



TO: Aquatics Board
FROM: George Schaaf, Parks & Recreation Director
DATE: February 25, 2020
RE: Draft Commercial Use Regulations & Policy

At its regular meeting on September 24, 2019, the Aquatics Board asked staff to draft regulations and policies regarding commercial use of municipal aquatics facilities. These draft regulations and a draft policy were presented to the Aquatics Board at the November 19, 2019 meeting. Since that time, the board has been focused on the biannual budget, and has not taken any further action on commercial use regulations. Pending action by the board, the Department is waiving enforcement of CBJ 67.01.090(i), which requires a permit for the commercial use of recreation facilities. This memo provides additional information developed since the Board last considered the draft regulation.

Insurance

City code requires liability insurance for any commercial use of recreational facilities (CBJ 67.01.080). A number of private swim instructors expressed concern about their ability to secure liability insurance at an affordable price. In cooperation with our Risk Management staff, we have secured "Special Events Program" insurance through Alliant Insurance Service, Inc. that will provide an affordable option for private swim instructors and coaches. The cost of this insurance is approximately \$97 per year for up to 125 students, and would be passed on to the permittee. A modest service charge would also be included to recover the City's costs to process the insurance application. Additional information is included in your packet; as of 2020, this insurance provides the following coverages:

\$2 million	General Aggregate
\$1 million	Personal and Advertising Injury
\$1 million	Each Occurrence
\$100,000	Fire Damage
\$5,000	Medical Expense

Next Steps

The process to adopt regulations is different from that used to adopt policies. Per CBJ 67.10, the Aquatics Board may adopt regulations necessary for the administration of the aquatics facilities. Regulations must be adopted pursuant to CBJ 01.60, which requires that public notice be provided at least 21 days before adoption. This means that you are free to discuss the issue and make changes to the draft regulations, but you may not adopt any regulations yet. When you feel the draft regulations are ready, a motion is required to begin the adoption process outlined at CBJ 01.60. From there, staff will work with the Municipal Clerk to provide the required public notice.

In addition to the regulation, a policy will be necessary to guide the commercial use permit process. Details such as the application process, appeals, scheduling, and specific permit conditions will be contained in the policy, not the regulation. Policies may be adopted at the discretion of the board, and I recommend you postpone action on the policy until the regulation is finalized and adopted.

Chapter 01 - COMMERCIAL USE OF MUNICIPAL AQUATICS FACILITIES

11 CBJAC 02.010 - Policy.

The policy of the City and Borough of Juneau concerning the commercial use of municipal aquatics facilities is to:

- (a) Maintain and improve aquatics facilities for their primary use by the public;
- (b) Offer aquatics programs and lessons that respond to community needs and meet high standards for training, quality, and safety;
- (c) Establish consistent rules and conditions for the commercial use of municipal aquatics facilities; and
- (d) Charge for commercial use of municipal aquatics facilities in order to generate a fair and reasonable return for the public.

(Eff. xx/xx/xx)

11 CBJAC 01.020 - Facilities regulated.

These regulations apply to all municipally owned aquatics facilities, including the grounds of such facilities.

(Eff. xx/xx/xx)

11 CBJAC 01.030 - Permit required.

- (a) No person may conduct commercial activities in facilities subject to these regulations except as authorized by a permit issued by the Director of the Parks and Recreation Department. **A permit under this chapter is not required for activities conducted under an agreement with the City and Borough.**
- (b) The Director may issue a permit for commercial activities only upon a determination that the proposed use:
 - (1) Will not damage or degrade the facility or impair the public's enjoyment of the facility;
 - (2) Will not endanger the public health, safety, and welfare; and
 - (3) Is consistent with established policies and procedures.
- (c) A permit may include reasonable conditions, including limitations as to time, area, equipment, parking, noise, training, certification, insurance, and other factors.
- (d) If the cumulative impact of proposed uses would exceed the appropriate level of commercial use for the facility, the Director shall not award any permits for that facility until the following procedure is followed:**
 - (1) The Director shall notify all members of any group of applicants whose applications, taken together, propose uses that would exceed the appropriate level of commercial use for a facility. The notice shall identify the nature and extent of the impacts exceeding the appropriate level of use, and shall invite the applicants to confer among themselves for the purpose of negotiating a resolution to the excess impacts issues.**

(2) The applicants may re-submit their applications, which may be granted if the Director finds that the excess impact issues have been resolved and the applications otherwise meet the requirements of this section.

