

**JUNE 15, 2022
CITY COUNCIL MEETING
ADDITIONAL MATERIAL/REVISIONS**

REQUESTED ADDITIONS TO THE PACKET:

<u>ACTION</u>	<u>ITEM</u>	<u>REQUESTED BY</u>
Add to item B. 1.	Scheduled Public Comments – Rights of Grand Juries <ul style="list-style-type: none">• Additional Information Provided by Presenter – Representative Ben Carpenter.	
Add to item D. 7.	Resolution No. 2022-51 <ul style="list-style-type: none">• Airport Commission Lawton Acres Memo/Minutes• Summary of Technical Amendments Memo	City Manager City Manager
Add to item G. 2.	Action/Approval – FY2022 Purchase Orders Over \$15,000 <ul style="list-style-type: none">• Requested Amendment Memo	City Manager
Add to item G. 13.	New Business – Ordinance 3295-2022 (<i>introduction</i>) <ul style="list-style-type: none">• Public Comment	City Clerk

The Constitution of the State of Alaska

Art. I, Sec. 8 Grand Jury

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

Alaska Statute

Chapter 40. Grand Jury.

Sec. 12.40.010. Qualifications and manner of drawing grand jurors.

Grand jurors shall have the qualifications and be drawn as are trial jurors under AS 09.20.010 - 09.20.080.

Sec. 12.40.020. Number of jurors.

The grand jury consists of not less than 12 nor more than 18 members.

Sec. 12.40.030. Duty of inquiry into crimes and general powers.

The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate, and make recommendations concerning the public welfare or safety.

Sec. 12.40.040. Juror to disclose knowledge of crime.

If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it.

Sec. 12.40.050. Holding to answer as affecting indictment or presentment.

The grand jury may indict or present a person for a crime upon sufficient evidence, whether that person has been held to answer for the crime or not.

Sec. 12.40.060. Access to public jails, prisons, and public records.

The grand jury is entitled to access, at all reasonable times, to the public jails and prisons, to offices pertaining to the courts of justice in the state, and to all other public offices, and to the examination of all public records in the state.

Sec. 12.40.070. Duty of prosecuting attorney.

The prosecuting attorney

(1) shall submit an indictment to the grand jury and cause the evidence in support of the indictment to be brought before them in every case when a person is held to answer a criminal charge in the court where the jury is formed;

(2) may submit an indictment in any case when the prosecuting attorney has good reason to believe a crime has been committed that is triable by the court; and

(3) shall, when required by the grand jury, prepare indictments or presentments for them and attend their sittings to advise them in relation to their duties or to examine witnesses in their presence.

Sec. 12.40.080. Effect of failure to return indictment.

When a grand jury does not return an indictment, the charge is dismissed, and it may not be again submitted to or inquired into by the grand jury unless the court so orders.

Sec. 12.40.090. Questioning juror for conduct.

A grand juror cannot be questioned for anything the juror may say or any vote the juror may give while acting as a grand juror, in relation to any matter legally pending before the grand jury, except for a perjury of which the juror may have been guilty in giving testimony before that jury.

<http://www.akleg.gov/basis/statutes.asp#12.40>

(a) **Representation by Counsel.** The defendant is entitled to be represented by counsel. If the defendant cannot secure counsel, counsel shall be appointed for the defendant.

(b) **Order of Proof—Witnesses Called by the State.** The state shall first present the evidence in support of its case. All witnesses called by the state shall be examined in the presence of the defendant and may be cross-examined by the defendant's or by the defendant's counsel.

(c) **Witnesses Called by the Defendant.** The defendant may produce and examine witnesses on the defendant's behalf. All witnesses, including the defendant should the defendant choose to testify, may be cross-examined. The production of witnesses shall be governed by Rule 17, so far as it is applicable.

(d) **Evidence.** At the preliminary examination, the admissibility of evidence other than written reports of experts shall be governed by the Alaska Rules of Evidence. Rulings pertaining to the admissibility of evidence shall not be binding upon any subsequent judicial proceeding.

(e) **Telephonic Testimony.**

(1) A witness may participate telephonically if the witness:

(A) would be required to travel more than 50 miles to court; or

(B) lives in a place from which people customarily travel by air to the court.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the court.

(f) **Record.** The proceedings shall be electronically recorded.

(g) **Exclusion of Witnesses.** At the request of either party, the judge or magistrate judge shall exclude from the courtroom any witness of an adverse party, if at the time of the request the witness is not under examination.

(h) **Discharge of the Defendant.** If from the evidence, it appears that

(1) there is no probable cause to believe that an offense has been committed, or

(2) if there is probable cause to believe that an offense has been committed, but no probable cause to believe that defendant committed the offense, then the judge or magistrate judge shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(i) **Commitment of Defendant.** If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge or magistrate judge shall enter an order holding the

defendant to answer to the charge and committing the defendant to proper custody. The judge or magistrate judge shall admit the defendant to bail as provided by law and by these rules.

