

## **CONSENT AGENDA**

### **POSSIBLE MOTION**

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**I MOVE TO APPROVE THE CONSENT AGENDA  
CONSISTING OF ITEMS A & B**

**I wish to remove Item(s) \_\_\_\_\_**

**REMINDER – Read aloud a portion of each item being  
voted on that is included in the consent vote.**

Should this item be pulled from the Consent Agenda the following motion is suggested:

### **POSSIBLE MOTION**

**I MOVE TO** approve the minutes of the  
January 23<sup>rd</sup> Assembly meeting.



# CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS  
330 Harbor Drive  
Sitka, AK  
(907)747-1811

## Minutes - Draft

### City and Borough Assembly

*Mayor Matthew Hunter  
Deputy Mayor Steven Eisenbeisz,  
Vice Deputy Mayor Bob Potrzuski,  
Aaron Bean, Kevin Knox, Dr. Richard Wein,  
Benjamin Miyasato*

*Municipal Administrator: Keith Brady  
Municipal Attorney: Brian Hanson  
Municipal Clerk: Sara Peterson*

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Tuesday, January 23, 2018

6:00 PM

Assembly Chambers

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#### REGULAR MEETING

#### I. CALL TO ORDER

#### II. FLAG SALUTE

#### III. ROLL CALL

**Present:** 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein

#### IV. CORRESPONDENCE/AGENDA CHANGES

**18-008**

Reminders, Calendars and General Correspondence

Mayor Hunter announced outside legal counsel was present to brief the Assembly on one of the executive session items. Hunter stated depending upon time, the Assembly may need to postpone some items to ensure the Assembly had time to hear from outside counsel.

Wein referenced the Public Works Assembly Update. He shared that a Request for Information had been posted by the State of Alaska Department of Transportation & Public Facilities seeking information on how an interested contractor could manage the Sitka Airport parking lot. Wein noted that charging for airport parking had been mentioned as a possibility. Jay Sweeney, Chief Finance and Administrative Officer, clarified later under item "VIII. Reports" that the airport terminal parking lot was owned by the State of Alaska. Sweeney stated parking discussions had been initiated by the State indicating they intended to charge for parking but would afford the City the opportunity to manage the parking and keep the revenue. Sweeney reported conversations were ongoing.

#### V. CEREMONIAL MATTERS

None.

**VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Sitka Community Hospital, Municipal Departments, School District, Students and Guests (five minute time limit)**

Rob Allen, Chief Executive Officer of Sitka Community Hospital, briefed the Assembly. Allen invited Assembly members to the January 25 Hospital Board meeting to hear the FY17 audit report, provided an update on the status of the StroudWater recommendations, and reported on the financial status of the Hospital.

Regarding the January 23 tsunami warning, Fire Chief Dave Miller thanked staff and the community for coming together to help one another.

**18-007**

Sitka Chapter of the Citizens' Climate Lobby

Kent Barkhau and Kay Kreiss of the Citizens' Climate Lobby, Sitka Chapter, briefed the Assembly on the Carbon Fee and Dividend proposal.

**VII. PERSONS TO BE HEARD**

Alene Henning reminded it was illegal to use a cell phone while driving and stated the Police Department was issuing tickets for the offense.

**VIII. REPORTS**

**a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other**

Mayor - Hunter thanked the community for coming together in response to the tsunami warning and commended Fire Chief Dave Miller.

Administrator - Brady thanked Emergency First Responders and Sitkans for their calm and rapid response to the morning's tsunami alert. He encouraged Sitkans to reflect on their emergency preparedness and take precautions. Brady reported he had met with Sitka Tribe of Alaska and Sitka Police Department to discuss collaboration on a domestic violence grant, and met with Senator Stedman for an update on state projects in Sitka and to review City Legislative Priorities.

Attorney - Hanson welcomed outside legal counsel Michael Gatti and Megan Sandone.

Liaison Representatives - Knox reported on the recent Planning Commission meeting. Wein gave an account of the Health Needs and Human Services Commission meeting and told of a special meeting January 24 on the Tobacco 21 initiative. Potrzuski reported on the work of the Tree and Landscape Committee and Miyasato on the Investment Committee.

Clerk - Peterson announced boards and commissions vacancies and reminded the Assembly of a work session on tax exemptions January 30.

**IX. CONSENT AGENDA**

**A 18-010** Approve the minutes of the January 9 Assembly meeting



A motion was made by Knox that this Item be APPROVED. The motion PASSED by a unanimous voice vote.

