

**City of Kodiak Regular Council Meeting Agenda for September 28, 2017  
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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<b>I. Call to Order/Roll Call</b>	
Invocation/Pledge of Allegiance	
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<b>III. Persons to Be Heard</b>	
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b. First Reading, Ordinance No. 1368, Amending Kodiak City Code 3.08.040, “General Exemptions” and Kodiak City Code 3.08.120, “Maximum Taxable Sale,” To Exempt Real Property Rentals Exceeding One Month and \$750.00 From City of Kodiak Sales Tax.....	24
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<b>IX. Audience Comments</b> (limited to 3 minutes) (486-3231)	
<b>X. Executive Session</b>	
a. Discuss City Litigation.....	44
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DRAFT

**MINUTES OF THE REGULAR COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, SEPTEMBER 14, 2017  
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Randall C. Bishop, Charles E. Davidson, Gabriel T. Saravia, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. Councilmember Laura B. Arboleda was absent. City Manager Mike Tvenge, Deputy Clerk Michelle Shuravloff-Nelson, and Assistant Clerk Shannon Hamer were also present.

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

**II. PREVIOUS MINUTES**

Councilmember Whiddon MOVED to approve the minutes of the August 10, 2017, regular meeting as presented.

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

**III. PERSONS TO BE HEARD**

**a. Proclamation: Declaring Senior Center Month**

Councilmember Davidson read the proclamation, which urges all citizens to recognize the special contributions of senior center participants and the special efforts of the staff and volunteers who work every day to enhance and enrich the lives of the elder citizens in our community.

**David Blacketer** thanked Mayor Branson for proclaiming Senior Center Month. He thanked the Council for their support and stated the Center has continued to build over the last 20 years. He said seniors strive to better the community by volunteering and being active citizens. He shared some of the programs at the senior center, and he indicated there are many resources available for the membership.

**b. Public Comments**

**Major Dave Davis** thanked the Mayor and Council for the nonprofit grant to the Salvation Army.

**Marion Owen** spoke to the Council about the sales tax history and referred to Ordinance No. 1171. She spoke about her experience when she applied for a business license in Kodiak in comparison to her experience in Seattle. She said in Kodiak she received a letter about the parameters of paying her taxes, and when she lived in Seattle, she received a “welcome to the business

community” letter. She said the system is not fair to those trying to make ends meet. She mentioned having a sales tax of three or four percent instead of a sales tax cap, and suggested an alcohol tax and removing the tax on groceries.

**Paddy O’Donnell** handed out a copy of Ordinance No. 1171. He said he does not support raising the tax cap from \$750 to \$3000, and he suggested raising the tax cap in smaller increments. He talked about the huge impact it would have on his business. He said he understands the need for revenue but has concern for the harm it could do to local businesses.

#### **IV. UNFINISHED BUSINESS**

None

#### **V. NEW BUSINESS**

**a. First Reading, Ordinance No. 1365, Amending Kodiak Municipal Code Title 7 Entitled “Health and Sanitation” to Adopt Chapter 7.40 Entitled “Marijuana Regulation,” and Designating the Kodiak City Council as the City’s Local Regulatory Authority on Marijuana**

Mayor Branson read Ordinance No. 1365 by title. Alaska voters approved Ballot Measure 2 on November 4, 2014, which provided for general legalization of marijuana. Ordinance No. 1365 will designate the Kodiak City Council as the City’s local regulatory authority on marijuana. Alaska Statute provides for the transfer of a portion of license application fees to the “local regulatory authority,” and this ordinance will ensure collection of any available fees.

Councilmember Davidson **MOVED** to pass Ordinance No. 1365 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**b. First Reading, Ordinance No. 1366, Amending Kodiak Municipal Code Title 8 Entitled “Public Peace, Safety, And Morals” to Adopt Kodiak City Code 8.40, “Prohibited Acts Regarding Marijuana,” to Prohibit the Extraction of Tetrahydrocannabinol (“Thc”) or any Cannabinoid by Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted By Law**

Mayor Branson read Ordinance No. 1366 by title. Alaska voters approved Ballot Measure 2 on November 4, 2014, which provided for general legalization of marijuana. Ordinance No. 1366 will prohibit the manufacture of marijuana products by use of solvents containing compressed flammable gases or solvent-based extraction methods. This will help protect the public health and safety against known and unreasonable risks of certain manufacturing processes of a legalized marijuana industry.

Councilmember Bishop **MOVED** to pass Ordinance No. 1366 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**c. Resolution No. 2017–23, Naming Election Workers for the October 3, 2017, Regular Municipal Election**

Mayor Branson read Resolution No. 2017–23 by title, which names election workers and canvass board members for the October 3, 2017, regular municipal election.

Councilmember Walker MOVED to adopt Resolution No. 2017–23.

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

**d. Resolution No. 2017–24, Appropriating \$250,000 of Unassigned Fund Balance of the Sewer Improvement Fund to Sewer Capital Project – Upgrade Lift Stations Project No. 7509 and Authorizing Change Order No. 5 With Brechan Construction, LLC**

Mayor Branson read Resolution No. 2017–24 by title. In 2011 staff began to evaluate and plan for the refurbishment or replacement of lift stations 1 through 4. Smith and Loveless (manufacture of all four stations) was consulted to discuss temporary repairs at lift station 3 in order to get an additional pump operational. Lift stations 1 thorough 4 were included in the capital improvement needs because of operations short comings and physical condition of the stations. The need to get either another pump operational or by-pass at lift station 3 is crucial to prevent a critical situation in the event of the existing pump failure.

Councilmember Whiddon MOVED to adopt Resolution No. 2017–24.

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

**e. Resolution No. 2017–25, Rescinding Resolution No. 2017–14 and Re-Establishing an Economic Development Special Committee**

The City Council has identified the need for an economic development plan. Economic Development Consultant Wanetta Ayers has been retained to assist with this plan and recommended the City establish a committee to achieve its economic development goals. Resolution No. 2017–14 established guidelines and Committee membership to include six community members and three elected officials. More than six individuals submitted applications to serve on the Committee. Resolution No. 2017–25 will provide the Council with more flexibility to appoint as many members as it deems necessary to initiate a plan to achieve economic growth.

