

**ASSEMBLY AGENDA/MANAGER'S REPORT
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

January 28, 2019 7:00 PM

Assembly Chambers
2019-06

Submitted By:

Duncan Rorie Watt
City and Borough Manager

I. FLAG SALUTE

II. ROLL CALL

III. SPECIAL ORDER OF BUSINESS

IV. APPROVAL OF MINUTES

A. **Special Assembly Meeting Minutes 2019-05, January 23, 2019**

V. MANAGER'S REQUEST FOR AGENDA CHANGES

VI. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

VII. CONSENT AGENDA

A. Public Requests for Consent Agenda Changes, Other Than Ordinances for Introduction

B. Assembly Requests for Consent Agenda Changes

C. Assembly Action

1. Ordinances for Introduction

a. **Ordinance 2019-08 An Ordinance Amending the Land Use Code Related to Street Standards.**

This ordinance would amend the Land Use Code regarding the standards for temporary cul-de-sacs and stub streets. A temporary cul-de-sac and stub street are used when the street design of a new subdivision ends at an adjoining property that could be developed. Currently, the land use code requires a developer of a subdivision designed with a stub street to construct it or provide a financial guarantee for five years to cover

construction of it. This ordinance would remove that five-year financial guarantee requirement and clarify the procedures and standards for when a temporary cul-de-sac and a stub street are required.

The Planning Commission recommended the Assembly adopt this ordinance at its meeting on December 11, 2018.

The City Manager recommends this ordinance be introduced and referred to the Public Works and Facilities Committee.

- b. **Ordinance 2018-11(AB) An Ordinance Appropriating to the Manager the Sum of \$1,474,553 as Funding for the New Recycleworks Consolidated Facility Capital Improvement Project; Funding Provided by Waste Management Fund's Fund Balance.**

This ordinance would appropriate \$1,474,553, the majority of the proceeds from the recent sale of the Shaune Drive public property, to create a new CIP that will consolidate the Recycleworks program and Household Hazardous Waste program at a central location at the Waste Management owned and operated landfill.

The Public Works and Facilities Committee reviewed this topic at its meeting on January 14, 2019, and referred it to the Assembly.

The City Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- c. **Ordinance 2018-11(AC) An Ordinance Appropriating to the Manager the Sum of \$300,000 as Funding for the Deferred Building Maintenance Capital Improvement Project; Funding Provided by Waste Management Fund's Fund Balance.**

This ordinance would appropriate \$300,000, a portion of the proceeds from the recent sale of the Shaune Drive public property, to reimburse the Deferred Maintenance CIP for funding the renovations made to the old Valley Shop at 2520 Barrett Avenue to allow the Water Department to occupy the facility.

The Public Works and Facilities Committee reviewed this topic at its meeting on January 14, 2019, and referred it to the Assembly.

The City Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

2. Liquor License

- a. **Liquor License Renewals for Licenses: 1081, 1384**

These liquor license actions are before the Assembly to either protest or wave its right to protest each license action.

Renewal of Liquor Licenses

License Type: Restaurant Eating Place, License #1384

Alfonso Soriano d/b/a Jovany's Italian Restaurant

Location: 9121 Glacier Highway, Juneau

License Type: Beverage Dispensary, License #1081

Shayz, LLC, d/b/a Squirez

Location: 11806 Glacier Highway, Juneau

Staff from the Police, Finance, Fire, Public Works (Utilities), and Community Development departments have reviewed the above licenses and recommend the Assembly waive its right to protest these applications. Copies of the documents associated with each license are in the Assembly's e-packet or available in hardcopy upon request to the Clerk's office.

The City Manager recommends the Assembly waive its right to protest the above-listed liquor license applications.

VIIIPUBLIC HEARING

A. Ordinance 2019-03 An Ordinance Amending the City and Borough of Juneau Code Related to Aquatics Facilities and Repealing the Associated Sunset Date.

In October 2014, Juneau voters authorized the Assembly to adopt an ordinance to establish a board to direct the operation of CBJ's aquatics facilities. Subsequently, Ordinance 2015-23(b) created the seven-member Aquatics Board. That ordinance specified the Aquatics Board would automatically sunset on May 28, 2018. Ordinance 2018-18 extended this sunset date to June 30, 2019, to allow for further consideration of better governance options. Since April 2018 the Aquatics Board, in consultation with the City Manager and Parks & Recreation staff, considered different governance options, which culminated in Ordinance 2019-03.

This ordinance would permanently remove the sunset provision and makes several other changes. It increases the number of board members from seven to nine, and designates one seat each for representatives from the Juneau School District and a local aquatics organization that rents a pool facility. The Director of the Parks & Recreation Department would sit on the board as a non-voting member. The ordinance further clarifies that the Aquatics Manager reports to the Parks & Recreation Director and provides staff support to the Aquatics Board. The Board would continue to have the ability to establish fees and charges for the use of aquatics facilities, review and approve annual operating and capital budget submissions, and adopt regulations subject to Assembly approval.

Upon adoption of this ordinance, the Assembly would then need to address the

Board's membership. Of the seven current members, two (Max Mertz and Pat Watt) have terms that expire in 2020 and the remaining five have terms that expire this June. I understand that some members are not interested in serving for additional terms. Thus, I recommend the Assembly open an application process and select three people to fill three-year terms, three people to fill two-year terms, one person to fill a one-year term, and keep the existing two members with terms that expire in 2020. This ordinance would not change the term limits for any member that continues after the new Board is formed.

The Human Resources Committee discussed this ordinance on January 7, 2019. The Aquatics Board discussed this ordinance on January 15 and 22, and recommends the Assembly adopt version (b). A memo from the City Attorney describes the changes in version (b).

The City Manager recommends version (b) of this ordinance be adopted.

B. Ordinance 2018-11(Y) An Ordinance Appropriating to the Manager the Sum of up to \$230,000 as Funding for Phase II of the Amalga Fish Cleaning Station Project; Grant Funding Provided by the Alaska Department of Fish and Game.

The Alaska Department of Fish and Game (ADF&G) has provided \$230,000 for the purpose of design and construction of a new fish cleaning float.

This project received a previous ADF&G grant of \$50,000 for feasibility and planning purposes. The additional funds will cover the final design, permitting, bidding, and construction of the fish cleaning station at Amalga Harbor. The Docks and Harbors Board referred this item to the Assembly at its regular meeting on December 20, 2018.

The Assembly Public Works and Facilities Committee discussed this matter on January 14, 2019, and recommended to postpone consideration of the ordinance until more public process occurred.

The City Manager recommends the Assembly allow public testimony tonight and then refer this ordinance to the Public Works and Facilities Committee to allow staff more time to facilitate public process.

C. Ordinance 2019-04(b) An Ordinance Repealing Ordinance 2015-18(am) and Re-establishing the Treadwell Arena Advisory Board.

