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TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Lacey G. Simpson, Assistant City Manager

DATE: January 12, 2021

RE: **Extension of Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA) Leave Benefits**

At its meeting of January 7, 2021, the City Council deferred consideration of a motion regarding an extension of the Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA) leave benefits offered to City and KPU employees in order to allow staff to respond to Councilmember questions on the financial impacts of such an extension.

The December 28, 2020 memorandum to the City Council, attached here for reference, summarized the positive and negative implications of extending EFMLA and EPSLA benefits to City and KPU staff beyond the December 31, 2020 federal expiration. Being that there has been no EFMLA use by employees, extending EPSLA leave benefit use is the predominant item under consideration.

Regarding the perceived costs of an extension to the City, regular sick and vacation leave are accrued at a rate based on length of service and collective bargaining agreements. In 2020, the City used approximately \$425,000 in eligible CARES Act funds to cover employee wages, excluding public safety employees, for EPSLA and paid administrative leave use when the leave was related to the pandemic. This equates to nearly 2,730 non-public safety employee leave hours. The City's available CARES Act funds have been fully allocated and there are no additional funds available to reimburse the City for these leave benefits in 2021 should the leave be extended. The City Council should keep in mind that EPSLA benefits are not eligible for end of employment cash-outs like regular vacation leave and merely act as an additional benefit to provide employees a non-punitive means of protecting workplace and public health.

At the close of 2020, EPSLA leave for many City and KPU employees remains available. While the City is under no further obligation to extend these leave benefits into 2021, staff believes there is value in an extension while the pandemic continues and vaccine availability for the majority of the population is yet unknown. Staff's primary concern is that employees will want to report to work when sick and/or not comply with workplace health policies requiring the use of leave if additional EPSLA leave benefits are not extended and personal accrued sick or vacation leave must be used. This will have a direct impact on workplace health, productivity and the ability to deliver critical

services through the continuation of the pandemic. Staff is seeking City Council direction on if these leave benefits should be made available into 2021 as a means of protecting workplace and public health.

Should the City Council wish to extend employee use of EPSLA and EFMLA benefits into 2021, staff recommends that only existing leave accruals be made available for continued use and that the use of both benefits expire on June 30, 2021.

The Finance Director and the Human Resources Manager will attend the meeting of January 21, 2021, in order to answer any questions and/or concerns that Councilmembers may have.

The motion that will be before the City Council is detailed below:

Moved by Gage, seconded by Kiffer that the City Council direct the City Manager to take such action regarding the continued use of Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA) benefits for the employees of the City and KPU as determined appropriate by the City Council.

"UNAPPROVED" January 7, 2021

worked for municipalities, and the City of Ketchikan laid off zero. He felt that is community support and he will support the motion for distribution of the \$662,021. He said the Finance Department indicated that \$1.5 million will be needed in appropriated reserves in order to keep us solvent.

Councilmember Gass said he would support this motion, but based on the information received yesterday regarding the cruise industry we need to keep in mind that we are still in a tough financial situation for 2021.

Motion passed with Gass, Kiffer, Gage, Flora and Bergeron voting yea; Bradberry voting nay; Zenge absent.

2021 Agreement Between the City of Ketchikan and the Ketchikan Visitors Bureau, Inc.

Moved by Flora, seconded by Kiffer the City Council approve the 2021 Community Agency Funding Agreement between the City of Ketchikan and the Ketchikan Visitors Bureau, Inc.; authorize funding in the amounts of \$142,143 and \$149,625 respectively from the 2021 Tourism & Economic Development Division and the Port Department's Marketing Services Account Nos. 635.13 and 635.13; and direct the city manager to execute the agreement on behalf of the City Council.

Patti Mackey President and CEO of the Ketchikan Visitors Bureau, Inc. answered questions from the Council.

Motion passed with Flora, Bergeron, Gass, Kiffer, Gage and Bradberry voting yea; Zenge absent.

Extension of Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA)

Moved by Gage, seconded by Kiffer the City Council direct the city manager to take such action regarding the continued use of Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA) benefits for the employees of the City and KPU as determined appropriate by the City Council.

Assistant Manager Simpson clarified for the Council that staff is suggesting extending this program to employees who have hours available, and allow them to use them for a designated period. She said this would not include adding new hours.

Councilmember Flora asked for clarification whether this is CARES Act or municipal money.

In answer to Councilmember Flora, Assistant Manager Simpson stated this was put into place before the extension and it is her understanding they would not be eligible for reimbursement after December 31, 2020.

Finance Director Johansen explained the funds were eligible, but the City expended all funds through sick leave and benefits. She said there are no additional funds for 2021, since the \$662,021 is going back to into the City's CARES Act housing and rental assistance program.

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Councilmember Flora indicated based on that explanation we are looking at a new budget expense that we had not taken into account during the budget cycle. He agreed with Councilmember Gass that we need to hold the line on expenses and would not support this.

Manager Amylon asked the Council if this item could be deferred to the meeting of January 21 2021. He indicated he would like to get additional clarification from the finance director and the assistant manager.

Moved by Flora, seconded by Kiffer the City Council defer consideration to the City Council meeting of January 21, 2021.

Assistant Manager Simpson pointed out we were federally obligated to offer these benefits prior to the end of 2020, but we are under no obligation to continue. She said since the pandemic is ongoing there is a need, and it does has some value worth considering.

Motion to defer passed with Flora, Gass, Kiffer, Gage, Bergeron and Bradberry voting yea; Zenge absent.

