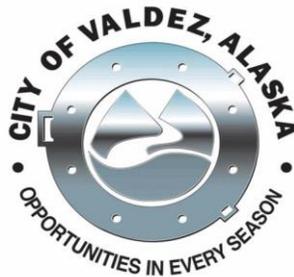


# City of Valdez

212 Chenega Ave.  
Valdez, AK 99686



## Meeting Minutes - Draft

Tuesday, November 1, 2016

7:00 PM

Work Session (City Space Needs) & Regular Meeting

Council Chambers

**City Council**

**WORK SESSION AGENDA - 6:00 PM**

City Space Needs

*Minutes are not transcribed for work sessions. Audio available upon request.*

Present: 7 - Mayor Ruth E. Knight  
Council Member Nate Smith  
Council Member Christopher Moulton  
Council Member Lon Needles  
Council Member H. Lea Cockerham  
Council Member Ryan Rydor McCune  
Council Member Dennis Fleming

Also Present: 5 - City Manager Dennis Ragsdale  
City Clerk Sheri Pierce  
Deputy City Clerk Allie Ferko  
City Attorney Jake Staser  
Assistant City Manager Todd Wegner

**REGULAR AGENDA - 7:00 PM**

**I. CALL TO ORDER**

Mayor Knight called the meeting to order at 7:03 p.m. in the Valdez City Council Chambers.

**II. PLEDGE OF ALLEGIANCE**

The City Council led in the Pledge of Allegiance to the American flag.

**III. ROLL CALL**

Present: 7 - Mayor Ruth E. Knight  
Council Member Nate Smith  
Council Member Christopher Moulton  
Council Member Lon Needles  
Council Member H. Lea Cockerham  
Council Member Ryan Rydor McCune  
Council Member Dennis Fleming

Also Present: 5 - City Manager Dennis Ragsdale  
City Clerk Sheri Pierce  
Deputy City Clerk Allie Ferko  
City Attorney Jake Staser  
Assistant City Manager Todd Wegner

#### IV. PUBLIC BUSINESS FROM THE FLOOR

##### Pete LaPella, American Red Cross

Mr. LaPella stated he is the new local American Red Cross Southeast Home Fire Safety Campaign Coordinator. He introduced a new Red Cross program which provides free smoke detector installation for homes around the community. He asked that residents keep an eye out for Valdez program information which will be advertised in coming weeks. Volunteers will canvas, going home to home, to see if residents need assistance with smoke detector inspection, installation, or replacement, fire escape plans, and other fire safety tools.

##### Shana Anderson, Friends of the Valdez Animal Shelter (FVAS)

Ms. Anderson explained she sent a letter to the City Manager and City Council discussing concerns the FVAS had with staffing at the animal shelter. She explained they support a full time City employee in place of the part time employee who works for both FVAS and the City. In the past, the FVAS paid an employee 15 hours per week to keep the animal shelter open to the public during the weekends. This includes paying an annual salary of \$10,000, workman's compensation fees, insurance fees, and other costs associated with employing a shelter attendant. Ms. Anderson stated she believes FVAS is the only 501c3 non-profit organization who provides an employee for any city department. She explained weekends are the busiest time of week at the shelter with visitors and volunteers. Animals in the shelter require care, feeding, and cleaning even when the shelter is closed.

Ms. Anderson stated the FVAS are not looking to reduce shelter hours or close it to the public, as this will have a negative effect on adoption rates. Staffing at the shelter currently consists of one part time shelter attendant and one full time shelter manager/animal control officer (ACO). Ms. Anderson stated that in order to perform his job as ACO effectively, little time is left for him to do hands-on work at the shelter. If the ACO is the only employee at the shelter and an animal complaint is made, he must shut down the shelter to the public to answer the complaint.

Ms. Anderson explained the FVAS pays for all shelter animals to be spayed or neutered and micro chipped. Additionally, FVAS provides a low-cost or fee spay or neuter program to the entire Valdez community. The organization make quarterly donations to the community "Honey Bear" fund that helps cover the costs of treatment for sick or injured animals when their owners cannot afford to pay. These programs cost the FVAS at least \$19,000 per year. Spay and neuter clinics cost approximately \$5,000 to \$6,000 each. The clinics are a proactive effort to reduce the amount of animals that end up in the shelter.

FVAS receives funding from a variety of sources including donations from United Way, fundraising through the annual Richardson Highway Rendezvous, and the pet store at the shelter. Ms. Anderson explained if the shelter attendant becomes a City employee, the FVAS will be able to use funding for programs and services to the community instead of human resources costs. She explained the mini pet store at the

shelter is run completely by volunteers and does not have any paid employees. Profits from the store cover the weekend shelter attendant's salary. She believes FVAS could better use those profits for community services.

Ms. Anderson explained the FVAS recently became aware of possible legal risk to the organization by employing the shelter attendant, as the City is considered the attendant's secondary employer. She stated she feels very strongly that a non-profit organization should not have to provide an employee to the City, but the weekend shelter attendant is a necessity. She reiterated the FVAS does not want the shelter to reduce its hours or services.

Ms. Anderson stated the FVAS have never requested funding but ask that the shelter attendant be converted to a full time position employed directly by the City. Mayor Knight asked how many hours the shelter attendant works per week and if they were provided benefits. Ms. Anderson replied FVAS pays a 15-hour employee plus workman's compensation. The position does not receive benefits.

Council Member Needles asked if the City already has part-time employees who might be a good fit for the weekend shelter attendant position. Mr. Ragsdale stated there are multiple part-time employees in different departments throughout the City. Council Member McCune asked if the current arrangement with the FVAS is similar to a contractor. Ms. Anderson stated it was similar, but she did not know the particulars. She stated, based on her research, the arrangement is similar to having a temporary employee from a temp agency.

