

**AGENDA
FOR THE REGULAR MEETING
OF THE CITY COUNCIL
FOR THE CITY OF THORNE BAY
ALASKA,
COUNCIL CHAMBERS
CITY HALL
TUESDAY
February 2, 2016
6:30p.m.**

The meeting will be preceded by a workshop beginning at 6:00p.m.

The public is invited and encouraged to attend

1. CALL TO ORDER:
2. PLEDGE TO FLAG:
3. ROLL CALL:
4. APPROVAL OF AGENDA:
5. MAYOR'S REPORT:
6. CITY ADMINISTRATOR'S REPORT:
7. PUBLIC COMMENTS:
8. COUNCIL COMMENTS:
9. NEW BUSINESS:
 - A. Amend Resolution 15-12-01-03 Supporting the Prince of Wales Advisory Council transportation amended resolution 16-02, discussion and action item:
 - B. Approval of rental agreement between Brad Taylor and the City of Thorne Bay, discussion and action item.
10. ORDINANCES FOR INTRODUCTION:
 - A. Ordinance 16-02-16-01, an ordinance of the City Council amending Title 2.28-Elections, discussion and action item:
11. EXPENDITURES EXCEEDING \$2,000.00:
12. EXECUTIVE SESSION: The Council May adjourn to executive session for the purpose of discussing pending or threatened lawsuits in which the city has an interest, which are matters, the immediate knowledge of which would clearly have adverse effect upon the finances of the city.
13. CONTINUATION OF PUBLIC COMMENT:
14. CONTINUATION OF COUNCIL COMMENT:
15. ADJOURNMENT:

Posted: January 27, 2016
City Hall (2), A&P, SISD, USFS, The Port, Tackle Shack Thorne Bay School, KRBD

PRINCE OF WALES COMMUNITY ADVISORY COUNCIL RESOLUTION No. 16-02

A JOINT RESOLUTION BY AND BETWEEN THE COMMUNITIES OF THE PRINCE OF WALES COMMUNITY ADVISORY COUNCIL (POWCAC) SETTING TRANSPORTATION PRIORITIES FOR PRINCE OF WALES ISLAND FOR 2016

WHEREAS, the Prince of Wales Community Advisory Council acts in an advisory capacity for participating communities on Prince of Wales Island; and,

WHEREAS, the representatives from the Alaska Department of Transportation and Public Facilities have discussed proposed road projects for Prince of Wales Island and have suggested that communities on the island develop a consensus of road projects priorities for inclusion in the State of Alaska's STIP, Public Forest Service Roads Program, and the Bureau of Indian Affairs Roads Program; and,

WHEREAS, the Prince of Wales Community Advisory Council has discussed road needs on Prince of Wales Island and recommends that the following projects and priorities be adopted by the Island communities and submitted to the Alaska Department of Transportation and Public Facilities for inclusion in the State's planning and prioritization process; and,

NOW, THEREFORE, BE IT RESOLVED that the communities of the Prince of Wales Community Advisory Council hereby adopt the following regional transportation projects and priorities for roads on Prince of Wales Island:

FOREMOST TRANSPORTATION PRIORITY

<u>Priority</u>	<u>Project Name</u>	<u>Project Description</u>
1.	Operational Support to IFA	Continue annual appropriation in the State of Alaska General Fund operating budget.
2.	Roads and Trails vegetation control	Mechanical not Chemical means for controlling noxious and/or invasive plants.

SURFACE TRANSPORTATION PRIORITIES

<u>Priority</u>	<u>Project Name</u>	<u>Project Description</u>
1.	Kasaan Road	Phase I-Goose Creek to Tolstoi Bay; Phase II-Tolstoi Bay to Kasaan: Upgrade to a two-lane road at 35 mph design speed. Surface with D1 and asphalt. The road is critical to Kasaan and carries school bus traffic, daily commuting from S. Thorne Bay to the balance of Prince of Wales Island, and industrial truck traffic, making upgrade of the right of way priority.
2.	Resurfacing Hydaburg Road	Redesign, straighten, and resurface the Hydaburg Road to provide safe driving conditions.
3.	Naukati Bay Road	Upgrade and pave Naukati Bay access road between the North POW Road and the Naukati Seaplane Float.

- | | | |
|----|-----------------------------|---|
| 4. | Whale Pass Road | Upgrade and pave the Neck Lake and Twin Island roads to create a suitable road base for El Capitan Cave and north island traffic loop through Whale Pass. |
| 5. | Sandy Beach Road | Upgrade and reconstruct between Thorne Bay and Coffman Cove. Evaluate merits of construction of the low elevation Eagle Creek road segment. |
| 6. | Ratz Harbor-Eagle Creek Rd. | Construct a low elevation road between Ratz Harbor and Eagle Creek. |
| 7. | Port Saint Nicholas Rd. | Upgrade and improve the remainder of the Port Saint Nicholas Road system located outside of Craig. |

AIR TRANSPORTATION PRIORITIES

<u>Priority</u>	<u>Project Name</u>	<u>Project Description</u>
1.	Frank Peratrovich Airport	Construct/install improvements detailed in the airport master plan, and provide a public parking facility. Address invasive plant species issues.

ROADS TO RESOURCES

<u>Priority</u>	<u>Project Name</u>	<u>Project Description</u>
1.	POW Minerals and Hydropower Road	Construct road access to POW mine and hydro-electric project sites, including Reynolds Creek, Niblack Mine, and Bokan Mountain sites.

ALTERNATIVE TRANSPORTATION PRIORITIES

<u>Priority</u>	<u>Project Name</u>	<u>Project Description</u>
1.	IFA Terminal & Clark Bay Float Plane Dock Parking area	Expand the public parking area shared by IFA and State of Alaska for passengers using the IFA and Clark Bay Floatplane Dock facilities.
2.	Coffman Cove and South Mitkof Terminal Modifications	Modification to allow both Rainforest Ferry Authority, AMHS and IFA vessels to dock at both terminals.
3.	Community Transit System	Establish an Island-wide bus system to connect communities and transportation hubs.

NON-MOTORIZED FACILITY PRIORITIES

1.	IFA Covered Walkway	Construct covered pedestrian walkway at the Ketchikan Terminal 3.
2.	Craig-Klawock Path	Construct a multi-use path for 4.7 miles along the uphill side of the highway between Craig and Klawock.

3. Multiple Use Paths Construct multi-use paths along the mainline road system Prince of Wales Island.
4. POW Discovery/Visitor Center Planning, design, and construction of a POW Discovery/visitor's center.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Bureau of Indian Affairs, US Forest Service and FHWA Western Federal Lands Division in Vancouver, Washington, Alaska Department of Transportation and Public Facilities, Governor Bill Walker, Senator Bert Stedman, Rep. Dan Ortiz, Rep. Jonathan Kreiss-Tomkins, and other members of the Alaska Legislature that represent Southeast Alaska communities.

PASSED AND APPROVED this 17th day of November, 2015 by the Prince of Wales Community Advisory Council.

POWCAC Chair

Member Approvals:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
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- 10.
- 11.
- 12.