Discussion of the Elimination of the State of Alaska Ocean Ranger Program – Councilmember Bergeron and Councilmember Gass

Councilmember Gass indicated he was approached by a couple of people who were involved with this program and asked if he could bring it to the Council for consideration. He said he was not aware the City Council had discussed this back in February. He said he would like to see our lobbyist relay to the Governor that the City of Ketchikan is in full support of this program. He felt the \$4 per passenger head tax money was prudent to reinstate the program. He also would like to request more local hire from within the State of Alaska.

Councilmember Bergeron questioned how this program was funded and what it could be used for.

In answer to Councilmember Bergeron, Manager Amylon confirmed it was through the State Passenger Vessel Tax, and yes this program was funded by the \$4 when it was in effect.

Assistant Manager Simpson said that House Bill 74 was introduced last year. She said upon termination of the Ocean Ranger Program those funds would be used for and directed to on shore primarily municipal wastewater systems. She indicated this would address the problem from a different side rather than monitoring ships, but that bill never passed. She stated it may come back at this legislative session, but staff has no information at this time. She informed two letters were sent last year by the Mayor to the Governor, noting you can't support House Bill 74 not knowing what the implications are and the Ocean Ranger Program simultaneously.

Councilmember Bergeron asked since the program went away what was done with the funds.

Assistant Manager Simpson said since there was no cruise last year, there was no funding. It is a question without an answer as of yet.

Councilmember Gage said she would like to see this program reinstated, since it is obvious if there is not a program overseeing the cruise industry they tend to not follow the rules. She said she would not support the elimination of this program.



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TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Lacey G. Simpson, Assistant City Manager

DATE: December 28, 2020

RE: **Extension of Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA)**

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) was signed into law. The act outlined two new provisions for certain employers effective April 1, 2020: the Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA). Both acts provide additional leave benefits to employees for situations related to the COVID-19 pandemic.

As a public employer, the City of Ketchikan has been required to offer EFMLA and EPSLA to all employees of the City and KPU that have been employed for at least 30 days. EFMLA benefits provide for up to 12 weeks of protected time away from work for situations in which an employee must care for their child due to an extended school or child care facility closure caused by the pandemic. Due to schools and many child care facilities remaining open through the majority of the pandemic, EFMLA use by City and KPU employees has been minimal. Conversely, many employees have utilized EPSLA benefits, which provide for an additional 80 hours of sick leave under the below conditions:

1. Employee is subject to a federal, state or local quarantine order related to COVID-19
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis
4. Employee is caring for an individual who is subject to an order as described in number 1 above or as advised in number 2 above.
5. Employee is caring for their child due a school or place of care closure or childcare provider unavailability because of COVID-19 precautions
6. Employee has a household member that is positive for COVID-19 and/or was told by Public Health to quarantine and the employee must also quarantine per City workplace health policies.
7. Employee is negative for COVID-19 but must not report to work while still symptomatic per City workplace health policies.

The EFMLA and EPSLA and the benefits they provide to employees are set to expire on December 31, 2020. Congress recently extended employers' ability to utilize the tax credit offered by the FFCRA until March 31, 2021 if the employer voluntarily continues to provide available FFCRA leave benefits to employees. As a municipality, the City is ineligible from taking advantage of this tax credit and is under no further obligation to offer FFCRA leave benefits to employees beyond December 31, 2020.

At the close of 2020, EPSLA leave for many City and KPU employees remains available. There is little doubt that as the pandemic continues into 2021 and the availability of a vaccine remains months away for the majority of the population, there will be a continued need for these benefits well into 2021. Staff is seeking City Council direction on if these benefits should be made available to employees beyond the federal expiration date. There are various positive and negative implications to an extension or a discontinuation of EPSLA benefits. Several implications are outlined below:

Continued EPSLA Use:

- | Positive | Negative |
|--|--|
| <ul style="list-style-type: none">• Employees may be more inclined to report symptoms, stay home from work, seek testing when sick and follow workplace health policies if it is known that their absence will not impact accrued sick or vacation leave. This aids in the control of community transmission and minimizes staffing impacts.• Minimizes the hardship placed on working families when schools or child care providers are closed in response to the pandemic.• Provides income to sick employees for periods in which they cannot physically report to their workstations and would otherwise need to take leave without pay if sick and/or vacation leave accruals were not available. | <ul style="list-style-type: none">• Misuse of leave; treated as "free" or "owed" leave used for inappropriate situations including as a form of vacation leave.• Requires additional staff administration time for use of this leave.• Costs no longer eligible for CARES Act reimbursement; unquantified additional cost to the City and KPU in addition to paid sick and vacation leave benefits.• Employees that have used their allotment of EPSLA will request that they receive additional hours outside of what was originally given in order to comply with state and workplace health policies and avoid use of sick and/or vacation leave accruals. |

Discontinued EPSLA Use:

- | Positive | Negative |
|--|--|
| <ul style="list-style-type: none">• Leave misuse is decreased when an employee must use their own leave accruals when sick or complying with workplace health policies.• No additional costs for paid leave.• Eliminates the additional administrative time necessary for use of this leave. | <ul style="list-style-type: none">• The City may have to discontinue policies that protect workplace health, which will increase the chance of community transmission and impact department staffing.• Employees may want to work when sick, and not follow or challenge workplace policies that require them to use accrued leave in order to comply with workplace safety measures, or the City may have to offer paid administrative leave.• Increases the hardship placed on working families when schools or child care providers are closed. |

Should the City Council wish to extend employee use of EPSLA benefits into 2021 for the reasons described herein, staff recommends that only existing EPSLA leave accruals be made available for continued use and that both EPSLA and EFMLA benefit use expire on June 30, 2021.

The Finance Director and the Human Resources Manager will attend the meeting of January 7, 2021, in order to answer any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

Motion: I move the City Council direct the City Manager to take such action regarding the continued use of Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA) benefits for the employees of the City and KPU as determined appropriate by the City Council.