#### Jeremy O'Neil, Providence Valdez Medical Center

Mr. O'Neil expressed his appreciation for both the work of the Providence Valdez Medical Center Health Advisory Council and the Valdez City Council. He explained the hospital is scheduled for a community health needs assessment refresh next year. Goals from the last needs assessment included reducing obesity, access to primary health care, and addressing substance abuse. His organization is undergoing a safety and quality of programs transformation. Mr. O'Neil thanked the community for their interest in applying for a position on the Health Advisory Council.

Council Member Moulton stated Council needs to meet with administration of the hospital to discuss building maintenance staffing and operational concerns raised during budget hearings. With two former City building maintenance staff positions being moved under the management of Providence, a few areas needed to be worked out in the very near future. Mr. O'Neil stated he will work City administration to schedule a work session.

#### Allen Godfrey, Friends of the Valdez Animal Shelter

Mr. Godfrey explained the Copper River spay and neuter clinics cost approximately \$5,000 to \$6,000 each. During the last few clinics, the group spays or neuters for over 200 animals. A large amount of animals from Copper Center and communities between Valdez and Glenallen would end up in the Valdez animal shelter. He explained there were even packs of feral dogs in the area. Due to the efforts of the FVAS, numbers of

upcountry animals coming to the shelter has been drastically reduced. Mr. Godfrey stated the organization is concerned they may not have funding to do clinics next year. As soon as the spay and neuter clinics stop, the number of animals in the shelter will increase, as well as the cost of care and feeding of those animals.

Mayor Knight thanked the FVAS for their efforts and great work in the community.

Cindy Butheras, Friends of the Valdez Animal Shelter

Ms. Butheras explained she was part of the original group who worked to get the original shelter built. She stated when the new shelter idea was being pitched, Mayor Cottle stated the way you judge a community's character is by how they take care of seniors, children, and animals. The Council at the time set a standard for how Valdez takes care of their most vulnerable. Ms. Butheras asked the current Council to uphold that standard moving into the future.

Rick Ballou, Valdez Resident

Mr. Ballou expressed his appreciation for the recent beautification efforts in Valdez. From the welcome arch to new lighting and other improvements, he was very impressed with all the aesthetic work being done around town.

Pam Verfaillie, Valdez United Way (President)

Ms. Verfaillie expressed her thanks for recent beautification efforts in Valdez. She was impressed that even with the amount of new light posts installed on Egan Drive, there was no addition to light pollution in town.

Ms. Verfaillie stated she supported the movement of the animal shelter attendant to City employment. She said the Valdez United Way is very proud to support the Friends of the Valdez Animal Shelter. In the past year, her organization donated \$5,000 to assist FVAS with their spay and neuter clinics. United Way can see proof that the clinics are making a difference for Valdez and surrounding communities.

Council Member Moulton clarified that the request for the shelter attendant was to change the position from a part-time City employee to a full-time City employee. The FVAS pays for a weekend shelter attendant in addition to the part-time City employee who works during weekdays.

Ashley Schaffer, Valdez Resident

Ms. Schaffer described her experience working as a youth volunteer at the Valdez animal shelter. She feels it is a safe place for her peers to learn, grow, and complete community service.

Todd Wegner, Valdez High School Boys Basketball Coach

Mr. Wegner expressed his appreciation for the City Parks & Recreation Department's annual haunted house. The structure of the event allows organizations to work the haunted house as a fundraiser. This is the fourth year of the haunted house event. Council Member Cockerham explained there are visiting high school sports teams who travel to Valdez while the haunted house is open and look forward to it every

year.

## V. CONSENT AGENDA

### 1. Proclamation - General Aviation Appreciation Month

*MOTION: Council Member Cockerham moved, seconded by Council Member Needles, to approve the Consent Agenda. The motion carried by the following vote.*

*Yays: 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming*

## VI. NEW BUSINESS

### 1. Appointment to City Permanent Fund Committee

*MOTION: Council Member McCune moved, seconded by Council Member Cockerham, to appoint Mike Wells to serve a three-year term on the City's Permanent Fund Committee. The motion carried by the following vote after the following discussion occurred.*

City Council selected by paper ballot Mr. Mike Wells to serve on the City Permanent Fund Committee.

Mayor Knight thanked all applicants for their interest in serving on City boards, commissions, and committees.

*Yays: 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming*

### 2. Appointment to Providence Valdez Medical Center Health Advisory Council

*MOTION: Council Member McCune moved, seconded by Council Member Cockerham, to appoint Matthew Ficek to serve a two-year term on the Providence Valdez Medical Center Health Advisory Council. The motion carried by the following vote after the following discussion occurred.*

City Council selected by paper ballot Mr. Matthew Ficek to serve on the Providence Valdez Medical Center Health Advisory Council.

*Yays: 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming*

### 3. Discussion Item: Valdez New Boat Harbor – Consideration of Procurement Options for Remaining Work, Including a Change Order Option in the Amount of \$1.75 Million

Mr. Jason Miles, City Capital Facilities Director, explained City Council previously asked for the pros and cons of investigating a change order as an option for the west rock removal work for the new boat harbor. City staff provided a package of information in the agenda packet outlining options for handling the situation. One option is to approve a change order with the current contractor for just under two million dollars. Another option is to do a single bid package for the remaining work. This option would likely be impacting by the Army Corps of Engineers contractor work schedule, which has control of the harbor basin until the end of 2017. The third option is to bid the west rock removal portion of the project over the winter season and do a separate package for the remainder of the work next year.

