

**CITY OF UNALASKA  
UNALASKA, ALASKA  
REGULAR MEETING  
TUESDAY, DECEMBER 22, 2015, 6:00 P.M.  
UNALASKA CITY HALL COUNCIL CHAMBERS  
AGENDA**

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CALL TO ORDER  
ROLL CALL  
PLEDGE OF ALLEGIANCE  
RECOGNITION OF VISITORS  
ADDITIONS TO AGENDA  
**MINUTES:** DECEMBER 8, 2015  
FINANCIAL REPORT:  
BOARD/COMMISSION REPORTS:  
**AWARDS/PRESENTATIONS:** AB RANKIN – 40 YEARS OF SERVICE  
MANAGER'S REPORT  
COMMUNITY INPUT/ANNOUNCEMENTS  
PUBLIC INPUT ON AGENDA ITEMS

**PUBLIC HEARING**

1. **ORDINANCE 2015-25:** AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 9.20 TO ALLOW BARS WITH AN EXISTING LICENSE TO DISPENSE ALCOHOLIC BEVERAGES BY THE DRINK TO OPEN AT 8:00 AM ON SUNDAY TO SERVE FOOD AND NON-ALCOHOLIC BEVERAGES

**WORK SESSION**

**RECONVENE TO REGULAR SESSION**

**CONSENT AGENDA**

1. **RESOLUTION 2015-75:** ESTABLISHING DATES FOR THE FISCAL YEAR 2017 REAL PROPERTY TAX AND BUSINESS PERSONAL PROPERTY TAX COLLECTION EFFORT
2. **RESOLUTION 2015-76:** ADOPTING AN ALTERNATIVE ALLOCATION METHOD FOR THE FY16 SHARED FISHERIES BUSINESS TAX PROGRAM AND CERTIFYING THAT THIS ALLOCATION METHOD FAIRLY REPRESENTS THE DISTRIBUTION OF SIGNIFICANT EFFECTS OF FISHERIES BUSINESS ACTIVITY IN THE ALEUTIAN ISLANDS FISHERIES MANAGEMENT AREA

**UNFINISHED BUSINESS**

1. **ORDINANCE 2015-25:** AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 9.20 TO ALLOW BARS WITH AN EXISTING LICENSE TO DISPENSE ALCOHOLIC BEVERAGES BY THE DRINK TO OPEN AT 8:00 AM ON SUNDAY TO SERVE FOOD AND NON-ALCOHOLIC BEVERAGES

**NEW BUSINESS**

1. **ORDINANCE 2015-26:** AMENDING UNALASKA CITY CODE CHAPTER 6.28 – LEVY OF PROPERTY TAX TO CREATE A FIVE YEAR EXEMPTION FROM REAL PROPERTY TAX FOR THE INCREASE IN ASSESSED VALUE DIRECTLY ATTRIBUTABLE TO THE SUBDIVISION OF A SINGLE PARCEL OF PROPERTY INTO THREE OR MORE PARCELS
2. **RESOLUTION 2015-77:** APPROVING A TIDELAND LEASE AGREEMENT FOR A TERM OF 30 YEARS BETWEEN THE CITY OF UNALASKA AND UNISEA, INC FOR TRACTS A-1 AND B-1 OF UNALASKA TIDELAND SURVEY 105
3. **ANNUAL LIQUOR LICENSE REVIEW:** REVIEW OF LOCAL LIQUOR LICENSE RENEWAL APPLICATION LIST FROM THE ALCOHOLIC BEVERAGE CONTROL BOARD
4. **MAYOR / COUNCIL TRAVEL:** AML LEGISLATIVE CONFERENCE / ALASKA CONFERENCE OF MAYORS, FEBRUARY 15-17, 2016, JUNEAU, AK; MARINE CONSERVATION ALLIANCE, JANUARY 7, 2016, SEATTLE, WA.

**COUNCIL DIRECTIVES TO MANAGER**

COMMUNITY INPUT  
ANNOUNCEMENTS  
ADJOURNMENT

**CITY OF UNALASKA  
UNALASKA, ALASKA  
REGULAR MEETING  
TUESDAY, DECEMBER 8, 2015, 6:00 P.M.  
UNALASKA CITY HALL COUNCIL CHAMBERS  
MINUTES**

The regular meeting of the Unalaska City Council was called to order at 6:00 pm, December 8, 2015, in the Unalaska City Hall council chambers. Roll was taken:

**PRESENT:**

Shirley Marquardt, Mayor  
Frank Kelty (Telephonic)  
Roger Rowland  
Zoya Johnson  
Alejandro Tungul  
David Gregory  
Yudelka Leclere

**ABSENT:**

None

**PLEDGE OF ALLEGIANCE:** Mayor Marquardt led the Pledge of Allegiance.

**RECOGNITION OF VISITORS:** None.

**ADDITIONS TO AGENDA:** No additions to the agenda. Resolution 2015-69 and Resolution 2015-70 were removed from the agenda. The agenda was adopted as amended.

**MINUTES:** The Council adopted the minutes of the November 24, 2015 City Council meeting as submitted.

**FINANCIAL REPORT:** Council members received a hard copy of the FY15 audit report.

**BOARD/COMMISSION REPORTS:** None.

**AWARDS/PRESENTATIONS:** None.

**MANAGER'S REPORT:** In the packet.

**COMMUNITY INPUT/ANNOUNCEMENTS:**

- PCR
  - Grinch Party – Library on Saturday, December 12, 2015, 1:00 pm. – 2:00 pm.
  - Winter/Spring Activity Guides available at PCR
  - PCR Remind Text Messaging
  - Youth Soccer Registration - PCR
  - Gymnasium Closure due to resurfacing of the gym floor, Monday, December 14, 2015. Gymnasium will reopen Monday, January 4, 2016
  - Youth Swim Registration – K through 8<sup>th</sup> Grade - Aquatics Center
- Fish & Game Advisory Committee – Meeting on Wednesday, December 16, 2015, 5:30 pm – 8:00 pm.

**PUBLIC INPUT ON AGENDA ITEMS:** None.

**PUBLIC HEARING**

Mayor Marquardt opened the Public Hearing on Ordinance 2015-24.

1. **ORDINANCE 2015-24:** BUDGET AMENDMENT NO. 3 – TO AMEND THE PORTS AND HARBORS BUDGET FOR PERMITTING, DESIGN AND ENGINEERING FOR THE LIGHT CARGO DOCK EXPANSION PROJECT IN THE AMOUNT OF \$148,000

Hearing no comment, Mayor Marquardt closed the Public Hearing on Ordinance 2015-24.

**WORK SESSION**

Rowland made a motion to move into Work Session; Tungul seconded.

Motion passed by consensus.

1. **DISCUSSION:** COMMERCIAL MARIJUANA IN UNALASKA

- Charles Cacciola, City Attorney, Boyd, Chandler, & Falconer, LLC
  - Reviewed the language in the Marijuana Initiative
  - Answered questions raised at the November 24, 2015 council meeting.
  - Answered questions from the community
  - Answered questions from the City Council

- Public Comment
  - Community members shared their comments
  - Request for another opportunity to receive public comment
- Council Directives to Manager
  - Mayor Marquardt reviewed council directives to City Manager

### **RECONVENE TO REGULAR SESSION**

Mayor Marquardt reconvened the meeting to Regular Session.

### **CONSENT AGENDA**

1. **RESOLUTION 2015-67:** AUTHORIZING THE FORMATION OF THE FY17 COMMUNITY SUPPORT COMMITTEE, AND CONFIRMING APPOINTMENTS TO THE COMMITTEE

Resolution 2015-67 adopted under Consent Agenda.

2. **RESOLUTION 2015-72:** CONFIRMING THE MAYOR'S APPOINTMENT OF WAYNE CHINN TO THE MUSEUM OF THE ALEUTIANS BOARD OF DIRECTORS

Kelty requested Resolution 2015-72 be removed from the Consent Agenda.

Mayor Marquardt removed Resolution 2015-75 from the Consent Agenda and placed it under New Business as item No. 1.

### **UNFINISHED BUSINESS**

1. **ORDINANCE 2015-24:** BUDGET AMENDMENT NO. 3 – TO AMEND THE PORTS AND HARBORS BUDGET FOR PERMITTING, DESIGN AND ENGINEERING FOR THE LIGHT CARGO DOCK EXPANSION PROJECT IN THE AMOUNT OF \$148,000

Johnson made a motion to adopt Ordinance 2015-24; Tungul seconded.

Rowland made a motion to amend Ordinance 2015-24 to strike City Network Core Upgrade and replace it with Light Cargo Dock Expansion Project; Johnson seconded.

Vote on amendment: Motion passed. 6-0.

Vote on main motion: Motion passed. 6-0.

### **NEW BUSINESS**

1. **RESOLUTION 2015-72:** CONFIRMING THE MAYOR'S APPOINTMENT OF WAYNE CHINN TO THE MUSEUM OF THE ALEUTIANS BOARD OF DIRECTORS

Kelty made a motion to postpone Resolution 2015-72 to the January 26, 2016 council meeting; Leclere seconded.

Point of Order: Prohibited from postponing this item beyond the next regularly scheduled meeting; December 22, 2015.

Kelty made a motion to amend the motion to postpone by changing the date to December 22, 2015. Motion passed by consensus.

Point of Order: The main motion to adopt Resolution 2015-72 had not been made.

Rowland made a motion to adopt Resolution 2015-72; Johnson seconded.

Roll Call Vote on amended motion to postpone the confirmation of the Mayor's appointment of Wayne Chinn to the Museum of the Aleutians Board of Directors to December 22, 2015: Tungul – no; Johnson – no; Rowland – no; Kelty – yes; Leclere – yes; Gregory – yes. Mayor voted no to break the tie. Motion failed 4-3.

Roll Call Vote on main motion: Rowland – yes; Johnson – yes; Tungul – yes; Gregory – no; Leclere – no; Kelty – no. Mayor voted yes to break the tie. Motion passed 4-3

2. **ORDINANCE 2015-25 - FIRST READING:** AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 9.20 TO ALLOW BARS WITH AN EXISTING LICENSE TO DISPENSE ALCOHOLIC BEVERAGES BY THE DRINK TO OPEN AT 8:00 AM ON SUNDAY TO SERVE FOOD AND NON-ALCOHOLIC BEVERAGES

Johnson made a motion to move Ordinance 2015-25 to second reading and public hearing on December 22, 2015; Rowland seconded.

Vote: Motion passed. 5-0.

3. **RESOLUTION 2015-68:** ADOPTING THE REVISED GUIDELINES AND APPLICATION/SCORE SHEET FOR THE COMMUNITY SUPPORT PROGRAM

Rowland made a motion to adopt Resolution 2015-68; Tungul seconded.

Vote: Motion passed. 5-0.

