital projects, which would place further demands on the fund balances. .

TABLE 1: Forecast Analysis - Income Statement with forecast values along a linear trend using existing values 2007-2012

GENERAL FUND	Actual	Actual	Actual	Actual	Actual	Budget	Forecast	Forecast	Forecast	Forecast
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Fund Revenues										
Property Tax	632,102	659,440	651,699	665,999	765,539	773,500	795,339	825,041	854,744	884,446
Sales Tax	8,489,795	8,875,306	9,308,960	9,404,691	9,654,542	9,125,000	9,703,996	9,884,266	10,024,537	10,184,807
Licenses & Permits	51,535	102,748	76,679	70,489	93,193	75,000	86,521	88,877	91,234	93,590
PERS Relief	203,176	353,911	640,340	269,592	407,269	427,540	474,753	500,785	526,818	552,851
State Revenue Sharing	240,365	778,085	389,286	400,759	428,304	430,000	435,497	432,934	430,371	427,808
Department of Revenue - Fish Tax	760,099	823,097	946,635	1,046,010	740,229	1,000,000	991,039	1,021,047	1,051,055	1,081,063
D CED Shared Fisheries Tax	68,674	62,581	70,855	70,933	87,810	70,000	80,048	82,402	84,757	87,111
Fuel Tax Sharing	6,728	6,955	6,634	5,993	6,215	6,500	6,104	5,990	5,875	5,761
Other Intergovernmental Revenues	121,124	106,154	109,190	95,647	79,664	109,100	88,167	83,791	79,416	75,041
Police General	785,835	752,476	774,075	707,836	997,627	1,045,840	1,040,872	1,097,136	1,153,400	1,209,664
KIB Revenues	308,797	292,806	269,811	272,873	178,930	140,000	125,615	91,827	58,040	24,253
Parks & Recreation	117,557	107,881	98,194	117,300	121,688	116,000	118,378	119,884	121,391	122,898
Library	19,413	18,623	18,941	18,580	15,467	19,000	17,148	16,808	16,469	16,129
Other Charges for Services	73,027	47,618	71,872	77,789	42,394	70,700	61,761	61,150	60,539	59,927
Fines & Forfeitures	29,452	55,229	20,122	23,514	6,156	20,500	6,970	1,582	1,000	1,000
Interest	217,721	283,602	234,671	31,162	24,500	60,000	30,000	30,000	30,000	30,000
Rents & Royalties	128,906	97,030	173,089	157,686	125,476	150,000	156,238	161,250	166,261	171,273
Miscellaneous	59,772	1,200,191	762,229	1,066,199	268,423	503,800	616,316	608,568	600,819	593,071
Interfund Charges	609,740	760,429	690,920	678,820	662,622	790,378	758,585	775,661	792,738	809,814
Total Operating Revenues	12,923,818	15,384,163	15,314,201	15,181,871	14,706,050	14,932,858	15,593,346	15,869,002	16,149,464	16,430,508
Fund Operating Expenses										
Salaries & Wages	4,870,631	5,035,785	5,168,357	5,213,895	5,480,849	6,173,610	6,113,417	6,339,006	6,564,595	6,790,185
Fringe Benefits	3,474,894	3,337,676	3,315,039	3,019,330	3,463,215	4,315,475	3,915,986	4,038,381	4,160,776	4,283,170
Professional Services	602,053	558,970	627,702	654,944	812,982	940,626	947,761	1,018,679	1,089,597	1,160,516
Contributions	212,180	232,584	226,853	232,638	226,218	279,800	267,526	276,808	286,089	295,370
Support Goods & Services	1,536,968	1,655,159	1,619,089	1,735,339	1,721,232	1,993,852	1,970,161	2,044,415	2,118,670	2,192,924
Utility Services	392,152	493,199	443,579	503,316	547,851	535,234	579,799	606,630	633,461	660,293
Administrative Services	21,939	27,447	23,687	33,275	34,559	36,000	39,607	42,499	45,392	48,284
Capital Outlays	603,918	316,215	492,152	322,994	333,557	1,161,041	805,161	881,404	957,646	1,033,889
Interest Expense	-	168,021	512,227	530,740	528,490	520,990	530,000	530,000	530,000	530,000
Total Operating Expenses	11,714,735	11,825,036	12,428,664	12,246,468	13,148,953	15,956,628	15,169,418	15,777,822	16,386,226	16,994,631
Operating Gain (Loss)	1,209,083	3,559,127	2,885,536	2,935,403	1,557,097	(1,023,770)	423,928	91,180	(236,763)	(564,123)
Other Financing Sources (Uses)										
GOB Issuance	-	8,000,000	-	-	-	-	-	-	-	-
Transfers In	924,796	1,528,024	1,828,843	531,870	96,288	400,000	-	-	-	-
Transfers Out	(1,433,470)	(10,350,205)	(5,118,473)	(2,318,826)	(3,999,224)	(1,015,000)	(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)
Net Other Financing Sources (Uses)	(508,674)	(822,181)	(3,491,630)	(1,786,956)	(3,902,936)	(615,000)	(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)
Net Change in Fund	700,408	2,736,946	(606,093)	1,148,447	(2,345,839)	(1,638,770)	(576,072)	(908,820)	(1,236,763)	(1,564,123)
Net Assets at Beginning of Year	4,872,862	5,573,270	8,310,217	7,704,123	8,852,570	6,506,731	4,867,961	4,291,889	3,383,069	2,146,306
Net Assets at End of Year	5,573,270	8,310,217	7,704,123	8,852,570	6,506,731	4,867,961	4,291,889	3,383,069	2,146,306	582,183

General Fund – Fund Balance

Figure 5 below shows the total fund balance each fiscal year and Figure 6 shows the change in fund balance each fiscal year or the use of fund balance per fiscal year. In fiscal year 2011 the use of fund balance was \$2,345,839. The City has budgeted using \$1,638,770 of fund balance in fiscal year 2012. The Fund Balance is made up of the assets of a fund less the liabilities, as determined at the end of each fiscal year. The year-end fund balance is recorded in the following categories: non-spendable, subsequent year's expenditures, and the unassigned balance that can be used. The City follows the recommended practice outlined in the Government Financial Officers Association (GFOA) to maintain a minimum General Fund balance of two months operating expense as a reserve. The budgeted fiscal year 2012 ending fund balance that is available for use in the fiscal year 2013 budget is estimated to be \$1,933,500. This is based on the ending fiscal year 2011 fund balance of \$6,506,731 less the budgeted use of fund balance in the fiscal year 2012 budget of \$1,638,770, two months of operating reserves of \$2,659,438, and the funds owed to the general fund from other funds in the amount of \$275,000.

Figure 5: General Fund – Total Fund Balance each Fiscal Year

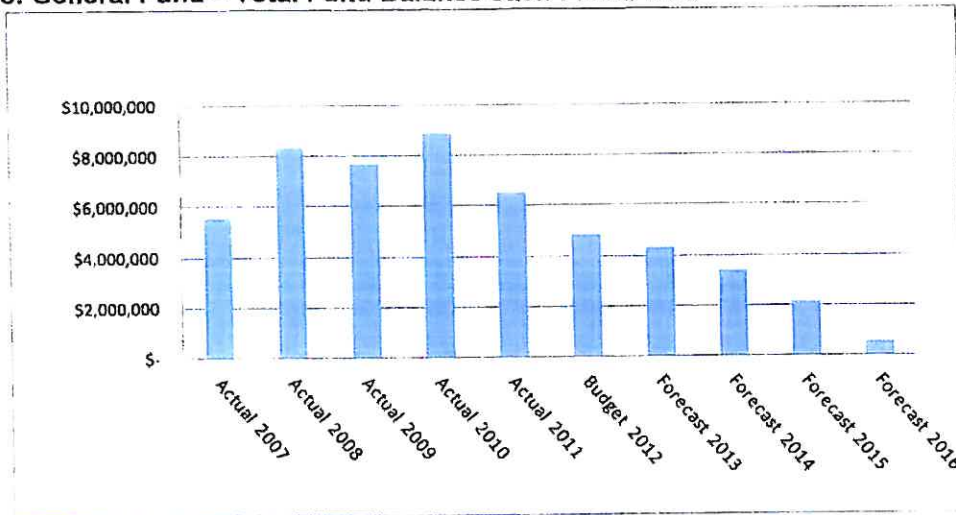
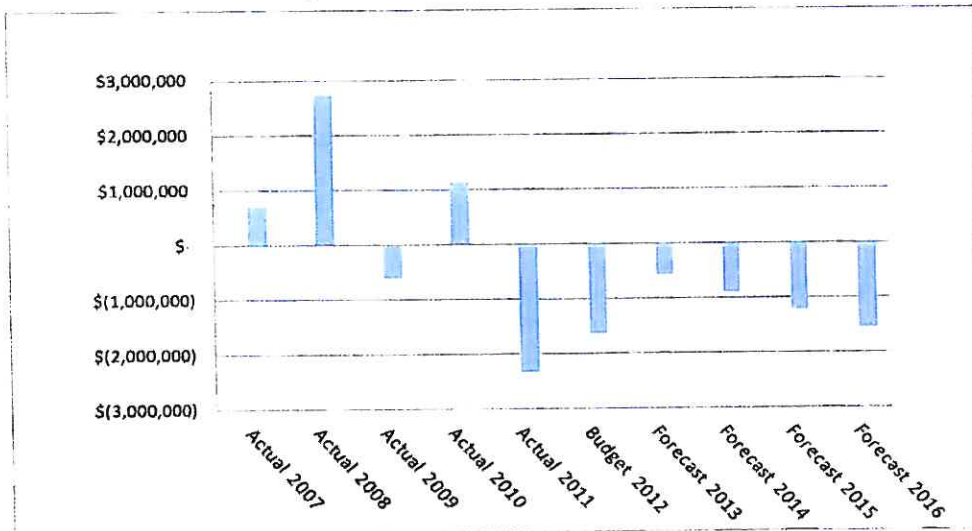