Mr. Miles explained the options analysis by the project manager, Arcadis, is included in the agenda materials provided to Council. Staff recommendation is to put out a single bid package for the remainder of the work. He stated putting out a single bid package for the remainder of the work will extend the timing of the project, because the Army Corps of Engineers controls the overall schedule. This fact was known prior to the beginning of construction.

Mr. Miles explained the legal memorandum provided by the City's legal firm outlines concerns with the options proposed. He stated if the change order option was challenged, there is the possibility that a "stop work" order could be issued. At that point two contractors could have a delay claim, which is a risky situation for the City. This does not mean the change order would stand. The second issue involves applicability from case studies which do not include an expanded scope of work as is the current case with the harbor.

Council Member Moulton asked what is the process for a contractor to submit a legal action against a possible change order. Mr. Staser stated filing a complaint is easy, but the complainant's standing would need to be proven. He explained awarding work without going through the standard procurement process carried risk and could be interpreted as depriving a contractor of the opportunity to bid. Mr. Staser explained putting out a single bid package for the remainder of the project is the most risk adverse of the options. Council Member Moulton asked if someone filed a complaint, would a "stop work" order be issued. Mr. Staser explained that type of order is a potential remedy. Essentially when there is an allegation that work is being done under a potentially illegal contract, courts have shown a tendency to issue a preliminary injunction which puts all work on hold. Mr. Staser explained there is not a great deal of case law that reflect these exact circumstances in Alaska.

Council Member Smith asked if this package goes out to bid and the current contractors are awarded the work, will that still delay the project. Mr. Miles explained based on the steps in the open bid procedure in procurement code, the process will take months. Having looked at the schedule, the Army Corps of Engineers contractor, Western Marine, will be back in Valdez to work on the basin in April 2017. There is not enough time to complete the open bid process before that time and will cause a delay. Western Marine has expressed multiple reasons why this timing will cause impacts to

their operations. Even if Harris Sand & Gravel won the open bid, there are several scenarios and unknowns which might delay Western Marine's work.

Council Member Smith asked if the scheduled start date could be flexible depending on who received the bid award. Mr. Miles explained the project team explored that option and the challenge is that Western Marine, through the Corps of Engineers contract, controls the basin. Once they begin dredging, breakwater construction, and other operations in April 2017 there could be a potential conflict or delay claim if the City's contractors are not out of the way. Looking at the bidding process and then the time it will take to complete the City work, there is just not enough time to ensure that conflict will not occur.

Mayor Knight reiterated that the Army Corps of Engineers stated they will be likely be done by September 2017. Mr. Miles stated the September 2017 was a flexible date and the City will want to get it in writing before proceeding. Mayor Knight asked if the work could be completed in winter 2017 instead of 2016. Mr. Miles explained he would advocate putting the bid package out as soon as possible, as there was much non-conflicting work that could be done in 2017 while the Army Corps of Engineers was on site. As soon as Western Marine is out of the basin in 2017, the City's contractors can get into the area and complete the in water portion of the project including building the pads, rock blasting and excavating. If that work could be done winter 2016 before Western Marine arrives, all of the other work will be done and the City contractors can begin drilling piles and setting floats.

Mayor Knight asked if the City's work could start in October 2017. Mr. Miles explained, by contract, Western Marine has control of the basin until the end of 2017. Therefore, the City cannot make any assumptions that we will be able to get into the area earlier. Mayor Knight stated verbiage could be written into the City's RFP which states work could begin earlier dependent on Western Marine's end work date. Mr. Miles stated that could be a possibility. Right now dredge work is anticipated to be complete in May 2017.

Mr. Jim Shirrell, Valdez resident, asked if the new harbor work for 2017 has been bid. Mr. Miles stated Phase One is being completed now, with the next phase for 2017 going out to bid shortly. Mr. Shirrell stated the 2017 work needs to be bid regardless and asked for clarification on the work currently being discussed. Mr. Miles explained the change order option being discussed would be a change order for Harris Sand & Gravel's Phase One contract, effectively having them complete work over this winter to remove rock from the boat basin. This would close out the Phase One work. Phase Two would be bid as a separate package. If the basin rock removal in Phase One was not included as part of a change order, it would need to be added to the Phase Two bid package. Mr. Shirrell asked what this would mean in terms of time and funds. Mr. Miles explained if work could be done over the winter, the City would realize substantial savings and possibly be able to open the new harbor a season earlier. Mr. Shirrell asked why Phase Two and Phase Three were not being bid together in one package. Mr. Miles explained a single bid package for the remainder of the work includes both Phases Two and Three and is in the City's best interest.

Mr. Miles stated the change order amount received from Harris Sand & Gravel was an excellent price. There are advantages to the City to choosing the change order option, including speeding up the construction process and some cost savings. However, the risk averse option is to bid the work in one package. Mayor Knight stated her preference was to chose the option with the least amount of risk to the City.

#### **4. Discussion Item: MOU with Alaska Pacific Development Group for Tax Credit Affordable Housing Project**

Mr. Ragsdale explained the MOU is for the Council's information and a starting point for discussion. He stated City staff do not have a recommendation for or against the MOU at this point in the process. He explained Council would likely need a full work session dedicated to the topic.

