VALDEZ CITY COUNCIL Regular Meeting Minutes December 20, 2010 Page 1

I. CALL TO ORDER

Mayor Cobb called the meeting to order at 7:00 pm in the City Council chambers.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Mayor Dave Cobb Council member Joe Prax Council member Mike Wells Council member Dorothy M. Moore Council member Karen Ables

Absent and excused: Council member Steve McCann and Council member Alan Sorum.

Also Present:

Eric Phillips, Assistant City Manager Sheri Pierce, City Clerk Joe Levesque, City Attorney

Members of staff and approximately 5 people were in the audience.

IV. APPROVAL OF MINUTES OF THE REGULAR MEETING OF December 6, 2010

The minutes of the meeting of December 6, 2010 were approved as presented with two minor corrections.

V. PUBLIC APPEARANCES - Donna Schantz, Presentation of RCAC Certificate of Appreciation

Ms. Schantz, director of programs for the Prince William Sound RCAC, addressed the Council and explained to the public the history of RCAC recognizing board members and staff members. She explained that all board and committee members serve as unpaid volunteers who work with paid staff members and expert consultants to obtain information regarding oil movement and storage. She explained that they then develop recommendations and advise on ways to increase safety. Ms. Schantz said that the idea is to involve the people in the region who stand to lose the most in the wake of another oil spill. She stated that RCAC as a whole is there doing their best to look out for the public's interest. Ms. Schantz recognized a major achievement that could not

have been possible without the support of the City of Valdez as well as other members. She reported that on September 30, 2010 the Oil Pollution Act of 1990 was amended to require two escort tugs accompany every loaded oil tanker that leaves the Valdez Marine Terminal. She indicated that this provision was supported by the RCAC, volunteers, and entities such as the City of Valdez. The City of Valdez twice passed resolutions expressing support for the two tug system. Ms. Schantz presented a certificate of appreciation to the City of Valdez for their role in making sure that the act was amended. Ms. Schantz thanked the Council for their part in protecting the waters of the Prince William Sound and gave the certificate of appreciation to Mayor Cobb.

VI. PUBLIC BUSINESS FROM THE FLOOR

Scott Malone, Vice President of VCVB, addressed the City Council regarding the article written in the paper about the audit of VCVB. He stated that he wished to clarify that the money which comes from the City to the VCVB is a bed tax collected from hotels and bed and breakfasts in town. It is not money collected from property taxes. He said that it looks bad to the public to have the article written about the audit but that the money used to fund the VCVB is not tax payer dollars. He explained they do have some problems they need to fix and they are working to do so. Mr. Malone requested that in the future that the City Council be a little more descriptive on how money is received by the VCVB.

Council member Moore acknowledged that she has similar issues about the way things are written in the newspaper but that there is no way to control it because they do have a free press. Mr. Malone stated that he is aware of that but that he felt it necessary to clarify that the money they spend to promote tourism in town is generated through the bed tax.

VII. CITY MANAGER/CITY CLERK/CITY ATTORNEY/MAYOR REPORTS

CITY MANAGER

Eric Phillips, acting City Manager stated that there was a written City Manager's report in the Council packet for their review. There were no questions from Council regarding the report.

CITY CLERK

Ms. Pierce stated that she did not have anything to report for the meeting other than reminding the Council that there is a work session prior to the first meeting in January with our lobbyists. She stated that she has also spoken to Senator Coghill and House Representative Feige and they will be in Valdez on the

Tuesday following the Council meeting. Council will meet with them at 6:00 pm on Tuesday January 4th. Ms. Pierce wished the Council, the public, and City of Valdez staff a Merry Christmas and a Happy New Year.

CITY ATTORNEY

Mr. Levesque stated that he did not have a report that evening. He did wish everyone a Merry Christmas and a Happy New Year.

MAYOR'S REPORT

Mayor Cobb stated that there was no Mayor's report.

