

Marine Passenger Fee Documents For May 23, 2012 AFC Meeting

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CBJ04333

MEMORANDUM

CITY/BOROUGH OF JUNEAU
City & Borough Manager's Office
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Voice (907) 586-5240
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DATE: March 22, 2012
TO: Assembly Finance Committee
FROM: Rod Swope 
City and Borough Manager
SUBJECT: Final FY13 Passenger Fee Proceeds Recommendations

Based on our latest projection of 930,000 passengers expected to visit this summer, the amount of revenue available in FY13 is anticipated to be \$4,675,000. Comments received during the 30-day public review period are attached. I am recommending that the proceeds be divided between operations and capital projects as follows:

OPERATIONS

Identified Government Operations

Project Description

On May 10, 2000, the Assembly Finance Committee approved a formula that reflects cruise ship passenger impacts on specific government services and is used to determine an amount of Marine Passenger Fee (MPF) proceeds to be used in support of identified government operations. Further, in 2003, a full cost analysis, reviewed by the NorthWest CruiseShip Association and evaluated by Elgee, Rehfield and Mertz, LLC, was done to determine whether this formula provided a fair and accurate assessment of costs. Although not inclusive, examples of expenses include landscaping and maintenance of baskets/barrels at the public docks and along the seawalk in addition to flower beds and grass areas at the Steamship Plaza and Marine Park; additional wear and maintenance on the downtown library restrooms; wear on public roads and sidewalks by tourists, tour buses, charter vans, and increased taxi service; time spent by the Finance Department accounting for expenditures of passenger fees to monitor fund balances and ensure compliance with the law; time spent by the Accounting Division on purchase of supplies, equipment, and materials/services funded by passenger fees; costs incurred by CCFR to remain current on shipboard fire suppression training; time spent by the Emergency Program Manager and CBJ staff training for emergency preparedness in the event of a cruise ship mishap or disease outbreak while in port; maintenance and replacement of tourist information signs; and time spent by the Manager's Office and Law Department on passenger fee and tourism related issues.

\$1,400,000



Capital City Fire/Rescue (CCFR) Air Medevac Support

Project Description

This funding is an offset for unrecoverable costs incurred by the Fire Department for the air medevac program in response to medical events involving cruise ship passengers or crew. This past year, there were 30 medical transports by helicopter in response to situations involving cruise ship passengers or crew. On average, CCFR only recovers 36% of the total costs from patient billings. **\$25,000**

Non-Profit Air Medevac Support

Project Description

Airlift Northwest, a non-profit ambulance transport service, was founded in 1983 to provide air ambulance service to Southeast Alaska. According to Airlift Northwest, the requested amount is to offset unrecoverable costs related to transport of cruise ship passengers and crew from Juneau this past year. **\$50,000**

Tourism Best Management Practices Support

Project Description

This provides funding for printing, public notices, advertisements, and a contractual amount for Juneau Convention and Visitors Bureau (JCVB) staff to provide support to the Tourism Best Management Practices (TBMP) effort. TBMP is a voluntary industry-managed program, designed to provide services to vessel passengers and address impacts, including safety issues, of tourism on local residents. The JCVB administers the program with funding provided by Marine Passenger Fee proceeds. **\$15,000**

Crossing Guards

Project Description

The purpose of this program is to facilitate safe traffic flow in the downtown area, encourage pedestrians to stay on the sidewalks, increase pedestrian safety, and control the crossing locations where summer pedestrians can cross the streets. This will fund part-time seasonal crossing guards during the summer visitor season. This funding also provides for some limited equipment purchases, general training, scheduling, and deployment of the crossing guards. This program is currently administered by the Juneau Convention and Visitors Bureau. **\$150,600**

Downtown Foot/Bike Patrol

Project Description

This provides additional foot and bike patrol presence by Juneau Police Department (JPD) officers in the downtown area during the summer. JPD's presence is important to ensure the safety of visitors, provide assistance and direction, and mitigate problems that can occur between some of the regular downtown locals and summertime visitors. These officers are regular police officers that volunteer for this duty during their off-duty hours. Further, we are continuing the



program using retired police officers, as seasonal employees, to patrol the downtown area during the summer. **\$87,000**

Downtown Restroom Maintenance

Project Description

This provides contractual services (labor and materials) required to clean the public restrooms in City Hall, Steamship Plaza, and the new Downtown Transportation Center, seven days a week, six times per day, for five months during the summer. **\$75,000**

Restroom Cleaning and Maintenance – AJ Juneau Dock, LLC

Project Description

This provides funding for restroom cleaning and maintenance supplies for cruise ship passenger public restrooms located at the AJ Dock. **\$20,000**

Restroom Cleaning and Maintenance – Franklin Dock Enterprises, LLC

Project Description

This provides funding for restroom cleaning and maintenance supplies for cruise ship passenger public restrooms located at the Franklin Dock. **\$12,000**

Juneau Port Security and Short-Range Response Boat – AJ Juneau Dock, LLC

Project Description

The Department of Homeland Security awarded the AJ Dock with a port security and short range response boat that conducts port security patrols, at-sea deliveries to cruise ships in port (some items can not go across the docks for security reasons), is designed to accommodate medevacs, spill response, salvage operations, and on-scene support for emergency or law enforcement issues when ships are at anchor or at sea. This request is solely to cover the manning, maintenance, and operational expenses related to this vessel. **\$19,600**

Port Security Guard, Security Training and Exercises – AJ Juneau Dock, LLC

Project Description

This is a request to fund a number of port security related expenses and projects. The training and exercise funding will benefit all regulated Juneau cruise ship passenger facilities. The AJ dock has been host to two large maritime security exercises. The AJ dock and other local facilities participate in annual security training. **\$44,000**

Downtown Cleaning

Project Description

Due to heavy summer use by visitors, the downtown sidewalks require extra cleaning and litter/garbage removal to keep them clean and safe. This funding provides for two summer employees to operate and maintain the sidewalk sweepers and empty downtown garbage



containers. This year, there is also some funding to replace cigarette butt receptacles and a few garbage cans. **\$89,000**