Mayor Knight asked for an explanation of the history behind the MOU. Ms. Lisa Von Barga, City Community & Economic Development Director explained Mr. Mark Lewis with Alaska Pacific Development Corporation contacted her during an unrelated training seminar in Anchorage. Mr. Lewis indicated his group was doing a project in Juneau and stated they might be interested in doing a separate project in Valdez due to the current housing shortage. Following that seminar, Mr. Lewis met in Valdez with Mr. Ragsdale, former interim city manager Bob Jean, former Mayor Larry Weaver, Mr. Lamar Cotten, and Ms. Von Barga in January 2016. The purpose of that meeting included an explanation of the purpose and mission of the Pacific Development Group and what they might be interested in undertaking in Valdez.

Ms. Von Barga explained, since the organization is working on a project in Juneau, they happened to be present at the same time City representatives were there for the annual lobbying trip in February 2016. Mr. Lewis and one of his business partners met with Council Members and City staff in Juneau to discuss options and a draft MOU for a project in Valdez. Pacific Development Group agreed to do a market rate analysis for Valdez. They hired a third party organization out of Anchorage to complete that study, with results provided to the City in summer 2016. Mr. Lewis requested a work session with City Council to discuss potential housing development projects. Following that work session, the City Council agreed to consider a draft MOU with the Pacific Development Group. Ms. Von Barga stated she received the MOU first and provided comments and adjustments back to Mr. Lewis. The adjusted MOU is now being presented for City Council consideration.

Ms. Von Barga explained she has received feedback from many members of the community that the City should be looking to many different development groups for proposals instead of solely focusing on one organization. Council Member Moulton stated he would prefer to release a request for proposals to see what options are available in the market similar to what was done with the revisioning project. Ms. Von Barga stated there are also local members of the Valdez community who would be able to create smaller housing developments if given the opportunity for a

public-private partnership. Those community members expressed concerns regarding the City partnering with a larger firm from outside Valdez when there were local options available. She explained there have also been discussions regarding creation of a "toolbox" of development options available to all developers under certain parameters. Public infrastructure and accessibility to affordable land appears to be two of the top hurdles to overcome.

Council Member Moulton stated the Pacific Development Group project is small in terms of the footprint at two acres. His long-term vision is to open up additional subdivisions like Corbin Creek, Robe River, or the zero lot line portion of town. Ms. Von Barga explained the City Economic Diversification Commission has a similar discussion. However, the Pacific Development Group project includes a narrow focus of possible home owners or clientele. The City should have a plan to meet the whole spectrum of needs of the community, including affordable housing. The proposed project is one small portion of that overall plan. She explained two options exist for the City - work with developers or develop the land directly and then sell it off via public auction.

Mayor Knight clarified the proposed project included new construction of 40 to 60 new housing units of various bedroom sizes on a two acre footprint. The proposal states rental rates for the housing units developed during the project should be affordable to families with proven income of less than 60% of the median family income levels of the community.

Council Member Smith stated he appreciated the Pacific Development Group providing the MOU as requested during the Council work session. He expressed concern that there are no clear costs associated with the project and the proposal references existing funding gaps. Ms. Von Barga stated the MOU involves a commitment to put together a funding package, however there is nothing committing the City to doing the project if the total funding package is delayed or unavailable by a certain period of time. Council Member Smith asked if the Council commits to the MOU, will the City then be committed to providing at least partial funding for the project. Ms. Von Barga explained the City would be committed to moving forward with the project, however, the MOU speaks to multiple other agreements including a funding and development agreements. She stated there will be several additional stages to go through before a project "go/no go" decision must be made.

Council Member Smith stated a company has identified a need, approached the City Council, and provided a proposal to address that need. He expressed with concerns that the Council would then put the project out to RFP because it appears to penalize the company who identified the issue and came forward with a proposal. Council Member Moulton stated the same situation occurred on another topic recently. Council Member Smith stated the RFP is a more prudent option, but making decisions which could effectively penalize someone who comes forward with a good idea should be taken into consideration. Ms. Von Barga said if the City puts out an RFP, it will be unlikely for a project to be completed in 2017. When Mr. Lewis visited with Council, he provided a 2017 project timeline based upon the tax credit application deadline.

However, in order to address and execute the MOU with Pacific Development Group and subsequently put together a housing package, that timeline is not going to be feasible. She explained the tax credit application is due mid-summer. Several months of predevelopment work will need to be done for the application, including identification of a development partner, working through the project process, and submitting for funding in 2018. This would push the project start to construction season 2019.

Mr. Staser added, after review of the agenda item, the MOU and subsequent project is likely subject to procurement sections of City Code. He would need to conduct additional research, but procurement policy should be explored prior to entering into any type of project contract.

Mr. Jim Shirrell, Valdez resident, expressed concerns with the exclusivity requirement. He said the MOU reads that the City will be committing to project development with Pacific Development Group in particular. He stated the City has quite a few projects and initiatives being worked recently and not enough staff resources to do all those initiatives well. This has resulted in a general feeling that the City must go with the first company who pitches an idea because enough time was not spent working on the initiative in the first place. He stated this is no one's fault and is not being critical of City staff. He requested, however, that Council make decisions based upon what is in the market place and what staff are capable of realistically addressing with time and resources available. Competition in the market place under the RFP process will benefit the City, especially if the City is providing land, utilities, and partial funding. He explained this will provide the City comparatives and put the Council in a better negotiating position.

Council Member Moulton stated his preference is to release an RFP for housing development projects. He explained there are plenty of communities who entered into public-private partnerships to build housing. It would be beneficial to reach out to other local government entities who have been through the process to better understand challenges. This type of housing project will likely never pay for itself, so it is unlikely a builder will choose to complete the project at a loss. Ms. Von Barga explained she and Mr. Lamar Cotten met with each of the housing authorities in January 2016 and have the ability to contact other local governments. She explained this topic was brought forward to Council as a discussion item because staff needed direction on the next step in the process. Council Member Moulton stated it appears resources are available to see if MOU language is standard in the industry. Ms. Von Barga explained the "trifecta" exists in Valdez for housing development. The biggest hurdles, especially for affordable housing development are funding, land, and regulatory authority of which Valdez has all three.