Figure 6: General Fund – Change in Fund Balance each Fiscal Year



WATER & SEWER FUNDS

Enterprise Funds are used to account for operations that are financed and operated in a manner similar to private business enterprises. The intent of the City Council is that the costs of providing goods and services to the public on a continuing basis be financed or recovered primarily through user charges; or where the City Council has approved the use of the fund balance reserves to fund capital projects or operations. The following are water and sewer enterprise funds:

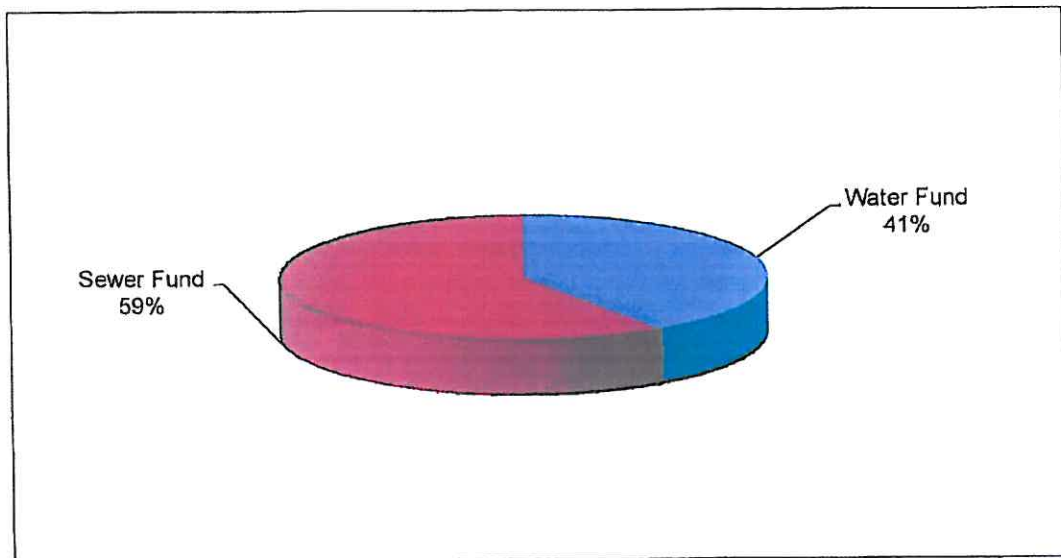
Water Utility Fund

This fund accounts for all activity of the city owned and operated water utility.

Sewer Utility Fund

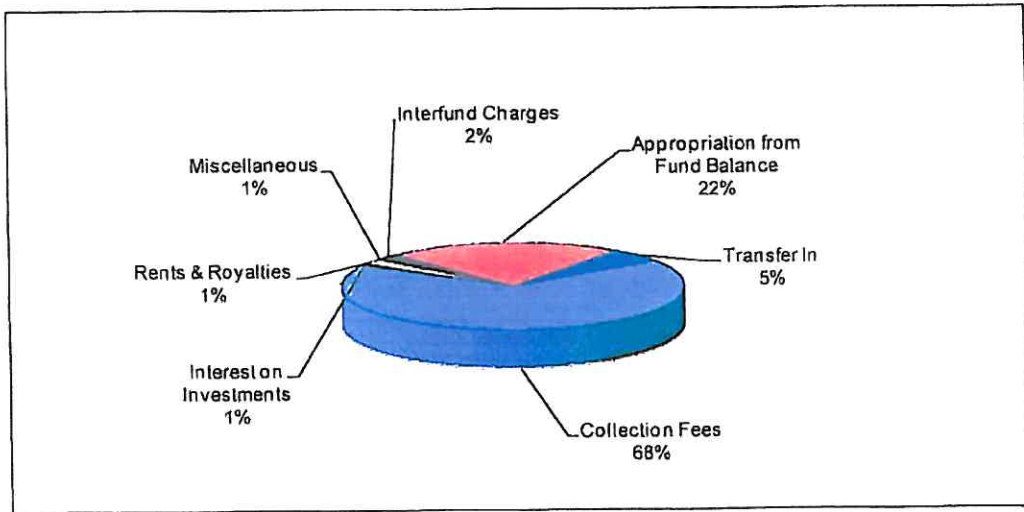
This fund accounts for all activity of the city owned and operated sewer utility.

Figure 7: Water & Sewer Funds - FY 2012 Budgeted Revenues by Function



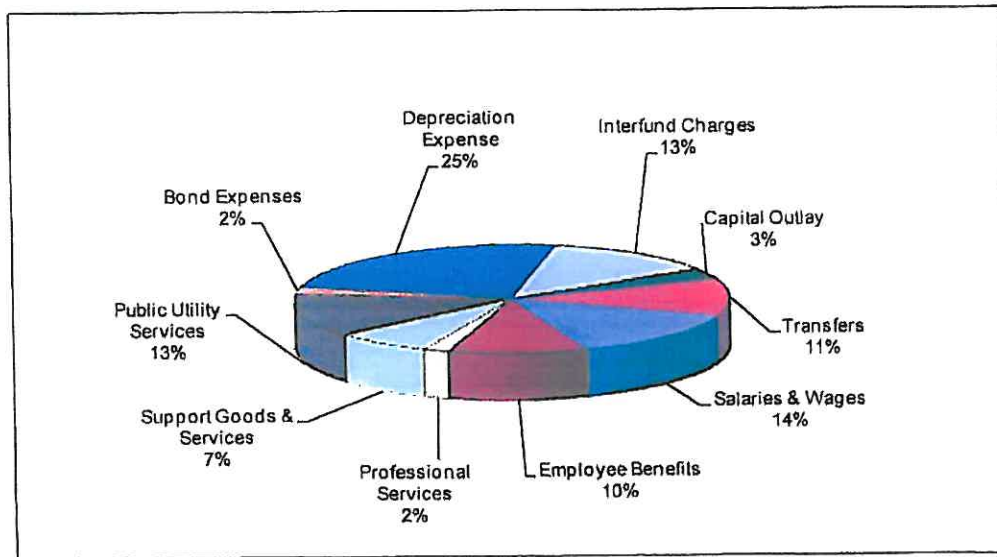
The Sewer Fund generates 59% of total revenues and the Water Fund generates 41% (Fig.7). The Water and Sewer Funds are responsible for maintaining the City's aging infrastructure while keeping rates to residents reasonable.

Figure 8: Water & Sewer Funds - FY 2012 Budgeted Revenues



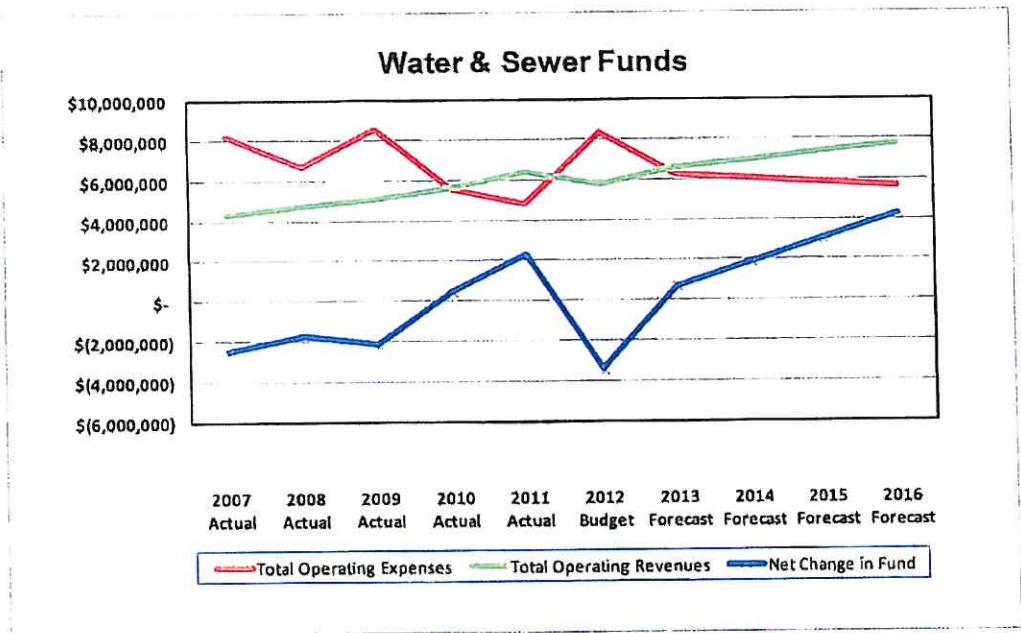
The main source of revenue is collection of fees for services at 68% (Fig.8) of total revenues. The Water and Sewer Funds use Fund Balance to make transfers to capital project funds and for operations.

