

City of Kodiak Regular Council Meeting Agenda for May 24, 2018
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

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

- II. Previous Minutes**
 - Approval of Minutes of the May 10, 2018, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Proclamation: Declaring Salvation Army Week (May 14-20).....10
 - b. Proclamation: Declaring Mental Health Month.....12
 - c. Proclamation: Declaring Safe Boating Week.....14
 - d. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. Second Reading and Public Hearing, Ordinance No. 1377, Amending the Senior Citizen Sales Exemption and Ordinances Relating to the Procedure for Verifying Exempt Buyers.....18

- V. New Business**
 - a. First Reading, Ordinance No. 1378, Amending Title 5 With the Renumbering of KCC Chapter 7.40 to Chapter 5.24 and the Addition of New Sections for Marijuana Businesses, and Amending Chapter 8.48 to Reflect Alaska Marijuana Law26
 - b. First Reading, Ordinance No. 1379, Approving a Terminal Operation Contract and a Pier II Use and Upland Agreement With American President Lines LTD38
 - c. Election of Deputy Mayor64
 - d. Authorization to Cancel the June 28, July 26, and August 23, 2018, Regular Meetings and Authorize the City Manager to Schedule a Special Meeting if Needed68
 - e. Direct the Mayor and Two Councilmembers to Pursue an Independent, Third-party Review of the Process Followed in Recent Personnel Decisions70

- 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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<p>DRAFT</p>

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, MAY 10, 2018
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:31 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. City Manager Mike Tvenge, City Clerk Debra Marlar, and Assistant Clerk Shannon Hamer were also present.

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

II. PREVIOUS MINUTES

Councilmember Whiddon MOVED to approve the minutes of the April 26, 2018, regular meeting as presented.

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

III. PERSONS TO BE HEARD

a. Proclamation: Police Week and Peace Officers Memorial Day

Councilmember Arboleda read this proclamation, which urged 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.

Police Chief Putney accepted the proclamation.

b. Proclamation: EMS Week

Councilmember Whiddon read this proclamation, which urged residents to recognize the value and the accomplishments of emergency medical services providers.

Deputy Fire Chief Dorner accepted the proclamation.

c. Presentation of Funding From Sun'aq Tribe of Kodiak to the City for Maintenance of Routes for Mission Road and Shelikof Street

The Sun'aq Tribe of Kodiak and the City of Kodiak have entered into multiple agreements to include various City roads into the Bureau of Indian Affairs (BIA) Tribal Transportation Program. Beginning in 2007, a portion of Mill Bay and Mission Road were included. On May 25, 2016, Shelikof Street was included, which was extended for three years by Council on

August 10, 2017. These agreements with Sun'aq Tribe of Kodiak could bring Federal funding to Kodiak for street improvements.

On April 17, 2018, the City Manager entered into maintenance of routes agreement with the CEO of Sun'aq Tribe for these roads, which outlined the eligible maintenance activities under the Tribal Transportation Program. On April 26, 2018, the City was notified that the Sun'aq Tribe of Kodiak received federal funding in the amount of \$7,500 for Mill Bay and Shelikof Road.

Randy Boskofsky of the Sun'aq Tribe presented the \$7,500 check to the City Clerk, and said he looks forward to continuing the collaboration between the City and the Sun'aq Tribe.

d. Public Comments

Mary Ruskovich said she had over 30 letters with her from individuals who care deeply about this community and about Matt Van Daele. She stated that Van Daele is a courageous, respectful, and honorable human being. Ms. Ruskovich said the community is asking why this happened and why the Council is allowing this decision to move forward. Ms. Ruskovich said the Council has a duty and obligation to step in when they see a decision being made that negatively impacts those in this community and the future of Kodiak. She said that she and Matt love this community, and he is an asset to Kodiak and a very loyal person. Ms. Ruskovich believes Matt and the people of Kodiak deserve to know what has happened. She asked the Council to look at both sides and to explain what happened. Ms. Ruskovich ended with a quote by Tennison.

Bonnie Dillard stated that she supports what Ms. Ruskovich said regarding Matt Van Daele. She said she is deeply concerned because she believes this community needs young, intelligent, hard-working people and fresh ideas. She said when we treat them this way we are putting ourselves at risk because we are eliminating the brightest and the best. Ms. Dillard said she is deeply disturbed that we are losing someone like this, and that we might lose the whole family, because no one can afford to live in Kodiak without a job. She asked the Council to examine this issue and consider reinstating Matt Van Daele.

Judy Kidder stated her opinion that the City lacks transparency. She said the City is not providing information readily, and information is not easily accessible from the City like she believes it is from the Borough. Ms. Kidder believes that as an employee Matt deserves to know why he was let go and to be able to defend himself. She stated she has known Matt for quite some time and said he has integrity and vision for this community. Ms. Kidder said she cannot imagine him doing anything that would cause him to be fired. She suggested that if there is any way to step back and look at this from the bigger picture that the Council should do that with the interest of the future of Kodiak at heart. She believes the community needs Matt. Ms. Kidder voiced concern about the tone and example this sets for other employees.

Alexis Kwatcha stated that Matt is one of our own, a born and raised child of this community. He said he had a very good working relationship with him, and that he has a very good vision for this community. He said it frustrates him to see kids that grew up here, moved away, and came back to make a difference being pushed to the side. He believes we need to invest in people that will stay here. He said there needs to be transparency, and it should be out in the open for everyone to digest because it is very hard to swallow. Mr. Kwatcha stated that he is also very concerned about the derelict boat at the boatyard. He said he does not want it sitting there taking

up space and accumulating a bill that no one is going to pay. Mr. Kwacha pointed out that on April 4 black cod fishing was shut down for the Gulf of Alaska. He said black cod has been the driving force for the fisheries in this community and makes fishing viable.

Jennifer Culbertson stated she has been a government employee for over 20 years. She said that during this time she never lost sight of the fact that she was a public servant, and she would never have made a decision that affected another employee based on anger or personal issues. Ms. Culbertson said she cannot imagine why Matt was fired. She said she knows him personally and has worked with him, and believes Matt has a lot of integrity and is a hard worker. She said she is not seeing transparency, and told the Council that as public servants, they have a duty to serve the public and be transparent. Ms. Culbertson said she would appreciate hearing why Matt was fired, and if there was no good reason, she would like to see him reinstated.

Linda Madsen thanked the Council for their willingness to serve. She voiced concern about the sudden and unexplained termination of Matt Van Daele. Ms. Madsen believes Mr. Van Daele demonstrates the highest ideals and character to be able to serve our community well in the present and for the long run. She spoke of his listening and problem solving skills, talents as a manager, and love and commitment to Kodiak. She stated that Matt is an Alaskan and a confident leader who has a right to protect his professional reputation. Losing his talents would be a big loss to this community. Madsen doesn't believe our town can afford to forfeit what Matt can and is willing to give to this community. She requests and urges the City Council with their mandated role of ultimate authority to work to bring about the reinstatement of Matt Van Daele.

Zoya Herrnsteen via telephone said she was shocked by the termination of Matt Van Daele. She said she hopes the City is considering reinstatement. She believes it would be in the best interest of the community, as Matt is thoughtful, articulate, intelligent, hard working, and listens to the needs of the community. Ms. Herrnsteen said the City needs people like Matt making decisions for the future. She said that the citizens of Kodiak deserve an explanation regarding Matt's termination. She stated that he has given much to the community, and it would be in the best interest of Kodiak to give him his job back.

Jonathan Strong stated his comments related to the last work session where local marijuana regulations were discussed. He said he was on the City's Marijuana Advisory Committee and the Borough's Marijuana Task Force, and he is a certified addiction counselor. When it comes to pedestrian pathways, he believes the State regulations regarding pedestrian pathways from a marijuana facility to a school or church really refers to more urban areas. In Kodiak, he stated, the pedestrian pathways are not as defined, so he recommended the City adopt the buffer zone concept, which is measuring from the marijuana facility to another prohibited area 500 feet in a straight line. Mr. Strong believes that if you just use buffer zones it is easier for the marijuana facilities to measure where they can operate. He thanked the Council for their service and time.

IV. UNFINISHED BUSINESS

- a. Continued Second Reading and Public Hearing, Ordinance No. 1375(SUB), Levying Taxes in the Amount of 2 Mills and Appropriating Funds for the Expenses and Liabilities of the City of Kodiak for the Fiscal Year Commencing on the First Day of July 2018 and Ending on the Thirtieth Day of June 2019**

Ordinance No. 1375(SUB) provides for the adoption of the City of Kodiak's FY2019 budget. The budget document, which supports the ordinance, estimates all sources of revenue the City anticipates receiving between July 1, 2018, and June 30, 2019. The budget document also establishes an operating and capital expenditure plan for FY2019 that is based on staff's assessment of operational and community needs, and the Council's FY2019 budget goals. Staff made the FY2019 budget presentation to Council and the public during a special budget work session on March 10, 2018. Staff recommends Council adopt Ordinance No. 1375(SUB) after the second reading and public hearing.

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 Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. The motion passed.

b. Second Reading and Public Hearing, Ordinance No. 1376, Amending Chapter 3.28 of the Kodiak City Code to Condition Future Deposits Into the City Enhancement Fund on the Existence of a Minimum Fund Balance of Six Months of General Fund Operating Expenditures

This ordinance amends Chapter 3.28 Enhancement Fund deposits and adds additional criteria for inflation-proofing the Enhancement Fund. Over the most recent two fiscal periods, the City has been reviewing ways to provide services in a more efficient manner and to rebuild the fund balance of the General Fund. The City of Kodiak's Municipal Code Chapter 3.28 provides that at the completion of the prior year audit and issuance of financial statements, should the General Fund have a surplus, then one half of this surplus is transferred to the Enhancement Fund in the succeeding fiscal year. This ordinance amends the code to only transfer one-half of the General Fund surplus when the fund balance of the General Fund reaches six months of budgeted operating expenses. Other additional changes to this code section relate to inflation-proofing. A section was added to further clarify the transfers between the Enhancement Fund and the General Fund to ensure that inflation-proofing was achieving the desired results.

Councilmember Davidson MOVED to adopt Ordinance No. 1376.

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 Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. The motion passed.

V. NEW BUSINESS

a. First Reading, Ordinance No. 1377, Amending the Senior Citizen Sales Exemption and Ordinances Relating to the Procedure for Verifying Exempt Buyers

Mayor Branson read Ordinance No. 1377 by title. Since May 2016, City staff has been providing updates regarding the City's fiscal outlook, which have included reviewing each sales tax exemption offered by the City. During this review of sales tax exemptions, the City recommended to the Council a closer look at strengthening the requirements for the senior sales

tax exemption. Ordinance No. 1377 provides for the following changes to this exemption: lengthening residency requirements from 30 days to 365 days; requiring a power of attorney for certified use on behalf of the senior; not allowing exemptions for tobacco, alcohol, or marijuana purchases; written warnings and civil penalties for failure to appropriately collect taxes; and a requirement that the seller shall confirm the eligibility by checking the names on the certificate and government issued identification card. All previously issued senior exemption cards are valid through December 31, 2018.