The Treadwell Arena Advisory Board (TAAB) was established by the Assembly in 2015 and tasked with reviewing operations at the Treadwell Arena, including financial performance, marketing, and facility usage. The TAAB recently developed mission and vision statements for the board, and has proposed amending ordinance 2015-18(am) to provide better alignment between the TAAB's work and its reports to the Assembly. This ordinance would better identify objective reporting criteria that align with the TAAB's vision "to ensure continued opportunities for the

community to use Treadwell Arena," and its mission to "work with Treadwell Arena to ensure operations are consistent with cost recovery goals, identify opportunities to generate net revenue, and identify ways to improve the user's experience."

The TAAB discussed these changes at its meeting on October 16, 2018 and recommended forwarding them to the Assembly for action. The Human Resources Committee discussed this ordinance on January 7, 2019, and recommended that the TAAB report to the Human Resources Committee instead of the Committee of the Whole. That change is reflected in version (b) of this ordinance.

The City Manager recommends that version (b) of this ordinance be adopted.

D. Ordinance 2019-01 An Ordinance Amending the City and Borough Code Relating to the Criminal Penalty for Violating Conditions of Release.

This ordinance would amend the CBJ's violating conditions of release penalty to be consistent with the maximum penalty allowed under State law. State law (AS 29.25.070(g)) requires that a penalty for a municipal ordinance may not be greater than for a violation of a similar State law. This ordinance would reduce the maximum term of imprisonment from 10 days to 5 days for the crime of violating conditions of release and clarify that the maximum fine is still \$2000, which is consistent with State law (AS 11.56.757, AS 12.55.135(b)(3), and 12.55.035(b)(6)).

The City Manager recommends this ordinance be adopted.

E. Ordinance 2018-11(U) An Ordinance Appropriating to the Manager the Sum of \$600,000 as Funding for the Electronic Fare Boxes Capital Improvement Project for Capital Transit; Grant Funding Provided by Alaska Department of Transportation and Public Facilities.

This ordinance would appropriate grant funding in the amount of \$600,000 as provided by federal funds through the Alaska Department of Transportation and Public Facilities. A local match requirement of \$150,000 has already been appropriated to the capital project under D71-090 – Electronic Fare Boxes.

This funding will provide Capital Transit with a data management and fare collection system that enables automatic passenger counters to track ridership and loads on an ongoing basis and a fare collection system to help reduce collection time, ultimately providing improved customer service.

The Public Works and Facilities Committee reviewed this topic at its meeting on December 10, 2018, and referred it to the Assembly.

The City Manager recommends this ordinance be adopted.

F. Ordinance 2018-11(V) An Ordinance Appropriating to the Manager the Sum of \$479,653 as Partial Funding for Bus Replacement for Capital Transit; Grant Funding Provided by Alaska Department of Transportation and Public

Facilities, With Local Match Funding Provided by the Equipment Replacement Reserve's Fund Balance.

This ordinance would appropriate grant funding in the amount of \$407,630 as provided by federal funds through the Alaska Department of Transportation and Public Facilities. A local match requirement of \$72,023 will be funded from the equipment replacement reserve fund balance.

This Lo-No Bus grant, and local match, will be combined with remaining funding of \$397,339 from the recent diesel bus replacement grant that was previously appropriated by the Assembly, along with the associated local match of \$99,335 available in the equipment replacement reserve fund balance. These combined funds, totaling \$976,327 will allow Capital Transit to replace a 2006 35 foot diesel powered bus with a 35 foot electric bus and associated charging infrastructure for the Mendenhall Valley Transit Facility.

The Public Works and Facilities Committee reviewed this topic at its meeting on December 10, 2018, and referred it to the Assembly.

The City Manager recommends this ordinance be adopted.

G. Ordinance 2018-11(W) An Ordinance Appropriating to the Manager the Sum of Up to \$30,000 as Partial Funding for the Cold Weather Emergency Shelter (FY19); Grant Funding Provided by the Alaska Mental Health Trust Authority (The Trust).

The Alaska Mental Health Trust Authority approved a \$30,000 grant request submitted by CBJ staff to cover the costs of operating the cold weather emergency shelter. Last year CBJ received \$16,425 to cover rent at the facility. The increased amount recognizes the CBJ's additional costs in taking over ownership of the building, but is \$6,000 short of that requested. The Housing Office will be looking for operational efficiencies to address the shortfall.

The City Manager recommends this ordinance be adopted.

H. Ordinance 2018-11(X) An Ordinance Appropriating to the Manager the Sum of \$52,763 as Partial Funding for the Housing and Homelessness Services Coordinator Project; Grant Funding Provided by the Alaska Mental Health Trust Authority.

The Alaska Mental Health Trust Authority approved a \$52,763 "house-keeping" grant submitted by CBJ at the request of the Trust. This grant streamlines travel funding and re-establishes a fiscal year grant cycle. One element of this grant is for \$36,355. The original award was for \$100,000 a year for up to three years, beginning in FY2018. Our Housing and Homelessness Services Coordinator was hired seven months into the fiscal year. This funding fills the gap between fiscal

years and allows the Trust to assume a regular grant cycle in FY2020. The other element of this grant is \$16,398 in travel and training dollars for the Housing and Homelessness Services Coordinator and the Chief Housing Officer to participate in homelessness-related training and conferences. Rather than approve them individually, the Trust requested they be submitted as a plan.

The City Manager recommends this ordinance be adopted.

I. Ordinance 2019-02 An Ordinance Authorizing the City Manager to Execute a Purchase and Sale Agreement with Archipelago Properties LLC for Real Property located at Lots 1, 2 and 4, Archipelago Subdivision, Plat No. 2013-22, Juneau Recording District, near 356 South Franklin Street.

The rapidly growing visitation of cruise ships and their passengers necessitates additional facilities to serve the industry. Since the opening of the new floating berth at Alaska Steamship Wharf, dockings have increased 44% and the number of passengers visiting has increased 182%.

Cruise ship vessels exist to take passengers on vacations, and their sole purpose for entering the port of Juneau is to allow passengers to disembark for the day and to enjoy walking about downtown and/or getting on ground transportation to their tours. This project would provide necessary services to the vessel, to the passengers, and will advance the marine enterprise of the cruise ship industry.

The Ninth Circuit Court of Appeals concluded that the provision of the same services as are proposed in this project was lawful. *Barber v. State of Hawaii*, 42 F.3d 1185, 1196 (1994) (providing restroom facilities, parking, trash disposal, and security services to boaters in exchange for moorage and anchoring fees did not violate the Tonnage Clause).

This ordinance would authorize the Manager to enter into an agreement to purchase private property and sell municipal property resulting in a net cost to the CBJ of \$922,175.

The City Manager recommends this ordinance be adopted.

J. Ordinance 2018-11(S) An Ordinance Appropriating to the Manager the Sum of \$11,000,000 as Funding for the Downtown Waterfront Improvement Project; Funding Provided by Cruise Passenger Vessel Excise Tax, Port Development Fees, Marine Passenger Fees Fund's Fund Balance, and Dock Fund's Fund Balance.