Transit Public Bus Service

Project Description

Visitors heavily use local bus service during the summer, making it necessary to increase services in order to accommodate locals adequately in addition to summer visitors. The bus system provides a safe, efficient, and cost-effective way for visitors to visit the glacier and view other areas of Juneau. The additional revenue from summer visitors does help offset the cost of providing additional summer bus services; however, our transit system is heavily subsidized and the additional costs are not completely offset by the revenue received. Several years ago, we did start providing additional bus service in the mornings and evenings. **\$278,000**

Juneau Convention and Visitors Bureau (JCVB)

Project Description

The JCVB provides summer visitors with information, directions, and assistance. Program expenses include administrative support for training and supervision of 130 volunteers, managing the cruise ship terminal kiosk, and Centennial Hall information centers, a paid seasonal visitor information position, and printed materials. **\$127,000**

Seasonal EMS Transport Program

Project Description

CBJ provides ambulance transport service for cruise ship patients that need to be transported from cruise ships and/or Bartlett Hospital to the airport for medevac to Anchorage or Seattle. The demand for patient transport service increases considerably during the summer due to cruise ship patients and does create situations, on a regular basis, in which we do not have available staff to provide transport service when requested. Two years ago, the cruise ship industry reported delays of 15 minutes to an hour and a half being encountered approximately 33% of the time during the summer. This causes delays for the medevac flight crews, resulting in costs and complications with regard to personnel, aircraft, weather, scheduling, etc. This program was implemented two years ago and has proven to be very effective in resolving this problem. This funding pays for four temporary seasonal EMTs to work 12-hour shifts during the summer (May through September) to cover transports, other EMS calls as needed, and to participate in fire suppression as an ancillary duty. It also pays for the replacement of consumable medical supplies used on board the ambulance and fuel costs directly related to cruise industry medical transports. **\$184,000**

Downtown Ambassador Program

Project Description

Funding for this program supports two uniformed security officers that patrol the downtown area on foot from May through September. These security officers assist visitors with information, directions, and patrol the downtown area for loitering, panhandling, public intoxication, and other



public nuisances potentially impacting summer visitors and local residents. With regard to public safety issues and infractions of the law, the security officers refer these issues to JPD to handle. This program is provided through a private contract administered by the Downtown Business Association. **\$56,300**

Docks and Facilities Operations

Project Description

The Docks and Harbors Board has requested funding to offset the costs and impacts of providing area wide services and support to cruise ship passengers. The Board reviewed its budget and apportioned expenses associated with those services and estimated that approximately 9% of the annual docks budget, approximately \$1,711,677 in FY13, will be attributed to providing areawide service to cruise ship passengers. **\$154,000**

Port-Customs Building Maintenance

Project Description

The Port-Customs building will be occupied by the Department of Homeland Security-Customs Border Protection year-round and Docks and Harbors staff from April through October. Funding for this project also includes support for the new Visitors Center, which will be managed by the Juneau Convention and Visitors Bureau. Docks and Harbors will be responsible for the year-round maintenance and operation of the facility, which includes all utilities, alarm monitoring, winter snow removal, janitorial, maintenance of the parking lot, and general maintenance of the facility. **\$133,500**

CAPITAL PROJECTS

Cruise Dock Cathodic Protection

Project Description

This project will provide for the replacement of a cathodic protection system, pile replacement, and sheet pile coating for the CBJ Steamship Dock. **\$500,000**

Waterfront Seawalk

Project Description

This project will provide funding to continue the design, examination of right-of-way issues, pedestrian access and safety, and construction of seawalk in accordance with the Waterfront Development Plan. Funding for construction of additional seawalk was a recommendation of the Planning Commission and was one of the top FY11 priorities of the Assembly. **\$671,810**



CCFR Ambulance Replacement

Project Description

Medic 1 is a 2003 Ford ambulance with 118,550 miles. It is scheduled for replacement this summer. It operates almost entirely as a transport vehicle for cruise ship passengers. During the 2011 summer season, it was used for 462 transports directly tied to the cruise industry compared to 485 transports for the entire year. Due to its high mileage, maintenance problems have become more frequent including fuel leaks and brake problems. This will provide partial funding for replacement of the ambulance. **\$175,000**

Security Improvements – AJ Juneau Dock, LLC

Project Description

Provide funding to complete a security guard building and enhance the dock entrance with better security signage and a more secure (higher) gate entrance similar to CBJ dock enclosures. This will complete a project that was funded last year with matching federal Port Security Grant Program funds. The building will be in place for the 2012 cruise ship season but funding was not sufficient for the entire project due to foundation requirements, the need for an additional electrical transformer, and fence replacement/repairs. **\$28,000**

Dock Entrance Atrium – AJ Juneau Dock, LLC

Project Description

This project would provide funding for the design and partial construction of a permanent covered area for cruise ship passengers, providing a focal gateway to the facility where passengers and workers would be sheltered from inclement weather. The covered area would have a historical mining theme and an outdoor warming fireplace and provide a specific location to meet traveling companions or groups as well as receive local and tour information. Currently, this area is covered by an inadequate canvas tent that is due for replacement this year. The concept is to create an aesthetic park-type atmosphere outside the restricted dock area for interpretive and historical information with features that complement the AJ/Juneau mining heritage and Juneau's natural beauty. This area will remain open for community use year-round. **\$170,190**

Tour and Information Kiosk – AJ Juneau Dock, LLC

Project Description

The initial planning, design, and purchase of one kiosk was funded last year. This will be the second and final phase to complete this project. The cost is to purchase and install a second kiosk. **\$35,000**



Security – Franklin Dock Enterprises, LLC

Project Description

Provide funding for the purchase and installation of a weather transmitter station, which allows ships to login and access real time weather conditions in the Juneau harbor. This will increase the safety of harbor operations as ships can know, well in advance, if a tug is required due to wind speed at the dock. **\$2,000**

Security Gates – Franklin Dock Enterprises, LLC

Project Description

Provide funding to construct an addition to the approach dock awning that will connect the secure area to the public access area, thus creating one continuous covered walkway to provide shelter for passengers and pedestrians utilizing the public and private thoroughfare at the dock and staging area. **\$83,000**