Councilmember Bishop MOVED to pass Ordinance No. 1377 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 Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. The motion passed.

b. Authorization of Bid Award for FY2019 Petroleum Products

Each year the Public Works Department issues bids for the City's petroleum products. Bids were opened on April 24, 2018, for FY2019 petroleum products. Two bids were received. Petro Marine Services was the low bidder for unleaded gasoline and North Pacific Fuel was low bidder for heating and equipment fuel.

Councilmember Davidson MOVED to authorize award of the City's FY2019 petroleum products bid to Petro Marine Services for unleaded gasoline at \$2.67 per gallon and to North Pacific Fuel for heating and equipment fuel at \$2.395 per gallon and diesel ultra low sulfur at \$2.445 per gallon with funds coming from each department's FY2019 line items.

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

c. Appointment to Parks and Recreation Advisory Board

The student position on the Parks and Recreation Advisory Board is vacant, and an application has been received for appointment to the student position. The student application for the Parks and Recreation Advisory Board requires endorsement by the Student Council, which is relayed by the Student Council Advisor. The ex-officio student position term is set at the time of appointment. Appointment is made by the Mayor and confirmed by the Council.

Councilmember Whiddon MOVED to confirm the Mayoral advisory board appointment to the Parks and Recreation Advisory Board as stated.

Mayor Branson clarified that this appointment is through May 2019.

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

d. Appointment of Applicant to Fill Vacant Council Seat

Councilmember Gabriel Saravia resigned his seat on the City Council effective May 4, 2018. Kodiak City Code requires the Council to fill the position within 30 days. The position was

advertised in the newspaper and via public service announcements on the radio. Daniel Mckenna-Foster was the sole applicant and was interviewed by the Council at the April 24 work session.

Councilmember Bishop **MOVED** to appoint Daniel Mckenna-Foster to the vacant seat on the City Council for a term ending when the October 2, 2018, election has been certified.

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

VI. STAFF REPORTS

a. City Manager

Manager Mike Tvenge stated that he has approved the activities for the 2018 Crab Festival and parade, and waived the permit fee. He said the Crab Festival 60th anniversary will take place May 24-28, 2018. Mr. Tvenge stated that the Public Works and Parks Departments have been cleaning and planting flowers downtown. He said the Birch Street project continues to go well, and Birch Street will be closed by Memorial Day to through traffic. He said that the City has two employees retiring this month: Library Specialist Ellie Werbe and Public Works Director Mark Kozak. Mr. Tvenge stated that both employees will be missed and he thanked them for their hard work and dedication. He said that on May 22, 2018, at 7:30 p.m. there will be a speaker at the Kodiak Public Library discussing the tsunami inundation maps and evacuation routes.

b. City Clerk

Clerk Marljar stated that upcoming meetings include a May 22 work session, and a May 24 regular meeting. She said the Mayors will decide Friday if there will be a May joint work session. She said there is also a community forum on combining local governments on May 29 at 7 p.m. in the library.

Councilmember Whiddon added that there is a May 30 Fisheries Work Group Meeting at 10 a.m.

VII. MAYOR'S COMMENTS

Mayor Branson stated that she and Mayor Rohrer have been discussing having a community forum about consolidation, unification, and annexation so that community members are educated and have the information they need about each of these processes. She said this will be held at the Kodiak Public Library on May 29, 2018, at 7 p.m. and she invites the public to come.

Mayor Branson congratulated Public Works Director Mark Kozak on his retirement and 30 years with the City. She said he has done a wonderful job and amazes her with his knowledge. She congratulated Ellie Werbe as well and said she has done a great job as the children's librarian. Mayor Branson welcomed Daniel Mckenna-Foster as a new Councilmember and stated that she looks forward to working with him and knows he cares greatly about this community. Mayor Branson stated that the City Finance Director Kelly Mayes is going to be leaving soon, and said she has done a great job, and thanked her for her service to the City.

Mayor Branson stated that the Kodiak City Charter is clear that the City Manager, not the Council, is responsible for personnel decisions for the City. She said policy setting and budget decisions are the role of the Council. She said she knows that everyone wants to know what happened, but in order to protect the City, the employee, and to follow personnel laws there must be confidentiality. Mayor Branson assured the public that the decision was made fairly and by protocol.

VIII. COUNCIL COMMENTS

Councilmember Walker thanked and congratulated Mr. Kozak and wished good luck to his replacement Craig Walton. He thanked all of the City employees for doing what they do.

Councilmember Davidson said congratulations and thank you to Mr. Kozak. He said the City will be at a loss in his absence but Craig will do a great job. He also thanked Ellie for her tremendous work at the library. He said he knows the community is having a hard time with what happened, but the citizens appointed the Council to follow the City Charter, which means their abilities on personnel decisions are limited. He said he hopes the community experiences healing and understanding soon.

Councilmember Arboleda congratulated Ms. Werbe and Mr. Kozak on their retirements and said good luck to Craig Walton in his new position. She also congratulated Daniel Mckenna-Foster and thanked him for stepping up. She said she looks forward to working with him.

Councilmember Whiddon congratulated Mr. Kozak for 30 years with the City. He said he can't think of a time Mark couldn't come up with an answer, and without his presence he can't even imagine where we would be as a community. He said they are expecting great things from Craig Walton. He thanked Daniel Mckenna-Foster for stepping up. Councilmember Whiddon said there was an Economic Development Committee meeting yesterday, and they decided to put on a community-wide economic summit in October to help decide where the City needs to go as far as economic activities. He stated that if he was in the position of the public, he would be feeling the same way and have a lot of the same questions regarding the former deputy manager. He said there are specific restrictions on what Council can and cannot do when it comes to employee matters and they have to abide by those. He said they have complete faith in the manager and are confident that the decision he has made is in the best interest of the City.

Councilmember Bishop congratulated Mr. Kozak on 30 years with the City and Ms. Werbe on her retirement. He recognized Ted Hansen and Paul Sorongon for their work in the Building Department. He thanked the community members who participated in the community clean up. He thanked Daniel Mckenna-Foster for getting involved and said he looks forward to working with him. He wished a happy Mother's Day to all the mothers.

IX. AUDIENCE COMMENTS

Larry Van Daele acknowledged his conflict of interest, as he is Matt's father. Regarding Matt's termination, he asked: Was it of the people, by the people, and for the people? He said he knows that this is a personnel matter, and the Council doesn't think they can do anything about it but he thinks that is wrong. Van Daele stated that the manager is an employee of the Council, and if something he does isn't right they have the right and the duty to correct his actions. He spoke

about checks and balances in the local government. He questioned whether all the new employees will feel secure in their jobs during the probationary period.

X. EXECUTIVE SESSION

a. City-Ocean Beauty Lease Agreement – Post-Termination Issues

Councilmember Arboleda MOVED to enter into executive session pursuant to KCC 2.04.100(b)(1) and (c) to discuss legal matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.

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

The City Council entered into executive session at 8:38 p.m.

Mayor Branson reconvened the regular meeting at 8:58 p.m.

XI. OATH OF OFFICE TO NEWLY APPOINTED COUNCILMEMBER

KCC 2.28.080 requires elected officials to take and subscribe to the Oath of Office. The City Clerk administered the Oath of Office to Daniel Mckenna-Foster, the City’s newly appointed Councilmember.

XII. ADJOURNMENT

Councilmember Mckenna-Foster MOVED to adjourn the meeting.

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

The meeting adjourned at 9 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

PERSONS TO BE HEARD

MEMORANDUM TO COUNCIL

Date: May 24, 2018

Agenda Item: III. a. Proclamation: Salvation Army Week

SUMMARY: This proclamation recognizes the Salvation Army for its service to Kodiak and throughout Alaska

ATTACHMENTS:

Attachment A: Proclamation: Declaring Salvation Army Week

Proclamation

Recognizing National Salvation Army Week

May 14-20, 2018

Whereas, in 1954, the first National Salvation Army week was declared by the U.S. Congress and proclaimed by President Dwight D. Eisenhower as a reminder to Americans to give freely of themselves in service to others, and

Whereas, since arriving in Kodiak in 1993, The Salvation Army has provided humanitarian relief and spiritual guidance to people in Kodiak and throughout Alaska; and

Whereas, The Salvation Army members continue their compassionate tradition of helping wherever there is hunger, disease, destitution, and spiritual need and provides for those in the most need without discrimination; and

Whereas, National Salvation Army week was celebrated May 14 through May 20; and

Whereas, The Salvation Army should be commended for its selfless dedication to helping meet the physical and spiritual needs of people across Alaska.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim the week of May 14 through May 20, 2018, as

National Salvation Army Week

in Kodiak and urge all to express their appreciation for The Salvation Army's good works and to follow their example of serving a cause greater than themselves.

Dated this 24th day of May 2018.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 24, 2018

Agenda Item: III. b. Proclamation: Declaring Mental Health Month

SUMMARY: This proclamation recognizes the importance of mental health treatment and encourages the community to increase awareness and understanding of mental health, the steps one can take to protect their mental health, and the need for appropriate and accessible services for all people with mental illnesses.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Mental Health Month

Proclamation Declaring Mental Health Month

WHEREAS, mental health is essential to everyone's overall health and well-being; and

WHEREAS, all Americans experience times of difficulty and stress in their lives; and

WHEREAS, prevention is an effective way to reduce the burden of mental illnesses; and

WHEREAS, there is a strong body of research that supports specific tools that all Americans can use to better handle challenges and protect their health and well-being; and

WHEREAS, mental illnesses are real and prevalent in our nation; and

WHEREAS, with early and effective treatment, those individuals with mental illnesses can recover and lead full, productive lives; and

WHEREAS, each business, school, government agency, healthcare provider, organization, and citizen shares the burden of mental illnesses and has a responsibility to promote mental wellness and support prevention efforts.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim May 2018, as

MENTAL HEALTH MONTH

in Kodiak and call upon the citizens, government agencies, public and private institutions, businesses, and schools in Kodiak, Alaska to increase awareness and understanding of mental health, the steps our citizens can take to protect their mental health, and the need for appropriate and accessible services for all people with mental illnesses at all stages.

Dated this 24th day of May 2018.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 24, 2018

Agenda Item: III. c. **Proclamation: Declaring Safe Boating Week**

SUMMARY: This proclamation urges residents who boat to wear Coast Guard-approved personal flotation devices and to practice safe boating habits.