DOWNTOWN WATERFRONT IMPROVEMENT PROJECT – FUNDING PACKAGE

Docks & Harbors proposes construction of a downtown transportation staging area and expanded waterfront open space deck-over project in support of the cruise passenger growth in Juneau. The project includes a land exchange and results in a

net purchase of approximately 0.4 acres of additional property. The project would be constructed in two phases over the course of twenty-four months. The total estimated project cost is \$23.5 million. The Finance Director has developed a funding package which would include sufficient resources to complete the proposed project. Phase I improvements would cost \$20.5 million and include the purchase of necessary property and the project costs of the first phase of the construction project. The first phase of construction would include the pilings and installed decks and surface improvements. Phase II, if funded at a later date by the Assembly, would include the covered passenger shelter with restrooms.

The proposal draws from a variety of funds including: Cruise Passenger Vessel Excise Tax, Marine Passenger Fees, Port Development Fees, Dock Fund Balance and Waterfront Land Acquisition CIP.

The funding for Phase I consists of:

- 1.) \$3.5 million of funds already appropriated,
- 2.) appropriating \$11 million via this ordinance and
- 3.) \$6 million of passenger fees to be transferred in from other CIPs.

The City Manager recommends this ordinance be adopted.

K. Transfer 1007 A Transfer of \$6,000,000 from Statter Harbor Improvements - Phase III and Open Space Waterfront Land Acquisition Capital Improvement Projects to Marine Park to Taku Uplands Improvement Capital Improvement Project.

Transfer T-1007 transfers \$4.5 million, of State Cruise Passenger Vessel Excise Tax, from Statter Harbor Improvements Phase III and \$1.5 million, of CBJ Marine Passenger Fees, from Open Space Land Acquisition Fund, to the Marine Park to Taku Uplands Improvement Project.

Docks & Harbors proposes construction of a downtown transportation staging area and expanded waterfront open space deck-over project in support of the cruise passenger growth in Juneau. The project includes a land exchange and results in a net purchase of approximately 0.4 acres of additional property. The project would be constructed in two phases over the course of twenty-four months. The total estimated project cost is \$23.5 million. The Finance Director has developed a funding package which would include sufficient resources to complete the proposed project. Phase I improvements would cost \$20.5 million and include the purchase of necessary property and the project costs of the first phase of the construction project. The first phase of construction would include the pilings and installed decks and surface improvements. Phase II, if funded at a later date by the Assembly, would include the covered passenger shelter with restrooms.

The funding for Phase I consists of:

- 1) \$3.5 million of funds already appropriated

- 2) Appropriating \$11 million via ordinance 2018-11(S) and
- 3) \$6 million of passenger fees to be transferred, via this resolution, from other CIPs.

The City Manager recommends this transfer be approved.

L. Bid Award-Downtown Waterfront Improvements-Materials Procurement

This bid award is for material procurement for the downtown waterfront improvements project at the Archipelago property. The materials sought are long lead-time items; procuring them now will assure that the desired construction schedule is met.

Bids were opened on this project on January 15, 2019. Results of the bid opening were as follows:

Bidders	Total Bid
Island Contractors	\$783,820
Trucano Construction	\$849,017
Western Marine Construction	\$840,600
<i>Engineer's Estimate</i>	\$833,000

The City Manager recommends approval of this bid to Island Contractors in the amount of \$783,820.

M. Ordinance 2018-11(Z) An Ordinance Appropriating to the Manager the Sum of up to \$200,000 as Funding for Visitor Information Kiosk Replacement Capital Improvement Project; Funding Provided by the Dock Fund's Fund Balance.

The CBJ Docks and Harbors Board requests approval to transfer \$200,000 from the Docks Fund Balance for construction of a new visitor information kiosk.

The current kiosk is over 40 years old, has several safety deficiencies, and does not meet ADA requirements. The kiosk is beyond repair and needs to be replaced.

The proposed funding would replace CBJ Marine Passenger Fees currently remaining in the account. Those funds would be transferred to another project under a separate action. The Docks Fund Balance is currently \$4.0M.

The Docks and Harbors Board considered this item at its regular meeting on December 20, 2018 and adopted a motion to recommend the Assembly approve this appropriation ordinance.

The City Manager recommends this ordinance be adopted.

N. Bid Award-Visitors' Information Kiosk Replacement

This bid award would construct a new visitors' information kiosk at the current site on the downtown waterfront. The existing kiosk does not meet ADA requirements and is beyond its useful life.

Bids were opened on this project on January 22, 2019. The results of the bid opening were as follows:

Bidders	Total Bid
Island Contractors, Inc.	\$163,873
Dawson Construction, LLC	\$204,300
Silver Bow Construction Co.	\$219,000
Carver Construction, LLC	\$220,642
<i>Engineer's Estimate</i>	\$150,000

The City Manager recommends that this bid be awarded to Island Contractors, Inc. in the amount of \$163,873.

O. Ordinance 2018-11(AA) An Ordinance Appropriating to the Manager the Sum of up to \$170,000 as Funding for Dock Security Stations Capital Improvement Project; Funding Provided by Marine Passenger Fees.

The CBJ Docks and Harbors Board requests approval to transfer \$170,000 of Marine Passenger Fees from Docks Operations Fund to CIP H51-122 (Dock Security Stations).

The Department of Homeland Security requires Docks personnel secure the vessel at all times it is moored to the cruise berths. Passengers' credentials must be cleared as they enter the vessel security area. Currently there is no orderly vessel security access and queuing location for security checks. The proposed project would construct new security checkpoint facilities (one at the Cruise Ship Terminal and one at Alaska Steamship Wharf).

Funds being transferred are CBJ Marine Passenger Fee proceeds within the approved Docks Operations account that was originally identified for US Coast Guard required TWIC readers. The USCG has since delayed indefinitely the TWIC reader requirement thus the funds are able to support another vessel security project.

The Assembly Public Works and Facilities Committee considered this funding item at its regular public meeting on November 19, 2018 and adopted a motion to prepare an appropriation ordinance for Assembly action.

The Docks and Harbors Board considered this item at its regular meeting on December 20, 2018 and adopted a motion to recommend the Assembly approve this appropriation ordinance.

The City Manager recommends this ordinance be adopted.

P. Transfer 1011 A Transfer of \$129,000 from the Visitor Info Kiosk Capital Improvement Project to the Dock Security Stations Capital Improvement Project.

The CBJ Docks and Harbors Board requests a transfer of funds from CIP account H51-110 (Visitor Information Kiosk) to CIP account H51-122 (Dock Security Stations).

The request is to transfer \$129,000 of CBJ Marine Passenger Fee proceeds to support design and construction of two new Dock Security Stations. The security stations would provide a covered area for secure vessel access and queuing for security checks.

The funding being transferred is CBJ Marine Passenger Fee proceeds that were approved previously for a new Visitor Information Kiosk. The funds would be transferred to support the Dock Security Stations project.

The Docks and Harbors Board considered this item at its regular meeting on December 20, 2018 and adopted a motion to recommend the Assembly approve this appropriation ordinance.

The City Manager recommends this transfer be approved.

IX. UNFINISHED BUSINESS

A. Volunteers of America v. CBJ Assessor

This is a property tax appeal. On March 7, 2018, the CBJ Assessor denied a request from the Volunteers of America for a religious or charitable purpose exemption for two parcels with multi-family housing known as the Terraces at Lawson Creek. Volunteers of America filed a timely appeal. On April 23, 2018, the Assembly accepted the appeal and referred it to a hearing officer.