4. **RESOLUTION 2015-69:** APPROVING THE ACQUISITION OF A 4,070 SQUARE FOOT PERMANENT UTILITY EASEMENT BETWEEN DUSTAN DICKERSON AND THE CITY OF UNALASKA TO ACCOMMODATE DRAINAGE INFRASTRUCTURE ASSOCIATED WITH THE LAKE & RIVER RESTORATION PROJECTS IN EXCHANGE FOR A ONE TIME PAYMENT OF \$7,733

Resolution 2015-69 was removed from the agenda.

5. **RESOLUTION 2015-70:** APPROVING THE ACQUISITION OF A 3,437 SQUARE FOOT TEMPORARY CONSTRUCTION EASEMENT BETWEEN DUSTAN DICKERSON AND THE CITY OF UNALASKA TO ACCOMMODATE DRAINAGE INFRASTRUCTURE ASSOCIATED WITH THE LAKE & RIVER RESTORATION PROJECTS IN EXCHANGE FOR A ONE TIME PAYMENT OF \$653

Resolution 2015-70 was removed from the agenda.

6. **RESOLUTION 2015-73:** AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PND ENGINEERS, INC FOR PERMITTING SUPPORT, PROJECT MANAGEMENT AND DETAILED DESIGN DEVELOPMENT, LIGHTING AND ELECTRICAL MODIFICATION, AND CONSTRUCTION CONTRACT BID DEVELOPMENT FOR THE LIGHT CARGO DOCK EXPANSION PROJECT IN AMOUNT NOT TO EXCEED \$167,650.

Rowland made a motion to adopt Resolution 2015-73; Leclere seconded.

Vote: Motion passed. 5-0.

7. **RESOLUTION 2015-74:** IDENTIFYING THE CITY OF UNALASKA'S STATE LEGISLATIVE FUNDING PRIORITIES FOR FISCAL YEAR 2017

Leclere made a motion to adopt Resolution 2015-74; Rowland seconded.

Rowland made a motion to replace the draft version of Resolution 2015-74 that was in the packet with the final version presented in hard copy; Leclere seconded.

Roll Call Vote on motion to replace the draft version of Resolution 2015-74: Tungul – yes; Gregory – yes; Leclere – yes; Rowland – yes; Johnson – yes. Motion passed.

Vote on main motion: Motion passed. 5-0.

**MAYOR / COUNCIL TRAVEL:** ARCTIC ENCOUNTER SYMPOSIUM, JANUARY 15-16, SEATTLE, WA

Rowland made a motion to approve travel for Mayor to the Arctic Encounter Symposium, January 15-16, 2016 in Seattle, WA, Leclere seconded.

Motion passed. 5-0.

**COUNCIL DIRECTIVES TO MANAGER:** The following information was requested by Council:

- Updated State Marijuana Regulations
- Planning and Zoning Map depicting commercial areas
- Information on Native Allotments
- Language regarding City taxes
  - Tax Ranges
- Ordinance Language on all (4) options:
  - Include all (4) components
  - Retail only
    - Retail of marijuana only
    - Retail of marijuana and other products
  - To do nothing
  - Prohibition on all (4)
- Prohibit cultivating, testing, and sales for 1 year until State has operated under regulations for 1 year

**COMMUNITY INPUT /ANNOUNCEMENTS:**

**ADJOURNMENT:** The meeting adjourned at 9:35 pm.

**CITY OF UNALASKA  
UNALASKA, ALASKA**

**ORDINANCE 2015-25**

**AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING UNALASKA CODE OF ORDINANCES  
CHAPTER 9.20 TO ALLOW BARS WITH AN EXISTING LICENSE TO DISPENSE ALCOHOLIC BEVERAGES BY  
THE DRINK TO OPEN AT 8:00 AM ON SUNDAY TO SERVE FOOD AND NON-ALCOHOLIC BEVERAGES**

**BE IT ENACTED** by the City Council of the City of Unalaska:

**Section 1: Form.** This is a Code ordinance.

**Section 2: Amendment of Section 9.20.020 and addition of Section 9.20.025.** Section 9.20.020 is amended and Section 9.20.025 is added to read as follows: [additions are underlined, deletions are overstruck]

**§ 9.20.020 CLOSING HOURS FOR LICENSED PREMISES.**

(A) ~~(4)~~ It shall be lawful to dispense alcoholic beverages in the city by a premises licensed under authority of the State of Alaska Alcoholic Beverage Control Board as follows:

- (a) Monday 8:00 a.m. through Tuesday 2:00 a.m.
- (b) Tuesday 8:00 a.m. through Wednesday 2:00 a.m.
- (c) Wednesday 8:00 a.m. through Thursday 2:00 a.m.
- (d) Thursday 8:00 a.m. through Friday 2:00 a.m.
- (e) Friday 8:00 a.m. through Saturday 3:00 a.m.
- (f) Saturday 8:00 a.m. through Sunday 3:00 a.m.

~~(2) (B) Except that~~ (B) Restaurants and bars with an existing license to dispense alcoholic beverages by the drink may lawfully  
do so on Sunday between the hours of 12:00 p.m. and 10:00 p.m.

~~(B) It shall be unlawful for a licensed premises, except restaurants when serving food or non-alcoholic beverages to allow persons or customers who are not owners or employees to remain on the premises during hours when alcoholic beverages are not permitted to be dispensed.~~

(C) It shall be unlawful for any premises licensed under authority of the State of Alaska Alcoholic Beverage Control Board, licensee, agent or employee to dispense alcoholic beverages within the city during hours not authorized by this chapter.

**§ 9.20.025 OPERATING HOURS FOR LICENSED PREMISES.**

(A) Except as provided in this section, it shall be unlawful for a licensed premise to allow persons or customers who are not owners or employees to remain on the premises during hours when alcoholic beverages cannot be lawfully dispensed.

(B) Restaurants and bars with an existing license to dispense alcoholic beverages by the drink may lawfully allow persons or customers on premises for food and non-alcoholic beverage service on Sundays from 8 a.m. until such hour as the licensed premises is authorized to dispense alcoholic beverages by UCO §9.20.020 unless the establishment is otherwise required to be closed by this chapter or any other law.

**Section 3: Effective Date.** This ordinance shall be effective upon passage.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

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HON. SHIRLEY MARQUARDT, MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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## MEMORANDUM TO COUNCIL

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**TO:** MAYOR AND CITY COUNCIL MEMBERS  
**FROM:** CAT HAZEN, CITY CLERK  
**THRU:** ERIN REINDERS, ACTING CITY MANAGER  
**DATE:** DECEMBER 8, 2015  
**RE:** AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 9.20 TO ALLOW BARS LICENSED TO DISPENSE ALCOHOLIC BEVERAGES BY THE DRINK TO OPEN AT 8:00 AM ON SUNDAY TO SERVE FOOD AND NON-ALCOHOLIC BEVERAGES

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**SUMMARY:** Currently, bars that do not have a restaurant designation permit from the Alcoholic Beverage Control Board cannot be open to the public prior to noon on Sundays. This ordinance will allow bars that do not have a restaurant designation permit to open at 8:00 AM on Sundays to serve food and non-alcoholic beverages. Staff recommends approval of this ordinance.

**PREVIOUS COUNCIL ACTION:** The current closing hours and Sunday liquor sales rules were adopted in Ordinance 2003-01 on February 25, 2003.

**BACKGROUND:** Unalaska Code of Ordinances §9.20.020 (B) states that “It shall be unlawful for a licensed premises, except restaurants when serving food or non-alcoholic beverages, to allow persons or customers who are not owners or employees to remain on the premises during hours when alcoholic beverages are not permitted to be dispensed.” UCO §9.20.020 (A)(2) sets 12:00 p.m. to 10:00 p.m. as the hours during which it is legal to serve alcohol on Sunday.

**DISCUSSION:** Because of the current ordinance language, bars that do not have a restaurant designation permit from the Alcoholic Beverage Control Board cannot open their doors to the public before noon on Sunday. Bars are, therefore, missing the opportunity to be open to serve food for patrons who might otherwise come in to watch football or other sports. In addition, the current ordinance prevents bars from being able to open for private events prior to noon on Sundays.

Ordinance 2015-25 will allow bars to be open to the public beginning at 8:00 a.m. on Sundays to serve food and non-alcoholic beverages, thereby providing these businesses with an opportunity to generate additional revenues.

**FINANCIAL IMPLICATIONS:** A small increase in sales tax revenue may result.

**LEGAL:** This ordinance revision has been reviewed by the city attorney.

**STAFF RECOMMENDATION:** Staff recommends adopting Ordinance 2015-25.

**PROPOSED MOTION:** I move to move Ordinance 2015-25 to public hearing and second reading on December 22<sup>nd</sup>.

**CITY MANAGER'S COMMENTS:** I recommend adopting ordinance 2015-25.



CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2015-75

A RESOLUTION OF THE UNALASKA CITY COUNCIL ESTABLISHING DATES FOR THE FISCAL YEAR 2017 REAL PROPERTY TAX AND BUSINESS PERSONAL PROPERTY TAX COLLECTION EFFORT.

WHEREAS, UCO 6.36.020 states that taxes become due and are delinquent on dates set yearly by resolution.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council sets the following dates for the accomplishment of the FY17 real property tax and business personal property tax collection effort:

January 15, 2016	Mailing of Business Personal Property Declaration Forms
March 1, 2016	Deadline for return of Business Personal Property Declaration Forms
March 30, 2016	Mail Real Property and Business Personal Property Regular, Supplemental, and Involuntary Assessment Notices
April 29, 2016	Deadline for filing appeal to the Board of Equalization
May 10, 2016	Board of Equalization meets
June 30, 2016	Final mailing date for Real and Business Personal Property statements
August 19, 2016	First payment due date for regular Real and Business Personal Property tax rolls
	Final payment due date for Supplemental and Involuntary Business Personal Property tax rolls
August 20, 2016	Unpaid taxes become delinquent and subject to penalty and interest
October 20, 2016	Final payment due date for regular Real and Business Personal Property tax rolls.
October 21, 2016	Unpaid taxes become delinquent and subject to penalty and interest.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 22nd DAY OF DECEMBER 2015.

