

Exhibit 1 to Plaintiffs' Opposition

City and Borough of Juneau, Ak., Code of Ordinances Ch. 69.20, "Marine Passenger Fee," available at: https://www.municode.com/library/ak/juneau/codes/code_of_ordinances?nodeId=COLABOJUALVOII_TIT69RETA_CH69.20MAPAFE_69.20.005PUIN (last visited July 7, 2016)

Chapter 69.20 - MARINE PASSENGER FEE^[1]

Footnotes:

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Cross reference— *Boat harbor, CBJ Code § 03.30.052; waters and harbors, CBJ Code tit. 85.*

69.20.005 - Purpose and intent.

It is the purpose of the fee imposed under this chapter to address the costs to the City and Borough for services and infrastructure rendered to cruise ships and cruise ship passengers visiting the City and Borough.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2012-27, § 2, 8-13-2012)

69.20.010 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent and *authorized agent* mean the master or person in charge of the ship or any other person authorized by the owner or operator of the ship to act on behalf of the owner or operator with respect to the ship.

Crewmember means a person providing services on a ship as a full-time employee of the owner or operator of the ship.

Entry into any port means anchoring or mooring and allowing passengers to disembark.

Marine passenger and *passenger* mean any person who has paid any amount for a ticket contract entitling that person to transportation aboard the ship. The term does not include the owner's or operator's employees or their immediate family members sharing their quarters; the owner's or operator's contractors or subcontractors; or musicians, artists, guest speakers, art auctioneers, interpreters, rangers or similar persons traveling without charge but providing passenger services for the owner or operator.

Marine passenger ship and *ship* mean a vessel carrying passengers for compensation.

Passenger manifest means a document stating the total number of passengers aboard the ship at the time it enters the boundaries of the City and Borough. The owner or agent shall provide upon demand and reasonable notice by the City and Borough manifests listing the names of all

passengers aboard the ship during the entries into a City and Borough port for the period requested. The passenger manifest shall be signed, produced, delivered or electronically transmitted by an authorized agent of the owner or operator of the ship in accordance with regulations adopted by the manager pursuant to CBJ 01.60. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the ship, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The City and Borough attorney may take appropriate action against any of the parties.

Person means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

Visit means an entry into any port of the City and Borough more than 24 hours before or after another entry by the same ship, excluding visits for emergency purposes.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2012-27, § 2, 8-13-2012)

Cross reference— Definitions generally, CBJ Code § 01.15.010.

69.20.020 - Imposition of fee.

A fee of \$5.00 per passenger per visit shall be assessed for every marine passenger ship not otherwise exempted.

(Serial No. 2000-01am, § 3, 1-24-2000)

69.20.030 - Calculation of fee.

- (a) The passenger fee for each ship shall be calculated based on the passenger manifest for the ship upon entry into any port within the City and Borough.
- (b) Upon entry into any port within the City and Borough, the owner or authorized agent from each ship shall present the City and Borough port director with a passenger manifest. To the extent possible, the contents of the passenger manifest shall be held in confidence to protect the privacy interests of the individual passengers.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2012-27, § 2, 8-13-2012)

69.20.040 - Payment of fees.

The passenger fees shall be paid by the owner or agent of the ship to the City and Borough within 60 days from entry of the ship into any port within the City and Borough.

(Serial No. 2000-01am, § 3, 1-24-2000)

69.20.050 - Exemptions.

- (a) The fee shall not apply to the following:
- (1) Ships having accommodations for 20 or fewer passengers;
 - (2) Ships without berths or overnight accommodations for passengers; or
 - (3) Noncommercial ships, ships operated by nonprofit entities as determined by the United States Internal Revenue Service, or ships operated by the state, the United States of America, or a foreign government.
- (b) The burden of proving an exemption shall be on the person claiming the exemption. Persons claiming an exemption may be required to obtain an exemption certificate. Certificates issued under this chapter shall be numbered and shall expire as determined by the manager or the manager's designee.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2012-27, § 2, 8-13-2012)

69.20.060 - Procedures and forms.

- (a) The manager may by regulation adopted pursuant to chapter 01.60 adopt and amend procedures for the administration of this chapter.
- (b) The manager or the manager's designee shall take all steps necessary and appropriate to administer this chapter which includes the authority to compromise and abate penalties, and to negotiate and enter into payment plans for delinquent fees, penalties and interest.
- (c) Except as otherwise provided in this chapter, all passenger manifests obtained by the City and Borough under this chapter, shall be kept confidential and shall not be subject to public inspection. Except upon court order, such manifests shall be made available only to employees of the City and Borough whose job responsibilities are directly related to such manifests; to the person supplying such documents and information; and to persons authorized in writing by the person supplying such documents and information. The following information shall be made available to the public:
- (1) The names of ships subject to the fee, whether or not the owner is current in payment of fees;
 - (2) The total fees due; and
 - (3) The names of ships which have been issued an exemption certificate. The manager or the manager's designee may, from time to time, publish the names of ships and owners delinquent in payment of fees and the amount thereof; provided that the names of owners

or agents who have signed a confession of judgment for the delinquent fees, penalties, and interest, and a stipulation to postpone execution on the judgment, and who are current in their payments under such stipulation as of the date on which the names are submitted to the publisher, will not be published. Information may also be made available to the public in the form of statistical reports if the identity of a particular passenger is not revealed by the reports.

- (d) To the extent required by law, the manager may permit the proper officer of the United States, of a state, or other municipality to inspect manifests filed under this title, or may furnish to the officer a copy of the manifest, if the other jurisdiction grants substantially similar privileges to the City and Borough and if the City and Borough determines that the other jurisdiction provides adequate safeguards for the confidentiality of the manifests, and that the manifests will be used for government revenue purposes only.
- (e) The manager may use and release information from a manifest as reasonably necessary to respond to an emergency involving the ship which provided the manifest.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2012-27, § 2, 8-13-2012)

69.20.070 - Penalties and interest for delinquency.