Security Training – Franklin Dock Enterprises, LLC

Project Description

This will provide training for security personnel to ensure compliance with the required Coast Guard security plan and for security costs during the season, as well as construction of a new booth for security personnel. **\$55,000**

Retaining Wall Repairs and Improvements – Franklin Dock Enterprises, LLC

Project Description

This project was funded last year. The project involved rebuilding the retaining wall from the dock entrance south to the edge of the pavement to combat subsidence and slope failure. Additional funds are needed to cover a funding shortfall with the project. **\$25,000**

Security Camera System – Franklin Dock Enterprises, LLC

Project Description

This will provide funding to upgrade the existing security camera system in order to provide better coverage along the dock, passenger, and public access areas. **\$10,000**

AJ and Franklin Dock Projects - FY13 Requests
as of March 22, 2012

| | <u>AJ Dock</u> | <u>Franklin Dock</u> |
|---|-------------------|----------------------|
| 1 Restroom cleaning and maintenance | \$ 20,000 | \$ 12,000 |
| 2 Manning and maintenance of port security boat | 19,600 | - |
| 3 Port security training | 44,000 | 55,000 |
| 4 Security improvements | 28,000 | - |
| 5 Dock entrance atrium | 170,200 | - |
| 6 Tour and information kiosk | 35,000 | - |
| 7 Weather transmitter station | - | 2,000 |
| 8 Approach dock awning | | 83,000 |
| 9 Security camera system | | 10,000 |
| 10 Retaining wall improvements | - | 25,000 |
| Totals | \$ 316,800 | \$ 187,000 |

AJ and Franklin Dock Projects - FY12

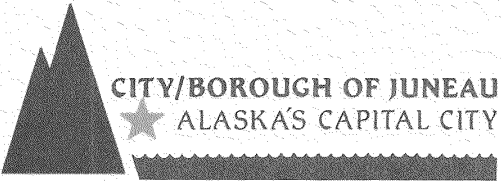
updated after actions at the April 27, 2011 Special Assembly meeting with changes approved during FY12

| | | <u>AJ Dock</u> | <u>Franklin Dock</u> |
|---------------|---|--------------------------|--------------------------|
| 1 | Restroom cleaning and maintenance | \$ 20,000 | \$ 8,000 |
| 2 | Manning and maintenance of port security boat | 19,600 | - |
| 3 | Port security training | 44,000 | - |
| 4 | Install security gates | 48,000 | - |
| 5 | Security personnel training and new security tent | - | 35,000 |
| 6 | Replace canvas covering for entrance/staging area | 10,000 | 20,000 |
| 7 | Provide cover for passenger waiting area | - | - |
| 8 | Redesign the covered pedestrian ramp | 48,000 | - |
| 9 | Planning and design of 2 information kiosks | 32,000 | - |
| 10 | Cathodic protection | 160,400 | - |
| 11 | Partial funding for gray water connection | 318,000 | - |
| 12 | Dock resurfacing | - | 40,000 |
| 13 | Corrosion control | - | 60,000 |
| 14 | Retaining wall improvements | - | 150,000 |
| 15 | Pave parking area behind restrooms | - | 45,000 |
| 16 | Analysis of new floating dock | - | - |
| 17 | Approach Dock | - | 142,000 |
| Totals | | <u>\$ 700,000</u> | <u>\$ 500,000</u> |

Notes:

11 Original requested amount was \$218,000.

16 Original requested amount was \$100,000.



OFFICE OF THE MANAGER
Telephone: (907) 586-5240; Fax: (907) 586-5385
Rod_Swope@ci.juneau.ak.us

February 13, 2012

Mr. Reed Stoops
Franklin Dock Enterprises
350 N. Franklin Street, Suite 2
Juneau, Alaska 99801

Dear Reed:

In response to your request of January 19, 2012, the Assembly has approved re-appropriating \$142,000 in Marine Passenger Fee proceeds, approved by the Finance Committee last year, for the Franklin Dock. The specific projects approved last year, which you identified as being complete (closed out) and having funds left over, are as follows:

| | | |
|---------------------------------|------------------|------------------------|
| Restroom cleaning | \$ 12,000 | |
| Security/dock tent structure | \$ 65,000 | |
| Staging area canvas replacement | \$ 10,000 | |
| Covered area on main deck | \$ 25,000 | |
| Paving project in staging area | <u>\$ 30,000</u> | |
| | \$142,000 | total unexpended funds |

Per your request, these unexpended funds can be used as partial funding for the addition to the approach-covered walkway. Use of these funds will reduce your FY13 request for this project to \$43,000, and your overall request for FY13 funding by \$142,000.

Sincerely,

Rod Swope
City & Borough Manager

cc: Kirby Day, Princess Cruises

Public Comment: None.

Assembly Action:

MOTION, by Sanford, to refer Ordinance 2011-11 to the Finance Committee for further review.
Hearing no objection, it was so ordered.

C. Ordinance 2011-12

An Ordinance Establishing The Rate Of Levy For Property Taxes For Calendar Year 2011 For The Budget For Fiscal Year 2012.

Administrative Report: Attached. The manager recommended the Assembly refer Ordinance 2011-12 to the Finance Committee for further review.

Public Comment: None.

Assembly Action:

MOTION, by Crane, to refer Ordinance 2011-12 to the Finance Committee for further review.
Hearing no objection, it was so ordered.

Removed from the consent agenda:

Resolution 2571(b)

A Resolution Adopting the City and Borough Capital Improvement Program for Fiscal Years 2012 Through 2017, and Establishing the Capital Improvement Project Priorities for Fiscal Year 2012.

Administrative Report: Attached. The manager recommended the Assembly adoption of Resolution 2571(b). Mayor Botelho said there are two related issues, the overall CIP, which includes money related to Marine Passenger Fees in terms of projects. As a consequence, he recommended the Assembly suspend the rules once the motion is before the Assembly, to move by exception, that is, to focus only on those projects for which there are questions or disagreement.

