

**KENAI CITY COUNCIL – REGULAR MEETING
SEPTEMBER 4, 2019 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
MAYOR BRIAN GABRIEL, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai City Council was held on September 4, 2019, in City Hall Council Chambers, Kenai, AK. Mayor Gabriel called the meeting to order at approximately 6:00 p.m.

1. Pledge of Allegiance

Mayor Gabriel led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Brian Gabriel, Mayor	Robert Molloy
Henry Knackstedt	Tim Navarre
Jim Glendening	Robert Peterkin
Glenese Pettey	

A quorum was present.

Also in attendance were:

Paul Ostrander, City Manager
Scott Bloom, City Attorney
Jamie Heinz, City Clerk

3. Agenda Approval

Mayor Gabriel noted the following revisions to the packet:

- | | |
|------------------|---|
| Add to item D.1. | Ordinance No. 3072-2019 <ul style="list-style-type: none">• Amendment Memo provided at 9/3/19 Work Session• Substitute Ordinance• Substitute Ordinance Memo |
| Add to item D.2. | Ordinance No. 3079-2019 <ul style="list-style-type: none">• Substitute Ordinance• Memo |
| Add to item D.5. | Ordinance No. 3082-2019 <ul style="list-style-type: none">• Amendment Memo |

- Add to item D.6. Ordinance No. 3083-2019
 - Zoning Map
- Add to item D.7. Resolution No. 2019-61
 - Amendment Memo
- Add to item D.6. Resolution No. 2019-62
 - Amendment Memo

MOTION:

Council Member Molloy **MOVED** to approve the agenda with the requested revisions to the packet and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

VOTE: There being no objections, **SO ORDERED**.

4. Consent Agenda

MOTION:

Council Member Knackstedt **MOVED** to approve the consent agenda and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment; there being no one wishing to be heard, the public comment period was closed.

VOTE: There being no objections, **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS – None.

C. UNSCHEDULED PUBLIC COMMENTS

Marian Nelson noted the upcoming Harvest Art Auction at the Kenai Fine Arts Center.

Patty See spoke with concern regarding beetle killed trees; wanted to be sure the City was having dialogue and making plans to address the problem. She the noted the Firewise program might have grant options.

D. PUBLIC HEARINGS

1. **Ordinance No. 3072-2019** - Renaming, Repealing and Re-Enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Residential, Recreational and Cultural Community

through Responsible Land Policies and Practices. (Administration) *[Clerk's Note: At the 08/21/19 Meeting, this Item was Postponed to the Meeting After a Work Session was Held Regarding the Matter for a Second Public Hearing. A Work Session was Held On 09/03/19. A Motion to Enact is On the Floor.]*

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

Administration was thanked for the information provided at the work session.

MOTION TO AMEND:

Council Member Molloy **MOVED** to amend by Substitute Ordinance No. 3072-2019 and Council Member Knackstedt **SECONDED** the motion.

VOTE ON THE AMENDMENT:

YEA: Knackstedt, Glendening, Pettey, Navarre, Gabriel, Molloy, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

Clarification was provided which amendments were included in the substitute; it was noted other desired changes could be made at this meeting or a future meeting.

MOTION TO POSTPONE:

Council Member Molloy **MOVED** to postpone to the September 18 meeting and Council Member Glendening **SECONDED** the motion.

Some members noted they would be absent from the September 18 meeting.

MOTION TO AMEND POSTPONEMENT:

Council Member Molloy **MOVED** to amend postponement to the October 2 meeting and Council Member Glendening **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

VOTE ON THE AMENDMENT: There being no objections, **SO ORDERED.**

UNANIMOUS CONSENT was requested on the motion to postpone as amended.

VOTE ON THE MOTION TO POSTPONE AS AMENDED: There being no objections, **SO ORDERED.**

2. **Ordinance No. 3079-2019** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds and Accepting a Grant from the Federal Aviation Administration for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles, Rehabilitation of the Fire Training Props, and Rehabilitation of the Training Facility for the Alaska Regional Fire Training Facility. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3079-2019 and Vice Mayor Navarre **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Knackstedt **MOVED** to amend by Substitute Ordinance No. 3079-2019. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

VOTE ON THE AMENDMENT: There being no objections, **SO ORDERED**.

An overview of the funding of the project was provided. Clarification was provided that the training facility was managed by BEACON and the benefit to the City was economic benefit from the facility's use. Federal legislators, the Federal Aviation Administration, and the Airport Manager were thanked for their work on securing the funding for the project.

VOTE ON THE MAIN MOTION AS AMENDED:

YEA: Knackstedt, Glendening, Pettey, Navarre, Gabriel, Molloy, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

3. **Ordinance No. 3080-2019** - Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Blazy Construction, Inc. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3080-2019 and Vice Mayor Navarre **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

It was pointed out that it was intended that the increased funding would be sufficient for the remainder of the project but that there could still be unknowns uncovered. It was also noted that it was not anticipated any additional City dollars would be spent.