Councilmember Whiddon MOVED to adopt Resolution No. 2017–25.

Councilmember Davidson MOVED to substitute for the pending resolution, Resolution No. 2017–25(SUB).

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

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

**f. Authorization of Purchase of Hurst (Jaws of Life) Equipment for the Fire Department**

Per the approved FY2018 operating budget, the Fire Department is replacing failing Hurst extrication equipment (Jaws of Life). The existing equipment is over 25 years old and is in dire need of replacement. LN Curtis and Sons of Kent, Washington submitted a quote for approved equipment in the amount of \$41,637.08. Per City Code 3.12.020 the total purchase price exceeds the City Manager's spending authority thus requiring City Council approval. Staff recommends Council authorize the purchase of approved equipment in the amount of \$41,637.08 with funds coming from the Fire Department General Fund Operations budget 100.150.100.470.126.

Councilmember Walker MOVED to authorize purchase of Hurst (Jaws of Life) equipment from L.N. Curtis in the amount of \$41,637.08, plus shipping costs, with funds from the General Fund, Fire Administration, Machinery and Equipment Account No. 470.126

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

**g. Appointment to Economic Development Special Committee**

Earlier in the meeting Council adopted Resolution No. 2017-25(SUB) to establish a committee to develop and initiate an economic develop plan. The resolution set guidelines and defined the membership to include the Mayor, and two Councilmembers, of which one shall be designated as Chair and one as Vice-chair; and community members who represent any of the following: Aviation and Support Services, Community and Civic Organizations, Construction Contracting and Trades, Health Care and Medical Support Services, Hospitality and Tourism, Marine Transportation and Support Services, Professional and Business Services, Retail Goods and/or Services, Seafood Harvesting, Seafood Processing, and other Representation Deemed Appropriate by the City Council. There is no residency requirement. The City Manager, as well as additional City staff designated by the City Manager, shall serve as nonvoting consulting members of the committee, if requested. The City's Economic Development Consultant shall also serve as a non-voting member of the committee.

Councilmember Bishop MOVED to appoint to the Economic Develop Special Committee Mayor Branson, Councilmembers Randall Bishop and John Whiddon, with John Whiddon designated as Chair and Randall Bishop as Vice Chair, and the following community members: Alan Austerman, Barbara Bigelow, Julie Bonney, Trevor Brown, Tyler Kornelis, Chris Lynch, Aimee Williams, and Rebecca Skinner as Alternate No. 1 and Daniel McKenna-Foster as Alternate No. 2.

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

## **VI. STAFF REPORTS**

### **a. City Manager**

Manager Tvenge reported that the Fire department staffing level is on the rise; he stated there are two additional fire fighter positions open. He stated that the department staffing levels were increasing; therefore, an extension of the contract with Delta Medical Transport will not be necessary. He expressed appreciation for the contract and the relief they provided to staff. Manager Tvenge gave an overview of the meeting he and Deputy Manager Van Daele had with Senator Murkowski's staff last month to discuss the Federal Infrastructure Project. He reported the Kodiak Public Library has new hours, as well as the Cashier's Office, which will go into effect on October 2. He mentioned the new community bronze bear and he thanked everyone involved in the project. He said the City is working with the Alutiiq Heritage Foundation on a new park to be located near Kashevaroff Street. He reported that the City is working with the Kodiak Island Borough School District to begin training for crossing guards during the school year.

### **c. City Clerk**

Deputy Clerk Shuravloff-Nelson reminded and encouraged the public to vote in the upcoming municipal election on October 3, 2017, she stated the City precincts are the Harbor and Teen Center buildings. She notified the public of the next work session and regular meeting.

## **VII. MAYOR'S COMMENTS**

Mayor Branson said she would like to thank the election workers in advance, and expressed her appreciation to the volunteers of the Economic Development Committee. She gave an overview of the progress of the Downtown Kodiak Revitalization Committee's action items. She shared that Subcommittee Chair Sandy Solenberger has facilitated the design, purchase and hanging of banners in downtown Kodiak. She said Bruce Schactler is working with the City and Brechan Enterprises on the murals downtown. She thanked April Laktonen Counciller, PhD, of the Alutiiq Museum and staff for their work to get the park underway. Mayor Branson recognized Parks and Recreation Director Gronn and staff's work on the flowers this summer downtown. She said the Manager is looking at Cops on Call to add more police presence downtown in an efficient way to help with the problems in public areas downtown. She mentioned parking in the downtown area for businesses as an upcoming topic for discussion. She spoke about improving the area between Tonys and Henrys, and with the recent walkway design downtown it has become handicap accessible. She highlighted the success of the Farmer's Market in the Sutliff's parking lot and she mentioned the annual Harbor Lights Festival in December.

## **VIII. COUNCIL COMMENTS**

Councilmember Walker thanked the City employees for their hard work and his fellow Councilmembers for their dedication. He said there are many good things happening in the downtown area. He shared that he is excited about the Economic Development Committee.

Councilmember Bishop provided an update on Ordinance No. 1366, which he said prohibits products referred to as "Dad's wax" or "Shattered glass." He thanked everyone involved with the

Marijuana Committee, and he expressed excitement about the downtown revitalization's action items.

Councilmember Davidson welcomed the Alaska Power Association membership to Kodiak. He thanked the staff of the Police and Fire Departments who have worked long hours due to being short-staffed. He said he would like the public to realize the sacrifices the staff and their families have made for the public safety of the community.

Councilmember Saravia encouraged citizens to vote in the upcoming election.

Councilmember Whiddon thanked members of the public who have attended the meetings this week, especially Monday night, and for the public feedback on the sales tax issues. He asked, the public the question: what type of community do we want in 3-5 years and how do we get there? He believes the answer is expanding our economic base and generating more sources of taxes. He reported on the Fisheries Work Group Meeting on September 13. He mentioned the Salmon Life Event this Saturday and encouraged people to attend.

## **IX. AUDIENCE COMMENTS**

None

## **X. EXECUTIVE SESSION**

### **a. Update on City Litigation**

The City Council entered into executive session to receive an update and discuss City Litigation.