Figure 9: Water & Sewer Funds - FY 2012 Budgeted Expenditures by Account Classification



The largest expense in the Water and Sewer Funds is for depreciation at 25% (Fig.9) of total expenses, salaries and benefits at 24%, and public utilities at 13%.

Figure 10: Water & Sewer Funds Forecast - Actual 2007-2011, Budgeted 2012, Forecast 2013-2016



With rate studies every five years, the water and sewer funds have been able to plan for future capital projects and operations by maintaining a reasonable fund balance.

Water Rates			Sewer Rates		
Fiscal Year	Residential Rate	% Increase	Fiscal Year	Residential Rate	% Increase
2006	25.30		2006	32.20	
2007	25.30	0%	2007	38.02	18%
2008	26.82	6%	2008	42.93	13%
2009	28.43	6%	2009	48.39	13%
2010	30.13	6%	2010	54.55	13%
2011	34.95	16%	2011	59.82	10%
2012	39.14	12%	2012	62.81	5%
2013	43.84	12%	2013	62.81	0%
2014	47.35	8%	2014	62.81	0%
2015	51.14	8%	2015	62.81	0%
2016	55.23	8%	2016	62.81	0%

Table 2 below shows the detail for the actual, budgeted, and forecast fiscal years. These forecasts do not include future capital projects.

TABLE 2: Forecast Analysis - Income Statement with forecast values along a linear trend using existing values 2007-2012										
Water & Sewer Fund	Actual	Actual	Actual	Actual	Actual	Budget	Forecast	Forecast	Forecast	Forecast
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Fund Revenues										
Collection Fees	4,298,624	4,756,869	5,040,778	5,581,077	6,374,280	5,747,100	6,563,279	6,924,277	7,285,274	7,646,272
Other	34,646	21,443	35,365	58,284	53,477	48,820	60,995	66,420	71,846	77,271
Total Operating Revenues	4,333,270	4,778,312	5,076,143	5,639,361	6,427,757	5,795,920	6,624,274	6,990,697	7,357,120	7,723,543
Fund Operating Expenses										
Salaries & Benefits	1,340,344	1,391,518	1,490,838	1,487,245	1,549,698	1,750,720	1,754,010	1,826,091	1,898,171	1,970,252
Professional Services	289,295	340,081	730,825	664,733	151,698	132,000	243,000	202,494	161,988	121,482
Support Goods & Services	381,220	316,641	345,514	322,309	342,366	515,847	443,360	464,134	484,909	505,683
Utility Services	594,298	722,582	577,012	468,376	825,707	943,250	883,087	938,673	994,259	1,049,844
Capital Outlays	57,469	20,471	4,196	12,230	11,896	240,000	147,207	172,777	198,348	223,918
Interfund Charges	207,480	264,920	239,000	173,610	183,180	918,844	655,793	748,542	841,291	934,040
Repairs & Maintenance	3,645,307	1,842,262	3,447,635	711,956	6,286	2,110,000	368,560	(86,301)	(541,162)	(996,023)
Depreciation	1,702,103	1,768,848	1,772,086	1,766,325	1,765,018	1,767,800	1,788,153	1,797,046	1,805,938	1,814,831
Total Operating Expenses	8,217,516	6,667,323	8,607,106	5,606,784	4,835,849	8,378,461	6,283,171	6,063,456	5,843,742	5,624,027
Earnings (loss) from Operations	(3,884,246)	(1,889,011)	(3,530,963)	32,577	1,591,908	(2,582,541)	341,103	927,241	1,513,378	2,099,516
Nonoperating Revenue (Expenses)										
Investment Income	452,946	295,834	88,695	20,914	38,596	70,000	(114,258)	(192,950)	(271,643)	(350,335)
Interest Expense	(39,396)	(31,317)	(23,126)	(22,064)	(32,356)	(148,470)	(104,197)	(119,838)	(135,479)	(151,119)
State PERS Relief	35,603	108,112	104,049	42,515	66,234	44,030	52,254	48,110	43,966	39,822
Other	18,973	4,034	(383)	28,777	(490,519)	-	(228,123)	(272,390)	(316,658)	(360,925)
Net Nonoperating Revenue (Expenses)	468,126	376,663	169,235	70,142	(418,045)	(34,440)	393,357	975,351	1,557,345	2,139,339
Earning (loss) Before Transfers	(3,416,120)	(1,512,348)	(3,361,728)	102,719	1,173,863	(2,616,981)	734,460	1,902,591	3,070,723	4,238,855
Other Financing Sources (Uses)										
Capital Contributions	13,898	369,282	1,793,672	1,086,345	1,169,683	-	-	-	-	-
Transfers In	3,053,416	200,000	886,720	673,761	689,633	-	-	-	-	-
Transfers Out	(2,160,000)	(800,000)	(1,485,100)	(1,375,761)	(713,633)	(805,000)	-	-	-	-
Net Change in Fund	(2,508,808)	(1,743,066)	(2,166,436)	487,064	2,299,546	(3,421,981)	734,460	1,902,591	3,070,723	4,238,855
Net Assets at Beginning of Year	43,506,337	40,997,529	39,254,463	37,088,027	37,575,091	39,874,637	36,452,656	37,187,116	39,089,707	42,160,430
Net Assets at End of Year	40,997,529	39,254,463	37,088,027	37,575,091	39,874,637	36,452,656	37,187,116	39,089,707	42,160,430	46,399,285

Water & Sewer Funds - Fund Balance

Figure 11 below shows the total fund balance each fiscal year and Figure 12 shows the change in fund balance each fiscal year or the use of fund balance per fiscal year. The City has budgeted the use of \$3,421,981 from the fund balance in fiscal year 2012. In fiscal year 2011 the return of fund balance was \$2,299,546. The Fund Balance is made up of the assets of a fund less the liabilities, as determined at the end of each fiscal year. The year end fund balance is recorded in categories that describe the use of the funds. These categories are invested in capital assets, and the unrestricted balance that can be used. The fiscal year 2012 fund balance that is available for use in the fiscal year 2013 budget is estimated at \$3,921,110. This is based on an ending fund balance of \$39,874,637 for fiscal year 2011 less the budgeted use of fund balance in the fiscal year 2012 budget of \$3,421,981, depreciation added in the amount of \$1,776,000, less invested in capital in the amount of \$31,486,042, debt payments in the amount of \$256,097, and capital projects obligations in the amount of \$2,497,207.

Figure 11: Water & Sewer Funds – Total Fund Balance each Fiscal Year

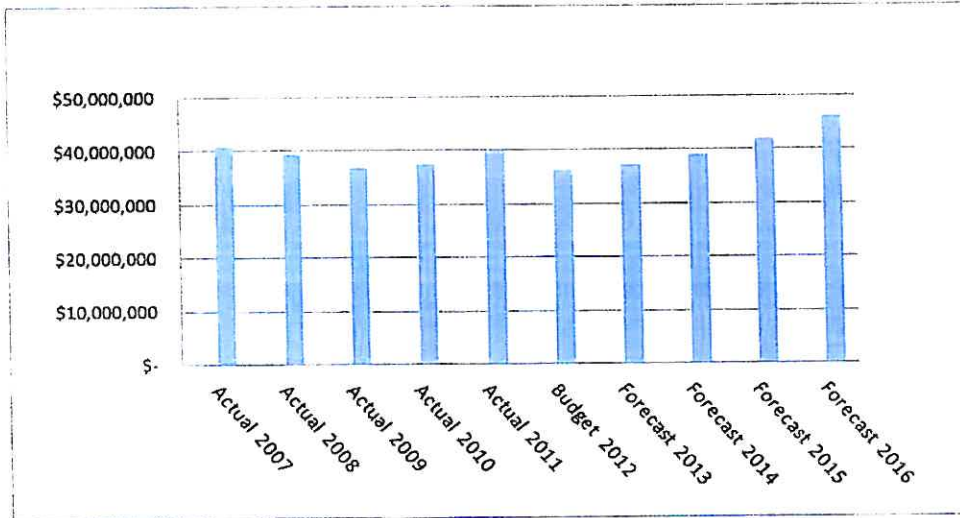
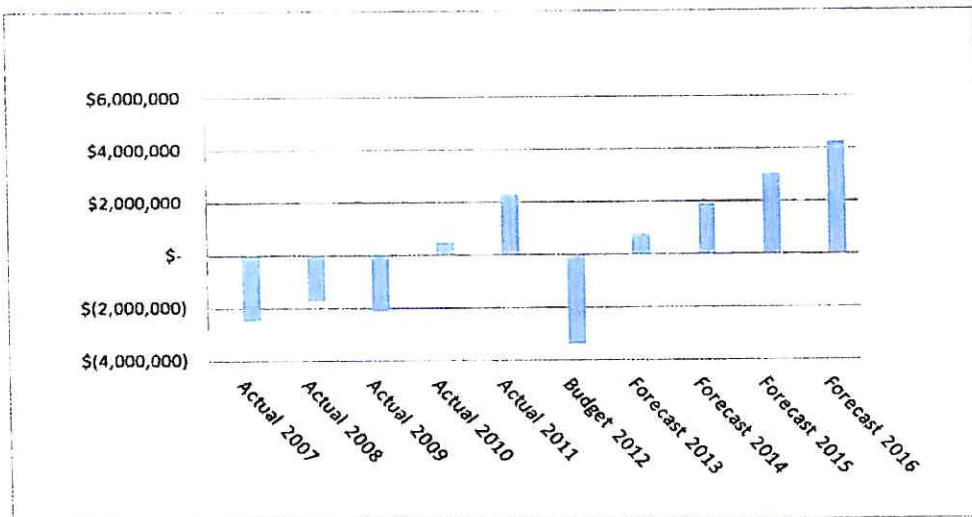


Figure 12: General Fund – Change in Fund Balance each Fiscal Year



HARBOR FUNDS

The Harbor Funds are also an Enterprise Funds, and as such, account for operations that are financed and operated in a manner similar to private business enterprises. The intent of the Council is that the costs of providing goods and services to the public on a continuing basis be financed or recovered primarily through user charges; or where the City Council has decided that periodic determination of net income is appropriate for accountability purposes. The General Fund transfers \$500,000 each fiscal year to the Harbor Capital Project fund based on the Sales Tax Code allocation. The following is a list of the harbor enterprise funds:

Cargo Terminal Fund

This fund accounts for all activity of the city owned and operated cargo terminal, which includes a warehouse and piers.