(j) **Records.** When a judge or magistrate judge has held a defendant to answer, the judge or magistrate judge shall transmit to the clerk of the superior court of the judicial district in which the offense is triable all papers in the proceedings, any bail taken by the judge or magistrate judge, and all exhibits introduced at the examination.

(k) **Counsel for Complaining Witness—Counsel for Prosecution.** A complaining witness may be represented by counsel at every stage of the preliminary hearing. The attorney general or some attorney authorized to act for the attorney general may appear on behalf of the State of Alaska and control the conduct of the prosecution.

(Added by SCO 157 effective February 15, 1973; amended by SCO 368 effective August 1, 1979; by SCO 1153 effective July 15, 1994; by SCO 1460 effective October 15, 2003; by SCO 1799 effective October 15, 2013; and by SCO 1829 effective October 15, 2014)

PART III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) **By Whom Convened.** The presiding superior court judge of the judicial district encompassing the grand jury location specified in section (b) shall convene the grand jury.

(b) **Where Grand Juries Shall Be Convened.** The grand jury shall be convened at the superior court location shown in the following table, based on the superior court venue district in which the matter under investigation occurred. The superior court venue districts are defined in the Criminal Rule 18 venue map.

Superior Court Venue District in which the matter under investigation occurred	Location at which the grand jury will be convened
Anchorage	Anchorage
Bethel	Bethel
Cordova	Anchorage or Palmer
Craig	Juneau, Ketchikan, or Sitka
Delta Junction	Fairbanks
Dillingham	Dillingham or Anchorage
Fairbanks	Fairbanks
Glennallen	Anchorage or Palmer
Homer	Kenai
Juneau	Juneau, Sitka, or Ketchikan
Kenai	Kenai
Ketchikan	Ketchikan, Sitka, or Juneau
Kodiak	Kodiak
Kotzebue	Kotzebue

Naknek	Anchorage
Nenana	Fairbanks
Nome	Nome
Palmer	Palmer
Petersburg	Juneau, Ketchikan, or Sitka
Seward	Kenai
Sitka	Sitka, Juneau, or Ketchikan
Tok	Fairbanks
Unalaska	Anchorage
Utqiagvik – (formerly Barrow)	Utqiagvik – (formerly Barrow)
Valdez	Anchorage or Palmer
Wrangell	Juneau, Ketchikan, or Sitka

The presiding judge of a judicial district shall be empowered to call a special jury to be convened at a site other than the site designated in this subsection if the presiding judge determines that the designation of a special site is necessary in the interest of justice.

(c) **Selection of Prospective Grand Jurors.** Prospective grand jurors shall have the qualifications and shall be drawn and selected as set forth by law, with the additional provisions:

(1) prospective grand jurors shall be selected from the population within a fifty-mile radius of the place where the grand jury is convened, and

(2) the presiding judge of the superior court may with the approval of the administrative director select prospective grand jurors at large from the judicial district in which the matter under investigation occurred.

(d) **Summoning Grand Jurors.** At least once each year the presiding judge of the superior court in each judicial district shall order one or more grand juries to be convened at such times as the public interest requires. The grand jury shall consist of not less than 12 nor more than 18 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement. Any qualified member of the grand jury panel not designated to serve as a member of the grand jury may be placed on the petit jury panel. An otherwise qualified person called for petit jury service may be placed on the grand jury panel. A grand jury shall serve until discharged by the presiding judge but no grand jury may serve more than 4 months, unless this period is extended for good cause.

(e) **Swearing and Instructing Jurors.**

(1) The following oath shall be administered by the clerk of the superior court to the persons selected for grand jury duty:

“You and each of you as members of this grand jury for the State of Alaska, do solemnly swear or affirm that you will diligently inquire and true presentment make of all such matters as shall be given to you for consideration, or shall otherwise come to your knowledge in connection with your present service; that you will preserve the secrecy required by law as to all proceedings had before you; that you will present

no one through envy, hatred or malice, or leave any one unpresented through fear, affection, gain, reward, or hope thereof; but that you will present all things truly and impartially as they shall come to your knowledge according to the best of your understanding.”

(2) When the grand jury is sworn, the court shall charge the jury with written instructions, which the court deems proper, concerning the powers and duties of the grand jury.

(f) **Alternate Jurors.** The presiding judge may direct that alternate jurors be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impaneled as provided in paragraph (s) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(g) **Objections to Grand Jury and to Grand Jurors.** A motion to dismiss the indictment or to expunge a report of the grand jury may be based upon objections to the array or the lack of legal qualification of an individual juror. An indictment shall not be dismissed nor a report expunged upon the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to paragraph (h) of this rule that a majority of the total number of grand jurors comprising the grand jury when the grand jury is sworn and charged with instructions, after deducting the number not legally qualified, concurred in finding the indictment or making the report.

(h) **Foreperson and Deputy Foreperson.** The presiding judge shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments and reports. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and the issuance of every report and shall file the record with the clerk of the court, but the record shall not be made public except on order of the presiding judge. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(i) **Preparing Indictments and Presentments.** The prosecuting attorney shall prepare all indictments and presentments for the grand jury, and shall attend their sittings to advise them of their duties and to examine witnesses in their presence.