CITY OF THORNE BAY
Amended RESOLUTION 15-12-01-03

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA,
SUPPORTING THE PRINCE OF WALES ADVISORY RESOLUTION NO ~~16-01~~ **16-02**

WHEREAS, the City Council is the governing body for the City of Thorne Bay, Alaska; and

WHEREAS, the City of Thorne Bay is a member of the Prince of Wales Advisory Council; and

WHEREAS, the Prince of Wales Advisory Council voted, on January 26, 2016 to amend the Prince of Wales Advisory Council resolution 16-01 (creating Prince of Wales Advisory Council resolution 16-02) Surface Transportation, to include an item #7 which is in support of improvements to the Port Saint Nicholas Road, and;

WHEREAS, the Prince of Wales Advisory Council has discussed road needs on Prince of Wales Island and recommends that the projects and priorities listed ~~in on the attached~~ Resolution No. **16-02** be adopted by the island communities and submitted to the Alaska Department of Transportation and Public Facilities for inclusion in the State's planning and prioritization process;

NOW, THEREFORE, BE IT RESOLVED

The City of Thorne Bay, City Council, hereby approves the joint resolution by and between the communities of the Prince of Wales Community Advisory Council setting transportation priorities for Prince of Wales Island for 2016.

PASSED AND APPROVED February 2, 2016

James Gould, Mayor

ATTEST:

Teri Feibel, City Clerk

RENTAL AGREEMENT

This Rental Agreement is entered into by and between the City of Thorne Bay, Alaska, P.O. Box 110, Thorne Bay, Alaska 99919 (hereinafter called the "CITY" and, Brad Taylor DBA HST Excavation, (hereinafter called the "RENTER").

1. **Rented Premises.** The City does hereby Rent to the Renter Lot 4 Business District Subdivision on municipally owned property within the corporate boundaries of the City of Thorne Bay.

Municipal Code, Title 2, Article III, Incorporated. The provisions of "Title 2, Article III of the Thorne Bay Municipal Code shall apply to the terms of this Rental Agreement unless otherwise amended in this Rental Agreement.

2. **Term.** The term of this Rental Agreement shall be Two (2) year(s) beginning March 1, 2016 and ending February 28, 2018. Monthly rental payments due the City shall commence prior to use of Rented Premises and continue throughout the term of this Rental Agreement. Monthly Sales Taxes due the City shall commence upon the signing of Rental Agreement. Renter shall have the option to renew this Rent for an additional period of time subject to renegotiations of Rent terms and payments acceptable to both the City and Renter. The option to renew and Rent for the additional period can only be effective upon approval by the Thorne Bay City Council. This option to renew shall be exercised by the Renter in writing sixty (60) days prior to the expiration of the original Rent term. The option to renew is specifically waived if not exercised in full compliance with this provision.

This Rental Agreement expires automatically on the last day of the Two (2) year period absent the approval of a new Rental Agreement by the Thorne Bay City Council. Absent an approved Rental Agreement the Renter shall vacate the premise on or before the ending date of this Rental Agreement.

In addition to any rights of the City to terminate this Rental Agreement as specified in this Rental Agreement, or as specified in the Thorne Bay Municipal Code, the City shall have all rights to terminate this Rental Agreement in accordance with any provision of applicable law.

3. **Monthly Rent Payment.** Renter covenants and agrees to pay City monthly Rent payments in the sum of One Hundred Fifty Dollars (\$150) plus applicable sales tax payable in advance on the first day of each month of the Rent term. In the event any payment required to be made pursuant to this Rental Agreement is more than ten (10) days past due, a late charge equal to ten percent (10%) per annum on such past due amount will be assessed and charged to Renter by City. At the expiration of two year term the monthly Rent payment shall be reviewed and adjusted in accordance with the provisions of Section 2.56.210 of Title 2, Article III of the Thorne Bay Municipal Code.

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4. **Deposits.** Renter shall deposit with the City an amount equal to One Month Rent. Upon termination of the Rental Agreement the Renter shall vacate the premise leaving it in the same clean condition as presented at the time said Rental Agreement was initiated. If the premise is in need of cleaning, repairs or the Renter is in default in payments said deposit shall be used to offset such costs. In the event the Rented Premise is clean and in need of no repairs the deposit will be refunded in full. First and last month may be waived in lieu of improvements to the Rented Premises or other City Facilities as provided by Renter per "Exhibit A".
5. **Use.** Renter shall use the Rented Premises for the purposed of maintaining and operating there on, Storing and working on heavy equipment used Construction. The Rented Premises shall be used for no other purposes without the prior written consent of City.
6. **Utilities and Fees.** Renter shall be responsible for all utility accounts and applicable deposits for said accounts. Renter agrees to pay, and keep current, ALL charges, including deposits, for all utilities, including but not limited to water, sewer, refuse collection, electricity, propane, fuel oil and telephone. Failure to do so will result in the utility being shutoff. Activation of a city shutoff shall constitute a material breach of the Rent Agreement resulting in the City's termination of the Rent Agreement. Absent an approved Rental Agreement the Renter shall vacate the premise immediately.
7. **Repairs, Maintenance and Compliance with Laws.** Renter shall maintain the Rented Premises at Renter's sole cost and expense and at all times keep the Rented Premises neat, clean and in a sanitary condition. Renter shall keep and use the Rented Premises in accordance with applicable laws, ordinances, rules, regulations and requirements of all governmental authorities. Renter shall permit no waste, damage or injury to the Rented Premises. Renter's use of the Rented Premises in violation of any law or regulation of any governmental entity related to public health or safety or environmental pollution shall be a material breach of the Rental Agreement and grounds for City's termination of the Rental Agreement. Renter is required to obtain building permit authorization from the City for construction of any and all structures placed on or in the Rented Premises.
8. **Signs, Alterations and Improvements.** All signs or symbols placed on or about the Rented Premises shall be subject to City's prior written approval. After prior written consent of City, Renter may make alterations and improvements to the Rented Premises, at Renter's sole cost and expense. City may elect to require Renter to remove any such alterations and improvements upon termination of this Rental Agreement at Renter's sole cost and expense. Any of Renter's improvements remaining on the Rented Premises longer than thirty (30) days after Renter's possessors rights to the Rented Premises have expired shall become Rented Premises of City.

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9. **Insolvency.** In the event Renter becomes insolvent, bankrupt or if a receiver, assignee or other liquidating officer is appointed for the business of Renter, City, in City's sole discretion may immediately terminate this Rental Agreement and require that Renter vacate the Rental Premises.
10. **Subletting or Assignment.** Renter shall not sublet the whole or any part of the Rented Premises nor assign this Rental Agreement without the prior written consent of City. This Rental Agreement shall not be assignable by operation of law. All terms and conditions of the Rental Agreement shall be binding upon any sub Renter or assignee of this Rental Agreement and Renter shall remain fully responsible to City for performance of this Rental Agreement.
11. **Permits and Compliance with Law.** Renter shall obtain all necessary local, state and federal permits necessary for the operation of Renter's business and shall comply with all local, state and federal laws, rules and regulations.

Failure to comply with any requirements of this section shall constitute a material breach of the Rental Agreement. Failure to remedy the violation within 30 days will result in the City's termination of the Rental Agreement. Absent an approved Rental Agreement the Renter shall vacate the premise immediately.

12. **Insurance.** General Liability Insurance: The Renter shall procure and maintain during the life of this agreement, General Liability Insurance on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence and /or aggregate combined single limit, personal injury, bodily injury and property damage.

Proof of Insurance shall be provided to City within thirty (30) days after the parties have executed this agreement and prior to public use of said premises. City shall be notified at least thirty (30) days before the cancellation or termination of any policy.

City shall be named as additional insured.