Boat Harbor Fund

This fund accounts for all activity for the Port of Kodiak, which is city owned and operated and includes two harbors.

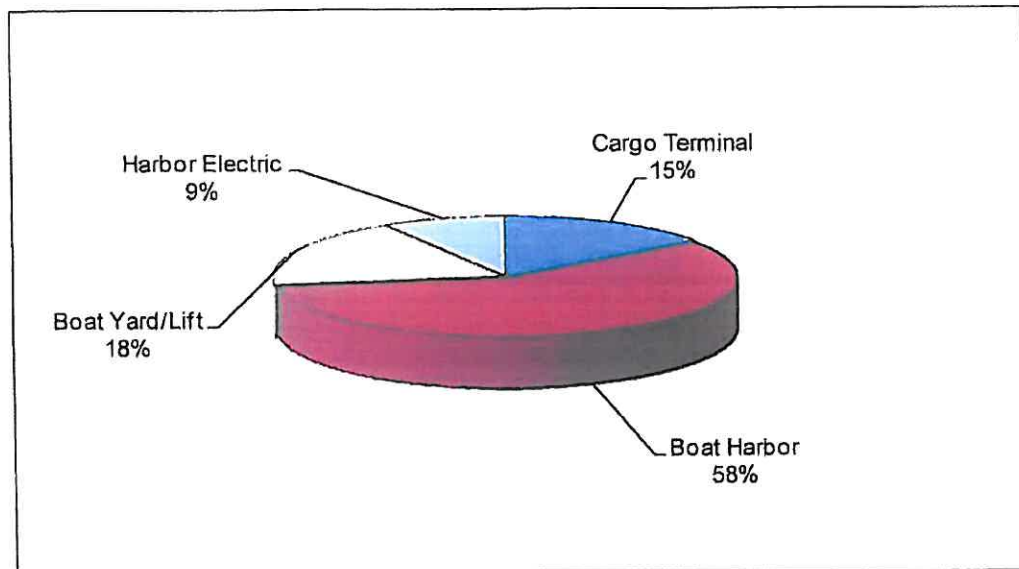
Boatyard/ Vessel Lift Fund

This fund accounts for all activity for the Boat Yard / Vessel Lift Facility which is city owned and operated.

Harbor Electric Fund

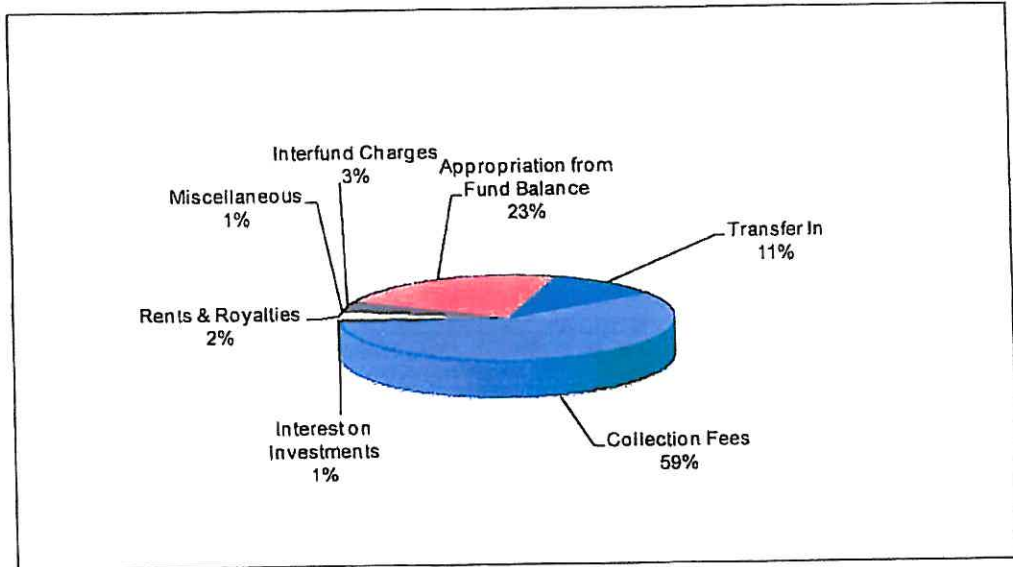
This fund accounts for the use of electrical power for the Boat Harbor, which is city owned and operated and includes two harbors.

Figure 13: Harbor Funds – FY 2012 Budgeted Revenues by Function



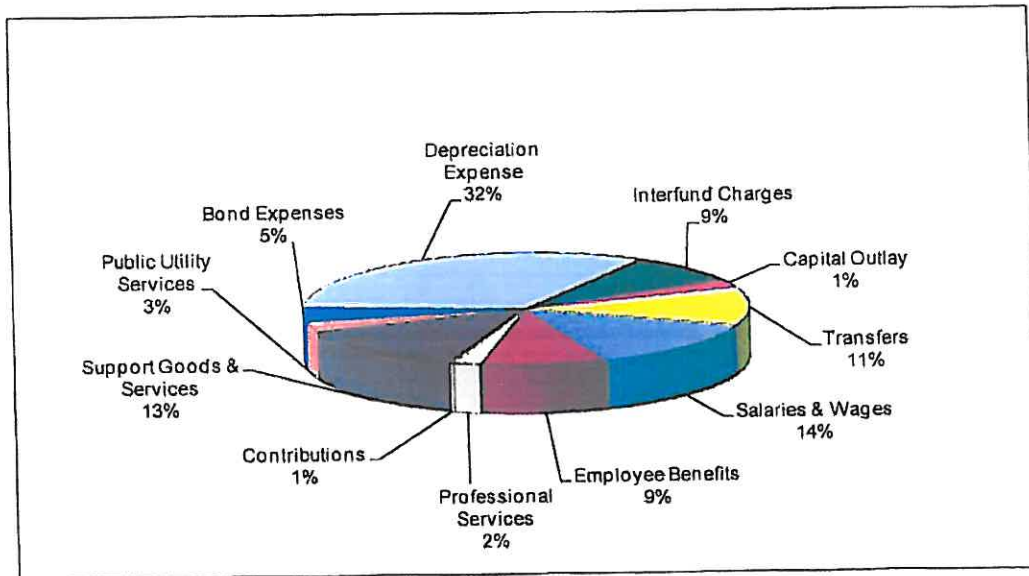
The Cargo Fund generates 15% of total revenues, the Harbor Fund 58% (Fig.13), the Boat Yard/Lift 18% and the Harbor Electric Fund 9%. The Harbor Funds are responsible for maintaining the City's Harbors while keeping rates to the fishing fleet reasonable.

Figure 14: Harbor Funds - FY 2012 Budgeted Revenues



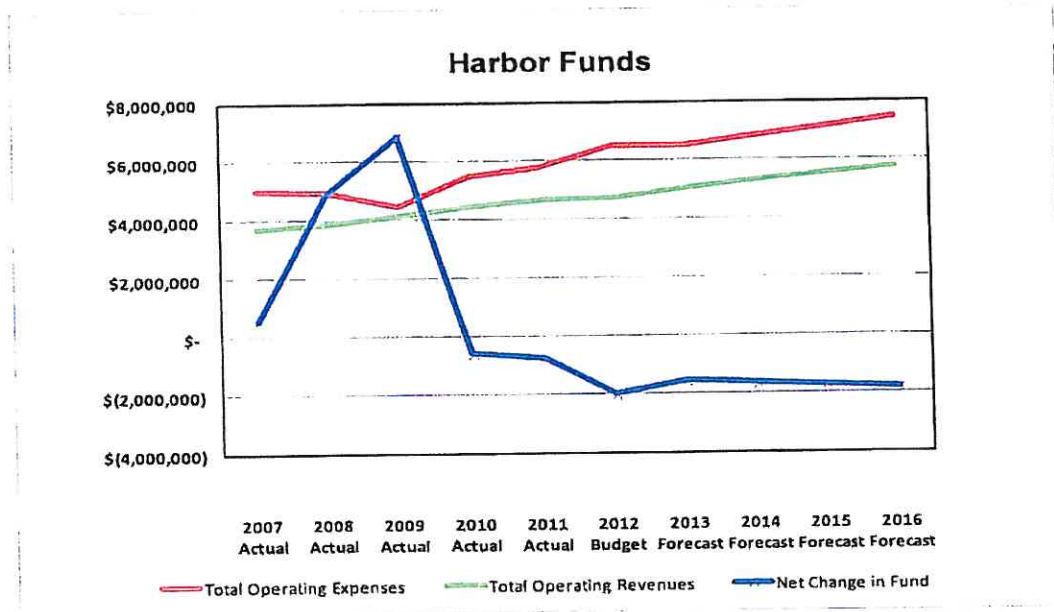
The main source of revenues is collection of fees for services or 59% (Fig.14), of total revenues. The Harbor Funds use Fund Balance to make transfers to capital project funds and for operations.