Councilmember Davidson **MOVED** to enter into executive session pursuant to AS 44.62.310(c)(1) to discuss matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.

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

The Council entered executive session at 8:20 p.m.

Mayor Branson reconvened the meeting at 9:30 p.m.

## **XI. ADJOURNMENT**

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

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

The meeting adjourned at 9:30 p.m.



CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:


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# **UNFINISHED BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager   
**Date:** September 28, 2017

**Agenda Item: IV. a. Second Reading and Public Hearing, Ordinance No. 1365, Amending Kodiak Municipal Code Title 7 Entitled “Health and Sanitation” to Adopt Chapter 7.40 Entitled “Marijuana Regulation,” and Designating the Kodiak City Council as the City’s Local Regulatory Authority on Marijuana**

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**SUMMARY:** Alaska voters approved Ballot Measure 2 on November 4, 2014, which provided for general legalization of marijuana. Ordinance No. 1365 will designate the Kodiak City Council as the City’s local regulatory authority on marijuana. Alaska Statute provides for the transfer of a portion of license application fees to the “local regulatory authority,” and this ordinance will ensure collection of any available fees.

### **PREVIOUS COUNCIL ACTION:**

- 2015-2016, received information at work sessions from Cynthia Franklin, Director of the Alaska Marijuana Control Office and City attorneys about State Ballot Measure 2 and other considerations regarding marijuana regulation in the City
- May 12, 2016, adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Committee
- May 26, 2016, adopted Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City (opt out expired January 1, 2017)
- November 10, 2016, Council postponed acceptance of the recommendations from the City Marijuana Advisory Special Committee
- June 27, 2017, Council discussed and finalized the final recommendations from the City Marijuana Advisory Special Committee
- September 14, 2017 Council passed Ordinance No. 1365 in the first reading and advance to second reading and public hearing.

### **ALTERNATIVES:**

- 1) Adopt Ordinance No. 1365 after the public hearing, which is staff’s recommendation, because it is consistent with our attorney’s advice and recommended by the City Marijuana Advisory Special Committee.
- 2) Postpone, amend, or do not adopt Ordinance No. 1365.

**FINANCIAL IMPLICATIONS:** Alaska Statute provides for the transfer of a portion of license application fees to the “local regulatory authority,” and this ordinance will ensure collection of any available fees.

**LEGAL:** The City’s attorney wrote Ordinance No. 1365.

**STAFF RECOMMENDATION:** Staff recommends Council adopt this ordinance after the public hearing at the regular Council meeting.

**CITY MANAGER’S COMMENTS:** It is recommended establishing the City as the local regulatory authority to be identified with the State of Alaska and therefore the control over regulations within our jurisdiction. I support establishing the City as such.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1365

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1365.

**CITY OF KODIAK  
ORDINANCE NUMBER 1365**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KODIAK, ALASKA AMENDING KODIAK MUNICIPAL CODE TITLE 7 ENTITLED “HEALTH AND SANITATION” TO ADOPT CHAPTER 7.40 ENTITLED “MARIJUANA REGULATION,” AND DESIGNATING THE KODIAK CITY COUNCIL AS THE CITY’S LOCAL REGULATORY AUTHORITY ON MARIJUANA**

WHEREAS, the voters of Alaska approved Ballot Measure 2 on November 4, 2014; and

WHEREAS, Ballot Measure 2 provided for general legalization of marijuana and adopted a new chapter in the Alaska Statutes, which has been codified at Alaska Statute 17.38; and

WHEREAS, Alaska Statute 17.38.100(c) provides for the transfer of a portion of license application fees to the “local regulatory authority” in a municipality and thus it is in the City’s best interest to establish a “local regulatory authority” to ensure collection of any available fees; and

WHEREAS, the Kodiak City Council is hereby designated the “local regulatory authority” pursuant to Alaska Statute 17.38.100(c).

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

- Section 1: Section 7.40.010 Health and Sanitation, of the Kodiak City Code, is hereby amended to add a chapter designating the Kodiak City Council as the City’s local regulatory authority on marijuana as that term is used in Alaska Statutes Chapter 17.38 and any implementing legislation or rule-making.
- Section 2: This ordinance shall be effective one month following final passage and publication in accordance with Kodiak Charter Article II, Section 13.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading: September 14, 2017


Second Reading:

Effective Date:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager   
**Date:** September 28, 2017

**Agenda Item: IV. b. Second Reading and Public Hearing, Ordinance No. 1366, Amending Kodiak Municipal Code Title 8 Entitled “Public Peace, Safety, And Morals” to Adopt Kodiak City Code 8.40, “Prohibited Acts Regarding Marijuana,” to Prohibit the Extraction of Tetrahydrocannabinol (“The”) or any Cannabinoid by Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted By Law**

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**SUMMARY:** Alaska voters approved Ballot Measure 2 on November 4, 2014, which provided for general legalization of marijuana. Ordinance No. 1366 will prohibit the manufacture of marijuana products by use of solvents containing compressed flammable gases or solvent-based extraction methods. This will help protect the public health and safety against known and unreasonable risks of certain manufacturing processes of a legalized marijuana industry.

**PREVIOUS COUNCIL ACTION:**

- 2015-2016, received information at work sessions from Cynthia Franklin, Director of the Alaska Marijuana Control Office and City attorneys about State Ballot Measure 2 and other considerations regarding marijuana regulation in the City
- May 12, 2016, adopted Resolution No. 2016-16, Establishing a Marijuana Advisory Committee
- May 26, 2016, adopted Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City (opt out expired January 1, 2017)
- November 10, 2016, Council postponed acceptance of the recommendations from the City Marijuana Advisory Special Committee
- June 27, 2017, Council discussed and finalized the final recommendations from the City Marijuana Advisory Special Committee
- September 14, 2017, Council passed Ordinance No. 1366 in the first reading and advance to second reading and public hearing.

**ALTERNATIVES:**

- 1) Adopt Ordinance No. 1366 in the first reading and advance to second reading and public hearing, which is staff’s recommendation, because it is consistent with our attorney’s advice and recommended by the City Marijuana Advisory Special Committee.
- 2) Postpone, amend, or do not adopt Ordinance No. 1366.