(j) **Record of Proceedings.** All proceedings before the grand jury, including the testimony of witnesses and any statements made by the prosecuting attorney or by any of the jurors, shall be electronically recorded.

(k) **Who May Be Present.** The prosecuting attorney, the witness under examination, a court clerk for the purpose of recording the proceedings, and, when needed, an interpreter, a person transcribing for the deaf, and any law enforcement officer who has custody of the witness being examined may be

present while the grand jury is in session. No persons other than the jurors and any interpreter or transcriber necessary to assist a juror who is hearing or speech impaired shall be present while the grand jury is deliberating or voting.

(l) Secrecy of Proceedings and Disclosure.

(1) The selection, swearing, and charging of grand jurors and all matters occurring before the grand jury are secret, except as otherwise provided by this rule. Disclosure of matters, other than the grand jury's deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of the prosecuting attorneys' duties. Otherwise a judge, juror, attorney, interpreter, person transcribing for the deaf, law enforcement officer, court clerk, or a typist who transcribes recorded testimony may disclose matters only when so directed by the court preliminary to or in connection with a judicial or administrative proceeding.

(2) The returns of indictments to the superior court are public proceedings, unless the court directs that the proceedings be closed to the public and the indictment kept secret until the defendant is in custody or has given bail. In that event, the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(3) No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(m) Availability of Grand Jury Record to Defendant. Upon request, a defendant shall be entitled to listen to the electronic recording of the grand jury proceedings and inspect all exhibits presented to the grand jury. Upon further request the defendant may obtain a transcript of such proceedings and copies of such exhibits. The trial of the case shall not be delayed because of the failure of a defendant to request the transcript. The availability of a grand jury report is governed by Criminal Rule 6.1.

(n) Finding and Return of Indictment.

(1) An indictment may be found only upon the concurrence of a majority of the total number of jurors comprising the grand jury when the grand jury is sworn and charged with instructions, after deducting the number not legally qualified.

(2) If an indictment is not found, the indictment shall be endorsed "not a true bill" and signed by the foreperson. If an indictment is found, the indictment shall be endorsed "a true bill" and signed by the foreperson.

(3) (i) If an indictment is endorsed "a true bill," the indictment shall be presented in open court and filed with the clerk where it shall be open to public inspection.

(ii) If an indictment is endorsed "not a true bill" and a complaint or information was previously filed in a district court, the indictment shall be presented in open court and filed with the clerk where it shall be open to public inspection.

(iii) If an indictment is endorsed "not a true bill" and no

complaint or information was previously filed in district court, the indictment shall be filed with the clerk and held under seal.

(iv) The foreperson or deputy foreperson may present an indictment in open court without the presence of other grand jury members.

(4) If no indictment is found, the court shall hold the minutes, log notes, and record of the grand jury proceeding under seal. If an indictment is found, the log notes, transcript, and record of the grand jury proceeding will be confidential, as defined in Administrative Rule 37.5(c), except that the grand jury documents may be used by a party or counsel and by their staff, investigators, experts, and others as necessary for the preparation of the case. This paragraph does not preclude a party from attaching relevant portions of these documents to a pleading or motion, so long as victim and witness information is protected as provided in AS 12.61.100-.150.

(5) The return of exhibits used during the grand jury proceedings is governed by Criminal Rule 26.1(h).

(o) Presentment.

(1) Whenever there is doubt from the evidence presented

(i) whether the facts constitute a crime, or

(ii) whether a defendant is subject to prosecution by reason of either a lapse of time or a former acquittal or conviction, then the grand jury by a concurrence of at least five members may make a presentment of the facts of the case to the court with a request for instructions on the law.

(2) The presentment shall be made by the foreperson in the presence of the grand jury.

(3) The presentment shall not mention the names of individuals. The presentment shall not be filed with the court, nor shall it be kept by the court beyond the time that the grand jury is discharged.

(4) When the presentment is made the court shall give such instructions on the law as it considers necessary.

(p) **Defense Witnesses.** Although the grand jury has no duty to hear evidence on the behalf of the defendant, it may do so.

(q) **Sufficiency of Evidence.** When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses. An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness. The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

(r) Admissibility of Evidence.

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2), (3), and (6), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

(2) In a prosecution for an offense under AS 11.41.410—11.41.458, hearsay evidence of a statement related to the offense, not otherwise admissible, made by a child who is the victim of the offense may be admitted into evidence before the grand jury if

(i) the circumstances of the statement indicate its reliability;

(ii) the child is under 10 years of age when the hearsay evidence is sought to be admitted;

(iii) additional evidence is introduced to corroborate the statement; and

(iv) the child testifies at the grand jury proceeding or the child will be available to testify at trial.

(3) Hearsay evidence related to the offense, not otherwise admissible, may be admitted into evidence before the grand jury if

(i) the individual presenting the hearsay evidence is a peace officer involved in the investigation; and

(ii) the hearsay evidence consists of the statement and observations made by another peace officer in the course of an investigation; and

(iii) additional evidence is introduced to corroborate the statement.