The hearing officer held a prehearing conference, had the record compiled, and the parties briefed their positions. The hearing officer issued a proposed decision on January 2. Volunteers of America filed a timely objection. The hearing officer considered that objection and the Assessor's statement of support and updated the proposed decision. The hearing officer reviewed the record, applied Alaska and CBJ law in light of the record, and ultimately concluded the Terraces at Lawson Creek do not qualify for a religious or charitable purpose tax exemption. CBJ 01.50.150(c) governs this process. Unless rejected or modified by an affirmative vote of the Assembly, the hearing officer's proposed order shall be deemed adopted by the Assembly. No testimony or evidence of any nature other than that contained in a timely filed objection may be received by the Assembly at

this meeting.

X. NEW BUSINESS

XI. STAFF REPORTS

XII. ASSEMBLY REPORTS

- A. Mayor's Report
- B. Committee Reports, Liaison Reports, Assembly Comments and Questions
- C. Presiding Officer Reports

XIII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

XIV. EXECUTIVE SESSION

- A. **CLIA Litigation Update**

XV. ADJOURNMENT

XVI. SUPPLEMENTAL MATERIALS

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city.clerk@juneau.org

**SPECIAL ASSEMBLY MEETING
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Meeting Minutes - January 23, 2019

MEETING NO. 2019-05: The Special Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 5:30 p.m. by Mayor Beth Weldon.

I. CALL TO ORDER / ROLL CALL

Assembly Members Present: Mayor Beth Weldon, Loren Jones, Michele Hale, Wade Bryson, Carole Triem, Maria Gladziszewski, Mary Becker, Rob Edwardson, Alicia Hughes-Skandjis

Assembly Absent: None.

Docks & Harbors Board Members Present: Chair Don Etheridge, Budd Simpson, Mark Ridgway, Weston Eiler, Bob Janes, Dave McCasland, Bob Wostmann, Jim Becker

Absent: None - there was one vacant D&H Seat.

A quorum of each group was present.

Staff Present: City Manager Rorie Watt, City Attorney Rob Palmer, Municipal Clerk Beth McEwen, Port Director Carl Uchtyl, Docks & Harbors Administrative Officer Teena Larson, Harbormaster David Borg, Deputy Harbormaster Matt Creswell, Port Engineer Gary Gillette, Finance Director Bob Bartholomew

II. APPROVAL OF AGENDA

The agenda was approved as presented by unanimous consent.

III. SPECIAL ORDER OF BUSINESS

A. Joint Meeting with Docks and Harbors Board

Mayor Weldon welcomed everyone to the meeting and turned the gavel over to Docks & Harbors Board Chair Don Etheridge. Docks and Harbors staff and other CBJ staff members were introduced and Mr. Etheridge gave an overview of the projects that Docks & Harbors has been working on during the past year as well as some of the projects they currently have in process.

Discussion took place regarding the Clean Harbors award and the harbors that were included in that award. Deputy Harbormaster Matt Creswell explained that to receive

the award, there is a 15 page check list of best practices with 19 of those practices required to be met while at least 80% of the remaining 85 practices be met to achieve the award. Juneau was the 5th harbor community to receive the award and after further discussion, Mr. Creswell explained that the harbor basins covered by Juneau's award were the Harris, Douglas, Aurora, and Statter Harbors. Additional discussion took place regarding the Amalga Harbor and N. Douglas launch ramp and since those aren't harbor basins with finger floats, they were not included in that project.

Mr. Jones raised the concerns of the residents of Amalga that Amalga Harbor was not part of the Clean Harbor review and does not meet the best practices. He asked if Docks and Harbors has any plans on bringing it in under the Clean Harbor standards?

Discussion then took place regarding the recent proposal for the fish cleaning station at Amalga Harbor. Mr. Etheridge explained that Amalga Harbor doesn't meet the harbor basin criteria since it is only a launch ramp. With respect to the fish cleaning station, they do intend to engage the general public and reach out specifically to Amalga residents to engage them in additional public meetings on that topic.

Additional discussion took place with Assemblymembers and Docks & Harbors members regarding fish stations, Fish and Game regulations, and public engagement in general. The Mayor and Assembly shared with the board members that the more dialogue and public process that can be done at the board level, the less the Assembly has to get deep into the weeds when it is forwarded to the Assembly level.

Other key topics discussed touched on the Auke Bay Marine Station and Statter Harbor plans including outreach and engagement with the Auke Bay residents and other groups such as the Auke Bay Plan Implementation Committee, UAS and NOAA. Ms. Gladziszewski asked for the Docks & Harbors Board to provide the Assembly with an update as to what work has been done to date on the marine station and what their plans and goals are with respect to future work on that property.

Discussion then turned to the Assembly's goals as well as how the Docks and Harbors board's work and plans align with those of the greater community as found in the Comprehensive Plan, the Long Range Waterfront Plan, the Juneau Economic Development Plan and how it all fits together with the zoning of the areas involved. Docks and Harbors members and staff then explained the various deferred maintenance projects they have undertaken as well as some that are coming in the near future, specifically with respect to the zinc anode projects. Staff explained that zinc anodes extend the life span of the harbor pilings by approximately 33%. Other major projects that meet the long range waterfront goals as well as the economic development plan include completion of the major cruise ship project downtown, rebuilding many of the kiosks, addition of new floats and renovations at Harris Harbor, Aurora Harbor, and a large part of Statter Harbor.

Mr. Etheridge stressed that Juneau is making strides on becoming a maritime community by attracting more fishermen and building on and expanding maritime culture locally.

Additional discussion took place between the Assembly and board members regarding a wish for greater communication between the bodies, especially when there are complex issues that can become controversial.

They discussed the Tlingit-Haida lease of the Thane property and that while it is a 35 year lease, it is opened up for review/continued approval every five years.

Discussion then continued with respect to long term planning and how the affects of climate change, rising sea levels, and glacial rebound enter into their plans. Mr. Etheridge explained that when they are working on their facility plans that they are planning with the extremes in mind such as 25-30 foot tidal changes, having to dredge harbors due to glacial rebound and other long term affects.

The discussion then turned to the policies behind what is being planned by the engineers and how the various plans adopted by CBJ and Assembly goals affect those long term project planning. Board members said they look to the plans and goals approved by the Assembly for their policy direction but they are also open to hearing more from the Assembly. Mayor Weldon shared that we are very fortunate to have competent managers in Mr. Watt and Mr. Uchytel who are "doers" and that it is up to the Assembly and also by extension, the Harbor Board, to listen to the public for their input and provide the policy and course corrections to staff. Mayor Weldon encouraged a broader opening of communication channels between the Assembly and the Harbor Board and members of both bodies discussed ways for engaging the public in the overall process.