Public Comment:

Reed Stoops spoke on behalf of Franklin Dock Enterprises on the Marine Passenger Fee CIP projects and distributed a memo to the Assembly. Mr. Stoops referred to Mayor Botelho's memorandum on the history of Port Development Fees and Marine Passenger Fee. The evolution of Port Dues between 1989 and the present were outlined in the Mayor's memo, but it did not reflect some of the early discussions regarding the Steamship/Marine Wharf project and funding sources. There was concern that the project was to construct a staging area for the public docks, and the private docks had their own staging areas and it did not seem appropriate to collect from the ships docking at the private docks to pay for that project. The Port Dues were used for this project, and when the resolution was renewed, the dues were increased at the public and private docks each time, and the last resolution did not have a specific project, but just referred to the "Waterfront Plan."

Mr. Stoops said he provided the Assembly with a memorandum in December 2010 which had more legal cases cited than in Mayor Botelho's memo, some of which reach a contrary conclusion, and he encouraged the Assembly to re-read his memo.

Mr. Stoops said the Franklin Dock is open to public access, including the staging area to the point of the security tent on the approach dock. There is an adjacent public parking lot at the Miner's Cove area and the public can use the staging area parking lot to pick up or drop off a passenger. The restrooms, waiting area, and phone booths are public. He assumed the public would not have access to the floats when ships were in port, same as the proposed city floating docks.

Mr. Stoops said several of the projects for which the Franklin Dock had requested Marine Passenger Fees are not covered in their agreement with the cruise companies, and passenger fees are an appropriate means to pay for the passenger amenities, similar to what is done on municipally-owned facilities. CBJ granted funds to the AJ Dock in the previous year's CIP for maintenance items.

Mr. Stoops said he wanted to clarify that Franklin Dock Enterprises has not proposed a navigational hazard study, but has considered a study on adding a floating dock to the fixed Franklin Dock. The city owns the tidelands where a floating dock would be constructed and Franklin Dock would never propose that it be built with Marine Passenger Fees, at least for the Franklin Dock's benefit. If the project was feasible it would need to be done in some kind of partnership with the city, a leaseback to the city or sold to the city, there were many options. He was willing to look at this project as a benefit to the entire harbor.

Mr. Stoops said legal constraints of Marine Passenger Fees and Port Dues include fees being based on a fair approximation of the use of the facilities and they are to be used solely to pay for the cost of service to the vessel or watercraft. There has been \$17 million collected from ships at the private docks and a small fraction of that expended at either of the private docks. Given that future revenues will be spent on one public project, there needs to be some balance.

Mr. Dybdahl asked about Mr. Stoops' statement that a floating dock at the Franklin Dock would eliminate a hazard to navigation. Mr. Stoops said that a previous navigation study indicated that in high winds, depending on which ships are docked at the new city floating dock, it is likely that a tug assist would be required at the Franklin Dock. It will be useable, but not ideal. He said if you look at the waterfront as a whole, regardless of who owns the facilities, the optimum facilities would be four floating docks, and this would eliminate the hazard to navigation. Their tariff could never justify doing this project on their own. They are open to doing this through a manner that meets the public benefit test, and this is just an idea at this point.

Mr. Doll said the private docks are a "for profit" organization. He asked for the logic to justify the use of public funds for private benefit of the owners of the docks. Mr. Stoops said the fees are different from property taxes or sales taxes, which would clearly be inappropriate to be used for private circumstances. The passenger fees have specific federal and state constraints attached to them. The city cannot use them for any purpose, but is restricted to specific purposes. Those uses clearly apply at a private dock as well as at a public dock. Regarding the projects they have mentioned, they have to comply with the specified purpose. The covered shelter on the dock is a specific benefit to the passenger and if one of the cruise companies built it, we would not get a higher tariff, so it is not a benefit to our company, but that is why

he identified it as one of the projects that would qualify for use of the passenger fees. Dock resurfacing is a matter of passenger safety. If we do it we have to continue to charge fees high enough to do so, but it becomes difficult because the city takes those fees to do similar work. In the past few years, the Assembly has approved funds for the AJ dock and there were no objections. Use of the fees for maintenance reduces dock fees to make the port attractive overall.

Mr. Anderson asked about the cost of docking at the private docks vs. the public docks. Mr. Stoops said he did not know the charges at the AJ dock, and the Princess dock charges are a private contract, but he could say that his dock fee was more than the city's and the AJ dock was even higher. The city has not adopted a policy of paying for a dock with revenue bonds and having those revenue bonds paid for by dock fees. Instead, it is taking Marine Passenger Fees and paying for the dock and because of this, it is not charging anywhere close to what the market value would be. The city has the power to do this and it may be in the public interest, but it creates a problem. When you need a new dock, in the past we could build it and charge enough to pay for the debt because the city was charging more for its dock. It makes it hard to build the next dock unless it is going to be a city facility.

Mayor Botelho asked if this would be a situation in which the use of an actual tonnage fee that is market based would have the effect of equalizing. Mr. Stoops said that would be a more economically rational system, and he thought the city at one time had proposed doing that. If the city operated more like the private sector, it would build a dock and pay for revenue bonds just like the private entities borrow money and repay it with fees from the ships. If you wanted to attract more ships, you would not be charging so much in taxes because you would be recouping your funds in that way and he felt that was a preferable system.

Drew Green, Port Manager for Cruise Line Agencies of Alaska, an Alaskan company that assists the cruise lines with Alaskan port services, including dock space, gangways, tugs, etc. The cruise lines look to them for the costs and we advise about port tariff changes. He wants to be able to ensure to their customers that the costs are not excessive, are reasonable, and appropriately used. He thought it was better to spread the costs over a longer period of time. He noted the laws regarding taxing tonnage had to be fair and equitable, used to pay the cost of service to the vessel and enhance the safety and efficiency of commerce and did not impose more than a small burden. For private docks operating in good faith, how did this burden affect their facility – was it more than a small burden or was it undue? Did it enhance or reduce interstate commerce? He appreciated the work of Mayor Botelho and the city attorneys to explain this. Of the annual \$12 million estimated collection of state and community fees there are arguably infrastructure projects near the private docks for which the funds could be used.

