

MEMORANDUM

CITY/BOROUGH OF JUNEAU
City & Borough Manager's Office
155 S. Seward St., Juneau, Alaska 99801
Rod_Swope@ci.juneau.ak.us



Voice (907) 586-5240
Fax (907) 586-5385

DATE: March 4, 2004
TO: Finance Committee
FROM: Rod Swope
City & Borough Manager
SUBJECT: FY05 Passenger Fee Proceeds

Based on our latest projections, the amount of revenue that will be available in FY05 is anticipated to be \$4,300,000. This estimate is based on information provided by the cruise ship industry that projects a 5% increase in passengers over FY04. Of that amount, \$375,800 will be used to pay a portion of the bond debt service for the Steamship Wharf/Marine Park project. The remainder has been divided up between operations and capital projects.

The Passenger Fee Committee held its first meeting on February 25th. At that meeting we invited public comment and testimony. A second meeting was held on March 3rd in which the Committee went through the list of proposed projects for funding and offered their comments and recommendations. We did reach consensus at the meeting regarding projects that should be funded and levels of funding for each project.

Ms. Susan Burke, a local attorney representing Northwest Cruise Ship Association, did address the Committee and encourage that we try to ensure that any project considered for funding with Passenger Fee Proceeds meet the criteria contained in the latest federal maritime law (copy enclosed as attachment 1 for your reference). We made every effort to do that. A summary of projects that were proposed and not funded is provided as attachment 2.

The following items are those projects identified by the Committee and approved by the City Manager to be considered for Passenger Fee funding:

Operations

General Support

Project Description

On May 10, 2000, the Assembly Finance Committee approved a formula that reflects cruise ship passenger use of general government services and is used to determine an amount of undesignated marine passenger fee (MPF) proceeds to be used in support of general government operations. As a result of ongoing concerns regarding this approach and the amount of funds being designated for this purpose, I have undertaken a review process to evaluate the impacts

Exhibit CP
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and associated costs of seasonal cruise ship passengers to general government operations. The approach being used is a common and widely accepted method for determining indirect impacts. The methodology and results of the evaluation, at my request, have been reviewed and validated by Max Mertz of Elgee Rehfeld Mertz, LLC, an independent outside accounting firm. The report was finalized last month at which time I made it available to the cruise ship industry and each Committee member. \$1,100,000

Tourism Impact Management

Project Description

This funding is an offset for additional time spent by staff in the Manager's Office on various tourism issues and projects such as flightseeing safety and noise abatement issues, waterfront planning efforts, the steamship wharf improvement project and operational/safety issues, downtown parking safety and congestion issues, citizen complaints/comments, and miscellaneous summer issues with downtown merchants and cruise ship passengers. \$68,000

Best Management Practices Support

Project Description

This provides funding for printing, public notices, advertisements, and a contractual amount for staff to provide support to the Best Management Practices (BMP) effort. BMP is a voluntary industry-managed program designed to provide service to vessel passengers and address impacts, including safety issues, of tourism on local residents. The Juneau Convention and Visitors Bureau administers the program with funding provided by MPF proceeds. \$9,000

Park Ranger

Project Description

This provides funding for a portion of a position dedicated to commercial trails. This position acts as a liaison with commercial vendors, a point of contact to Trailmix, SAGA, and other volunteer groups involved in commercial trails projects. This position also ensures the safety of visitors using trails designated for commercial use, makes sure the trails are clean and free of hazards to ensure a safe and pleasurable visitor experience, monitors illegal camping, dumping, motorized use, trail conditions, ongoing trail work, trail signs, trash receptacles, and dog use on commercially used trails. \$25,000

Crossing Guards

Project Description

This funds part-time seasonal crossing guards eight hours a day, seven days a week, during the summer. The purpose of the positions is to facilitate safe traffic flow in the downtown area, encourage pedestrians to stay on the sidewalks, increase pedestrian safety, and limit and control the locations in which pedestrians can cross the streets. This funding also provides for general training, scheduling and deploying the crossing guards. In addition, a limited amount of training will be required and provided by the Juneau Police Department to all crossing guards and their supervisors. \$83,000

Downtown Foot/Bike Patrol

Project Description

This provides additional foot and bike patrol presence by JPD officers in the downtown area during the summer. Their presence is extremely important to ensure the safety of visitors, provide assistance and direction, and mitigate problems that frequently occur between some of the regular downtown locals and summertime visitors. Most problems that occur are drug and/or alcohol related. These are usually regular police officers that volunteer for this duty in order to make some additional money during their off-duty hours. \$28,000

Downtown Restroom Maintenance

Project Description

This provides the contractual services (includes all labor and materials) required to clean the public restrooms in City Hall and the new public restrooms at the Steamship Plaza dock seven days a week, six times per day, for five months during the summer. \$60,000