ATTACHMENTS:

Attachment A: Proclamation Declaring Safe Boating Week

Proclamation

National Safe Boating Week

May 19-25, 2018

WHEREAS, recreational boating is fun and enjoyable, and we are fortunate that Kodiak Island has extraordinary resources to accommodate a variety of commercial and recreational boating demands; and

WHEREAS, weather and sea conditions in Alaskan waters present dangers year-round causing boating activity to be risky for the unprepared; and not knowing or obeying the Navigation Rules, drinking alcohol or taking drugs while operating a boat, or choosing not to wear a life jacket are clearly unwise decisions; and

WHEREAS, while the rate of recreational boating deaths has been decreasing, more than 700 people still die each year in boating-related accidents in the U.S., and 80 percent of these fatalities are due to drowning; and

WHEREAS, 83 percent of those involved in these drowning fatalities were not wearing a life jacket and a significant number of boaters' lives could have been saved had they worn their Coast Guard-approved personal flotation device; and

WHEREAS, boating knowledge and skills may be learned locally in classes offered by the United States Coast Guard Auxiliary, and are important in reducing human error and improving judgment; and

WHEREAS, the United States Coast Guard Auxiliary also offers a free Vessel Safety Check for any recreational boat;

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby support the goals of the Safe Boating Campaign and proclaim May 19 through May 25, 2018, as

Safe Boating Week

in Kodiak and the start of a year-round effort to promote safe boating. I urge all those who boat to "Wear It" and practice safe boating habits.

Dated this 24th day of May 2018.

City of Kodiak

Pat Branson, Mayor

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UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Thru: Kelly Mayes, Finance Director

Date: May 24, 2018

Agenda Item: **IV. a. Second Reading and Public Hearing, Ordinance No. 1377, Amending the Senior Citizen Sales Exemption and Ordinances Relating to the Procedure for Verifying Exempt Buyers**

SUMMARY: Since May 2016, City staff has been providing updates regarding the City's fiscal outlook, which has included reviewing each sales tax exemption offered by the City. During this review of sales tax exemptions, the City recommended to the Council a closer look at strengthening the requirements for the senior sales tax exemption. Ordinance No. 1377 provides for the following changes to this exemption: lengthening residency requirements from 30 days to 365 days; requiring a power of attorney for certified use on behalf of the senior; not allowing exemptions for tobacco, alcohol, or marijuana purchases; written warnings and civil penalties for failure to appropriately collect taxes; and a requirement that the seller shall confirm the eligibility by checking the names on the certificate and government issued identification card. All previously issued senior exemption cards are valid through December 31, 2018. Staff recommends Council adopt Ordinance No. 1377 after the second reading and public hearing.

PREVIOUS COUNCIL ACTION: The Council has held twenty-nine work sessions directly relating to the City's fiscal outlook, budgeting, revenue projections, alternative revenue sources, and sales tax exemptions. These began in May 2016 and were held approximately once per month culminating in the most recent work session held on April 24, 2018. During the April 24, 2018, work session, the Council directed City staff to move forward with the ordinance noted above. On May 11, 2018, Council passed Ordinance No. 1377 in the first reading and advanced to second reading and public hearing at the next regular or special Council meeting.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1377 after the second reading and public hearing, which is staff's recommendation, because it is consistent with Council's direction at the work session on April 24, 2018.
- 2) Postpone, amend, or do not adopt Ordinance No. 1377.

FINANCIAL IMPLICATIONS: Financial implications would be minimal. With increased strengthening of this ordinance, additional staff, which has been included in the upcoming FY2019

budget, would be considered necessary to administer this program (along with other previously passed changes to sales tax and sales tax exemptions).

LEGAL: This ordinance has been reviewed by the City's attorney.

STAFF RECOMMENDATION: Staff recommends Council adopt Ordinance No. 1377 after the second reading and public hearing.

CITY MANAGER'S COMMENTS: *[Clerk's Note: The City Manager was out of town when the packet was prepared. Any additional comments will be made at the regular meeting.]*

ATTACHMENTS:

Attachment A: Ordinance No. 1377

MOTION:

Move to adopt Ordinance No. 1377.

**CITY OF KODIAK
ORDINANCE NUMBER 1377**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
THE SENIOR CITIZEN SALES EXEMPTION AND ORDINANCES RELATING TO
THE PROCEDURE FOR VERIFYING EXEMPT BUYERS**

WHEREAS, the City of Kodiak grants exemption from City sales tax to certain buyers;
and

WHEREAS, under the existing ordinances these exemptions are subject to abuse by
ineligible persons; and

WHEREAS, the Council continues to support the policy of exempting certain buyers City
sales tax;

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

Section 1: Sections 2, 3 and 4 of this ordinance are of a permanent and general nature and
shall be included in the Kodiak City Code.

Section 2: Section 3.08.055 Senior citizen exemption, of the Kodiak City Code, is hereby
amended to read as follows: [deleted text is ~~struck through~~; added text is
underlined]

3.08.055 Senior citizen exemption

(a) A person 65 years of age or older who has resided in the Kodiak Island Borough for a
continuous period of ~~30~~ 365 days or more may obtain a senior citizen sales tax exemption
certificate by submitting a completed application to the finance director on a form
provided by the city. The application must be signed by the applicant under oath and shall
contain information relating to the applicant's residence, marital status, rental or
ownership of occupied dwelling, persons occupying the dwelling, and other information
reasonably necessary to determine the applicant's eligibility and monitor the use of the
exemption certificate. The applicant shall also submit for inspection and copying a birth
certificate, or other evidence determined by the finance director to be adequate, to
establish the applicant's age. The exemption certificate shall be issued without charge in
the name of the applicant and shall be valid for a period of three years.

~~(b) An exemption certificate issued to a person who is prevented or impaired from
personally making purchases or payments by a physical or mental infirmity may
designate not more than two other persons who shall be authorized to utilize the
certificate when making purchases and payments on behalf of and for the sole use and
benefit of the certificate holder or the certificate holder's spouse.~~

(b) When applying for an exemption certificate, a senior may request one other person to be authorized to present the certificate when making purchases and payments on behalf of and for the sole use and benefit of the senior and the senior's spouse by providing a duly authorized power of attorney granting the designated person lawful authority to enter into transactions involving tangible personal property on the senior's behalf as the senior's agent.

(c) (1) No person may utilize a senior citizen tax exemption certificate to purchase or acquire property or rentals that are to be consumed or utilized by a person or persons other than the certificate holder, the certificate holder's spouse, a dependent of the certificate holder, or another person or persons who would be qualified to have a senior citizen exemption certificate issued to them under this section. As used in this section, "dependent" means a child of the certificate holder or the certificate holder's spouse who resides with the certificate holder when not attending school and who receives more than one-half of his or her support from the certificate holder.

(2) Notwithstanding any other provisions of this chapter, no person may utilize a senior citizen tax exemption certificate to purchase or rent an item or service which will be used or consumed in a commercial business or enterprise or for the production of income.

(d) ~~Persons making sales or rentals to or for the benefit of a senior citizen which are exempt from tax under the provisions of this section shall confirm the identity of the person or persons presenting an exemption certificate, if not personally known to them, by requesting identification and shall maintain records of each such exempt sale with an appropriate reference to the senior citizen exemption certificate number. If the person making the sale or rental has~~ with reason to believe that it is not for use or consumption by a senior citizen or other qualified user, because of the volume, type of purchase, or other facts, that person shall promptly report the possible fraudulent use of the exemption certificate to the city finance director. The finance director shall investigate the sale or sales, and if the finance director determines that the exemption certificate is being abused, the matter shall be referred to the city manager, who shall conduct such further investigation as is determined necessary and present the facts to the council for authorization to initiate prosecution or revocation action, or both.

(e) Senior citizen exemption certificates shall be subject to revocation as provided in KCC 3.08.070.

(f) A senior citizen exemption certificate shall not authorize the purchase of any tobacco product, marijuana product, or alcoholic beverage without sales tax having been added to the purchase price and paid by the buyer, and no person shall sell any tobacco product, marijuana product, or alcoholic beverage without collecting taxes otherwise required by this chapter.

Section 3: Section 3.08.090 Addition of tax, of the Kodiak City Code, is hereby amended by the addition of a new subsection (g) to read as follows:

3.08.090 Addition of tax

(g) The seller shall add the tax in accordance with this section unless the buyer is exempt under KCC 3.08.040(f) or presents a certificate of exemption for an exemption under KCC 3.08.040(c) or (v), 3.08.050, or 3.08.055 and the seller confirms the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the exemption certificate.

Section 4: Section 3.08.190 Failure to collect taxes, of the Kodiak City Code, is hereby amended to read as follows: [deleted text is ~~struck through~~; added text is underlined]

3.08.190 Failure to collect taxes

(a) A person required by this chapter to collect sales taxes levied, who fails to collect such taxes on taxable transactions, shall be assessed with a civil penalty of double the tax that should have been collected, as determined by an audit.

(b) If any of the following defenses are established, the civil penalty imposed by this section shall be waived:

(1) The securing, in good faith, of a certificate of exemption ~~or a statement of eligibility for exemption~~ from the person against whom the tax would have been levied and confirmation of the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate;

(2) Proof of a belief, based upon advice of legal counsel or the city finance director, that the sale, rental, or rendering of service was not subject to the tax levied by this chapter, accompanied by proof of notification in writing to the city manager based on such belief prior to or immediately following the transaction; or

(3) A reasonable attempt, in good faith, to collect the tax from the buyer.

(c) If a seller is found to have failed to confirm the eligibility of a person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate, the seller, shall be assessed a civil penalty of \$100 per violation or, at the finance director's sole discretion, a written warning in lieu of this penalty.

(1) The finance director shall give written notice to the seller that the seller was found to have failed to confirm the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate.

(2) The finance director's determination that a seller failed to confirm the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate may be appealed by the seller in accordance with 3.08.180(d) and 3.08.070 (c).

(e d) A purchaser, renter, or other person obtaining property or services who fails to pay the tax levied by this chapter on a taxable transaction shall be assessed with a civil penalty of double the taxes that should have been paid.

(d e) The civil penalties imposed by this section shall be in addition to any other civil or criminal penalties imposed by this chapter.

Section 5: Section 6 of this ordinance is of this ordinance is not of permanent and general nature and shall not be included in the Kodiak City Code.

Section 6: All exemption certificates issued prior to the adoption of this ordinance shall remain valid through December 31, 2018.

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: May 10, 2018

Second Reading:

Effective Date:

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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers,
From: Mike Tvenge, City Manager and Debra Marlar, City Clerk
Date: May 24, 2018

Agenda Item: V. a. **First Reading, Ordinance No. 1378, Amending Title 5 With the Renumbering of KCC Chapter 7.40 to Chapter 5.24 and the Addition of New Sections for Marijuana Businesses, and Amending Chapter 8.48 to Reflect Alaska Marijuana Law**

SUMMARY: On November 4, 2014, Alaska voters passed Ballot Measure 2, An Act to Tax and Regulate the Production, Use, and Sale of Marijuana, which initiated the State and Statewide municipalities to begin to determine how to regulate marijuana on both State and municipal levels. Subsequently, the Council adopted Resolution No. 2016-16, Establishing a Marijuana Advisory Special Committee, to recommend guidelines for implementing taxation, regulation, production, sale, and use of marijuana within the Kodiak City limit. The Committee met nine times from June 2016 through April 2017 and brought forward for Council consideration regulations and policies governing marijuana establishments within the Kodiak City limit. Staff met with Kodiak Island Borough Planning officials to discuss zoning and land use regulations pertaining to marijuana. Staff then met with the City attorney and requested he draft an ordinance to include the recommendations accepted by the City Council in October 2017. The Council reviewed the ordinance at the May 10, 2018, work session, requested that all schools, licensed day care facilities, and parks be included in the “buffer zone” and voiced a consensus to bring the ordinance forward at a regular meeting. The definition of “school ground” now includes post-secondary and licensed day cares.

