

**DOCKS & HARBORS BOARD  
DOCKS FEE REVIEW COMMITTEE MEETING**

January 6<sup>th</sup>, 2015, 5:00 PM  
CBJ Room 237

- I. **Call to Order** (5:00 pm in CBJ Room 237)
- II. **Roll Call** (David Summers, John Bush, Mike Peterson, David Logan, and Greg Busch)
- III. **Approval of Agenda**
- IV. **Approval of November 18<sup>th</sup>, 2014 Docks Fee Review Committee Minutes**
- V. **Public Participation on Non-Agenda Items** (not to exceed five minutes per person, or twenty minutes total time)
- VI. **Action Item**
  1. WATERFRONT SALES PERMITS (05 CBJAC 10)
    - a. Remanded action from December Board Meeting
    - b. Perpetual Permitting memo from CBJ Law
    - c. Draft Application

Committee Questions

Public Discussion

Committee Discussion/Action

**MOTION: TO BE DEVELOPED AT THE MEETING**

- VII. **Adjournment**

**CBJ Docks and Harbors Board**  
**Docks Fee Review Committee Meeting Minutes**  
**For Tuesday, November 18th, 2014**

I. Call To Order – Greg Busch called the meeting to order at 5:48 p.m. in CBJ Room 224.

II. Roll Call – The following members were present: John Bush(arrived at 6:30) Mike Peterson(Via Telephone), David Logan, and Greg Busch.

Absent: David Summers

Also present were the following: Carl Uchytel – Port Director

III. Approval of Agenda.

*MOTION By MR. LOGAN: TO APPROVE THE AGENDA AS PRESENTED AND ASK UNANIMOUS CONSENT.*

*Motion passed with no objection*

IV. Approval of October 28<sup>th</sup>, 2014 Docks Fee Review Committee Minutes. Hearing no objection, the October 28<sup>th</sup>, 2014 Port Fee Review minutes were approved as presented.

V. Public Participation on Non-Agenda Items – None

VI. Agenda Topics

1. Waterfront Sales Permits (05 CBJAC 10)

Mr. Busch asked Mr. Uchytel if any of his proposed options in the packet aligned with Mr. Bonnell's proposal.

Mr. Uchytel said option five.

Mr. Busch said the difference from Mr. Bonnell's proposal is he recommended the 10<sup>th</sup> permit be on a lottery every 3<sup>rd</sup> year versus every year in Mr. Uchytel's proposal.

Mr. Logan asked if the three year permits would all sync up to the same year and not be staggered?

Mr. Uchytel said he was trying to get Mr. Bonnell's request in the proposal. This would be putting all nine vendor booths on the same three year cycle with the 10<sup>th</sup> being available by lottery. There are pro's and con's to all of the proposals.

Mr. Busch recommended to read through the proposed options and discuss the pro's and con's. He invited all the vendor booth permit holders to come up to the table to discuss the options in an open format.

Vendor Booth Permit Holders in attendance:

Mariann Cummings – M & M Tours, Greg Pilcher – Whale Tales, Jeff Fanning – Liquid Alaska Tours, Sky Bonnell – Woo Hoo Tours.

**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

Mr. Uchytel said with all the options, staff is trying to keep a level playing field. This task is accomplished by how we issue the permit and how the actual activities in the booth are regulated. One of the guiding principles he was given was to always have an opportunity for new entry. Docks & Harbors has a total of 33 booths, which is three banks of 11. Only nine permits were issued last year.

- Option #1(limited entry w/increased firm fixed fee)
  - Each Vendor pays firm fixed permit fee of \$37,500
  - Up to seven booths available in CY15
  - Only one booth per company
  - CPI adjusted

Mr. Uchytel said with option #1, there will be 11 booths available and the fee is determined from the average of the booths from the last couple years. An average booth sells at \$37,500. There will not be an outcry but the firm fixed fee and be adjusted every year with CPI. There would still only be one booth per company. If someone doesn't want to pay the \$37,500 there will be less than the 11 vendor booths, and the permits are all annual.

- Option #1A(outcry w/increased minimum)
  - Raise minimum bid amount from \$5K to \$37,500
  - Continue with outcry auction
  - Up to seven booths in CY15
  - Only one booth per company
  - CPI adjusted

Mr. Uchytel said option #1A is basically the same as we have currently except to raise the minimum bid amount from \$5K to \$37,500. Again, if someone doesn't want to pay the \$37,500 than there will be less booths. This option also has CPI adjustment every year, and these permits are also annual.

Public Questions –

Mariann Cummings – M & M Tours. She asked if you have a booth currently, and these are one year booths, would you be guaranteed a booth from year to year or would you have to go through a process?

Mr. Uchytel said he doesn't know if the market force is there to have more than the 11 booths. Increasing the minimum bid would help regulate the marginal companies getting a permit.

Mariann Cummings – M & M Tours, she asked if M & M tours wanted to renew their permit, would she just need to provide a check for the \$37,500 to get a permit? Will her company have preference and could be renewed every year?

Mr. Uchytel said yes, and if there was a twelfth company that wanted in, there would need to be another process.

Mr. Logan said with an outcry option in #1A, the market would settle itself because you have a set number of permits. With option #1, you have a set fee, and a set number of permits, then you would be into a lottery.

**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

Mr. Busch said it could be a lottery, or an outcry.

Mr. Uchytel said anyone that wanted a vendor booth would just need to pay by January 1<sup>st</sup>. Depending on how many Company's wanted a permit would determine if they are sold by outcry, sealed bid, or lottery.

Jeff Fanning – Liquid Alaska Tours. He said with option #1, if it is a set amount at \$37,500 and a 12<sup>th</sup> company comes in, this will decrease the value of the permit. He said he doesn't see the benefit for Docks & Harbors if a 12<sup>th</sup> Company is let buy a permit and three companies drop out. Mr. Fanning said the \$37,500 average has already determined what the market is willing to pay. If this is a set rate, with allowable years and a CPI adjustment annually, some people will drop out at that rate and some will maintain at that rate. He said Option #1 would be the most favorable to him, but with only 11 booths.

Mr. Busch asked if there were additional booths over 11, would a lessor averaged fixed rate be fair.

Mr. Fanning said at some point there needs to be a set maximum allowable amount of booth permits.

Mr. Busch said Docks & Harbors has a maximum of 33 booths and we wouldn't go over that. The change would be if more permits were issued. Depending on the rotation, one company would have two booths on the same day and some would have three booths on the same day. The cost would be determined over the season by how many times you had two booths per day and how many times you had three booths per day. This is how the option #2 proposal would work.

Mr. Fanning said his problem with this would be investing in an infrastructure with 11 companies one year, and then the following year, 20 companies. Having more companies selling tours will devalue his infrastructure.

Ms. Cummings said there are only so many customers. With more Companies, it would be split up even more if there are more booths out there. Less permits would be better.

Mr. Uchytel said it didn't work out that way this last season when there were less permits, and the available permits sold for less than the average even knowing there was going to be less competition.

Mr. Busch verified that the preferred option so far is #1, but with a limit on the amount of permits not to exceed 11.

- Option #2 (unlimited entry)
  - Each vendor booth pays \$37,500
  - In the event of more than 11 vendors, then booths are distributed through each of the three banks (i.e. up to 33 individual points of sale)

**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

- Multiple booths authorized
- CPI adjusted

Option two was not preferred by all who attended because they would like to limit the entry.

➤ Option #3 (opportunity for 3-year permits every year)  
In CY15

- Four multi-year permits remaining in CY15 (Last Chance, Liquid AK, M & M and Gold Tours)
- Outcry five, 3-year permits (must have previously held booth permit)
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2016

- Two multi-year permits remaining in CY16 (M&M and Gold Tours)
- Outcry two, 3-year permits in CY16
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2017

- Outcry two, 3-year permits
- Outcry two, 1-year permits for new entry

➤ Option #3A

- Any variation of #3 with firm fixed permit fees.

Mr. Uchytel said option #3 was to get everyone on a three year cycle with outcry auction and have two/1-year permits available for new entry annually. He said option #3A is still the 3 year option but with a firm fixed permit fee.

Mr. Logan suggested to change the wording from “must never have held booth permit” to “must not have current multi- year booth permit”.

Mr. Pilcher – Whale Tales. He said he doesn’t understand the need for the “must never have held a booth permit”. What happens if no one is there to bid that hasn’t had a permit before?

Mr. Busch said booth’s 10 and 11 would be left open to provide an opportunity for a new company to come in and if there are no new companies then the booths would be left open.

Mr. Logan said it would need to be worded differently so if someone has a multiple year permit and wanted to drop back to a single year they would be able to do that, or if they wanted to come back after taking a year off they would be able to compete again. Mr. Logan asked if it was necessary to have the wording “must never have held a booth permit”?

Mr. Fanning asked if the two new entries that get a one year permit would then need to get a different permit to be able to stay in business?

Mr. Busch said yes they would.

**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

Mr. Logan suggested to change the policy for the multi year holder to be held responsible for the entire three years of the permit.

More discussion followed Mr. Logan's suggestion.

Mr. Busch recommended to add in option #3 that the Companies currently owning the permit has right of first refusal.

- Option #4 (3-year outcry cycle starting in 2018; annual outcry for new entry

In CY15

- Four multi-year permits remaining in CY15 (Last Chance, Liquid AK, M&M and Gold Tours)
- Outcry five, 3 year permits (must have previously held booth permit)
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2016

- Two multi-year permits remaining in CY16 (M&M and Gold Tours)
- Outcry two, 2-year permits
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2017

- Outcry two, 1-year permits
- Outcry two, 1-year permits for new entry (must never have held booth permits)

In 2018

- Outcry nine, 3-year permits
- Outcry two, 1-year permits for new entry (must never have held booth permit)

Mr. Uchytel said Option #4 is a process of getting all the nine permits on a 3-year cycle, and then every year there is an outcry for two one year permits for new entry.

Mr. Busch said Option #4 is an outcry auction and this would get all the three year permits on a three year cycle. It would just be raising the minimum bid for the outcry.

- Option #5 (Industry Proposal: 3-year cycle commencing in 2015 – continuation from CY14; lottery for new entry)
  - Four multi-year permits remaining in CY15 (Last Chance, Liquid AK, M&M and Gold Tours)
  - Five companies from CY14 are extended three years (Woo Hoo = \$50K; Whale Tales = \$45K; Experience

**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

Juneau = \$25K; Capital City Sightseeing = \$24K;  
Mendenhall Taxi = \$23K) Average = \$33.6K

- 10<sup>th</sup> Permit is offered on lottery basis each year.
- All permits sync-up in 2018 for 3-year permit cycle.
- Fee structure TBD.

Mr. Uchytel said Option #5 is a fixed fee based on an average from last years expired permits. The permit holders for 2014 would be granted a permit until 2018 working to get all the permits sync-up for a 3-year permit cycle.

Mr. Logan said he has a problem with this option. A new company can come in for one year, but never be able to move up to a three year permit until a company decided to leave the business.

Mr. Fanning recommended to have the 10<sup>th</sup> or 11<sup>th</sup> permit a 3-year permit.

Mr. Logan said he is wanting a blended approach with multi- year permits that can be extended out in perpetuity as long as they wanted to keep the permits going, and also have some outcry options so if someone new to the market has a chance to move up if they wanted.

Mr. Busch asked how would it be determined, out of the nine permits, who would get the permit in perpetuity and who would not?

Mr. Logan said to make the permits which are offered in perpetuity at a higher dollar amount. He said to set an amount of (ex: \$37,500) for a three year permit with no guarantee of renewal. A permit that would go on for perpetuity would be worth more (ex: \$50,000) because it has a security to having a permit year after year.

Mr. Busch said some companies will drop out over time and that would open up for new entry.

Ms. Cummings recommended to have a 10<sup>th</sup> booth for a one year entry and the 11<sup>th</sup> booth for a three year entry in an outcry. This would be one new entry every year and a three year new entry every third year. Then, these permit holders would get the first right of refusal if someone dropped out of a booth that was held in perpetuity.

Mr. Busch said if an opening became available for a permit in perpetuity, there would need to be something figured out on who would get that permit.

Mr. Logan said this would mean that the current nine permit holders would get the permits in perpetuity and these permits would be worth more than the permits that don't extend out. The permits extended out in perpetuity would need to be a set fee with a CPI adjustment.