Figure 15: Harbor Funds – FY 2012 Budgeted Expenditures by Account Classification



The largest expenses in the Harbor Funds are depreciation at 32% (Fig.15), of total expenses, salaries and benefits at 23%, support goods and services at 13%.

Figure 16: Harbor Funds Forecast - Actual 2007-2011, Budgeted 2012, Forecast 2013-2016



As a result of a recommendation from the Harbor Advisory Board, a rate increase was implemented in fiscal year 2004 for four years and the rates were again adjusted in fiscal year 2011. The chart below shows the increase in moorage rates. Moorage rates are the largest category of fees in the Harbor Funds. In the future continued operating losses may necessitate additional transfers from the General Fund.

Annual Moorage Rates

Fiscal Year	Annual Moorage Per Foot		% Increase	
	Low	High	Low	High
2004	23.00	37.00		
2005	25.00	60.00	9%	62%
2006	27.00	73.00	8%	22%
2007	28.00	88.00	4%	21%
2008	29.00	98.00	4%	11%
2009	29.00	98.00	0%	0%
2010	29.00	98.00	0%	0%
2011	30.00	100.00	3%	2%

Low Range = 0 to 20 feet
 High Range = 151 feet and higher

Table 3 below shows the detail for the actual, budget and forecasted fiscal years. These forecasts do not include future capital projects.

TABLE 3: Forecast Analysis - Income Statement with forecast values along a linear trend using existing values 2007-2012										
Harbor	Actual	Actual	Actual	Actual	Actual	Budget	Forecast	Forecast	Forecast	Forecast
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Fund Revenues										
Collection Fees	3,185,666	3,630,335	3,897,970	3,976,024	4,123,339	4,308,500	4,570,763	4,775,655	4,980,548	5,185,440
Other	528,121	245,038	259,501	484,122	553,936	442,218	491,003	511,626	532,248	552,871
Total Operating Revenues	3,713,787	3,875,373	4,157,471	4,460,146	4,677,275	4,750,718	5,061,765	5,287,281	5,512,796	5,738,311
Fund Operating Expenses										
Salaries & Benefits	1,253,198	1,235,064	1,265,554	1,343,916	1,451,235	1,671,680	1,652,037	1,732,588	1,813,140	1,893,691
Professional Services	56,284	69,724	74,827	105,112	228,564	144,500	207,957	235,039	262,122	289,204
Support Goods & Services	984,576	948,816	958,980	1,044,714	1,032,885	994,100	1,032,588	1,043,584	1,054,600	1,065,616
Utility Services	145,062	158,479	147,649	140,960	162,895	205,250	190,799	199,585	208,370	217,156
Capital Outlays	78,515	38,427	108,022	97,113	46,869	176,300	141,209	155,590	169,971	184,352
Interfund Charges	337,180	402,600	378,940	391,579	391,309	632,951	568,189	609,835	651,481	693,128
Repairs & Maintenance	729,990	563,344	-	588,055	167,021	332,000	132,315	57,719	(16,877)	(91,473)
Depreciation	1,391,452	1,547,454	1,538,885	1,787,423	2,302,339	2,368,990	2,562,845	2,774,299	2,985,753	3,197,207
Total Operating Expenses	4,976,255	4,963,908	4,472,857	5,478,872	5,783,117	6,525,771	6,487,919	6,808,239	7,128,560	7,448,881
Earnings (loss) from Operations	(1,262,468)	(1,088,535)	(315,386)	(1,018,726)	(1,105,842)	(1,775,053)	(1,426,154)	(1,520,959)	(1,615,764)	(1,710,570)
Nonoperating Revenue (Expenses)										
Investment Income	339,028	409,005	166,172	38,239	39,610	43,000	50,000	50,000	50,000	50,000
Interest Expense	-	-	(24,405)	(308,322)	(334,588)	(333,100)	(340,000)	(340,000)	(340,000)	(340,000)
State PERS Relief	38,400	111,606	94,559	43,076	67,880	63,160	63,894	62,212	60,531	58,849
Other	-	1,600	24,778	201,751	112,736	-	107,849	122,431	137,014	151,596
Net Nonoperating Revenue (Expenses)	377,428	522,211	261,104	(23,256)	(114,362)	(228,940)	(118,257)	(105,356)	(92,456)	(79,555)
Earning (loss) Before Transfers	(885,040)	(566,324)	(54,282)	(1,041,982)	(1,220,204)	(2,001,993)	(1,544,411)	(1,626,315)	(1,708,220)	(1,790,125)
Other Financing Sources (Uses)										
Capital Contributions	940,373	4,161,622	6,292,418	-	-	-	-	-	-	-
Transfers In	1,000,000	1,350,000	645,784	4,945,260	2,283,431	800,000	-	-	-	-
Transfers Out	(500,000)	(50,000)	-	(4,470,260)	(1,803,431)	(800,000)	-	-	-	-
Net Change in Fund	555,333	4,895,298	6,883,920	(566,982)	(740,204)	(2,001,993)	(1,544,411)	(1,626,315)	(1,708,220)	(1,790,125)
Net Assets at Beginning of Year	28,009,806	28,564,939	33,460,237	40,344,157	39,777,175	39,036,971	37,034,978	35,490,567	33,864,252	32,156,032
Net Assets at End of Year	28,564,939	33,460,237	40,344,157	39,777,175	39,036,971	37,034,978	35,490,567	33,864,252	32,156,032	30,365,907

Harbor Funds – Fund Balance

Figure 17 below shows the total fund balance each fiscal year and Figure 18 shows the change in fund balance each fiscal year or the use of fund balance per fiscal year. The City has budgeted the use of \$2,001,993 of fund balance in fiscal year 2012. In fiscal year 2011 the use of fund balance was \$740,204. The Fund Balance is made up of the assets of a fund less the liabilities, as determined at the end of each fiscal year. The year end fund balance is recorded in categories that describe the use of the funds. These categories are invested in capital assets, and the unrestricted balance that can be used. The fiscal year 2012 fund balance that is available for use in the fiscal year 2013 budget is estimated at \$4,674,536. This is based on an ending fiscal year 2011 fund balance of \$39,036,971, less the budgeted use of fund balance in the fiscal year 2012 budget of \$2,001,993, depreciation added in the amount of \$2,365,628 less invested in capital in the amount of \$33,383,596, debt payments in the amount of \$338,681, and capital projects obligations in the amount of \$1,007,155.

Figure 17: Harbor Funds – Total Fund Balances each Fiscal Year

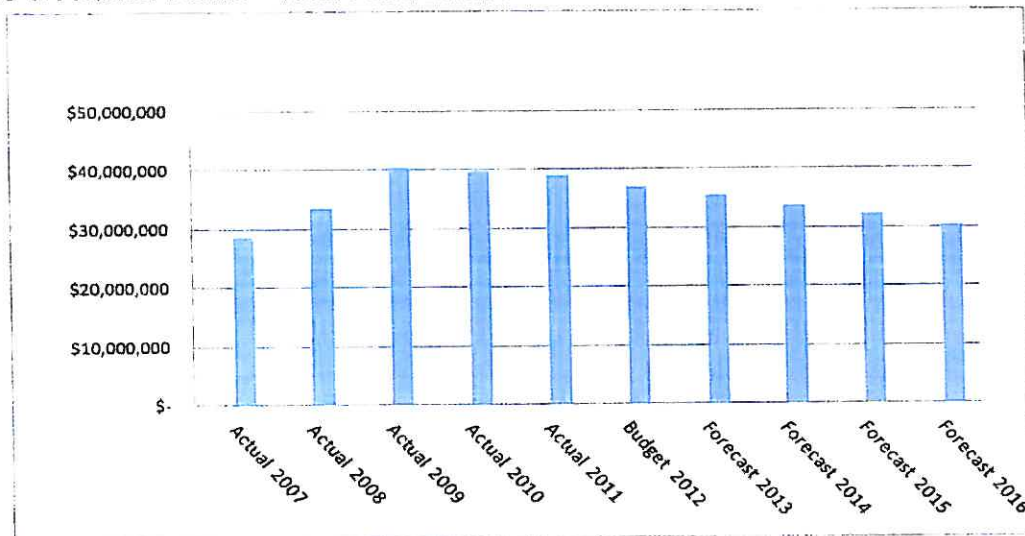
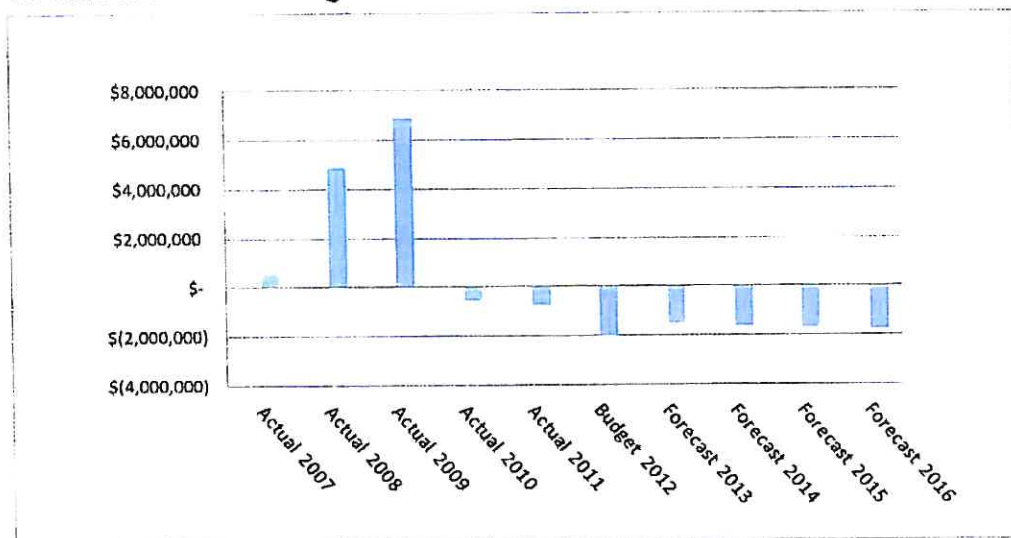