Transit Bus Service

Project Description

Our local bus service is heavily used by visitors during the summer, thus making it necessary to increase bus service in order to continue accommodating locals 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. In order to do this, it has been necessary to hire additional bus drivers to allow for adequate supervision, training, and to enable employees to take leave and still maintain regular service. The cost to service and maintain the buses also increased with the additional service. The revenue from visitors does help offset the costs of additional bus service, however, our transit system is heavily subsidized and the costs of adding additional buses to accommodate summer visitors is not offset by the additional revenue we receive. \$205,000

Downtown Parking Improvements

Project Description

A considerable effort has been made to mitigate traffic congestion and protect the safety of visitors in the downtown area during the summer tourist season. In an effort to address that concern, we have reallocated parking spaces, identified new loading/unloading zones and pedestrian crossing areas, transit zones, handicap parking, and have increased parking fines. Based on this past year's experience, we will be repainting all of the curbs, redesigning the parking zones and crossing areas, and installing new parking information signs. Although the curbs and gutters will have to be repainted each summer, this work will be a one-time expense. \$48,000

JCVB

Project Description

The Juneau Convention and Visitors Bureau provides summer visitors with information, directions, and assistance. They also provide volunteers that staff the information kiosks and provide whatever information and assistance they may require. \$100,000

City Museum

Project Description

This provides funding to increase staffing at the City Museum which allows for longer hours and to be open seven days a week during the summer months, thus extending the hours for the benefit of visitors and local residents. \$60,000

LEPC

Project Description

Provides very limited general staff support of emergency management activities such as port security planning and emergency response to both minor and catastrophic incidents involving cruise ships or their passengers. \$10,000

Capital Projects

Wayfinding Plan

Project Description

This project would appropriate money to be used for consulting services to determine pedestrian traffic flow patterns and develop signage throughout the waterfront area that would be informative, provide for safety of visitors, reduce congestion, and help direct visitors to various destinations. This project would dovetail with the waterfront planning project. \$45,000

Waterfront Land Acquisition

Project Description

A fund has been established that can be used to purchase available space along the waterfront in downtown Juneau for various public uses. As the waterfront plan is fully developed and finalized, numerous opportunities and uses for this money will be identified. This fund currently contains \$1,085,000 as a result of contributions from the past three years. \$400,000

Gunakadeit Restroom/Pocket Park Improvements

Project Description

Preliminary design and engineering work has been completed for Gunakadeit Pocket Park and restroom facilities. This area is located in the center of downtown and would provide much needed restroom service to summer visitors. In addition, it may also serve as a visitor information center and location for the summer JPD bike patrol to use. \$254,800

Quiet Technology and Noise Abatement

Project Description

A fund has been established to make low interest loans available to floatplane companies operating in the downtown area. The money is available to retrofit planes with quieter turbine engines in an effort to reduce floatplane noise and traffic. The new more powerful turbine engines have also proven to be much safer than the existing engines. This fund currently contains \$510,000 as a result of a contribution from last year. \$300,000

Auke Bay Commercial Loading Facility

Project Description

This project will provide for a commercial loading facility to serve commercial fishing charters, commercial whale watching boats, other commercial fishing vessels, and regional freight transporters. When completed, the new loading facility will consist of a drive down float and a fixed moorage float with parking and material storage areas. Commercial use of the existing facilities is impacting local users from gaining access to the limited public dock loading areas. Separating commercial activities from the public access areas would also improve safety to the public users. \$348,400

ADA Passenger Boarding System

Project Description

Last year the Assembly appropriated \$10,000 to have a contractor design and evaluate the feasibility of an ADA accessible gangway for use at the Steamship Wharf cruise ship dock. Assuming the project is feasible, this funding would provide for construction of the gangway. \$300,000

Steamship Wharf Lightering Ramp/Float

Project Description

The existing ramp and float needs to be replaced to accommodate additional use next summer. The current float is too small, the ramp is too steep for passengers, and it is not ADA accessible. A contract for design of an improved ramp and float was issued in mid-October. Design alternatives and cost estimates are currently being completed. Therefore, the amount of funding being recommended is only an estimate. \$350,000

Waterfront Seawalk

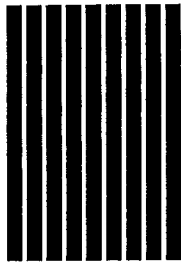
Project Description

This will begin the initial design of a waterfront seawalk and establish guidelines for the seawalk project as it is envisioned in the long range Waterfront Plan. This initial design effort will address such issues as themes for each area, phasing of construction, port security, safety considerations for pedestrians, materials requirements, right-of-way issues, and public/private partnerships. \$74,000