Mr. Fanning asked what the thoughts are on a lottery or the outcry auction in option #4 if a 10<sup>th</sup> or 11<sup>th</sup> Company wanted a permit? How would this work with only two permits and three companies?

Mr. Busch would like staff preference?

**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

Mr. Uchytel said a lottery or a firm fixed price is a fair way to go for everyone.

Mr. Busch said his preference is a firm fixed fee which would eliminate potential for collusion.

Mr. Bonnell said a lottery is random. Another option would be a sealed bid.

Ms. Cummings said an outcry auction could potentially make more money for Docks & Harbors with Companies battling to get a permit. The cost of the permit could go up.

Mr. Fanning said he would prefer the 10<sup>th</sup> and 11<sup>th</sup> permit go out for a lottery.

Mr. Peterson said with having the fixed fee at \$37,500 would be beneficial for the Industry because the one \$8,000 current five year permit fee brought the average down.

Mr. Bonnell suggested to keep the available permits to nine. Every three years one permit holder would get picked to put their permit back up for auction. He said this would randomly open up an opportunity for someone else to come in every three years.

Mr. Logan said that would be moving toward a closed market.

Mr. Busch said the Committee wants an opportunity every year for new entry.

More discussion followed on Mr. Bonnell's suggestion.

Mr. Busch said within the current regulation, it doesn't stipulate how many permit issued or how long the terms are, it just says they will be sold by outcry auction. He said there are two places that need to be changed in regulation. The minimum bid amount and whether this is an outcry auction or fixed fee plus an outcry or lottery.

Mr. Logan suggested to set the firm fixed fee at \$42,000.

Mr. Bush asked when 16B is built, will the number of the 33 booths change?

Mr. Uchytel said no. Docks & Harbors is pre-committed to having booths in the three locations.

Mr. Busch said he would like to work on getting the permits to a three year cycle and keeping the one year permits as an annual lottery with his preference being a fixed fee.

Mr. Logan modified option #5 and suggested starting in 2018 have nine 3-year permits at \$42,000 CPI adjusted with an option to renew. The 10<sup>th</sup> permit be a 1-year permit outcry auction with a \$30,000 minimum. If all permits are still in operation in 2021, a 11<sup>th</sup>/3-year permit becomes available for a minimum at what the current three year permits are at.

Mr. Pilcher asked if the 11<sup>th</sup> permit would stay outcry?

Mr. Logan said yes. If one of the nine booth permits opened up, anyone would be able to bid. He would suggest anyone that has currently had a permit would be



**CBJ Docks and Harbors Board**  
**DOCKS FEE REVIEW COMMITTEE MEETING MINUTES**  
**For Tuesday November 18th, 2014**

grandfathered forward. The committee would need to work out the details on how to establish a fee for this.

Mr. Bonnell asked if the permits would be able to be transferred when a Company is sold?

Mr. Busch said yes, the three year renewable permits can be transferred and that would make it more valuable. He recommended to take the new recommended changes to the Finance and the Regular Board in December.

Mr. Uchtyl said assuming everyone is in agreement, the permits are not issued until May 1<sup>st</sup>. This change may be able to be effective for the 2015 season. If the process does not move forward quick enough to be effective for the 2015 season then to have the outcry auction on April 15, just before the season starts.

Mr. Logan recommended to get to the 2018 cycle, allow the 2014 expired permit holders the first right of refusal for a permit for \$42,000. When the current remaining four permits expire, they will then start getting charged \$42,000 and CPI adjusted from that point moving forward.

Mr. Busch asked if there would be one/1-year permit available by outcry auction with a minimum bid at \$30,000 with a CPI adjustment, and one/3-year permit available by outcry?

Mr. Logan said there would be the one/1-year permit with a minimum bid of \$30,000, but the one/3-year permit would be available only if there is interest.

Mr. Busch wanted to still provide the Port Director with flexibility on managing the permits. He recommended to say "remaining permits will be sold by outcry auction, with a total of 11 permits".

Mr. Logan said he would send an e-mail to Mr. Uchtyl with the recommended wording to go in the regulation change.

Ms. Cummings asked about putting a cap on the permit fee?

Mr. Logan said that is the whole purpose of CPI because it looks at inflation.

Mr. Busch said at the next regulation review it would need to be changed at that time.

Mr. Logan said how the current CPI adjustment is written is if the Board takes action or not is whether the adjustment takes effect.

Mr. Busch said this would give the Board the power to not apply a CPI adjustment if a specific year warranted that. The change to regulation will be in the outcry auction and minimum bid portion.

The Committee was all in agreement with the new regulation change providing more predictability for the permit holders and Docks & Harbors.

VII. Adjournment - The Meeting adjourned at 7:04 p.m.



# Port of Juneau

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155 S. Seward Street • Juneau, AK 99801  
(907) 586-0292 Phone • (907) 586-0295 Fax

**From:** Carl Uchytel, Port Director  
**To:** Docks & Harbors Finance Committee  
**Copy:** CBJ Law  
**Date:** December 11<sup>th</sup>, 2014  
**Re:** VENDOR BOOTH – FEE REVIEW

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1. At the November 18<sup>th</sup> Docks Fee Review meeting, the Committee considered input from four representatives of vendor booth businesses and Docks & Harbors staff. The Committee was presented with various options for review and debate (enclosure 1). The model receiving consensus was one in which provided for multi-year permits (i.e. 3 years and renewable) at a fixed fee. The Committee was also steadfast in their vision to ensure new entries would be afforded the chance to compete for the business opportunity as a vendor booth operator, using an outcry auction with a minimum starting bid of \$30,000. Based on the two-year median value of vendor booths, the Committee suggested \$42,000 as an initial fixed fee. Both values would be subjected to the Anchorage CPI adjustment annually.
2. Representatives of the vendor booth businesses also requested an ownership provision allowing for the transfer of a permit if the vendor sells their business - provided the person/business purchasing the business with permit is not a current permit holder (violating one permit per owner). Upon review of the existing regulations, it appears this is allowed under 05 CBJAC 10.030(c)(1).
3. The following calendar year schedule is proposed for implementation through regulation change and execution by the Port Director:

## 2015

- Existing permits with terms of 2015 or longer carry forward at rate set by their respective outcry auction bid. This would apply to Last Chance Tours, Liquid AK, M&M Tours and Gold Tours.
- CY2014 Booth Vendors have the option to renew a 2 year permit at \$42,000 (subject to an annual CPI adjustment). This would apply to Woo Hoo Tours, Whale Tales, Experience Juneau, Capital City Sightseeing and Mendenhall Taxi. These permits become 3 year renewable permits in 2017.
- Any vendor choosing not to renew or any vendor without a current permit can participate in an outcry action for 1 year permits with a minimum bid of \$30,000.
- The total number of permits cannot exceed 10.

## 2016

- Existing permits with terms of 2016 carry forward at rate set by their respective outcry auction bid. This applies to Gold Tours and M & M Tours.
- Any existing vendor can renew a 1 year permit at \$42,000 (2015 base rate + annual CPI adjustments). These permits become 3 year renewable permits in 2017.
- Any vendor choosing not to renew or any vendor without a current permit can participate in an outcry action for 1 year permits with a minimum bid of \$30,000 (2015 base rate + CPI adjustment).
- The total number of permits cannot exceed 10.

## **2017**

- Existing renewable permits and existing vendors on a multi-year permit (Gold Tours and M & M Tours) may purchase 3 year renewable permits at \$42,000 (2015 base rate + annual CPI adjustments).
- Available 3 year permits, not renewed in 2015, 2016 or 2017, may be offered to any interested party at the same rate as 2017 3 year rate and renewable. If there are more interested parties then permits, a lottery will be used. The same number of permits available (not to exceed 9 total of 3 year renewable permits) may be offered.
- Any vendor choosing not to renew or any vendor without a current permit can participate in an outcry action for 1 year permits with a minimum bid of \$30,000 (2015 base rate + CPI adjustments).
- The total number of permits cannot exceed 10.

## **2018 & 2019**

- Any of the available 3 year permits, not renewed, may be offered to any interested party at the same rate as the 2017 three-year renewable rate. If there are more interested parties then permits a lottery system will be used. The same number of permits available (not to exceed 9 total of 3 year renewable permits) may be offered.
- Any vendor choosing not to renew or any vendor without a current permit can participate in an outcry action for 1 year permits with a minimum bid of \$30,000 (2015 base rate + CPI adjustments).
- The total number of permits cannot exceed 10.

## **2020 and thereafter**

- Any of the available 3 year permits, not renewed, may be offered to any interested party at the same rate as the 2017 three-year renewable rate. If there are more interested parties then permits a lottery system will be used. The same number of permits (not to exceed 9 total of 3 year renewable permits) may be offered.
- Any vendor choosing not to renew or any vendor without a current permit can participate in an outcry action for 1 year permits with a minimum bid of \$30,000 (2015 base rate + CPI adjustments).
- The Port director may, after consultation with the Docks and Harbor Board, offer an additional 3 year renewable permit if no 3 year permit has been available during the previous 2 years.
- The total number of permits cannot exceed 11.

## **4. Other criteria:**

- All multiyear permits are required to be paid in full by February 15<sup>th</sup> of the year the permit is active. Failure to satisfy in full the required permit fee by February 15<sup>th</sup> of the calendar year the permit is active for will terminate the permit and the permit for its remaining term will be available to any interested party. In the event there are more interested parties then available permits the Port Director may, at his or her discretion, make available that permit by lottery for the equal amount of 3 year permits for that calendar year or make available by outcry auction for a minimum amount of the existing 3 year permit for that calendar year.
- The Consumer Price Index (CPI) shall be adjusted to the Anchorage Consumer Price Index (CPI) as reported by the Alaska Department of Labor for the calendar year preceding the year the permit is active for, unless the Docks and Harbors Board takes action to keep the fee the same as the previous year. The Board will make any adjustments for the following fiscal year of permits by June 1 of the previous fiscal year.

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- Encl (1) Waterfront Sales Permit – Fee Structure Options – November 18<sup>th</sup>, 2014  
(2) 05 CBJAC Chapter 10 – Waterfront Sales Permits with proposed changes  
(3) Draft Waterfront Sales Permit Matrix

## Waterfront Sales Permits – Fee Structure Options

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### Calendar Year 2015

Last Chance Tours (expires 10/15)	\$40,000
Liquid Alaska (expires 10/15)	\$41,000
Gold Tours (expires 10/16)	\$42,000
M & M Tours (expires 10/16)	\$8000
Up to an addition 7 booths available	

Average of all Booth Fees (CY13 & CY14)	\$37,500
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### **Option #1 (limited entry w/increased firm fixed fee)**

- Each Vendor pays firm fixed permit fee of \$37,500
- Up to seven booths available in CY15
- Only one booth per company
- CPI adjusted

### **Option #1A (outcry w/increased minimum)**

- Raise minimum bid amount from \$5K to \$37,500
- Continue with outcry auction
- Up to seven booths in CY15
- Only one booth per company
- CPI adjusted

### **Option #2 (unlimited entry)**

- Each vendor booth pays \$37,500
- In the event of more than 11 vendors, then booths are distributed through each of the three banks (i.e. up to 33 individual points of sale)
- Multiple booths authorized
- CPI adjusted

### **Option #3 (opportunity for 3-year permits every year)**

#### In CY15

- Four multi-year permits remaining in CY15 (Last Chance, Liquid AK, M&M and Gold Tours)
- Outcry five, 3-year permits (must have previously held booth permit)
- Outcry two, 1-year permits for new entry (must never have held booth permit)

#### In 2016

- Two multi-year permits remaining in CY16 (M&M and Gold Tours)
- Outcry two, 3- year permits in CY16
- Outcry two, 1-year permits for new entry (must never have held booth permit)

#### In 2017

- Outcry two, 3- year permits
- Outcry two, 1-year permits for new entry (must never have held booth permit)

### **Option #3A**

- Any variation of #3 with firm fixed permit fees.