The ordinance before the Council has two additional changes from the draft reviewed at the work session. In addition to the changes noted above, the ordinance was amended to address the following housekeeping issues:

- “or be addicted to the use of” is deleted from 8.48.010 because it is unconstitutional to penalize someone for being an addict.
- Marijuana references are deleted from the drug paraphernalia section, 8.48.020. Several places state “except as provided by AS 17.38.” This is because marijuana is still a scheduled substance under AS 11.71 so simply deleting the marijuana terms would technically be insufficient to take it out of the universe of drug paraphernalia.

PREVIOUS COUNCIL ACTION:

- January 27, 2016, joint work session – Cynthia Franklin, Director of the Marijuana Control Board presented information about marijuana laws to the Council and Assembly.
- April 12, 2016, City work session – City attorney Holly Wells presented marijuana information to the Council.
- April 26, 2016, City work session – the Council voiced a consensus and directed staff to prepare an ordinance to opt out of marijuana establishments within the Kodiak City limit for not more than six months and directed that a resolution be brought forth to establish a marijuana advisory committee appointed by the Council to be comprised of two Councilmembers, two Kodiak business owners, and two City resident at-large members to review and recommend regulations and policies for establishing marijuana establishments within the Kodiak City limit.
- May 10, 2016, City work session – the Council reviewed applications from City business owners and City resident at large members for appointment to the Marijuana Advisory Special Committee.
- May 12, 2016, regular meeting – the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee.
- May 26, 2016, regular meeting – the Council adopted Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City.
- November 10, 2016, work session – Councilmembers Bishop and Arboleda presented the Marijuana Committee’s recommendations to the Council.
- September 28, 2017, regular meeting – the Council adopted Ordinance No. 1365, Amending Kodiak Municipal Code Title 7 Entitled "Health and Sanitation" to Adopt Chapter 7.40 Entitled "Marijuana Regulation," and Designating the Kodiak City Council as the City's Local Regulatory Authority on Marijuana.
- September 28, 2017, regular meeting – the Council adopted Ordinance No. 1366, Amending Kodiak Municipal Code Title 8 Entitled "Public Peace, Safety, And Morals" to Adopt Kodiak City Code 8.40, "Prohibited Acts Regarding Marijuana," to Prohibit the Extraction of Tetrahydrocannabinol ("The") or any Cannabinoid by Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted By Law.
- October 12, 2017, regular meeting – the Council accepted the recommendations from the City Marijuana Advisory Special Committee.
- May 8, 2018, work session – the Council reviewed a draft ordinance to implement recommendations of the City Marijuana Advisory Special Committee.

ALTERNATIVES:

- 1) Pass Ordinance No. 1378 in the first reading and advance to second reading and public hearing. This option is recommended.
- 2) Amend or postpone Ordinance No. 1378.
- 3) Do not pass Ordinance No. 1378.

FINANCIAL IMPLICATIONS: N/A

LEGAL: The City's attorney wrote Ordinance No. 1378 and the memo explaining the ordinance.

CITY MANAGER'S COMMENTS: [*Clerk's Note: The City Manager was out of town when the packet was prepared. Any additional comments will be made at the regular meeting.*]

ATTACHMENTS:

Attachment A: Ordinance No. 1378, Amending Title 5 With the Renumbering of KCC Chapter 7.40 to Chapter 5.24 and the Addition of New Sections for Marijuana Businesses, and Amending Chapter 8.48 to Reflect Alaska Marijuana Laws

Attachment B: Attorney's Memo Regarding Marijuana Business Ordinance

PROPOSED MOTION:

Move pass Ordinance No. 1378 in the first reading and advance to second reading and public hearing at the next special or regular Council meeting.

CITY OF KODIAK
ORDINANCE NUMBER 1378

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

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

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

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

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

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

5.24.005. Definitions.

As used in this chapter the following definitions shall apply:

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

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

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

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

5.24.020. License Application Review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.24.040. Manufacture and Sale of Marijuana Edibles Prohibited.

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

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

8.48.010 Use restrictions.

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

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

8.48.020 Sale or possession of drug paraphernalia.

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

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

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

(d) This section shall not apply to:

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

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

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

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

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

BOYD, CHANDLER & FALCONER, LLP

Attorneys At Law
 Suite 302
 911 West Eighth Avenue
 Anchorage, Alaska 99501
 Telephone: (907) 272-8401
 Facsimile: (907) 274-3698
 bcf@bcfaklaw.com

MEMORANDUM

To: Kodiak City Council
 From: Charles Cacciola
 Date: March 29, 2018
 Re: Marijuana Business Ordinance

In November 2016, the Marijuana Advisory Committee, formed by council resolution, made 14 regulatory recommendations.¹ We were asked to draft implementing ordinances.

The Kodiak Island Borough, following joint City-Borough work sessions and as the local zoning authority, amended the Borough zoning code to zone marijuana businesses. With modest exception, Borough zoning of marijuana businesses reflects the Marijuana Advisory Committee's recommendations. The proposed ordinance accompanying this memo implements the Marijuana Advisory Committee's non-zoning recommendations.

This memo provides a brief summary of the proposed ordinance followed by a section identifying how each of the Advisory Committee's recommendations are accomplished.

A. Proposed Ordinance

The proposed ordinance renumbers Chapter 7.40 to 5.24, moving ordinances regulating marijuana businesses to the Business License and Regulation title. It also prohibits commercial manufacture and sale of marijuana edibles, provides an additional setback from schools, and, most importantly, establishes a procedure for the council to review and protest marijuana establishment license applications.

¹ See City Manager Tvenge Memo to Council (October 12, 2017).
 MEMO: MARIJUANA BUSINESS ORDINANCE

The proposed license application review procedure (5.24.020) has three key components. First, respective city departments review the application to determine if the proposed license adheres to legal requirements. Based on this review, the administration prepares a report and recommendation for the council’s consideration. The second component is a public hearing. The third component is council action on the application. Subsection (d) identifies bases upon which the council may decide to protest (or conditionally protest) a license. Codifying these bases is intended to provide guidance the council and applicants. But the council, acting as the local regulatory authority on marijuana, retains authority to protest on any non-arbitrary or capricious ground, including ones not identified in the subsection.

The proposed definition for “school ground” includes any public or private school. It does not include UAA or other facilities used for adult education, nor does it include licensed daycares. This definition can be narrowed or broadened to achieve the council’s goals.

B. Marijuana Advisory Committee’s Recommendations

1) *Establish a 500’ separation distance from any school property line to a public entrance of a marijuana establishment.*

Under state law, the 500’ distance from a school is measured “by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the school ground . . .” The Borough has a similar zoning provision (separate from borough regulation of marijuana businesses outside of cities set forth in Chap 5.02), KIBC 17.15.120.

Ms. Marlar clarified that it was the committee’s specific intent for this distance to be measured differently under city ordinance than under state law. The proposed Section 5.24.030 specifies that a marijuana business cannot be located within 500’ of school *as measured in a straight line to the school property boundary*. A marijuana license applicant would need to comply with both the state and City buffer for school grounds.

2) *Adhere to state rules and regulations regarding the 500’ pedestrian pathway separation from a marijuana establishment to jails, churches, etc.*

No action is presently needed to accomplish this goal. The City ensures that an applicant satisfies this requirement during review of the license application.

3) *Regulate retail stores within the City limits to industrial, light industrial, business, and business retail.*

The Borough zoning code reflects this recommendation.

4) *Comply with State of Alaska laws for retail stores within the City limits.*

No action is presently needed to accomplish this goal. The City ensures that an applicant satisfies these requirements during review of the license application.

5) *Adhere to State of Alaska laws for personal growing of marijuana.*

No action is presently needed to accomplish this goal. Cultivation for personal consumption in excess of the allowances set forth by state law is subject to criminal penalties and can be enforced by the Kodiak Police Department.

6) *Establish a 500' pedestrian pathway separation from a marijuana cultivation facility to jails, churches, etc.*

No action is presently needed to accomplish this goal. The City ensures that an applicant satisfies these requirements during review of the license application

7) *Regulate commercial growing within the City limits to industrial, light industrial, business, and business retail areas.*

This recommendation is substantively satisfied by Borough code. The Borough zoning code allows for cultivation by right in the light industrial, industrial, and conservation districts. Cultivation is a condition use in the retail business district and business district. Additionally, the Borough code allows limited cultivation facilities (not more than 500 square feet under cultivation) as a conditional use in the rural residential districts on lots 40,000 square feet or larger.

8) *Adopt attorney's recommended ordinance Designating City Council as the City's Local Regulatory Authority on Marijuana and incorporate a process by which the Council is aware of new licenses and has the opportunity to object.*

Ordinance No. 1365 was adopted September 28, 2017. That ordinance did not establish a procedure for reviewing and protesting license applications. The proposed ordinance contains such a procedure.

We also recommend “moving” the designation from its existing location in Title 7 (Health and Sanitation) to Title 5 (Business Licenses and Regulation). There is no substantive change, but a chapter of regulations for marijuana commerce is a better fit for Title 5.

9) *Adopt attorney's recommended ordinance Prohibiting 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.*

The provision is codified as KCC 8.40.010.

10) *Approve limited cultivation licenses in rural residential lots 20,000 square feet or greater with issuance of a conditional use permit and in compliance with Kodiak Island Borough zoning requirements.*

The City cannot accomplish this goal because the Borough requires that a residential lot be 40,000 square feet or greater. The City cannot be more permissive than the Borough.

11) *Approve manufacturing facilities in industry, light industry, and both business and business retail districts with a conditional use permit.*

The Borough code allows manufacturing facilities *by right* in industry, light industry, retail business, and general business.

The Committee recommended that manufacturing facilities be a conditional use in the latter two districts. Through discussion with Mr. Tvenge and Ms. Marlar, we determined that the Advisory Committee's recommendation and existing Borough zoning are not sufficiently different to justify additional City regulation, particularly where the Borough, not the City, wields zoning authority.

12) *Allow testing facilities in industrial, light industrial, business, and conservation districts.*

This recommendation is substantively satisfied by Borough code. The Borough Code allows for testing facilities by right in all of the above districts except for the conservation district.

13) *Do not assess a local marijuana entity application fee, licensing fee, and special sales tax at this time. (Regular sales tax would still apply.)*

No action necessary.

14) *Prohibit edibles within the City of Kodiak at this time and discuss again with the City Council in one year whether to permit edibles as a part of a manufacturing process.*

Section 5.24.040 prohibits the commercial manufacture and all sale of marijuana edibles. Prohibiting the creation of marijuana edibles for personal consumption is not feasible.

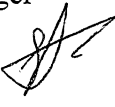
It is worth noting that the Borough also prohibits commercial manufacture of marijuana edible, but the Borough restriction does not apply in cities.

Please let us know if you have any further questions regarding this matter.