**FINANCIAL IMPLICATIONS:** N/A

**LEGAL:** The City's attorney wrote Ordinance No. 1366.

**CITY MANAGER'S COMMENTS:** Staff recommends Council adopt this ordinance after the public hearing.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1366

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1366.

**CITY OF KODIAK  
ORDINANCE NUMBER 1366**

**AN ORDINANCE OF THE KODIAK CITY COUNCIL AMENDING KODIAK MUNICIPAL CODE TITLE 8 ENTITLED "PUBLIC PEACE, SAFETY, AND MORALS" TO ADOPT KODIAK CITY CODE 8.40, "PROHIBITED ACTS REGARDING MARIJUANA," TO PROHIBIT THE EXTRACTION OF TETRAHYDROCANNABINOL ("THC") OR ANY CANNABINOID BY USE OF MATERIALS OR METHODS DEEMED DANGEROUS TO PUBLIC HEALTH AND SAFETY, UNLESS OTHERWISE PERMITTED BY LAW**

WHEREAS, in 2014, Alaska voters approved a ballot measure legalizing personal recreational marijuana use and possession of marijuana and marijuana paraphernalia; and

WHEREAS, other jurisdictions that have legalized marijuana have experienced an increase in fires and explosions related to certain methods of manufacturing marijuana products, including the use of highly flammable materials and methods to extract THC oil from the marijuana plant, resulting in significant personal injury, death and property damage; and

WHEREAS, it is in the interest of the City of Kodiak and its residents to protect the public health and safety against known and unreasonable risks of certain manufacturing processes of a legalized marijuana industry.

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

Section 1: Kodiak City Code 8.40.010, "Certain manufacturing processes prohibited," is adopted to read as follows:

(a) It shall be unlawful for any person to: Manufacture a marijuana concentrate, hashish, or hash oil by use of solvents containing compressed flammable gases or through use of a solvent-based extraction method using a substance other than vegetable glycerin, unless the person is validly licensed and permitted in accordance with statute, regulation, or ordinance.

(b) Definitions. For purposes of this section.

1. "manufacture" means the preparation, compounding, conversion, or processing of marijuana, hashish, or hash oil, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the marijuana, hashish, or hash oil, or labeling or relabeling of its container. It includes the organizing or supervising of

the manufacturing process. It does not include the legally authorized planting, growing, cultivating, or harvesting of a plant.

2. "marijuana concentrate" means any product which, through manufacture, contains tetrahydrocannabinol (THC). Common names and types of product include "shatter", butane or CO2 hash oil, "ring pots", butter, hash, hashish, keif, oil, or wax.

(c) Seizure. Any marijuana as defined in AS 17.38.900, equipment, material, product, package or container possessed, used or intended to be used, or produced in violation of this section may be seized and held as evidence to be used in any future proceeding and may be disposed of as appropriate after their use for evidentiary purposes is no longer required, including in accordance with chapter 18.30 of this code.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading: September 14, 2017

Second Reading:

Effective Date:

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# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager *MT*  
**Thru:** Kelly Mayes, Finance Director *KMM*  
**Date:** September 28, 2017

**Agenda Item:** V. a. First Reading, Ordinance No. 1367, Amending Kodiak City Code 3.08.120, "Maximum Taxable Sale," to Increase the Maximum Amount of a Sale Service or Rental that is Subject to City Sales Tax to \$3,000

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**SUMMARY:** Since May 2016, City staff has been providing updates regarding the City's fiscal outlook. The State of Alaska provides funding to the City of Kodiak through various sources – capital grants, shared revenues, PERS on-behalf payments, and other miscellaneous sources. Due to economic conditions within the State, the State of Alaska budget has been experiencing a shortfall over the past three fiscal years. This shortfall at the state level has impacted funding provided to the City of Kodiak. The City revenues are generated through sales tax, property tax, city charges for services, and intergovernmental revenues. Due to continual decreases in city intergovernmental revenues, city staff has presented data to the City Council and Mayor throughout eighteen work sessions to consider the implications to the City. These discussions culminated into the direction from Council to move forward with three ordinances:

- Increase minimum taxable sale from \$750 to \$3,000
- To hold the maximum taxable sale on real property commercial and real property residential rentals to \$750
- Eliminate the 2% discount allowed to early sales tax filers

**PREVIOUS COUNCIL ACTION:** The Council has held eighteen work sessions directly relating to the City's fiscal outlook, budgeting, revenue projections, and sales tax. These began in May 2016 and were held approximately once per month (excluding June 2016, November 2016, and December 2016) culminating in the most recent work session that occurred on September 11, 2017. During the September 11, 2017, work session, Council directed City staff to move forward with the ordinances noted above.

**FINANCIAL IMPLICATIONS:** Financial implications for increasing the sales tax minimum taxable sale from \$750 to \$3,000, maintaining a \$750 maximum sale amount for real property residential and commercial rentals, and eliminating the 2% discount offered for timely filing of sales tax returns are projected to increase City revenues by approximately \$5.8 million within the first full year of implementation.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1367 in the first reading and advance to second reading and public hearing, which is staff's recommendation, because it is consistent with the Council's direction at the work session on September 11, 2017.
- 2) Postpone, amend, or do not pass Ordinance No. 1367 in the first reading.

**LEGAL:** The City's attorney wrote Ordinance No. 1367.

**CITY MANAGER'S COMMENTS:** These changes to our City's tax structure are necessary if City Council wishes to provide the level of service typically provided and look forward to upgrades in the City's aging infrastructure. We have established a long-range capital improvement plan, which will require millions of dollars in expenditures, over the next ten years or longer. In order to accomplish these goals, additional revenue will be necessary. This infrastructure includes essential life /safety as well as support to our primary economic industries. If adopted, this ordinance will become effective January 1, 2018. Staff supports this ordinance.