Port Security Improvements

Project Description


This project will match a \$94,000 port security grant available from the U.S. Coast Guard to design and construct required security improvements to the public cruise ship docks in the downtown area. The security improvements are necessary to comply with the vehicle and passenger requirements set out in the new port security regulations in 33 CFR Parts 101, 104 and 105. \$56,000



MEMORANDUM

CBJ Law Department

To: Rod Swope, City & Borough Manager

From: John R. Corso, City & Borough Attorney 

Subject: Port Fees; federal law

Date: April 18, 2003

This morning, KTOO broadcast a story about the Murkowski administration reaction to recent changes in federal maritime law. The law in question is the Maritime Security Act of 2002, which amended 33 USC §5 to provide:

(b) No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for--

- (1) fees charged under section 208 of the Water Resources Development Act of 1986 (33 U.S.C. 2236); or
- (2) 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.

The reference in (b)(1) is to a long-established program for harbor improvement fee review by the Federal Maritime Commission. Joe Graham submitted the reports required by this program: I assume John Stone is doing so as well, but I'll check. Copies of the laws are attached.

I am hopeful that the language quoted above does little more than codify the constitutional rules that we have discussed in the Assembly Chambers many times in recent years. In my judgment, these rules allow port dues and fees for certain purposes. Certainly the new statute does not prohibit fees, and I am uncertain why (according to KTOO) the Murkowski administration reads it as a prohibition. I'll look into this.

1 of 2 DOCUMENTS

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*** CURRENT THROUGH P.L. 108-10, APPROVED 3/11/03 ***

TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 1. NAVIGABLE WATERS GENERALLY
GENERAL PROVISIONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

33 USCS § 5 (2003)

§ 5. Abolition of tolls on Government canals, canalized rivers, etc.; expense of operation, repairs to and construction of canals, etc.; Panama Canal excepted

(a) No tolls or operating charges whatever shall be levied upon or collected from any vessel, dredge, or other water craft for passing through any lock, canal, canalized river, or other work for the use and benefit of navigation, now belonging to the United States or that may be hereafter acquired or constructed; and for the purpose of preserving and continuing the use and navigation of said canals and other public works without interruption, the Secretary of War [Army], upon the recommendation of the Chief of Engineers, United States Army, is hereby authorized to draw his warrant or requisition, from time to time, upon the Secretary of the Treasury to pay the actual expenses of operating, maintaining, and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury out of any money in the Treasury not otherwise appropriated: Provided, That whenever, in the judgment of the Secretary of War [Army], the condition of any of the aforesaid works is such that its entire reconstruction is absolutely essential to its efficient and economical maintenance and operation as herein provided for, the reconstruction thereof may include such modifications in plan and location as may be necessary to provide adequate facilities for existing navigation: Provided further, That the modifications are necessary to make the reconstructed work conform to similar works previously authorized by Congress and forming a part of the same improvement, and that such modifications shall be considered and approved by the Board of Engineers for Rivers and Harbors and be recommended by the Chief of Engineers before the work of reconstruction is commenced: Provided further, That nothing herein contained shall be held to apply to the Panama Canal.

(b) No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for—

- (1) fees charged under section 208 of the Water Resources Development Act of 1986 (33 U.S.C. 2236); or
- (2) 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.

HISTORY: (July 5, 1884, ch 229, § 4, 23 Stat. 147; Mar. 3, 1909, ch 264, § 6, 35 Stat. 818; Aug. 30, 1954, ch 1076, § 1(15), 68 Stat. 967.)

(As amended Nov. 25, 2002, P.L. 107-295, Title IV, § 445, 116 Stat. 2133.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word "Army" has been inserted on authority of the Transfer of functions note to this section.

consider—

(A) the direct and indirect cost of construction, operations, and maintenance, and providing the facilities and services under paragraph (1) of this subsection;

(B) the value of those facilities and services to the vessel and cargo;

(C) the public policy or interest served; and

(D) any other pertinent factors.

(5) Notice and hearing.

(A) Before the initial levy of or subsequent modification to port or harbor dues under this section, a non-Federal interest shall transmit to the Secretary—

(i) the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, including provisions for their administration, collection, and enforcement;

(ii) the name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;

(iii) the date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement; however, the non-Federal interest may not set a hearing date earlier than 45 days after the date of publication of the notice in the Federal Register required by subparagraph (B) of this paragraph or set a deadline for receipt of comments earlier than 60 days after the date of publication; and

(iv) a written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions of this section.

(B) On receiving from a non-Federal interest the information required by subparagraph (A) of this paragraph, the Secretary shall transmit the material required by clauses (i) through (iii) of subparagraph (A) of this paragraph to the Federal Register for publication.

(C) Port or harbor dues may be imposed by a non-Federal interest only after meeting the conditions of this paragraph.