Mr. Ragsdale explained housing development is a competitive business. If developers know the City is interested in project proposals, the City is then in a position to find the best possible package for community needs. He stated any housing development in Valdez will likely need to be under a public-private partnership and the City must provide guidelines for the types of projects needed. Mayor Knight stated a clear

delineation must be made in any future project contract who is responsible for and receives rent from the housing development once construction is complete. Mr. Ragsdale stated that point could be included in the RFP. Council Member Moulton expressed he would prefer the City not manage a rental type development post-construction. Ms. Von Barga explained development agreements would include designation of who will manage the property for its lifespan. She stated, as she understands the process, the City would own the development at the end of construction with rental or other payments going back to the City to pay for investment funding. Those points need to be clearly outlined in the RFP and subsequent agreement documents.

Council Member Smith stated the RFP must include the location where the developer recommends placing housing so the City can look at existing and needed infrastructure. This will allow development of cost estimate for each proposed housing project. He explained the Council needs to look at total available funding allocated to housing and their priorities moving forward. He stated he supported additional Council work sessions to continue the affordable housing project conversation.

Mr. Harold Blehm, Valdez resident, encouraged Council to put thoughtful effort into housing options for Valdez and keep development a competitive process. He stated it would be great to see Valdez develop an affordable housing model that sets the standard statewide. Without an RFP, the City might be missing out on important opportunities.

Ms. Von Barga clarified the Council expects staff to put together a housing project timeline, draft an RFP for housing project proposals, and encourage Pacific Development Group to submit a proposal once the RFP is released. Mayor Knight stated construction would likely not occur in 2017 based upon timelines for the RFP process.

Council Member Fleming suggested the City Manager review all of the workload of the Community Development Department overall. The City Manager should then evaluate timelines needed to work on the housing project within the scope of all responsibilities of that department and determine if additional staff resources might be needed. He stated the City Manager should then come back to Council with an appropriate timeline. Mayor Knight stated the timeline should be aggressive but considerate of staff workload.

Council Member Smith thanked Pacific Development Group for all their hard work and investment into the process thus far. He explained their efforts have substantially moved along the conversation regarding affordable housing development in Valdez.

## **5. Approval of Brewery License - Valdez Brewing Company, LLC**

Item moved from the Consent Agenda to New Business.

***MOTION: Council Member Moulton moved, seconded by Council Member Cockerham, to approve brewery***

*license for the Valdez Brewing Company, LLC.*

Council Member Moulton stated the establishment appears to be a tap room and not a brewery. Ms. Pierce explained she asked the city attorney to determine the legal definition of a brewery under state statute and provided the footprint included in the applicant's state license paperwork. Mr. Staser explained, by state statute, a brewery license authorizes the holder to operate a brewery where beer is manufactured and bottled or barreled for sale. He stated it was unclear in the applicant's package to the state where beer would be manufactured.

Ms. Von Barga explained in previous conversations with the applicant, the intent was to make the space available to small home brewers who could manufacture then sell batches of their craft beers on an interim basis. She stated the City is not currently zoned for a brewery. This will need to be updated in zoning code before the applicant will be able to open to the public.

Ms. Pierce recommended postponing the agenda item until the next regular City Council meeting. This would allow time to contact both the applicant and the state of Alaska for clarification.

***MOTION TO POSTPONE:*** Council Member Smith moved, seconded by Council Member Fleming, to postpone approval of brewery license for the Valdez Brewing Company, LLC until the next regular Council meeting of November 22, 2016. The motion to postpone carried by the following vote after the following discussion occurred.

**Yays:** 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming

## **6. Appointments to Planning & Zoning Commission**

Item moved from the Consent Agenda to New Business.

***MOTION:*** Council Member Moulton moved, seconded by Council Member Smith, to appoint Roger Kipar, Donald Haase, and Victor Weaver to three-year terms on the Planning & Zoning Commission. The motion carried by the following vote after the following discussion occurred.

Council Member Needles asked if Mr. Roger Kipar was eligible to serve as a Planning & Zoning Commissioner since he has multiple contracts with the City. Ms. Von Barga and Ms. Ferko provided explanation of multiple steps used by staff to determine if a commissioner has an apparent conflict of interest with items they might be discussing or acting upon as part of their official duties.

Ms. Ferko explained she holds a one-on-one in processing meeting with all appointed and reappointed commissioners where ethics and conflicts of interest are discussed in detail. During this meeting, she provides each commissioner with a copy of the ethics chapter of City code, explains application of the code, and assists the appointee with completing a declaration form for contracts, businesses or other potential financial conflicts of interest. The commissioner is instructed to update the form as needed or

take it with them for future use if it does not currently apply. Ms. Ferko then explains situations and processes when a commissioner would need to recuse themselves from a discussion or vote during a commission meeting.

Ms. Von Bargaen stated this process is followed and highlighted for all Planning & Zoning commissioners after the in processing meeting in the Clerks Office. Ms. Von Bargaen stated there have also been commissioners who lived in a proposed rezone area or area effected by a conditional use permit who have asked to recuse themselves from a vote due to a potential or perceived conflict of interest.

Ms. Pierce added the City Council may remove a commissioner from service if they fail to declare a conflict of interest per City Code.

Mayor Knight thanked all three applicants for their interest in applying to serve on the commission.