(4) If the testimony presented by a peace officer under paragraph (3) of this section is inaccurate because of intentional, grossly negligent, or negligent misstatements or omissions, then the court shall dismiss an indictment resulting from the testimony if the defendant shows that the inaccuracy prejudices substantial rights of the defendant.

(5) In this section “statement” means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

(6) When a prior conviction is an element of an offense, hearsay evidence received through the Alaska Public Safety Information Network or from other government agencies of prior convictions may be presented to the grand jury.

(s) **Excusing Grand Jurors.** A seated juror may be excused for a particular case, permanently excused, or temporarily excused under the following circumstances:

(1) The prosecutor shall excuse a juror for a particular case when the juror informs the prosecutor that the juror cannot be fair or impartial in deciding that case. The prosecutor may ask the presiding judge to impanel an alternate.

(2) If the prosecutor is made aware of a grand juror’s potential prejudice or bias that could affect the grand jury’s impartial deliberations, or if the prosecutor seeks to challenge a juror for cause, the prosecutor shall present the information as to prejudice or bias or the challenge to the presiding judge. The judge shall provide the juror with notice of the prosecutor’s action and shall question the juror concerning the potential bias or challenge. After hearing from the juror, the judge may request additional information from the prosecutor, other jurors, or other sources. If potential bias or cause is shown, the judge may excuse the juror permanently or for a particular case. The judge may impanel an alternate juror in place of the juror excused. If no potential bias or cause is shown, the judge shall allow the juror to remain and may take other appropriate action.

(3) The presiding judge may excuse a juror temporarily because of illness or a personal or business matter that requires the juror’s attention. The presiding judge may delegate this authority to another judicial officer.

(4) An alternate juror must be present during the presentation of all evidence related to that case in order to vote on the proposed bill.

(t) **Delegation of Duties.** Whenever a superior court is sitting other than where the presiding judge is sitting, or the presiding judge is unavailable, the presiding judge may delegate duties under this rule to another judicial officer. However, the presiding judge may delegate duties under Criminal Rule 6.1 only to another superior court judge.

(u) **Telephonic Testimony.**

(1) A witness may participate telephonically in grand jury proceedings if the witness:

(A) would be required to travel more than 50 miles to the situs of the grand jury; or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the presiding judge of the judicial district, or the presiding judge’s designee. A motion to allow telephonic testimony under this subparagraph may be ex parte and shall be accompanied by an affidavit of the prosecuting attorney that states the reason telephonic testimony is requested.

(3) If a witness participates telephonically in grand jury proceedings, after the witness is sworn, the prosecuting attorney shall require the witness to:

(A) state the location from which the witness is testifying; and

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(B) verify

(i) that the witness' conversation cannot be overheard;

(ii) that no extension for the telephone from which the witness is testifying is in use; and

(iii) that the witness will notify the grand jury immediately if any person can overhear the witness' testimony or if the witness becomes aware that an extension for the telephone enters use during the testimony.

(Adopted by SCO 4 October 4, 1959; amended by SCO 30 effective February 1, 1961; by SCO 49 effective January 1, 1963; by SCO 136 dated August 27, 1971; by SCO 136A dated September 13, 1971; by Amendment No. 1 to SCO 136 dated October 17, 1972; by SCO 146 effective October 31, 1971; by Amendment No. 1 to SCO 146 effective October 31, 1971; by SCO 157 effective February 15, 1973; by SCO 216 effective October 1, 1975; by SCO 261 effective December 30, 1976; by SCO 539 effective October 1, 1982; by SCO 706 effective May 21, 1986; by SCO 711 effective September 15, 1986; by SCO 881 effective July 15, 1988; by SCO 937 effective January 15, 1989; by SCO 945 effective January 15, 1989; by SCO 956 effective July 15, 1989; by SCO 967 effective July 15, 1989; by SCO 969 effective July 15, 1989; by SCO 973 effective July 15, 1989; by SCO 991 effective January 15, 1990; by SCO 997 effective January 15, 1990; by SCO 1012 effective January 15, 1990; by SCO 1039 effective January 15, 1991; by SCO 1046 effective January 15, 1991; by SCO 1061 effective July 15, 1991; by SCO 1115 effective November 12, 1992; by SCO 1171 effective July 15, 1995; by SCO 1181 effective July 15, 1995; by SCO 1204 effective July 15, 1995; by SCO 1269 effective July 15, 1997; by SCO 1293 effective January 15, 1998; by SCO 1338 effective June 11, 1998; by SCO 1381 effective April 15, 2000; by SCO 1439 effective October 15, 2001; by SCO 1482 effective October 15, 2002; by SCO 1490 effective October 15, 2002; by SCO 1618 effective October 15, 2006; by SCO 1646-Amended effective October 15, 2007; by SCO 1745 effective April 15, 2011; by SCO 1760 effective October 14, 2011; by SCO 1872 effective April 27, 2016; by SCO 1916 effective January 1, 2018 and by SCO 1949 effective July 9, 2019)

Note to SCO 1269: Criminal Rule 6(r) was amended by §§ 18 & 19 ch. 143 SLA 1996 to allow certain hearsay evidence to be presented to the grand jury in a prosecution for felony DWI or felony refusal to submit to a chemical test. Section 21 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note: Subparagraphs (r)(2) and (3) of Criminal Rule 6 were added by ch. 41, §§ 1-2, SLA 1985, adopting AS 12.40.110.