Mr. Dybdahl asked if he heard from his clients about their impressions of the community as a whole. Mr. Green said they are hearing more positive comments over time as there have been improvements. There were some issues with the older piers, but now there are better docks, roads and overall improvements, but the costs have grown exponentially. The taste for the cruise lines in Alaska has been a little rough recently, and we need to be aware.

Chip Thoma, President of Responsible Cruising in Alaska, said over the past four years he has researched the booking, prices of tickets, the taxes, fees, and other charges that are charged by the cruise lines that come to Alaska. In the last two years, the price of tickets has risen 35%. That is a minimum average of \$400 per ticket for every passenger who comes to Alaska. Part

of that ticket, distinguished separately, is taxes and fees. Taxes amount to only the taxes charged by the municipalities and the state and that amounts to \$40. There is another \$40 that goes to fees, and those go to the private docks. That is something that is never discussed, the extra \$40 million that goes to the private docks for docking and services at those docks. That is \$80 million a year that comes in taxes and fees. And there is a third category called gratuities at \$80 per passenger, which goes supposedly to each steward in a cabin. But the reality is, there is enough money there to pay the entire compliment of people who work on the ships. There is so much money that is not being disclosed to the Assembly.

Mr. Anderson asked what correlation he was making. Mr. Thoma said that underlying other public testimony is the “rough time” the cruise industry is going through, but he said there is no “rough time.” There is plenty of revenue to pay the private docks but the companies are squeezing them.

Mr. Anderson asked if Mr. Thoma had a different understanding than Mr. Stoops regarding the private docks using docking fees to pay for construction of their docks, and the public docks having access to the passenger fees to do so. Mr. Thoma said yes, the city had paid for the \$3 million electrical hookup at the Franklin Dock, had done extensive roadwork to both the Franklin and AJ Docks and utilities and other development, which are keys to their proper operations. He said if the public could benefit from the improvements, that is a satisfactory use of the fees, however, if there were no public benefit, then that should not happen.

Assembly Action:

Mayor Botelho asked for a motion on Resolution 2571(b), and suggested the Assembly suspend the rules to dispose of any non-port related CIP project and discuss that, and he had asked the Manager to distribute a list of marine passenger proceed projects, capitol or otherwise and those that did not make the list, and he asked the Assemblymembers to note those which they wanted to discuss, and the Assembly would go through them and act on specific items.

Mr. Anderson asked about the revenue source and Mayor Botelho said it would only be the Marine Passenger Fee.

MOTION, by Sanford, to discuss Resolution 2571(b). Hearing no objection to suspending the rules, Mayor Botelho asked if there was any project, other than a project related to Marine Passenger Fee priorities, to discuss.

Ms. Danner asked about the changes made to Resolution 2571(b). Mr. Swope said that on page 4, the amount for the Seawalk was adjusted upward by \$1,000 due to a mathematical error. The FY12 Port Development Fee priority has been added as a result of the discussion at the COW with regard to Project 16b, and the State Marine Passenger Fee priority has been added as well, for the same reason, regarding Project 16b.

The Assembly recessed from 6:30 – 6:40 p.m. to review a handout from the city manager, titled “List of Proposed Marine Passenger Fee projects” dated April 22, 2011.

Mayor Botelho reviewed the list of Capital Projects with Assemblymembers and determined that there was no objection to the list as presented, with the exception of items identified as:

- 21. Cathodic protection of the AJ Dock, \$160,400;
- 23. Installation of security gates at the AJ Dock, \$48,000;
- 25. Planning and design of two information kiosks at the AJ Dock, \$32,000;
- 29. Corrosion control at the Franklin Dock, \$60,000;
- 30. Retaining wall improvements at the Franklin Dock, \$150,000;
- 33. Analysis of new floating dock to replace the existing Franklin Dock, \$100,000; and
- 34. Provide a cover for the passenger waiting area on the main Franklin Dock, \$25,000.

Mr. Doll said that items 21, 29, 30, and 33, did not meet his test of relating to passenger safety and positive experience, and they should be in the private docks long-range planning and should not be funded in the amount of \$470,000.

Ms. Danner said that each project needed to be related to the health, safety, efficiency or movement of passengers and the long-term benefit of the passengers that pay the fee. She said it was appropriate for the private docks to put forward projects for the funds but the Assembly needed to provide them with guidance regarding which projects the Assembly would consider.

Ms. Becker said she had no problem with today's passengers paying for projects, which increased the safety of passengers now and/or future passengers. The docks need to be safe.

Mayor Botelho asked for a roll call to delete the listed item 21, Cathodic protection of the AJ Dock, \$160,400.

Aye: Danner, Doll.

Nay: Anderson, Becker, Crane, Dybdahl, Sanford, Botelho.

Motion failed, 2 ayes, 6 nays.

Mayor Botelho asked for a roll call to delete the listed item 23, Installation of security gates at the AJ Dock, \$48,000.

Aye: Danner, Doll

Nay: Anderson, Becker, Crane, Dybdahl, Sanford, Botelho

Motion failed, 2 ayes, 6 nays.

Mayor Botelho asked for a roll call to delete the listed item 25. Planning and design of two information kiosks at the AJ Dock, \$32,000.

Aye: Danner, Doll

Nay: Anderson, Becker, Crane, Dybdahl, Sanford, Botelho

Motion failed, 2 ayes, 6 nays.

Mayor Botelho asked for a roll call to delete the listed item 29. Corrosion control at the Franklin Dock, \$60,000.

Aye: Danner, Doll

Nay: Anderson, Becker, Crane, Dybdahl, Sanford, Botelho

Motion failed, 2 ayes, 6 nays.

Mayor Botelho asked for a roll call to delete the listed item 30. Retaining wall improvements at the Franklin Dock, \$150,000.

Aye: Danner, Doll

Nay: Anderson, Becker, Crane, Dybdahl, Sanford, Botelho

Motion failed, 2 ayes, 6 nays.

Mayor Botelho asked for a roll call to delete the listed item 33. Analysis of new floating dock to replace the existing Franklin Dock, \$100,000.