13. **Accidents and Liability.** City or its agent shall not be liable for any injury or damage to the persons or property sustained by Renter or others, in and about the Rented Premises.
14. **Indemnification and Waiver of Subrogation.** To the fullest extent permitted by law, the Renter agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, employees and volunteers against any and all liabilities, claims, demands, lawsuits, or losses, including costs and attorney fees incurred in defense thereof, arising out of or in any way connected or associated with this agreement. To the extent permitted by law, the Renter hereby re-Rents the City, its elected and appointed officials, employees and volunteers from any and all liability or responsibility to the Renter or anyone claiming through or under the Renter by way of subrogation or

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otherwise, for any loss or damage to the property caused by fire or any other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the City, its elected or appointed officials, employees or volunteers. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of the Renter's occupancy or use.

Renter understands that the City accepts no responsibility whatsoever for loss of, or damage to Renter's property.

- 15. Removal of Renter's Property and Repair of Rented Property.** All buildings, fixtures and equipment of whatsoever nature, that Renter shall have acquired and installed upon Rented premises, whether permanently affixed or otherwise, shall continue to be the property of the Renter and must be removed by the Renter at the expiration or termination of this Rental Agreement; and at its own expense, Renter shall repair any injury to Rented Premises resulting from such removal. Renter shall remove all buildings, fixtures, and equipment, and make all repairs, within thirty days of the date the Renter vacates Rented Premises. If the Renter fails to remove its buildings, fixtures, and equipment, and fails to make the necessary repairs, the City may do so, and seek reimbursement from the Renter for the full amount of the repairs, without any deduction for the value of any buildings, fixtures, or equipment left on the premises by the Renter. If City determines that it is in City's best interest to acquire the improvements, it may negotiate to purchase Renter's buildings, fixtures, and equipment at a price equal to or less than fair market value.
- 16. Taxes.** Renter shall be solely and fully responsible for the payment of all applicable federal, state, and Thorne Bay municipal taxes including all Monthly Sales Taxes due the City.
- 17. Liens.** Renter shall maintain Rented Premises free of any and all liens. Renter will not permit any mechanics', laborers' or materialmen's liens to stand against the Rented Property or improvements for any labor or materials furnished to Renter or claimed to have been furnished to Renter, or to Renter's agents, contractors, or sub-Renters, in connection with work of any character performed or claimed to have been performed on Rented premises or improvements by or at the direction or sufferance of Renter; provided, however, Renter shall have the right to contest the validity or amount of any such lien or claimed lien, In the event of such contest, Renter shall give to the City such reasonable security as may be demanded by the City to insure payment of such lien or such claim of lien. Renter will immediately pay any judgment rendered with all proper costs and charges and shall have such lien re-Rented or judgment satisfied at Renter's own expense. Renter agrees to indemnify, hold harmless and to defend the City and Rented premises from such liens. Renter consents to the City's recording of and posting of a statutory notice of non-responsibility in accordance with Alaska Statute 34.35.065

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18. Default by Renter. Each of the following shall be deemed a default by the Renter and a breach of the Rental Agreement:

- (a) A failure to make payment of any installment, of rent or of any other sum herein specified to be paid by Renter, and Renter fails to cure such default within ten (10) days after receipt of a written notice has been received by Renter specifying such failure to make payment;
- (b) Upon shut off of utilities;
- (c) A default in the performance of any other covenant or condition on the part of the Renter to be performed for a period of thirty (30) days after receipt by Renter of a notice specifying the particular default or defaults;
- (d) The filing of a petition by or against Renter for adjudication as a bankrupt, or for reorganization or arrangement within the meaning of the Bankruptcy Act;
- (e) The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of the Renter or for the appointment of a receiver or trustee of Rented Premises of the Renter;
- (f) The taking possession of Rented Premises of the Renter by any governmental officer of agency pursuant to statutory authority for the dissolution or liquidation of the Renter;
- (g) The making by the Renter of an assignment for the benefit of creditors;
- (h) Renter vacates or abandons the Rented Premises; and
- (i) A failure that continues for five (5) days or more to have the City named as an additional insured as required under paragraph 18, and Renter fails to cure such default within ten (10) days after receipt of a written notice has been received by Renter specifying such failure to name the City as an additional insured.

The specification of events constituting default by the Renter in this Section, are in addition to any defaults specified in the Thorne Bay Municipal Code.

19. City's Remedies for Default. In the event of any default of the Renter, the City shall have the following rights and remedies – all in addition to any rights or remedies that may be given to the City by statute, common law, or under Thorne Bay Municipal Code.

- (a) Distraint for rent due and subsequent sale of chattels so distrained. The sale of any such chattels shall be in accordance with the procedure set forth in Alaska Statutes.
- (b) Re-enter Rented Premises and take possession thereof, remove all persons therefrom, and remove Renter's property therefrom and store it in a public warehouse or elsewhere at the cost of Renter, all without service of notice or resort to legal process (all of which Renter expressly waives) and without becoming liable for trespass, forcible entry, detainer, or other tort or for any loss or damage which may be occasioned thereby;
- (c) Declare the Term ended;

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- (d) Re-let Rented premises in whole or in part for any period equal to or greater, or less, than the remainder of the Term for any sum which is commercially reasonable;
 - (e) Cure any such default, if possible, and demand immediate payment until all costs incurred in curing the default have been reimbursed fully, together with interest calculated at the rate of ten percent (10%) per annum at the then current prime rate as established by the First Bank of Alaska;
 - (f) Collect all reasonable damages, costs and expenses that the City may incur by reason of default by Renter, together with interest calculated at the rate of ten percent (10%) per annum at the then current prime rate as established by the First Bank of Alaska.
 - (g) The City shall use reasonable diligence to relet Rented Premises in or to mitigate the City's damages, consistent with the uses of Rented Premises, and all applicable Thorne Bay code provisions related to this Rent and Rented Premises.
20. **Rights and Remedies.** Except insofar as this is inconsistent with or contrary to any provision of this Rent, no right or remedy herein conferred upon reserved to the City or Renter is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.
21. **Waiver.** Except to the extent that a party may have otherwise agreed in writing, no waiver by a party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by a party to seek a remedy for any breach of the other party be deemed a waiver of its rights or remedies with respect to such breach.
22. **Changes.** No modifications, amendments, deletions, additions or alterations of the Rent Agreement shall be effective unless in writing and signed by all of the parties hereto and such representatives of the parties as have been duly authorized to make such changes.
23. **Joint Product.** The language set out in this Rental Agreement represents the joint product of the parties and shall not be construed against one party in favor of the other. Each party hereto has had the option of seeking the advice of legal counsel in the drafting of this Rental Agreement, and the rule of construction favoring construction against the drafter shall not apply. Renter acknowledges and agrees that Renter has not received any legal advice from the City's attorney or from anyone associated with the City.
24. **Authority.** The parties and their undersigned representatives warrant that they have full authority to enter into this Rental Agreement and to execute this Rental Agreement.
25. **Hazardous Materials.** The Renter shall not permit, store, manufacture or dispose on Rented Premises any hazardous material or controlled substance as determined by

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federal, state, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to , the Comprehensive Environmental Response, Compensation and liability Act (42 U.S.C. 9601 et seq.), the Hazardous materials Transportation Act (42 U.S.C. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C.7401 et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. 651et seq.), and Title 46 of the Alaska Statutes as these laws have been and may hereafter be amended or supplemented. "Hazardous Substance" means any pollutant, contaminant, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCB's or any other substance the removal of which is required, or the manufacture, preparation production, generation, use maintenance, treatment, storage, transfer, handling or ownership of which is restricted , prohibited, regulated or penalized by any and all federal, state, or municipal statutes or laws now or at any time hereafter in effect. Hazardous material shall not include cleaning supplies used in the routine daily cleaning and operation of a restaurant.