Note to SCO 1204: Criminal Rules 6(r)(3) & (4) were added by ch. 114 § 2 SLA 1994. Section 4 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note to SCO 1293: Criminal Rule 6(u) was amended by §§ 20 & 25 ch. 63 SLA 1997 to eliminate the requirement that the prosecution must obtain permission from the court before a victim can testify by telephone. Section 1 of this order is

adopted for the sole reason that the legislature has mandated the amendment.

Note to SCO 1338: Criminal Rule 6(r)(2) was amended by § 21 ch. 81 SLA 1998 to allow hearsay evidence of a statement made by a child to be admitted before the grand jury in a prosecution for first degree indecent exposure as well as the other sex offenses defined in AS 11.41. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Note: Chapter 10, SLA 2019 (HB 49) enacted a number of changes relating to criminal procedure. Section 135 of the Act amended paragraph (r)(6) to allow the admissibility of an Alaska Public Safety Information Network or other government agency report of prior convictions if the prior conviction is an element of the offense. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Cross References

- (b) **CROSS REFERENCE:** AS 12.40.030; AS 12.40.040; AS 12.40.050; AS 12.40.060

Rule 6.1. Grand Jury Reports.

(a) **Authority to Issue Reports.**

(1) A grand jury may investigate and make reports and recommendations concerning the public safety or welfare. An indictment is not a "report" as used in this rule and Criminal Rule 6.

(2) A grand jury report may be made only upon the concurrence of a majority of the total number of grand jurors on the panel at the commencement of the proceedings resulting in the report. The report must be signed by the foreperson. A grand jury report may include allegations of criminal conduct.

(b) **Initial Judicial Review.** The grand jury shall present any proposed report to the presiding judge of the judicial district. The judge shall examine the report and the grand jury record before the grand jury is discharged. The judge may order production of audio copies or transcripts of the grand jury proceeding and may request the prosecuting attorney to submit a summary of the evidence presented to the grand jury. The judge shall make specific findings on the record as required by the following subparagraphs.

(1) The judge shall determine first whether the report satisfies the requirements of subparagraphs (a)(1) & (2). If it does not, the judge shall proceed under subparagraph (b)(3).

(2) The judge shall then determine if publication of the report would improperly infringe upon a constitutional right of any person, including but not limited to improper interference with a person's right to privacy or right to a fair trial in a pending or planned criminal proceeding. The judge shall make an ex parte on the record inquiry of the prosecuting attorney about any planned or pending criminal prosecutions related to the subject of the grand jury report.

(3) If the judge determines that the report does not meet the standards of subparagraphs (a)(1), (a)(2) or (b)(2) the judge shall return the report to the grand jury with an explanation of the reasons for returning the report. The grand jury may conduct further proceedings, revise the report, or seek appellate review of the judge's decision not to release the report.

(c) Judicial Review If Report Adversely Reflects on Identifiable Person. If the judge determines that the standards of paragraph (b) are satisfied, the judge shall determine whether any part of the report may reflect adversely on any person who is named or otherwise identified in the report. "Person" includes a natural person or an organization, but does not include a governmental subdivision or agency. If the report may adversely reflect on any identifiable person, the judge shall proceed under the following subparagraphs (c)(1)–(5).

(1) The judge shall order that notice of the report be provided to the person. The notice must advise the person of his or her rights as provided in this paragraph.

(2) The person may move, within ten days of notice of the report, for a hearing. The hearing will be held in camera and on the record.

(3) The person must be given a reasonable period of time prior to the hearing to examine the grand jury report and the record of the grand jury proceedings. A person receiving notice or a copy of the report and record may not disclose any matter occurring before the grand jury except as permitted by the court. Each person receiving these materials must be advised of this obligation.

(4) The person named or otherwise identified in the report may be represented by counsel at the hearing and may present argument as to whether the standards stated in subparagraph (c)(5) are satisfied. The prosecuting attorney may be present at this hearing and may also present argument. Neither side may present evidence nor examine witnesses, except that the named or otherwise identifiable person may submit a written response to the grand jury report which the person may request that the court issue with the report under paragraph (d).

(5) The judge shall determine at the close of the hearing whether that part of the report which may adversely reflect upon a named or otherwise identified person is supported by substantial evidence or, if raised at the hearing, whether the report satisfies the requirements of paragraph (b) of this rule and paragraph (g) of Criminal Rule 6. If the judge finds that these requirements are not satisfied, the judge shall return the report to the grand jury with an explanation of why the report has not been released. The court may request that the grand jury consider further evidence as to the named or otherwise identifiable person. The grand jury may conduct further proceedings, revise the report, or seek appellate review of the decision not to release the report.

(d) Release of Report.