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MAYOR

ATTEST:

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CITY CLERK

CITY OF UNALASKA  
UNALASKA, ALASKA

**RESOLUTION 2015-76**

**A RESOLUTION OF THE UNALASKA CITY COUNCIL ADOPTING AN ALTERNATIVE ALLOCATION METHOD FOR THE FY16 SHARED FISHERIES BUSINESS TAX PROGRAM AND CERTIFYING THAT THIS ALLOCATION METHOD FAIRLY REPRESENTS THE DISTRIBUTION OF SIGNIFICANT EFFECTS OF FISHERIES BUSINESS ACTIVITY IN THE ALEUTIAN ISLANDS FISHERIES MANAGEMENT AREA.**

WHEREAS, AS 29.60.450 requires that for a municipality to participate in the FY16 Shared Fisheries Business Tax Program, the municipality must demonstrate to the Department of Commerce, Community, and Economic Development that the municipality suffered significant effects during calendar year 2014 from fisheries business activities; and

WHEREAS, 3 AAC 134.060 provides for the allocation of available program funding to eligible municipalities located within fisheries management areas specified by the Department of Commerce, Community, and Economic Development; and

WHEREAS, 3 AAC 134.070 provides for the use, at the discretion of the Department of Commerce, Community, and Economic Development, of alternative allocation methods which may be used within fisheries management areas if all eligible municipalities within the area agree to use the method, and the method incorporates some measure of the relative significant effect of fisheries business activity on the respective municipalities in the area; and

WHEREAS, the Unalaska City Council proposes to use an alternative allocation method for allocation of FY16 funding available within the Aleutian Islands Fisheries Management Area in agreement with all other municipalities in this area participating in the FY16 Shared Fisheries Business Tax Program;

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council by this resolution certifies that the following alternative allocation method fairly represents the distribution of significant effects during 2014 of fisheries business activity in the municipalities within the Fisheries Management Area 2 ALEUTIAN ISLANDS:

1. All municipalities share equally 60% of the allocation;
2. All but Aleutians East Borough share remaining 40% on a per capita basis.

BE IT FURTHER RESOLVED that the Unalaska City Council urges the Department of Community & Economic Development to accept the proposed allocation method as a measure of the relative effects of the fishing industry on the respective municipalities.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 22ND DAY OF DECEMBER, 2015.

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MAYOR

ATTEST:

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CITY CLERK

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## MEMORANDUM TO COUNCIL

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**TO:** MAYOR AND CITY COUNCIL MEMBERS  
**THROUGH:** DAVID MARTINSON, CITY MANAGER  
**FROM:** CAT HAZEN, CITY CLERK  
**DATE:** DECEMBER 22, 2015  
**RE:** RESOLUTION 2015-76: ADOPTING AN ALTERNATIVE ALLOCATION METHOD FOR THE FY16 SHARED FISHERIES BUSINESS TAX PROGRAM AND CERTIFYING THAT THIS ALLOCATION METHOD FAIRLY REPRESENTS THE DISTRIBUTION OF SIGNIFICANT EFFECTS OF FISHERIES BUSINESS ACTIVITY IN THE ALEUTIAN ISLANDS FISHERIES MANAGEMENT AREA

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**SUMMARY:** The purpose of this tax program is to provide for a sharing of State fish tax collected outside municipal boundaries with municipalities that have been affected by fishing industry activities. This resolution is being submitted to Council with the assumption that the Alternate Method of distribution will be adopted as it has been for more than 20 years. Adak, Atka, Akutan, and the Aleutians East Borough, all of which are included in this management area, have agreed to the Alternate Method and are addressing or have addressed the same resolution.

**PREVIOUS COUNCIL ACTION:** Council has adopted the alternative allocation formula as outlined in Resolution 2015-76 for the last 23 years.

**BACKGROUND:** This program was created to recognize that there were municipalities that were affected by fishing activity outside their municipal boundaries, but that were not receiving a share of the State fish tax collected from these activities.

The Shared Fisheries Tax became law (AS 29.60.450) in 1962 with qualified municipalities sharing approximately 10% of the monies. The law evolved from a series of congressional and territorial legislation that originally taxed canned salmon receipts and later other fisheries for the purpose of funding fisheries-related activities in pre-territorial Alaska. Since becoming law, the amount of fisheries business tax shared with qualified municipalities has increased only twice, once in 1979 to 20% and in 1981 to the present 50% share.

**DISCUSSION:** The Shared Fisheries Tax Program provides two methods for applying for this funding. The first method is the Standard Method, which is very complicated and requires a great deal of coordinated effort among the affected communities. The second is the Alternate Method through which all municipalities within a management area agree to a formula for distribution of funds. This method is less complex and agreeable to all affected communities in the management area.

Atka, Adak, Akutan, and the Aleutians East Borough, all of which participate in this program with Unalaska, have been contacted for confirmation that they agree on the use of the Alternate Method and that they agree with the formula.

The attached spreadsheet was created using figures from the Alaska Department of Commerce, Community and Economic Development's formula and certified population figures from 2014.

**ALTERNATIVES:** Council could choose not to adopt the Alternate Method.

**FINANCIAL IMPLICATIONS:** The State has provided the attached spreadsheet, which shows an amount of \$345,554.04 allocated to Unalaska.

**LEGAL:** No legal opinion is necessary for this item.

**STAFF RECOMMENDATION:** Adoption of Resolution No. 2015-76

**PROPOSED MOTION:** "I move to adopt Resolution 2015-76 . . ."

**CITY MANAGER'S COMMENTS:**

Attachments:

Program Description from the State of Alaska

# **FY 16 SHARED FISHERIES BUSINESS TAX PROGRAM**

## **PROGRAM DESCRIPTION**

The purpose of the Shared Fisheries Business Tax Program is to provide for an annual sharing of fish tax collected outside municipal boundaries to municipalities that can demonstrate they suffered significant effects from fisheries business activities. This program is administered separately from the state fish tax sharing program administered by the Department of Revenue which shares fish tax revenues collected inside municipal boundaries.

### **Program Eligibility**

To be eligible for an allocation under this program, applicants must:

1. Be a municipality (city or borough); and
2. Demonstrate the municipality suffered significant effects as a result of fisheries business activity that occurred within its respective fisheries management area(s).

### **Program Funding**

The funding available for the program this year is equal to half the amount of state fisheries business tax revenues collected outside of municipal boundaries during calendar year 2014.

Program funding is allocated in two stages:

**1st Stage:** Nineteen Fisheries Management Areas (FMAs) were established using existing commercial fishing area boundaries. The available funding is allocated among these 19 FMAs based on the pounds of fish and shellfish processed in the whole state during the 2014 calendar year. For example, if an area processed 10% of all the fish and shellfish processed in the whole state during 2014, then that area would receive 10% of the funding available for the program this year. These allocations are calculated based on Fisheries Business Tax Return information for calendar year 2014.

**2nd Stage:** The funding available within each FMA will be allocated among the municipalities in that area based on the level of fishing industry significant effects suffered by each municipality compared to the level of effects experienced by the other municipalities in that FMA.

Some boroughs, because of their extensive area, are included in more than one fisheries management area. In these cases, the borough must submit a separate program application for each area.

# FY 16 SHARED FISHERIES BUSINESS TAX PROGRAM

## PROGRAM DESCRIPTION

### There are two possible application methods: Standard and Alternative

**Standard Method:** In the Standard Method, established by the department, each municipality in the FMA must determine and document the cost of fisheries business impacts experienced by the community in 2014. These impacts are submitted by each municipality in their applications. The department will review the applications and determine if the impacts submitted are valid. Once the impacts have been established for each of the municipalities in the FMA, the department will calculate the allocation for each municipality using the following formula:

One half of the funding available within a FMA is divided up among participating municipalities on the basis of the relative dollar amount of impact in each municipality. The other half of the funding available to that area is divided equally among all eligible municipalities.

**Alternative Method:** Alternative allocation methods may be proposed by the municipalities within the FMA. The department will consider approving the use of a proposed alternative method only if all the municipalities in the area agree to use the method, and if the method includes some measure of the relative effects of the fishing industry on the respective municipalities in the area.

This application packet contains the instructions and forms for applying under either of these methods.

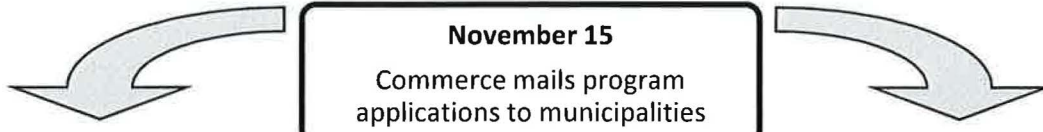
- The **yellow pages** are for applications using the standard method.
- The **pink pages** are to be used for alternative method applications.

The chart on the following page summarizes the process for these two methods.



# FY 16 SHARED FISHERIES BUSINESS TAX PROGRAM

## PROGRAM DESCRIPTION



### STANDARD METHOD

**By no later than February 15**

Each municipality determines and documents the cost of fisheries impacts on the community and submits this information with their application.



**By no later than April 15**

Commerce reviews applications, makes a determination as to the validity of the submitted impacts, and notifies the municipalities of this determination.



**Within 30 days**

Municipalities have 30 days in which to appeal Commerce's determinations regarding submitted impacts.



**Within 20 days**

Commerce will respond to appeals within 20 days after receiving them.



**After all appeals are resolved**

Commerce will perform the formula calculations for each FMA based on the relative impacts approved for each municipality in the FMA, and distribute the funding allocations.

### ALTERNATE METHOD

**By no later than January 15**

All municipalities in an FMA work together to develop an alternate allocation formula and submit their proposal to Commerce. Municipalities are encouraged to consult with Commerce during this effort regarding the acceptability of alternative methods.



**By no later than February 1**

Commerce reviews alternate proposals, determines if proposals are acceptable, and notifies the municipalities of this determination. If the proposal is accepted, municipalities may then use the Alternative Method application. If the proposal is not acceptable to Commerce, the department will work with municipalities in an area to resolve problems. If the problems cannot be resolved, the municipalities in that FMA must apply using the Standard Method application.



**By no later than February 15**

Each municipality must submit an Alternative Method application. Commerce will distribute allocations after all applications within that FMA have been received and verified.

## **FY 16 Shared Fisheries Business Tax Program Application Instructions**

### **ALTERNATE METHOD The Process**

- In the alternate method application process all municipalities in a fisheries management area may work together to develop an alternative allocation formula for distributing the available program funding among municipalities in the area. It is advised that the department be consulted during this process if the municipalities have questions or concerns about what constitutes an acceptable alternative to the standard allocation method.
- All the municipalities in an area must reach an agreement in writing on an alternative allocation formula.
- By January 15, the department must receive the proposed alternative method. If the alternative method is not acceptable, the department will work with the municipalities to resolve the problems.
- If the municipalities in an area fail to satisfy the department regarding the acceptability of the alternative allocation method proposed, then each municipality in the region must return to the standard application process and submit separate applications as required by that process.
- If the department finds the alternative allocation method satisfactory, each municipality must then complete an alternative method application consisting of a cover page and resolution. The resolution must be adopted by the governing body and it must clearly describe the approved alternative allocation method within that area. After all alternative method applications within an area have been received and approved; the department will perform the allocations and distribute program funds.

### **Specific Instructions for an Alternative Method Application**

In the alternative method application, an approved resolution constitutes the application. No other forms need to be submitted. A sample resolution has been attached for your use.