26. **Acceptance of the Rented Property by Renter.** Renter acknowledges that it has thoroughly examined Rented Premises. Renter accepts Rented Premises in their "AS IS" condition, and the City shall not be required to perform any work to prepare Rented Premises for the Renter. Renter's taking possession of Rented Premises shall be conclusive evidence against it that, at the time possession was taken, Rented Premises were in good and satisfactory condition. Renter acknowledges that, except for those representations and statements regarding the condition of Rented Premises expressly stated herein, Renter has not relied upon any representations or statements of the City or its representatives or agents regarding the condition of Rented premises or their suitability for Renter's uses under this Rent.
 1. **Attorneys' Fees and Costs.** Should any dispute and/or legal action arise by reason of any default or breach on the part of Renter in the performance of any of the provisions of the Rental Agreement, Renter agrees to pay all reasonable attorneys' fees and costs incurred by City in connection therewith including City's attorneys' fees and costs incurred on appeal. It is agreed that the venue of any legal action brought under the terms of this Rental Agreement will be the First Judicial District, at Ketchikan, Alaska. Renter specifically agrees that venue for trial in any action related to this Rent shall be in Craig, Alaska.
 2. **No Waiver of Covenants.** Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future or similar breach. This Rental Agreement contains all the agreements between the parties, and there shall be no modification of the agreements contained herein except by written instrument signed by both parties.

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3. **Surrender of Rented Premises.** Upon termination of this Rental Agreement, Renter agrees to peacefully quit and surrender the Rented premises without notice, remove all of Renter's personal property and leave the Rented premises neat and clean. If City elects to require Renter to remove any alterations or improvements made by Renter, then Renter shall restore the Rented Premises to their previous condition, at Renter's sole expense.
4. **Binding on Heirs, Successors and Assigns.** The covenants and agreements of this Rental Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of both parties thereto, except as hereinabove provided, and as allowable by law.
5. **Notice.** Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to City at P.O. Box 19110, Thorne Bay, Alaska 99919, or the Renter at, PO Box 19403, Thorne Bay, AK 99919, or at such other address as either party may designate in writing to the other.
6. **City's Right of Entry.** The City shall have the right to enter Rented premises at all reasonable times to examine the condition of same.

IN WITNESS WHEREOF, The parties hereto have executed this Rental Agreement as of the date first set above written.

CITY:

RENTER:

THE CITY OF THORNE BAY

By _____
James Gould, Mayor "City"

By _____
Brad Taylor DBA HST Excavation "Renter"

ATTEST:

Teri Feibel, City Clerk

RATIONAL FOR ELECTION CODE AMENDMENT

Several sections of the City of Thorne Bay Municipal Election Code were questioned at the last election. As a result, the City Government Specialist spent a day with the City Clerk going through the election code. The amended code as proposed reflects the recommendations. Most of the changes do not change the intent of the code but add clarification and adjustment to dates to better serve the public. As with changing a major code section, one change ripples into several changes.

It is recommended that if the council approves the first reading of the ordinance, the amendment be reviewed by the City Legal Counsel prior to the second reading.

Changes should provide better clarity and a timeframe that can be easily managed and provide the public ample time to participate in the processes.

There is no fiscal impact.

CITY OF THORNE BAY
ORDINANCE 16-02-16-01

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA,
AMENDING TITLE 2.28-ELECTIONS;

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA

- Section 1. Classification. This ordinance is of a general and permanent nature, the chapter and section hereby amended shall be added to the Thorne Bay Municipal Code.
- Section 2. Severability. If any provisions of this ordinance or any application thereof to any person or circumstances is held invalid, the circumstances shall not be affected thereby.
- Section 3. Amendment of Section. The title and chapter of Title 2, Chapter 2.28-Elections; is hereby amended.
- Section 4. Effective Date. This ordinance shall become effective upon adoption.

PASSED AND APPROVED February 16, 2016

James Gould, Mayor

ATTEST:

Teri Feibel, CMC

[Introduction: February 2, 2016]
[Public Hearing: February 16, 2016]

Chapter 2.28

ELECTIONS

Sections:

ARTICLE I. PROVISIONS GENERALLY

- 2.28.010 Administration of elections.
- 2.28.020 Voter qualification.
- 2.28.030 General election-Time.
- 2.28.040 Special election-Time.
- 2.28.050 Expenses.
- 2.28.060 Time off for voting.
- 2.28.065 Determining election winner**
- 2.28.066 Write in candidates**
- 2.28.068 Write in votes not counted**
- ~~2.28.070 Runoff election.~~

ARTICLE II. ELECTION OFFICIALS

- 2.28.080 Administration.
- 2.28.090 Election judges ~~and clerks.~~
- 2.28.100 Election board-Vacancy filling.

- 2.28.110 Election official-Oath.
- 2.28.120 Canvass committee.

ARTICLE III. CANDIDATES-NOMINATIONS-
ELECTION NOTICE

- 2.28.130 Qualifications-General election.
- 2.28.140 Declaration of candidacy-Filing for general election.
- 2.28.160 Declaration of candidacy-Record.
- 2.28.170 Declaration of candidacy-Time for withdrawing candidacy.
- 2.28.180 Notice of election.
- 2.28.190 Election notice contents.

ARTICLE IV. ELECTION EQUIPMENT

- 2.28.200 Election booths.
- 2.28.210 Furnishing instruction cards.
- 2.28.220 Ballots-Printing and inspection.

Ordinance 16-02-16-01

- 2.28.230 Ballots-Form.
- 2.28.240 Sample ballots.
- 2.28.250 Division of elections precinct lists-Distribution to precinct officials.

ARTICLE V. ELECTION PROCEDURES

- 2.28.260 Time for opening and closing polls.
- 2.28.270 Distribution of ballots.
- 2.28.280 Preparation of ballot box.
- 2.28.290 Voting procedure.
- 2.28.300 Marking of ballots by voters.
- 2.28.320 Questioning a voter's ballot.
- 2.28.330 Questioned ballots-Disposition.
- 2.28.340 Ballots-Counting and tallying.
- 2.28.350 Defective and unused ballots.
- 2.28.360 Election certificate.
- 2.28.370 Majority decision of election **judges. board.**
- 2.28.380 Prohibitions near election polls.