(1) The court shall withhold publication of the report until the expiration of the time for making a motion for a hearing under paragraph (c). If such a motion is made, publication must be withheld pending a ruling on the motion or pending any review under paragraph (e). All proceedings under this rule are confidential until the presiding judge orders the report released.

(2) If the judge finds that the standards of paragraphs (b) and (c) are met, the judge shall order the report released. The judge may order that a response to the report by a person named or otherwise identified, or other additional materials, be attached to the report as an appendix. The report and any appendices will be filed with the clerk of the court and made available for public inspection. The court shall also direct that copies of the report and any appendices be sent to other persons as reasonably requested by the grand jury.

(e) Appeal.

(1) A judicial determination under paragraph (d) of this rule is a final order for purposes of appeal. Such an appeal is governed by Appellate Rule 216 except that the appeal is to the Supreme Court. Any named or otherwise identifiable person, the state, or the grand jury by majority vote may seek review of the presiding judge's decision.

(2) The grand jury will be permitted access to the record of the in camera hearing to assist it in determining whether to pursue appellate review. The grand jury shall maintain the confidentiality of this record.

(Added by SCO 938 effective January 15, 1989)

Rule 7. Indictment and Information.

(a) Use of Indictment and Information. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, unless indictment is waived. Any other offense may be prosecuted by indictment or information. Any information may be filed without leave of court.

(b) Waiver of Indictment. An offense which may be punished by imprisonment for a term exceeding one year may be prosecuted by information if the defendant, after having been advised of the nature of the charge and of the defendant's rights, waives in open court prosecution by indictment.

(c) Nature and Contents—Defects of Form Do Not Invalidate.

(1) The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means.



KENAI

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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Paul Ostrander, City Manager
DATE: June 15, 2022
SUBJECT: **Resolution No 2022-51 – Airport Commission Recommendation of Lawton Acres**

Attached are minutes from the April 14, 2022 Kenai Airport Commission Regular Meeting. During the meeting, the Commission unanimously moved to affirm that the Airport Commission's recommendation of Parcel 04501003 retention status remain dispose.

**KENAI AIRPORT COMMISSION
REGULAR MEETING
APRIL 14, 2022 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
CHAIR GLENDA FEEKEN, PRESIDING**

MEETING SUMMARY

1. CALL TO ORDER

Chair Feeken called the meeting to order at 6:00 p.m.

a. Pledge of Allegiance

Chair Feeken led those assembled in the Pledge of Allegiance.

b. Roll was confirmed as follows:

Commissioners Present: G. Feeken, D. Pitts, P. Minelga, J. Bielefeld, J. Caldwell, J. Daily, J. Zirul

Commissioners Absent:

Staff/Council Liaison Present: Airport Manager E. Conway, Administrative Assistant E. Brincefield, Council Liaison Baisden

A quorum was present.

c. Agenda Approval

MOTION:

Commissioner Bielefeld **MOVED** to approve the agenda and Commissioner Caldwell **SECONDED** the motion. There were no objections; **SO ORDERED**.

2. SCHEDULED PUBLIC COMMENT – None.

3. UNSCHEDULED PUBLIC COMMENT – None.

4. APPROVAL OF MEETING SUMMARY

a. March 10, 2022

MOTION:

Commissioner Bielefeld **MOVED** to approve the meeting summary of March 10, 2022 as presented. Vice Chair Minelga **SECONDED** the motion. There were no objections; **SO ORDERED**.

5. UNFINISHED BUSINESS – None.

6. NEW BUSINESS

- a. **Discussion/Recommendation** – Special Use Permit to Laser Art Alaska, LLC for Displaying Laser Artwork and Alaskan Gifts for Sale

MOTION:

Commissioner Zirul **MOVED** to recommend Council approve a Special Use Permit to Laser Art Alaska, LLC for Displaying Laser Artwork and Alaskan Gifts for Sale. Commissioner Caldwell **SECONDED** the motion.

Riley Updike of Laser Art Alaska responded to questions asked by the commission, including whether a specific piece of art on their website would be displayed in the terminal building, and Mr. Updike confirmed it would not be. He clarified the operating hours, and other vendors to be displayed.

UNANIMOUS CONSENT was requested.

VOTE: There were no objections; **SO ORDERED.**

- b. **Discussion/Recommendation** – Execution of a Lease to Joel Caldwell

MOTION:

Commissioner Pitts **MOVED** to recommend Council approve Execution of a Lease to Joel Caldwell. Commissioner Zirul **SECONDED** the motion.

Commissioner Caldwell declared a conflict of interest, stating that he had a financial interest in the matter. Chair Feeken ruled that Commissioner Caldwell had a conflict and excused him from voting.

UNANIMOUS CONSENT was requested.

VOTE: There were no objections; **SO ORDERED.**

- c. **Discussion/Recommendation** – Special Use Permit to Weaver Brothers, Inc. for Truck Trailer Storage

MOTION:

Vice Chair Minelga **MOVED** to recommend Council approve a Special Use Permit to Weaver Brothers, Inc. for Truck Trailer Storage. Commissioner Caldwell **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: There were no objections; **SO ORDERED.**

- d. **Discussion/Recommendation** – Lawton Acres Parcel 04501003 Disposal Recommendation

The commission stated their support for the disposal and development of parcel 04501003, and had further discussion on rezoning.