Figure 18: Harbor Funds – Change in Fund Balance each Fiscal Year

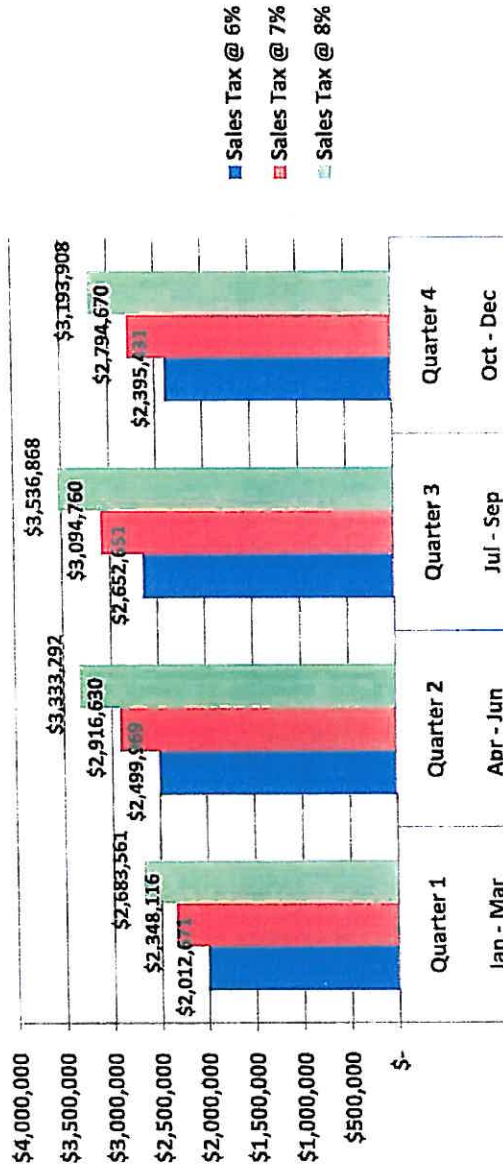


Business Types	Current - 2010			Scenario Template		
	Tax @ 6.0% Tax Cap \$750			Tax @ XX% Tax Cap \$X,XXX		
	Total Receipts	Rate	Sales Tax Revenue	Total Receipts	Rate	Sales Tax Revenue
Retail Sales	\$ 293,591,984	6.0%	\$ 17,615,519	\$ 293,591,984	7.0%	\$ 20,551,439
Services	\$ 85,267,748	6.0%	\$ 5,116,065	\$ 85,267,748	7.0%	\$ 5,968,742
Real Estate Rentals	\$ 9,287,109	6.0%	\$ 557,227	\$ 9,287,109	7.0%	\$ 650,098
Rentals	\$ 4,194,725	6.0%	\$ 251,684	\$ 4,194,725	7.0%	\$ 293,631
Other	\$ 9,069,873	6.0%	\$ 544,192	\$ 9,069,873	7.0%	\$ 634,891
Total Receipts	\$401,411,439		\$ 24,084,686	\$ 401,411,439		\$ 28,098,801
Deductions						
Senior Citizens	\$ 7,955,338			\$ 7,955,338		
Government	\$ 65,495,796			\$ 65,495,796		
Whole Sale/Retail	\$ 27,810,776			\$ 27,810,776		
Contractors	\$ 8,949,074			\$ 8,949,074		
Sales Tax Included	\$ 757,026			\$ 757,026		
Amount Over Cap	\$ 72,010,547	\$750		\$ 50,000,000	\$3,500	
Other Deductions	\$ 57,657,617			\$ 57,657,617		
Total Reduction of Receipts	\$240,636,173	6.0%	\$ 14,438,170	\$ 218,625,625	7.0%	\$ 15,303,794
Taxable Receipts	\$160,775,266	6.0%		\$ 182,785,814	7.0%	
Sales Tax Generated			\$ 9,646,516			\$ 12,795,007
Additional Revenue Generated			\$ -			\$ 3,148,490.96
Maximum Tax Paid	\$ 750	6.0%	\$ 45.00	\$ 3,500	7.0%	\$ 245.00
Sales Tax Per Capita			\$ 1,456			\$ 1,931
Red indicates undocumented estimate						

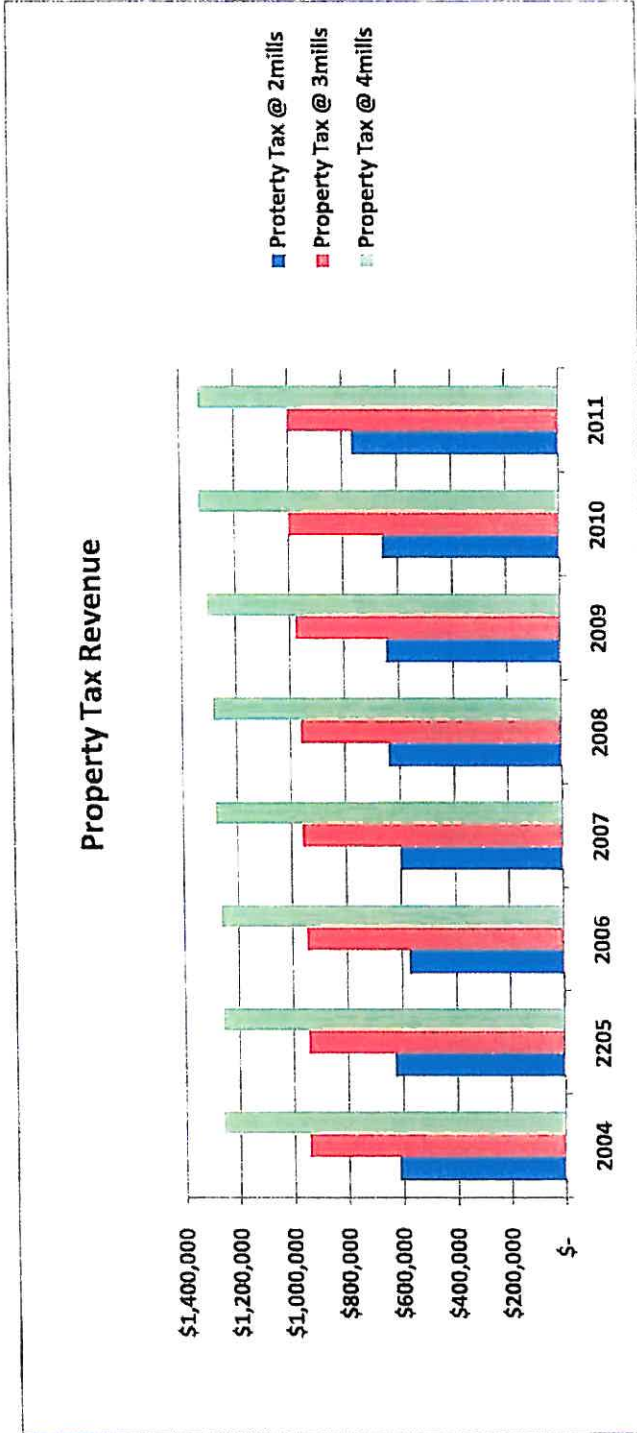
2010 Sales Tax Rates

	Total Receipts	Total Deductions	Taxable Receipts	Sales Tax @ 6%	Sales Tax @ 7%	Sales Tax @ 8%
Jan - Mar	\$ 87,000,526	\$ 53,456,016	\$ 33,544,510	\$ 2,012,671	\$ 2,348,116	\$ 2,683,561
Apr - Jun	\$ 111,196,543	\$ 69,530,398	\$ 41,666,145	\$ 2,499,969	\$ 2,916,630	\$ 3,333,292
Jul - Sep	\$ 109,130,949	\$ 64,920,098	\$ 44,210,851	\$ 2,652,651	\$ 3,094,760	\$ 3,536,868
Oct - Dec	\$ 92,754,147	\$ 52,830,294	\$ 39,923,852	\$ 2,395,431	\$ 2,794,670	\$ 3,193,908
Total	\$ 400,082,165	\$ 240,736,806	\$ 159,345,358	\$ 9,560,722	\$ 11,154,175	\$ 12,747,629