Aye: Anderson, Becker, Crane, Danner, Doll, Dybdahl

Nay: Sanford, Botelho

Motion passed, 6 ayes, 2 nays.

Mayor Botelho asked for a roll call to delete the listed item 34. Provide a cover for the passenger waiting area on the main Franklin Dock, \$25,000.

Aye:

Nay: Anderson, Becker, Crane, Danner, Doll, Dybdahl, Sanford, Botelho

Motion failed, 0 ayes, 8 nays.

Mayor Botelho reviewed the list of Operations with Assemblymembers and determined that there was no objection to the list as presented, with the exception of item 10. Additional Summer Transit Bus Service, \$278,000.

Mr. Anderson said he was interested in seeing an extension of Capital Transit to the AJ Dock into town as a benefit to the visitors and downtown businesses and asked Mr. Swope what was needed to make such a decision. Mr. Swope said the Downtown Business Association (DBA) had an outside consultant study this issue, and a circulator system with 15 minutes service stopping at all dock locations and moving about town was recommended. \$600,000 was estimated for purchase of the vehicle. These were hybrid buses, not all electric, which were his preference. To get this project going, funding was needed to obtain the buses. It would fit nicely with the new Transit Center for servicing the buses.

Mr. Anderson asked if this system were instituted, would it reduce the funding needed for transit in the downtown area. Mr. Swope said no. The largest impact upon the present bus system by the tourism industry was the local buses filling with tourists wanting to go to the glacier in the summer.

Mr. Dybdahl said there was also some discussion of a downtown walking mall area and he asked how this fit into the discussion of a downtown circulator. Mayor Botelho said the DBA has discussed this and he plans to meet with Larry Spencer soon to get more information.

Mr. Anderson said he had asked to remove this item for discussion only, not to vote to delete it from the list.

The Assembly recessed from 7:10 – 7:15 p.m.

Mayor Botelho said that with the deletion of the analysis of new floating dock to replace the existing Franklin Dock from the Marine Passenger Fee expenditures, there was \$100,000 available to another project.

Mr. Sanford suggested adding the \$100,000 of unallocated passenger fees to the Centennial Hall roof account.

Mr. Anderson suggested adding a CIP for a downtown circulator.

Ms. Becker suggested adding a CIP for a covered passenger waiting area on the Franklin Dock, which was estimated at \$35,000.

Mr. Dybdahl suggested adding the \$100,000 to the CIP for grey water connection and CBJ lift station improvements at the AJ Dock as it is a revenue generator for the CBJ and it also benefits the cruise ships schedule, which may allow more time in port.

Mayor Botelho gave each Assemblymember two votes, to be used to narrow the list down from the Centennial Hall Roof, the Circulator Bus; the Franklin Dock covered passenger area and the AJ gray water connection. Hearing no objection, the result of the tally was a decision to add \$100,000 to the Capital Projects - gray water connection at the AJ Dock.

Mayor Botelho said that 2012 Marine Passenger Fee priorities reflect a total of \$700,000 to the AJ Juneau Dock LLC and \$500,000 to the Franklin Dock Enterprises, on page four of Resolution 2571(b).

Mayor Botelho asked for any further objection to the expenditures outlined in Resolution 2571(b). Hearing none, Resolution 2571(b) was adopted.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None.

VI. EXECUTIVE SESSION – None.

VII. ADJOURNMENT – 7:25 p.m.

Signed: _____
Laurie Sica, Municipal Clerk

Signed: _____
Bruce Botelho, Mayor

MEMORANDUM

CITY/BOROUGH OF JUNEAU
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Voice (907) 586-5240
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DATE: April 25, 2011
TO: Borough Assembly
FROM: Bruce Botelho, Mayor *Bob*
SUBJECT: Marine Passenger Fees and Port Development Fees [REVISED]

During the course of the last months the assembly and its finance committee have discussed whether and how we should make use of monies received from cruise ship passengers. Recently, challenges to some proposed expenditures have been offered by members of the public and these, rightly, should be openly and forthrightly addressed.

In advance of this Wednesday's consideration of the CIP budget for FY 2012, I thought it might be helpful to review the fee structures we have in place, their historical context and my understanding of the applicable law. I do so in recognition that my remaining time on the assembly is limited and that I am the only member who participated in the early development of our fee structures.

Historic cruising

Cruise ship tourism of one sort or another has been part of Southeast Alaska's history for generations, frequently regarded as beginning with John Muir's 1879 visit, immediately before the discovery of gold in what became the Juneau Mining District.

Throughout the first half of the Twentieth Century, tourists travelled to Alaska primarily on vessels of the Alaska Steamship and Canadian Pacific steamship boats. By the mid-1960's, these companies had been supplanted by air travel and the Alaska Marine Highway system.

The first cruise ships in numbers returned to Juneau in the late 1970's and, by 1982, the annual number of passengers had risen to 80,000. Juneau consciously focused on this potential market in the aftermath of a 1982 vote on a bond issue to finance the relocation of the capital. The city recognized the need to diversify and cruise ship tourism offered one attractive alternative. On its own, Juneau undertook the establishment of a

downtown historic district and extensive reconstruction of streets and sidewalks, hoping that these improvements would attract more cruise lines to call on Juneau.¹

Whether by coincidence or not, the cruise industry did expand its presence in Juneau and by the late 1980's the annual number of cruise passengers exceeded 200,000.

1990 Enactment of a port dues structure

As mayor in January 1989, I requested the assembly adopt an ordinance imposing a \$5 marine passenger fee on each cruise ship passenger arriving in Juneau. Juneau's docks were old and could not sustain the volume of ship traffic, consisting of vessels five to ten times the size of those the docks had been built for. Revenue sharing and capital projects from the state to municipalities had fallen sharply since the 1985 recession. The burden of infrastructure development needed to be shifted to the industry that benefited from it.

The cruise industry opposed the imposition of a fee. However, over the course of the next thirteen months, hearings and negotiations between industry representatives and the city took place. And, in February 1990, (over industry opposition) the assembly unanimously enacted a "port dues" ordinance, Ord. 89-52. In the ordinance, the assembly made several findings, among them, that "the establishment of port dues is necessary and appropriate in order to fund capital acquisitions and improvements to the city and borough's port facilities for the use and benefit of the cruise ship industry."

