

THE CITY AND BOROUGH OF JUNEAU, ALASKA
Assembly Committee Of The Whole Work Session Minutes

July 23, 2012

I. CALL TO ORDER/ROLL CALL

Deputy Mayor David Stone called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Bruce Botelho, Karen Crane, Ruth Danner, Jesse Kiehl, Carlton Smith, David Stone and Randy Wanamaker.

Assemblymembers Absent: Johan Dybdahl.

Staff present: Rob Steedle, Deputy City Manager; John Hartle, City Attorney; Bob Bartholomew, Finance Director; Carl Uchytel, Port Director; Laurie Sica, Municipal Clerk.

II. APPROVAL OF MINUTES

a. Monday, July 2, 2012 Committee of the Whole Meeting

Hearing no objection, the minutes of the July 2, 2012 Committee of the Whole meeting were approved.

III. ORDINANCE 2012-27-AMENDING THE MARINE PASSENGER FEE CODE

Mr. Stone thanked staff for providing comprehensive memos in the packet and said this appeared to be a "housekeeping" issue.

Mr. Hartle agreed and said the underlying ordinance was adopted in 1999, but that was prior to Maritime Security Act of 2002 (MSA 2002), which limited the ways that any fees could be spent and these changes cleaned up the code to comply with existing law.

Mr. Hartle reviewed the code changes. The phrase "mitigate impacts" was taken out as the MSA2002 did not include this language. Mr. Hartle said that it would be good if that language was in the MSA2002. If CBJ had to litigate Passenger Fee issues, a case could be made that with the significant number of ships and passengers, CBJ would find it necessary to mitigate impacts, and hopefully the courts would agree. In the meantime, it was not in the federal code and it was a glaring invitation to misuse of those funds.

The requirement of an audit in the case that the manifests were requested was removed, as to his knowledge, they had never been requested.

The exemption from the fee for those who rented a room within 24 hours of disembarking was removed as the Port Director said this section of the code had not been applied and there was a need to provide equal protection under the constitution.

The code section, regarding the authority to abate interest if there was a dispute about the fees, was deleted. Penalties would still be subject to potential abatement.

The section on "Use of Proceeds" was amended to follow the federal law.

Mr. Hartle said the one substantive change regarded the application of the law to exempt ships with 20 or fewer passengers, rather than the current 40 or fewer passengers. This was to answer the equal protection argument, but also to relieve the administrative burden of collection at the 20 or fewer passenger level. Mr. Uchytel indicated there may be some vessels arriving with 20 – 40 passengers and those ships may be impacted by this change.

Mr. Smith said he appreciated the memos, and with reference to litigation risk and case law, what was the CBJ's litigation risk?

Mr. Hartle said that it was a constant issue and it was hard to say as every year he heard that cruise lines would litigate CBJ's uses, but CBJ strictly followed the law. He referred to the Polar Tankers case in Valdez, in which the court noted that Valdez had imposed a general tax on the tankers for general revenue. CBJ imposed a fee per passenger, on the ships, and worked hard to spend those dollars on the purposes allowed by Federal law.

Ms. Danner asked about the removal of wording "beautification" from purposes for use of the proceeds. Mr. Hartle the words "efficiency" and "enhancement" were taken from the MSA2002, but "beautification" was not covered by the MSA2002, nor was mitigation of impacts.

Mayor Botelho said an argument could be made that enhancement could include beautification. Regarding the question of litigation, last year there was a potential of litigation regarding funds being expended on private properties and the idea of the funds being spent on a public purpose.

Mr. Hartle said the Alaska Constitution required that funds be spent for a public purpose, and there had been some questions about whether the expenditures at private docks would meet that test. He listed two cases that gave a broad reading of the public purpose clause and said the issue was what money was spent on, not who spent it. If the funds were spent on passengers, it "passed muster."

Ms. Crane said her first concern was loss of mitigation by striking the word "impact." The fee money was used in the past to mitigate the noise of floatplanes and she asked if this type of project would still qualify for use of Marine Passenger Fees. Mr. Hartle said each expenditure had to be reviewed on a case-by-case basis. The argument was made that virtually all floatplane passengers were off the cruise ships, and those engines were safer, more reliable and quieter.