(3) If excess use issues remain unresolved, the Director shall determine which of the proposals offers the greatest benefit to the public and maximum value to the City and Borough. In making this determination, the Director shall consider past performance, impacts of the activity, mitigation, whether the applicants are responsive and responsible, and the policies set forth in 11 CBJAC 02.010.

(4) The Director's decision may be appealed to the City Manager by filing a notice of appeal with the Clerk's Office within 10 days of the Director's decision, setting forth the reasons for the appeal. The City Manager will take up the appeal within 10 days. The City Manager's decision to deny a permit shall constitute a final agency action subject to appeal in accordance with CBJ 01.50.020(b).

- (e) A permit is transferable only with the permittee's entire business interest in activities conducted under the permit and only to a person who has successfully completed the permit application process. No credit will be given for any permit payments made by the previous holder of the permit.
- (f) No permit shall be issued to any person or entity delinquent in the payment of fines, taxes or other monies owed to the City and Borough.

(Eff. xx/xx/xx)

11 CBJAC 01.040 - Application process.

(a) *General requirements.*

- (1) Applications for permits will be accepted only from persons who have the legal authority to act in accordance with the permit. All applications must be signed by the owner(s) of the business to be subject to the permit.
- (2) All applications for permits must be on forms provided by the department. Applications will not be considered unless they are complete, signed, accompanied by the applicable fee, and filed together with any required attachments or exhibits at the offices of the Parks and Recreation Department during regular business hours.

(b) *Application information.*

(1) *Applicant information.*

- (A) The application shall identify each individual or business entity responsible for the use intended;
- (B) The application shall include the physical address, mailing address, and phone number for each person, owner, and company responsible for the use intended;

(2) *Proposed use.*

- (A) The application shall include a description of each proposed use, providing sufficient detail to allow the Department to determine the effect of the use on the facility and impacts, if any, to the public;
- (D) The application shall include a description of the maximum number of customers anticipated on a daily, monthly, and annual basis.

(3) *Fees to be charged by permit holder.*

- (A) The application shall include a schedule of fees and charges to customers and a description of any collection, disbursement, royalty, commission or similar arrangements with others.

(Eff. xx/xx/xx)

11 CBJAC 01.050 - Permit fees.

(a) **Application Fee**

- (1) The applicant shall pay a nonrefundable fee, established by the manager, which fee is intended to recover the full cost of processing the application for a commercial use permit.**

(b) **Permit Fee**

- (1)** The applicant shall pay a fee, established by the CBJ Aquatics Board, which fee will give the City & Borough of Juneau a fair and reasonable return in light of the cost of administering the activity permitted under the permit, the impact of the proposed activity on the facility, the cost of any improvements required, and the value of the benefit conferred upon the user.
- (b) The permittee shall be responsible for collecting and remitting all admission fees for all persons engaged in the authorized activity, including the permittee.
- (c) Fees for lessons, classes, and similar activities shall be calculated on a daily basis, per person.
- (e) The fee shall be paid to the Department by the 15th day of each month for fees owed in the previous calendar month. All payments shall be accompanied by a completed activity report on a form provided by the Department. Fees and charges not paid by the 15th day of each month will be considered delinquent and subject to the interest provisions established in CBJ Code 1.41. (Eff. xx/xx/xx)

11 CBJAC 01.060 - Insurance and indemnification.

Prior to issuance of a permit, the permittee must provide the Department with a broker's certificate of insurance showing that the permittee has obtained public liability insurance in the amount and for the risks determined by the risk manager of the City and Borough of Juneau for the proposed use. The certificate must establish that the City and Borough is named as an additional insured on the policy, and that the insurer shall notify the City and Borough if the policy is modified, canceled, or terminated.

Permittees, upon acceptance of 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.