It was noted that the Public Works Director fought to keep change orders minimal even though the project was mostly grant funds. A reminder was provided that there wasn't sufficient time to design project which potentially caused some change orders.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Navarre, Gabriel, Molloy, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

4. **Ordinance No. 3081-2019** - Increasing Estimated Revenues and Appropriations in the Airport Improvements Capital Project Fund, and Authorizing an Increase to the Construction Purchase Order to Polar North Construction, Inc. (Administration)

MOTION:

Vice Mayor Navarre **MOVED** to enact Ordinance No. 3081-2019 and Council Member Knackstedt **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

It was noted that the change order was at the request of tenant who was paying 100% of the additional cost.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Navarre, Gabriel, Molloy, Peterkin

NAY:

MOTION PASSED UNANIMOUSLY.

5. **Ordinance No. 3082-2019** - Amending Kenai Municipal Code Chapter 5.35, Oil and Gas Wells, to Provide that Applications and Supplemental Applications be Filed with the City Manager. (City Clerk)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3082-2019 and Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Molloy **MOVED** to amend by adding the words, "or designee," after City Manager in subsection a of both section 1 and section 2 and Council Member Glendening **SECONDED** the motion.

It was noted administration was systematically adding, "or designee" when possible.

VOTE TO AMEND:

YEA: Knackstedt, Glendening, Pettey, Navarre, Molloy, Gabriel, Peterkin

NAY:

MOTION PASSED UNANIMOUSLY.

VOTE ON THE MAIN MOTION AS AMENDED:

YEA: Knackstedt, Glendening, Pettey, Navarre, Molloy, Gabriel, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

6. **Ordinance No. 3083-2019** - Amending Kenai Municipal Code 14.20.175 – Adult Businesses, to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses. (Council Member Pettey)

MOTION:

Council Member Pettey **MOVED** to enact Ordinance No. 3083-2019 and Council Member Knackstedt **SECONDED** the motion.

Mayor Gabriel opened for public hearing.

Ron Isaacs spoke against the ordinance concerned about the buffer distance from sensitive uses and that his marijuana business could at some point be defined as an adult business.

There being no one else wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Pettey **MOVED** to amend by Substitute Ordinance No. 3083-2019 and Council Member Glendening **SECONDED** the motion.

There was discussion whether a business would have grandfather rights if it were to apply between now and when this ordinance became effective.

It was suggested the increased buffer pushed this type of business out of the core business district in town and closer to neighborhoods.

Clarification was provided the use could not be prohibited in the City but could be regulated if regulated in the right way; based on experiences of other communities. It was also clarified that there was a clear court precedent that an occasional event did not make a business an “adult business.”

It was noted the substitute was identical but the amendment added the use in the land use table.

The sponsor was thanked for their memo, which explained rationale and tied it to goals in the Comprehensive Plan. It was noted the packet of information had been provided to the Planning & Zoning Commission and there was interest in their recommendation.

UNANIMOUS CONSENT was requested on the amendment.

VOTE ON THE AMENDMENT: There being no objections, **SO ORDERED.**

Clarification was provided on which zones adult businesses were currently allowed in.

Mayor Gabriel opened for public comment.

Ron Isaacs noted that with the number of churches, his marijuana business wouldn't be able to be where it was if it were to be defined as an adult business.

Al Weeks spoke against marijuana businesses suggesting the distances as currently allowed was frustrating and the measurement criteria presented a problem. He noted the last thing he wanted for his church was to be referred to as across from a specific adult business.

There being no one else wishing to be heard, public comment was closed.

It was noted the ordinance was intended to be preventative and protect sensitive areas in the community.

It was suggested the issue was better addressed with signage and the atmosphere in the way the business was run in the community. It was also suggested the buffers could push the businesses to areas where the City hadn't developed yet.

Understanding was expressed with cities only allowing adult businesses in certain areas noting the surrounding areas appeared degraded and somewhat less desirable areas. It was reiterated the businesses couldn't be disallowed so the broader discussion of where it should be limited to made sense.

Clarification was provided that a recent supreme court case required action to be evidence based and narrowly tailored to meet specific governmental interest. It was noted additional conversation regarding population and demand and a recommendation from the Planning & Zoning Commission was desired.

MOTION TO REFER:

Council Member Knackstedt **MOVED** to refer Ordinance No. 3083-2019 to the Planning & Zoning Commission for a recommendation and to be scheduled for a second public hearing before City Council on October 2 and Council Member Molloy **SECONDED** the motion.

It was suggested the ordinance was reactionary at a time of a specific application.