VIII. CONSENT AGENDA

- 1. Approval of Contract Award: KVAK Broadcasting Agreement Moved to new business item #4.
- 2. Approval to go into Executive Session Regarding TAPS Litigation

MOTION: Council member Moore moved, seconded by Council member Ables, to approve the remaining item on the Consent Agenda.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

IX. UNFINISHED BUSINESS

1. Resolution #10-64 – Supporting the Prince William Sound Regional Citizens' Advisory Council's Request for Cooperation from the U.S. Coast Guard Regarding Timely Sharing of Information Pertinent to the RCAC Mission (postponed from the regular meeting of December 6, 2010)

MOTION: Council member Wells moved, seconded by Council member Ables, to postpone this item indefinitely.

Council member Moore explained that there have been developments since they originally worked on the issue so she proposed that it be postponed indefinitely.

Council member Wells asked if anything new had been received for the Coast Guard. Mayor Cobb responded in the negative.

Council member Wells stated that he supported postponing this until they get a better handle on the issue.

VOTE ON THE MOTION TO POSTPONE INDEFINITELY: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

Mayor Cobb commented that it is important that all parties understand that their representatives on the RCAC board do represent the City of Valdez. The Council has no problem with their actions. More often than not if it is a critical situation it is discussed with Council.

X. NEW BUSINESS

 Approval to Purchase 422 Theater Seats from Wolverine Supply in the Amount of \$117,000

MOTION: Council member Wells moved, seconded by Council member Moore, to purchase 422 theater seats from Wolverine Supply in the amount of \$117,000.

Council member Moore asked if they could be given an explanation of why there were seats that were rejected. Jack McCay, Capital Facilities Director, replied that the bidder was required to submit their seat of choice for approval. The Civic Center staff already had an idea of what they wanted but opened it up to the bidder to see if there was something out there that they were missing. The bidder proposed they use a seat that is made in China that would take three months to receive. In addition, the construction design of the seat with was not good and the theatrical consultant hired to assist with this process came up with several other reasons why that particular seat would not be a good choice.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

2. Approval of Change Order to RPM Marine in the Amount of \$165,089.40 for the Installation of Additional Bracing for the Kelsey Dock Rehabilitation Project

MOTION: Council member Wells moved, seconded by Council member Ables, to approve a change order to RPM Marine in the amount of 119,746.40.

Council member Wells asked for the record why the numbers changed. Eric Philips stated that it was just an addition error that was discovered on Friday morning after the packets went out.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

3. Approve the Purchase of a 2006 Bomag BW177D-3 Compactor From United Rentals Inc. in the Amount of \$46,500

MOTION: Council member Moore moved, seconded by Council member Ables, to approve the purchase of a 2006 Bomag BW177D-3 compactor from United Rentals, Inc. in the amount of \$46,500.

Council member Wells commended Larry Weaver and his department for looking at a used piece of equipment which saved the City almost \$50,000. Council members Prax and Moore agreed.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

4. Approval of KVAK Broadcasting Agreement

MOTION: Council member Wells moved, seconded by Council member Ables, to approve the 2011 KVAK Broadcasting Agreement.

Council member Prax declared a conflict of interest as co-owner of the radio station and asked to abstain from discussion and action on this item. It was the consensus of council to approve his request.

Council member Moore stated that there have been complaints about sound quality of the broadcast of the meeting over the radio. She stated that Council needs to move in closer to the microphones and speak clearly so that listeners can hear what is being said.

VOTE ON THE MOTION: 4 yeas, 1 abstained (Council member Prax) 2 absent (Council member Sorum and Council member McCann), motion carried.

XI. ORDINANCES

The ordinance was presented by title only; copies of the full text ordinance were made available to the public.

1. #10-04 – Amending Chapter 2.80 of the Valdez Municipal Code Titled Procurement Policy. Second Reading/Adoption.

MOTION: Council member Moore moved, seconded by Council member Wells, to adopt Ordinance #10-04 at second reading.

Council member Prax stated that it is good that they are tightening this up somewhat but that the local vendor preference would not stand up to a constitutional challenge according to the City Attorney. He stated that they all took an oath to uphold the constitution and they are being told that it is more than likely unconstitutional. Council member Prax stated that he believed it is supported by Council because locals are looking out for each other but in the end it ends up costing the City ten percent more for projects when a local bidder wins the bid.