**B 18-011**

Approve a liquor license renewal application for Talon Charters, Inc. dba Talon Lodge on Apple Island

Wein wondered of the differences in information required of liquor license applicants. Eisenbeisz and Bean offered some of the differences had to do with the class and type of license.

A motion was made by Potrzuski that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein

**C 18-012**

Approve a standard marijuana cultivation facility license application for Darren H Phillips dba Fiberlite at 120 Jarvis Street Unit C

Wein noted there were 14 conditions and asked for further clarification of the required review for a conditional use permit. Planning Director, Michael Scarcelli, explained the components of the review: notice to adjacent property owners, code review, working with applicant to ensure conditions have been met.

A motion was made by Potrzuski that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein

**X. BOARD, COMMISSION, COMMITTEE APPOINTMENTS****D 18-013**

Reappoint: 1) Donna Callistini to a three-year term on the Local Emergency Planning Committee, and, Appoint: 1) Alan Stevens to a three-year term on the Local Emergency Planning Committee, 2) Daniel Gunn to an unexpired term on the Library Commission, and, 3) Jennifer Herrera to an unexpired term on the Health Needs and Human Services Commission

Wein invited the applicants present, Gunn and Herrera, to come forward and introduce themselves. Miyasato thanked all of the applicants for their willingness to serve.

A motion was made by Miyasato that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein

**E 18-014**

Appoint three members to the Sitka Community Hospital Board (At-Large seats) - applicants are: 1) Carin Adickes, 2) Carolyn Evans, 3) Mary Ann Hall, 4) Robert Hattle, 5) Heidi Horner Raffaele, and 6) Loyd Platson

Potrzuski raised concern of a possible financial conflict of interest Wein may have. Potrzuski stated he had been approached by community members voicing concern of what they believed to be Wein's intent to possibly eliminate and replace Sitka Community Hospital's (SCH) management and be rehired or to be rehired as the Chief Executive Officer (CEO). Wein stated he had no conflict of interest and noted his basic interest was for the well being of the Hospital, Hospital staff, and the community. Mayor Hunter ruled Wein could participate. Knox added he had been approached by a community member with a similar concern. Knox stated Wein had made comments publicly of a need for management change at SCH. Knox wondered if Wein intended to

pursue the CEO position if it were to become vacant. Wein replied while he had not considered it, some community members had approached him about the idea. Wein stated he did not believe it was within his purview to proceed with that (CEO).

Board applicants Carin Adickes, Heidi Horner Raffaele, Carolyn Evans, and Robert Hattle came forward to introduce themselves. Hall and Platson were not in attendance.

Speaking from the public, Travis Hudson, Nancy Blatchley Davis, and Marilyn Corruzi spoke of the importance the Board served and stated their applicant preferences.

Assembly members thanked all of the applicants for applying and noted the difficult decision in choosing only three. Knox wondered if there was a possible conflict of interest with Carolyn Evans serving. Evans stated she had two family members who were employed by SCH but that there was no financial conflict of interest and she would recuse herself as needed.

**A motion was made by Wein to nominate Carin Adickes, Carolyn Evans, Mary Ann Hall, Robert Hattle, Heidi Horner Raffaele, and Loyd Platson to serve on the Sitka Community Hospital Board under the category of At-Large.**

**A voice vote of the Assembly was taken. Assembly members stated their top three applicant choices. On the first round, the top vote getters were Evans and Hattle with five votes each. Adickes and Horner Raffaele tied for the third seat with four votes each. A second vote of the Assembly was taken. Carin Adickes received four votes and Horner Raffaele three. The three individuals appointed to the Hospital Board were: Evans, Hattle, and Adickes.**

**XI. UNFINISHED BUSINESS:**

None.

**XII. NEW BUSINESS:**

**New Business First Reading**

**F ORD 18-01 Amending Sitka General Code Section 2.08.050 Planning Commission Organization**

Knox, Assembly Liaison for the Planning Commission, noted the Commission was in support of the change and allowed for greater efficiencies. Wein encouraged the Commission to make their meeting dates conflict adverse with other city board/commission meeting dates. Eisenbeisz believed it was important for the Commission to maintain consistency and hoped meetings wouldn't unnecessarily be reduced to once a month thereby creating inefficiencies for the public. Planning Director, Michael Scarcelli, reiterated the intent was to allow for greater flexibility for the Commission - e.g. a different day. It was not the intent to make citizens wait to have their matters heard before the Commission. Scarcelli relayed the Commission intended to continue to meet at least twice a month unless circumstances warranted otherwise.