The port dues structure assessed vessels based on their tonnage, with the receipts used to finance specific dock improvements proposed in a General Obligation bond package approved by the voters in 1991. The rate began at \$.05 a ton and was readjusted annually.²

The Marine Passenger fee

In 1999, City and Borough of Juneau voters passed Proposition 1, assessing a fee of \$5 per cruise ship passenger. The proposition, embodied in CBJ 69.20, directed that the fees be placed in a marine passenger fund, from which appropriations were to be made to "address the impacts caused by the marine passenger ship industry." Permissible expenditures included:

- (1) Design, construction, operation, or maintenance of capital improvements to relieve impacts of marine passenger ships and marine passengers;

¹ In addition, between 1978 and 1988 the city invested \$9.619 million in waterfront projects.

² Two other features of the ordinance are noteworthy. The first was creation of a port development plan that served as the basis for the 1991 GO bond issue. The second was the creation of a port advisory committee whose primary responsibility was to comment on the port development plan and adjustments to all port fees.

- (2) Operating funds for personnel, training, commodities, rentals, services and equipment for services provided, made available to, or required as a result of marine passenger ships and marine passengers;
- (3) Projects and programs that promote safety, environmental improvements, or enforcement of laws caused or required by marine passenger ships and marine passengers;
- (4) Acquisition of land required to execute the activities listed in this section;
- (5) Beautification and enhancement of the facilities listed in subsections (a)(1)—(a)(4) of this section;
- (6) Surveys, analyses, polls, plans, monitoring, and similar efforts to measure, describe or predict, or manage the impacts of marine passenger ships and marine passengers, for items listed in subsections (a)(1)—(a)(5) of this section.

In 2008, the Assembly amended the ordinance's process for soliciting and deciding projects, but did not alter the list of permissible expenditures. Ord. 2008-07.

The Port Development fee

In January 2002, the port dues ordinance, Ord. 89-52, expired. In April 2002, the assembly adopted Res. 2150, "a Resolution Imposing Port Dues on Vessels Carrying Passengers for Hire." In doing so, the assembly determined that "it is appropriate to implement a replacement that assures better planning, improved community and business partnerships, and the development of broadly supported waterfront improvements".

Despite the title of the resolution, the fee was to be denominated a "port development fee". The initial rate was \$1.73 per passenger. Monies were to be used to partially fund Phase I of the Steamship Wharf/Marine Park project, a comprehensive waterfront plan "addressing the area from the Douglas Bridge to the Little Rock Dump", and a feasibility study and preliminary design of a dock extension. The fee was to be collected through December 31, 2005.

The port development fee was the subject of several subsequent resolutions:

- (1) Resolution 2163 (July 2, 2002), which, for the first time, differentiated between CBJ owned facilities and private facilities, charging 18 cents per arriving passenger for all vessels and an additional \$2.00 on those arriving at CBJ owned facilities;
- (2) Resolution 2294b am (March 14, 2005), which increased the fee on all arriving passengers to \$1.18 and an additional \$2.00 on passengers arriving at CBJ owned facilities. In addition to projects addressed in Res. 2150, Res. 2294b directed funds to implement waterfront development projects identified in the then-recently-adopted Long-Range Waterfront

Plan. The assembly specifically found that the primary user of the downtown waterfront facilities was the cruise line industry and that the safety and efficiency of interstate and foreign commerce would be enhanced by planning, designing, and constructing facilities outlined in the plan;³

- (3) Resolution 2423(b) am (January 7, 2008), which set the port development fee at \$3.00 for all arriving passengers and extended it until January 2011; and
- (4) Resolution 2552 (November 29, 2010), which repealed the sunset provision.

Other topics bearing on Marine Passenger and Port Development fees

a. State Commercial Passenger Vessel Excise Tax (CPV)

In August 2006, a voter-approved initiative established the commercial passenger vessel excise tax, popularly known as a “head tax”; of \$50 per person disembarking from cruise ships in an Alaska port. Monies were placed into the CPV tax account and were then appropriated annually by the legislature under a formula set forth in the initiative. The initiative’s findings included a determination that “the State of Alaska and local governments. . . incur significant costs related to health, safety and other social activities and obligations. These passengers should also contribute their fair share to the costs of the general government of the State of Alaska. . .”

At Governor Parnell’s urging, the legislature modified the CPV in the 2010 session, effectively reducing the tax to \$34.50 per passenger. Two features were of specific benefit to the City and Borough of Juneau. First, it would receive \$5 per passenger. Second, doing so would not be conditioned on repeal of its own marine passenger fee or port development fee.

b. The Long Range Waterfront Plan

As I noted above, one of the uses of the port development fee was to be the completion of a long-range waterfront development plan. After two years of public hearings and preliminary work, the assembly adopted its plan in November 2004 (Ordinance 2004-40). The plan, with a 20-year horizon, embodied the assembly’s systematic approach to development of the Port of Juneau.⁴ Among its “key organizing elements and themes” were “cruise facility growth” and “expanded transportation mode choice”.

³ Ord. 2005-02 (imposing market rate port dues on vessels carrying passengers for compensation) was adopted at the same time. It authorized a port tonnage fee on vessels calling at the Port of Juneau, but it has not been implemented.

⁴ The Port of Juneau encompasses those facilities located on the downtown waterfront, including the ferry terminal and lightering docks, which are not included under the term “boat harbor” and which are used for commercial purposes related to marine shipping, transportation, and tourism. CBJ 85.05.010

The plan specifically contemplates the reconstruction of CBJ's docks to accommodate two, 1,000 foot cruise vessels, sets forth considerations for additional berthing, and identifies alternatives near Gold Creek to achieve that result.

c. Expenditures from the two city fee structures

Over the course of the period 1990 – 2008 there was another nearly five-fold increase in the number of passengers arriving in Juneau.⁵ The volume of visitors and the size of the vessels calling on Juneau both brought major challenges and opportunities to Juneau. Floatplane and, later helicopter, operations, crowding of pedestrians on Juneau streets, bus congestion, air and water quality, and adequacy of docks were all issues successive assemblies have tried to address responsibly.