**NOTES/ATTACHMENTS:**

Attachment A: Ordinance No. 1367

**PROPOSED MOTION:**

Move to pass Ordinance No. 1367 in the first reading and advance to second reading and public hearing at the next special or regular meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1367**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING KODIAK CITY CODE 3.08.120, “MAXIMUM TAXABLE SALE,” TO INCREASE THE MAXIMUM AMOUNT OF A SALE SERVICE OR RENTAL THAT IS SUBJECT TO CITY SALES TAX TO \$3,000**

WHEREAS, it in the City of Kodiak’s best interest to exempt sales that exceed \$3,000 from sales tax during the 2018 fiscal year due, in part, to the fiscal challenges facing the City’s taxpayers,

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

**Section 1:** Kodiak City Code 3.08.120, entitled “Maximum taxable sale,” is hereby amended to read as follows:

- (a) **Except as otherwise provided in this section, if** ~~If~~ the sales price of an item or items or the charge for rental of any property or performance of any service exceeds **\$3,000** ~~\$750.00~~ for a single transaction, that portion of the price or charge in excess of **\$3,000** ~~\$750.00~~ shall be exempt from the tax levied by this chapter.
- (b) In determining the maximum tax payable with regard to a single transaction for the rendering of services on a substantially regular basis, which services are generally repetitive in nature and are to be performed over a period of time under a contract, each period for payment or partial payment under the contract shall be deemed a separate service transaction. The maximum tax payable shall be applicable to each deemed service transaction with tax payments to accrue and become payable at the time of filing the next quarterly return to be submitted following receipt of payment for the service.
- (c) For purposes of computing the maximum tax, a rental of property for a period in excess of one month shall be deemed as a series of rentals with each rental transaction terminating as a rental payment is made. The maximum sales tax payable shall be applicable to each deemed rental with tax payments to accrue and become payable at the time of filing the next quarterly return to be submitted following receipt of the rental.
- (d) For purposes of computing the maximum tax, a transaction which takes the form of a lease shall be deemed a rental or series of rentals unless a party to the transaction demonstrates that it constitutes a capital lease as defined in this chapter. A capital lease shall be treated as an installment purchase. The finance director shall have the final authority to determine whether or not a par-



ticular transaction constitutes a capital lease and may require the parties to such a transaction to submit such information or documentation as the finance director feels is reasonably necessary to make this determination. In making such a determination the finance director may rely upon the 1991 Comprehensive Governmental GAAP Guide by Larry P. Bailey (Miller Accounting Publications, Inc., a subsidiary of Harcourt Brace Jovanovich Publishers).

**Section 2:** This ordinance shall be effective on January 1, 2018 and no earlier than one month after its final passage and publication in accordance with Kodiak Charter Section 2-13.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager *MT*  
**Thru:** Kelly Mayes, Finance Director *KMM*  
**Date:** September 28, 2017

**Agenda Item:** V. b. First Reading, Ordinance No. 1368, Amending Kodiak City Code 3.08.040, “General Exemptions” and Kodiak City Code 3.08.120, “Maximum Taxable Sale,” To Exempt Real Property Rentals Exceeding One Month and \$750.00 From City of Kodiak Sales Tax

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**SUMMARY:** Since May 2016, City staff has been providing updates regarding the City’s fiscal outlook. The State of Alaska provides funding to the City of Kodiak through various sources – capital grants, shared revenues, PERS on-behalf payments, and other miscellaneous sources. Due to economic conditions within the State, the State of Alaska budget has been experiencing a shortfall over the past three fiscal years. This shortfall at the state level has impacted funding provided to the City of Kodiak. The City revenues are generated through sales tax, property tax, city charges for services, and intergovernmental revenues. Due to continual decreases in city intergovernmental revenues, city staff has presented data to the City Council and Mayor throughout eighteen work sessions to consider the implications to the City. These discussions culminated into the direction from Council to move forward with three ordinances:

- Increase minimum taxable sale from \$750 to \$3,000
- To hold the maximum taxable sale on real property commercial and real property residential rentals to \$750
- Eliminate the 2% discount allowed to early sales tax filers

**PREVIOUS COUNCIL ACTION:** The Council has held eighteen work sessions directly relating to the City’s fiscal outlook, budgeting, revenue projections, and sales tax. These began in May 2016 and were held approximately once per month (excluding June 2016, November 2016, and December 2016) culminating in the most recent work session that occurred on September 11, 2017. During the September 11, 2017, work session, Council directed City staff to move forward with the ordinances noted above.

**FINANCIAL IMPLICATIONS:** Financial implications for increasing the sales tax minimum taxable sale from \$750 to \$3,000, maintaining a \$750 maximum sale amount for real property residential and commercial rentals, and eliminating the 2% discount offered for timely filing of sales tax returns are projected to increase City revenues by approximately \$5.8 million within the first full year of implementation.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1368 in the first reading and advance to second reading and public hearing, which is staff's recommendation, because it is consistent with the Council's direction at the work session on September 11, 2017.
- 2) Postpone, amend, or do not pass Ordinance No. 1368 in the first reading.

**LEGAL:** The City's attorney wrote Ordinance No. 1368.

**CITY MANAGER'S COMMENTS:** This ordinance does not change the current tax structure for residential or commercial rental property. In fact it is meant to protect rental property from escalating sales taxes with the intent to continue the City Councils vision of maintaining affordable housing in our community. This cap in sales tax for property rental is set at \$750. If adopted, this ordinance will become effective January 1, 2018. Staff supports this ordinance.