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Thru: Lon White, Harbormaster 

Date: May 24, 2018

Agenda Item: V. b. **First Reading, Ordinance No. 1379, Approving a Terminal Operation Contract and a Pier II Use and Upland Agreement With American President Lines LTD**

SUMMARY: Ordinance No. 1379 authorizes the City of Kodiak to enter into the following agreements with American President Lines, LTD (APL): a Pier II Use and Upland Lease Agreement for a term of five years, plus an option for two five year renewals upon mutual agreement; and a Terminal Operating Contract for a term of five years, plus two five year renewals upon mutual agreement.

PREVIOUS COUNCIL ACTION: At the April 24 and May 8 work sessions, Council received a briefing on the proposed agreements and operation plan for APL to work freight barges across Pier II and the need for upland staging and a Terminal Operating Contract that would allow APL to stevedore its own vessels.

BACKGROUND: APL has served Kodiak for over 40 years as a commercial freight carrier and has maintained an office in the Pier II warehouse the entire time, currently subleasing from the primary tenant Matson. Additionally, in the past, APL leased over 40,000 square feet of Pier II uplands for container handling and storage. As of June 30, 2018, Matson has terminated APL's office lease and advised APL that their containers will no longer be permitted on Matson Property at Lash Terminal in Women's Bay. These factors have prompted APL to seek an alternative location to conduct their commercial freight business in Kodiak, a business that is critical to maintain reliable and competitive freight services to Kodiak.

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

PND Engineers conducted an evaluation of Pier II specifically to address the anticipated loads placed on the dock and determined the dock is capable of safely supporting the loads from APL operations.

The Terminal Operating Contract grants APL the right to stevedore (load and unload commercial freight) for its own vessels, using existing long-shore personnel. Additionally, APL would have the non-exclusive right to stevedore other vessels requiring stevedoring services at Pier II. Currently, the City has a Terminal Operating Contract with Matson. Provisions in the Matson contract and the Port Tariff specifically allow for another stevedore to operate at Pier II to insure fair competition.

ALTERNATIVES:

- 1) Approve the new agreements with APL as drafted. This is staff's recommendation and the option less likely to interrupt critical freight service to and from Kodiak.
- 2) Council could choose to renegotiate the agreements, amend them, or reject them entirely. This may affect APL's ability to maintain a viable operation in Kodiak and is not recommended by staff.

FINANCIAL IMPLICATIONS: Under the agreement, APL will pay warfage and dockage fees at 10 percent off Tariff rates based on a minimum of 50,000 tons of cargo over the dock. If 50,000 tons is not met, full tariff rates apply for both wharfage and dockage. Discount rates escalate to 20 percent from 51,000 to 75,000 tons, and to 30 percent at 76,000 tons and up. Discounted rates are based on Tariff rates, which increase annually approximately 6 percent. APL operations at Pier II are expected to generate significant and much needed revenue for the Port of Kodiak.

LEGAL: The City's attorney drafted the ordinance, participated in drafting the agreements with APL, and has reviewed all documents for compliance.

STAFF RECOMMENDATION: Staff recommends City Council approve this ordinance in order to implement the agreements with American President Lines LTD, and to ensure uninterrupted freight service to Kodiak.

CITY MANAGER'S COMMENTS: [*Clerk's Note: The City Manager was out of town when the packet was prepared. Any additional comments will be made at the regular meeting.*]

ATTACHMENTS:

- Attachment A: Ordinance No. 1379
- Attachment B: Pier II Use and Upland Lease Agreement, with Exhibit A
- Attachment C: Terminal Operation Contract, with Exhibit A

PROPOSED MOTION:

Move to pass Ordinance No. 1379 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1379**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

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

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

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

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

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

I. DESCRIPTION OF PREMISES

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

II. USE OF PREMISES

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

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

1. Non-Preferential Berthing Rights.

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

b. The non-preferential right of use provided by this paragraph is defined to mean that APL shall be accorded the right, after furnishing a vessel schedule at least 12 hours in advance to the City Harbormaster, to berth a vessel at Pier II.

- c. It is agreed that the berths and facilities at Pier II are public berths and subject to the provisions of Preferential Use Agreements and contracts between the City and others. APL agrees the NOAA vessel Oscar Dyson, State of Alaska ferries, Petro Star fuel barges and cruise ships will have priority use of Pier II berths. APL's vessels will be accommodated at Pier II on a space available basis.
 - d. APL berths are depicted in attached Exhibit A. APL's primary berth for cargo operations is Berth 1 on the NE end of Pier II. Berth 2 is the secondary berth on the SW end of Pier II, to be used only when berth 1 is not available. Containers may only be temporarily grounded during loading and unloading operations at berth 2.
 - e. APL shall make a reasonable effort to vacate the berth within two (2) hours after working cargo; provided however, should weather conditions prevent the vessel from leaving safely, an extension may be granted by the City Harbormaster if not a conflict with previously scheduled vessels.
 - f. APL agrees that during the term of this Agreement its Kodiak representative, will furnish the City Harbormaster with information as to the position, estimated time of arrival in Kodiak, and estimated port time of any vessel desiring to berth at Pier II at least 12 hours in advance of the estimated time of arrival.
2. Use of Storage, Marshaling Areas, and Facilities Other than the Dock.
- APL shall have exclusive right to use and occupy the APL Upland Lease area depicted in attached Exhibit A, including without limitation the operations of loading, unloading, working, parking, and storage of cargo, vans, chassis, trucks, and other equipment; provided that the City reserves the right to maintain access for all users via the public rights-of-way and dock area adjacent to any APL vessel berthed at Pier II when not actively engaged in loading or unloading operations.
3. Reservation of Rights.
- The City specifically reserves to itself and for non-APL vessels rights to use and occupy the Pier II Terminal, or portions thereof, subject to the priorities of use accorded to APL under this Agreement. The City agrees that it will issue tariffs governing the rates, charges, and conditions for the use of the Pier II Terminal by others, and shall assess reasonable rates and charges to users of the facility.
4. Berthing of APL Vessels.
- In addition to non-preferential berthing for loading and unloading cargo as provided above, barges owned, chartered, or operated by APL shall be allowed to berth at Pier II while not engaged in cargo operations, unless the City Harbormaster requests their removal to allow the use of Pier II by other vessels. In such event, the City Harbormaster will notify the vessel captain as early as possible of the time the vessel must clear the pier.

III. PAYMENTS

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

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

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

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

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

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

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

IV. TERM OF AGREEMENT

- A. Initial Term. The term of his Agreement is for five years and shall commence on June 1, 2018, and shall continue in full force and effect until midnight May 31, 2023, unless earlier terminated pursuant to this section.
- B. Renewal Terms. This Agreement may be renewed for two consecutive additional five-year periods (each a “Renewal Term”), by mutual agreement of the parties. At least ninety (90) days’ prior to the expiration of the term then in effect, APL shall provide written notice to the City of its desire to renew or not renew this Agreement for the next succeeding Renewal Term. The City will then reply to APL within fifteen (15) days whether it wishes to renew this Agreement. If both parties agree to renew this Agreement, they shall then enter good faith negotiations to address any modifications to this Agreement requested by either party. The failure of the parties to agree upon a renewal of this Agreement shall cause this Agreement to terminate at the end of the current term.
- C. The City may declare a default hereunder and terminate this Agreement, in addition to exercising any other available remedy, upon the occurrence of any of the following:
 - 1. The failure of APL to pay any sum of money due under this Agreement within ten (10) days after the due date.
 - 2. The failure of APL to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money described in Section **IV.C.1**, which is not cured within thirty (30) days after notice thereof from the City to APL, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as APL shall commence the curing of the default within such thirty (30) day period and thereafter shall diligently and continuously prosecute the curing of same.
 - 3. The commencement of a case under any chapter of the federal Bankruptcy Code by or against APL, or the filing of a voluntary or involuntary petition proposing the adjudication of APL as bankrupt or insolvent, or the reorganization of APL, or an arrangement by APL with its creditors, unless the petition is filed or case commenced by a party other than APL and is withdrawn or dismissed within ninety (90) days after the date of its filing.
 - 4. The admission in writing by APL of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of APL, unless such appointment shall be vacated within ten (10) days after its entry; APL making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of APL.
 - 5. If APL is in default under the Terminal Operation Contract.

V. USE OF PREMISES

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

VI. MAINTENANCE AND REPAIR OF PREMISES

- A. The City shall maintain and repair, at its own expense, the utilities (water, sewer or septic system, storm drainage, and electrical), common roadbeds and pier structures. In no event shall the City be obligated to repair or otherwise mitigate or respond to damages resulting from APL's use of the pier and pavement pursuant to this Agreement; except that the City shall be obligated to repair or otherwise attempt to mitigate or respond to damages resulting from an act or omission by the City or a third party. The City shall insure that other users of Pier II keep it clean and orderly.
- B. Specifically in APL leased areas as depicted in attached Exhibit A, APL shall, at its own expense, provide all routine preventive maintenance, repairs, and replacements to any APL structures, including: any APL buildings, container cranes, container handling equipment, APL installed electric systems and equipment, and the container storage area.
- C. Asphalt: APL will maintain and repair all asphalt pavement in good condition. APL will provide all snow removal and de-icing of the APL leased areas at Pier II. APL shall keep the Premises clean, orderly, and free of rubbish. If APL fails to adequately remove snow, ice, or debris, the City may furnish the necessary equipment and manpower to provide this service in which event APL shall promptly pay the City's billings for such services.
- D. APL shall provide the City Harbormaster a semi-annual maintenance and repair report on any single incident of damage or repair over ten thousand dollars (\$10,000).
- E. Within thirty (30) days after each anniversary of the date of this Agreement, APL and the City agree to inspect the Premises and prepare a report describing the condition of the Premises and specifying any items in need of repair. The party responsible for those repairs shall start those repairs within thirty (30) days after the report is prepared and shall promptly complete them.
- F. If, at any time during the term of this Agreement, the Premises are damaged or destroyed by fire or other casualty, due to any cause other than an act or omission solely of APL, the City may elect to either (i) at its expense, repair, rebuild, replace and restore the Premises to a condition comparable to that which existed immediately prior to the fire or other casualty, or (ii) terminate this Agreement. In the event the City elects to repair, rebuild, replace or restore the Premises, payments under this Agreement shall be abated in proportion to the extent that the Premises are not usable by APL during the time the unusable areas remain unrepaired or unrestored.
- G. APL shall make no alterations, additions, or improvements to the Pier II Terminal without the prior written approval of the City. At the expiration of this Agreement, or any renewal thereof, any such improvements not removed by APL in accordance with Paragraph XVI(B) shall become the property of the City.
- H. APL acknowledges having inspected or having been given a full opportunity to inspect the Premises and hereby accepts them in their present condition, and shall at the termination of this Agreement surrender said Premises in as good a condition and repair to the City.

VII. INDEMNITY

- A. APL shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death)

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

- B.** This indemnity provision specifically includes all environmental damage that may result from APL operations under this Agreement and any penalties or fines which may be assessed in connection therewith.
- C.** Claims arising in whole or in part out of any incident or event occurring during the term of this Agreement or any extension or renewal of it shall be covered by the provisions of this section IX even though they may not have been asserted or discovered until after the expiration of said term.

