



February 14, 2011

Rod Swope
City & Borough Manager
City and Borough of Juneau
155 South Seward Street
Juneau, AK 99801

Dear Mr. Swope:

I am writing to provide the Alaska Cruise Association's comments on your Draft FY12 Passenger Fee Proceeds Recommendations. This letter will first set forth the principles that limit the City and Borough of Juneau's discretion in spending passenger fees. It will then identify some of the proposed expenditures that, in our view, would plainly violate federal law.

Given the attention devoted to these issues over the last five years, the controlling legal principles should be familiar. In the 2002 Marine Transportation Security Act, Congress prohibited state and local governments (including the CBJ) from collecting *any* "taxes, tolls, operating charges, fees, or any other impositions ... from any vessel or other water craft [operating in navigable waters], or from its passengers or crew." 33 U.S.C. §5(b). Congress then carved out a narrow class of user fees from this prohibition, allowing "*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." 33 U.S.C. § 5(b)(2) (emphasis added). The CBJ's attorney, as you know, has long recognized that this statute circumscribes the permissible expenditures of passenger fees collected by the CBJ.

The Draft FY12 Passenger Fee Proceeds Recommendations contains several projects that do not meet the exacting standards of federal law:

- The appropriation of \$1,400,000 to "General Support" embodies precisely the type of impermissible expenditure that Congress had in mind when it passed the Marine Transportation Safety Act. As the Recommendations make clear, this appropriation would support "general government operations." But the law allows only expenditures that "solely ... pay the cost of a service to the vessel or watercraft" *and* "enhance the safety and efficiency of interstate or foreign commerce"; it does not permit expenditures to mitigate cruise ship "impacts" on general local government services.

- The appropriation of \$278,000 to “Transit Public Bus Service” service passes on to *all* cruise ship passengers the alleged cost of subsidizing bus service for those cruise ship passengers who actually use public transit. But even if many cruise ship passengers use public transit (and we believe you overestimate the percentage of those who do), federal law forbids the CBJ from charging the passengers who do *not* use that service to recoup the subsidy of passenger fares described in the Recommendations.
- The appropriation of \$159,100 to “Airport General Operations” has nothing to do with services provided to passengers of ACA members. The ACA understands that some smaller cruise vessels do have a turnaround in Juneau, and their passengers may use the airport. But under federal law, the CBJ cannot charge large cruise ship passengers fees for services provided only to smaller cruise ships and their passengers.
- Several categories purport to pass on to all cruise line passengers fees for services incurred by only a few cruise ship passengers. Thus, for example, the Recommendations would charge passengers in the 2011 cruise year “for unrecoverable costs related to transport [by Airlift Northwest] of cruise ship passengers and crew from Juneau *this past year*.” As that passage shows, this payment would not defray the cost of any services rendered to the passengers who pay the fee; instead, it would defray the cost of services rendered to a small number of passengers in prior years. Similar issues arise with respect to the proposals for Bartlett Regional Hospital and Capital City Fire/Rescue.
- The Recommendations suggest an appropriation of \$536,372 to the “Statter Harbor Passenger for Hire Facility,” justified on the theory that “[n]early all of the customers that will use this new facility will be cruise ship passengers.” But that statement answers the wrong question under federal law. The question *should* be whether all of the passengers who pay the fee will use the facility—and, of course, the answer is no. In essence, the CBJ has decided to charge *all* cruise line passengers in 2011 to build a passenger for hire facility that *some* cruise line passengers may use *in the future*. Because federal law allows a fee *only* for services actually provided to a vessel and its passengers, the CBJ has no basis to defray these costs by charging passengers who will not benefit in any way from the expenditure.
- Finally, several categories of expenditures deal with managing the downtown area during the busy summer months. None of these categories, including “Crossing Guards,” “Foot/Bike Patrol,” “Restroom Maintenance,” and “Downtown Cleaning” involve service provided to cruise ship vessels and their passengers. Instead, the CBJ provides these services to *all* who use the downtown in the summer, including CBJ residents and business owners. The fact that the services also benefit those passengers who visit downtown (and who, by the way, already contribute to the local economy in a variety of ways) does not provide a basis for charging a fee under 33 U.S.C. §5(b).

As this shows, the above CBJ recommendations for FY 2012 passenger fee revenues fail to satisfy the basic federal test for permissible fees and we urge the CBJ to reject them. As always, we would be pleased to consult with the CBJ regarding permissible uses of passenger fees.

Sincerely,



ON BEHALF OF

Bob Stone
Chairman
Alaska Cruise Association

CC: Mayor Bruce Botelho, City & Borough of Juneau
City & Borough of Juneau Assembly
City & Borough of Juneau Docks & Harbors Board
John Stone, Port Director, Juneau Docks & Harbors