## Waterfront Sales Permits – Fee Structure Options

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### **Option #4 (3-year outcry cycle starting in 2018; annual outcry for new entry)**

In CY15

- Four multi-year permits remaining in CY15 (Last Chance, Liquid AK, M&M and Gold Tours)
- Outcry five, 3-year permits (must have previously held booth permit)
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2016

- Two multi-year permits remaining in CY16 (M&M and Gold Tours)
- Outcry two, 2-year permits
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2017

- Outcry two, 1-year permits
- Outcry two, 1-year permits for new entry (must never have held booth permit)

In 2018

- Outcry nine, 3-year permits
- Outcry two, 1-year permits for new entry (must never have held booth permit)

### **Option #5 (Industry Proposal: 3-year cycle commencing in 2015 - continuation from CY14; lottery for new entry)**

- Four multi-year permits remaining in CY15 (Last Chance, Liquid AK, M&M and Gold Tours)
- Five companies from CY14 are extended three years (Woo Hoo = \$50K; Whale Tales = \$45K; Experience Juneau = \$25K; Capital City Sightseeing = \$24K; Mendenhall Taxi = \$23K) Average = \$33.6K
- 10<sup>th</sup> Permit is offered on lottery basis each year.
- All permits sync-up in 2018 for 3-year permit cycle.
- Fee structure TBD.

#

## **05 CBJAC 10.010 - Policy.**

These regulations are intended to implement the following policies:

- (a) To provide desirable commercial services to cruise ship passengers.
- (b) To provide for orderly administration by the department of appropriate vending in the downtown waterfront area.
- (c) To ensure that vending uses shall remain incidental to the principle uses of the downtown waterfront area. The principle uses are pedestrian, vehicular, and recreational access to the docks and waterfront. The director may order the suspension of vending activities as necessary to avoid conflict with the principle uses.
- (d) To collect revenues in support of management of and improvements to City and Borough harbor and waterfront facilities.
- (e) To assure fair treatment of persons wishing to sell tours in the downtown waterfront area.
- (f) Establish a system of tour sales and tour brokerage permits in order to effectuate the purposes listed above. The administration of such system shall be for the benefit of the general public, and the grant or denial of a permit, or any act or omission by the city with respect to such permit is not intended to regulate the private business relationships or to protect the business interests of one party against the other. It shall be the individual responsibility of the permit holders and their clients to enforce their rights and liabilities through civil actions or such other private relief as may be available.

### **(g) To provide reasonable opportunity for entrepreneurs to enter the business market.**

(01/19/98)

- **05 CBJAC 10.020 - Prohibitions. (No change)**

(a) A person shall not conduct any commercial activity within the downtown waterfront area except as authorized by a permit issued under this chapter by the director. Except as authorized by a permit, a person shall not within the downtown waterfront area:

- (1) Sell or offer to sell goods or services,
- (2) Construct, maintain, or use any structure, or
- (3) Use any loading zone.

(b) Solicitation, advertisement, sales, use of loading zones or any other commercial activities without a permit issued pursuant to this chapter is a violation of CBJ [85.25.090](#) (11).

(c) A person delinquent in the payment of fines, taxes, judgments or other monies owed to the city may not receive a permit.

(d) No permit may be issued or reissued to any person whose prior permit hereunder was revoked.

(01/19/98)

- **05 CBJAC 10.030 - Permit duration, reissuance options, transferability, refunds, actively sell requirement, eligibility, number of permits available.**

Permits may be issued by the director. Permits are valid only for the dates, times, areas, and activity specified.

(a) *Duration.*

- (1) Tour sales, tour broker, and loading permits shall be valid only from May 1 through October 15 of each permit year.
- (2) No permit may be issued for a period in excess of one calendar year.

(b) *Reissuance.* Permits may be reissued only as authorized by these regulations. A reissued permit shall be subject to the regulations in effect for the year in which the permit is used. Permittees and option holders assume the risk that changes in regulations could affect their business through reduced revenues, increased costs, or both; that the number, location and rules for permits may be changed from year to year without liability to the city, compensation to permittees or option holders, and that municipal regulation hereunder shall be immune from liability pursuant to AS 09.65.070 and other applicable law.

- (1) Reissuance options.

- (A) A reissuance option entitles the holder to apply for and receive a permit for the tour season designated in the option, provided that the holder meets all the requirements for permit applicants and holders in the year the reissued permit will be operated.
- (B) The fee for any permit issued pursuant to a reissuance option shall be the same as the fee paid for the original permit.
- (C) The holder of a reissuance option shall notify the director of its intention to seek reissuance. Written notice must be received by the director no later than December 1 preceding the year in which the reissued permit will be operated. If the notice is not so received, if application is not made, or if for any other reason the permit is not reissued, the director may consider the permit, including any remaining reissuance periods, as forfeit and either available for issuance to others or withdrawn from any issuance.
- (D) Reserved.
- (E) These regulations apply to any permits and reissuance options authorized by 05 CBJAC 10.010—10.090.

(c) *Transferability.*

- (1) A permit, other than a limited loading permit, may be transferred, together with any reissuance options, provided that such transfer includes the transferor's entire business interest in activities conducted under the permit. The transferor's business interest includes all assets used in the business conducted under the permit.
- (2) No permit may be leased or rented, nor may the permittee allow the permit to be used by any person who is not an employee of the permittee.
- (3) A transferred permit is not valid until it has been approved and reissued by the director.

(d) *Refunds.* No permit fees shall be refunded after the issuance of a permit.

(e) *Reserved.*

(f) *Permit eligibility and requirements.*

- (1) To be eligible to bid on a tour sales or tour broker permit, the permit applicant must:
  - (A) Hold a current Alaska business license, and
  - (B) Maintain a place of business under the name on the Alaska business license within the boundaries of the city and borough.
- (2) Any person holding a permit must maintain a year round place of business and mailing address in the City and Borough of Juneau, Alaska, and must designate a single individual by physical address, mailing address and phone number in Juneau upon whom service of notices and legal proceedings may be made. Service of any notice concerning the permit to that person shall be legal and sufficient notice to any of the holders, owners or any other with an interest in the permit. The director must be notified in writing no less than ten days before there is a change in the name, address or phone number of the designated person for a permit. Failure to timely notify the director shall be considered a violation of the permit conditions.
- (3) No person, **individual, business or corporation** shall have an ownership interest in more than one tour sales or tour broker permit, meaning the person shall not pay for the operation of another permit holder's sales booth, direct or manage the activities of another permit holder's sales booth, or in any way financially contribute to the purchase of more than one permit. A permit holder who operates tours may have its tours sold by another permit holder, provided the permit holder operating the tour does not direct the activities of the other permit holder's sales booth or obtain any financial benefit from the other permit holder's sales booth other than that provided by the sale of the tour. **Violations will result in permit revocation per 05 CBJ 10.080(e).**
- (4) Tour sales permit holders and tour broker permit holders must actively sell during the tour season. "Actively sell" means that the permit holder either derives a significant portion of its income from sales made through a tour sales or broker's permit, or that the permit holder is making substantial use of the permit.

**(5) Denial of Fix Fee permit applications will be at the discretion of Docks & Harbors for violations of these regulations, fraud, gross negligence or misrepresentation of the applicant. A hearing appeal of the denial will be conducted in accordance with 05 CBJAC 10.080(c).**

(g) *Number of permits available.* The director shall publicly announce the number, type and schedule for application for permits.



• **05 CBJAC 10.040 - Tour sales permits.**

A tour sales permit authorizes the solicitation and sale of tours and experiences.

(a) *Application process and permit award.*

- (1) *How to apply.* No later than December 1, of each year, the port director will publicly announce an application period for tour sales permits. The notice will include a description of how to apply for a permit, the number and type of permits available, and the process that will be used to award the permits. Persons must apply on an application form provided by the port director and must include all required information and attachments.
- (2) *Application review.* The port director will review each application to determine if it is complete. The port director will reject incomplete applications. The port director will review complete applications to determine if the applicant meets the permit eligibility requirements set out in 05 CBJAC 10.030(f).
- (3) *How the permits are awarded.* The port director will **manage and** award the permits ~~by~~ **through** public outcry auction **and fixed fee permits subject to CPI adjustments. In CY2015,** ~~the~~ minimum bid for **an outcry permit** is ~~\$5,000.00~~ **\$30,000 and the fixed fee permit is \$42,000.** Applicants meeting the permit eligibility requirements set out in 05 CBJAC 10.030(f) will be allowed to bid on a permit provided the applicant posts a ~~\$5,000.00~~ **\$30,000** bid bond payable to CBJ. The applicant must agree to forfeit the bid bond in the event the applicant does not honor a winning bid on a permit.
- (4) Permit by Lottery. The port director is not limited to the issuance of permits as described in 05 CBJAC 10.040 (a)(3) and may employ assignment of permits by lottery when demand exceeds supply, with the prior approval of the Docks & Harbors board.**
- (5) Payment. Applicants for fixed fee permits shall pay in full by February 15<sup>th</sup> of the year the permit is active. Failure to meet this requirement will forfeit the remaining issuance of the permit, if applicable.**
- (6) Consumer Price Index (CPI) Adjustment. Fixed Fee Permits and minimum bid amounts shall be subject to CPI adjustment commencing in CY2015. The Consumer Price Index (CPI) shall be adjusted to the Anchorage Consumer Price Index as reported by the Alaska Department of Labor for the calendar year preceding the year the permit is active for, unless the Docks and Harbors Board takes action to keep the fee the same as the previous year.**

- (b) *Permit requirements.* The port director may issue permits and require permit holders to comply with stipulations as necessary to assure compliance with applicable requirements of this chapter and the Maritime Transportation Security Act of 2002. Permit holders shall also comply with the prohibitions set out in 05 CBJAC 10.020, the tour sales area rules set out in 05 CBJAC [10.040\(c\)](#), and the general operating requirements set out in 05 CBJAC [10.070](#)

(c) *Tour sales area rules.*

- (1) A permit holder shall only sell tours in a booth provided by the port director. The port director will provide booths at the Steamship Wharf Plaza, the Visitor's Center Lot, and the Columbia Lot sales areas. The port director reserves the right to relocate or close booths as required for public safety, security, or other good cause. The booths at each sales area will be assigned by lot. In order to assure equitable exposure for each permit holder, the port director will cause the permit holders to shift one booth on each day of operation. A permit holder shall only occupy the booth assigned by the port director.
- (2) A permit holder shall not have more than one representative selling tours at a booth, except when training new employees and then for no longer than is necessary to adequately train the employee. A permit holder shall make its best effort to maintain a presence at its booths during all hours when cruise ship passengers are likely to purchase tours in a sales area. The permit holder shall provide the port director with a list of all individuals that will sell tours at its booths and, if requested, staff identification documentation, booth staffing schedules, and other documentation, as determined by the director necessary to demonstrate the permit holder complies with this requirement.
- (3) **The permit holder shall not sell, or permit to be sold, tours on any vouchers or receipts other than their own.**
- (4) The permit holder shall provide the port director with a list of all tours sold pursuant to its permit, including the name of the company providing the tour.
- (5) The permit holder may display **up to two large signs on a single booth** provided the signs do not extend beyond the front profile of the booth. The permit holder may also display a one-foot by one-foot sign for



each tour the permit holder sells. These signs may not extend more than six inches beyond the front profile of the booth.

- (6) The permit holder or its representatives shall not engage in hawking or disruptive behavior or interfere with the operations of other sales booths.

*(01/19/98; Amended 5-2-2000, eff. 5-16-2000; Amended 1-7-2008, eff. 1-15-2008; Amended 2-7-2011, eff. 2-15-2011)*

- **05 CBJAC 10.050 - Reserved. (No change)**

**Editor's note—**

Regulation adopted January 7, 2008, effective January 15, 2008, repealed 05 CBJAC [10.050](#), which pertained to tour broker permits.

- **05 CBJAC 10.060 - Loading permits. (No change)**

No person shall operate, park, stand, or stop a commercial vehicle, or cause or direct the same, within the designated loading zones in the downtown waterfront area except as authorized by a permit issued hereunder. Vehicular use of designated loading zones for commercial purposes without a permit is a violation of CBJ [85.25.090](#)(11).

*(a) Application process.*

- (1) Application forms for loading permits will be available at the Harbor office between April 1 and October 15.
- (2) Applications must be made on the form provided by the department, and must be complete, including all required attachments. Any incomplete application will not be considered for a permit.