**A motion was made by Miyasato that this Ordinance be APPROVED on FIRST READING. The motion PASSED by the following vote.**

**Yes: 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein**

No: 1 - Eisenbeisz

- G     ORD 18-02**     Authorizing the lease of Alaska Tideland Survey 1300 to Larry McCrehin (*adjacent 4319 Halibut Point Road and 104 Pirates Way*)
- Wein encouraged the need for consistency in tidelands lease terms - e.g. 20 years, 30 years. The subject lease term was for 50 years. Hunter commented he was pleased to see an adjustment for inflation every 7 years. Knox relayed the Planning Commission was in support of the lease.

**A motion was made by Miyasato that this Ordinance be APPROVED on FIRST READING. The motion PASSED by the following vote.**

**Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein**

### **Additional New Business Items**

- H     18-017**     Consider for approval the City and Borough of Sitka Request for Proposal regarding Sitka Community Hospital
- Assembly members heard from consultants Sarah Cave and Steve Huebner.
- Wein offered the process may be premature given new members on the Hospital Board, and in general principle wished to postpone the item to a future date because the Hospital may do better and become more suited for an affiliation or agreement with another hospital. He noted he had spoke with a Providence official. It was their opinion the Hospital would need to improve their bottom line in order for there to be interest from outside entities.
- Eisenbeisz asked Municipal Attorney Brian Hanson for an explanation of the request for proposal (RFP) clause stating that, "under no circumstances should any Assembly member, officer, employee, physician, board member or affiliate of CBS or SCH be contacted directly, except with prior approval of CBS Administrator, P. Keith Brady, or CBS Municipal Attorney, Brian E. Hanson." Bean felt it important to move ahead with the RFP but didn't agree with the inclusion of the clause. Hanson explained this was a standard provision in affiliation with RFPs. The goal was to prevent any preferential contact and allow for a fair playing field for potential proposers. He added that once a RFP was accepted it put the Assembly into a quasi judicial role.
- Hunter stated the document accurately represented the Assembly's direction to staff. He believed the RFP process would be a complete process and emphasized the importance of determining what the available options were with regards to the Hospital. Potrzuski and Knox concurred and reminded this was the process outlined to the community.

**A motion was made by Potrzuski to APPROVE the Request for Proposal by the City and Borough of Sitka for purchase, lease, partnership, management or affiliation off/with Sitka Community Hospital. The motion PASSED by the following vote.**

**Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein**

- I     18-015**     Discussion/Direction regarding the removal of fluoride from municipal drinking water



A motion was made by Potrzuski to POSTPONE items I, J, and K to the February 13 meeting in order to attend to item L. The motion PASSED by the following vote.

Yes: 4 - Miyasato, Potrzuski, Hunter, and Wein

No: 3 - Eisenbeisz, Knox, and Bean

**J 18-009**

Approve sending an Assembly member or Municipal Administrator to attend the March Seatrade Cruise Global event in Fort Lauderdale, FL

A motion was made by Potrzuski to POSTPONE items I, J, and K to the February 13 meeting in order to attend to item L. The motion PASSED by the following vote.

Yes: 4 - Miyasato, Potrzuski, Hunter, and Wein

No: 3 - Eisenbeisz, Knox, and Bean

**K 18-018**

Reassignment of an Assembly Liaison to the Historic Preservation Commission

A motion was made by Potrzuski to POSTPONE items I, J, and K to the February 13 meeting in order to attend to item L. The motion PASSED by the following vote.

Yes: 4 - Miyasato, Potrzuski, Hunter, and Wein

No: 3 - Eisenbeisz, Knox, and Bean

### **XIII. PERSONS TO BE HEARD:**

Charles Bingham stated the State no longer had an employee at the local Division of Public Assistance Office. He encouraged the Assembly to work with the State to rectify the matter.

### **XIV. EXECUTIVE SESSION**

**L 18-016**

1) Litigation Update/Report - Dapcevich vs. CBS/Gorman/Hunter, and, 2) Sulzbach vs. CBS

A motion was made by Potrzuski to go into Executive Session to 1) receive and discuss an update from legal counsel, Michael Gatti and Megan Sandone, regarding financial and legal matters affecting the Municipality as a result of the lawsuit filed by Marko Dapcevich on March 30, 2017, and, 2) receive and discuss a report from Municipal Attorney Brian Hanson regarding financial and legal matters affecting the Municipality as a result of the lawsuit filed by Sandy and Rob Sulzbach on December 18, 2017.