Next to be discussed was the status of the tug boat "Lumberman" which is still floating in the channel under the jurisdiction of the State of Alaska Division of Natural Resources. Mr. Etheridge reported that CBJ and DIPAC have stabilized the boat with additional anchors. The Coast Guard has removed its fluids but there is still some bilge sludge on board. It is estimated that it would cost approximately \$250,000 to tow the vessel to Hoonah where it could be taken out of the water, chopped up for scrap metal and disposed of properly. Mr. Edwardson shared that this is not just a CBJ problem or even a Southeast problem but rather a national problem with approximately 900 abandoned or derelict vessels in Alaska waters alone. Mayor Weldon asked if Docks and Harbors had money in their budget to address the issue of the Lumberman. Mr. Janes asked if the Assembly was directing them to take on this issue. With the agreement of the Assemblymembers present, Mayor Weldon said yes, they would like Docks and Harbors to address this issue.

Mr. Becker said that a bill was signed last year by Governor Walker but that it was not funded by the State. He noted that DNR has to apply for the funds in order for the state to be able to do something with the Lumberman. Mr. Becker also shared that last year,

there was quite a bit of concern from DIPAC about the possibility that the Lumberman would break loose of its anchoring and damage the infrastructure of the DIPAC facilities.

Mayor Weldon thanked the Docks and Harbors board and congratulated them and their staff for doing such a great job on the deferred maintenance and also on its Clean Harbors Award.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None.

V. EXECUTIVE SESSION

A. CLIA Litigation Update - To be held in City Hall Conference Room 224

MOTION by Ms. Triem to recess into Executive Session to discuss matters which might have an adverse affect on the finances of the city, specifically with regard to the CLIA litigation.

Mayor Weldon asked for any public comment on the motion to go into Executive Session. Hearing none, she recessed the Assembly at 6:45 p.m. upstairs to hold its Executive Session.

The Assembly came out of Executive Session at 8:48 p.m. and reported that it received updates from Bob Bartholomew, Robert Palmer and Rorie Watt regarding the CLIA litigation.

VI. ADJOURNMENT

There being no further business to come before the Assembly, the meeting adjourned at 8:50 p.m.

Signed: _____
Elizabeth J. McEwen, Municipal Clerk

Signed: _____
Beth A. Weldon, Mayor

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-08

An Ordinance Amending the Land Use Code Related to Street Standards.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 49.35.240 Improvement standards, is amended to read:

49.35.240 Improvement standards.

...

(g) *Cul-de-sacs.*

(1) *Length.* Streets designed to have one end permanently closed shall be no more than 600 feet and not less than 150 feet in length measured from the center of the intersection to the radius point of the turnaround. The director for minor subdivisions, and the commission for major subdivisions, may authorize a longer or shorter cul-de-sac if it is found that the unique characteristics of the site warrant modification to the length.

(2) *Temporary cul-de-sacs.* Temporary cul-de-sacs will be allowed where a street can practically logically be extended in the near future to provide for connecting streets into an adjoining undeveloped land, is located in a right-of-way or in an easement for public access, and if the following are met:

(A) The temporary portions of the cul-de-sac ~~turnaround~~ shall must be shown on easements on the plat rather than as dedicated right-of-way. Such easements shall allow for public access and maintenance as if it were dedicated right-of-way until such time the easements are vacated. The easements shall not contribute towards lot area.

(B) All of the cul-de-sac must be constructed to permanent street construction standards except as noted in (G) below.

(C) The CBJ will record a release of the easements for the temporary portions of the ~~cul-de-sac turnaround~~ at the state recorder's office at Juneau at the time the ~~cul-de-sac turnaround~~ is removed and the street improvements have been extended.

(D) Easement lines for the temporary ~~cul-de-sac turnaround~~ will be considered front property lines for determining building setbacks.

(E) All improvements, including utilities and private driveways, must be designed to accommodate the eventual extension of the street and reversion of the temporary ~~cul-de-sac turnaround~~ to adjoining properties. The construction plans shall demonstrate those improvements connecting through a temporary cul-de-sac will still comply with CBJ standards after the temporary cul-de-sac is removed.

(F) Temporary cul-de-sacs must provide required access and minimum frontage on a publically maintained right-of-way to all lots using the cul-de-sac as access. If the cul-de-sac is not extended to the adjoining property, the maximum length of an unconstructed right-of-way between the temporary cul-de-sac and the adjoining property shall be the minimum lot width for the zoning district. If the right-of-way is located in more than one zoning district, the shortest minimum lot width shall be used. The right-of-way between the constructed temporary cul-de-sac and the adjoining property shall be subject to the stub street requirements of this Title. ~~be extended to as close to the adjoining property boundary as practical. If it is not practical to construct the turnaround portion of the cul-de-sac at this location, then the right of way must be extended beyond the temporary turnaround to the adjoining property line, and the street extension constructed to standard (See Figure 3).~~

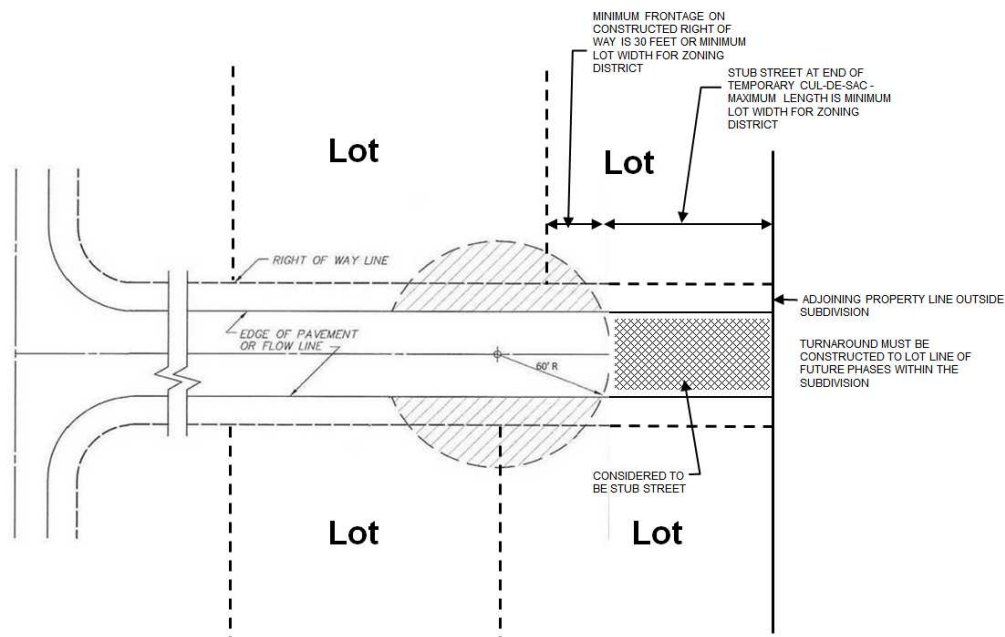


Figure 3 [Instruction for Municode, delete existing figure and insert new figure as depicted above]

(G) The temporary cul-de-sac may be located on property within the subdivision intended for future subdivision phases in conjunction with a platted right-of-way. It may also be located outside the subdivision boundary entirely within an easement. See Figure 4. If the temporary cul-de-sac turnaround is constructed on property outside of the subdivision boundary, then curb, gutter, and sidewalks are not required for the temporary cul-de-sac turnaround.