*Yays: 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming*

## VII. RESOLUTIONS

### 1. #16-39 Re-Authorizing the Negotiated Land Sale of a 5,368ft<sup>2</sup> Portion of Tract D, Block 3 of Block 20, Addition #2, Mineral Creek Subdivision to Edward (Mike) and Aurora Meller.

*MOTION: Council Member McCune moved, seconded by Council Member Needles, to approve Resolution #16-39 reauthorizing the negotiated land sale of a 5,368 square foot portion of Tract D, Block 3 of Block 20, Addition #2, Mineral Creek Subdivision to Edward(Mike) and Aurora Meller. The motion carried by the following vote after the following discussion occurred.*

Council Member Fleming asked what was the original intent for use of Tract D. Ms. Von Bargaen explained Tract D was originally intended for snow storage and a utility easement. However, it has not been used for snow storage recently. Council Member Fleming stated it appears Tract D overlaps adjoining parcels and asked if the adjacent property owners had been contacted. Ms. Von Bargaen explained her staff contacted the adjacent property owners and they were not interested in purchasing the land.

Ms. Von Bargaen stated there is a concern with this negotiated land sale. The City received a title report that states there is not clear title to the land by the City. She explained she received a preliminary report from the land attorney which confirmed the most recent title report. She is still working through the details to obtain a clear title. It appears when the City sold the land to the company who developed the land, there was supposed to be a document which returned ownership of that portion of the property back to the City for snow storage and utility easement purposes. That document is missing. Ms. Von Bargaen continues to work with the City land attorney to clear the title.

Council Member Fleming supports selling the land adjacent to the Meller's property

to them, however finds it odd to sell the entire tract. Ms. Von Bargen clarified the land sale in question would be just that portion adjacent to the Meller's property. Mayor Knight stated this sale is a reauthorization and was previously approved by Council. She asked if the challenges with clearing the title would be resolved in enough time to complete the sale within a year.

Mayor Knight stated during a meeting with Mr. Robin Brena, the City's legal firm, Mr. Brena stated they do have a land attorney on staff. She stated Ms. Von Bargen should be using Mr. Brena's land attorney instead of contracting out with a separate firm.

Council Member Smith asked if having a clear title might be an issue with any other land sales or purchases undertaken by the City. Ms. Von Bargen stated the easiest way to resolve the issue in the future is to obtain title documents prior to any other actions on the sale or purchase of land. That way the title can be cleared before any negotiations occur or the item is brought forward to Council for consideration.

*Yays: 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming*

## **2. #16-40 Supporting Full Funding of the State of Alaska Municipal Harbor Facility Grant Program in the FY 2018 State Capital Budget**

*MOTION: Council Member Smith moved, seconded by Council Member McCune, to approve Resolution # 16-40 supporting full funding of the State of Alaska Municipal Harbor Facility Grant Program in the FY 2018 State Capital Budget. The motion carried by the following vote after the following discussion occurred.*

*Yays: 7 - Mayor Knight, Council Member Smith, Council Member Moulton, Council Member Needles, Council Member Cockerham, Council Member McCune, and Council Member Fleming*

## **VIII. REPORTS**

### **1. Appraisal Report**

### **2. Commercial Marijuana Facility Inspection – Alaskan Greenery**

Mayor Knight stated, to her understanding the inspections were not required but part of maintaining open communications and transparency between the City and the businesses. Chief of Police Bart Hinkle stated he reached out to both businesses once it was clear what date they would open. Both business owners were more than willing to allow the Valdez Police Department to conduct an inspection. Chief Hinkle stated both Alaskan Greenery and Herbal Outfitters are in compliance with state and city regulations. Council Member Smith thanked both business owners for following through and "being good neighbors" as they moved through the regulatory process.

### **3. Commercial Marijuana Facility Inspection - Herbal Outfitters**

#### 4. City Council Quarterly Travel Report

#### 5. Human Resources Report on At-Will Employment

Mayor Knight thanked Mr. Tim James, City Human Resources Director, for the work he and his staff put into the report. She stated it appears it would require a change of City charter, City code, and Personnel Regulations policies to move to at-will employment status for City department directors.

Council Member Smith asked if a biannual evaluation for department directors would be more appropriate than a move to at-will employment status. He stated he understands the differences between public and private sector employees, and even with at-will status public sector employees must be afforded due process. Mr. James stated a bi-annual employee evaluation would require a change to the City's Personnel Regulations. If there is movement, promotion, or other employment actions, an evaluation is required as well. Mr. James stated the larger concern with department directors is that their evaluations have not been completed by the former City Manager for several years. He explained he has been very forward leaning since he was hired in January with ensuring evaluations are completed on time for every employee, including department directors. He explained he has also has standardized discipline and performance correction processes across the City departments so they are all the same and in compliance with the Personnel Regulations manual. Mr. James stated if the City can follow the evaluation, discipline, and performance corrections processes as laid out in the manual, many of the previous employee issues will be resolved. Council Member Smith stated having due diligence during the hiring process might also be an area of improvement to address. Mr. James stated the City is moving away from hiring just to fill positions, instead seeking out good quality applicants and leaving a position vacant until a good, qualified fit is found.

Council Member Smith asked if Mr. Staser had anything to add. Mr. Staser stated his firm, in partnership with Mr. James, is currently working to revise the City Personnel Regulations. Mr. James stated increasing the number of performance evaluations at this point is likely not going to create any substantial positive change. He stated he would recommend following the current process as intended over the next year. If positive changes are not apparent, he might then consider other options.