It was pointed out there was believed to be a deficiency in the code and had it been discovered sooner, proactive measures would have been taken to remove the use from the middle of the City. It was suggested the use didn't align with the vision for the City and should be addressed immediately. It was also suggested it was believed our City was a place where people would want to raise families and there should be protection for sensitive areas where children, a valuable asset to the community, might be walking to school. It was agreed that that further work needed to be done as far as signage and this ordinance was a beginning.

Clarification was provided that, with all changes to the Planning and Zoning section of code, the Council was required to send the amendments to the Planning and Zoning Commission. Clarification was also provided that it wasn't clear whether an application at this point would create a grandfather situation.

VOTE ON REFERRAL:

YEA: Knackstedt, Glendening, Pettey, Molloy, Gabriel, Peterkin
NAY: Navarre

MOTION PASSED.

7. **Resolution No. 2019-61** - Awarding a Construction Contract for Rehabilitation of Training Props at the Alaska Regional Fire Training Facility. (Administration)

MOTION:

Vice Mayor Navarre **MOVED** to adopt Resolution No. 2019-61 and Council Member Molloy **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Molloy **MOVED** to amend by inserting the contractors and their bids into the table as follows, Kirila Fire, Inc., \$1,993,000.00, Alpine Metal, Inc., \$2,767,428.00, and Blazy Construction, Inc., \$4,505,246.00, amending the second whereas clause to read, "Kirila Fire, Inc., was found to be the lowest responsive and responsible bidder and award to this bidder will be in the best interest of the City," amend the third whereas to read, "the recommendation from the City Administration is to award the agreement to Kirila Fire, Inc., for completion of the Alaska Regional Fire Training Equipment Rehabilitation Project," amend Section 1 to read, "that the City Manager is authorized to execute a construction contract with Kirila Fire, Inc., for \$1,993,000.00", and amend Section 2 to read, "that the City Manager is authorized to issue a purchase order to Kirila Fire, Inc., in the amount of \$2,143,000.00, for the contract amount of \$1,993,000.00 and \$150,000 of contingency funding, which may be authorized for construction change orders during completion of the project. Council Member Knackstedt **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

Clarification was provided that bid came in approximately \$300,000 less than the Engineer's estimate.

VOTE ON AMENDMENT: There being no objections, **SO ORDERED.**

UNANIMOUS CONSENT was requested on the main motion as amended.

VOTE ON THE MAIN MOTION AS AMENDED: There being no objections, **SO ORDERED.**

8. **Resolution No. 62** - Awarding a Construction Contract for Rehabilitation of the Alaska Regional Fire Training Facility. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-62. Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Knackstedt **MOVED** to amend by inserting the contractors and their bids into the table as follows, Orion Construction, Inc., \$1,938,735.00, and Blazy Construction, Inc., \$2,453,446.00, amending the second whereas clause to read, "Orion Construction, Inc., was found to be the lowest responsive and responsible bidder and award to this bidder will be in the best interest of the City," amend the third whereas to read, "the recommendation from the City Administration is to award the agreement to Orion Construction, Inc., for completion of the Alaska Regional Fire Training Center Building Rehabilitation Project," amend Section 1 to read, "that the City Manager is authorized to execute a construction contract with Orion Construction, Inc., for \$1,938,755.00", and amend Section 2 to read, "that the City Manager is authorized to issue a purchase order to Orion Construction, Inc., in the amount of \$2,088,755.00, for the contract amount of \$1,938,755.00 and \$150,000 of contingency funding, which may be authorized for construction change orders during completion of the project. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

VOTE ON AMENDMENT: There being no objections, **SO ORDERED**.

UNANIMOUS CONSENT was requested on the main motion as amended.

VOTE ON THE MAIN MOTION AS AMENDED: There being no objections, **SO ORDERED**.

9. **Resolution No. 2019-63** - Authorizing the Use of the State of Alaska Department of Transportation and Public Facilities Fleet Procurement Program for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles for the Alaska Regional Fire Training Facility. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-63 and requested **UNANIMOUS CONSENT**. Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

VOTE: There being no objections, **SO ORDERED**.

E. MINUTES

1. *Regular Meeting of August 21, 2019

Approved by the consent agenda.

F. UNFINISHED BUSINESS

1. **Resolution No. 2019-58** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes to Application Fees for Lands Outside the Airport Reserve. (Administration) *[Clerk's Note: At the 08/21/19 Meeting, this Item was Postponed to the Meeting which Ordinance No. 3072-2019 was Scheduled for its Second Public Hearing; a Motion to Enact is On the Floor.]*

MOTION TO POSTPONE:

Council Member Molloy **MOVED** to postpone to the October 2 meeting and Council Member Knackstedt **SECONDED** the motion.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Gabriel, Molloy, Navarre, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

G. NEW BUSINESS

1. ***Action/Approval** – Bills to be Ratified. (Administration)

Approved by the consent agenda.