2010 Sales Tax Revenue Collected



Property Tax									
	2004	2205	2006	2007	2008	2009	2010	2011	
Property Tax @ 2mills	\$ 616,172	\$ 628,516	\$ 573,763	\$ 599,261	\$ 640,435	\$ 644,857	\$ 656,852	\$ 765,539	
Property Tax @ 3mills	\$ 947,304	\$ 945,488	\$ 948,776	\$ 960,771	\$ 964,190	\$ 978,944	\$ 997,975	\$ 997,975	
Property Tax @ 4mills	\$ 1,263,073	\$ 1,260,650	\$ 1,265,034	\$ 1,281,028	\$ 1,285,586	\$ 1,305,259	\$ 1,330,633	\$ 1,330,633	
Taxable Assessed Value	\$315,768,131	\$ 315,162,532	\$ 316,258,532	\$ 320,256,932	\$ 321,396,532	\$326,314,738	\$332,658,365	\$ 332,658,365	



Property Tax									
	2004	2205	2006	2007	2008	2009	2010	2011	
1 mill Increase	\$ 315,768	\$ 315,163	\$ 316,259	\$ 320,257	\$ 321,397	\$ 326,315	\$ 332,658	\$ 332,658	
Taxable Assessed Value	\$315,768,131	\$ 315,162,532	\$ 316,258,532	\$ 320,256,932	\$ 321,396,532	\$326,314,738	\$332,658,365	\$ 332,658,365	

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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Date: May 10, 2012

Agenda Item: V.a. **Resolution No. 2012–13, Authorizing the Issuance of a Permit to the Kodiak Garden Club for Use of Public Property for its Annual Plant Sale**

SUMMARY: Resolution No. 2012–13 authorizes the issuance of a permit to the Kodiak Garden Club to use the covered area of the Baranof Park ice rink to hold its annual plant sale on June 9, 2012. Staff recommends Council adopt Resolution No. 2012–13.

PREVIOUS COUNCIL ACTION: Each year Council issues permits to non-profit organizations to allow them to conduct fundraising activities that benefit the community on City property.

DISCUSSION: The Kodiak Garden Club makes locally grown plants available to Kodiak gardeners through a plant sale each June. Besides the plants that are sold, the Garden Club provides educational materials to the public, including information on ways to identify and control invasive species, and they answer questions about gardening in Kodiak. The proceeds from the sale augment the small annual grant the club receives from the City to plant flowers and greenery at City facilities like the Baranof Museum, the Harbor, and the small grassy area at the “Y” intersection. Funds from this sale also help support a small grant program to the schools for related projects.

This year, the Garden Club has requested to use the covered area at the ice rink at Baranof Park to stage their sale. This spot works well as an indoor/outdoor space which accommodates unpredictable weather. The sale is planned for Saturday, June 9, 2012. The Garden Club is requesting permission to use the facility from 8 a.m. until the sale, which starts at 10 a.m., is over. The Garden Club ensures they will coordinate their activities with the Parks and Recreation Director and will provide clean up after the event. The resolution authorizes the use of the ice rink facility at Baranof Park for the plant sale from 8 a.m. through completion and cleanup, on June 9, 2012.

ALTERNATIVES:

1. Adopt Resolution No. 2012–13, which is staff’s recommendation.
2. Do not adopt Resolution No. 2012–13, which would require the Garden Club to find another suitable location for this fundraiser.

STAFF RECOMMENDATION: Staff recommends Council adopt Resolution No. 2012–13.

CITY MANAGER’S COMMENTS: The City and its residents both benefit from this annual plant sale. The Garden Club is an active and responsible non-profit that works to educate and beautify our

community. The way the Garden Club uses the proceeds from the sale benefits the community. I support the request and recommend that Council adopts Resolution No. 2012–13.

ATTACHMENTS:

Attachment A: Resolution No. 2012–13

Attachment B: Letter of request from the Kodiak Garden Club, dated April 11, 2012

PROPOSED MOTION:

Move to adopt Resolution No. 2012–13.

**CITY OF KODIAK
RESOLUTION NUMBER 2012-13**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO THE KODIAK GARDEN CLUB FOR USE OF PUBLIC PROPERTY IN FOR ITS ANNUAL PLANT SALE

WHEREAS, for many years the Kodiak Garden Club has shared locally grown plants with Kodiak gardeners through a plant sale in June; and

WHEREAS, during the plant sale educational materials are distributed and questions answered about gardening in Kodiak, including methods to get rid of invasive weeds; and

WHEREAS, funds from the plant sale are used to make small grants to school groups working on growing projects; and

WHEREAS, funds from the sale are also used to supplement the small grant the Garden Club receives from the city for plantings throughout the city; and

WHEREAS, the Garden Club has requested use of the covered area at Baranof Park on Saturday, June 9, 2012, to stage the sale.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, to the Kodiak Garden Club as provided in section 5.04.050(b) and (d) of the City Code for use of public property for 2012 plant sale on the condition that the Garden Club agrees to comply with the stipulations set forth in this section and section 5.04.060 of the City Code.

BE IT FURTHER RESOLVED that event sponsors shall coordinate the event with the Kodiak Parks and Recreation Director.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:



Kodiak Garden Club
PO Box 8792
Kodiak, Alaska 99615
April 11, 2012

Dear Mayor Branson, and City Council Members:

For many years, the Kodiak Garden Club has shared locally grown plants with Kodiak gardeners through a plant sale in early June. During the sale, educational materials are distributed and questions answered about gardening in Kodiak. In addition, Blythe Brown of the Kodiak Soil and Water Conservation District distributes information about invasive weeds and other plants to attendees. Funds from this sale are used to make small grants for school groups working on growing projects and to supplement the small grant Garden Club receives from the city for work at Baranof Museum, the harbor area (especially the memorial area), and other areas around the city from year to year. This year the Garden Club would like to use the covered area at Baranof Park to stage the sale. This spot works very well as an indoor/outdoor space which adapts to Kodiak's unpredictable weather. The sale is planned for Saturday, June 9, starting at 10:00. However, we usually begin setting up about 8 am on that morning and so would need access to the space at that time. Garden Club members are very conscientious about clean up after the event.

Thank you for your consideration of Kodiak Garden Club's request to use the covered area at Baranof Park for the Kodiak Garden Club Annual Plant Sale on June 9.

Sincerely,

Patricia Holmes, President
Kodiak Garden Club

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Date: May 10, 2012

Agenda Item: V.b. **Authorization of Extension of the Professional Services Contract With Birch, Horton, Bittner, and Cherot for Legal Services**

SUMMARY: The firm of Birch, Horton, Bittner, and Cherot was selected to provide legal services to the City in July 2000. The original contract was for a three-year period, with an option for three additional one-year extensions. The contract and eight extensions have been approved and renewed by Council since that time. The current contract extension is set to expire on June 30, 2012. The firm, and Tom Klinkner, the City's primary municipal attorney, wish to continue to serve the City of Kodiak and recommends a three-year contract extension with the option to extend for three additional one-year terms. Staff recommends Council authorize this ninth contract amendment with Birch, Horton, Bittner, and Cherot as attached.

PREVIOUS COUNCIL ACTION:

- August 2000: Authorized three-year professional legal services contract with Birch, Horton, Bittner, and Cherot
- One-year contract extensions were approved by Council each July from 2003-2006
- July 2006: Authorized a fourth amendment for a three-year contract and three additional one-year terms at the Council's option
- One-year contract extensions were approved by Council each July from 2010-2011 with the last contract end date of June 30, 2012

DISCUSSION: In July 2000 the Mayor and City Council members interviewed representatives of four firms under consideration as the City's primary legal counsel. As a result, a three-year professional services agreement for legal services was approved by the City Council with Birch, Horton, Bittner and Cherot. The original contract was signed in 2000, and provided for a three-year term with three one-year extensions at the option of the City. This arrangement was renewed in 2006. Beginning in 2009, the contract was extended from year to year. The last one-year extension under the 2006 contract expires on June 30 of this year. If the City wishes to follow the pattern established in 2000 and 2006, this year is the time for a new three-year contract term, followed by three one-year extensions at the option of the City.

ALTERNATIVES:

1. Authorize the extension and continue legal services with Birch, Horton, Bittner and Cherot, which is staff's recommendation.
2. Do not authorize the extension, which would require issuance of a request for proposals for legal services.

FINANCIAL IMPLICATIONS: The approved FY2013 budget includes funds for legal services in the General Fund, Legislative, Legal, Professional Services account.

LEGAL: The services provided by legal counsel are identified in the Kodiak City Code. Legal services are critical to the City's day-to-day operation.

STAFF RECOMMENDATION: Staff recommends Council authorize the contract extension.

CITY MANAGER'S COMMENTS: The services provided by Tom Klinkner and other attorneys at Birch Horton Bittner and Cherot are very important to the City. I appreciate their legal diligence and support on behalf of the City and recommend Council authorize this contract amendment.