*(b) Permit requirements and conditions of operations.*

- (1) The port director is authorized to designate loading zones in the downtown waterfront area and establish rules to assure safety, security, and efficiency of operation.
- (2) The port director may issue loading zone permits and require permit holders to comply with stipulations as necessary to assure safety, security, and efficiency of operation. Permit holders shall also comply with the loading zone rules set out in 05 CBJAC [10.060](#)(c) and the general operating requirements set out in 05 CBJAC [10.070](#)
- (3) An applicant for a loading zone permit must show that use of the permit will be limited to transportation of passengers and/or crew to or from cruise ships. If the applicant will be transporting passengers, the showing must consist of at least one of the following:
  - A. A tour sales permit in the applicant's name;
  - B. A contract for the sale of tours onboard a cruise ship;
  - C. A contract with a cruise ship for the transportation of passengers;
  - D. A contract for the sale of tours with a tour sales permit holder. An applicant may enter into a contract with one tour sales permit holder only; or
  - E. If the applicant sells tours without the aid of the cruise lines, a cruise ship, or a tour sales permit holder, the applicant must show that it will only transport persons who have purchased tours directly from the applicant, and the applicant shall, upon request, provide the port director with a daily manifest showing the names of passengers to be transported.

*(c) Loading zone rules.*

- (1) No signs are allowed in the loading zone.
- (2) Loading zone permits shall be prominently displayed in the lower right corner of the front windshield of the vehicle, or as specified by the director.
- (3) No person shall sell or solicit the sale of any goods or services in any loading zone.
- (4) Goods and passengers shall be staged at loading zones so as to minimize vehicular standing time. No vehicle shall be present in a loading zone except as reasonably necessary for loading or unloading goods or passengers.

- (5) The driver of a vehicle must remain in the driver's seat unless assisting in the loading or unloading of passengers or luggage in the immediate vicinity of the vehicle. No driver may leave a vehicle unattended in a loading zone for any period of time.
- (6) "A" loading zones.
  - (A) Vehicles containing 18 or more passenger seats may be operated only in loading zones marked "A."
  - (B) Permittees using "A" loading zones shall submit a schedule of all cruise ships they will be meeting. For each meeting, permittees must use the "A" loading zone closest to the terminal or lightering dock designated on the schedule. Permittees may not depart from the schedule unless approval is obtained from the director at least 24 hours in advance. Approval shall be contingent upon the impact of changes upon other permittees, users of the park, and traffic conditions.
- (7) "B" loading zones. Vehicles containing fewer than 18 passenger seats may be operated only in loading zones marked "B."
- (8) A vehicle without the appropriate permit may use a loading zone as necessary for a health or safety emergency. Such use shall be the minimum necessary to resolve the emergency.
- (d) *Limited loading permits.* A person may apply for a limited loading permit for designated vehicles to provide services in a designated loading zone to a cruise ship or cruise ship passengers for occasional or off-peak-hour use. Application must be made to the director no less than one business day in advance of use.
  - (1) *Nonpassenger vehicles.* If the vehicle will be left standing in a loading zone for any amount of time, or if the driver will not remain with the vehicle for any period of time, the applicant must schedule that time with the director so as not to interfere with the efficient use of the loading zone by other permittees. The permittee must conduct all business efficiently so as to minimize any standing in the loading zone.
  - (2) *Passenger vehicles.* All requirements of subsection (c) of this section apply to vehicles providing passenger services to a cruise ship pursuant to a limited loading permit.
- (e) *Fees.*
  - (1) The fee for a loading permit shall be established at least annually by the docks and harbors board.
  - (2) The fee for a limited loading permit shall be \$15.00 per vehicle for each permit day or \$250.00 per year, whichever is less.

(01/19/98; Amended 1-7-2008, eff. 1-15-2008)

- **05 CBJAC 10.070 - General operating requirements. (No change)**

- (a) Permittees are responsible for complying with all state, federal, and local laws applicable to their activities.
- (b) Permittees shall police the area immediately around their vending area and shall properly dispose of all litter accumulating there during the course of their activities.
- (c) Permittees shall reimburse the City and Borough of Juneau for any damage to municipal property caused by the permittee's activities, including the cost of litter abatement.
- (d) No permittee may store equipment or supplies in the downtown waterfront area except as approved by the director in advance.
- (e) Permittees shall prominently display the permit issued pursuant to these regulations, as well as all other required permits and licenses, at all times during their activities hereunder.
- (f) Permittees may not engage in hawking or make an unreasonably loud noise. Written information may be distributed to interested parties only when requested.
- (g) Permittees, as a condition of receiving a permit, shall execute an instrument under the terms of which the permittee shall agree to indemnify, defend, and hold harmless the City and Borough of Juneau from any and all claims for injury or damage to persons or property suffered in connection with the permittee's activities unless such injury or damage is caused by the gross negligence of the City and Borough of Juneau.
- (h) Prior to issuance of a permit, the prospective permittee must provide the department with a broker's certificate of insurance showing that the permittee has obtained at least \$500,000.00 or, in case of courtesy vehicles, \$300,000.00, of public liability insurance. The certificate must establish that the City and Borough is named as an additional insured on such policy, and that the insurer thereof shall notify the City and Borough if the policy is modified, canceled, or terminated. Vehicles operated under and in conformity with CBJ [Chapter 20.40](#) are exempt from the requirements of this subsection.

(i) Permit holders are responsible for compliance with permit conditions. Any entity or person listed on a permit issued to a partnership, joint venture or other form of association or joint ownership, shall be deemed to be jointly and severally liable for any violations of these regulations by any person operating under the permit.

(01/19/98)

- **05 CBJAC 10.080 - Enforcement and penalties.**

(a) The port director may summarily suspend a permit issued under 05 CBJAC 10 without a hearing for a period not to exceed ten days if any activity conducted under the permit presents an immediate danger to the public health, welfare, or safety.

(b) The port director may suspend a permit, revoke a permit, deny a permit, deny the reissuance of a permit, or deny the ability to bid on a permit under 05 CBJAC 10 after an informal hearing before the port director and upon written findings that the permittee or applicant has violated these regulations, engaged in fraud or gross negligence, or misrepresented the nature and substance of a tour product.

(c) The port director shall conduct the hearing called for in 05 CBJAC 10.080(b) as follows:

(1) The permittee or applicant shall be provided with at least ten days notice of the hearing. The notice shall include a brief statement of the facts giving reason for the proposed suspension, revocation, or denial.

(2) The permittee or applicant shall have an opportunity to be heard at the hearing and shall have the right to call or cross-examine witnesses.

(3) Relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence, but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

(4) The hearing shall be recorded by audio tape.

(d) The port director shall issue a written decision. The permittee or applicant may appeal the port director's decision to the docks and harbors board by filing a notice of appeal, setting forth the reasons for the appeal, with the port director within ten days of the director's decision.

(e) A permittee whose permit is revoked loses all rights and privileges under that permit, shall deliver copies of the permit to the port director, and may not apply for a new waterfront sales permit for a period of ~~one~~ **two** years after the revocation. In addition, for a period of one year after revocation, no application for a waterfront sales permit shall be approved for an applicant who was an owner, operator, partner, director, manager, officer, assignor, or transferor, of any operation or business which required a waterfront sales permit, regardless of its form of legal entity, if the waterfront sales permit for that operation or business was revoked.

(f) Failure to follow any permit condition is a violation of CBJ 85.25.090, and may carry a fine of up to \$250.00 for each instance of a violation.

(01/19/98; Amended 4-24-2006, eff. 5-2-2006; Amended 2-7-2011, eff. 2-15-2011)

- **05 CBJAC 10.090 - Definitions. (No change)**

As used in this chapter:

"Courtesy vehicle" means a vehicle owned or operated by a business and used to transport passengers without additional charge, where such transportation is provided in conjunction with and in furtherance of a related primary business purpose or enterprise of that person.

"Department" means the City and Borough of Juneau Docks and Harbors Department.

"Director" means the port director or the port director's designee.

"Downtown waterfront area" and "facility" means that property owned by the City and Borough of Juneau located adjacent to the city cruise ship wharves, which is under the regulation of the Docks and Harbors Department and/or the Parks and Recreation Department. This includes all public spaces, loading zones, parking areas, and any wharves or trestles or portions thereof designated for enforcement hereunder by resolution of the harbor board.

"Employee" means a person who provides services at the direction and under the control of another. An employee is an integrated part of the employer's business, is hired, supervised and paid by the employer for hours set by the employer, and the employer furnishes tools and materials for the employee's use. For purposes of this chapter, drivers operating vehicles pursuant to CBJ [Chapter 20.40](#) shall be considered the employees of the holder of that certificate.

"Hawking" means the loud or continuous audible solicitation of business by a permittee to the general public.

"Permittee" [and] "permit holder" [and] "holder" mean the business entity or its authorized representatives conducting activities in the downtown waterfront area according to a permit issued under these regulations.

"Person" means a natural person, partnership, corporation, association, or other legal entity.

"Tour season" means May 1 through October 15 of one calendar year.

"Tours and experiences" means tours, transportation, transfers, entertainment, meals and services sold to customers and includes all services provided whether or not incidental to, advertised with, or specifically offered in the sale. All transportation provided to a customer by a permittee, or arranged by a permittee is considered a part of the tour or experience.

"Vehicle" means a device in, upon or by which a person or property may be transported or drawn including devices moved by human, animal, mechanical or other power source.

*(01/19/98; Amended 5-2-2000, eff. 5-16-2000)*

		2015 <sup>8</sup>	2016 <sup>1</sup>	2017 <sup>2 &amp; 6</sup>	2018 <sup>3</sup>	2019 <sup>4</sup>	2020 <sup>5, 6, 9</sup>
1	Last Chance	\$40K	\$42K	\$42K	Renewable	Renewable	
2	Liquid Alaska	\$41K	\$42K	\$42K	Renewable	Renewable	
3	M&M	\$8K	\$8K	\$42K	Renewable	Renewable	
4	Gold Tours	\$42K	\$42K	\$42K	Renewable	Renewable	
5	Woo Hoo	\$42K	\$42K	\$42K	Renewable	Renewable	
6	Whale Tales	\$42K	\$42K	\$42K	Renewable	Renewable	
7	Experience Juneau	\$42K	\$42K	\$42K	Renewable	Renewable	
8	Capital City Sightseeing	\$42K	\$42K	\$42K	Renewable	Renewable	
9	Mendenhall Taxi	\$42K	\$42K	\$42K	Renewable	Renewable	
10	“OUTCRY#1”	>\$30K	\$42K	\$42K	Renewable	Renewable	>\$30K
11	“OUTCRY#2”	none	>\$30K <sup>7</sup>	>\$30K <sup>7</sup>	>\$30K <sup>7</sup>	>\$30K <sup>7</sup>	>\$30K

Regular Black Text = Active multi-year permits

**Black Text = Renewal of 3-year permits in 2017; not to exceed 9 renewal permits**

Regular Red Text = Annual Fixed Fee permit with deference to 2014 permit holders set at \$42K (2015 dollars).

**Red Text = Outcry Auction minimum bid \$30K (2015 dollars)**

<sup>1</sup>Fixed Fee Permits \$42,000 + Anchorage CPI 2015

<sup>2</sup> Fixed Fee Permits 2016 + Anchorage CPI 2016

<sup>3</sup> Fixed Fee Permits 2017 + Anchorage CPI 2017

<sup>4</sup> Fixed Fee Permits 2018 + Anchorage CPI 2018

<sup>5</sup> Fixed Fee Permits 2019 + Anchorage CPI 2019

<sup>6</sup> Total Number of 3-year renewal permits shall not exceed 9; Lottery shall determine if there are more interested parties than permits.

<sup>7</sup> Total Number of Booths not to exceed 10

<sup>8</sup> No person, individual, business or corporation shall have an ownership in more than one tour sale or tour broker permit subject to verification through documentation.

<sup>9</sup> An additional 3-year renewal permit (10 total) may be granted provided no 3-year permits are available in the preceding 2 years.



**Law Department  
City & Borough of Juneau**

**MEMORANDUM**

DATE: January 2, 2015  
TO: Carl Uchytel, Port Director  
FROM: Christopher F. Orman, Assistant Municipal Attorney  
SUBJECT: Legal Ramifications of Long Term/Endless Permits

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CBJ Law Department has learned the Docks and Harbors Fee Review Committee has considered granting “perpetual”<sup>1</sup> or “never-ending” vendor booth permits to businesses. The reason, as provided to CBJ Law Department, would be to provide those businesses with predictability and to increase the value of their businesses should the businesses sell.