## **General Guidelines for Developing an Alternative Allocation Method**

**All municipalities in a fisheries management area must agree on the alternative method:**

There must be unanimous agreement among all eligible municipalities in a fisheries management area with regard to alternative allocation methods. It is the responsibility of community leaders in the area to work together to negotiate an alternative which is acceptable to all municipalities. The department may be consulted at any time regarding what kinds of formula approaches are considered acceptable by the department.

**Alternative methods must incorporate some measure of the relative significant effects experienced by the respective municipalities in the area.** The measure of significant effects may take many forms. One area might agree to use the number of commercial fishing boat visits-per-year per community as a measure of significant effects. Another area might use the linear foot-length of public docks as a measure. Another area might use community population figures as an indication of the significant effects of fisheries business activity. Another area might share one half of the funding equally between the respective municipalities and share the other half based upon community population figures. Areas may decide to use one measure, or may use a combination of measures.

**Submit your completed application  
by no later than February 15, 2016 to:**

**Department of Commerce, Community,  
and Economic Development  
Division of Community and Regional Affairs  
Shared Fisheries Business Tax Program  
P.O. Box 110809  
Juneau, AK 99811-0809**

**If you require assistance in completing this application,  
please call Danielle Lindoff at 465-4733.**

# FY 16 Shared Fisheries Business Tax Program

FMA 2: Aleutians Islands Area					FY 16 Landing Tax Allocation
<b>Alternative Method*</b>					\$105,284.29
	Total allocation:	60% Divided	40% per capita		
	\$804,348.94	\$482,609.37	\$321,739.58		
Community	Population	60% divided share	40% per capita share	Calculated Allocation	Calculated Allocation
Adak	247	\$96,521.87	\$13,118.14	\$109,640.01	\$14,351.20
Aleutians East Boro	3,096	\$96,521.87	\$0.00	\$96,521.87	\$12,634.12
Akutan	1,052	\$96,521.87	\$55,871.58	\$152,393.45	\$19,947.36
Atka	70	\$96,521.87	\$3,717.69	\$100,239.56	\$13,120.74
Unalaska	4,689	\$96,521.87	\$249,032.17	\$345,554.04	\$45,230.88
Totals	9,154	\$482,609.37	\$321,739.58	\$804,348.94	\$105,284.29
Community Count	5				
* All municipalities share equally 60% of allocation; all but Aleutians East Boro share remaining 40% on a per capita basis.					

**CITY OF UNALASKA  
UNALASKA, ALASKA**

**ORDINANCE 2015-26**

**AN ORDINANCE AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 6.28 – LEVY OF PROPERTY TAX TO CREATE A FIVE YEAR EXEMPTION FROM REAL PROPERTY TAX FOR THE INCREASE IN ASSESSED VALUE DIRECTLY ATTRIBUTABLE TO THE SUBDIVISION OF A SINGLE PARCEL OF PROPERTY INTO THREE OR MORE PARCELS**

BE IT ENACTED BY THE UNALASKA CITY COUNCIL:

**Section 1:**     **Classification.** This is a code ordinance.

**Section 2:**     **Amendment of UCO §6.28.030(A).** Subsection 6.28.030(A) of the Unalaska Code of Ordinances is hereby amended by the addition of a new subsection (8), to read as follows:

(8) The increase in assessed value directly attributable to the subdivision of a single parcel of property into three or more parcels and completion of the construction of any improvements made to the property by the property owner necessitated by its subdivision. This exemption shall commence no earlier than the first assessment year after subdivision and shall expire for each individual lot upon the earlier of:

- (1) sale, leasing or rental of the lot; or
- (2) construction or placement of any structure upon the lot; or
- (3) use of the lot for any occupation, employment, or enterprise that is carried on for profit; or
- (4) the end of the fifth assessment year following subdivision.

**Section 3:**     **Amendment of UCO §6.28.030(F).** Subsection 6.28.030(F) of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language is underlined deleted language is overstruck]:

(F) No exemption may be granted ~~except~~ under (A)(8) or (E) of this section except upon written application for the exemption on a form prescribed by the State assessor for use by local assessors or upon a form established by the city assessor. The claimant must file the application no later than March 1 of the assessment year for which the exemption is sought. The City Council for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and approved by the assessor, the assessor shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by March 1 of the assessment year has been waived as provided in this subsection and application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year for the property exempted shall be refunded to the claimant. The assessor shall require proof in the form the assessor considers necessary of the right to and amount of an exemption claimed under (A)(8) or (E)

of this section, and shall require a disabled veteran claiming an exemption under (E) of this section to provide evidence of the disability rating. The assessor may require proof under this section at any time.

**Section 4:**     **Amendment of UCO 6.28.030:** Section 6.28.030 of the Unalaska Code of Ordinances is hereby amended by the addition of a new subsection (K) (and re-lettering existing subsections (K) through (N) as (L) through (O)) to read as follows:

(K) For the purpose of determining property exempt under (A)(8) of this section:

- (1) The date of subdivision shall be the date of final approval of a plat by the Platting Authority.
- (2) Lots for which the city completes the construction of required improvements shall not be exempt.
- (3) Lots whose exemptions terminate prior to the due date for final payment of tax shall not be subject to a pro rata payment of tax.

**Section 5:**     **Effective Date.** This ordinance is effective upon passage.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 12<sup>TH</sup> DAY OF JANUARY, 2016.

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HON. SHIRLEY MARQUARDT  
MAYOR

ATTEST:

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CAT HAZEN  
CITY CLERK

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## MEMORANDUM TO COUNCIL

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**TO:** MAYOR AND CITY COUNCIL MEMBERS  
**FROM:** CAT HAZEN, CITY CLERK  
**THRU:** DAVID MARTINSON, CITY MANAGER  
**DATE:** DECEMBER 22, 2015  
**RE:** AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 6.28.030 TO CREATE A FIVE YEAR EXEMPTION FROM REAL PROPERTY TAX FOR THE INCREASE IN ASSESSED VALUE DIRECTLY ATTRIBUTABLE TO THE SUBDIVISION OF A SINGLE PARCEL OF PROPERTY INTO THREE OR MORE PARCELS

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**SUMMARY:** In 2015 Alaska Statute 29.45.050 was amended by adding subsection (x), authorizing municipalities to adopt a tax exemption of up to five years for the increase in assessed value of a parcel of real property attributable to its subdivision into three or more parcels. Ordinance 2015-26 will incorporate that tax exemption into Unalaska Code of Ordinances Chapter 6.28. Staff recommends the adoption of Ordinance 2015-26.

**PREVIOUS COUNCIL ACTION:** Council held a work session on December 2, 2014 to solicit public input and participation in a discussion about housing issues, including assessing the need for additional housing, perceived barriers to creating more housing, and possible incentives for housing development. One of the comments made by property owners during that discussion was that the additional property taxes levied because of the increase in assessed value during the development of a subdivision were a hardship that discouraged the creation of new subdivisions.

**BACKGROUND:** Alaska Statute 29.45.010 authorizes municipalities to levy a property tax, and provides that “If a tax is levied on real property or on personal property, the tax must be assessed, levied, and collected as provided in this chapter.” The statute includes lists of required property tax exemptions and optional exemptions, as well as describing administrative requirements and enforcement methods. Any changes to the property tax chapters of the Unalaska Code of Ordinances have to conform to A.S. 29.45.

In 2015 the state legislature amended Alaska Statute 29.45.050 by adding subsection (x), which provides for an optional real property tax exemption of up to five years for all or a portion of the increase in assessed value directly attributable to the subdivision of a single parcel of property into three or more parcels. The adoption by the State of AS 29.45.050(x) cleared the way for the City to offer some tax relief to property owners who wish to create new subdivisions.

**DISCUSSION:** Unalaska currently levies both real property tax and business personal property tax according to the provisions in Chapters 6.28, 6.32, and 6.36 of the Unalaska Code of Ordinances. UCO 6.28.030, Required Exemptions, lists types of real and personal property that are currently either partially or totally exempt from general taxation, as well as listing requirements to qualify for exemptions and limitations on exemptions.

Ordinance 2015-26 will add subsection (8) to UCO 6.28.030(A), providing for a real property tax exemption for the increase in the assessed value of a parcel of real property that is directly attributable to its subdivision into three or more parcels, as authorized by AS 29.45.050(x). The exemption will commence the first assessment year after the final approval of the plat and be in effect for five years for lots in the subdivision that remained unsold and unused. The exemption would immediately be extinguished for any lot if the subdivision that is sold, has a structure placed upon it, or is put to any commercial use. If the city outright pays for the infrastructure improvements required as part of the subdivision, the lots would not be eligible for this exemption.

In order to receive the exemption property owners will be required to submit an application to the City Clerk each year by March 1<sup>st</sup>, just as homeowners seeking a senior citizen or disabled veteran exemption are required to do. This will allow the Clerk's department to identify and track eligible properties for tax billing and state reporting purposes.

Ordinance 2015-26 will remove the financial burden of increased property taxes during the development phase of new subdivisions, when property owners typically are having to invest in surveying, platting, legal fees and other costs but are not yet able to generate cash flow by selling or leasing lots.

**FINANCIAL IMPLICATIONS:** Any short term reductions in revenue should be offset by long term increases in assessed values and, therefore, in property taxes.

**LEGAL:** As needed for a change to the Unalaska Code of Ordinances.

**STAFF RECOMMENDATION:** Staff recommends adopting Ordinance 2015-26.

**PROPOSED MOTION:** I move to move Ordinance 2015-26 to public hearing and second reading on January 12, 2016.

**CITY MANAGER'S COMMENTS:** This ordinance is in response to public comment and discussion on ways to encourage the development of housing in our community. Staff supports this ordinance.

that is actively engaged in farming and that derives at least 10 percent of the person's yearly gross income from farming activity, and the structure is used for

(1) the growing, storage, or processing of grains, fruits, vegetables, or other crops intended for human consumption and produced by the owner's or lessee's farming activity;

(2) the storage or processing of

(A) feed for livestock, poultry, or other animals used in the owner's or lessee's farming activity;

(B) milk or milk products produced by the owner's or lessee's farming activity; or

(3) stabling or milking the owner's or lessee's dairy animals.

(u) In this section, "farming activity" means raising and harvesting crops; feeding, breeding, and managing livestock; dairying; or any combination of those activities.

(v) A municipality may by ordinance exempt or partially exempt from taxation for up to 10 years property in a military facility zone that creates or supports industry, development, or educational or training opportunities beneficial to a facility. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption. In this subsection, "facility" and "military facility zone" have the meaning given in AS.26.30.900.

(w) A municipality may by ordinance classify and exempt or partially exempt from taxation all or a portion of privately owned real property rented or leased for use as a charter school established under AS 14.03.250

(x) A municipality may by ordinance partially or wholly exempt from taxation all or a portion of the increase in assessed value directly attributable to the subdivision of a single parcel of property into three or more parcels and any improvements made to the property necessitated by its subdivision. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration. A municipality may also by ordinance provide that

(1) the exemption is terminated when

(A) a lot in the subdivision is sold; or

(B) a residential or commercial use is established on a lot in the subdivision; or

(2) the exemption continues for the unsold lots in the subdivision after

(A) a lot in the subdivision is sold; or

(B) a residential or commercial use is established on a lot in the subdivision.