VIII. UTILITIES

- A.** During the term of this Agreement, APL shall pay the providers directly for all utility bills and accounts for utility services used or consumed by APL on or in connection with the Premises.
- C.** APL shall be responsible for obtaining its own janitorial services for APL facilities on the Premises, if any..

IX. INSURANCE

- A.** APL shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Agreement, the following policies of insurance:
 - 1. Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$5,000,000.
 - 2. Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.
 - 3. Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.
 - 4. Pollution Insurance, \$10,000,000 combined single limit per loss applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and

defense, including costs and expenses incurred in the investigation, defense or settlement of claims. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of petroleum products, smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants.

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

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

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

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

X. RIGHT OF INSPECTION-RECORD KEEPING REQUIREMENT

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

- B.** The City shall have the right to audit APL's records and to require APL to prepare summaries or reports from its records to determine compliance with the payment terms of this Agreement.
- C.** APL shall prepare or cause to be prepared bills of lading detailing all cargo loaded on or from each container on any APL Vessel using the Premises. AML shall preserve all bills of lading and other records evidencing APL's use of the Premises for not less than three (3) years after expiration of this Agreement.

XI. TAXES

- A.** In addition to the fees and charges provided in this Agreement, APL shall pay when due all taxes and other charges which are levied at any time during the term of this Agreement upon the leasehold interest and any improvements on the Premises. If the City receives a notice of assessment from any taxing jurisdiction claiming that the City or APL is liable for any tax or charge for which APL has agreed to make payment under this paragraph, the City shall notify APL in writing no later than thirty (30) days after receipt of the claim. If the City fails to provide APL such notice, APL shall have no obligation to pay the tax or charge.
- B.** If APL has a reasonable basis to contest, protest, or appeal (the "Appeal") the imposition or amount of any tax or charge, APL, at its own expense, may prosecute the Appeal, in which case the City shall cooperate fully with APL including, but not limited to, providing documentation and other information as required for APL to settle or sustain the Appeal. If APL prosecutes the Appeal, and if, but only if, such proceedings suspend enforcement and collection of the tax or charge, and no part of the Premises or any interest therein is or will be in danger of being sold or forfeited, APL shall have no obligation to pay the tax or charge until the taxing jurisdiction's decision that the City or APL is liable for the tax or charge becomes final. If any of the Premises is subjected to a lien which is not discharged within thirty (30) days after APL receives notice of such lien, APL shall deposit with the City cash, a sufficient corporate surety bond or other security satisfactory to the City in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of such contest.

XII. ASSIGNMENT

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

XIII. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

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

XIV. SEVERABILITY

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

XV. WAIVERS

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

XVI. SURRENDER

- A.** APL agrees not to encumber the Premises at any time during the term of this Agreement. APL agrees that the Premises shall not be subject to any liens, charges or encumbrances and agrees that at the expiration of the term of this Agreement it will deliver to the City or its designee, the Premises in good condition (ordinary wear and tear excepted) and without liens, charges, or encumbrances.
- B.** Unless required for the performance by APL of its obligations hereunder, APL shall have the right at any time during the Term to remove from the Premises all its equipment, removable fixtures and other personal property, and all property of third persons for which APL is responsible, and on or before the expiration or earlier termination of this Agreement it shall remove all of the same from the Premises, repairing all damage caused by any removal; provided, however, if APL shall fail to remove all such property within forty-five (45) days after the expiration or earlier termination of this Agreement, the City may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction; provided, further, that the City shall have given APL ten (10) days' notice of the City's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by APL to the City, with any balance remaining to be paid to APL. If the expenses of such removal, repair, storage, and sale shall exceed the proceeds of sale, APL shall pay such excess to the City upon demand. Without limiting any other term or provisions of this Agreement, APL shall indemnify and hold harmless the City, its officers, agents, employees, and contractors from all claims of third persons arising out of the City's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise, excluding only claims based on the City's sole negligence.

XVII. MODIFICATIONS AND NOTICES

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

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

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

American President Lines, LTD	City Manager
P.O. Box 920425	City of Kodiak
Dutch Harbor, Alaska, 99692	710 Mill Bay Road
Attn: Eugene Makarin	Kodiak, Alaska 99615

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

XVIII. ANTI-DISCRIMINATION

During the performance of this Agreement, APL agrees:

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

XIX. ALASKA LAW

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

XX. BINDING ON SUCCESSORS AND ASSIGNS

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

XXI. COMPLETE AGREEMENT

This Agreement, including Exhibit A hereto, and the Terminal Operation Contract, both dated June 1, 2018, between APL and the City, constitutes the final agreement between the parties. They are the complete and exclusive expression of the parties' agreement on

the matters contained in this Agreement. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by the aforementioned agreements.

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

City of Kodiak

American President Lines, LTD

Mike Tvenge, City Manager Date

Eugene Makarin Date
General Manager,
Alaska Operation

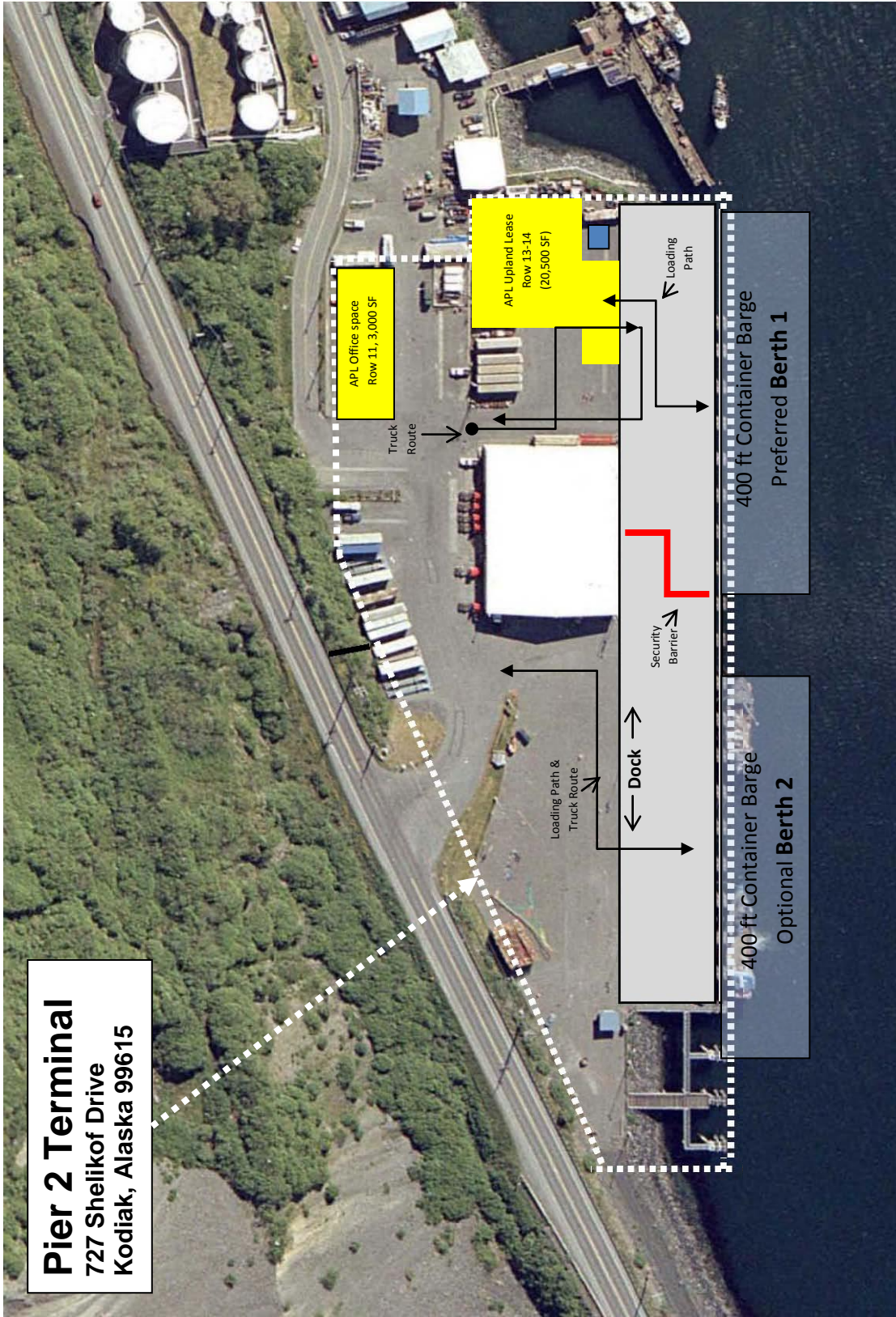
ATTEST:

ATTEST:

Debra L. Marlar Date
City Clerk

Mike Mizell Date
Kodiak Terminal Manager

Exhibit-A: Pier II Use and Upland Lease Agreement, American President Lines, LTD



**PORT OF KODIAK
TERMINAL OPERATION CONTRACT
(Pier II)
City of Kodiak and American President Lines, LTD
City Contract No. 237653**

This Terminal Operation Contract made and entered into as of June 1, 2018, by and between the City of Kodiak, Alaska, an Alaska municipal corporation (“City”), and American President Lines, LTD, a limited liability company organized under the laws of state of Delaware (“Operator”).

W I T N E S S E T H

WHEREAS, the parties desire to enter into a Terminal Operation Contract and Operator is willing and able to perform the services; and

WHEREAS, the Operator and the City have entered into a Pier II Use and Upland Lease Agreement, dated June 1, 2018, which together with this Contract provide for Operator’s use and occupancy of facilities at Port of Kodiak Pier II and the City agrees that it is in the best interest of the public for the Operator to provide services for the Port of Kodiak at Pier II; and

WHEREAS, Operator has agreed in the Pier II Use and Upland Lease Agreement to conditions for use of the Pier II facilities and to lease uplands at Pier II for container operations.

NOW, THEREFORE, in consideration of premises, and the terms, covenants, conditions, and agreements herein contained and further stated in the Pier II Use and Upland Lease Agreement, the Operator and the City hereby agree as follows:

1. Term.

With regard to Operator’s services at Pier II:

A. Initial Term. The term of this Contract shall be five years, commencing on June 1, 2018, and shall continue in full force and effect until midnight May 31, 2023, unless earlier terminated pursuant to the terms of Paragraph 13 below.

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

2. Facilities. The City will make available to the Operator those certain terminals and adjacent properties at Pier II, as depicted in Exhibit A to this Contract (the “Facilities”). The City shall have the right to make additions, alterations, or improvements to the Facilities which do not impede Operator’s access to or use of the Facilities, except as required to perform necessary repairs to the Facilities.

3. Terminal Operator Services. Subject to the foregoing and to any future modifications or revisions of the Pier II Use and Upland Lease Agreement, the Operator agrees to perform

Stevedoring and Cargo Terminal Services at the Facilities in a prompt, efficient, prudent, and economical manner including the provision of all clerical personnel, laborers, and supervision necessary to perform such Stevedoring and Cargo Terminal Services.