Before addressing legal issues such as takings and due process, the waterfront sales permits are unique. The waterfront sales permits entitle the business to three booths in various locations in the waterfront to sell their various tours to cruise ship passengers. They differ from a taxi permit, as a taxi permit grants the privilege to drive passengers throughout the city. They differ from a driver’s license, which grants the privilege to legally drive throughout the city. Lastly, they differ from a liquor license which grants a business the economic right to sell alcohol. These permits are for specific locations and being allowed to do business in those limited areas. Therefore, the waterfront permits are exclusive, somewhat limited, feature an annual auction process, and grant a business an area to conduct a business. Unlike the other permits, the business could still conduct business elsewhere; this permit provides one area in which the business can be conducted.

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<sup>1</sup> I have used the term perpetual herein because that suggests the most accurate description of the concept being proposed.

January 2, 2015

Subject: Legal Ramifications of Long Term/Endless Permits

Page 2

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Whether a permit constitutes a compensable property right<sup>2</sup> can limit the regulatory changes a city can undertake regarding the permit. If an individual holds a compensable property right, if a city passes a regulation inhibiting the use or exercise of a property interest then the holder of the property interest will have a legal right to just compensation due to the diminution or loss of value as to the property right.<sup>3</sup>

Alaska courts have ruled a fishing permit does not constitute a property interest for a constitutional takings claim where the statute or regulation unambiguously states the permit constitutes a privilege and not a property interest. In *Vanek v. State*, several fishermen argued the limited entry permits were property interests.<sup>4</sup> Because they were property interests, the fishermen contended state regulations shortening the salmon gillnet fishing season.<sup>5</sup> The Alaska Supreme Court found the permits were not a property interest because the “the plain language of the Limited Entry Act” articulated the permits were a “use privilege that does not require compensation when modified.”<sup>6</sup>

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<sup>2</sup> In *Frontier Saloon Inc. v. Alcoholic Beverage Control Board*, the Alaska Supreme Court examined due process requirements related to an alcohol license. 524 P.2d 657 (Alaska 1984). The Court, therefore, was not examining whether the property right reached the level of a compensable property right; though the decision does suggest such a possibility. *Id.* Therefore, when considering the current permit regulations, the CBJ has offered a permit holder a due process right to a hearing regarding a revocation or suspension of the property interest. However, the question is whether the property interest currently granted is compensable as to a constitutional taking.

<sup>3</sup> “According to article I, section 18, ‘private property shall not be taken or damaged for public use without just compensation.’ Article VIII, section 16 states, ‘[n]o person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.’” *Vanek v. State*, 193 P.3d 283 (Alaska 2008).

<sup>4</sup> 193 P.3d 283.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 289; *see also Vandever v. Lloyd*, 644 F.3d 957 (9th Cir. 2011) [Where the federal court, facing the same analysis, reached the same conclusion as the Alaska Supreme Court in *Vanek*.].

January 2, 2015

Subject: Legal Ramifications of Long Term/Endless Permits

Page 3

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Similarly, courts have found a taxi permit which could be revoked by the city, must be renewed every year, and had a specific expiration date was not a property right requiring just compensation when the city revoked the right. In *Gluck v. City of Syracuse*, the City of Syracuse passed a regulation revoking a taxi “medallion” which allowed taxi cabs to pick up passengers at the airport; instead entering an agreement with a private company to exclusively provide such a service.<sup>7</sup> The New York Supreme Court determined the medallions were not a property interest because the medallions were not “vested with any protected property right” and the medallions “lacked an essential quality of investment-backed expectations” because the Chief of Police had full discretion to determine the number of medallions issued.<sup>8</sup>

The current regulations clearly establish the permits are for only one year (though allowing reissuable permits), can be revoked, and have limited transferability rights. The revocation or suspension of a permit allows the individual due process rights to a hearing regarding the revocation or suspension. References to transferability rights and due process rights as to revocation or suspension, implies a property right which could result in takings litigation. Nevertheless, in general, the regulations create a privilege and not a compensable property interest much like in *Gluck*.

A proposal to allow for perpetual permits – with the expressed reason to provide an economic valued item for these local businesses – could result in a court finding the permits

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<sup>7</sup> 665 N.Y.S.2d 135 (N.Y. 4th Div. 1997).

<sup>8</sup> *Id.* Of note, the issue of whether a permit constitutes a compensable right has not been addressed by the Alaska Supreme Court. In *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418 (Alaska 2006), the court refused to answer the question of whether a taxi permit constituted a property interest as to a constitutional taking. However, the Municipality of Anchorage at the beginning of the litigation – which concerned the constitutional validity of a proposed initiative – seemed to almost concede the taxi permits were compensable property rights. These permits were limited in nature, could be assigned and transferred, could only be revoked for misconduct, and had a strong valuation in the resale market. Of strong importance, these permits after being purchased were perpetual.



January 2, 2015

Subject: Legal Ramifications of Long Term/Endless Permits

Page 4

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constitute compensable property rights. With the right to assign the interest, limited revocation and suspension of the permit, a somewhat fixed number of such permits, and without the regulations noting the permits are a privilege, a strong claim could be made the permit now became a compensable property interest; wherein changes to the regulations as to the permit could require just compensation from the CBJ to those permit holders. The permits would be viewed as an economic interest held by the permit holder. All of which would ostensibly limit the port director's ability to revoke the permits unless for good cause.

As a secondary concern, a perpetual permit would be inconsistent with leases and other agreements entered into by the city. All CBJ leases are a maximum 35 years long. Most contracts are for five years with up to five one year renewals; thus a maximum of 10 years. Most memorandum of understanding or agreement mirror contracts in length; thus five year terms and five one year renewals. A perpetual permit would allow an individual to apply and have unlimited renewals and no set revocation date. Such a permit would be inconsistent with various use agreements.

**CBJ DOCKS & HARBORS  
2015 WATERFRONT SALES PERMIT  
REISSUANCE APPLICATION**

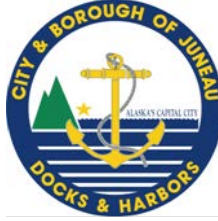


**I. General Information:** Use this form to exercise the reissuance option of a waterfront sales permit. To exercise a reissuance option, you must complete and submit this permit application form to the Port Director by 4:30 p.m. on Monday, December 15<sup>th</sup>, 2014 and meet the eligibility requirements listed below. You must also pay the permit fee in full by 4:30 p.m. on Monday, December 15<sup>th</sup>, 2014. Persons obtaining a permit must comply with certain permit conditions when operating at the facility.

**II. Permit Requirements:** To exercise a reissuance option for a waterfront sales permit, the applicant must:

- (1) In accordance with 05 CBJAC 10.030 (f) (1)(a), Hold a current Alaska business license;
- (2) In accordance with 05 CBJAC 10.030 (f) (3)(1)(b), Have maintained a place of business under the name of the Alaska business license within the boundaries of the City and Borough of Juneau, Alaska;
- (3) In accordance with 05 CBJAC 10.030 (2), Maintain a year round place of business and mailing address in the City and Borough of Juneau, Alaska and must designate a single individual by physical address, mailing address and phone number in Juneau upon whom services of notices and legal proceedings may be made;
- (4) In accordance with 05 CBJAC 10.030 (f) (3), Not have an ownership interest in more than one permit, meaning the permit holder may not pay for the operation of another permit holder's sales booths, direct or manage the activities of another permit holder's sales booths, or in any way financially contribute to the purchase of more than one permit.
- (5) In accordance with 05 CBJAC 10.030 (f) (3), A permit holder who operates tours may have its tours sold by another permit holder, provided the permit holder operating the tour does not direct the activities of the other permit holder's sales booths or obtain any financial benefit from the other permit holder's sales booths other than that provided by the sale of the tour;
- (5) In accordance with 05 CBJAC 10.030 (f) (4), Actively sell during the tour season meaning the permit holder either derives a significant portion of its income from the sales made through the permit or that the permit holder is making substantial use of the permit; and
- (6) In accordance with 05 CBJAC 10.020 (c), Not be delinquent in the payment of fines, taxes, judgments, or other monies owed to the City and Borough.
- (7) In accordance with 05 CBJAC 10.040 (c) (3), The permit holder shall not sell, or permit to be sold, tours on any vouchers or receipts other than their own.
- (8) In accordance with 05 CBJAC 10.070 (a) Permittees are responsible for complying with all state, federal, and local laws applicable to their activities. Applicants are hereby noticed that Violations of Alaska Consumer Protection Act AS 45.50.471 - AS 45.50.561 and specifically Section 45.50.471. - Alaska Unfair Trade Practices and Consumer Protection Act, apply to the permitting process. Applicants are also reminded of Alaska Statute 45.50.562 - .596 (MONOPOLIES; RESTRAINT OF TRADE) making it unlawful to restrain trade or commerce by fixing, controlling or maintaining prices, allocating or dividing customers or markets or refusing to deal or inducing third parties to deal with another person. Violators will be subject to administrative and criminal fines to the maximum extent allowed by law, including the revocation of CBJ business and other CBJ licenses.

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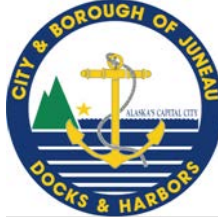
**III. Permittee Information (1-10 below must be completed in full)**

- (1) Legal Business Name: \_\_\_\_\_
- (2) Owner(s) \_\_\_\_\_
- (3) Business Mailing Address: \_\_\_\_\_  
\_\_\_\_\_
- (4) Business Physical Address: \_\_\_\_\_  
\_\_\_\_\_
- (5) Business Phone number: \_\_\_\_\_
- (6) Name of Designated Contact: \_\_\_\_\_
- (7) Designated Contact Person Mailing Address: \_\_\_\_\_
- (8) Designated Contact Person Physical Address: \_\_\_\_\_  
\_\_\_\_\_
- (9) Designated Contact Person Telephone Numbers:  
(Home) \_\_\_\_\_ (Fax) \_\_\_\_\_ (Cell) \_\_\_\_\_
- (10) E-mail address: \_\_\_\_\_

**IV. Verification**

- (1) **Attach copy of current business license.**
- (2) **Attach copy of tours which will be sold at your booth.**
- (3) **Attach copy of employees**

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**V. Certification.**

As a reminder, the purpose of these regulations is fairness to all businesses. By signing this agreement you acknowledge and understand the regulations and ordinances regarding these permits and will comply with all the laws of the State of Alaska.

If any clause or provision of this Application is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Application shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid, or unenforceable, there shall be added as a part of this License a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

No alteration or variation of this Application shall be valid or binding unless contained in a written amendment signed by the City and [applicant].

Applicant:

City and Borough of Juneau

By:

Its:

STATE OF ALASKA                     )  
  ) ss:  
\_\_\_\_\_ JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and s/he acknowledged to me that s/he signed the same as \_\_\_\_\_ of the City and Borough of Juneau, in the name of and for and on behalf of said entity, freely and voluntarily and by authority of its \_\_\_\_\_ Agreement, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

Notary Public in and for Alaska  
My commission expires:

Applicant:

\_\_\_\_\_

By:

Its:

Notary Public in and for Alaska  
My commission expires:

# **Alaska Consumer Protection Act**

## **AS 45.50.471 - AS 45.50.561**

### **Sec. 45.50.471. - Alaska Unfair Trade Practices and Consumer Protection Act.**

1. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.
2. The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:
  1. fraudulently conveying or transferring goods or services by representing them to be those of another;
  2. falsely representing or designating the geographic origin of goods or services;
  3. causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;
  4. representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
  5. representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;
  6. representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
  7. disparaging the goods, services, or business of another by false or misleading representation of fact;
  8. advertising goods or services with intent not to sell them as advertised;
  9. advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;
  10. making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
  11. engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;
  12. using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of

goods or services whether or not a person has in fact been misled, deceived or damaged;

13. failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;
14. representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve, or which are prohibited by law;
15. knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;
16. misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction;
17. basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;
18. disconnecting, turning back, or resetting the odometer of a vehicle to reduce the number of miles indicated;
19. using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;
20. selling or offering to sell a right of participation in a chain distributor scheme;
21. selling, falsely representing, or advertising meat, fish, or poultry which has been frozen as fresh food;
22. failing to comply with AS 45.02.350;
23. failing to comply with AS 45.45.130 - 45.45.240;
24. counseling, consulting, or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf

the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling, or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