(§ 12 ch 74 SLA 1985; am § 1 ch 103 SLA 1985; am § 5 ch 70 SLA 1986; am § 1 ch 151 SLA 1988; am § 2 ch 73 SLA 1989; am § 1 ch 98 SLA 1989; am § 15 ch 93 SLA 1991; am § 107 ch 4 FSSLA 1992; am § 1 ch 66 SLA 1993; am § 1 ch 7 SLA 1994; am § 1 ch 65 SLA 1994; am § 1 ch 40 SLA 1995; am § 1 ch 70 SLA 1998; am § 1, 2 ch 8 SLA 1999; am § 4 ch 117 SLA 2000; am § 1 ch 64 SLA 2002; am § 1 ch 54 SLA 2002; am §§ 2, 3, 4, 5 ch 140 SLA 2004; am § 40 ch 56 SLA 2005; am §§ 2, 4 ch 44 SLA 2006; am § 1 ch 89 SLA 2008; am § 10 ch 83 SLA 2010; am § 1 2012 Primary Election Ballot Measure 1; am § 1 ch 66 SLA 13; am § 1 ch 57 SLA 14; am § 35 ch 15 SLA 14; am §§ 1, 2 ch 36 SLA 15)

**Effect of amendments.** The 2015 amendment amends subsection (o) by adding paragraph (1) providing an optional exemption from and deferral of payment of municipal taxes on deteriorated property and added subsection X. The 2014 amendment added subsections (v) effective October 5, 2014 and (w) effective July 1, 2014. The 2013 amendment, effective



**CITY OF UNALASKA, ALASKA  
CITY COUNCIL**

**RESOLUTION NO. 2015-77**

**A RESOLUTION OF THE UNALASKA CITY COUNCIL APPROVING A TIDELAND LEASE AGREEMENT FOR A TERM OF 30-YEARS BETWEEN THE CITY OF UNALASKA AND UNISEA, INC FOR TRACTS A-1 AND B-1 OF UNALASKA TIDELAND SURVEY 105**

WHEREAS, the City of Unalaska is the owner of Tracts A-1 and B-1, Unalaska Tideland Survey (UTS) 105, Plat 2015-10, Aleutian Islands Recording District; and

WHEREAS, UniSea, Inc. desires to lease UTS 105 Tracts A-1 and B-1, totaling 0.583 acres, to construct a marine facility; and

WHEREAS, a new marine facility is consistent with Unalaska Comprehensive Plan by helping to strengthen and diversify the local economy; and

WHEREAS, the lease has been processed and drafted in accordance with City Manager Regulations for Tidelands Leasing, License, Exchange or Sale; and

WHEREAS, the annual rent of \$10,340.00 has been determined in accordance with City Manager Regulations for Tidelands Leasing, License, Exchange or Sale; and

WHEREAS, Section 7.12.020 UCO requires City Council approval of any lease of City property having a term greater than 5 years; and

WHEREAS, the City Council has determined that a 30-year lease is of benefit to the city as it promotes long-term investment in Unalaska's tidelands.

NOW THEREFORE BE IT RESOLVED THAT THE UNALASKA CITY COUNCIL approves a tideland lease between the City of Unalaska and UniSea, Inc. for Tracts A-1 and B-1 of UTS 105 for the annual rent of \$10,340.00.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



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## MEMORANDUM TO COUNCIL

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**TO: MAYOR AND CITY COUNCIL MEMBERS**  
**THRU: DAVID MARTINSON, CITY MANAGER**  
**FROM: ANTHONY GRANDE, AICP - DIRECTOR OF PLANNING**  
**DATE: DECEMBER 22, 2015**  
**RE: UNISEA TIDELAND LEASE (RESOLUTION 2015-77)**

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**SUMMARY:** A tideland lease between the City of Unalaska and UniSea, Inc. has been drafted and is being processed in accordance with City code, regulations, and existing agreements. City Council approval is required for the lease because the term is greater than 5 years. Staff recommends approval or Resolution 2015-77.

**PREVIOUS COUNCIL ACTION:** The current City Manager Regulations for Tidelands Leasing, License, Exchange or Sale ("Regulations") were endorsed by the City Council on April 24, 2012.

**BACKGROUND:** In February 2015, UniSea submitted an application to lease the proposed tideland area, filling out the standard forms and paying the required fee, as outlined in the Regulations. The requested tideland area is 0.583 acres and at the time was a portion of the City-owned tideland known as ATS 1445. The application requested a lease term of 30 years. UniSea is the upland owner and has submitted a site development plan, involving an expansion of the existing G-1 Dock on the adjacent tideland.

In preparation for leasing the proposed area, UniSea had the area surveyed and recorded in an official subdivision plat. The result was Plat 2015-10 (UTS 105), subdividing the City's existing tideland, ATS 1445, such that Tracts A-1 and B-1 would match the area intended to be leased by UniSea. This was done at UniSea's sole expense and was finalized on October 12, 2015.

According to UCO 7.12.020, the City Council must approve any lease of City property having a term of greater than 5 years, as is the case with this application.

The rent was determined to be \$10,340.00 annually. According to the Regulations, the annual rent is to be set at 10% of the value of the property. The property to be leased was appraised by MacSwain Associates, LLC to have a value of \$103,417.00. The rent will be adjusted every 5 years to maintain the rent at 10% of the market value.

**DISCUSSION:** UniSea and City Staff have processed the lease application in accordance with the Regulations, as stated above. The terms of the lease are written to follow the Regulations, and the 30-year lease term is appropriate for a tideland lease involving marine facility expansion.

UniSea has submitted their development plans for the leased property, which will involve expansion of the existing G-1 Dock. As the upland owner of the tideland parcel, zoned Developable Tideland, with an appropriate plan for use, the lease of such tideland to UniSea supports sound orderly growth in the

community. It also meets the goals of the Unalaska Comprehensive Plan 2020 Economic Development section by contributing to a strong, diverse economy and making more land available for business and industry. The map below shows the area to be leased, and the recorded plat at the end of the lease shows the legal boundaries.

### **Proposed Lease Area**



Prior to the City signing the agreement, UniSea will provide proof of insurance. All insurance requirements are identified in the lease agreement. Additionally, as described in the Tideland Regulations, a performance bond based on 5% of the estimated value of the proposed improvements, in this case for the portion of the planned G-1 dock that will be within the lease area, will need to be provided to the city prior to the signing the agreement.

Army Corps of Engineer, and other required permits, for the initial phase of the project is in the process of being obtained. Additionally, building permits will need to be obtained from the Department of Public Works. No construction will be permitted by the City until documentation is provided to verify that these permits have been issued, as noted in the lease agreement.

The rent is set at \$10,340.00 annually, according to the Regulations, and will be adjusted every 5 years if an appraisal determines a new value for the property, as explained above.

Resolution 2015-77 has been drafted by Staff to approve the 30-year tideland lease as shown in the packet.

**ALTERNATIVES:** If the City Council finds that it is in the best interest of the City to reject Resolution 2015-77 as is, they may disapprove or modify the agreement.

**FINANCIAL IMPLICATIONS:** The annual rent has been set at \$10,340.00 for 30 years, which totals \$310,200. This does not account for potential increased tax revenue that might result from the development of the tideland, nor incremental rate increases. As described in the lease, the incremental rate increases will be based on appraisal of the lease property only, and will not include improvements on the property.

**LEGAL:** The lease was developed in consultation with the City Attorney.

**STAFF RECOMMENDATION:** Staff recommends approval of Resolution 2015-77.

**PROPOSED MOTION:** I make the motion to approve Resolution 2015-77

**CITY MANAGER COMMENTS:** I recommend approval of Resolution 2015-77

Attachments:

- 1) City Council Resolution 2015-77
- 2) Draft Lease Agreement

CITY OF UNALASKA  
TIDELAND LEASE AGREEMENT  
UTS 105, Tracts A-1 and B-1  
FOR CITY OWNED TIDELANDS

This Lease Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between the City of Unalaska, a first-class Alaska municipal corporation ("Lessor"), whose address is P.O. Box 610, Unalaska, Alaska 99685, and UniSea, Inc. ("Lessee"), whose address is 15400 Northeast 90<sup>th</sup> St., Redmond WA, 98052. This Lease Agreement supersedes all other existing Lease Agreements between these parties, or related parties, for the property described in the following section.

NOW THEREFORE, the Lessor and the Lessee, in consideration of the mutual covenants and conditions stated in this Lease, agree as follows:

Leased Premises. The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the following parcel of land (collectively "Parcel"), which are situated in the State of Alaska, shown in a Tideland Plat signed by Registered Professional Land Surveyor in the State of Alaska, comprised of 0.583 Acres, more or less, and are described as follows:

Tracts A-1 and B-1 of the Unalaska Tideland Survey 105 according to the official survey and recorded thereof included as Exhibit A, Plat Number 2015-10 Aleutian Islands Recording District, Third Judicial District, State of Alaska.

EXCEPTING AND RESERVING THEREFROM, to the Lessor and its assigns during the term of this Lease, the following specific interests, which shall be in addition to and not in derogation of any general reservations to the Lessor which may be stated elsewhere in this Lease:

- A. Easements, rights of way and reservations of record.
- B. All reservations contained in the City's Patent No. 366 of ATS 1445
- C. The rights of the public to access tidelands under the Alaska Constitution.
- D. The rights of the public to access tidelands under the Public Trust Doctrine.

1. Term. The term of this Lease shall be for a period of 30 years commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. Rent. The Lessee shall pay to the Lessor the following rent ("Rent") for the Parcel: equal annual payments, in advance, on or before the \_\_\_\_\_ of the first month of the period of said rental term at the rate of Ten Thousand Three Hundred Forty (\$10,340.00) for the 0.583 Acre Parcel for the first year, such annual rental payments to be subject to adjustment in accordance with Paragraph 3 of this Agreement.

3. Adjustments to Rent. Rent due under this Agreement shall be adjusted upward or downward as follows:

The annual rent will typically be 10% of the appraised value of the tideland, including all previously existing

improvements, as determined by an appraiser or based on the Fair Market Rent as established by an appraiser. Commencing at the end of the fifth (5<sup>th</sup>) year of the term, and continuing at the end of every five (5) years thereafter the Parcel, including any previously existing improvements included in this Lease Agreement, but excluding improvements made by Lessee, shall be reappraised by the City of Unalaska and the annual rent shall be adjusted accordingly. In some instances, a letter of opinion from an appraiser may be all that is warranted and may be considered every five years with a reappraisal every 10 years. Rent shall at no point be less than \$2,250 per acre with a \$2,250 minimum annual rent. The cost of subsequent reappraisals will be split equally between the City and the Lessee.