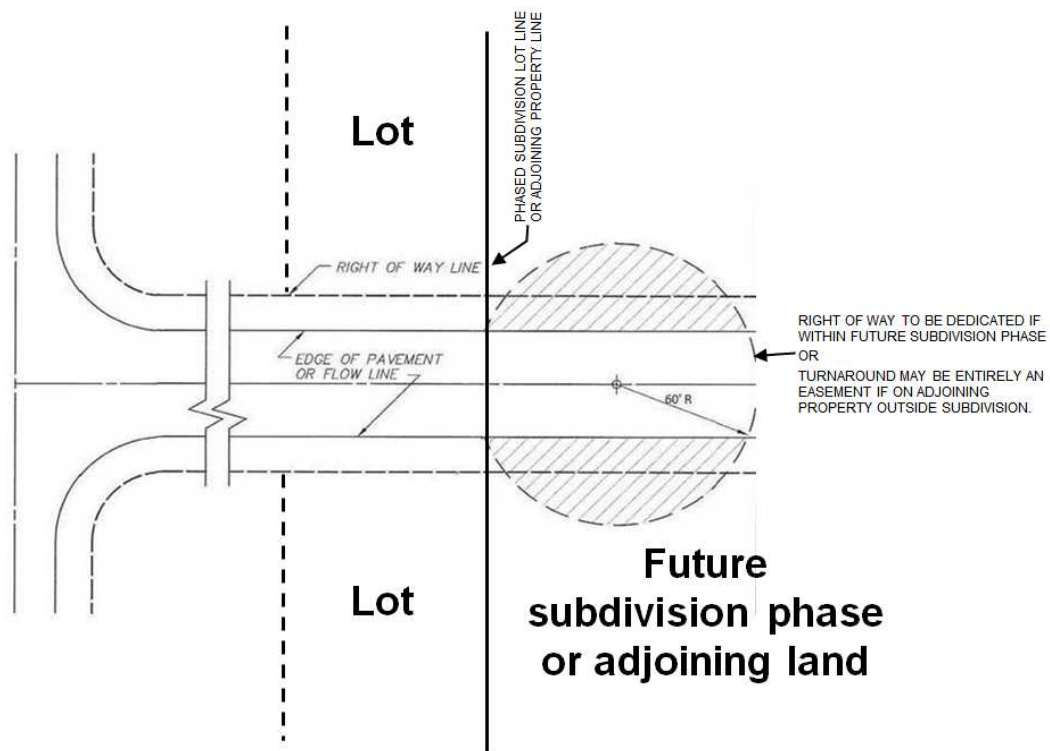


Figure 4

(H) The plat shall include the following note “Temporary cul-de-sac easement shall be vacated upon extension of street unless the director determines all or a

~~portion of the cul-de-sac may remain.” Before final acceptance of all improvements by the CBJ, the developer must provide a financial guarantee to cover the cost of removal of the temporary turnaround and reconstruction of the street. The guarantee must be for a period of five years from the date the plat is recorded. If it is necessary to construct the street to the adjoining property within that five-year period, the developer can complete the reconstruction and extension, or the guarantee may be used by the CBJ for that purpose. If a right-of-way has not been dedicated on the adjoining property for the purpose of connection to the temporary cul-de-sac within this five-year period, the financial guarantee will be released.~~

(I) When the developer of adjoining property is required to connect to the temporary cul-de-sac, the temporary portions of the cul-de-sac shall be removed. The director, after considering public safety, costs, and recommendations of the director of engineering and public works department and of the fire marshal, shall determine if the developer may leave all or part of the temporary portions of the cul-de-sac. If any temporary cul-de-sac portion is removed, then the resulting constructed right-of-way shall conform to CBJ standards.~~and the temporary cul-de-sac has not been extended as authorized by this section, then the developer must remove the temporary portions of the turnaround and reconstruct and extend the street to CBJ standards.~~

(3) *Hammerhead turnarounds.* Hammerhead turnarounds may be built in lieu of a temporary cul-de-sac, upon approval by the director of engineering and public works.

...

(i) *Street waivers.* The director, after considering the recommendations of the director of the engineering and public works department and of the fire marshal, may waive the following and no other street improvement requirements:

(1) *Right-of-way relocation.* If a plat is submitted for the purpose of relocating a right-of-way, the director may waive all or some of the construction requirements under the following conditions:

(A) The proposed relocation will improve access to abutting or neighboring property not otherwise adequately served.

(B) The subdivider has provided sufficient engineering information to demonstrate to the director of engineering and public works the feasibility of constructing a public street at the location of the relocated right-of-way.

(C) The relocated right-of-way and the resulting subdivision layout will conform to all the other standards of this chapter.

(D) The improvements required in the new right-of-way will not be less than those in the existing right-of-way.

(E) No additional lots are being platted.

(2) *Stub streets.*

(A) The director for minor subdivisions and the commission for major subdivisions may waive the full construction of a roadway within a right-of-way that is required to provide access to a bordering property, and does not provide required access to any lot within the subdivision. A developer requesting a stub street waiver shall demonstrate in the construction plans that a street can reasonably be constructed to CBJ standards in the right-of-way. The commission

or director may require provision of a roadbed, utility line extensions, or other appropriate improvements (See Figure 54).



Figure 54

(B) Reserved.— In addition, before final acceptance of subdivision improvements, the subdivider must provide a financial guarantee to cover the costs of constructing that part of the roadway improvements waived by the commission or director in subsection (A) of this section. The guarantee must be for a period of five years from the date the plat is recorded. If it is necessary to connect the roadway to adjoining property within that five year period, the subdivider may complete the construction, or the guarantee may be used by the City and Borough for that purpose. If a right-of-way has not been dedicated on the adjoining property that accomplishes the connection to the stub street within this five year period, the financial guarantee will be released.

(C) When the developer subdivider of adjoining property is required to connect to the stub street, and the stub street will not be constructed through

~~subsection (B) of this section~~, then the developer ~~subdivider~~ of the adjoining property will be required to construct the stub street to City and Borough standards at the time.

...

Section 3. Amendment of Section. CBJ 49.80.120, Definitions, is amended to read:

49.80.120 Definitions.

...

Cul-de-sac means a dead-end street that provides for a required vehicle turnaround. ~~the turnaround at the end of a dead end street.~~

...

Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: January 28, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(AB)

An Ordinance Appropriating to the Manager the Sum of \$1,474,553 as Funding for the New Recycleworks Consolidated Facility Capital Improvement Project; Funding Provided by Waste Management Fund's Fund Balance.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of \$1,474,553 for the New Recycleworks Consolidated Facility CIP. .

Section 3. Source of Funds

Waste Management Fund's Fund Balance	\$1,474,553
--------------------------------------	-------------

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: January 28, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(AC)

An Ordinance Appropriating to the Manager the Sum of \$300,000 as Funding for the Deferred Building Maintenance Capital Improvement Project; Funding Provided by Waste Management Fund's Fund Balance.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of \$300,000 to reimburse the Deferred Building Maintenance CIP for previously funding the renovations made to the Old Valley Shop at 2520 Barrett Ave.