Bean wondered if he was going to be excluded from executive session with regards to the Dapcevich matter.



Knox asked Municipal Attorney, Brian Hanson, if there was concern with having Bean participate in executive session given the fact he had provided an affidavit to the Dapceovich case. Hanson stated there were concerns.

Mayor Hunter believed Bean to be a party to the lawsuit, on Dapceovich's side, because of the affidavit filed and presumed he was against the City's position. Bean disagreed and stated he was standing by his interpretation of what the Charter said and wasn't for or against anyone else's interpretation.

**A motion was made by Knox to remove Bean from the Dapceovich lawsuit executive session item. (vote follows)**

Hanson outlined the concerns and potential bias: Bean had aligned himself with Mr. Dapceovich in the past, had communication with Mr. Dapceovich and Mr. Geldhof, and had voluntarily provided an affidavit which supported the plaintiff's position against the City. Hanson noted this bias could affect the decision that was going to be asked of the Assembly in executive session. Hanson stated there was also concern about confidentiality.

Bean asked the Assembly to consider what the Charter said about an Assembly member having to vote on every item. He didn't believe his integrity was in question nor would there be a breach of confidentiality. Bean offered he had his interpretation of the Charter and stood by it. He stated while he happened to share a legal opinion on a matter with Mr. Dapceovich, he didn't see how it affected his ability to be in executive session.

Eisenbeisz wondered if Hanson and Gatti would be looking for direction in executive session or for the Assembly to come out and vote. He reminded of Bean's statement that he was required by Charter to vote on every item. Attorney Michael Gatti stated he would be looking for direction in executive session rather than a public vote because of some strategies looking that may be employed depending upon the direction from Assembly. Gatti added that Bean had indicated his position with respect to his belief that he disagreed with the judge and legal position the City had prevailed on. Gatti clarified typically there was a duty to vote among all Assembly members, however, if there was a conflict then that person may be recused. Hanson clarified he was not asking for Bean to be recused but that there were concerns for the Assembly to consider.

Miyasato inquired if Bean had been recused from previous executive session items on this matter. Hunter recalled there had been a meeting in which Assembly members were discussing a public records request filed by Mr. Dapceovich and the possibility of releasing documents that were considered protected documents because of potential legal risk. At that meeting Bean stated he had chosen to release them to Mr. Dapceovich on his own. Bean had explained he felt it was in his right to release them and had consulted a personal attorney. Bean, when queried by the Assembly, had answered the Assembly's questions to their satisfaction and was allowed to participate in the executive session. Since that time, Hunter said the one thing that had changed for him was that Bean had submitted an affidavit supporting the plaintiff's case against the City. Hunter felt it would be a liability to have any individual in the room who had filed anything in court against the position of the City.

Bean reiterated he had not shared any information from past executive sessions on the matter nor would he if allowed to participate in tonight's session.

A motion was made by Miyasato to extend the meeting to 11:00pm. The motion **PASSED** by the following vote.

**Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein**

Attorney Gatti reminded the issue was that when Attorney's came to an Assembly with legal strategies those were confidential and subject to attorney client privilege. He added there was also a work product privilege. One individual member didn't hold that privilege, but rather the body did. If one member were to breach that confidentiality, improperly or illegally, then the Assembly may feel a degree of distrust and it could also be a recallable offense because there would be a failure to perform prescribed duties if the member breached that confidentiality without approval of the Assembly. If someone was bias, and released confidential information, that could potentially create a conflict of interest. Bean had said he would not do that.

Miyasato stated Bean represented people who had voted for him. If he had stated he had not violated confidentiality, and participated in a previous executive session, then he believed Bean should be able to participate.

The motion to remove Mr. Bean from executive session **FAILED** by the following vote.

**Yes: 2 - Eisenbeisz and Hunter**

**No: 4 - Wein, Knox, Potrzuski, and Miyasato**

The motion to enter executive session **PASSED** by the following vote.

**Yes: 7 - Miyasato, Eisenbeisz, Potrzuski, Hunter, Knox, Bean, and Wein**

The Assembly was in executive session from 10:15pm to 10:55pm.

A motion was made by Miyasato to reconvene as the Assembly in regular session. The motion passed by a unanimous voice vote.

## **XV. ADJOURNMENT**

A motion was made by Potrzuski to **ADJOURN**. Hearing no objections, the meeting **ADJOURNED** at 10:58pm.

**ATTEST:** \_\_\_\_\_

**Sara Peterson, MMC  
Municipal Clerk**