The cost of the initial appraisal used to calculate this lease rate was \$3,500, originally paid for by the City and to be split equally between the City and the Lessee. The Lessee shall pay the Lessor the following reimbursement for the Initial Appraisal of the Parcel: on or before the \_\_\_\_\_ day of the first month of the period of said rental term at the rate of One Thousand Seven Hundred Fifty dollars (\$1,750.00).

4. Payment of Rent. Rent payments shall be made payable to the City of Unalaska and delivered to the City of Unalaska Finance Department, P.O. Box 610, Unalaska, Alaska 99685, or to any other address which Lessor may designate in writing.

5. Interest on Delinquent Payments. All unpaid rents and fees shall accrue interest at the rate of ten and one-half per cent (10.5%) per annum beginning thirty (30) days after payment is due.

6. Use of Parcel. The Lessee shall use and occupy the Parcel in compliance with all applicable laws, regulations, ordinances and orders which a public authority has promulgated or may promulgate, including those of a building or zoning authority and those relating to pollution and sanitation control and those relating to City of Unalaska sales taxation. The Lessee shall not permit any unlawful occupation, business, or trade to be conducted on the Parcel. The Lessee shall properly locate itself and its improvements on the Parcel, and shall not commit waste of the Parcel, whether ameliorated or otherwise. Notwithstanding such laws, regulations, ordinances and orders, the Lessee shall maintain the Parcel in a reasonably neat and clean condition, and take all prudent precautions to prevent or suppress pollution of the ground, surface water, air, or land, and to prevent erosion or destruction of the land.

7. Improvements. The Lessee may make permanent improvements to the Parcel permitted by applicable law. Improvements proposed as part of the lease application shall be made to the leased tideland within 2 years of the signing of the lease, or lease may be revoked. The Lessee must within 90 days of completion of any such improvements including, but not limited to, structural improvements, clearing, leveling, excavation, and backfill, file with the Lessor adequate and reasonable documentation of such improvements, setting forth all applicable costs and quantities. Failure to provide such documentation may result in a loss of credit to the Lessee for such improvements when the original condition of the Parcel is determined for reappraisal purposes under Paragraph 3 hereof.

8. Encumbrance of Parcel. The Lessee, during the term of this Lease, shall not encumber or cloud the Lessor's reversionary interest in the Parcel, without the prior written consent of the Lessor, which shall not be unreasonably withheld; and any such act or omission, without the prior written consent of the Lessor, shall be voidable by the Lessor.

9. Notices of Non-responsibility and Completion. Prior to commencing any improvements on the Premises costing more than twenty thousand dollars (\$20,000.00), individually or in the aggregate, Lessee shall obtain from Lessor and duly post and record an appropriate notice of Lessor's non-responsibility for such Improvements, pursuant to the requirements of AS 34.35.065 or its successor. Lessee shall, upon the completion

of any improvements to the Property, promptly give and record an appropriate notice of completion respecting all such Improvements, pursuant to the requirements of AS 34.35.071 or its successor.

10. Assignment of Lease and Sublease of Parcel. The Lessee may not assign this Lease or sublet the Parcel, without the prior written consent of the Lessor, which shall not be unreasonably withheld. No assignment of this Lease shall be approved until the assignee agrees to be subject to and governed by the provisions of this Lease in the same manner as the original Lessee to the extent that they may be applicable to the sublease except for the payment of Rent and other monetary obligations. No such assignment or sublease will be effective until approved by the Lessor in writing or shall annul the Lessee's obligation to pay the rent herein required for the full term of this Lease. Except as permitted by the Lessor, no subdivision of the Lessee's leasehold interest, including any exposed airspace thereon, shall occur.

11. Denial of Warranty Regarding Conditions. The Lessor neither makes any warranty, express or implied, nor assumes any liability whatsoever, regarding the natural, social, economic, or environmental conditions of the Parcel, including, without limitation, the soil, water and drainage conditions, natural or artificial hazards, and the profitability or fitness of the Parcel for any use.

Lessee represents and warrants that it has independently inspected the Parcel and made all tests, investigations and observations necessary to satisfy itself of the condition of the Parcel. Lessee shall and is relying solely on such independent inspection, tests, investigations and observations in making this Agreement. Lessee accepts and shall be responsible for any risk of harm to any person and property, including but not limited to, employees of Lessee, from any latent defects in the Property.

12. Agreement to Terms of Lease. The Lessor and the Lessee agree and recognize that each of the covenants and conditions in this Lease and any attachments thereto are merged and incorporated into this agreement and shall be binding upon themselves and upon their respective successors, successors in interest and assigns and shall inure to their benefit. The Lessor and the Lessee further agree and recognize that this Lease shall be conditioned upon satisfactory performance by the Lessor and the Lessee of all covenants and conditions contained herein.

13. Payment of Taxes and Assessments. The Lessee shall pay as additional rent all real property taxes and assessments lawfully levied upon the Parcel during the term of the Lease.

14. Utilities and Services. Lessee shall, at its expense, procure and timely pay for all services and utilities and hook-ups therefore which are necessary or appropriate for its operation or use of the Parcel.

15. Easements. Lessor reserves the right to make grants to third parties or reserve to the Lessor easements through, on or above the Parcel for the purpose of providing water, sewer or electric services to the Parcel or to adjacent properties, or for the purpose of providing reasonable public access to public waters, provided that no such easement or may be granted or reserved which unreasonably interferes with the Lessee's use of the Parcel.

16. Condemnation of Leasehold Improvements. If the whole or any part of the Parcel is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

- (a) If all of the Parcel is taken by condemnation, this Lease and all rights and obligations of the Lessee will immediately terminate, and the rent will be adjusted so that it is due only until the

date the Lessee is required to surrender possession of the Parcel. The Lessor is entitled to all the condemnation proceeds, except that the Lessee will be paid the portion of the proceeds attributable to relocation costs or to improvements located on the Parcel.

(b) If the taking is of a substantial part of the Parcel, the following rules apply:

(1) If the taking reduces the ground area of the Parcel by at least 30 percent or materially affects the use being made by the Lessee of the Parcel, the Lessee has the right to elect to terminate or not to terminate this Lease by written notice to the Lessor not later than 180 days after the date of taking.

(2) If the Lessee elects to terminate this Lease, the provisions in (a) of this subsection govern the condemned portion of the Parcel and the terms of the Lease govern disposal of the remainder if any

(3) If the Lessee elects not to terminate, the Lease continues and the Lessor is entitled to the full condemnation proceeds, except the Lessee will be paid the portion attributable to relocation costs or to improvements located on Parcel. Except as it may be adjusted from time to time under the terms of this Lease, rent for the balance of the term will be equitably adjusted by the Lessor to reflect the taking.

(c) If the taking by condemnation reduces the ground area of the Parcel by less than 30 percent and the Lessee's use of the Parcel is not materially affected, the provisions of (b)(3) of this subsection will govern.

17. Access. The Lessor makes no representations or warranty that it will construct or maintain access to the Parcel.

18. Valid Existing Rights. This Lease is entered into and made subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land of record on the date of execution of this Lease.

19. Inspection. The Lessor shall have reasonable access to the Parcel for purposes of inspection regarding the faithful performance by the Lessee of the covenants and conditions of this Lease and for the performance of other lawful requirements.

20. Mineral Reservations. The Lessor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals (other than sand, gravel and rock), fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals (other than sand, gravel and rock), fissionable materials, geothermal resources, and fossils. The Lessor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals (other than sand, gravel and rock), fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and

all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, power lines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, that no rights reserved hereunder shall be exercised by the Lessor or its subsurface lessees, until provision has been made by the Lessor or its subsurface lessees to pay to the Lessee of the land upon which the rights are herein reserved, full payment for all damages and losses sustained by said Lessee by reason of entering upon said land; and provided further that, if the Lessee for any cause whatever refuses or neglects to accept such damage or loss payment, the Lessor or its subsurface lessees, or any applicant for a subsurface lease, contract or option from the Lessor or its subsurface lessee for the purpose of exploring for or extracting valuable minerals (other than sand, gravel and rock), coal, petroleum, natural gas, or geothermal resources shall have the right, after posting an adequate surety bond for the Lessee, as the obligee, issued by a corporation qualified to do business in Alaska and licensed to sell insurance in Alaska, or after posting for the Lessee, as the obligee, an adequate bond executed by one or more individual sureties approved by the Lessee and after due notice and an opportunity to be heard, to exercise rights granted to it for reasonable use of the surface required for the full enjoyment of the reserved subsurface rights which it holds. Each surety bond shall be sufficient in amount and security to secure the affected rights of the Lessee, and the Lessee and the Lessor or its subsurface lessee shall have the standing which may be necessary to seek a determination of the damages and losses which the Lessee may suffer, and the security appropriate to hold the Lessee harmless in relation thereto.

21. Appropriation or Disturbance of Waters. During the term of this Lease, the Lessee shall have the right to apply for an appropriation of ground or surface water on the Parcel in accordance with the Alaska Water Use Act. All water applied for and appropriated during the term of this Lease shall remain appurtenant to the Parcel during said term, and such water and water rights shall not be severed or transferred from the Parcel or any part thereof during said term without the prior consent of the Lessor. The Lessee's rights under any permit or certificate of appropriation shall revert to the Lessor upon termination of the Lease or forfeiture of the Lease for cause.

22. Acquisition of Rights or Interests. Any right or interest acquired during the term of this Lease and accruing to the benefit of the Parcel shall remain appurtenant to the Parcel during that term, and shall not be severed or transferred from the Parcel without the prior consent of the Lessor. In the event of termination or forfeiture of this Lease, any such right or interest shall revert to the Lessor along with the Parcel.

23. Land Alterations Due to Natural or Artificial Causes. The Parcel described herein shall constitute the entire Parcel of property to be leased by the Lessor to the Lessee pursuant to this agreement. If, through natural or artificial causes, accretion or reliction of land occurs on property contiguous to the Parcel that is owned by the Lessor, the Lessee shall have no right to occupy or use such contiguous property unless a separate lease is entered with the Lessor with respect to such property. The parties agree and stipulate that the rules of law usually applicable to accretion or reliction of land shall not apply to this Lease, nor to the Parcel leased hereunder, in order that the parties may give effect to the provision agreed upon herein.

24. Environmental Indemnification. If any hazardous substances are released or discharged on or from the Parcel to, on or about the Parcel or other properties, including, but not limited to, the surface or subsurface waters adjacent to the Parcel during the term of this Agreement, Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, but not limited to, costs incurred in connection with any investigation of site conditions or any



cleanup, remediation, removal, or restorative work required by any federal or state agency due to the presence of hazardous substances in the soil or groundwater on or under the Parcel or other affected properties, whether such losses arise during or after the term of this Agreement, but only to the extent that such release or discharge is not caused by the fault of Lessor or its agents, representatives, contractors or employees.