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ARTICLE I. PROVISIONS GENERALLY

2.28.010 Administration of elections. The city council shall prescribe the general rules for conducting city elections. (Ord. 96-24 § 4(part), 1996)

2.28.020 Voter qualification. A person may vote in a city election only if the person:

- A. Is qualified to vote in state elections under AS 15.05.010;
- B. Has been a resident of the city for thirty days immediately preceding the election;
- C. Is registered to vote in state elections at a residence within the city **limits** at least thirty days before the city election at which the person seeks to vote; and
- D. Is not disqualified under Article V. of the State Constitution. (Ord. 96-24 § 4(part), 1996)

2.28.030 General election-Time. On the first Tuesday of October of each year a general election will be held in the city, for the purpose of filling vacant city offices. The determination of other matters may be placed on the ballot. (Ord. 96-24 § 4(part), 1996)

2.28.040 Special election-Time. The city council, by resolution, may order that a special election be held. (Ord. 96-24 § 4(part), 1996)

2.28.050 Expenses. A. The city shall pay all necessary election expenses, including those of securing places for polls and providing ballot boxes, ballots, voting booths, screens, national and state flags and other supplies, and any wages due to judges and clerks. Salaries for the election judges and

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~~clerks~~ shall be set by the council. B. When the results of an election are contested, the contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse a result of the election, or the difference between the winning and losing vote on the result contested is more than two percent. (Ord. 96-24 § 4(part), 1996)

C. If an election is established by petition all costs and expenses incurred shall be the responsibility of those petitioning for a special election. If the subject or question brought by petition is placed on the ballot in a general election the cost to be paid by petitioner will be any additional ballot/judge/election expenses over and above the general election expenses. (Ord. 96-24 § 4(part), 1996) (Ord.13-12-03-01)

2.28.060 Time off for voting. Any qualified voter who is an employee of the city who does not have time to vote at any city and borough, state or national election may, without loss of pay, take off working time that will enable him to vote. It is the policy of the city to encourage employers to make allowances for residents to exercise their voting rights without penalty of loss of pay, particularly where employment may conflict with normal voting hours. (Ord. 96-24 § 4(part), 1996)

2.28.065 The candidate with the highest number of votes cast for the seat declared shall be the winner of that council seat. Write in votes (unless declared) shall not be considered in computations for determining the number of votes necessary to be elected as a declared candidate. In case of a tie vote refer to section 2.28.620 of this chapter.

2.28.066 Write-in candidates. A write-in candidate shall complete and file with the city clerk a declaration of intent by 12 pm the Friday preceding the election.

2.28.068 Write-in votes not counted. If a write-in candidate does not file a declaration of intent for candidacy the votes cast for that candidate will not be counted towards determining the winning candidate.

~~2.28.070 Runoff election. A. If no candidate receives a majority of the votes or at least forty percent when more than 2 certified candidate names, whom have filed a declaration of candidacy or declaration of intent, are on the ballot, the city~~

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~~shall conduct a runoff election between the two candidates receiving the greatest number of votes for the office.~~

~~B. Notice of a runoff election shall be published at least five days before the election.~~

~~C. Write in votes are not counted in runoff elections.~~

~~D. Runoff elections shall be held within three weeks after the date of certification of the election for which the runoff is required. (Ord. 98-17 § 3, 1998; Ord. 96-24 § 4(part), 1996)~~

ARTICLE II. ELECTION OFFICIALS

2.28.080 Administration. The city clerk is the supervisor of elections and is responsible for the administration of city elections. The election duties of the city clerk include, among other duties, obtaining from the state of Alaska a list of voters registered in accordance with AS 15.07.040. The clerk may publish notices urging voter registration and may cooperate with the state of Alaska in encouraging city residents to register. (Ord. 96-24 § 4(part), 1996)

2.28.090 Election judges ~~and clerks~~. A. Before each city election, the council shall appoint three judges for each city polling place to constitute the election board for the polling place. A judge shall be a **registered** voter of the **City**. ~~polling place for which appointed unless no voter is willing to serve. If the council is unable to locate a registered voter in the city who is willing and able to serve on the election board, they may appoint a qualified individual registered to vote in the state.~~ One judge in each polling place shall be designated chairman by the **City Clerk** ~~council~~ and shall be responsible for the election in that polling place. The city clerk may appoint up to **two** ~~three~~ additional election **judges** ~~clerks~~ at any polling place when necessary to facilitate the orderly conduct of the election or to relieve the judges ~~or clerks~~ of undue hardship.

~~B. Each judge or clerk must be a qualified voter of the city.~~

B. Candidates for office and their immediate family members (parents, spouse, children, and siblings) shall not serve as judges ~~or clerks~~. (Ord. 96-24 § 4(part), 1996)

2.28.100 Election board-Vacancy filling. If an appointed judge ~~or clerk~~ fails to appear and subscribe to the oath on Election Day or becomes unable to work during the time of the election or canvass, the **City Clerk** ~~election board members present~~ shall **appoint** ~~elect, by a majority voice vote,~~ a qualified voter to fill the vacancy. (Ord. 96-24 § 4(part), 1996)

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2.28.110 Election official-Oath. The city clerk will choose an election judge from each polling place to appear before the city clerk and take the oath set out in this section. This election official will administrate the same oath to all other election judges and clerks at his polling place. The oath will be as follows:

"I do solemnly [swear or affirm] that I will honestly and faithfully perform the duties of election [judge or clerk] to the best of my ability."

(Ord. 96-24 § 4(part), 1996)

2.28.120 Canvass committee. A. A canvass committee shall canvass all votes after the election judges have completed their tally of votes.

B. The council shall serve as the canvass committee for special **and** general ~~and general runoff~~ elections.

ARTICLE III. CANDIDATES-NOMINATIONS-ELECTION NOTICE

2.28.130 Qualifications-General election. No person shall hold any elective city office or be eligible to seek election to any elective office, unless he is a qualified voter of the city. (Ord. 96-24 § 4(part), 1996)

2.28.140 Declaration of candidacy-Filing for general election. A. A person who wishes to become a candidate for an elected office shall complete and file a declaration of candidacy. The declaration shall be completed under oath before the city clerk and on a form provided by the city clerk. The declaration shall state definitely:

1. The full name of the candidate and the manner it is to appear on the ballot;

2. The full residence address of the candidate;

3. The full mailing address of the candidate;

4. The office for which the candidate declares;

5. That the candidate is a qualified voter and resident of the city;

6. That the candidate agrees to serve if elected to the office of councilmember for a term of three years **or the remainder of the term of office elected.**

A. The City Clerk shall post a notice containing the date, time and place of filing a declaration of candidacy in at least three (3) locations within the City, in a newspaper of general circulation if there is

one in the area, and may post a notice on the City's website, before a candidate may submit a declaration.

B. A person seeking elective office shall file a Declaration of Candidacy form along with a Financial Disclosure Statement to the Office of the City Clerk.

C. A declaration of candidacy filing period shall be filed with the City Clerk not earlier than 50 days and not later than 30 days before the election. No declaration of candidacy may be filed on weekends. ~~B. A declaration of candidacy shall be filed with the city clerk not earlier than sixty days nor later than twenty days before the election. (Ord. 96-24 § 4(part), 1996)~~

2.28.160 Declaration of candidacy-Record. The city clerk will maintain a record containing the name and address of every person who filed a declaration of candidacy and also the date and time of the filing. (Ord. 96-24 § 4(part), 1996)

2.28.170 Declaration of candidacy-Time for withdrawing candidacy. A candidate may withdraw his declaration of candidacy through the last day for filing declarations, by submitting a written notice of withdrawal with the city clerk. (Ord. 96-24 § 4(part), 1996)

2.28.180 Notice of election. The city clerk shall give at least twenty days' notice of each general, or special elections ~~and at least five days' notice of each runoff election~~ by posting notices in three ~~places~~ **locations** within the city; If the city has **two or more precincts or polling places within the city limits, the clerk shall post notices of elections in each voting precinct or polling place.** ~~precincts in two or more places in each voting precinct of the city.~~ (Ord. 96-24 § 4(part), 1996)

2.28.190 Election notice contents. Notices for general, or special elections must contain the following:

- A. The date of the election;
- B. The offices to be filled or the propositions to be voted upon;
- C. The time the polling places will open and close;

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- D. The location of city polling places;
- E. A boundary description of the voting precinct or a reference to the Alaska Administrative Code sections establishing precinct boundaries;
- F. The procedure for declaring candidacy; and
- G. Whether the election is general, or special. (Ord. 96-24 § 4(part), 1996)

ARTICLE IV. ELECTION EQUIPMENT

2.28.200 Election booths. At each polling place the city clerk shall provide voting booths and enough supplies and materials to enable each voter to mark his ballot unobserved. At least three sides of each voting booth shall be within plain view of the judges, clerks, voters and other persons at the polling places. (Ord. 96-24 § 4(part), 1996)

2.28.210 Furnishing instruction cards. ~~A.~~ The city clerk will furnish to each election **Judge** ~~board~~ **written** instructions **on voting procedures** for the guidance of voters, **including but not limited to. covering the following:**

1. How to obtain ballots;
2. The manner for marking them;
3. The method for obtaining information; and
4. How to obtain a new ballot to replace any ballot destroyed or spoiled.