25. failing to comply with the terms of AS 45.50.800 - 45.50.850 (Alaska Gasoline Products Leasing Act);
26. failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;
27. failing to comply with AS 14.48.060(b)(13);
28. dealing in hearing aids and failing to comply with AS 08.55;
29. violating AS 45.45.910(a), (b), or (c);
30. failing to comply with AS 45.50.473;
31. violating the provisions of AS 45.45.400;
32. knowingly selling a reproduction of a piece of art or handicraft that was made by a resident of the state unless the reproduction is clearly labeled as a reproduction; in this paragraph, "reproduction" means a copy of an original if the copy is
  1. substantially the same as the original; and
  2. not made by the person who made the original;
33. violating AS 08.66 (motor vehicle dealers);
34. violating AS 08.66.260--08.66.350 (motor vehicle buyers' agents);
35. violating AS 45.63 (solicitations by telephonic means);
36. violating AS 45.68 (charitable solicitations);
37. violating AS 45.50.474 (on board promotions);
38. referring a person to a dentist or a dental practice that has paid or will pay a fee for the referral unless the person making the referral discloses at the time the referral is made that the dentist or dental practice has paid or will pay a fee based on the referral;
39. advertising that a person can receive a referral to a dentist or a dental practice without disclosing in the advertising that the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral if, in fact, the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral;
40. violating AS 45.50.477(a)-(c);
41. failing to comply with AS 45.50.475;
42. violating AS 45.35 (lease-purchase agreements);
43. violating AS 45.25.400--45.25.590 (motor vehicle dealer practices);
44. violating AS 45.66 (sale of business opportunities);
45. violating AS 08.18.023(b) or 08.18.152;
46. violating AS 45.50.479 (limitations on electronic mail);
47. violating AS 17.06.010 (sale of, or offering to sell, organic food);



48. violating a labeling or advertising provision of AS 17.20 (Alaska Food, Drug, and Cosmetic Act);
  49. violating AS 45.45.920 (free trial period);
  50. violating AS 45.45.930 (opt-out marketing plans);
  51. violating AS 45.45.792 (deceptive acts or practices relating to spyware);
  52. violating AS 06.60.340 (mortgage lending regulation);
  53. offering a check, through the mail or by other means, to promote goods or services, if the cashing or deposit of the check obligates the endorser or payee identified on the check to pay for goods or services; in this paragraph, "services" does not include the extension of credit or the lending of money;
  54. violating AS 45.65.055 (authentic Alaska Native art identification seals);
  55. an information collector, other than a governmental agency, violating AS 45.48.010--45.48.090 (breach of security involving personal information); in this paragraph,
    1. "governmental agency" has the meaning given in AS 45.48.090;
    2. "information collector" has the meaning given in AS 45.48.090;
  56. violating AS 45.27 (marine products and motorized recreational products);
  57. violating AS 45.45.450--45.45.459 (rental car fees).
3. The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.
  4. [Repealed, Sec. 21 ch 166 SLA 1978].

## **Sec. 45.50.472. Junk telephone calls. [Repealed, Sec. 5 ch 142 SLA 1996].**

Repealed or Renumbered

## **Sec. 45.50.473. Disclosure of costs of certain telephone services.**

1. A person may not provide an alternate operator service without disclosing to the consumer before a charge is incurred the cost of the service provided by the person and the identity of the person providing those services. This section does not affect the power of the Regulatory Commission of Alaska to regulate providers of alternate operator services under AS 42.05 in a manner consistent with this section.
2. The owner of a place where telephone business from consumers is aggregated, including a hotel, motel, hospital, and pay telephone other than a telephone utility regulated by the Regulatory Commission of Alaska, shall disclose a surcharge added to the cost of local or long distance telephone service before the service is provided. Disclosure may be made by posting the amount of the surcharge on or

near the telephone instruments subject to the surcharge or by other reasonable written or oral means.

3. A violation of this section constitutes an unfair or deceptive act or practice under AS 45.50.471 . It is presumed that actual damages to the consumer under AS 45.50.531 (a) are equal to the cost of the service provided plus \$200. Additional damages must be proved.
4. In this section, "alternate operator service" has the meaning given in AS 42.05.325 (c).

### **Sec. 45.50.474. Required disclosures in promotions and shoreside sales on board cruise ships.**

1. A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured, or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.
2. A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations, or other shoreside activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shoreside vendor shall disclose the address and telephone number of the shoreside vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.
3. Each violation of this section constitutes an unfair trade practice under AS 45.50.471 , and shall result in a penalty of not more than \$100 for each violation.
4. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

### **Sec. 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.**

1. A person is in violation of AS 45.50.471 (b)(41) if the person
  1. [Repealed, Sec. 35 ch 55 SLA 2004].

2. engages in the telephone solicitation of a customer whose telephone number has been registered with the national do not call registry for the minimum amount of time required by the national do not call registry before the date the call is made;
  3. engages in the telephone solicitation of a customer who has previously communicated to the telephone solicitor, or to the business enterprise or charitable organization for which the person is calling, the customer's desire not to receive telephone solicitations to that number; or
  4. originates a telephone call using an automated or recorded message as a telephonic advertisement or a telephone solicitation.
2. A local exchange telecommunications company and a company that provides a telephone directory on behalf of a local exchange telecommunications company shall provide for the identification in the telephone directory of those residential customers who do not wish to receive telephone solicitations. The local exchange telecommunications company may impose a reasonable charge for identification in the directory. The charge shall be based on the cost of providing the identification and is subject to the approval of the Regulatory Commission of Alaska.
3. [Repealed, Sec. 35 ch 55 SLA 2004].
4. A person who employs individuals to engage in telephone solicitations is not liable for a violation of (a)(1) - (3) of this section if the person establishes that
  1. the person has adopted and implemented written procedures and policies to comply with (a)(1) - (3) of this section, including corrective actions if appropriate;
  2. the person has trained its personnel in the procedures and policies established under (1) of this subsection;
  3. the call that violated (a)(1) - (3) of this section was made contrary to the procedures and policies established by the person; and
  4. the call that violated (a)(1) - (3) of this section was made as a result of a good faith error.
5. An individual who solicits a telephone customer in violation of (a)(1) - (3) of this section is not liable for the violation if the individual establishes that the individual did not intend to make the call in violation of this section and did not recklessly disregard information or policies and procedures that would have avoided the improper call.
6. Local exchange telecommunications companies shall inform customers of the provisions of this section. Notification shall be made by
  1. quarterly inserts in the billing statements mailed to customers; and
  2. clear and conspicuous publication of the notice in the consumer information pages of local telephone directories.
7. In this section,
  1. "charitable organization" has the meaning given in AS 45.68.900;
  2. "customer" means a telephone customer of a telecommunications company;
  3. "national do not call registry" means the data base of telephone numbers of customers who do not wish to receive telephone solicitations

established and maintained by the Federal Trade Commission and the Federal Communications Commission;

4. "telephone solicitation"
  1. means the solicitation by a person by telephone of a customer at the residence of the customer for the purpose of encouraging the customer to purchase property, goods, or services, or make a donation;
  2. does not include
    1. calls made in response to a request or inquiry by the called customer or communication made during a call made by the customer;
    2. calls made by a charitable organization or volunteers on behalf of the charitable organization to a member of the organization or to a person who, within the last 18 months, has made a donation to the organization or expressed an interest in making a donation, but only if the charitable organization has not received a request from the member or person asking that the telephone solicitations cease;
    3. calls limited to soliciting the expression of ideas, opinions, or votes;
    4. business-to-business calls; or
    5. a person soliciting business from prospective purchasers who have, within the last 18 months, purchased from the person making the solicitation or from the business enterprise for which the person is calling but only if the person or business enterprise has not received a request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage.

## **Sec. 45.50.477. Use of titles relating to industrial hygiene.**

1. A person may not use the title "industrial hygienist," the initials "I.H.," another term that includes the phrase "industrial hygiene" or similar words, or represent to the public that the person is an industrial hygienist, unless the person has a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from a college or university accredited by a national or regional accreditation association recognized by the Council on Recognition of Postsecondary Accreditation, or a degree based on equivalent academic training, and has acquired competence in industrial hygiene through special studies or work experience sufficient to provide the person with the ability and competence to

1. anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on people and their well-being;
  2. evaluate, on the basis of training and demonstrated work experience and with the aid of quantitative measurement techniques, the magnitude of the factors and stresses identified under (1) of this subsection in terms of their ability to impair human health and well-being; and
  3. prescribe methods to prevent, eliminate, control, or reduce the factors and stresses identified under (a) of this subsection when necessary to alleviate their effects.
2. A person may not use the title "industrial hygienist in training," the initials "I.H.I.T.," another term involving the phrase "industrial hygienist in training" or a variation of those words, or represent to the public that the person is an industrial hygienist in training, unless the person is certified as an industrial hygienist in training by the American Board of Industrial Hygiene.
  3. A person may not use the title "certified industrial hygienist," the initials "C.I.H.," another term involving the phrase "certified industrial hygienist" or a variation of those words, or represent to the public that the person is a certified industrial hygienist unless the person is certified as a certified industrial hygienist by the American Board of Industrial Hygiene.
  4. A state or local government agency may not prohibit or restrict the practice of industrial hygiene by a qualified individual who complies with this section except to the extent that a state statute allows the agency to regulate a specific activity that may be included in the practice of industrial hygiene.
  5. In this section, "industrial hygiene" means the science and practice devoted to the anticipation, recognition, evaluation, and control of environmental factors and stresses arising in or from the workplace that may cause illness, impaired health or well-being, or significant discomfort among workers and may also affect persons outside the workplace.

## **Sec. 45.50.479. Limitation on electronic mail.**

1. A person may not send unsolicited commercial electronic mail to another person from a computer located in this state or to an electronic mail address that the sender knows is held by a resident of this state if the commercial electronic mail contains information that consists of explicit sexual material that another law provides may only be viewed, purchased, rented, leased, or held by an individual who is 18 years of age or older, unless the subject line of the advertisement contains "ADV:ADLT" as the first eight characters.
2. (b) In (a) of this section,
  1. "commercial electronic mail" means electronic mail consisting of advertising material for the lease, sale, rental, gift, offer, or other disposition of real property, goods, or services, including an extension of credit;

2. "explicit sexual material" means material that visually or aurally depicts conduct described in AS 11.41.455 (a), but is not limited to conduct engaged in by a child under 18 years of age;
3. "unsolicited commercial electronic mail" means commercial electronic mail sent to a person who
  1. does not have an existing personal or business relationship with the sender; and
  2. has not given permission for or requested the sending of the commercial electronic mail.

## **Sec. 45.50.480. [Repealed, Sec. 1 ch 246 SLA 1970].**

Repealed or Renumbered

## **Sec. 45.50.481. Exemptions.**

1. Nothing in AS 45.50.471 - 45.50.561 applies to
  1. an act or transaction regulated under laws administered by the state, by a regulatory board or commission except as provided by AS 45.50.471(b)(27) and (30), or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471;
  2. an act done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service;
  3. an act or transaction regulated under AS 21.36 or AS 06.05 or a regulation adopted under the authority of those chapters.
2. The exemption in (a)(3) of this section does not apply to an act or transaction between a bank and its borrowers, depositors, or other customers or potential customers.

## **Sec. 45.50.490. [Repealed, Sec. 1 ch 246 SLA 1970].**

Repealed or Renumbered

## **Sec. 45.50.491. Regulations.**

1. The attorney general, in accordance with AS 44.62 (Administrative Procedure Act), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 - 45.50.561.

## **Sec. 45.50.495. Investigative power of attorney general.**

1. If the attorney general has cause to believe that a person has engaged in, is engaging in, or is about to engage in a deceptive trade practice under AS 45.50.471 , the attorney general may
  1. request the person to file a statement or report in writing, under oath, on forms prescribed by the attorney general, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;
  2. examine under oath any person in connection with the sale or advertisement of property;
  3. examine property or sample of the property, record, book, document, account, or paper that the attorney general considers necessary;
  4. make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection, which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 - 45.50.561; and
  5. under an order of the superior court, impound samples of property that are material to the investigation and retain the sample until proceedings undertaken under AS 45.50.471 - 45.50.561 are completed.
2. The attorney general, in addition to other powers conferred by this section, may issue subpoenas to require the attendance of witnesses or the production of documents or other physical evidence, administer oaths, and conduct hearings to aid an investigation or inquiry. Service of an order or subpoena shall be made in the same manner as a summons in a civil action in the superior court.