(Eff. xx/xx/xx)

11 CBJAC 01.070 - Permit duration.

- (a) Permits shall expire **may be authorized for a maximum of** one (1) year from the date of issue.
- (b) Permits are valid only for the dates, times, activities and facilities specified.
- (c) Permits are not renewable. Issuance of a permit shall not entitle the permit holder to any priority or preferential consideration for subsequent, new, or additional permits for the same or related uses or areas. A new application must be submitted each permit period, for each permit.
- (d) The director may issue a temporary permit at any time, valid for no more than 30 days and not renewable. The application process for a temporary permit shall be the same as the other permits.

(Eff. xx/xx/xx)

11 CBJAC 01.080 - General operating requirements.

- (a) Permittees shall have a copy of the permit immediately available for inspection at all times while engaged in activities authorized by the permit.
- (b) Permittees are responsible for their actions and those of their agents, employees, and/or customers while engaged in permitted activities. The following operating requirements apply to activities conducted under the permit unless otherwise specified in a permit.
 - (1) Commercial use of aquatics facilities shall be limited to public swim periods.
 - (2) No advertising or solicitation is permitted within any municipal aquatics facility.
 - (3) No alterations or improvements to the facility are allowed, nor may anything be posted or signs of any kind be displayed in the facility.
 - (4) The permit holder shall promptly notify the Aquatics Manager of any accident, injury or claim relating to the permitted activity.
 - (5) The permit holder shall promptly notify the Aquatics Manager of any repair or maintenance needed within the facility, or of any conditions which constitute a hazard. The permit holder shall not make any repairs or alterations to the facility.
 - (6) Permit holders shall comply with all CBJ policies, rules and regulations; as well as all applicable state, federal, and local laws.
 - (7) Permit holders shall properly dispose of all litter resulting from their use of the facility.
 - (8) The permit holder shall reimburse the City and Borough of Juneau for any damage to municipal property caused by the permittee, their clients, or their use of the facility, including cleaning costs.
 - (9) No equipment or supplies may be stored at any municipal facility.
 - (10) No pets shall use an aquatics facility.

(Eff. xx/xx/xx)

11 CBJAC 01.090 - Enforcement and penalties.

- (a) A permit may be suspended by the director without advance notice for a period not to exceed ten days if any activities conducted under the permit present an immediate danger to the public health, welfare, or safety.
- (b) A permit may be suspended or revoked by the Director upon a written finding that the permittee has violated these regulations, failed to comply with permit conditions, engaged in fraud or negligence, or misrepresented the nature and substance of the commercial activity. The permittee shall be provided at least 10 days' notice and an opportunity to be heard at an informal hearing on the suspension or revocation. The Director's decision may be appealed to the City Manager by filing a notice of appeal with the Clerk's Office within 10 days of the Director's decision, setting forth the reasons for the appeal. The City Manager will take up the appeal within 10 days. The City Manager's decision to deny a permit shall constitute a final agency action subject to appeal in accordance with CBJ 01.50.020(b).

(Eff. xx/xx/xx)

11 CBJAC 01.100 - Definitions.

As used in this chapter:

"Commercial use" [and] "commercial purpose" mean the sale, delivery, or solicitation to provide, goods or services in exchange for valuable consideration. The term includes a service offered in conjunction with another sale of goods or services whether or not it is incidental to, advertised with, or specifically offered in the other sale. All instruction, lessons, classes, and other services are commercial activities if any payment or valuable consideration through barter, trade, cash or other commercial means is required, expected or received.

"Department" means the City and Borough of Juneau Parks and Recreation Department.

"Director" means the supervisor of the City and Borough of Juneau Parks and Recreation Department or such person as may be designated by the manager to administer these regulations.

"Municipal aquatics facilities" [and] "pools" mean all swimming pools and related buildings and grounds owned by the City & Borough of Juneau.

"Permittee" or "permit holder" means the business entity or its authorized representative conducting commercial activities in an aquatic facility according to a permit issued under these regulations.

"Person" means a natural person, firm, partnership, corporation, association, or other entity organized for a common purpose.

(Eff. xx/xx/xx)