A. Exclusive and Non-Exclusive Rights

(1) American President Lines Vessels. The Operator shall have the exclusive right to perform Stevedoring of vessels and Cargo Terminal Services twenty-four (24) hours per day, seven (7) days per week on American President Lines vessels and associated cargo at the Facilities. American President Lines vessels include ships, barges, or other watercraft which are owned, operated, or chartered by or for American President Lines or any affiliated or related company, or which are used in connection with any of American President Lines' freight operations, or a vessel owned or operated by an entity with which American President Lines has a connecting carrier, consortium, or rationalization agreement, if, and to the extent that, said vessel is carrying cargo on American President Lines' behalf.

(2) Non-APL Vessels at Pier II

(a) The City shall have the planning and management responsibility in accommodating any non-American President Lines vessels at Pier II, including the planning and assignment of berthing and cargo staging/storage space and the rearrangement or relocation of other customers' berthing and cargo staging/storage space at Pier II.

(b) The Operator shall have a non-exclusive right to perform Stevedoring of vessels and Cargo Terminal Services twenty-four (24) hours per day, seven (7) days per week on all non-American President Lines vessels at Pier II.

(4) Exemptions. Unless services are requested, the following vessels are exempt from using the services of the Operator: vessels of the Alaska Marine Highway System, vessels in port at the invitation of the City for special occasions where the ship will be open to the public, U.S. flagged government vessels, including university research vessels, and vessels seeking fuel or other services from Harbor Enterprises dba Petro Marine Services and North Pacific Fuel aka Petro Star. Commercial fishing vessels, catcher-processors and fish processors, and cargo vessels under 300' are also exempt, unless loading or unloading commercial freight or hazardous materials. For this purpose, commercial freight means cargo transported on a vessel under a bill of lading.

(5) Use of Vessels' Gear. It is recognized that some vessels carry on-board cranes or other vessel's gear for the discharging or loading of cargo. In the interests of safety and expeditious handling of cargo, it is agreed that vessel's cranes or vessel's gear may be used for the discharge or loading of cargo at Pier II unless, in the City's opinion the vessel's cranes are not suitable for the handling of such cargo.

B. Stevedoring. For the purpose of this Contract, the term "Stevedoring" is defined to include the following vessel loading and discharging functions:

(1) Perform the stowage of cargo on board vessels in accordance with instructions received from their masters or their designated representatives.

(2) Discharge cargo or containers from vessels and transport the cargo or containers to a place of rest in the Facilities.

(3) Transport cargo or containers from a place of rest in the Facilities and load and stow cargo or containers onto the vessels.

(4) Lash and unlash cargo on vessels.

(5) Open and close hatches and cells.

(6) Plug and unplug shipboard electrical reefer receptacles if necessary to the extent not performed by the vessels.

(7) Check and tally containers and container seals and cargo.

(8) Spot vessels and handle lines as may be required.

(9) Bill, receive, or attempt to collect and, where applicable, remit to the City, all charges incurred under the applicable Port of Kodiak Tariff by persons, vessels, or cargo utilizing Port facilities or services subject to this Contract.

C. Cargo Terminal Services. For the purpose of this Contract, the term “Cargo Terminal Services” is defined to include the following functions:

(1) Transport empty and loaded containers within the Facilities.

(2) Receive and deliver empty or loaded containers or chassis.

(3) Perform all necessary housekeeping services.

(4) Furnish all security at Pier II, for commercial cargo vessels, in accordance with a U.S. Coast Guard approved facility security plan, except for cruise ship operations.

(5) Visually inspect the condition of containers and cargo discharged from vessels at the Facilities, reporting to the vessels’ masters or agents any damage or defects noted.

(6) Prepare reports reflecting the movement of containers or cargo.

(7) Provide expeditious movement of containers and cargo.

(8) Perform such other duties as are reasonable in such operations and as negotiated between the parties involved.

4. Definition of Vessel. For the purpose of this Contract, the term “vessel” shall mean and include every type of self propelled or non-self propelled vessel, including without limitation barges, container vessels, break-bulk vessels, and combinations of break-bulk and container vessels, and all other types of cargo or passenger vessels.

5. Operator’s Equipment. The Operator will provide all equipment necessary to perform the services required by this Contract.

6. Public Berth. It is agreed that the berths and facilities at Pier II are public berths and subject to the provisions of Preferential Use Agreements and contracts between the City and others. The Operator agrees the NOAA vessel Oscar Dyson, State of Alaska ferries, Petro Star fuel barges and cruise ships will have priority use of Pier II berths. Operators vessels will be accommodated at Pier II when scheduled in advance on a space available basis. Pier II shall be made available to all types of vessels that may wish to load or unload without discrimination in

favor of or against any vessel, shipper, or consignee; provided, however, that the City at its option may determine that a given vessel is unsuitable for servicing at the berth and may prohibit the berthing of such vessel or alternatively may require the owner of such vessel to post such bond as the City may deem appropriate in the circumstances. Nothing contained herein is to be deemed to allow the berthing or transit of cargo which is prohibited by any applicable law including without limitation explosives or other dangerous commodities.

7. Services by Other Persons at Pier II. A person other than Operator may provide Stevedoring or Cargo Terminal Services at Pier II under the following conditions.

A. Such other person may provide Stevedoring or Cargo Terminal Services only in accordance with the terms of a written contract between the City and such other person. The City will provide a copy of such contract to the Operator.

B. If any term of such contract between the City and such other person to provide Stevedoring or Cargo Terminal Services at Pier II is more favorable to such other person than the terms of this Contract are to the Operator, the Operator may elect to adopt any or all of such more favorable terms under this Contract, commencing as of the date on which the contract with such other person becomes effective.

C. A contract between the City and any other person to provide Stevedoring or Cargo Terminal Services at Pier II shall require that if there exists a labor organization which represents a majority of the individuals living in or around Kodiak, Alaska who earn their livelihood as stevedores or longshoremen, such other person shall make reasonable good-faith efforts to negotiate a collective bargaining agreement with said labor organization for the provision of the Stevedoring and Cargo Terminal labor under the contract.

D. Currently Matson Lines has a non-exclusive Terminal Operating Agreement with the City to perform stevedoring services at Pier II.

8. Compensation to City. As and for compensation to the City, the City shall be entitled to all income derived from wharfage, dockage, and sale of water. All such sums shall be a charge against the vessel or cargo, as the case may be, and shall be collected by the Operator and remitted by the Operator to the City. Such remittances shall be accompanied by appropriate itemized documentation. Charges shall be paid by the Operator to the City within ninety (90) days after the first billing to the vessel or cargo, as the case may be or within ten (10) working days of receipt of payment by the Operator, whichever is less, provided that credit terms shall be those chosen by the Operator. All such billings to the vessels and cargo will be itemized for services rendered by the Operator and shall be made promptly after performance of those services.

9. Compensation to Operator. The Operator shall be entitled to keep all other charges (including charges for electrical energy, storage in Operators leased area, and the movement of cargo) authorized and fixed in accordance with the applicable Port of Kodiak Tariff. The Operator shall be bound by any future modification or amendments of the Port of Kodiak Tariff; provided, however, the City shall not alter the credit terms of the tariff during the term of this Contract. When charges involve stevedoring or other labor services based upon an hourly wage rate, then the Operator may add to the total applicable labor charge an administrative fee not exceeding thirty percent (30%) and shall collect such fee from the person or vessel requiring the services in question. In no event, however, shall the Operator charge or collect an administrative fee with respect to any portion of its labor costs which are based upon or derived from wage rates exceeding those applicable to similar work under contracts or agreements subject to the Davis-

Bacon Act. If, on the date of execution of this Contract, there exists a labor organization which represents a majority of the individuals living in or around Kodiak, Alaska who earn their livelihood as stevedores or longshoremen, then the Operator shall make reasonable good-faith efforts to negotiate a collective bargaining agreement with said labor organization for the provision of stevedoring labor services under this Contract.

10. Indemnification.

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

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

C. Notwithstanding any provision of this Contract, Operator shall not be liable for, and shall not be liable to indemnify, defend or hold the City harmless from, any condition at the Facilities, whether known or unknown, which was in existence before June 1, 2018.

11. Insurance.

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

(1) Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Contract. The general aggregate limit shall be \$5,000,000.

(2) Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

(4) Pollution Insurance, \$10,000,000 combined single limit per loss applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or

settlement of claims. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of petroleum products, smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants.

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

(1) Commercial General Liability and Automobile Liability

(i) City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.

(ii) Operator's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of Operator's insurance and shall not contribute to it.

(iii) Operator's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Operator for City.

(2) Worker's Compensation and Employer's Liability. Operator's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Operator for City.

(3) All Insurance. Each insurance policy required by this Contract shall be endorsed to state that, unless acceptable to City, coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.

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

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

12. Damage to the Facilities. The Operator shall pay for all damage to City-owned property caused by the Operator, its agents, employees, or invitees. A person does not become an invitee of the Operator under this section solely because of the person's use of the Operator's stevedoring or cargo terminal services.

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

A. The failure of the Operator to pay any sum of money due under this Contract within ten (10) days after the due date.

B. The failure of the Operator to perform or observe any covenant or condition of this Contract, other than a default in the payment of money described in Paragraph 13(A), which is not cured within thirty (30) days after notice thereof from the City to the Operator, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as the Operator shall commence the curing of the default within such thirty (30) day period and thereafter shall diligently and continuously prosecute the curing of same.

C. The commencement of a case under any chapter of the federal Bankruptcy Code by or against the Operator, or the filing of a voluntary or involuntary petition proposing the adjudication of the Operator as bankrupt or insolvent, or the reorganization of the Operator, or an arrangement by the Operator with its creditors, unless the petition is filed or case commenced by a party other than the Operator and is withdrawn or dismissed within ninety (90) days after the date of its filing.

D. The admission in writing by the Operator of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of the Operator, unless such appointment shall be vacated within ten (10) days after its entry; the Operator making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of the Operator.

E. If the Operator is in default under the Pier II Use and Upland Lease Agreement.

14. Inspection of Books. The City reserves the right at any reasonable time after seven days written notice to Operator to inspect and make copies of the books and records of the Operator related to operations conducted pursuant to this Contract. The Operator agrees that cargo manifests shall not be released by Operator to a third party except in accordance with the laws of the United States. Operator shall retain copies of all bills of lading, manifests and invoices related to services provided pursuant to this Agreement for a period of three (3) years following termination or expiration of this Agreement.

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

16. Compliance with Federal, State, and Local Laws. At all times during the term of this Contract, the Operator shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances. Without limiting the generality of the foregoing, the Operator shall obtain coverage under the Multi-Sector General Permit for all industrial storm water discharges from the Pier II Terminal Facilities.

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

18. Waivers. No waiver by the Operator or the City of any covenant or condition of this Contract shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered as a waiver of any other breach.

19. Modifications and Notices.

A. No modification of this Agreement shall be effective unless agreed to by the Operator and the City in writing. No modification of one provision of this Agreement shall be considered a waiver, breach or cancellation of any other provision.