~~B. The clerk will furnish a necessary number of these instruction sheets to the election judges in each voting place.~~
(Ord. 96-24 § 4(part), 1996)

2.28.220 Ballots-Printing and inspection. In all city elections, the city clerk will be responsible for the printing of ballots. The ballots will be printed and in the possession of the city clerk, at least fifteen days before the general election, ~~or no later than three days after the certification for runoff election.~~ Ballots shall be available for inspection by the candidates or the public **through a public records request.** (Ord. 96-24 § 4(part), 1996)

2.28.230 Ballots-Form. A. A ballot shall show the list of candidates and issues to be decided at the election.

B. Before the list of candidates for each office there will be placed the words ~~"vote for not more than three," or "vote for not more than one," or such other number as are to be elected.~~

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C. Under the title of each office and below the printed names of the candidates, there will be printed the number of candidates to be elected to the office.

D. Somewhere on the ballot, so as to be clearly visible, will be printed the words:

1. "OFFICIAL BALLOT";
2. The date of the election; and
3. ~~An example of~~ **The City Seal along with the**

signature of the clerk who had the ballots printed.

E. The ballots will be printed on plain white paper and numbered in consecutive order. The names of the candidates will be printed ~~in capital letters~~ the same size. On each line on which the name of a candidate is printed and on the line of each blank provided for write-in candidates, a square not less than one-quarter of an inch on each side will be printed.

F. The names of candidates shall be printed as they appear upon the declarations of candidacy filed with the city clerk, in the order received, except that any honorary or assumed title or prefix shall be omitted.

G. Following the names of the offices and candidates, there shall be placed on the ballot all propositions and questions to be voted upon. The words "yes" and "no" shall be placed below the statement of each proposition and question. (Ord. 96-24 § 4(part), 1996)

2.28.240 Sample ballots. The city clerk will have a number of sample ballots printed. The sample ballots will be printed on nonwhite paper and clearly labeled as a "sample ballot." Sample ballots will be delivered to the election board in each voting place. (Ord. 96-24 § 4(part), 1996)

2.28.250 Division of elections precinct lists-Distribution to precinct officials. Prior to the opening of the polls, the city clerk shall deliver a division of elections precinct list to the election ~~judges officials in every voting place~~. The precinct list will provide enough space to allow voters to sign their name. ~~A record shall be kept in a separate register of the names of persons who are required to vote a questioned ballot.~~ The signing of the precinct list is a declaration by the voter that he is qualified to vote. **A record shall be kept in a separate register of the names of persons who are required to vote a questioned ballot.** (Ord. 96-24 § 4(part), 1996)

ARTICLE V. ELECTION PROCEDURES

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2.28.260 Time for opening and closing polls. A. On the day of any election, each election board shall open the polls for voting at eight in the morning, shall close the polls for voting at eight in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place at seven thirty in the morning of an election day.

B. ~~Fifteen~~ **Ten** minutes before the closing of the polls, a judge or clerk shall announce to all persons present the time remaining before the polls close. When the polls are closed, no ballots will be given out except to qualified voters present at the polls and waiting to vote when the polls are announced closed. (Ord. 96-24 § 4(part), 1996)

2.28.270 Distribution of ballots. A. The city clerk shall deliver the ballots to the election ~~judges board~~ before the polls are opened on Election Day. The ballots shall be delivered in separate sealed packages, with the number of ballots enclosed in each package clearly marked on the outside of it. A receipt of each package shall be taken from the election ~~judges board~~ to which it is delivered, and saved by the city clerk. No ballots shall be taken from the polling place before the closing of the polls.

B. The clerk shall keep the following records:

1. The number of ballots delivered to the various polling places;
2. The name of the persons to whom the ballots are delivered; and
3. The time the ballots are delivered.

C. When the ballots are returned, the clerk shall record the following:

1. The number of the ballots returned;
2. The time when the ballots are returned;
3. The name of the person returning the ballots;
4. The condition of the ballots. (Ord. 96-24 § 4(part), 1996)

2.28.280 Preparation of ballot box. Before receiving any ballots the election ~~board~~ **judges or City Clerk** must, in the presence of all persons present at the polling place, open and exhibit the ballot box to be used at the polling place. After showing the box, the box will be sealed and not opened again until the polls are finally closed. At the close of the polls and after deposit into the ballot box of all ballots properly

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voted upon, the ballot box will be personally opened by the election judges **or City Clerk in the presence of all persons present at the polling place.** (Ord. 96-24 § 4(part), 1996)

2.28.290 Voting procedure. A. A voter shall give the judges ~~and clerks~~ his/**her** name, and sign his/**her** name adjacent to his printed name in the precinct list. If any judge ~~or clerk~~ present believes the person is not qualified to vote, he/**she** immediately shall question the voter.

B. If the voter is not questioned, he/**she** shall be given one ballot **with the ballot number torn off by the election judge** and shall retire alone to a voting booth. There the voter without delay shall prepare his ballot by marking the boxes opposite the names of candidates of this choice, whether printed on the ballot or written in by him on the blank lines provided for the purpose. The voter also marks the boxes for questions and propositions. Before leaving the voting booth, the voter shall fold his ballot **and deliver it to the ballot box.** ~~in a manner displaying the number on the ballot and deliver it to one of the judges or clerks, who shall tear the number off and deposit the ballot in the ballot box. If the ballot bears the same number as the ballot given to the voter by the judges and clerks.~~

C. A voter who by accident or mistake spoils his ballot shall, upon returning the spoiled ballot to the judges ~~and clerks~~, be given another ballot. The number of the spoiled ballot shall be recorded on **the ballot accountability sheet a** ~~spoiled ballots list~~ by the judges and the spoiled ballot shall be destroyed in front of the voter. A voter who is blind or otherwise incapable of marking his ballot shall be assisted in doing so by a judge ~~or clerk~~ if he/**she** requests such assistance. (Ord. 96-24 § 4(part), 1996)

2.28.300 Marking of ballots by voters. A. A voter may mark his ballot only by the use of cross marks, "X" marks, **diagonal, horizontal or vertical marks, solid marks, stars, circles, asterisks,** checks or plus signs that are clearly spaced in the square opposite the name of the candidate the voter desires to designate.

B. A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

C. If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.

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D. If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office shall not be counted.

E. The mark shall be counted only if it is mostly inside the square provided, or touching the square so as to indicate clearly that the voter intended the particular square to be designated.