MOTION:

Commissioner Daily **MOVED** to affirm that the Airport Commission's recommendation of Parcel 04501003 retention status remain dispose. Commissioner Pitts **SECONDED** the motion.

VOTE:

YEA: Feeken, Minelga, Zirul, Bielefeld, Caldwell, Daily, Pitts
NAY: None

MOTION PASSED UNANIMOUSLY.

7. REPORTS

- a. **Airport Manager** – Airport Manager Conway reported on the following:
- Kenai Aviation will begin service May 2nd, and will have an open house on April 22nd to view the new aircraft;
 - Enplanement numbers continue to grow;
 - Parking revenue up 80%
 - CDC extended mask mandate to May 3rd
 - Excited to have another tenant in terminal, “My Alaskan Gifts”
 - 5th Amendment to airline operating agreement to address insurance requirements will go before Council on April 20, 2022.
- b. **City Council Liaison** – Council Member Baisden reported on the Council meetings of March 16, 2022 and April 6, 2022.

8. NEXT MEETING ATTENDANCE NOTIFICATION – May 12, 2022

Commissioner Zirul noted that he will be absent for this meeting.

9. COMMISSIONER COMMENTS AND QUESTIONS

Congratulations were expressed to Kenai Aviation.

Vice Chair Minelga mentioned updating the Airport Master Plan.

10. ADDITIONAL PUBLIC COMMENT – None.

11. INFORMATION ITEMS

- a. February 2022 Enplanement Report

12. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 6:33 p.m.

Meeting summary prepared and submitted by:



Meghan Thibodeau
Deputy City Clerk



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Ryan Foster, Planning Director

DATE: June 15, 2022

SUBJECT: **Resolution 2022-51 – Land Management Plan Technical Edits List**

This memorandum introduces a laydown document, the Land Management Plan Technical Edits List, for consideration of Resolution 2022-51 – Adopting the City of Kenai Land Management Plan. The list contains all technical edits of the draft Land Management Plan. The following technical update was missed in the review process, but will be updated as the plan is finalized: On p.114, parcel 04324030 in the quick table, will be changed to reflect that it is leased to 2066.

Thank you for your consideration.

Attachments

Land Management Plan Technical Edits List

Page#	Technical Edit
Front Cover	Updated cover photo and document date.
p.1	Updated the table of contents page numbers.
p. 5	Updated acknowledgements.
p.6	Legal Description – Added missing period.
p.8	Definitions – Changed “the following columns” to “the following terms” (not all of the terms defined appear in columns).
p.8	Updated definition of "dispose", included trade and donation.
p.9	“Retain” – Changed “Some of the parcels for retention” to “Some of the parcels recommended for retention”.
p.10	Added a 11x17 map of Map 1. Atlas for greater legibility.
p.11	Added periods to "Shore fishery lease through 2026." for entire table.
Starting on p.12	All maps from 2-46 have an expanded quick table that includes the fund and zoning for each parcel.
p.28	Removed comments on the Central Peninsula Habitat for Humanity parcels 03910208, 03910209, 03910211, and 03910304 since the approval ordinance has expired.
p.31	#03913202 – Added note in comments regarding re-dedication of ROW as noted on Page 27.
p.32	Detailed Table Comments – Changed “conditional” should be “conditionally”.
p.36	Changed retention status to "Mixed-Retain/Dispose" for #04301034 to address the following comment: – Retention Status Table should be “Retain -Mixed” not just retain since the triangular rea to the north may be suitable for sale per Comments on Page 37.
p.49-50	Added missing zoning district information in the table.
p.56	Removed last sentence of the paragraph on snow storage.
p.58	Final paragraph, second sentence, changed to "Parcels adjacent to North Spruce Street and Fourth Avenue have no dedicated full right-of-ways on the plats; right-of-ways have been granted for the parcels across the street."
p.64	Parcel No. 04317027 removed from narrative (it is not on this map, it is on Map 17).
p.65	Removed extra "l" in the middle of the comments for parcel 04301013.
p.70	Last sentence of 1st paragraph was changed to address the following comment: Second Paragraph - road rights-of-way need to be dedicated “in conformance with the most recent FAA-approved ALP”. Restructure sentence to reference ALP is needed.
p.71	Added information for the following comments: #04318044 – The southern portion of this parcel, southwest of long-term parking is leased by the CAP. There should be similar language as used for Parcel #04327036 on pages 75, and Page 79.
p.73	Added parcel 04317027 to Map 17. Gusty Subdivision, Kenai Cemetery.
p.75	Information was added in the parcel comments section for the following comment: 04327036 – I think it is worth comment that high pressure gas pipelines cross the property along the section line that bisects the CAP lease.
p.79	Information was added in the parcel comments section for the following comment: 04327036 CAP Property. I think it should be a stated goal for the city to gain control of the CAP Property lease from the USACE and renegotiate a lease with the Alaska Civil Air Patrol.
p.93	Rotated parcels numbers on Map 21. East Addition Townsite of Kenai to improve legibility.
p.106	Added "(lease to 2066)" to the table for parcel 04336049.
p.118	#04324030 – Change to "leased to 2066".
p.172	Changed last sentence states to “This parcel, along with other City-owned tidelands, is recommended for disposal for lease only.”
p.176	Added last sentence "The City should consider vacation of M Street to eliminate the possibility of future development along the ROW."
p.184	Last paragraph, second sentence changed to " The city hired a consultant who excavated test holes and provided a soils report at the southern end of the parcel where to borders gravel pits." to address the following comments: #04901022 – Last paragraph – the city did not dig test holes. The city hired a consultant who excavated test holes and provided a soils report.
p.188	Replaced "caribou" with "wildlife habitat".
p.189	Replaced "caribou" with "wildlife habitat".
p.192	Replaced "requires subdivision" to "may require subdivision".
p.203	Updated Map 44. Wells and Wellhead Protection to fix the overlapping parcel numbers and improve legibility.
p.212	Corrected page numbering, p.212 was missing.