Section 3. Source of Funds

Waste Management Fund's Fund Balance	\$300,000
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Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Commerce, Community,
and Economic Development**

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West Seventh Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

December 21, 2018

City & Borough of Juneau

Attn: Beth McEwen

Via Email: beth.mcewen@juneau.org

Cc: City.Clerk@juneau.org

Re: Notice of 2019/2020 Liquor License Renewal Application

License Type:	Restaurant/Eating Place	License Number:	1384
Licensee:	Alfonso Soriano		
Doing Business As:	Jovany's Italian Restaurant		

We have received a completed renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

To protest the application referenced above, please submit your written protest within 60 days, and show proof of service upon the applicant and proof that the applicant has had a reasonable opportunity to defend the application before a meeting of the local governing body.

Sincerely,

A handwritten signature in cursive script that reads "Erika McConnell".

Erika McConnell, Director
amco.localgovernmentonly@alaska.gov



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Commerce, Community,
and Economic Development**

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West Seventh Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

December 19, 2018

City & Borough of Juneau

Attn: Beth McEwen

Via Email: beth.mcewen@juneau.org

Cc: City.Clerk@juneau.org

Re: Notice of 2019/2020 Liquor License Renewal Application

License Type:	Beverage Dispensary	License Number:	1081
Licensee:	Shayz, LLC		
Doing Business As:	Squirez		

We have received a completed renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

To protest the application referenced above, please submit your written protest within 60 days, and show proof of service upon the applicant and proof that the applicant has had a reasonable opportunity to defend the application before a meeting of the local governing body.

Sincerely,

A handwritten signature in cursive script that reads "Erika McConnell".

Erika McConnell, Director
amco.localgovernmentonly@alaska.gov

Presented by: The Manager
 Introduced:
 Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-03

An Ordinance Amending the City and Borough of Juneau Code Related to Aquatics Facilities and Repealing the Associated Sunset Date.

WHEREAS, the Juneau voters approved a proposition in October 2014 amending the Charter to give the Assembly discretion to establish a board to oversee the City and Borough's aquatics facilities; and

WHEREAS, Ordinance 2015-23(b) amended the City and Borough code to create a new chapter, Chapter 67.10 Aquatics Facilities, with an automatic sunset date of May 28, 2018; and

WHEREAS, Ordinance 2018-19 extended the sunset date to June 30, 2019.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. Except for Section 2, which is a non-code ordinance, this ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Repeal of Sunset Date. The sunset date created by Ordinance 2015-23(b) and extended by Ordinance 2018-19 is repealed. Chapter 67.10 no longer has a sunset date.

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Section 3. Amendment of Section. CBJ 67.10.010 Board of directors, is amended to read:

67.10.010 Board of directors.

(a) The aquatics board shall consist of nine ~~seven~~ voting members appointed by the assembly to serve without compensation for staggered three-year terms, ~~and one liaison from the Juneau School District. The liaison shall not have the power to vote or be counted in determining whether a quorum of the board is present.~~ Members of the board shall serve at the pleasure of the assembly. Terms shall commence on July 1. Appointments to fill vacancies shall be for the unexpired term. In the event a seat has six months or less remaining to the unexpired term, the assembly, at its discretion, may choose to appoint the member to the remainder of the current term as well as to the full term immediately following the expiration date of the unexpired term. No board member who has served for three consecutive terms or nine years shall again be eligible for appointment until one full year has intervened, provided, however, that this restriction shall not apply if there are no other qualified applicants at the time reappointment is considered by the assembly.

(b) No board member, or member of a board member's immediate family or household, may be employed by an aquatics facility owned by the City and Borough. One board member shall be from and represent the Juneau School District. One board member shall be from any local swim organization that rents a pool facility. To the extent possible, appointments to the remaining seven seats on the aquatics board shall include persons having skills relevant to matters concerning the aquatics facilities. No more than two members of the aquatics board shall be a member or employee of any local swim organization, or the immediate family member of any member or employee of any local swim organization.

(c) The parks and recreation department director may participate in any board proceedings like a member but shall not have the power to vote and shall not be counted in determining whether a quorum of the board is present.

Section 4. Amendment of Section. CBJ 67.10.020 General powers, is amended to read:
67.10.020 General powers.

(a) Subject to state laws and City and Borough ordinances, the aquatics board shall make policy decisions and generally direct ~~exercise all powers necessary and incidental to the~~ operation and maintenance of the municipally-owned aquatics facilities according to the best interests of the public and in a sound business manner. The aquatics board:

(1) Shall be responsible for generally directing the operation, maintenance, development and marketing of the municipally owned and operated aquatics facilities, except as otherwise provided by the assembly by resolution.

(2) Shall prescribe the terms under which persons and groups may use the aquatics facilities under the board's management and establish and enforce standards of operation.

(3) May adopt regulations pursuant to CBJ 01.60 necessary for the administration of the aquatics facilities under the board's management.

(4) Shall facilitate and receive citizen input on the management and operations of the aquatics program.

~~(b) The aquatics facilities shall conform to the City and Borough Personnel Management Code, the City and Borough Personnel Rules, Personnel Classification Plan, and the City and~~

~~Borough Manager's Administrative Policies. The aquatics facilities shall utilize the services of the human resources and risk management department when hiring or terminating any employee, when responding to grievances, in labor agreement negotiation, and in substantial disciplinary matters.~~

(be) All legal services for the aquatics board and aquatics facilities shall be provided by or under the supervision of the municipal attorney.

(c) Shall annually provide to the assembly a written review of the aquatics program. The review shall include public usage, financial trends, facility maintenance needs, capital needs, and the efficiency of the program operation.

(d) Shall annually provide a personnel evaluation to the parks and recreation department director of the aquatics manager's performance in supporting the board and implementing board direction. The aquatics manager personnel evaluation and the board's deliberation of it shall be confidential unless the aquatics manager requests a public discussion.

(e) Shall participate in the selection process for the hiring of the aquatics manager. In the event the board does not support the hiring recommendation of the parks and recreation department director, the board chair shall timely notify the city manager. The city manager shall then make the hiring decision.

Section 5. Amendment of Section. CBJ 67.10.050 Meetings, is amended to read:
67.10.050 Meetings.

(a) The aquatics board shall meet at least once each month at an accessible location and time to be designated by the board. The board chair may cancel a monthly meeting when a quorum

will not be present. Subject to public notice requirements, any three board members may call for a special meeting.

(b) Every meeting of the board, including its committees, shall have an agenda. The agenda shall be prepared by the board or committee chair in consultation with the aquatics manager.

Section 6. Amendment of Section. CBJ 67.10.070 Manager designated, is amended to read:

67.10.070 Aquatics Manager designated.

The aquatics manager shall provide staff support to the board but is supervised by the parks and recreation department director. The chief executive officer of the aquatics facilities shall be the parks and recreation department director.

