



City Manager  
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<b>TRANSMITTAL MEMORANDUM</b>
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TO: The Honorable Mayor and City Council

FROM: Lacey G. Simpson, Acting City Manager

DATE: December 20, 2021

RE: **Ordinance No. 22-1943 – Amending Ketchikan Municipal Code Section 9.54.060 Entitled, “Legal Accountability” Section 9.54.070 Entitled, “Fine Schedule,” Concerning Off Premise Commercial Solicitation Restrictions; and Establishing and Effective Date.**

Pursuant to City Council direction at the special budgeting deliberation meeting of December 6, 2021, the attached ordinance was prepared by City Attorney Mitch Seaver, who requested that it be placed before the City Council for consideration at its meeting of February 3, 2022. If adopted, Ordinance No. 22-1943 provides for amending sections of the Ketchikan Municipal Code to address the fine provisions concerning off-premise commercial solicitation, or “hawking and barking” as it is commonly referred. In the proposed ordinance, the fine would be set at \$1,000 for any and all violations.

The City Attorney and Acting Police Chief will be attending the City Council meeting of February 3, 2022, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

### RECOMMENDATION

It is recommended the City Council adopt the motion approving in first reading Ordinance No. 22-1943 amending Section 9.54.060 of the Ketchikan Municipal Code entitled “Legal Accountability” and Section 9.54.070 of the Ketchikan Municipal Code entitled “Fine Schedule” concerning off premise commercial solicitation restrictions; and establishing an effective date.


**Recommended Motion:** I move the City Council approve in first reading Ordinance No. 22-1943 amending Section 9.54.060 of the Ketchikan Municipal Code entitled “Legal Accountability” and Section 9.54.070 entitled “Fine Schedule” concerning off premise commercial solicitation restrictions; and establishing an effective date.

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**MEMORANDUM**

**TO:** Mayor Kiffer  
Members of the City Council  
Lacey Simpson, Acting City Manager

**FROM:**  Mitch Seaver  
City Attorney

**DATE:** January 18, 2022

**SUBJECT:** Off Premise Solicitation Ordinance

Transmitted herewith is a proposed amendment to the fine provisions for violation of KMC Chapter 54 entitled, "Off-Premise Commercial Solicitation Restrictions." The amendment would eliminate increased fines for repeated violations and set the fine amount at \$1000 for each violation. As with the current ordinance, employers of the person who violates the ordinance would also be subject to a separate \$1000 fine.

Setting the fine at \$1000 leaves the offenses within the scope of the District Courts' minor offense rules so there is no right to court appointed counsel or a jury trial. Also, because the employers responsibility is strictly liable for the employees conduct, the fine amount cannot be so great as to denote criminal conduct.

There has been discussion of the possibility of suspending operation of businesses that have violated the ordinance similar to remedies available to the City under dock vendor leases. However, the dock vendor program involves proprietary contractual relationships as opposed to regulatory measures of general application, which would involve significantly different procedures and enforcement considerations.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 22-1943

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AMENDING KETCHIKAN MUNICIPAL CODE SECTION 9.54.060 ENTITLED, "LEGAL ACCOUNTABILITY" AND KETCHIKAN MUNICIPAL CODE SECTION 9.54.070 ENTITLED, "FINE SCHEDULE," CONCERNING OFF PREMISE COMMERCIAL SOLICITATION RESTRICTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

**Section 1: Amendment.** Section 9.54.060 of the Ketchikan Municipal Code, entitled "Legal accountability," is hereby amended to read as follows:

"In addition to the OPS solicitor, the responsible OPS employer shall be strictly and vicariously liable for any violations of this chapter by that OPS employer's OPS solicitor[.], such that in the event of a violation by the OPS solicitor the OPS solicitor shall be subject to a \$1000 fine and the responsible OPS employer would be subject to a separate \$1000 fine.

**Section 2: Amendment.** Section 9.54.070 of the Ketchikan Municipal Code, entitled "Fine schedule," is hereby amended to read as follows:

"~~[(a)]~~ Pursuant to KMC 1.02.110 the ~~[following]~~ fine ~~[schedule is]~~ established for the violation of any provision of this chapter is \$1000.00:

<del>[First violation]</del> _____	<del>\$200.00</del>
<del>Second violation within 12 months</del> _____	<del>\$300.00</del>
<del>Third and subsequent violation within 12 months</del> _____	<del>\$500.00</del>

~~(b) When the OPS solicitor is employed by the same OPS employer at the time of the violations involved, subsequent violations by that OPS solicitor shall constitute subsequent violations by the OPS employer. Violations by different OPS solicitors employed by the same OPS employer shall be aggregate and constitute subsequent offenses by the OPS employer.~~

~~As examples:~~

~~(1) In the instance of a first violation the OPS solicitor and the OPS employer would each be subject to a \$200.00 fine so that the total penalties would be \$400.00;~~

(2) In the instance of a second violation within 12 months the OPS solicitor and OPS employer would each be subject to a \$300.00 fine so that the total penalties would be \$600.00; penalties for the third and subsequent violations within a 12-month period would be imposed in the same manner;

(3) Where OPS solicitor A and OPS solicitor B are employed by the same OPS employer and OPS solicitor A commits a first violation and then OPS solicitor B commits a first violation within 12 months the OPS employer would be subject to a \$200.00 fine in respect to OPS solicitor A's violation and a \$300.00 fine in respect to OPS solicitor B's violation; penalties for subsequent violations within 12 months would be imposed in a similar manner.]

**Section 2: Effective Date.** This ordinance is effective one (1) month after its final passage and publication.

PASSED ON FIRST READING \_\_\_\_\_.

FINAL PASSAGE \_\_\_\_\_.

\_\_\_\_\_  
Dave Kiffer, Mayor

ATTEST:

\_\_\_\_\_  
Kim L. Stanker  
City Clerk

FYI: Bracketed language is intended to be removed from the existing ordinance, and underlined language in bold type is intended as an addition to the existing Ketchikan Municipal Code.

EFFECTIVE	DATE:			
	ROLL CALL	YEA	NAY	ABSENT
BRADBERRY				
FLORA				
GAGE				
GASS				
KISTLER				
MAHTANI				
ZENGE				
MAYOR				