Mr. Kiehl asked about removing the need for audit and if one had ever been done. Mr. Hartle said he was not aware of one having ever been done. Mr. Kiehl asked about changing the time frame for a hearing on delinquency from ten days to 30 days and if there was a reason for a "less speedy" hearing. Mr. Hartle said he was proposing this in many areas of the code as hearings took time to schedule in general and he wanted to avoid setting up a situation for failure.

Ms. Danner said limiting projects to the narrow corridor next to the docks had been discussed but this was not expressed in code. She asked if a sightseeing facility at Statter Harbor, even if substantially supported by cruise passengers, would be a prohibited use. Mr. Hartle said if a project was designed almost exclusively to benefit cruise passengers – then it would likely be supported. He spoke about a court case defining "functional relationships." The entire seawalk project was in the waterfront development plan and each part had a functional relationship to the other parts, and the whole, and as long as it did, he believed it met case law.

Mr. Wanamaker said he had heard nothing from the public or the industry on this and asked if this had been discussed with industry – had they offered any suggestions. Mr. Hartle said that he had not personally discussed it. It was distributed through the Port Director. The main substantive change was lowering the threshold from 40 to 20 passengers and this did not affect the cruise lines. Mr. Wanamaker said the exemption for smaller vessels was discussed in the past and he was not sure it was necessary – he did not have enough information.

Mr. Hartle said his recommendation was to have the threshold as low as could be to avoid an equal protection issue – by putting a fee on the big operators and perhaps not on a smaller user.

Mr. Wanamaker asked about the cost of collection on those vessels or if the change would be a disincentive to conducting business. He asked to hear from industry and thought it might not warrant a change.

Mr. Uchytel said he had discussed the issue with Mr. Hartle and Lorene Palmer of the Juneau Convention and Visitors Bureau. The smaller vessels generally docked at the Seadrome and it was a handful of vessels every other week. There may be one vessel that carried fewer than 20 passengers. He had spoken to administrative staff of those vessels and it would take some work for collection, with little added return, but he understood the reason for the change. He credited his administrative staff, Ms. Teena Scovill, for her efficiency and effectiveness in collections and other duties. Mr. Uchytel said he sent the proposed changes to Kirby Day, Drew Green, Lorene Palmer, and Jeff White of the Inner Sea Company, along with the agenda, and three of those people were present at this meeting.

Ms. Becker asked why is there was a fee exemption for any ship. Mr. Uchytel said the ordinance was attempting to find a workable boundary for the issue.

Mayor Botelho said CBJ was recognizing a scale. The closer to zero for exemptions, the stronger the legal position, and this was a reasonable attempt not to target large cruise ships. Whatever the cost of collection to balance the weight of litigation was reasonable. Most companies would be likely to comply and those on smaller vessels

were generally paying more for their cruise, so the fee was substantially smaller in comparison.

Mr. Hartle noted the effective date of January 1, 2013, to allow those businesses to build the change into their contracts and advertising.

MOTION, by Crane, to forward this to the Assembly. Hearing no objection, it was so ordered.

Mr. Wanamaker said in a related topic, he had an opportunity to talk with people who try to stay aware of economic issues and it seemed a number of people were concerned that while the tourism numbers were good, they were not spending as in the past – these are not “high ticket tourists.” Cab drivers were talking about the decrease in tourists going to the glacier and he suggested that staff collect sales tax information soon so the Assembly could see the numbers are in relation to projections made and have that information be presented to the Finance Committee.

Mayor Botelho suggested obtaining anecdotal information from the tourism representatives present.

Lorene Palmer, JCVB and Kirby Day, Holland America / Princess and Andrew Green, Cruise Line Agencies, all came forward. Ms. Palmer said that the volume of visitors was increasing and hotel occupancy was up 10.5%, which was great. At the same time, people found great opportunities to create businesses and the competition was getting very fierce. Mr. Day agreed and said this competition may be impacting the cab drivers. Some businesses depended on price point – that was why there was May and September shoulder pricing and there would be different spending habits.

Mr. Day said Juneau was sheltered from the impacts of the economy seen in the lower 48 and there were people who were hurting. Some of those people still decided to travel but they were watching their pennies and looking for the best deal. As the economy improved, there would be increases in on board and shore side spending but it was not as close to the 2008 numbers for spending as was reflected in the numbers of passengers.

IV. ADJOURN – 6:45 p.m.

Submitted by
Laurie Sica, mmc
Municipal Clerk