F. Improper marks on the ballot shall not be counted and shall not invalidate marks for candidates made properly. **No ballot shall be rejected if the election judges can determine the candidate for whom the voter intended to vote or proposition to be chosen.**

G. An erasure or correction invalidates only that section of the ballot in which it appears.

H. Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot. ~~unless the election board determines, on the basis of other evidence that the ballot was marked for the purpose of identifying the ballot.~~

I. Write-in votes are invalidated if the voter fails to mark the square provided. (Ord. 96-24 § 4(part), 1996)

J. Write-in candidates will not be counted **towards determining the winning candidate** unless the candidate has filed a declaration of intent **with the city clerk** ~~(filed not earlier than the last day of filing period for declaration of candidacy and not later than 12 pm on the Friday before the election.)~~ ~~with The City Clerk stating~~ **The declaration of intent shall state:**

1. The full name of the candidate;
2. The full residence and mailing address of the candidate;
3. The seat in which the candidate wishes to be written in on the ballot by the voter;
4. The date of the election in which the candidate seeks election;
5. A certification by the candidate that the candidate:
 - a. Is a qualified voter;
 - b. Is a resident of the City
 - c. Qualifies or shall qualify as of the date of election, for the office to which the candidate seeks election;
 - d. Shall serve if elected; and
 - e. Is not a candidate for any other office to be voted on at the election.

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2.28.320 Questioning a voter's ballot. If a voter's right to vote is questioned by an election judge, **City Clerk election clerk** or other qualified voter in the city, the voter shall be allowed to vote and any election official shall consider the ballot a questioned ballot. (Ord. 96-24 § 4(part), 1996)

2.28.330 Questioned ballots-Disposition. Before voting a questioned ballot the voter shall take an oath and sign an affidavit provided by the **election judge or city clerk** attesting to the fact the voter is a qualified voter. After the questioned voter has taken the oath and signed the affidavit, the voter may vote. After a questioned voter has cast his ballot, the questioned voter will insert the ballot into ~~a small envelope and seal it.~~ **an envelope shall be placed in with the signed oath and affidavit envelope. taped or glued to the outside of the envelope.** If the questioned person refuses to take the oath or sign the affidavit, the person may not vote. **The election judges shall deliver the oath and affidavit envelope shall be sealed and inserted into a larger envelope along with a written explanation of why the voter was questioned.** ~~The envelope will be delivered to the city clerk.~~ The city clerk will present these materials to the canvass committee and assist the canvass committee in determining the validity of the question. (Ord. 96-24 § 4(part), 1996)

2.28.340 Ballots-Counting and tallying. A. Immediately after the polls close and the last vote has been cast, the election judges will open the boxes containing the ballots. The ballots will be counted to determine whether the total number of ballots is equal to the total number of persons who voted as indicated in the precinct list and questioned ballot list. If the number of ballots drawn from the ballot box does not match the number of ballots indicated by the precinct list and questioned ballot list, the ballots shall be recounted until the election board finds that there is an unexplained error or that the number of ballots cast matches the number of ballots indicated by the precinct list and questioned ballots list. If a discrepancy is determined to exist between the number of votes cast and the precinct list and questioned ballot list, it shall be explained in detail on the tally paper or papers, and the explanation shall be signed by the election judges.

B. The counting of the ballots shall be public. The opening of the ballot box at the close of the polls shall be done in full view of any persons present. The public may not be excluded from the area in which the ballots are counted.

However, the **election board** chairman **and/or the City Clerk** ~~of the election board~~ shall not permit anyone present to interfere in any way or to distract the appointed officials from their duties, and no one other than appointed election officials may handle the ballots. The judges shall remove the ballots from the ballot box one by one, and tally the number of votes for each candidate and for or against each issue. The ballots shall be inspected for disqualifying marks or defects. The election judges shall cause the vote tally to be continued without adjournment until the count is complete.

~~C. Write-in votes for fictitious candidates shall be counted as a "vote cast" for purpose of runoff elections. (Ord. 96-24 § 4(part), 1996)~~

C. Write-in votes shall be tallied but not used to determine percentage for the winning vote unless the person written in has filed a declaration of intent with the City Clerk as set forth in section 2.28.300 (j) of this chapter. only if the total number of write-in votes for an office exceeds the smallest number of votes cast for a candidate for that office whose name is printed on the ballot.

2.28.350 Defective and unused ballots. If a voter shall mark more names than there are persons to be elected to any office, or if for any reason it is impossible to determine from his ballot any voter's choice for any office to be filled, the ballot shall not be counted as to that office or issue. A failure to properly mark a ballot as to one or more candidates or issues shall not invalidate the entire ballot. No ballot shall be rejected if the election **judges board** can determine the person for whom the voter intended to vote. ~~and the office intended to be chosen by the voter.~~ Ballots not counted shall be marked "Defective" on the back, ~~and ballots to which objection has been made shall be marked "Objected to" on the back.~~ An explanation of the defect ~~or objection~~ shall be written on the back of the ballot and signed by the chairman. All such ballots shall be enclosed in an envelope marked on the outside with the label "defective ~~and objected~~ ballots." All ballots not voted on shall be returned by the judges to the city clerk, who shall give a receipt for them and keep a record of the number and condition of ballots returned to him, indicating when and by which judge each was returned. (Ord. 96-24 § 4(part), 1996)

2.28.360 Election certificate. After the votes are announced and counted, a certificate will be drawn stating the number of votes each person has received, and designating the

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office for which he has run. The poll lists and tallies will be attached to the certificate. The certificate will be signed by the election judges. The precinct list tallies or tally papers, oath of judges, oaths of voters, other papers, and the certificate will be ~~placed in an envelope. The envelope will be marked "election returns" and delivered to the city clerk.~~
(Ord. 96-24 § 4(part), 1996)

2.28.370 Majority decision of election **judges board**. The decision of the majority of judges determines the action that ~~the they~~ ~~election board~~ shall take regarding any question which arises during the course of the election. (Ord. 96-24 § 4(part), 1996)

2.28.380 Prohibitions near election polls. During the hours the polls are open, no person who is in the polling place or within two hundred feet of any entrance to the polling place, may attempt to persuade a person to vote for or against a candidate, proposition or question. (Ord. 96-24 § 4(part), 1996)

ARTICLE VI. CANVASSING OF ELECTION RETURNS

2.28.390 Canvass committee-Meeting-Postponing canvass. The canvass committee will meet on the first Friday after the election and canvass all absentee and questioned ballots executed in the election. The canvass may be postponed from day to day for cause but not exceeding three days in total. (Ord. 96-24 § 4(part), 1996)

2.28.400 Canvass to be made public. A. The canvass of all absentee and questioned ballots will be made in public by opening the returns and announcing the results thereof in front of those present.

B. Absentee ballots shall be counted by the city clerk and two or more assistants in the following manner: All ballot envelopes shall be removed from return envelopes, and placed in a ballot box. The return envelopes shall be delivered to the city clerk. The absentee ballots shall one by one be removed from the ballot box, taken out of the ballot envelopes and counted, in the same manner in which ballots cast at the polls are counted.

C. The canvass shall include a review and comparison of the tallies of paper ballots with the election certificates to correct any mathematical error in the count of paper ballots.