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

American President Lines, LTD
P.O. Box 920425
Dutch Harbor, Alaska, 99692
Attn: Eugene Makarin

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

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

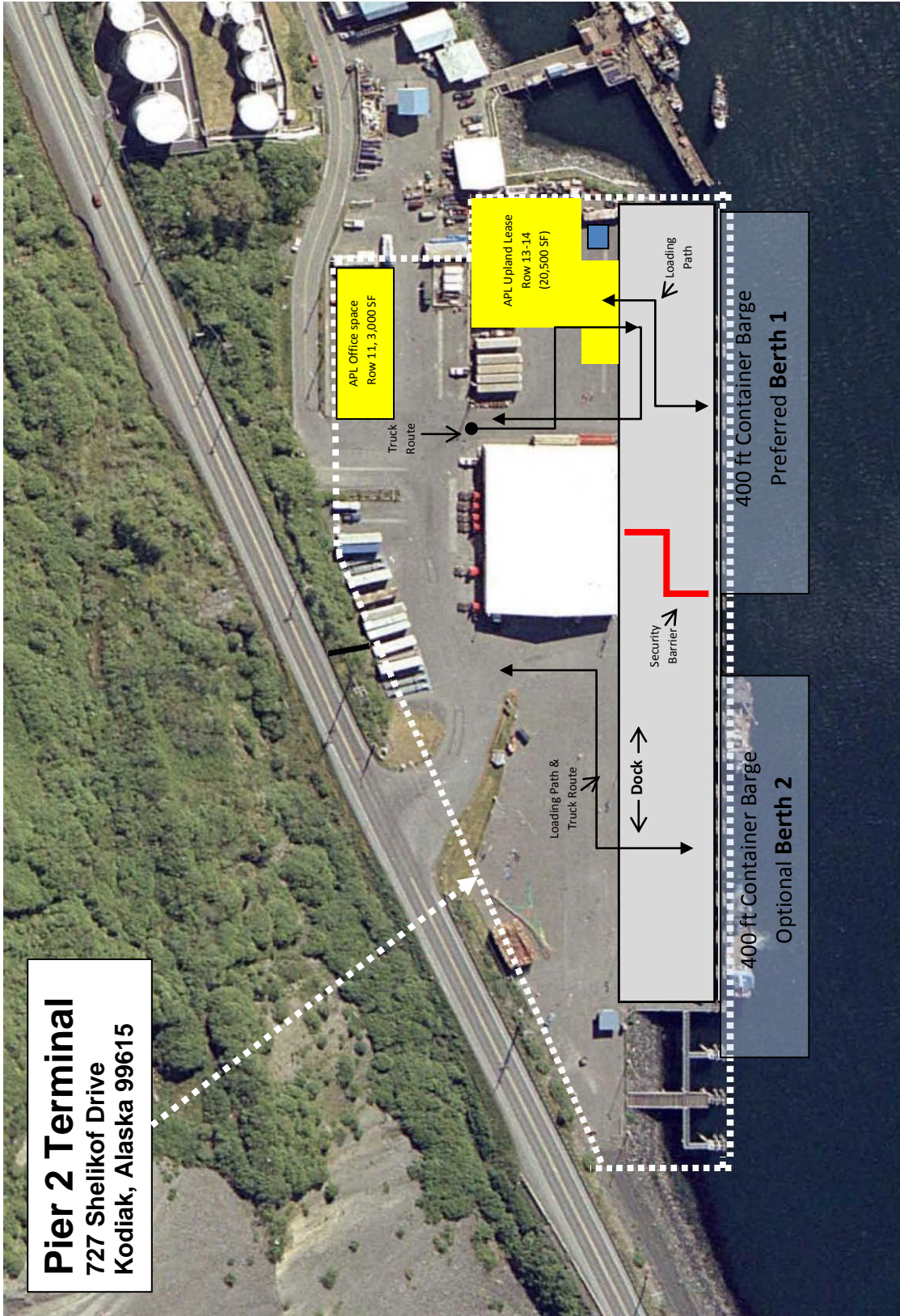
20. Alaska Law. The parties agree that this Contract was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Contract shall be in the Superior Court for the State of Alaska Third Judicial District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

21. Binding on Successors and Assigns. All provisions of this Contract shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

22. Complete Agreement. This Contract, including Exhibit A, hereto, and the Pier II Use and Upland Lease Agreement, both dated June 1, 2018, between the Operator and the City, constitute the final agreement between the parties. They are the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Contract are expressly merged into and superseded by the aforementioned agreements.

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

Exhibit-A: Terminal Operation Contract, American President Lines, LTD



MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Debra Marlar, City Clerk

Date: May 24, 2018

Agenda Item: V. c. Election of Deputy Mayor

SUMMARY: Under the provisions of City Charter Article II, Section 2, the City Council shall elect one of its members as Deputy Mayor no sooner than thirty days, nor more than sixty days, from the beginning of the newly-elected Councilmembers' terms. On December 14, 2017, Councilmember Saravia was elected by the Council to serve as Deputy Mayor for a one-year term. On May 4, 2018, Deputy Mayor Saravia resigned as an elected official and the Deputy Mayor position is currently vacant.

If a vacancy occurs in the office of Mayor, the Deputy Mayor serves until another Mayor is elected by the Council. If the office of Deputy Mayor becomes vacant, the Council shall elect from its members another Deputy Mayor for the completion of the unexpired term. The Deputy Mayor, when acting as Mayor, shall continue to have a vote as Councilmember; but the Deputy Mayor shall not have veto power.

ATTACHMENTS:

Attachment A: City Charter Article II, Section 2

Attachment B: List of previous Deputy Mayors

PROPOSED MOTION:

Move to elect _____ as Deputy Mayor for the remainder of the one-year term ending in 2018.

OR

Move to elect the Deputy Mayor by a secret vote on paper ballot, provided that the first candidate to receive four affirmative votes be appointed for the remainder of the one-year term ending in 2018, and further provided that if no candidate receives four affirmative votes in the first ballot, that the applicant with the fewest votes be removed from consideration on subsequent ballots, until a candidate receives four affirmative votes.

Charter of the City of Kodiak, Alaska**Article II****II-2 Mayor and Deputy Mayor**

There shall be a mayor who shall have all the qualifications of a councilmember, and, in addition, must be at least thirty (30) years of age at the time of his election or choice to fill a vacancy. The mayor shall preside at meetings of the council, and shall certify the passage of all ordinances and resolutions passed by it. The mayor shall have no regular administrative duties, except that the mayor shall sign such written obligations of the City as the council may require. If a vacancy occurs in the office of mayor, the council shall elect a qualified person, who may or may not be a councilmember at the time, to be mayor for completion of the unexpired term or until the vacancy is filled by election. If a councilmember is elected mayor, the councilmember's office shall be vacated upon taking office as mayor, and then be filled as prescribed elsewhere by this charter.

Not sooner than thirty (30) days nor more than sixty (60) days from the beginning of the terms of newly elected councilmembers, the council shall elect one of its members deputy mayor, who shall serve as such until the next such first meeting. The deputy mayor shall act as mayor during the absence or disability of the mayor or, if a vacancy occurs in the office of mayor, until another mayor is elected by the council and qualifies. If the office of deputy mayor becomes vacant, the council shall elect from its members another deputy mayor for the completion of the unexpired term. The deputy mayor, when acting as mayor, shall continue to have a vote as councilmember; but the deputy mayor shall not have veto power.

Should both mayor and deputy mayor be absent from a council meeting, a temporary mayor shall be appointed by the council to serve during such absence.

Deputy Mayor Elections

Date <u>Elected</u>	
01/16/1993	Bernie Ballao
11/10/1994	Gary Gilbert
11/09/1995	Tom Walters
11/14/1996	Kathy Colwell
11/20/1997	Steven Hobgood
02/12/1998	Tom Walters
11/12/1998	Charles Davidson
11/10/1999	Jesse Vizcocho
11/16/2000	Barbara Stevens
11/15/2001	Tom Walters
12/12/2002	Lydia Olsen
01/08/2004	David Woodruff
12/14/2004	Charles Davidson
12/15/2005	David Woodruff
12/14/2006	Josie Rosales
11/29/2007	Gabriel Saravia
12/11/2008	Jack Maker (resigned 6/9/09)
07/24/2009	Paul Smith
12/10/2009	Terry Haines
12/9/2010	Gabriel Saravia
12/8/2011	John Whiddon
12/13/2012	John Whiddon
12/12/2013	Gabriel Saravia
12/12/2014	Terry Haines
12/10/15	Rich Walker
12/08/16	Randall C. Bishop
12/14/17	Gabriel Saravia

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Date: May 24, 2018

Agenda Item: V. d. **Authorization to Cancel the June 28, July 26, and August 23, 2018, Regular Meetings and Authorize the City Manager to Schedule a Special Meeting if Needed**

SUMMARY: The regularly scheduled Council meetings for June, July, and August may be cancelled to reflect the summer meeting schedule. Elected officials and staff will attend the summer Alaska Municipal League conference August 21 through August 24. Staff discussed the meeting schedule with the Council at the May 8, 2018, work session, and Council recommended cancelling the June 28, July 26, and August 23, 2018, regular meetings and scheduling a special meeting if needed.

PREVIOUS COUNCIL ACTION: The City Council cancels regular meetings and schedules special meetings from time to time due to travel and other scheduling conflicts.

LEGAL: Kodiak City Code identifies regular meetings are held on the second and fourth Thursdays of each month. If a regular meeting must be cancelled, a special meeting may be scheduled. The attendance requirements do not apply to special meetings.

CITY MANAGER'S COMMENTS: [*Clerk's Note: The City Manager was out of town when the packet was prepared. Any additional comments will be made at the regular meeting.*]

PROPOSED MOTION:

Move to cancel the June 28, July 26, and August 23, 2018, regular meetings and authorize the City Manager to schedule a special meeting if needed.

MAY 24, 2018
Agenda Item V. d. Memo Page 1 of 1

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MEMORANDUM TO COUNCIL

Date: May 24, 2018

Agenda Item: V. e. **Direct the Mayor and Two Councilmembers to Pursue an Independent, Third-party Review of the Process Followed in Recent Personnel Decisions**

SUMMARY: The City of Kodiak cannot discuss the reasons for any personnel action or the steps that lead to employees being terminated during a probation period. The City takes any personnel action only after careful consideration following a formalized process set out in the Personnel Rules and Regulations. Regarding a recent employee termination, the Council and Mayor asked hard questions of the Manager and department heads, and reviewed documentation from this 9-month employment that supported the decision. As a result of this thorough review, the Mayor and Council support the Manager's due diligence, and are comfortable that although no one likes to end working relationships in this way, the City did all it could to support this employee and assist in his success, as it does all employees. Because no person or process is without flaw, the Council will pursue a thorough, independent, third-party review of the process followed here.

PROPOSED MOTION:

Move to direct the Mayor and Councilmembers _____ and _____ to select a reviewer to pursue a thorough, independent third-party review of the process followed in the termination of the Deputy Manager and provide the general outcome of the review once it has been completed.

MAY 24, 2018
Agenda Item V. e. Memo Page 1 of 1