Council Member Cockerham expressed he is a strong believer in evaluations as a performance management tool. Evaluations provide opportunities to highlight good performers, as well as areas in which employee performance can improve. If a struggling employee is unable to correct a deficiency once it has been communicated and tools have been provided to assist with correction, then supervisors can move forward from that point.

Mr. James explained his assistant, Ms. Tina Fifarek, sends out a monthly reminders to department directors regarding their status with department employee evaluations. He stated the City must follow the established evaluation and personnel management

processes across departments.

Council Member Needles stated he would like to see the at-will employment charter change on the May 2017 municipal ballot to determine the view of Valdez citizens. Mayor Knight stated she asked Ms. Pierce about the timeline for placing something on the ballot. Ms. Pierce explained a resolution with the ballot verbiage would need to come before Council for approval in February 2017. Mr. James asked Council Member Needles if the suggested ballot proposition would be for department directors only or all City staff. Mr. James stated, in discussion with the City's attorney, if a change to at-will employment occurred, the City would likely be very busy with employment litigation.

Council Member Smith added it would likely be more challenging to hire talented people for public service if they did not have basic job security through due process. Council Member Moulton stated it was more important to him that staff were following the Personnel Regulations. He explained performance step increases are linked to annual evaluations. If a staff member failed to either receive a performance evaluation or received a less than favorable rating, they do not receive the step increase. Mr. James stated this is correct as outlined in Personnel Regulations. He explained, however, the current practice is that the performance step increase has now become a longevity award since performance evaluations have not historically been completed on time.

Council Member Moulton stated as long as both sides of the evaluation process are being enforced, he has less concern with the at-will status of employees. He stated he feels more comfortable with the process now that the City has a separate Human Resources function and that failure to complete evaluations on time is being enforced. He stated as long as employees are performing, they should not be in fear of being fired. Mr. Staser stated City employees are currently considered "just cause", considered to have a property right for employment, and must be offered due process if the change to "at will" is being considered. Mr. James stated courts have been upholding the public employment property right since the 1980's. Council Member Needles asked if employees are considered "just cause" there will be less litigation. Mr. James stated if due process procedures are followed, litigation would be less likely but would never be non-existent.

Mr. Staser stated moving employees from "just cause" to "at will" would require following due process regarding property rights for current employees. Mr. James explained even though employment property rights are not a formal contract, they are considered an implied contract and still treated in relatively the same manner by the courts. Mayor Knight stated the previous discussion regarding at will status involved all future department heads, not those currently serving.

Council Member Moulton stated he would support leaving employment status as currently structured, as long as the written processes for evaluations and performance management are followed. He stated it is not difficult to remove an employee from their job if there is documented proof of non-performance. He explained the problem

in the past was that department heads were not evaluated as required, nor was discipline or performance correction documented.

Mayor Knight stated if the issue comes up again in the future, Mr. James has done all of the research on the topic. Council Member Fleming asked the City Clerk if changes to the City Personnel Regulations manual must be approved by City Council. Ms. Pierce confirmed this as true. Mr. James clarified revisions and changes to the manual are currently being drafted, but must be approved by Council. Mr. James stated the Baker-Tilly report suggested changing the Personnel Regulations manual format into an employee handbook coupled with a set of policies and procedures. If a change needed to be made to a single policy or procedure, the revision process would be much easier to complete and approve.

## **IX. CITY MANAGER / CITY CLERK / CITY ATTORNEY / MAYOR REPORTS**

### **1. City Manager Report**

Mr. Ragsdale distributed the City Council goals matrix. This document would be referenced throughout the year when referencing projects or programs designed to meet Council's five priority goals.

Staff efforts during the past couple of weeks have been focused on the budget process. Work with the Department of Natural Resources towards the gravel extraction permits is ongoing. Staff have also been working on development of scope for the Kimley-Horn project, with the working group meeting several times in the past couple of weeks.

### **2. City Clerk Report**

Absentee voting in person is currently available at City Hall between 8:30 a.m. and 5:00 p.m. through November 7th.

Election day is Tuesday, November 8th. Polls are open from 7:00 a.m. until 8:00 p.m. The November General Election is run by the State of Alaska, with the City Clerk providing support to the precinct chairs as needed. The City does not certify anything for this election.

As District IX representative, Ms. Pierce will be attending the mid-year International Institute of Municipal Clerks meeting in Washington, D.C. the week of November 6th.

The Alaska Municipal League winter conference will take place in Anchorage the week of November 14th. The Mayor will be attending the Alaska Conference of Mayors meeting directly prior to the AML conference. Council Member Needles is scheduled to attend AML. Ms. Pierce and Ms. Ferko will be attending the Alaska Association of Municipal Clerks portion of the AML conference.

The Economic Diversification Commission will be holding a work session on

December 7th at 6:00 p.m. to discuss the results of the SE Group's Year Round Mountain Recreation Site study. They would like to invite the City Council to attend as a joint work session. Council Member Moulton requested a copy of the study results prior to the meeting. Ms. Pierce will work with the City's Community Development Department to obtain a copy for the Council.

Prior to the regular Council meeting on December 6th, a work session at 6:00 p.m. will be held to discuss legislative priorities. Mr. Kim Hutchinson, the City's state lobbyist, and the school board will be in attendance.

The second regular Council meeting for November will move to the 22nd due to AML. The public budget hearing will take place prior to that meeting at 6:00 p.m. The City Manager evaluation process will start on November 22nd, with the actual evaluation taking place on December 6th. Council policies involve a two meeting evaluation process, with the first being Council only and the second being both the Council and City Manager. Council Member Moulton stated along with the expectations for employees, evaluations for the City Manager and City Clerk must also be done on time.