The fees have been essential in building and maintaining basic infrastructure for nearly one-million visitors who arrive by cruise ship into the Port of Juneau each year and in partially off-setting the impact of these visitors on municipal government services.

Not including the initial port dues regime, the CBJ has expended \$14,776,800 in port development fees on port infrastructure maintenance and construction. The CBJ has expended an additional \$22,239,000 on Port of Juneau capital projects from marine passenger proceeds.⁶

Applicable Legal Standards

From the outset, successive assemblies have been conscious of, and conscientious about, complying with federal, state and local laws respecting use of the monies collected from port dues, port development and marine passenger fees. Nevertheless, our application of these standards has evolved, becoming increasingly sophisticated because of greater awareness on the part of assembly members, vigilance by city management and the public and constantly developing case law. This iterative process will continue.⁷

What we all know is that, in addition to complying with our own ordinances, each proposed expenditure must satisfy every federal and state standard in order to be lawful. Here is my cursory outline of these standards, along with my thoughts on their application:

a. Federal constitutional constraints

⁵ The number of passengers arriving in Juneau declined after that point from a high in 2008 of 969,354 visitors, 962,573 in 2009, and 825,916 in 2010 to an anticipated 816,188 visitors this summer, attributed variously to a national recession and to the imposition of the statewide passenger fee discussed above.

⁶ Approximately \$30 million has been expended on "operations" which has ranged from general support (\$14,063,900), shoreside power (\$3 million), to the seasonal EMS Transport program (\$480,000) and crossing guards (\$991,000).

⁷ I will have recommendations to make in this regard later this year.

The “dormant” Commerce Clause. The United States Constitution authorizes Congress to regulate “Commerce with foreign Nations, and among the several States, and with the Indian Tribes”. Art. I, sec. 8, cl. 3 U.S. Const. This explicit grant of authority to Congress has a converse implicit prohibition known as the “dormant” Commerce Clause which bars states from passing legislation that improperly burdens or discriminates against interstate commerce, even when there is no conflicting federal statute.

The United States Supreme Court has established a three-pronged test to determine whether a state (or local) fee imposed on interstate commerce to pay for facilities used in part by those engaged in interstate commerce is “reasonable” [constitutional]. It is permissible only if it

- (1) is based on some fair approximation of use of the facilities,
- (2) is not excessive in relation to the benefits conferred, and
- (3) does not discriminate against interstate commerce.

Northwest Airlines, Inc. v. County of Kent, 510 U.S. 355, at 369 (1994).

The Tonnage Clause. Article I, section 10 of the United States Constitution declares that “[n]o State shall, without the Consent of Congress, lay any Duty of Tonnage.” The Supreme Court has interpreted the clause to apply to “all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port.” *Clyde Mallory Lines v. Alabama ex rel. State Docks Comm’n*, 296 U.S. 261, at 265-66 (1935).

Two years ago, the Supreme Court was presented with a challenge to the City of Valdez’s imposition of a property tax on large vessels docking at its ports. While striking down the tax, the Court noted: “. . . [N]othing in the history of the adoption of the Clause, the purpose of the Clause, or this Court’s interpretation of the Clause suggests that it operates as a ban on *any and all* taxes which fall on vessels that use a State’s port, harbor, or other waterways.” *Polar Tankers Inc. v. City of Valdez, Alaska*, 129 S.Ct. 2277, at 2283 (2009).

Most pernicious about the tax, not an issue with respect to our own fees, was that it was intended to raise money for general municipal services, it was uniquely targeted at large vessels rather than to any other form of non-affixed personal property, and it was not related to services provided to the vessel.

b. Federal statutory constraints

Language in the Maritime Transportation Security Act of 2002 amended 33 U.S.C. 5 by adding a new subsection (b) that provides in pertinent part:

No taxes, tolls, operating charges, fees . . . shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew . . . except for . . . reasonable fees charged on a fair and equitable basis that - (A) are used solely to pay the cost of a service to the vessel or water craft; (B) enhance the safety and efficiency of interstate and foreign commerce; and (C) do not impose more than a small burden on interstate or foreign commerce.

In *State v. Alaska Riverways, Inc.*, 232 P.3d 1203, 1222 (Alaska 2010), the Alaska Supreme Court noted that this section was a codification of the common law concerning the constitutional constraints discussed above.

What is the service we provide? It is rendering the Port of Juneau able to receive passenger ships of current and anticipated capacity into its harbor, permit their passengers and crew to cross our docks, and enter the community, whether on foot, by water taxi or motorized terrestrial vehicle, safely and efficiently. And, when I refer to “our docks”, I mean to include those that have been privately developed. Our responsibility to passengers and crew who visit Juneau does not end at a property line. On the other hand, how and in what manner that responsibility is fulfilled will vary, based in part on the ownership of any specific facility within the Port of Juneau.

It is my view of the service we provide that makes me uncomfortable with expenditures outside of the Port of Juneau. For that reason, I have been particularly wary of the use of marine passenger fees for the airport. Use of funds for Statter Harbor presents a much closer question for me, even though it is geographically more remote from the Port of Juneau than the airport. It is because the facilities that are proposed to be constructed are almost exclusively for the use and benefit of marine passengers who disembark in the Port. A court could conclude that it is an appropriate expenditure.

c. State constitutional constraints

Public Purpose Requirement. Article IX, section 6 of the Alaska Constitution reads:

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

This provision enters our discussion because of proposed expenditures to dock facilities that are privately owned. The Alaska Supreme Court has applied this provision on several occasions. A case that structurally bears some resemblance to the situation presented here is *Weber v. Kenai Peninsula Borough*, 990 P.2d 611 (Alaska 1999).

In 1993, certain property owners petitioned the borough to form a utility special assessment district to finance a gas line extension to their area. The extension was to be constructed and owned by Enstar. Once the extension was completed that year, the borough confirmed the assessment roll and set the amount each