ATTACHMENTS:

- Attachment A: Ninth Amendment to Contract for Professional Legal Services
- Attachment B: Contract for Professional Legal Services

PROPOSED MOTION:

Move to authorize the ninth amendment to the contract dated August 22, 2000, with Birch, Horton, Bittner, and Cherot for professional legal services.

**NINTH AMENDMENT TO CONTRACT FOR
PROFESSIONAL LEGAL SERVICES**

NINTH AMENDMENT, dated as of July 1, 2012, (the "Amendment"), to the Contract for Professional Legal Services (the "Contract") between the CITY OF KODIAK (the "City") and BIRCH HORTON BITTNER & CHEROT (the "Contractor"), dated August 1, 2000.

WHEREAS, the Contract provides for the Contractor to provide legal services to the City for a term expiring on June 30, 2009; and

WHEREAS, the Contract provides for renewal at the option of the City Council of the City for three additional one-year terms; and

WHEREAS, the City Council of the City desires to extend the term of the Contract for an additional three years from the date hereof, with the option of the City Council to renew the Contract for three additional one-year terms, and the Contractor has agreed to such an extension.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein, the parties agree as follows:

Section 4, Term of the Contract is amended to read as follows:

4. Term. For purposes of case assignments, this contract becomes effective when signed on behalf of the City and shall continue until June 30, 2015. The contract may be renewed for three (3) additional years, with one-year extensions at the Council's option. For purposes of assigned case completion, this contract may be extended upon mutual consent.

All other terms and provisions of the Contract, as previously amended, shall remain unchanged.

DATED as of the date first set forth above.

CITY OF KODIAK

BIRCH HORTON BITTNER & CHEROT

Aimée Kniazowski, City Manager

Thomas F. Klinkner

CONTRACT FOR PROFESSIONAL LEGAL SERVICES

THIS CONTRACT ("Contract") is made this 1st day of August 2000, by and between the **City of Kodiak**, of P. O. Box 1397, Kodiak, Alaska 99615 ("City"), and **Birch, Horton, Bittner, Inc.**, d/b/a Birch, Horton, Bittner and Cherot, an Alaska professional corporation, of 1127 West 7th Avenue, Anchorage, Alaska 99501 ("Contractor" or "City Attorney").

In consideration of the mutual promises herein, the parties agree as follows:

1. Scope of Services. The City Attorney shall act as legal advisor to the City Council, administration, and other officials of the City to include, without limitation, the following:

- a. To duly advise the Council, administration, and other officials at meetings of the Council and at other functions as may be designated;
- b. To draft opinion letters regarding, among other subjects, the interpretation of the City code, state and federal law, and policies;
- c. To draft municipal ordinances involving all municipal matters;
- d. To review and provide opinions on codes, contracts, resolutions, and other written instructions which are submitted to the attorney by the City;
- e. To call attention of the Council and/or City Manager, as may be appropriate, to or of changes or developments in legal matters that affect the City; and
- f. To perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the Council and/or City Manager or the Mayor.

2. Access to Municipal Personnel. The City Manager shall secure the cooperation of the City personnel as necessary to assist the Contractor's performance hereunder.

3. Contract Administrator. The City Manger shall administer the contract on behalf of the City.

4. Term. *see subsequent amendments* For purposes of case assignments, this contract becomes effective when signed on behalf of the City and shall continue for three (3) years from date executed. The contract may be renewed for three (3) additional years, with one-year extensions at the Council's option. For purposes of assigned case completion, this contract may be extended upon mutual consent.

5. Compensation.

*Amended
7/1/04
7/1/08*

a. **Fees.** The Contractor shall be compensated at the following hourly rates:

Shareholders	Partners/Members	\$150.00	\$ 805.00
	Senior Associates	\$135.00	
	Associates:	\$115.00	\$ 180.00
	Paralegals and Law Clerks:	\$ 75.00	\$ 100.00

The attorneys' fee schedule is to remain fixed for the first year of the contract. After the first year of the contract, the fee schedule may be negotiated. The Contractor will not charge for travel time by attorneys performing work for the City except when the attorney actually is performing work for the City while en route. Attorneys will be made available on call for telephonic participation in City meetings without charge for "standby" time. The Contractor will bill at standard hourly rates for actual attendance at meetings.

b. **Costs.** The Contractor shall be entitled to reimbursement for out-of-pocket expenses incurred in the course of representation. Expenses, including long distance telephone charges, expedited mail or courier service, filing and recording fees, computerized research fees and travel expenses will be billed at actual cost. Certain in-house expenses, such as photocopying and messenger service, are billed at standard rates.

6. Payment and Reporting.

a. The Contractor shall submit itemized monthly billings to the City Clerk for payment of all fees and costs for which the Contractor seeks reimbursement under paragraph 5. Said monthly billings shall identify the subject of the work performed and the time, to the nearest one-tenth (1/10) of an hour, spent on each subject. Costs shall be itemized and described separately on each monthly invoice.

b. Upon approved billing, payment will be remitted to the Contractor within forty-five (45) days.

7. Termination of the Contractor's Services. The Contractor's services may be terminated:

- a. for convenience by the City Council;
- b. By mutual consent of the parties; or
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notify the other party of its intent to terminate, stating with reasonable specificity the

grounds therefor, and the other party fails to cure the default within fifteen (15) days after receiving notice.

8. Duties Upon Termination. If the Contractor's services are terminated, the Contractor will be paid for services performed to the date of termination.

9. Case Management. Execution of the contract by the City shall act as full authority for the Contractor to proceed with representation of the City as provided herein. The City will have complete and total access to all material, information, and files worked on by the Contractor pursuant to this contract.

10. Assignments. Contractor shall not assign this contract, or any interest in this Contract without consent of the City.

11. Confidentiality. The Contractor agrees to discuss matters and reveal documents relating to this contract only with the City Council, City Manager, City Clerk, or any other person authorized by the aforementioned, and as required by court order.

12. Notices. Any notice required pertaining to the subject matter of this contract shall be either personally delivered, faxed, or mailed by prepaid first class registered or certified mail, return receipt requested, to the following addresses:

City: City of Kodiak
ATTN: City Manager
P. O. Box 1397
Kodiak, AK 99615
fax: (907) 486-8600

Contractor: Birch, Horton, Bittner and Cherot
ATTN: Thomas F. Klinkner
1127 West 7th Avenue
Anchorage, AK 99501
fax: (907) 276-3680

13. Conflicts of Interest. The Contractor may not represent or assist private or public clients in connection with other claims, litigation, or other legal matters where such representation would constitute or appear to constitute a conflict of interest. In particular, the Contractor shall comply with all relevant provisions of the Alaska Bar Rules and the Alaska Rules of Professional Conduct concerning the prohibition of conflicts of interest among clients. The Contractor shall not accept any employment and shall not render any professional services to other parties if such action might be inconsistent with the above-referenced standards unless the prior approval of the City Council has been first obtained.

14. Relationship of Parties. The Contractor shall perform its obligations hereunder as an independent contractor of the City. The City may administer the contract and monitor the Contractor's compliance with its obligations hereunder.

15. Nondiscrimination. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical disability. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical disability. Such action shall include, without limitation, employment, upgrading, demotion, or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

16. Permits, Laws, and Taxes. The Contractor shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable laws to include, without limitation, statutes, ordinances, rules, and regulations.

17. Nonwaiver. The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part thereof, or the right of such party thereafter to enforce each and every provision hereof.

18. Amendment. This contract may be amended, modified, or changed only in writing executed by the City Manager and an authorized representative of the Contractor.

19. Governing Law. The laws of the State of Alaska shall govern the rights and obligations of the parties under this contract.

20. Severability. Any provision of this contract deemed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

21. Integration. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein. This contract shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto.

22. Insurance. The Contractor shall provide lawyers' professional liability insurance for all periods under the contract for claims up to a minimum amount of \$1,000,000 per claim.

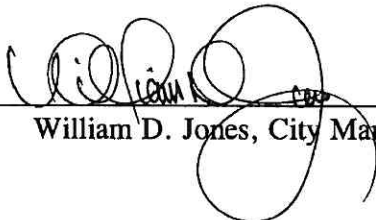
23. **Inspection and Retention of Records.** The Contractor shall at any time during normal business hours and as often as the City Manager or Council may deem necessary, make available to the City for examination all records with respect to all matters covered by this contract for a period ending three (3) years after the date the Contractor is to complete performance of this Contract. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this contract to the City in such a form and at such times as the Council may reasonably require. The Contractor shall permit the Council or their designee to audit, examine, and make copies of such records, and to make audits of all research, materials, pleadings, records of personnel, and other data relating to all matters covered by this contract. The City may, at its option, permit the Contractor to submit its records to the City in lieu of the retention requirements of this section.

24. **Availability of Funds.** This contract is subject to the availability of funds lawfully appropriated for its performance.

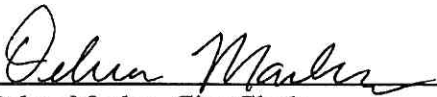
IN WITNESS WHEREOF, the parties have executed this contract.

CITY OF KODIAK

Dated: 8/22/00


By: 
William D. Jones, City Manager

ATTEST:


Debra Marlar, City Clerk



BIRCH, HORTON, BITTNER, INC., d/b/a Birch,
Horton, Bittner and Cherot

By: 
Thomas F. Klinkner, Member