2. ***Action/Approval** – Purchase Orders Over \$15,000. (Administration)

Approved by the consent agenda.

3. ***Ordinance No. 3084-2019** - Increasing Estimated Revenues and Appropriations in the General Fund for Reimbursement Received for Support of the Swan Lake Fire Suppression Efforts. (Administration)

Introduced by the consent agenda and public hearing set for September 18.

4. **Discussion** - Amending Kenai Municipal Code 14.20.330 - Standards for Commercial Marijuana Establishments, to Incorporate Hours of Operation for Retail Marijuana Establishments into the City of Kenai's Code of Ordinances as Recommended by the Planning and Zoning Commission. (Council Member Molloy)

Council Member Molloy discussed the resolution adopted by the Planning and Zoning Commission recommending the change to the code regarding hours of operation noting it came after a Conditional Use Permit was amended to remove an hours of operation condition which was not consistent with other permittees; asked if Council was interested in moving forward. He added the proposal was that no Retail Marijuana Store could conduct business between 2:00 a.m. and 8:00 a.m. each day which was consistent with the Kenai Peninsula Borough

Clarification was provided that State Law required the businesses to be closed from 5:00 a.m. to 8:00 a.m. and it fell to the Alaska Marijuana Control Office investigators to enforce.

MOTION:

Council Member Glendening **MOVED** to direct Administration to draft an ordinance to require closure of Marijuana Retail Stores between 2:00 a.m. and 8:00 a.m. pursuant to Planning and Zoning Commission Resolution No. PZ2019-29 and Council Member Knackstedt **SECONDED** the motion.

VOTE:

YEA: Knackstedt, Glendening, Pettet, Gabriel, Molloy, Navarre, Peterkin
NAY:

MOTION PASSED UNANIMOUSLY.

5. **Discussion** - Set a Board of Adjustment Hearing Date. (City Clerk)

It was decided a Board of Adjustment Hearing would take place on October 7, 2019 at 6:00 p.m.

H. COMMISSION/COMMITTEE REPORTS

1. Council on Aging – No report; next meeting September 12.
2. Airport Commission – No report; next meeting September 12.
3. Harbor Commission – No report; next meeting September 16.
4. Parks and Recreation Commission – No Report; next meeting September 5.
5. Planning and Zoning Commission – It was reported that at their August 28 meeting the Commission heard a presentation regarding case law relating to Adult businesses; next meeting September 11.
6. Beautification Committee – It was noted the Committee attended a tour of the parks and gardens with the Parks & Recreation Commission; next meeting September 10.
7. Mini-Grant Steering Committee – No report.

I. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Attended Industry Appreciation Day;
- Attended the Kenai Peninsula Food Bank Soup Supper;
- Noted the Board of Fisheries would be reconsidering their decision to move their upcoming finfish meeting due to the Ombudsman ruling that the Board violated the Open Meetings Act;
- Wished Hilcorp good luck with their purchase of assets on the slope.

J. ADMINISTRATION REPORTS

1. City Manager –City Manager P. Ostrander reported on the following:
 - Federal disaster monies available for projects noting there needed to be a nexus between the November 2018 earthquake and the project;
 - Going back out for recruitment for a Library Director;
 - Received grants from the Rasmuson Foundation for the Senior Center and FEMA for the Fire Department;
 - Upcoming Silver Salmon Derby and ticket sales;
 - Surplus auction ongoing.

2. City Attorney – No Report.
3. City Clerk – City Clerk J. Heinz noted training for the Planning & Zoning Commission and their iPads had been accomplished; also noted upcoming absentee voting.

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comment limited to five (5) minutes per speaker*)

None.

2. Council Comments

Vice Mayor Navarre noted Industry Appreciation Day was a great day and offered kudos to the Parks and Recreation Department for their help; also noted the healthy debate on topics at the meeting.

Council Member Pettey noted she attended Industry Appreciation Day; thanked the industries that donated to make it successful; thanked the community and individuals that came out for the Kenai Peninsula Food Bank Soup Supper. She also noted she spoke to Senator Sullivan's Chief of Staff regarding the Bluff Erosion Project and asked for their help in the process. Ms. Pettey thanked her colleagues for the discussion and debate on a number of topics from the night's agenda.

Council Member Glendening noted he participated in Industry Appreciation Day and its Steering Committee; also attended the Old Timers Luncheon at the Senior Center.

Council Member Peterkin noted he would be out of town for the Council's next meeting.

Council Member Molloy noted he benefitted from using the library, working there while work was being done on his building affecting power.

Council Member Knackstedt noted he attended Industry Appreciation Day; also noted upcoming Kenai Historical Society meetings.

L. EXECUTIVE SESSION – None.

M. PENDING ITEMS – None.

N. ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 9:30 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of September 4, 2019.


Jamie Heinz, CMC
City Clerk