## **Sec. 45.50.500. [Repealed, Sec. 1 ch 246 SLA 1970].**

Repealed or Renumbered

## **Sec. 45.50.501. Restraining prohibited acts.**

1. When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471 , and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has the person's principal place of business in the state, or, with the consent of the parties, in any other judicial district in the state.
2. The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471.

## **Sec. 45.50.510. [Repealed, Sec. 1 ch 246 SLA 1970].**

Repealed or Renumbered

## **Sec. 45.50.511. Assurances of voluntary compliance.**

1. In the administration of AS 45.50.471 - 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 - 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in the state. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501.

## **Sec. 45.50.521. When information and evidence confidential and nonadmissible.**

1. [Repealed by Sec. 6 ch 53 SLA 1974].
2. Subject to the provisions of AS 45.50.501 (a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 - 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 - 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy that constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis.

## **Sec. 45.50.531. Private and class actions.**

1. A person who suffers an ascertainable loss of money or property as a result of another person's act or practice declared unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act or practice three times the actual damages or \$500, whichever is greater. The court may provide other relief it considers necessary and proper. Nothing in this subsection prevents a person who brings an action under this subsection from pursuing other remedies available under other law, including common law.
2. [Repealed, Sec. 4 ch 31 SLA 1987].
3. Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney



general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

4. [Repealed, Sec. 4 ch 31 SLA 1987].
5. A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.
6. A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.
7. [Repealed, Sec. 6 ch 96 SLA 1998].
8. If the basis for the action is the fault of the manufacturer or supplier of the merchandise, the manufacturer or supplier who is at fault is liable for the damages awarded against the retailer under this section.
9. If a person receives an award of punitive damages under (a) of this section, the court shall require that 50 percent of the award be deposited into the general fund of the state under AS 09.17.020.
10. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

### **Sec. 45.50.535. Private injunctive relief.**

1. Subject to (b) of this section and in addition to any right to bring an action under AS 45.50.531 or other law, any person who was the victim of the unlawful act, whether or not the person suffered actual damages, may bring an action to obtain an injunction prohibiting a seller or lessor from continuing to engage in an act or practice declared unlawful under AS 45.50.471.
2. A person may not bring an action under (a) of this section unless
  1. the person first provides written notice to the seller or lessor who engaged in the unlawful act or practice that the person will seek an injunction against the seller or lessor if the seller or lessor fails to promptly stop the unlawful act or practice; and
  2. the seller or lessor fails to promptly stop the unlawful act or practice after receiving the notice.

### **Sec. 45.50.536. Mediation.**

1. Notwithstanding the other provisions of AS 45.50.471 - 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be submitted to mediation under the Alaska Rules of Civil Procedure. The mediation must begin within 30 days after the court's order for mediation. During mediation, the court may, if it is determined appropriate by the court, enjoin the defendant from engaging in the act or practice that is the subject of the civil action.

### **Sec. 45.50.537. Attorney fees, costs, and damages.**

1. In an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing plaintiff shall be awarded costs as provided by court rule and full reasonable attorney fees at the prevailing reasonable rate.
2. Unless the action is found to be frivolous, in an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing defendant shall be awarded attorney fees and costs as provided by court rule. If the action is found to be frivolous, the attorney fees to be awarded to the defendant shall be full reasonable attorney fees at the prevailing reasonable rate.
3. Notwithstanding the other provisions of this section, in an action brought by a private person under AS 45.50.471 - 45.50.561, if the plaintiff is not the prevailing party and if the court finds that the action was brought by the plaintiff to obtain a competitive business advantage, the court shall award a prevailing defendant costs as provided by court rule, full reasonable attorney fees at the prevailing reasonable rate, and any damages suffered by the prevailing defendant as a result of the plaintiff's allegations.
4. In an action brought by the attorney general under AS 45.50.471 - 45.50.561, if the attorney general prevails, the state shall be awarded its actual attorney fees and costs, including costs of investigation, to the extent those fees and costs are reasonable.
5. In this section, "frivolous" means
  1. not reasonably based on evidence or on existing law or a reasonable extension, modification, or reversal of existing law; or
  2. brought to harass the defendant or to cause unnecessary delay or needless expense.

### **Sec. 45.50.541. Nonnegotiability of consumer paper.**

1. If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument, or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument, or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument, within the meaning of AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code).
2. Notwithstanding the absence of such a notice on a note, instrument, or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.
3. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

### **Sec. 45.50.542. Provisions not waivable.**

1. A waiver by a consumer of the provisions of AS 45.50.471 - 45.50.561 is contrary to public policy and is unenforceable and void.

### **Sec. 45.50.545. Interpretation.**

1. In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1) (Sec. 5(a)(1) of the Federal Trade Commission Act).

### **Sec. 45.50.551. Civil penalties.**

1. A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$50,000 for each violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and, in these cases, the attorney general acting in the name of the state may petition for recovery of the penalties.
2. In an action brought under AS 45.50.501 , if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not less than \$1,000 and not more than \$25,000 for each violation.
3. [Repealed by Sec. 21 ch 166 SLA 1978].

### **Sec. 45.50.561. Definitions; short title.**

1. In AS 45.50.471 - 45.50.561
  1. "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;
  2. "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;
  3. "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means

acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

4. "consumer" means a person who seeks or acquires goods or services by lease or purchase;
  5. "dealing in hearing aids" has the meaning given in AS 08.55.200;
  6. "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;
  7. "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;
  8. "fresh" means a condition of food that has never been frozen;
  9. "goods or services" includes goods or services provided in connection with a consumer credit transaction or with a transaction involving an indebtedness secured by the borrower's residence;
  10. "hearing aid" has the meaning given in AS 08.55.200;
  11. "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;
  12. "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.
2. AS 45.50.471 - 45.50.561 may be cited as the Alaska Unfair Trade Practices and Consumer Protection Act

# **Antitrust & Monopolies**

## **AS 45.50.562 – 45.50.596**

### **Article 04. MONOPOLIES; RESTRAINT OF TRADE**

#### **Sec. 45.50.562. Combinations in restraint of trade unlawful.**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is unlawful.

#### **Sec. 45.50.564. Monopolies and attempted monopolies unlawful.**

It is unlawful for a person to monopolize, or attempt to monopolize, or combine or conspire with another person to monopolize any part of trade or commerce.

#### **Sec. 45.50.566. Transactions and agreements not to use or deal in commodities or services unlawful.**

It is unlawful for a person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged for it, or discount from, or rebate upon, that price, on the condition, agreement, or understanding that the lessee or purchaser will not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or service of a competitor or competitors of the lessor or seller, if the effect of the lease, sale, or contract for sale, or of the condition, agreement, or understanding may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

#### **Sec. 45.50.568. Mergers and acquisitions unlawful when competition lessened.**

1. It is unlawful for a person to acquire and hold, directly or indirectly, the whole or a part of the stock, or other share capital, or assets of any corporation after August 5, 1975 if the effect of the acquisition and holding may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in the state or in a section of the state. This subsection does not apply to persons purchasing such stock solely for investment if it is not used by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nothing in this subsection prevents a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions of it, or from owning and holding all or a part of the stock of the subsidiary corporation, when the effect of the formation is not substantially to lessen competition.

2. When the court finds that the effect of the holding of such stock, share capital, or assets is substantially to lessen competition or tends to create a monopoly and no other remedy will eliminate the lessening of competition or the tendency to create a monopoly, the court shall order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition of it.
3. This section does not apply to mergers, acquisitions, or holding companies permitted by AS 06.05.235 or to a merger carried out in accordance with AS 21.69.590 - 21.69.600, or to mergers, acquisitions, or holding companies permitted and regulated by a regulatory agency of the United States having jurisdiction and control over those mergers and acquisitions.

#### **Sec. 45.50.570. Interlocking directorates and relationships.**

1. It is unlawful for a person to be at the same time a director, officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations or any combination of them engaged in commerce, if these firms, partnerships, trusts, associations, or corporations or a combination of them, are by virtue of their business and location or operation, competitors and if the effect may be substantially to lessen competition or tend to create a monopoly.
2. A person may not by the use of a representative accomplish the result prohibited in (a) of this section.
3. The validity or invalidity of an act of a director, officer, or trustee done by the director, officer, or trustee while occupying the position in violation of this section shall be determined by the statutory and common law of the state relating to corporations, trusts, or associations.
4. The attorney general may bring an action at any time to cause a director, officer, or trustee who may be occupying such a position in violation of this section to vacate the office or offices to effect the termination of the prohibited interlocking relationship.
5. A person affected by an act of a director, officer, or trustee may bring an action at any time to cause the director, officer, or trustee who may be occupying the position in violation of this section to terminate the prohibited interlocking relationship.
6. The court, upon finding that a director, officer, or trustee is holding office in violation of this section, shall order the person to terminate the interlocking relationship, and, in the case of a trustee, the court may, when it considers it appropriate, order the trustee to vacate the office of the trustee. A remedy provided in this section does not limit and is in addition to any other remedy available under another section of this chapter or another law.

#### **Sec. 45.50.572. Exemptions.**

1. AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural, or marine pilot organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those

organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

2. AS 45.50.562 - 45.50.596 do not forbid actions or arrangements authorized or regulated under the laws of the United States that exempt these actions or arrangements from application of the antitrust laws of the United States or under the following statutes of this state:
  1. AS 06.05.235 and 06.05.570;
  2. AS 10.15; and
  3. AS 31.05.110.
3. AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen who catch, collect, or cultivate aquatic products from acting together in associations for the purpose of collectively catching, producing, preparing for market, processing, handling, and marketing their product. Associations may have marketing agencies in common and may make contracts and agreements necessary to achieve the purposes of this subsection. In this subsection, "association" means an association, corporate or otherwise, with or without capital stock, that
  1. is operated for the mutual benefit of its members;
  2. does not deal in the aquatic products of nonmembers to an amount greater in value than the association handles for its members; and
  3. either
    1. does not allow a member of the association more than one vote because of the amount of stock or membership capital the member may own in the association; or
    2. does not pay dividends on stock or membership capital in excess of eight percent a year.
4. AS 45.50.562 - 45.50.596 apply to long distance telecommunications services provided by public utilities. AS 45.50.562 - 45.50.596 do not apply to other services provided by public utilities that have been issued a certificate of public convenience and necessity under AS 42.05.
5. [Repealed, Sec. 68 ch 21 SLA 1985].
6. [Repealed, Sec. 10 ch 75 SLA 1982].
7. AS 45.50.562 - 45.50.596 do not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regulatory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anticompetitive effects before permitting the activities, and enforcement of the provisions of AS 45.50.562 - 45.50.596 would be disruptive of the regulatory scheme.
8. AS 45.50.562 - 45.50.596 do not forbid actions or arrangements necessary to carry out the provisions of the Alaska Native Claims Settlement Act.
9. AS 45.50.562 - 45.50.596 do not prohibit activities of the Alaska Housing Finance Corporation to stabilize the market price of and demand for residential housing in the state under AS 18.56.210.
10. AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen, including fishermen acting through associations allowed under (c) of

- this section, from collectively agreeing with fish processors, including fish processors acting through associations of processors, on the (1) price paid to the fishermen for aquatic products; and (2) minimum price that fish processors will accept for the sale of processed aquatic products. Nothing in this subsection allows fish processors to agree among themselves on the price paid to fishermen or the minimum price that fish processors will accept for the sale of processed aquatic products if fishermen did not participate in the making of the agreement and are not a party to the agreement.
11. AS 45.50.562 - 45.50.596 do not apply to action taken by a person to comply with AS 45.25 or to action refrained from by a person in order to comply with AS 45.25 (motor vehicle transactions).
  12. AS 45.50.562 - 45.50.596 do not forbid the existence or operation of organizations of physicians acting in accordance with AS 23.50, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

#### **Sec. 45.50.574. Contracts voidable.**

A contract or agreement in violation of a provision of AS 45.50.562 - 45.50.596 is voidable by either party as to future performance by either party; however, the court may, in its discretion, order payment for goods or services already received to prevent unjust enrichment. Sec. 45.50.576. Suits by persons injured; treble damages; costs.