### **3. City Attorney Report**

There was a challenge to the State of Alaska Department of Revenue's jurisdiction over taxability issues. The City's legal team argued that the State Assessment Review Board (SARB), through with there has been much success regarding valuation, can hear taxability issues for oil and gasoline properties. The court agreed and now legal is waiting on a final appeal judgment from Superior Court.

Following the TAPS litigation settlement, the City's legal team is currently sending out compliance certificates with protective orders attendant to that case. Documents received as part of the litigation included confidential items in both electronic and paper format. Now that the case is concluded, all of those confidential documents must be destroyed as part of the settlement. Anything that is part of the official record will be maintained.

The City's legal team is in negotiations with the Department of Revenue regarding escaped property. Essentially, this would allow the City to impose property taxes on certain types of oil spill response equipment.

FERC staff filed comments on second draft resource reports last week. They requested additional information on the Valdez alternative, which is encouraging. Substantive data omitted to date, such as acres of wetlands effected and amount of green field construction required, has been requested by FERC itself. This type of information would allow a true and objective comparison analysis of the two pipeline routes. Comments are nearly finalized by the City's legal team. Once approved by Mr. Brena, they will be presented to City Council for review and approval prior to submission to FERC. The state is now willing to take a bigger role in the project, which bodes well for taking a more open minded look at the Valdez alternative.

Mr. Staser is meeting with Chief Hinkle and Ms. Pierce regarding City Code changes necessary following passage of SB91 and SB165. These bills made changes to the state's criminal code and reduced certain charges to minor offenses which the City could prosecute. Mr. Staser would act as the City's prosecutor in these cases. The City fine schedule is also being considered for changes to provide more of a deterrent to certain behavior under the minor offense code.

#### **4. City Mayor Report**

Mayor Knight reviewed her written Mayor's report.

Several Council members brought to the Mayor's attention concerns with the subpar concrete work on the new Egan Street benches. This topic was discussed at the Mayor's Beautification Task Force meeting and City staff were already addressing the issue. The subcontractor will be returning to fix the problems with the concrete. Red and white lights will be added to the light poles along Egan Street for the holidays. The Mayor's Beautification Task force has a subcommittee working on options for banner artwork for the poles. Options for snowflake lights are also being discussed.

Mayor Knight and Mr. Robin Brena discussed the proposed legal budget at a meeting on Wednesday. Mr. Brena expressed no concerns at this time and there will likely be no changes. They discussed the importance of having a substantive attorney's report at each Council meeting. The Mayor thanked Mr. Staser for providing a thorough report during the meeting.

Mayor Knight attended a teleconference regarding the Alaska Marine Highway System (AMHS). The cities of Cordova, Kodiak, and Homer were all represented and asked questions. She thanked Mr. Doug Desorcie for providing a schedule for that teleconference. Mayor Knight stated the City provided AMHS a list of events in Valdez around which they might consider ferry service to Valdez. The AMHS schedule for 2017 should be released mid-November.

Mayor Knight gave a brief synopsis of the upcoming budget hearing schedule. She requested a list of capital improvement project priorities and staff capabilities to work projects from each department to help the City Council make more informed decisions. City Council scheduled an additional budget work session for Monday, November 7th at 6:00 p.m. at the Civic Center. This will be the final budget work session.

A second grade class at the elementary school wrote letters about the things they want to keep in Valdez during the budget hearing process - including the skate park, City parks, the climbing wall, the pool, the animal shelter, and the movie theater. Mayor Knight wrote back to the students thanking them for their letters. She was happy to see local teachers highlighting civic engagement even with the younger students.

**X. COUNCIL BUSINESS FROM THE FLOOR**

Council Member Smith expressed his appreciation for all the hard work of the Beautification Task Force on the Egan Street Beautification Project. He explained he serves on the committee that is developing the scope of work for the Kimley-Horn revitalization project and the group would be reaching out for public involvement and input in the very near future. He stated he was impressed with the amount and quality of activities offered around Valdez for the Halloween holiday.

Council Member Smith asked for an update on the Aleutian Village situation. Ms. Von Barga explained Mr. Alan Minish from Wrangell Mountain Technical Services is in the process of completing the record of improvements survey. He provided a document for Ms. Von Barga and the City Engineer to review, which is due back to him in several days. The survey is almost complete.

Council Member McCune expressed his appreciation for all of the volunteers or businesses that participated in Halloween events around town.

Council Member Cockerham asked if the City had ever conducted a climate survey so that employees might provide anonymous input regarding their experience with the City workplace. He explained the school district completed a climate survey for both students and staff and the results were powerful. Mr. James stated the City has not conducted a climate survey, but it is on his list of items to accomplish. Mr. Ragsdale asked if Council Member Cockerham could provide a copy of the climate survey used at the school district as an example.

Council Member Moulton expressed his appreciation for the Valdez Fire Department volunteers who spent time doing fire safety outreach recently at the school district. The education provided to local students appears to have been very well received.

Council Member Moulton stated he received far more compliments than complaints on the Egan Street Beautification Project and thanked the Beautification Task Force for their hard work.

Mayor Knight stated she received an email from DOWL stating there is still work to be done to obtain the gravel extraction permits. However, overall the Army Corps of Engineer does not seem to want to deter this type of project as long as it is planned properly. Council Member McCune asked how much gravel has been moved out of the Valdez Glacier Stream. Council Member Needles stated he spoke with the City Public Work Director and only a small amount of material has been removed. Mayor Knight explained the Gravel & Flooding Task Force would be meeting in the next couple of weeks.

**XI. ADJOURNMENT**

There being no further business, Mayor Knight adjourned the meeting at 9:35 p.m.

DRAFT