25. Lease Subject to Public Trust. This Agreement is subject to the principles of the Public Trust Doctrine.

26. Hazardous Substances. Lessor represents and warrants to Lessee that, to the best of its information, knowledge and belief, no hazardous substances have been released, discharged or spilled on the Parcel; however, Lessor does not represent, warrant or guarantee that this is necessarily the case. Otherwise, Lessor has made no express or implied representations or warranties to Lessee with respect to the release, discharge or spillage of any hazardous substances in, on or about the Parcel. Lessee hereby releases and discharges Lessor, its affiliates and all of their respective past, present and future officials, employees, agents, attorneys, insurers and representatives, with prejudice, from any and all claims, obligations or liabilities which have arisen, resulted from or are based upon, or may in the future arise out of, result from or be based upon, in whole or in part, the past release, discharge or spill of any hazardous substances or other environmental pollution in, on or about the Parcel, regardless of whether such claim, obligation or liability, or the type or extent thereof, is now known or foreseeable; provided, however, that such release and discharge shall be inapplicable to claims, obligations and liabilities that are based upon a material breach of the representations and warranties made by Lessor in this Agreement.

27. Definition of Hazardous Substance. Hazardous substance, as such term is used in this Agreement, includes: (a) (1) crude oil, (2) petroleum, (3) diesel fuel, (4) marine fuel, (5) heating oil, (6) gasoline, (7) motor oil, (8) kerosene, (9) aviation fuel, (10) other petroleum products, additions and derivatives, (11) urea formaldehyde foam insulation, (12) asbestos, and (13) polychlorinated biphenyls; and (b) any other (1) pollutant, (2) contaminant or (3) toxic, flammable, explosive, radioactive, noxious, hazardous, extremely hazardous, dangerous or potentially dangerous waste, material or substance, the response to which or the remediation or removal of which is required, or the manufacture, preparation, production, use, maintenance, treatment, storage, transfer, disposal, handling, processing or ownership of which is restricted, prohibited, regulated or penalized by any federal or state law or regulation as now or hereafter in effect.

28. Spill Prevention. Any fuel or oil stored on the Parcel shall be stored so as to prevent the discharge thereof from entering any ground or surface waters. Lessee shall promptly clean or mop up any fuel or oil spilled on or about the Parcel. If Lessee's use of the Parcel results in hazardous substances being on or about the Parcel, Lessee shall:

(a) Have materials and equipment available on the Parcel at all times sufficient to contain and clean up any hazardous substance that may reasonably be expected to be spilled on or about the Parcel. A list of said material and equipment shall be provided to Lessor for approval at the request of Lessor which approval shall not be unreasonably withheld. Lessee shall comply with all reasonable requests of Lessor regarding the amount and type of equipment and material to be kept available on the Property to contain and clean up any hazardous substance that may reasonably be expected to be spilled on or about the Property.

(b) Prior to commencing operations from any improvement on the Parcel for which a DEC-approved Spill Contingency Plan is required, Lessee shall provide evidence of the existence of such an approved plan in a form acceptable to Lessor.

(c) Lessor's inspection rights identified in paragraph 24 specifically include the right to inspect the materials indicated as present and stored for purposes of responding to spills of hazardous substances on the Parcel.

29. Erosion Prevention. Lessee shall prevent unwarranted erosion of the Parcel that is caused by Lessee's use or occupancy of the Parcel. Any such erosion shall be repaired in a manner satisfactory to Lessor at Lessee's sole expense.

30. Waiver or Forbearance. The receipt of rent by the Lessor, with or without knowledge of any breach of the Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the terms, conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of the Lessor to enforce a condition or covenant of this Lease, nor the waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate the application of such term or covenant; nor shall any forbearance or written waiver affect the right of the Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money, or the termination in any manner of the Lease, or the giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend this Lease, nor destroy or in any manner or impair the validity of any such notice of termination which may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by the Lessor.

31. Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, Lessor shall have the right to declare this lease in default.

32. Breach and Remedies.

(a) Time is of the essence of this Lease. If the Lessee shall materially breach any of the terms, covenants, conditions or stipulations contained in this Lease or attached hereto which are applicable to it, and said breach shall not be completely cured within 60 days after written notice of such breach has been served by the Lessor upon the Lessee and each holder of a security interest in the Lessee's interest under this Lease that has notified the Lessor of such security interest, the Lessee shall be subject to such legal rights and remedies as the Lessor shall have available to it under applicable law, including, but not limited to, the termination of this Lease; provided, however, that no improvements now upon the Parcel, or which may be placed thereon during the term of this Lease, may be removed therefrom during any time in which the Lessee may be in material breach of this Lease. In the event that this Lease is terminated by the Lessor for a material breach by the Lessee of this Lease, all rents paid by the Lessee shall be forfeited to and retained by the Lessor, not as a penalty, but as liquidated damages for such breach. The Lessor shall not be liable for any expenditures made by the Lessee or undertaken by the Lessee under this Lease prior to such termination.

(b) If the Lessee fails to completely cure a material breach of this Lease by it within the time allowed in (a) of this paragraph, any holder of a security interest in the Lessee's interest under this Lease who has notified the Lessor of such security interest may cure or remedy such breach if the breach can be cured by the payment of money or, if this cannot be done, by performing, or undertaking in writing to perform, the Lessee's obligations which are the subject of such breach that are capable of performance by the holder. The holder shall act within 60 days from the date

of receipt of notice under (a) of this paragraph, or within any additional period which the Lessor may allow for good cause.

(c) In the event that this Lease is terminated, or in the event that the Parcel is abandoned by the Lessee during the term of this Lease, the Lessor may immediately, or at any time thereafter, enter or reenter and take possession of such Parcel and without liability for any damage therefore, remove all persons and personal properties therefrom, either by summary proceedings or by suitable action at law; provided, however, that the words "enter" and "re-enter" as used herein are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, or dispossession by the Lessor, whether taken by summary proceedings or otherwise, shall not be deemed to absolve, relieve, release or discharge the Lessee, either in whole or part, for any monetary liability under the Lease.

33. Disposition of Improvements and Personality After Termination:

(a) Improvements, fixtures, machinery and equipment owned by lessee shall be removed by lessee from the Property within sixty (60) days after the expiration or termination of this Lease; provided that such removal will not cause injury or damage to the Property, or if it does, Lessee shall indemnify Lessor for the full amount of such damage; and further provided that any improvements, fixtures, machinery or equipment left on the Property by Lessee shall be in good, safe and tenantable or operable condition; and further provided that Lessee shall not commit, create, leave or allow to exist on the Property any nuisance or public nuisance. The Lessor may extend the time for such removal in case hardship is shown to Lessor's satisfaction, provided application for extension has been made in writing and received by Lessor within said sixty (60) day period.

(b) Any buildings, improvements, fixtures, machinery, equipment or other items of real or personal property, which are not removed from the Property within the time allowed in paragraph 33 (a) of this Lease, shall immediately become the property of Lessor and title thereto shall vest in Lessor without further action on the part of Lessee or Lessor. Lessor may use, sell, destroy, or otherwise dispose of any such property in any matter that it sees fit, without further obligation to Lessee.

34. Indemnification. To the fullest extent allowed by law, Lessee shall defend indemnify and hold harmless Lessor from and against all claims and demands for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims arising out of or in connection with the use or occupancy of the Parcel by Lessee or by any other person holding under Lessee from any accident or fire on the Parcel and from any nuisances made or suffered thereon; and from any failure by Lessee to keep the Property in a safe and lawful condition except to the extent that such claims or demands are caused by the fault of Lessor or its agents, representatives, employees or contractors.

35. Surrender of Leasehold. Upon the expiration or sooner termination of this Lease, the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the Parcel. In the event that Lessee remains in possession of the Parcel after the expiration of this Agreement with Lessor's permission, Lessee shall be deemed to be occupying the Property as a month-to-month tenant, subject to all of the terms and conditions of this Agreement and the law, to the extent that they may be applicable to a month-to-month tenant.

36. Required Insurance. The following insurance coverage is required to be furnished by the Lessee and is subject to annual review and adjustment by the Lessor, who may require reasonable increases in such coverage based on increased risks. Proof of the following coverage must be shown prior to execution of this Lease. A current certificate of insurance shall be submitted to the City each year.

The insurance policies must be written by a company or companies that are on the Alaska Division of Insurance's "admitted list" or "surplus lines insurance list". The broker/agent must be licensed to do business in the State and, if surplus lines insurance is provided, the broker must have a surplus broker license.

(a) Comprehensive (Commercial) General Liability Insurance. Such insurance must have coverage limits of not less than \$1,000,000 combined single limits per occurrence and not less than two million dollars (\$2,000,000) aggregate limits and shall include premises operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

The policies evidencing such coverage shall contain, or be endorsed to:

(1) The Lessor, its officers, its agents and its employees are to be covered as additional insureds with respect to liability arising out of use of the Parcel or operations of the Lessee with respect to the Parcel.

(2) The Lessee's insurance coverage shall be primary insurance with respect to the Lessor, its officers, agents, and employees. Any insurance or self insurance maintained by the Lessor shall be excess of the Lessee's insurance and shall not contribute to it.

(3) Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit brought except with the respect to the limits of insurer's liability.

(4) That, as respects the interests of Lessor, such insurance shall (A) not be invalidated by any action or neglect of any person other than Lessor and (B) insure Lessor regardless of any misrepresentation, breach or non-observance of any warranty, declaration or condition contained in any applications by Lessee for, or policy evidencing, such insurance; and

(5) That no such insurance shall be canceled or materially changed as respects the interests of Lessor on less than thirty days prior written notice to Lessor;

(b) Workers' Compensation and the Employer's Liability Coverage. Lessee shall provide Workers' Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employers Liability insurance with limits not less than one million dollars (\$1,000,000) and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, Maritime and the Outer Continental Shelf's Land Act.

37. Notices. All notices required or permitted under this Lease shall be personally delivered or sent by certified mail, postage prepaid, to the parties at the following addresses:

To Lessor: City of Unalaska  
P.O. Box 610

Unalaska, Alaska 99685

To Lessee:

UniSea, Inc.  
15400 Northeast 90<sup>th</sup> St.  
Redmond, WA 98052

Any notice or demand which must be given or made by the Lessor or the Lessee shall be in writing and shall be complete if personally delivered or sent by United States certified mail to the address shown in the Lease Agreement, or to such other address as each of the parties may designate in writing from time to time. A copy of any such notice shall be forwarded to the Lessor, and to the holder of any security interest in the Lessee's interest in the Lease has properly given notice of its security interest in the Lease to the Lessor.