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D. If the city clerk finds an unexplained error in the tally of paper ballots, he may count the ballots from the ballot box. (Ord. 96-24 § 4(part), 1996)

2.28.410 Investigation of questioned ballots. The canvass committee may request the assistance of the city clerk ~~or the mayor~~ to investigate the questioned ballots. Any city elector may appear to give testimony concerning the questioned ballots. ~~The canvass committee will deliver the questioned ballots to the council and submit a report of their finding.~~ **The City Clerk will check with the Division of Elections to determine whether the questioned ballot voter was a registered voter of the City.** The council may accept or reject a questioned ballot. If a questioned ballot is rejected, the ballot rejected will not be opened or counted, but will be saved as are other ballots. If a questioned ballot is accepted, the ballot accepted will be counted with the absentee ballots. The city clerk will notify a voter whose ballot is not counted that the ballot was rejected. (Ord. 96-24 § 4(part), 1996)

2.28.420 Questioned ballots-Subpoenas. The council may order testimony of witnesses and issue subpoenas while investigating questioned ballots. The subpoenas may be enforced by the court upon certification as provided by the state of civil procedure concerning the enforcement of administrative and state agency subpoenas. (Ord. 96-24 § 4(part), 1996)

2.28.430 Canvass committee-Report-Contents. The canvass committee will submit a report of its findings ~~to the council~~ at a special meeting on the first Monday following the election. The report will show:

- A. The number of ballots cast in the election;
- B. The names of the persons voted for and the propositions voted upon;
- C. The offices voted for;
- D. The number of votes cast for each candidate and the number of votes cast for or against each proposition voted on at the election;
- E. A proposed disposition of all absentee, write-in, questioned and voided ballots; and
- F. Other matters which the canvass committee may determine to be necessary. (Ord. 96-24 § 4(part), 1996)

2.28.440 Results of election-Public declaration. A. If a contest is not begun under the provisions of Article VIII of

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this chapter, the result of the election shall be publicly declared by the council and entered in the minutes of a special meeting of the council on the first Monday following the election.

B. If a contest is declared and resolved, the result of the election shall be publicly declared by the council and entered in the minutes of a special meeting of the council within a week after the contest is resolved. (Ord. 96-24 § 4(part), 1996)

2.28.450 Certificate of election. The city council will authorize the city clerk to make and deliver a certificate of election to every person elected. The certificate of election will be signed by the mayor and clerk. It shall display the corporate seal of the city. (Ord. 96-24 § 4(part), 1996)

ARTICLE VII. ABSENTEE VOTING

2.28.460 Absentee voting-Eligible persons. Any qualified voter, who expects to be absent from the city or who will be unable to vote by reason of physical disability on the day of any election, may cast an absentee ballot. (Ord. 96-24 § 4(part), 1996)

2.28.470 Absentee ballot-Application-Filing. A. A person who seeks to vote by absentee ballot may file either in person or by mailing his written application to the city clerk.

B. An application made by mail must be received by the city clerk ~~not more than twenty days, nor~~ no less than five days before a city election. An application made in person must be filed with the city clerk **not earlier than 30 days before the city election date** ~~not more than fifteen days before the city election,~~ and no later than the close of business on the day before a city election.

C. The application must be signed by the applicant and show his place of residence.

D. Nothing in this section is intended to limit the city clerk in personally delivering a ballot to a person who, because of physical incapacity, is unable to make application in person at the city clerk's office for an absent voter's ballot. (Ord. 96-24 § 4(part), 1996)

2.28.480 Absentee ballot-Delivery. Upon receipt of an application for an absentee voter's ballot, the clerk will check the latest state registration listings to determine whether the

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acknowledged his signature and affidavit, all in accordance with the law.

Official's Signature

(SEAL)

Title of Officer

NOTICE: After receiving the sealed envelope from the person taking your affidavit when voting outside the office of the city clerk of the City of _____, you must immediately return it by mail, postage prepaid, to the City Clerk, P.O. Box _____.

MARKED BALLOT ENCLOSED TO BE
OPENED ONLY BY
CANVASSING COMMITTEE

(Ord. 96-24 § 4(part), 1996)

2.28.510 Absentee ballot-Execution in city. A voter who receives an absentee voter's ballot may, on any day prior to the day of the election, appear at the office of the city clerk, and execute his ballot in the following manner:

A. The voter will first display the ballot to the clerk to show that the ballot has not been previously marked. He then will proceed to mark the ballot in the voting booth at the clerk's office. The voter will place the ballot in the envelope provided to him in a manner that permits the clerk to see the number of the ballot. The voter will then hand the envelope to the clerk, who will examine it. If the clerk determines that the ballot is numbered correctly, he will tear the printed number off and permit the voter to enclose the ballot in the identification envelope.

B. The voter will then make out and swear to the affidavit printed on the face of the envelope. He will seal the envelope and deliver it to the clerk.

C. The clerk will certify the affidavit printed on the identification envelope by writing or stamping his name across the seal. The clerk will deposit the envelope in a safe place in his office, to be kept by him and delivered to the canvassing committee.

D. If an absentee voter returns to the city on Election Day, he will not be allowed to vote unless he surrenders the absentee voter's ballot and any other supplies mailed to him.

(Ord. 96-24 § 4(part), 1996)

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2.28.520 Absentee ballot-Execution outside city. A. After receiving an absentee voter's ballot, the voter may appear on any day prior to and including the day of the election, before a notary public, **post master**, clerk or officer of any city, state, territory or district within the United States. Before the officer he may complete his ballot as set out in Section 2.28.510 of this chapter. **B. Absentee ballots executed outside of the City may be faxed to ensure receipt by the City Clerk prior to canvass. Ballot by fax must contain a disclaimer that the voter understands his/her vote cast will not be secret.** (Ord. 96-24 § 4(part), 1996)

2.28.530 Absentee ballot-Receipt. To be counted an absentee voter's ballot must be executed before the polls close in the city and be received by the clerk prior to the time the ballots are canvassed by the canvassing committee. (Ord. 96-24 § 4(part), 1996)

2.28.540 Absentee ballot-Voting supplies. All supplies necessary for the voter to cast and return his ballot will be furnished by the clerk. No city official may make any charge for services rendered to any voter under the provisions of this chapter. (Ord. 96-24 § 4(part), 1996)

2.28.550 Liberal construction. This article will be liberally interpreted, so as to accomplish the purposes set forth. (Ord. 96-24 § 4(part), 1996)

ARTICLE VIII. CONTEST OF ELECTION

2.28.560 Contest of election. A. Any candidate or any ten qualified voters may contest the election of any person and the approval or rejection of any question or proposition.

B. A candidate or elector who believes that prohibited practices occurred at an election will appear before the council at the special council meeting held on the first Monday following the election. He will deliver a sworn written notice of contest, which will state with particularity the provisions of the law which he believes were violated and the specific acts he believes to be misconduct. A notice shall read:

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2.28.590 Ballot recount. If only a recount of ballots is demanded, the election board where the error allegedly occurred shall recount the ballots. (Ord. 96-24 § 4(part), 1996)

2.28.600 Prohibited practices alleged. When the contestant alleges prohibited practices the council will direct the city clerk to produce the original register books for the election. (Ord. 96-24 § 4(part), 1996)

2.28.610 Sustained charges-Recount. If the charges alleged by the contestant are upheld, the canvassing committee will make a recount and report immediately to the council. The council will then certify the correct election returns as provided in Section 2.28.440 of this chapter. (Ord. 96-24 §4(part), 1996)

2.28.620 Determination of tie votes. If after a recount and appeal two or more candidates tie in having the highest number of votes for the same office, the mayor shall notify the candidates who are tied. The mayor shall notify the candidates of a reasonably suitable time and place to determine the successful candidate by lot. After the determination has been made by lot, the mayor shall so certify. (Ord. 96-24 §4(part), 1996)