**NOTES/ATTACHMENTS:**

Attachment A: Ordinance No. 1368

**PROPOSED MOTION:**

Move to pass Ordinance No. 1368 in the first reading and advance to second reading and public hearing at the next special or regular meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1368**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING KODIAK CITY CODE 3.08.040, “GENERAL EXEMPTIONS” AND KODIAK CITY CODE 3.08.120, “MAXIMUM TAXABLE SALE,” TO EXEMPT REAL PROPERTY RENTALS EXCEEDING ONE MONTH AND \$750.00 FROM CITY OF KODIAK SALES TAX**

WHEREAS, it is in the City of Kodiak’s best interest to exempt rentals of real property that are for longer than one month and more than \$750 from sales tax; and

WHEREAS, this exemption also serves as a “tax cap” and thus it is best codified in both the “general exemptions” and “maximum taxable sale” sections of the Kodiak City Code to provide Kodiak’s taxpayers with clarity when applying the Kodiak City Code,

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

Section 1: Kodiak City Code 3.08.040 entitled “General Exemptions” is amended as follows:

The following classes of sales, rentals, and services are exempt from the tax imposed by this chapter:

- (a) Casual and isolated sales and rentals of personal property, and services not rendered in the regular course of business of the seller;
- (b) Medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, psychiatrists, psychologists, and chiropractors; sales of medicinal preparations and drugs prescribed by medical doctors; and hospital services;
- (c) Sales, rentals, and services to religious and charitable organizations as defined in Sections 501(c)(1), (3), and (4) of the Internal Revenue Code, for the conduct of regular religious or charitable functions and activities, and not for the support or maintenance of the general membership or for communal living;
- (d) Sales of food in school cafeterias and lunchrooms that are operated primarily for students;
- (e) Sales and services by nonprofit schools and student organizations within schools for support of the school, organization, or extracurricular activities or events;
- (f) Sales, rentals, and services to the United States, the state of Alaska, and any agencies or political subdivisions thereof;
- (g) Dues or fees to clubs, labor unions, and fraternal organizations;

- (h) Subscriptions to newspapers and periodicals;
- (i) Sales of insurance and bonds of guaranty and fidelity;
- (j) Funeral charges;
- (k) Transportation charges of commercial airlines, air charters, and passenger ship companies; provided, however, that this exemption shall not extend to boat charter operations not affecting interstate commerce;
- (l) Services rendered by banking or savings and loan institutions or credit unions;
- (m) Services rendered by an employee to an employer in the normal course of employment;
- (n) Sales, rentals, and services which the city is prohibited from taxing by the Constitution or laws of the United States or the state of Alaska;
- (o) Retail sales in dining rooms or cafeterias of food furnished by nonprofit organizations under programs wholly or partially supported by government funds;
- (p) Nursery and babysitting services;
- (q) Long-distance transmission of telephone and telegraph messages;
- (r) Sales of heating fuel exclusively for residential uses (not to include fuel used in or on watercraft);
- (s) Sales of electrical service to exclusively residential units;
- (t) Sales of propane gas exclusively for residential uses (e.g., cooking, water heating, heating, clothes drying);
- (u) Sale of fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;
- (v) Sales, rentals, and services to nonprofit associations or organizations operated primarily for the purpose of planning, promoting, and conducting organized group activities for participants who are 18 years of age or less;
- (w) Charges for garbage/refuse collection for garbage/refuse generated exclusively by residential use;
- (x) Sales of water and sewer utility services for residential use; and

(y) Sales by religious or charitable organizations, as defined in Sections 501(c)(1), (3), and (4) of the Internal Revenue Code, of pull tabs, raffle and lottery tickets, bingo cards, and other tokens of participation in games of chance and contests of skill;

**(z) Charges for rental of any residential or commercial real property for a period in excess of one month that exceeds \$750.00 for a single transaction.**

Section 1: Subsection (a) of Kodiak City Code 3.08.120, entitled “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 \$750.00 for a single transaction, that portion of the price or charge in excess of \$750.00 shall be exempt from the tax levied by this chapter. **If the the charge for rental of any residential or commercial real property for a period in excess of one month exceeds \$750.00 for a single transaction, that portion of the charge in excess of \$750.00 shall be exempt from the tax levied by this chapter.**

Section 2: This ordinance shall be effective on January 1, 2018 and no earlier than 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:  
Second Reading:  
Effective Date:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager *MT*  
**Thru:** Kelly Mayes, Finance Director *KMM*  
**Date:** September 28, 2017

**Agenda Item:** V. c. First Reading, Ordinance No. 1369, Repealing Kodiak City Code 3.08.160, “Administrative Costs and Reimbursements,” to Eliminate the 2% Deduction for Timely Filing of Sales Tax Returns and Remittance of Collected Sales Tax

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**SUMMARY:** Since May 2016, City staff has been providing updates regarding the City’s fiscal outlook. The State of Alaska provides funding to the City of Kodiak through various sources – capital grants, shared revenues, PERS on-behalf payments, and other miscellaneous sources. Due to economic conditions within the State, the State of Alaska budget has been experiencing a shortfall over the past three fiscal years. This shortfall at the state level has impacted funding provided to the City of Kodiak. The City revenues are generated through sales tax, property tax, city charges for services, and intergovernmental revenues. Due to continual decreases in city intergovernmental revenues, city staff has presented data to the City Council and Mayor throughout eighteen work sessions to consider the implications to the City. These discussions culminated into the direction from Council to move forward with three ordinances:

- Increase minimum taxable sale from \$750 to \$3,000
- To hold the maximum taxable sale on real property commercial and real property residential rentals to \$750
- Eliminate the 2% discount allowed to early sales tax filers

**PREVIOUS COUNCIL ACTION:** The Council has held eighteen work sessions directly relating to the City’s fiscal outlook, budgeting, revenue projections, and sales tax. These began in May 2016 and were held approximately once per month (excluding June 2016, November 2016, and December 2016) culminating in the most recent work session that occurred on September 11, 2017. During the September 11, 2017, work session, Council directed City staff to move forward with the ordinances noted above.

**FINANCIAL IMPLICATIONS:** Financial implications for increasing the sales tax minimum taxable sale from \$750 to \$3,000, maintaining a \$750 maximum sale amount for real property residential and commercial rentals, and eliminating the 2% discount offered for timely filing of sales tax returns are projected to increase City revenues by approximately \$5.8 million within the first full year of implementation.



**ALTERNATIVES:**

- 1) Pass Ordinance No. 1369 in the first reading and advance to second reading and public hearing, which is staff's recommendation, because it is consistent with the Council's direction at the work session on September 11, 2017.
- 2) Postpone, amend, or do not pass Ordinance No. 1369 in the first reading.