38. Integration and Modification. This Lease, including all attachments and documents which by reference are incorporated herein or made a part hereof, contains the entire agreement between the parties hereto.

39. Amendments. This Lease may not be modified or amended except by a document signed by both parties hereto, and any purported amendment or modification shall be without legal effect until reduced to writing and signed by both parties hereto.

40. Severability of Clauses of Lease Agreement. If any clause, or provision, herein contained, shall be adjudged to be invalid or unenforceable, it shall not affect the validity or enforceability of any other clause or provision of this Lease or give any cause of action in favor of either party as against the other.

41. Applicable Law. This Lease shall be governed by the laws of the State of Alaska. The venue for any dispute between the parties shall lie exclusively with the courts for the Third Judicial District for the State of Alaska at Anchorage, or, alternatively, with the United States District Court for the District of Alaska at Anchorage, unless a non-waivable federal or Alaska law should require to the contrary.

IN WITNESS WHEREOF the Lessor and the Lessee have caused these presents to be executed in duplicate, and have hereunto set their respective hands, agreeing to keep, observe and perform the terms, conditions and provisions herein contained or attached, which on the Lessor's or the Lessee's respective parts are to be kept, observed and performed.

CITY OF UNALASKA

UNISEA, INC.

\_\_\_\_\_  
David A. Martinson  
City Manager

\_\_\_\_\_  
Tom Enlow  
President

STATE OF ALASKA            )  
  ) ss.  
Third Judicial District        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by Tom Enlow, \_\_\_\_\_ (President) of UNISEA, INC. of Redmond, WA on behalf of the corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

\_\_\_\_\_  
Notary Public, State of Alaska

My Commission expires \_\_\_\_\_

STATE OF ALASKA            )  
  ) ss.  
Third Judicial District        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, by David A. Martinson, City Manager for the City of Unalaska, a First Class Alaska Municipal Corporation, on behalf of the City of Unalaska.

\_\_\_\_\_  
Notary Public, State of Alaska

My Commission expires \_\_\_\_\_

Exhibit A:

Plat 2015-10

Form A: UTS 105 Tracts A-1 & B-1 Tideland Lease Agreement – UniSea

**AFTER RECORDATION, PLEASE RETURN TO:**

**City of Unalaska  
Planning Department  
PO Box 610  
Unalaska, AK 99685**



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## MEMORANDUM TO COUNCIL

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**TO:** MAYOR AND CITY COUNCIL MEMBERS  
**THROUGH:** DAVID MARTINSON, CITY MANAGER  
**FROM:** CAT HAZEN, CITY CLERK  
**DATE:** DECEMBER 22, 2015  
**RE:** ANNUAL LIQUOR LICENSE RENEWALS

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**SUMMARY:** Liquor licenses must be renewed with the State of Alaska every two years. Each year, Council reviews the businesses that have liquor licenses, and the Council determines whether or not the City will protest the request for renewal submitted by those businesses whose licenses are up for renewal. A total of ten liquor licenses are held Unalaska businesses, and nine are up for renewal now for 2016-2017. It is recommended that the City not file protests on any renewals at this time.

**PREVIOUS COUNCIL ACTION:** Council reviews liquor license renewals every year. Council discussed protesting specific license renewals in 1995, 2002, and 2006 due to delinquent utility bills. However, Council did not file any protests. In 2010, through Resolution 2010-77, Council protested the renewal of the liquor license held by Myong Sun Chong, dba Peking Restaurant, because of delinquent sales tax, property tax, and utility bills, and because the business had no physical location due to fire.

**BACKGROUND:** AS 04.11.400 defines the distribution of liquor licenses based on population and location. For every 1,500 or fraction thereof of population count, one restaurant/eating place license is authorized. Such licenses allow the establishment to serve only beer and wine. For every 3,000 or fraction thereof of population count, one beverage dispensary license is authorized and one package store license is authorized. Beverage dispensary and restaurant/eating place licenses that are designated as tourism, convenience, or airport do not count as licenses based on population. The ABC Board lists the city's population as 4,737. As a consequence, the City of Unalaska has the following breakdown of licenses authorized:

Establishment	License Type	Explanation
Alaska Ship Supply	Package Store	One of two package store licenses allowed by population
Harbor View Liquor Store	Package Store	One of two package store licenses allowed by population
Dutch Harbor Fast Food	Restaurant/Eating Place	One of three restaurant/eating place licenses allowed by population
Amelia's Restaurant	Restaurant/Eating Place – Public Convenience	Restaurant/Eating Place – Public Convenience is not counted in population per AS 04.11.400(g)
Airport Restaurant & Lounge	Beverage Dispensary - Tourism	Beverage Dispensary – Tourism is not counted in population per AS 04.11.400(d)(2)
Grand Aleutian Hotel	Beverage Dispensary - Tourism	Beverage Dispensary – Tourism is not counted in population per AS 04.11.400(d)
Grand Aleutian Hotel Chart Room	Beverage Dispensary – Tourism Duplicate	Beverage Dispensary – Tourism is not counted in population per AS 04.11.400(d)

Harbor View Bar & Grill	Beverage Dispensary - Tourism	Beverage Dispensary – Tourism is not counted in population per AS 04.11.400(d)
Harbor Sushi	Beverage Dispensary	One of the two beverage dispensary licenses allowed by population
The Norwegian Rat Saloon	Beverage Dispensary	One of the two beverage dispensary licenses allowed by population

Based on population, Unalaska has two unused restaurant/eating place licenses remaining.

**DISCUSSION:** The City has received notice that eight businesses have requested that their licenses be renewed for the next two years. It is anticipated that Alaska Ship Supply, whose license is also up for renewal this year, will request renewal. Rather than bring the license renewal discussion to Council as each application is received, all licenses are being brought forward for review at this time.

Licenses are issued on a two-year cycle, and the following licenses are up for renewal for 2016-2017:

Alaska Ship Supply	Package Store
Harbor View Liquor Store	Package Store
Harbor View Bar & Grill	Beverage Dispensary - Tourism
Grand Aleutian Hotel/Cape Cheerful	Beverage Dispensary - Tourism
Grand Aleutian Hotel/Chart Room	Beverage Dispensary - Tourism
Harbor Sushi	Beverage Dispensary
Amelia's Restaurant	Restaurant/Eating Place - Convenience
Dutch Harbor Fast Food 2	Restaurant/Eating Place
The Norwegian Rat Saloon	Beverage Dispensary

The Airport Restaurant & Lounge is not on the same renewal cycle as the other nine licenses.

None of the nine businesses up for renewal are behind in taxes or utilities payments owed to the City. Council also considers the number of public safety calls made to an establishment each year. Although the Airport Restaurant & Lounge license is not up for renewal this year, Council traditionally examines the police calls for all establishments holding liquor licenses. Public safety calls for each establishment with a liquor license in Unalaska this year are listed below:

Dutch Harbor Restaurant	0
Amelia's Restaurant	6
Harbor Sushi	0
Harbor View Bar	159
Grand Aleutian (Cape Cheerful)	3
Grand Aleutian Chart Room	0
Harbor View Liquor Store	0
Alaska Ship Supply	45
Airport Restaurant	5
The Norwegian Rat Saloon	81

### **ALTERNATIVES:**

1. Direct the City Clerk to inform the ABC Board that no protests will be filed; or

2. At the January 12, 2016 meeting adopt a resolution protesting the continued licensing of one or more businesses.

**FINANCIAL IMPLICATIONS:** None

**LEGAL:** None

**STAFF RECOMMENDATION:** Staff recommends that Council not file any protests at this time.

**PROPOSED MOTION:** If Council does not wish to file any protests a motion may be made to direct the City Clerk to notify the ABC Board that no protests will be filed this year.

If Council wishes to file a protest on a liquor license, staff may be directed to create a resolution protesting the renewal of the liquor license for an establishment: “I move to schedule a resolution filing a protest against the continued operation of [Name of Business(es)] on January 12, 2016.”

**CITY MANAGER’S COMMENTS:** I support Staff’s recommendation for Council not to file any protests at this time.

#### ATTACHMENT

- ❖ ABC Board Renewal Application Notice



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

Sarah Daulton Oates  
550 W 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
Phone: 907.269.0350  
alcohol.licensing@alaska.gov

December 7, 2015

Ms. Catherine Hazen  
City of Unalaska  
VIA Email: [chazen@ci.unalaska.ak.us](mailto:chazen@ci.unalaska.ak.us)

Re: Notice of 2016/2017 Liquor License Renewal Applications

Dear Ms. Hazen,

We have received a renewal application for each of the following licenses within your jurisdiction:

Lic. #	Doing Business As	License Type	Licensee	Premises Address
1185	Harbor View Bar & Grill	Beverage Dispensary-Tourism	Unisea, Inc.	Dutch Harbor
1367	Harbor View Liquor Store	Package Store	Unisea, Inc.	Dutch Harbor
3290	Grand Aleutian Hotel	Beverage Dispensary-Tourism	Unisea, Inc.	Margaret's Bay
3301	Gran Aleutian Hotel-Chart Room	Beverage Dispensary-Tourism Duplicate	Unisea, Inc.	Margaret's Bay
3811	Dutch Harbor Restaurant	Restaurant/Eating Place	Loi My Ma	11 North 2 <sup>nd</sup> Street
4048	Amelia's Restaurant	Restaurant/Eating Place-Public Convenience	Edelmira Cortez	Corner of Airport & East Point
4748	Harbor Sushi	Beverage Dispensary	Unisea, Inc.	188 Gilman Road
5264	The Norwegian Rat Saloon	Beverage Dispensary	M & M Holdings, LLC	1906 Aiport Beach Road

A local governing body as defined under AS 04.21.080(b)(18) may protest the approval of an application(s) pursuant to AS 04.11.480 by providing the board **and** the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is arbitrary, capricious, and unreasonable. Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in

accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify our office and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind when responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application(s) referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information regarding local governing body protests, please refer to 3 AAC 304.145.

If you have any questions or concerns or require additional information, please feel free to contact our licensing unit at [alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov).

Sincerely,



***Sarah Daulton Oates***

Records & Licensing Supervisor

sarah.oates@alaska.gov

**DRAFT**

**2016 All-Day Marine Conservation Alliance Board Retreat  
Meeting Agenda  
Cedarbrook Lodge | 18525 36<sup>th</sup> Ave S, SeaTac, WA 98188  
and via Teleconference  
9:00AM – 5:00PM (8:00AM – 4:00PM Alaska Time)  
Thursday, January 7, 2016**

Teleconference Dial-in Number: **1-800-791-2345**

Participant Code: **68121**

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes (November 19)
4. Financial Report
  - a. Quarterly Financials
5. Review Purpose of MCA
6. Discuss if Purpose is Relevant
7. Decide to Continue:
  - a. On Current Course
  - b. On New Course
  - c. Dissolve
8. Plan for Next Steps
9. Member comments
10. Adjourn