(6) Requirements on non-Federal interest. A non-Federal interest shall—

(A) file a schedule of any port or harbor dues levied under this subsection with the Secretary and the Federal Maritime Commission, which the Commission shall make available for public inspection;

(B) provide to the Comptroller General of the United States on request of the Comptroller General any records or other evidence that the Comptroller General considers to be necessary and appropriate to enable the Comptroller General to carry out the audit required under subsection (b) of this section;

(C) designate an officer or authorized representative, including the Secretary of the Treasury acting on a cost-reimbursable basis, to receive tonnage certificates and cargo manifests from vessels which may be subject to the levy of port or harbor dues, export declarations from shippers, consignors, and terminal operators, and such other documents as the non-Federal interest may by law, regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues; and

(D) consent expressly to the exclusive exercise of Federal jurisdiction under subsection (c) of this section.

(b) Jurisdiction.

(1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a proposed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).

(3) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(c) Collection of duties.

[(1)] Delivery of certificate and manifest.

(A) Upon arrival of vessel. Upon the arrival of a vessel in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate authorized representative appointed under subsection

33 USCS § 2236

(a)(6)(C) of this section a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect.

(B) Before departure of vessel. The shipper, consignee, or terminal operator having custody of any cargo to be loaded on board a vessel while the vessel is in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section shall, within forty-eight hours before departure of that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section an export declaration specifying the cargo to be loaded on board that vessel.

(d) Enforcement. At the request of an authorized representative referred to in subsection (a)(6)(C) of this section, the Secretary of the Treasury may:

(1) withhold the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and

(2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 [App.] U.S.C. 1202 et seq.) if the shipper, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(e) Maritime lien. Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

(f) [Redesignated]

HISTORY: (Nov. 17, 1986, P.L. 99-662, Title II, § 208, 100 Stat. 4102; Dec. 21, 1995, P.L. 104-66, Title I, Subtitle B, § 1021(g), 109 Stat. 713.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The paragraph designator "(1)" is enclosed in brackets in subsec. (c) because no para. (2) was enacted.

Brackets are inserted around the abbreviation "App." in subsec. (e)(2) to indicate the probable intent of Congress to delete it.

Amendments:

1995. Act Dec. 21, 1995 deleted subsec. (b), which read:

"(b) Audits. The Comptroller General of the United States shall—

"(1) carry out periodic audits of the operations of non-Federal interests that elect to levy port or harbor dues under this section to determine if the conditions of subsection (a) of this section are being complied with;

"(2) submit to each House of the Congress a written report containing the findings resulting from each audit; and

"(3) make any recommendations that the Comptroller General considers appropriate regarding the compliance of those non-Federal interests with the requirements of this section.";

and redesignated subsecs. (c)-(f) as subsecs. (b)-(e), respectively.

INTERPRETIVE NOTES AND DECISIONS

Port is not prevented by 33 USCS § 2236 from imposing charges on ships to finance emergency response services, when port is not financing harbor improvement. *New Orleans S.S. Asso. v Plaquemines Port, Harbor & Terminal Dist.* (1989, CA5 La) 874 F2d 1018.

Shippers organization's claim that harbor fees imposed by port violate Harbor Development and Navigation Improvement Act of 1986 (33 USCS §§ 2231 et seq.) is dismissed, where it is undisputed that port has not undertaken any navigational improvements or accepted any federal funding under Act, because Act does not prevent or restrict manner in which states may impose harbor fees unless fees are imposed to finance new construction project developed pursuant to Act. *New Orleans S.S. Asso. v Plaquemines Port, Harbor & Terminal Dist.* (1988, ED La) 690 F Supp 1515.

Attachment 2

1. A request was made from JCVB to increase their funding contribution from \$78,000 to \$163,000. The Committee agreed to increase it to \$100,000.
2. A request was made from Eaglecrest to consider funding, in part or in whole, for two separate projects. Project one is for a summer dog sled tour for \$350,000. The second project was for a treetop Walkway for \$425,000. The Committee determined that these projects did not meet the intent of the federal law.
3. A request was made by Drew Green, representing Southeast Stevedoring, to fund \$81,000 in road improvements at the intersection of Mt. Roberts/Jacobsen Drive as a result of requirements that were conditioned by the Planning Commission when they approved construction of the new dock. As it was a requirement of the Planning Commission, the Committee did not believe it should be funded with Passenger Fee Proceeds.
4. Marie Darlin thanked the Committee for continued funding of the City Museum and asked that the funding remain. The Committee agreed to retain funding for the museum there was some discomfort in terms of how well it meets the federal law.
5. Kirby Day, representing Princess Cruise Line, requested that the Committee include \$300,000 to help defray the costs of installing the electrical hook-up connection at the Franklin Dock so the ship can shut the engines down and go to shore power when in dock. The Committee agreed to defer the request to the Finance Committee.