**LEGAL:** The City's attorney wrote Ordinance No. 1369.

**CITY MANAGER'S COMMENTS:** Currently businesses within the City that collect and remit sales tax file returns quarterly. Included in this reporting is the option of retaining 2% of the tax collected to offset administrative costs; however not all businesses retain the 2% option. For those businesses that do retain the 2% option, the result is approximately \$200,000 in uncollected sales tax. These changes to our City's tax structure are necessary if City Council wishes to provide the level of service typically provided and look forward to upgrades in the City's aging infrastructure. We have established a long range capital improvement plan, which will require millions of dollars in expenditures, over the next ten years or longer. In order to accomplish these goals, additional revenue will be necessary. This infrastructure includes essential life /safety as well as support to our primary economic industries. If adopted, this ordinance will become effective January 1, 2018. Staff supports this ordinance.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1369

**PROPOSED MOTION:**

Move to pass Ordinance No. 1369 in the first reading and advance to second reading and public hearing at the next special or regular meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1369**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK REPEALING KODIAK CITY CODE 3.08.160, “ADMINISTRATIVE COSTS AND REIMBURSEMENTS,” TO ELIMINATE THE 2% DEDUCTION FOR TIMELY FILING OF SALES TAX RETURNS AND REMITTANCE OF COLLECTED SALES TAX**

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

- Section 1: Kodiak City Code 3.08.160, entitled “Administrative costs and reimbursements,” is hereby repealed.
- Section 2: This ordinance shall be effective on January 1, 2018, and no earlier than one month after its final passage and publication in accordance with Kodiak Charter Section 2–13.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Mike Tvenge, City Manager *WVT*

**Date:** September 28, 2017

**Agenda Item:** V. d. **Authorization of Professional Services Contract With Boyd, Chandler & Falconer, LLP for Legal Services**

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**SUMMARY:** On January 14, 2017, during the planning work session the Council determined they would proceed with a Request for Proposal (RFP) for legal services, in preparation of their legal services contract ending on June 30, 2017. In March 2017, a Request for Proposal for General Counsel Legal Services was released by the City Manager's office. On April 11, 2017, Council discussed their preferred attorney selection process at a work session and the membership of the Legal Counsel Review Committee was determined. The closure period of the RFP was on May 2, 2017, and the City received proposals from seven law firms in Alaska (Attachment B). In August, the Mayor, two City Councilmembers, the City Manager, and the City Clerk interviewed representatives of four firms under consideration as the City's primary legal counsel. The firm of Boyd, Chandler & Falconer, LLP is the recommendation for legal services by the Legal Counsel Review Committee on September 18, 2017.

**PREVIOUS COUNCIL ACTION:**

- BIRCH, HORTON, BITTNER, and CHEROT have provided legal services for the City of Kodiak from August 2000 to current.

**ALTERNATIVES:**

- 1) Authorize the legal services contract with Boyd, Chandler & Falconer, LLP, which is staff's recommendation.
- 2) Amend the contract.
- 3) Do not authorize the contract.

**FINANCIAL IMPLICATIONS:** The approved FY2018 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.

**CITY MANAGER'S COMMENTS:** I support the committee's choice to recommend Boyd, Chandler & Falconer, LLP as the City's legal team. Council will now make the decision as to which files should transfer from BHB to BCF. I will contact each law firm and inform them of our path forward. The attached contract with BCF has been reviewed by Brooks Chandler and is acceptable by their law firm.

SEPTEMBER 28, 2017  
Agenda Item V. d. Memo, Page 1 of 2

**ATTACHMENTS:**

Attachment A: Contract for Professional Legal Services

Attachment B: RFP Proposal List and Score

**PROPOSED MOTION:**

Move to authorize the contract dated September 28, 2017, with Boyd, Chandler & Falconer, LLP for professional legal services.

## CONTRACT FOR PROFESSIONAL LEGAL SERVICES

THIS CONTRACT ("Contract") is made this 28th day of September, 2017, by and between the City of Kodiak, of P. O. Box 1397, Kodiak, Alaska 99615 ("City"), and Boyd, Chandler & Falconer, LLP, an Alaska professional corporation, of 911 W. 8<sup>th</sup> Avenue, Suite 302, Anchorage, AK 99501 ("City Attorney" or "BCF").

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

1. **Scope of Services.** The City Attorney is expected to provide the City with general counsel legal services to include the following:
  - a. Serve as the legal advisor of and be responsible to the City Council, advise the City Manager and City Clerk concerning matters affecting the City, and perform other duties prescribed by the City Council.
  - b. Prepare legal documents including, but not limited to ordinances, resolutions, contracts, collective bargaining contracts, conveyances, leases, easements, and legal opinions as needed.
  - c. Be readily available for consultation with the City Council, City Manager, and City Clerk.
  - d. Provide representation in court and manage the activities of other attorneys who may represent the City in court.
  - e. Assist the City Manager in negotiations on the City's behalf and handle other legal matters as they may arise.
  - f. Draft opinion letters regarding, among other things, the interpretation of the City Code, state and federal laws, and policies.
  - g. Perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the City Council and/or City Manager.
  - h. Work effectively with the City Council, City Manager, City Clerk, and, when directed, with other public agencies and other entities with which the City has a legal relationship.
  - i. Attend at least one meeting annually in person and others telephonically, or in person, as requested.
  
2. **Access to Municipal Personnel.** The City Manager shall secure the cooperation of the City personnel as necessary to assist the City Attorney's performance hereunder.
  
3. **Contract Administrator.** The City Manager shall administer the contract on behalf of the City.
  
4. **Term.** The term of the professional services contract shall be one year initially. A longer term may be negotiated by the parties after the initial year. The contract may be terminated at the convenience of the City at any time with or without cause.

5. Compensation.
- a. Fees. The City Attorneys' shall be compensated at the following hourly rates:

\$225 – Mr. Chandler  
\$200 – Mr. Munson  
\$190 – Mr. Cacciola  
\$250 – Mr. Falconer  
\$100 – Paralegal Services

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 City Attorney 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 City Attorney will bill at standard hourly rates for actual attendance at meetings but will not charge for "standby" time while in attendance at a city council meeting.

b. Costs. The City Attorney 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 City Attorney shall submit itemized monthly billings to the Finance Department, P.O. Box 1397 for payment of all fees and costs for which the City Attorney seeks reimbursement under paragraph 5. Costs shall be itemized and described separately on each monthly invoice.