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MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Dan Castimore, IT Manager

DATE: June 14, 2022

SUBJECT: **Action/Approval – FY2022 Purchase Orders Over \$15,000 Requested Amendment**

The purpose of this memo is to request an amendment to the Action/Approval – FY2022 Purchase Orders Over \$15,000. The original Action/Approval did not include a purchase order for the tower study.

Resolution 2022-46 was originally requesting the award of a sole source contract to TecPro to provide a tower study. Since the resolution was written another vendor submitted a quote that was below the amount that requires a resolution. This amendment would add an item to the Action/Approval – FY2022 Purchase Orders Over \$15,000 and authorize the issuance of a purchase order to Larson Engineering & Design in the amount of \$34,750 to provide the same work discussed in Resolution 2022-46.

Administration respectfully requests that Council make the following motion.

Motion

Move to remove Agenda item G. 2. FY2022 Purchase Orders Over \$15,000 from the Consent Agenda; and Move to Suspend the Rules to hear Agenda Item G. 2. FY2022 Purchase Orders Over \$15,000 prior to Agenda Item D. Public Hearings.

If the above motion passes, the administration respectfully requests that the following motion be made in regard to item G. 2. Action/Approval – FY2022 Purchase Orders Over \$15,000.

Motion

Move to add a new line to the Action/Approval – FY2022 Purchase Orders Over \$15,000 that reads:

Vendor:	Larson Engineering & Design
Description:	FY22 Tower Study
P.O. # - DEPT.:	124639 – Non-Departmental
Reason:	Tower Study
Amount:	34,750.00
Total PO AMT:	34,750.00

Should this amendment pass, the administration respectfully requests that Council vote to Fail resolution 2022-46.

Thank you for your consideration.



From: [Barbara Baldwin](#)
To: [City Clerk](#)
Subject: Public Comment on Angler Drive, Basin View Subdivision Rezoning
Date: Sunday, June 12, 2022 7:47:16 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Mayor Gabriel and City Council Members,

We are residents and owners of three lots in Basin View subdivision, The lot at 3080 Kim-n-Ang Court which is our home address fronts Beaver Creek.

Unfortunately, we are unable to attend the June 15th hearing for consideration of rezoning our neighborhood to the RR 1 status. We support this rezoning initiative in order to maintain the residential character of our neighborhood. The RR1 designation supports the values we consider important to our quality of life.

Thank you for your consideration of our support for this change.

Sincerely,
Bobbie and Rick Baldwin
3080 KIm-n-Ang Court
3075 Kim-n-Ang Court
465 Cub Court

From: [OAB](#) on behalf of mcjurek@gmail.com
To: [Shellie Saner](#); [Meghan Thibodeau](#)
Subject: Approval requested:Support for Ordinance No. 3295-2022
Date: Monday, June 13, 2022 4:18:00 PM
Attachments: [Support for Ordinance No. 3295-2022.msg](#)

Your decision is requested.

S Jurek(mcjurek@gmail.com) has asked you to approve the attached message for delivery to:
City_Council

A preview of the message is below. To view the complete message, open the attachment.

From: S Jurek(mcjurek@gmail.com)
To: city-council@kenai.city; city_council@kenai.city
Subject: Support for Ordinance No. 3295-2022

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Kenai City Council,

We are in support of Ordinance No. 3295-2022 (Amending the Official Zoning Map by Rezoning Certain Parcels Southeast of Beaver Loop Road along Basin View Way, Kim N Ang Court, Cub Court, Ames Road, and Dolchok Lane from Rural Residential to Rural Residential-1).

We support rezoning the parcels in Basin View Subdivision to Rural Residential-1. We moved to Kenai in 2019 for the quality of life and this quiet and peaceful neighborhood. Rezoning will help preserve the stability of our neighborhood for us, our neighbors, and future families of this lovely area.

Please accept our apologies for being unable to attend the city council meeting in person.

Thank you,
Mark & Frances Jurek
3065 Kim N Ang Court, Kenai