Mayor Cobb stated that until it is challenged in court and becomes an issue it is not an issue.

VOTE ON THE MOTION: 4 yeas, 1 nay (Council member Prax), 2 absent (Council member Sorum and Council member McCann), motion carried.

XII. RESOLUTIONS

1. #10-70 – Amending The 2010 City Budget in Various Funds for End of Year Cleanup Items for 2010 Budget Obligations and Authorizing Those Expenditures

MOTION: Council member Well moved, seconded by Council member Moore, to approve Resolution #10-70.

Council member Moore asked that it be documented where these items are coming from. Walter Sapp, Finance Director, stated that various Capital Facilities Projects are being grouped in other areas. A lot of the projects are being renamed to be more descriptive of the work that is being done with the funding. Council member Ables asked for clarification on the professional fees and services line item. She stated that there was \$12,000 there and it was being changed into \$5000 for contingency and \$7000 for the Fire Department. Mr. Sapp responded that at midyear they had decided to subscribe to Bloomberg for investment services which would cost \$2000 a month. He reported that there were issues with acquiring the necessary bandwidth to be able to receive the Bloomberg service. Mr. Sapp concluded that it was not worth the effort to try and subscribe. He said that the money was initially taken from the general fund so it now is being reprogrammed back into those projects.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

2. #10-71 – Amending the 2010 City Budget in the Debt Service Fund and the General Fund by Transferring \$459,000 to the Law Department Budget and Authorizing its Expenditure

MOTION: Council member Moore moved, seconded by Council member Ables, to approve Resolution #10-71.

Council member Moore asked if this was a necessity because we have been sued by several entities in the past. Mr. Levesque stated that the TAPS litigation case has been ramped up. He said that TAPS litigation has several phases and there are multiple cases because of all of the years of appeals. Mr. Levesque said that part of the case that is costing a lot of money is the pre-trial discovery phase which includes experts and on-going depositions. He stated that it is his understanding that there are close to 50 current depositions. Council member Prax asked if we get a breakdown of these costs. Mayor Cobb replied in the affirmative.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

3. #10-72 – Amending the 2010 Budget by Approving the Transfer of \$3,341,896 from the Reserve Fund to the Permanent Fund, Effectively Reversing the 1.5% Appropriation of Permanent Fund Market Value that was Originally Authorized in the 2009 and 2010 Budgets

MOTION: Council member Wells moved, seconded by Council member Moore, to approve Resolution #10-72.

VOTE ON THE MOTION: 4 yeas, 1 nay (Council member Ables) 2 absent (Council member Sorum and Council member McCann), motion carried.

4. #10-73 – Setting the Tax Calendar for the City of Valdez for the 2011 Tax Year

MOTION: Council member Moore moved, seconded by Council member Ables, to approve Resolution #10-73.

Council member Wells asked if there had been any changes from last year. Mr. Sapp replied that it is essentially the same from last year except that the days have changed slightly due to the new calendar year. Council member Moore stated that changes might have been made as well due to accessibility to City

Hall. There may be days this year that fall on holidays so the schedule has been adjusted accordingly.

VOTE ON THE MOTION: 5 yeas, 2 absent (Council member Sorum and Council member McCann), motion carried.

XIII. REPORTS

- 1. Building Permit Report
- 2. Itinerant Vendor/Seasonal Use Structure Permit Status Update

Council member Wells asked if all vendors had been contacted. Lisa Von Bargen, Community Development Director, stated that certified letters and a letters by regular mail were sent to all vendors so she assumed that everyone had been notified. She stated that they can make an effort to contact them again if needed. Council member Wells stated that it was his concern that the individuals not contacted will be surprised by this and will show up in May and bring this issue to Council. Ms. Von Bargen agreed that this could happen.

Council member Ables asked about others that are there that would or would not qualify. Ms. Von Bargen stated that anything on wheels does not qualify and that those vendors that have vehicle registrations are exempt. Council member Ables stated that she did not have a problem with them being there but that maybe we should provide a provision where they actually pay taxes for the space since there is a building on it. Ms. Von Bargen stated that that was an option discussed at a work session held in July but that she was open to revisiting the possibility if it was the direction of the Council.