The fees charged under this chapter must be paid to the City and Borough within 60 days of the port visit for which the fee is owed. Interest at a rate of 10.5 percent per year on the delinquent fee from the date of delinquency until paid shall accrue and be collected in the same manner the delinquent fee is collected.

(Serial No. 2000-01am, § 3, 1-24-2000)

69.20.080 - Fee liability period; recordkeeping.

- (a) A ship's liability for fees under this chapter may be determined and imposed for a period of three years after the visit for which the fees are owed. No civil action for the collection of such fees may be commenced after the expiration of the three-year period except an action for the fee, penalties and interest due for those visits that are the subject of a written demand or billing pursuant to section 69.20.090 within the three-year period, unless the owner waives the protection of this section.
- (b) In order to facilitate the administration and enforcement of the provisions of this chapter, each owner or agent of a ship subject to payment of a fee under this chapter shall maintain and keep for a period of three years after the date of filing all of the period passenger manifests, forms and supporting records and other records prescribed by the manager by regulation. Upon the

request of the manager, the owner or agent of a marine passenger ship shall make available for examination in the City and Borough the books, records and other documents of the ship unless the manager or the manager's designee authorizes the examination to be conducted at a different location.

(Serial No. 2000-01am, § 3, 1-24-2000)

69.20.090 - Delinquency.

- (a) Whenever the manager reasonably believes a manifest contains inaccurate information or whenever any ship has become delinquent in the submission of manifests or the payment of fees, the manager shall mail to the owner or agent's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required manifest fee payment within ten days. In the event of noncompliance with such demand, the manager may make a passenger fee billing against the delinquent ship, the billing to be based on an estimate of the passenger count during the filing period in question. A copy of the billing shall be sent to the owner or agent at the owner's or agent's last known address by certified mail, return receipt requested. The owner or agent shall have a right to a hearing before the manager at which time the owner or agent shall make available for examination the books, papers, records and other documents pertaining to the passenger count for the period involved in the billing. The owner or agent may exercise the right to a hearing by delivering to the manager within 15 days of the date the notice was mailed a written request for a hearing. The manager shall establish a date and time for a hearing to be held within 30 days of receipt of the request unless a later time is mutually agreeable. The hearing officer conducting the hearing may issue an amended billing. The amended billing, or the original billing if no amendment is made within five days of the hearing, shall be the final billing for the purpose of determining liability to the City and Borough. If no timely request for a hearing is made, the original billing shall be the final billing 30 days after the mailing of the notice of the original billing unless the owner or agent has submitted an accurate return within the 30 days.
- (b) The City and Borough may file a civil action for collection of any fees, penalty or interest due before or after making a demand or billing under subsection (a) of this section.
- (c) Whenever any owner or agent fails to submit the required manifest or pay the fees after notice given as provided in subsection (a) of this section, the manager may require such owner or agent to pay fees upon entry into the port rather than within 60 days thereof.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2012-27, § 2, 8-13-2012)

69.20.100 - Protest of fees.

An owner or agent who protests the payment of the fees charged under this chapter shall pay the fees and shall, within the time set for payment of the fees, provide the manager with a written statement of protest specifying the amount of fees paid and the basis for the protest. The manager's decision shall be final and any appeal thereof shall be to the superior court.

(Serial No. 2000-01am, § 3, 1-24-2000)

69.20.110 - Criminal liability; use of port.

- (a) Any person violating any of the provisions of this chapter or failing or refusing to comply with a lawful request or demand of the manager authorized or made under this chapter is guilty of a class A misdemeanor.
- (b) No ship delinquent in the payment of passenger fees, nor any lightering craft carrying passengers to or from such ship shall be allowed to moor at any port facility owned by the City and Borough.

(Serial No. 2000-01am, § 3, 1-24-2000)

69.20.120 - Use of proceeds.

- (a) *Purposes.* The fees collected under this chapter shall be placed in the marine passenger fund. The proceeds of the fund shall be appropriated in support of the marine passenger ship industry including:
 - (1) Design, construction, enhancement, operation, or maintenance of capital improvements;
 - (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 efficiency of interstate and international commerce, 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) Reserved;
 - (6) Surveys, analyses, polls, plans, monitoring, and similar efforts to measure, describe or predict, or manage marine passenger ships and marine passengers, for items listed in subsections (a)(1)—(a)(4) of this section.
- (b) *Procedures.*
 - (1)

Preparation of list. The manager shall annually solicit for marine passenger fee project requests. The solicitation will be posted on the CBJ website no later than December 1. The manager shall annually no later than January 1, prepare a draft list of projects and programs proposed for funding in the City and Borough budget for the following year by revenues from the passenger fee.

- (2) The draft list shall be posted on the CBJ website and forwarded to the cruise line industry and the Docks and Harbors Board no later than January 15, providing an opportunity for the public, cruise line industry, and board to review and comment on the draft list. The comment period shall close on February 15. The manager's final recommendations will be posted on the CBJ website no later than March 1.
- (3) The manager shall forward all submittals, cruise line industry comments, board comments, public comments, and the manager's final recommendations to the assembly finance committee for consideration. The finance committee will forward the final list of marine passenger fee proceeds' projects to the assembly for consideration during its deliberations on the annual City and Borough budget.
- (4) Funds shall be transferred or expended from the marine passenger fund only to the extent authorized by the assembly by ordinance.

(Serial No. 2000-01am, § 3, 1-24-2000; Serial No. 2008-07(b), § 2, 3-10-2008; Serial No. 2012-27, § 2, 8-13-2012)