1. A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action
  1. for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and
  2. to enjoin the unlawful practice, and, if the judgment is for the plaintiff, the plaintiff may be awarded costs of the suit, including reasonable attorney fees.
2. If a home rule or general law city or borough or other governmental entity is injured by reason of a violation of AS 45.50.562 - 45.50.570, it may maintain an action in the same manner as prescribed in (a) of this section for an injured person, and the city, borough, or other governmental entity is entitled to the same relief as provided in (a) of this section.
3. In a civil action brought under AS 45.50.562 - 45.50.570, if judgment is for the defendant, the defendant shall be awarded the defendant's costs of the suit, including reasonable attorney fees in accordance with rules adopted by the supreme court for awarding costs and attorney fees to prevailing parties in civil actions. If the plaintiff in a civil action brought under this section in which



judgment is for the defendant is a class certified under Rule 23, Alaska Rules of Civil Procedure, any award of costs and attorney fees to the defendant

1. may be satisfied only through funds, if any, that the class has collected from settlements with or judgments against other defendants; and
2. is not a liability of any individual member of the class.

#### **Sec. 45.50.577. Enforcement by attorney general.**

1. The attorney general may bring a civil action in superior court to secure monetary relief as provided in this section on behalf of the state and its agencies injured either directly or indirectly by reason of any violation of AS 45.50.562 - 45.50.570.
2. The attorney general may bring a civil action in superior court in the name of the state, as *parens patriae* on behalf of governmental entities or persons doing business or residing in this state, to secure monetary relief as provided in this section for injuries directly or indirectly sustained by persons by reason of any violation of AS 45.50.562 - 45.50.570.
3. The court shall exclude from the amount of monetary relief awarded in an action under (a) or (b) of this section any amount of monetary relief that
  1. duplicates amounts that have been awarded for the same injury; or
  2. is properly allocable to persons who have excluded their claims under (e) of this section.
4. The court shall award the attorney general as monetary relief three times the total damage sustained as described in (a) or (b) of this section and, additionally, the costs of the action, including reasonable attorney fees.
5. In any action brought under (b) of this section, the attorney general, at the times, in the manner, and with the content the court directs, shall cause notice of the action to be given by publication. Any governmental entity or person on whose behalf an action is brought under (b) of this section may elect to exclude from civil action the portion of the state claim for monetary relief attributable to that governmental entity or person by filing notice of the election with the court within the time specified in the attorney general's notice given in accordance with this subsection.
6. The final judgment in an action under (a) or (b) of this section is *res judicata* as to any claim under AS 45.50.576 by any governmental entity or person on whose behalf the action was brought and who fails to give notice of election to exclude under (e) of this section within the period specified in the attorney general's notice given under (e) of this section.
7. An action under (b) of this section may not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given by publication at the times, in the manner, and with the content the court directs in accordance with (e) of this section and AS 45.50.584 .
8. Monetary relief recovered in an action under this section shall be (1) distributed in the manner the court, in its discretion, authorizes; or (2) deemed a civil penalty by the court and deposited in the general fund, and may be appropriated to the Alaska permanent fund (AS 37.13.010 (a)) or for any other public purpose. A

distribution procedure authorized by the court under this subsection must afford each governmental entity or person participating in the civil action a reasonable opportunity to secure that entity's or person's appropriate portion of the net monetary relief.

9. Only the attorney general, in a suit brought under this section, may seek monetary relief for injury indirectly sustained for a violation of AS 45.50.562 - 45.50.570.

#### **Sec. 45.50.578. Criminal and civil penalties.**

1. A person who violates AS 45.50.562 or 45.50.564 is guilty of a class C felony and upon conviction is punishable,
  1. if a natural person, by a fine of not more than \$1,000,000, notwithstanding AS 12.55.035, or by imprisonment as provided in AS 12.55, or by both; or
  2. if not a natural person, by a fine of not more than \$50,000,000, notwithstanding AS 12.55.035.
2. In addition to any other relief available, the attorney general may bring a civil action against a person who violates AS 45.50.562, 45.50.564, 45.50.568, or 45.50.570, or an injunction issued under AS 45.50.580, for a civil penalty of not more than
  1. \$1,000,000 if the person is a natural person;
  2. \$50,000,000 if the person is not a natural person.

#### **Sec. 45.50.579. Proof of aggregate damages.**

In a civil action brought by the attorney general under AS 45.50.577, the attorney general may recover aggregate damages by using statistical sampling or sampling methods, by the computation of illegal overcharges, or by a similar, reasonable system of estimating aggregate damages that the court, in its discretion, permits, without the necessity of separately proving the individual claim or amount of damage to governmental entities or persons on whose behalf the civil action was brought.

#### **Sec. 45.50.580. Injunction by attorney general.**

1. In addition to any other relief provided by AS 45.50.562 - 45.50.596, the attorney general may bring an action to enjoin a violation of AS 45.50.562 - 45.50.596. This action may be brought as a sole action or in conjunction with another action that the attorney general is authorized to bring.
2. The court may make additional orders or judgments as may be necessary to restore to a person in interest any money or property, real or personal, that may have been acquired by an act prohibited by AS 45.50.562 - 45.50.596, and as may be necessary to prevent continuing or future violations of AS 45.50.562 - 45.50.596.

#### **Sec. 45.50.582. Jurisdiction of court.**

An action arising under AS 45.50.562 - 45.50.596 shall be brought in the superior court.

#### **Sec. 45.50.584. Consent judgment.**

1. In an action maintained under AS 45.50.562 - 45.50.596, the parties to it may file with the court a consent judgment or decree. The consent judgment or decree shall set out the alleged violations, future obligations of the parties, if any, damages, or other relief, the defendant agrees to make, if any, and the reasons for entering into the consent judgment or decree.
2. A consent judgment or decree does not become final until 60 days from its filing. During the 60-day period an interested party may file verified exceptions to the form or substance of the consent judgment or decree, and the court, upon a full hearing on those exceptions, may approve or refuse to enter the consent judgment or decree.

#### **Sec. 45.50.586. Judgment in favor of the state as evidence in another action.**

A final judgment rendered in a civil or criminal action brought by the state under AS 45.50.562 - 45.50.596 is prima facie evidence against the defendant in any other action under AS 45.50.562 - 45.50.596 brought by another party, or by the state, a city, a borough, or other governmental entity; however, this section does not apply to consent judgments or decrees entered under AS 45.50.584.

#### **Sec. 45.50.588. Limitation of actions.**

An action to enforce a claim arising under AS 45.50.562 - 45.50.596 is barred unless commenced within four years after the claim accrues, except that when an action is brought by the attorney general under AS 45.50.562 - 45.50.596, the running of this period of limitation, with respect to every private right of action for damages that is based in whole or in part on a matter complained of in the action by the attorney general, shall be suspended during the pendency of the action brought by the attorney general. For the purpose of this section, a claim for a continuing violation is considered to accrue at any time during the period of the violation.

#### **Sec. 45.50.590. Powers of the attorney general.**

If the attorney general determines, upon complaint or otherwise, that a person has engaged in, or engages in, or is about to engage in an act or practice prohibited or declared unlawful by AS 45.50.562 - 45.50.596, or that a person has assisted or participated in a plan, scheme, agreement, or combination of the nature described in AS 45.50.562 - 45.50.596, or when the attorney general believes it to be in the public interest, the attorney general may commence an investigation. The attorney general may compel production of documentary material and take testimony, under oath, before the institution of an action under AS 45.50.562 - 45.50.596.

#### **Sec. 45.50.592. Investigatory demand for documentary evidence.**

1. If the attorney general determines that a person is in possession, custody, or control of a documentary evidence, wherever situated, that the attorney general believes to be relevant to an investigation authorized in AS 45.50.590 , the attorney general may execute in writing and cause to be served upon that person an investigative demand requiring the person to produce the documentary material and permit inspection and copying.
2. Each demand must
  1. state the specific statute the alleged violation of which is under investigation, and the general subject matter of the investigation;
  2. describe, with reasonable specificity so as fairly to indicate the material demanded, the documentary material to be produced;
  3. prescribe a return date within which the documentary material is to be produced; and
  4. identify the state employees or representatives to whom the documentary material is to be made available for inspection and copying.
3. A demand may not
  1. require the production of documentary material that would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the state; or
  2. contain a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state; however, this does not limit the power of the attorney general to require production of documents located outside the state that pertain to matters affecting the state.
4. The demand may be served by the attorney general or the designee of the attorney general by
  1. delivering a copy of it to the person to be served, or, if the person is not a natural person, to an officer of the person to be served;
  2. delivering a copy of it to a place of business in the state of the person to be served; or
  3. mailing by registered or certified mail a copy of it addressed to the person to be served at a place of business in the state, or, if the person has no place of business in the state, to principal office or place of business of the person.
5. Documentary material produced pursuant to a demand, or copies of it, unless otherwise ordered by a superior court for good cause shown, may not be produced for inspection or copying by, nor may its contents be disclosed to, anyone other than an authorized employee of the state without the consent of the person who produced the material. However, under those reasonable terms and conditions the attorney general prescribes, copies of the documentary material shall be available for inspection and copying by the person who produced the material or an authorized representative of that person. The attorney general, or a designee, may use copies of the documentary material as the attorney general or designee considers necessary in the enforcement of AS 45.50.562 - 45.50.598, including presentation before a court; however, material that contains trade secrets may not

- be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.
6. At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued under (a) of this section, stating good cause, may be filed in the superior court for the judicial district where the parties reside. A petition by a person on whom a demand is served, stating good cause, to require the attorney general or another person to act in accordance with the requirements of (e) of this section, and all other petitions in connection with a demand, may be filed in the superior court for the judicial district in which the person on whom the demand is served resides.
  7. A person upon whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by an order of court issued in response to a petition filed under (f) of this section. A person who, with intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies, a documentary material in the possession, custody, or control of a person which is the subject of a demand duly served upon any person, or who otherwise wilfully disobeys any such demand, is guilty of a misdemeanor, and is punishable upon conviction by a fine of not more than \$5,000, or by imprisonment for a term of not more than one year, or by both. Failure of the state to serve the demand properly under (d) of this section is a defense to prosecution under this subsection, but invalidity of the demand under (b) or (c) of this section is not a defense, and that invalidity may be tested only in an action under (f) of this section to modify or set aside the demand.
  8. Nothing in this section impairs the authority of the attorney general or a designee to lay before a grand jury of this state evidence concerning a violation of AS 45.50.562 - 45.50.596, to invoke the power of a court to compel the production of evidence before a grand jury, or to file a civil complaint or criminal information alleging a violation of AS 45.50.562 - 45.50.596.

**Sec. 45.50.594. Investigatory demand for attendance of witness.**

1. In connection with an investigation authorized by AS 45.50.590, the attorney general may issue an investigative demand compelling the attendance of a person for examination under oath before the attorney general or before a court of record.
2. Each demand shall
  1. state the specific statute the alleged violation of which is under investigation, and the general subject matter of the investigation;
  2. state the date, time, and place at which the examination is to take place.
3. A demand may be served by the attorney general, or a designee, in accordance with the procedures prescribed in AS 45.50.592(d).
4. If a person ordered to attend the inquiry fails to attend without good cause, the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. If a person in attendance at the inquiry refuses to answer a question on the ground

that the person may be incriminated by the answer, and if the attorney general, or a designee, in a writing directed to the person being questioned orders the person to answer the question, the person shall comply with the order. After complying, and if but for this section the person would have been privileged to withhold the answer given, the person may not be prosecuted for an offense or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which the person gave evidence. However, the person may nevertheless be prosecuted or subjected to penalty or forfeiture for a perjury, false swearing, or contempt committed in answering or failing to answer. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify, the person may be adjudged in contempt and committed to jail until the time the person purges the contempt by testifying. A grant of immunity does not prevent the attorney general from instituting civil contempt proceedings against a person who violates any of the above provisions.

### **Sec. 45.50.596. Definitions.**

In AS 45.50.562 - 45.50.596,

1. "asset" includes any property, tangible or intangible, real, personal, or mixed and wherever located, and any other thing of value;
2. "documentary evidence" includes an original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical tabulation, magnetic tape, or other computer data storage system, or other tangible document or recording;
3. "trade" and "commerce" include but are not limited to, trade in goods, merchandise, natural resources, whether or not severed, extracted, harvested, or produced, agricultural products, produce, choses in action, commodities, and any other article of commerce; they include trade or business in service trades, transportation, banking, lending, advertising, bonding, and any other business whether or not that business furnishes a personal service.