Council member Prax stated that he is conflicted with the issue. He said that getting rid of the rules all together would be the best solution.

Council member Wells questioned whether a property owner would be held responsible if an itinerant vendor on his property was not complying with the City code or building codes. Ms. Von Bargen stated that the property owner is responsible. She said the vendors are informed from the beginning of what the rules are and are aware of what is expected. She stated that they try and address this with the vendors themselves rather than taking it up with the business owner. However, they do have the right to address this issue with the property owner because ultimately they are the ones responsible.

Council member Ables asked if changes could be made so that everyone has to play by the same rules whether they are mobile or not. Ms. Von Bargen responded in the affirmative.

Council member Moore stated that the wind can often be a problem and that her concern lies with the safety aspect of the issue.

Council member Wells said that he believed that we should be probusiness but there are people who are taking advantage of the system and at that point the City cannot afford to just look the other way. He said that having vendors meet with Community Development and develop a plan creating a timeframe in which they will come into compliance is a way to get everyone on the same page. Ms. Von Bargen stated that there is no doubt that these vendors play a very important role in our economy and she and her department are very supportive of them being there. However, she stressed that they must provide a service in a safe manner, in a way that is fair to the overall business climate of this community. She stated that they are informed of the rules from the beginning and in many cases blatantly ignore them.

- 3. 2010 Alaska Regional Ports Conference Report
- 4. Fireworks Ordinance Report

Council member Prax stated that we are too late to make changes for 2010 but that at a minimum he would like the ordinance suspended for 4th of July and New Year's. He stated that he would have no problem with getting rid of it entirely. He agreed that there is still a public nuisance issue we would have to deal but we have the rules to combat it. He stated that he felt that laws should be clear for everyone. He said that if we have a law and are not going to enforce it we should suspend it. Sending the message that it is okay to break the law because we do not enforce it is not a good idea. Mayor Cobb stated that on the other hand if there is some special situation that comes along and someone wants to have a fireworks show they will not be able to if they pass the ordinance changing the law. Mayor Cobb said that as it is now, someone can get a permit for special occasions to use fireworks.

Council member Ables asked if they legalize it in town what safety concerns surround the issue. She stated that if there is an ordinance that supports fireworks people might be less careful.

Council member Moore stated that it is a safety issue with her. With propane tanks in neighborhoods and other things flammable it is a true

concern. However, she would be open to changing it at only certain times of the year. She stated that if someone wanted to have fireworks during another time of year there should be a manner in which you could apply for a permit and do so.

XIV. COUNCIL BUSINESS FROM THE FLOOR

Council member Moore

Council member Moore stated that she was concerned with one of the letters that was received stating that our docks are unfriendly because they have to work with the long shore men. She stated that we need to work with them in a more straightforward fashion. She said that Valdez has always been a port with things going in and out and so she would like us to be concerned that we involve the folks that are loading and unloading the dock rather than saying we have an unfriendly atmosphere.

Council member Prax

Council member Prax will be gone for the next two meetings. He stated that he hoped that they could move forward with the fireworks issue and suspend it for at least New Years and the 4th of July. Mayor Cobb asked if there was consensus to move forward on that. Council replied in the affirmative. Ms. Pierce stated that she could make this happen. Council member Prax wished everyone a Merry Christmas and Happy New Year.

Council member Ables

Council member Ables reminded everyone that Christmas dinner would be served at the Civic Center from 2:00~pm-4:00~pm and that everyone in town is invited. She stated that she truly enjoys making dinner for people in this community and that she hopes to see everyone there. Council member Ables wished everyone a merry Christmas.

Council member Wells

Council member Wells wished everyone happy holidays.

Mayor Cobb

Mayor Cobb wished everyone a Merry Christmas and Happy New Year!

XV. COUNCIL TRAVEL

XVI. EXECUTIVE SESSION

XVII. RETURN FROM EXECUTIVE SESSION

XVIII. ADJOURNMENT

There being no further business, Mayor Cobb adjourned the meeting at 7:45 pm.