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

7. Termination of the City Attorney's Services. The City Attorney'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 commence to cure the default within fifteen (15) days after receiving notice and diligently work

to cure the default within thirty (30) days after receiving notice.

8. Duties Upon Termination. If the City Attorney's services are terminated, the City Attorney 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 City Attorney 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 City Attorney pursuant to this contract.

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

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

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: Mike Tvenge, City Manager  
P.O. Box 1397  
Kodiak, AK 99615  
Fax: (907) 486-8600

City Attorney: Boyd, Chandler, & Falconer, LLP  
Attn: Brooks W. Chandler  
911 W. 8<sup>th</sup> Avenue, Suite 302, Anchorage, AK 99501  
Fax: (907) 274-3698

13. Conflicts of Interest. The City Attorney 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 City Attorney 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 City Attorney 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 City Attorney shall perform its obligations hereunder as an independent City Attorney of the City. The City may administer the contract and monitor the City Attorney's compliance with its obligations hereunder.

15. Nondiscrimination. The City Attorney 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 City Attorney 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 City Attorney 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 City Attorney 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 City Attorney 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 City Attorney.

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 decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

21. Integration. This instrument embodies the entire contract 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 contracts, either oral or written, between the parties hereto.

22. Insurance. Boyd, Chandler & Falconer, LLP, at its expense shall provide the following insurance coverages for its performance under this Contract, and shall provide to the City certificates of insurance and/or policies acceptable to the City at the time this Contract is executed.

a. Professional Liability Insurance for all periods under the contract for claims up to a minimum amount of \$1,000,000 per claim.

b. Commercial General Liability Insurance, with a minimum of \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury, and property damage.

c. Workers' Compensation Insurance shall be provided and maintained for all employees of Boyd, Chandler & Falconer, LLP engaged in work under this Contract as required by AS 23.30.045 or any other applicable statutes or regulations. Boyd, Chandler & Falconer, LLP shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this Contract.

d. Additional Insurance Requirements are as follows; (1) list the City as an additional insured, including all elected and appointed City officials, all City employees and volunteers, all City boards, commissions, and/or authorities and their board members, employees, and volunteers, and waive subrogation; (2) provide coverage that is primary to the City and not contributing with any other insurance or similar protection available to the City, whether other available coverage be primary, contributing, or excess; and, (3) Require sixty (60) days written notice of cancellation, non-renewal, reduction, and/or material change addressed to: City Clerk, 710 Mill Bay Road, Room 220, Kodiak, Alaska 99615.

e. If the above coverage expires during the term of this Contract, Boyd, Chandler & Falconer, LLP shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date. Boyd, Chandler & Falconer, LLP shall not commence operations under this Contract until it has obtained the coverage required under the terms of this Contract. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska and acceptable to the City. If Boyd, Chandler & Falconer, LLP fails to comply with the insurance requirements of this Contract, the City may terminate this Contract on sixty (60) days written notice. Boyd, Chandler & Falconer, LLP covenants to maintain the professional liability insurance policy required in this Contract for the period of time in which a person may commence a civil action as prescribed by the applicable statute of limitations. The coverage required by this Contract shall cover all claims arising in connection with Boyd, Chandler & Falconer, LLP's performance under this Contract, whether or not asserted during the term of this Contract and even though judicial proceedings may not be commenced until after this Contract expires.

23. Inspection and Retention of Records. The City Attorney 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 City Attorney is to complete performance of this Contract. If City does not request delivery of the file for this matter before the end of the three year period, BCF will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to City. Upon request, and within a reasonable time, the City Attorney 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 City Attorney 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 City Attorney to submit its records to the City in lieu of the retention requirements of this section.

24. At sole option of City, all disputes concerning fees charged for professional services or costs incurred by BCF are subject to arbitration under Alaska Bar Rule 34 except for:

(1) disputes where the City seeks affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct; or

(2) dispute over fees which were charged more than six years earlier, unless BCF or City could maintain a civil action over the disputed amount.

(3) disputes where the fee to be paid by City or on City's behalf has been determined pursuant to State statute or by a court rule, order or decision.

25. City has been advised that if services performed pursuant to this Agreement involve litigation City may become liable for certain costs, fees and expenses incurred by other parties if City is not the prevailing party in the litigation. Such costs, fees, and expenses may include, but are not necessarily limited to, those identified in Alaska Civil Rules 79 and 82, copies of which are attached to this Agreement.

26. 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

By: \_\_\_\_\_  
Mike Tvenge, City Manager

Dated:

ATTEST:

BOYD, CHANDLER & FALCONER, LLP

\_\_\_\_\_  
Debra Marlar, City Clerk

By: \_\_\_\_\_  
Brooks W. Chandler, Partner

2017 Attorney RFP Scoring					
Legal Counsel RFP's Received	Primary Attorney(s)	RFP Points	Interview	Total Points	
Birch Horton Bitner & Cherot	Holly Wells	78	19	97	
Boyd Chandler & Falconer, LLP	Brooks Chandler	80	25	105	
Dillon & Findley PC and Simpson, Tillinghast, Sorensen & Sheehan, P.C.	Jessica Dillon James Sheehan	73	n/a	73	
Landye Bennett Blumstein, LLP	Mat Mead Leslie Need	77	21	98	
Jermain Dunnagan & Owens	Michael Gatti	80	22	102	
Hoffman Blasco, LLC	Megan J. Costello	66	n/a	66	
Joseph W. Evans	Joe Evans	62	n/a	62	

# **EXECUTIVE SESSION**

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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers

**From:** Mike Tvenge, City Manager *MT*

**Date:** September 28, 2017

**Agenda Item:** X. a. Discuss City Litigation

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**SUMMARY:** The City Council will enter into executive session to discuss City litigation.

**MOTION:**

Move to enter into executive session pursuant to AS 44.62.310(c)(1) to discuss matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.

SEPTEMBER 28, 2017  
Agenda Item X. a. Memo Page 1 of 1