Section 7. Amendment of Section. CBJ 67.10.080 Director; duties and responsibilities, is amended to read:

67.10.080 Aquatics manager; Director; duties and responsibilities.

The aquatics manager ~~director~~ is responsible for the overall supervision of the municipally-owned aquatics facilities under the aquatics board's policy direction ~~management~~. The aquatics manager's ~~director's~~ authority and duties shall include, but are not limited by, the following:

- (1) To be responsible for carrying out all applicable laws, ordinances and regulations.
- (2) To be responsible for carrying out policies established by the aquatics board not in conflict with policies established or adopted by the assembly or manager.
- (3) To prepare an annual budget as required by City and Borough ordinance.

(4) To attend all meetings of the aquatics board and its standing committees except as otherwise directed by the board and not otherwise conflicting with other duties of the position of aquatics manager ~~parks and recreation director~~.

(5) Direct and supervise the maintenance and operation of the municipal pools.

(6) Keep the aquatics board fully advised on the financial circumstances of the program budget, the physical condition, and the maintenance needs of the aquatics facilities.

(7) At the direction of the aquatics board, prepare draft regulations and draft fee changes for consideration.

(8) Assist the aquatics board in all matters, including the preparation of the annual report to the assembly.

Section 8. Amendment of Section. CBJ 67.10.100 Preparation and submission of budget, is amended to read:

67.10.100 Preparation and submission of budget.

The aquatics manager ~~director~~ shall prepare the budget in accordance with approved City and Borough procedure and shall submit it to the aquatics board for approval. The aquatics manager shall submit to the board the draft Capital Improvement Plan no later than December 1 and the draft operating budget no later than February 1.

The operating portion of the budget submitted by the aquatics board shall, to the extent practical given safety concerns and maximizing operating hours of the pools, minimize its general fund subsidy. The aquatics board shall make its recommendations and submit the budget to the ~~City and Borough~~ city manager for transmittal to the assembly in the same manner as general government departments.

Section 9. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk



MEMORANDUM

DATE: January 23, 2019
 TO: Assembly
 FROM: Robert H. Palmer III, Municipal Attorney
 SUBJECT: Aquatics Board recommendation of Ord. 2019-03(b)

The Aquatics Board reviewed Ordinance 2019-03 and recommends the Assembly make the following changes, which are provided in version (b).

Recommendation 1: Local “aquatics” organization instead of “swim” organization

Section 67.10.010(b) qualifies that at least one but not more than two members can be from a local swim organization. The Board recommends using the term “aquatics” instead of “swim” to be more inclusive. Those changes are reflected on page 2 lines 19-24.

Palmer comments: The Assembly is free to make this change.

Recommendation 2: Removing the employment prohibition

67.10.010(b) states that “No board member, or member of a board member's immediate family or household, may be employed by an aquatics facility owned by the City and Borough.” (page 2 lines 17-18). The Board recommends deleting this sentence.

Palmer comments: The decision whether to keep or delete the sentence is a policy decision. On one hand, this sentence prevents a class of potential conflicts of interests. On the other hand, such a sentence may limit the number of well-qualified board member applicants.

- *If this sentence is deleted, then the regular conflict of interest code provisions, 01.45, would apply and board members would need to be hyper-aware of potential conflicts of interest. For example, if an immediate family member of a board member would receive a financial benefit from the Board’s decision, then the board member has a financial conflict of interest and cannot vote. 01.45.010(c); 01.45.360 (defining immediate family member to include minor children or a regular member of the board member’s household). There are potential defenses if the financial interest is insignificant or if the Board decision would have an insignificant effect of the immediate family member’s financial interest. 01.45.008(b).*
- *If this sentence is NOT deleted, then this sentence would continue to prevent potential conflicts of interest due to an immediate family member’s employment with the CBJ aquatics program.*

Presented by: The Manager
 Introduced:
 Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-03(b)

An Ordinance Amending the City and Borough of Juneau Code Related to Aquatics Facilities and Repealing the Associated Sunset Date.

WHEREAS, the Juneau voters approved a proposition in October 2014 amending the Charter to give the Assembly discretion to establish a board to oversee the City and Borough's aquatics facilities; and

WHEREAS, Ordinance 2015-23(b) amended the City and Borough code to create a new chapter, Chapter 67.10 Aquatics Facilities, with an automatic sunset date of May 28, 2018; and

WHEREAS, Ordinance 2018-19 extended the sunset date to June 30, 2019.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. Except for Section 2, which is a non-code ordinance, this ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Repeal of Sunset Date. The sunset date created by Ordinance 2015-23(b) and extended by Ordinance 2018-19 is repealed. Chapter 67.10 no longer has a sunset date.

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Section 3. Amendment of Section. CBJ 67.10.010 Board of directors, is amended to read:

67.10.010 Board of directors.

(a) The aquatics board shall consist of nine ~~seven~~ voting members appointed by the assembly to serve without compensation for staggered three-year terms, ~~and one liaison from the Juneau School District. The liaison shall not have the power to vote or be counted in determining whether a quorum of the board is present.~~ Members of the board shall serve at the pleasure of the assembly. Terms shall commence on July 1. Appointments to fill vacancies shall be for the unexpired term. In the event a seat has six months or less remaining to the unexpired term, the assembly, at its discretion, may choose to appoint the member to the remainder of the current term as well as to the full term immediately following the expiration date of the unexpired term. No board member who has served for three consecutive terms or nine years shall again be eligible for appointment until one full year has intervened, provided, however, that this restriction shall not apply if there are no other qualified applicants at the time reappointment is considered by the assembly.

(b) ~~No board member, or member of a board member's immediate family or household, may be employed by an aquatics facility owned by the City and Borough.~~ One board member shall be from and represent the Juneau School District. One board member shall be from any local aquatics swim organization that rents a pool facility. To the extent possible, appointments to the remaining seven seats on the aquatics board shall include persons having skills relevant to matters concerning the aquatics facilities. No more than two members of the aquatics board shall be a member or employee of any local aquatics swim organization, or the immediate family member of any member or employee of any local aquatics swim organization.

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(3) May adopt regulations pursuant to CBJ 01.60 necessary for the administration of the aquatics facilities under the board's management.

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~~(b) The aquatics facilities shall conform to the City and Borough Personnel Management Code, the City and Borough Personnel Rules, Personnel Classification Plan, and the City and~~

~~Borough Manager's Administrative Policies. The aquatics facilities shall utilize the services of the human resources and risk management department when hiring or terminating any employee, when responding to grievances, in labor agreement negotiation, and in substantial disciplinary matters.~~

(be) All legal services for the aquatics board and aquatics facilities shall be provided by or under the supervision of the municipal attorney.

(c) Shall annually provide to the assembly a written review of the aquatics program. The review shall include public usage, financial trends, facility maintenance needs, capital needs, and the efficiency of the program operation.

(d) Shall annually provide a personnel evaluation to the parks and recreation department director of the aquatics manager's performance in supporting the board and implementing board direction. The aquatics manager personnel evaluation and the board's deliberation of it shall be confidential unless the aquatics manager requests a public discussion.

(e) Shall participate in the selection process for the hiring of the aquatics manager. In the event the board does not support the hiring recommendation of the parks and recreation department director, the board chair shall timely notify the city manager. The city manager shall then make the hiring decision.

Section 5. Amendment of Section. CBJ 67.10.050 Meetings, is amended to read:

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will not be present. Subject to public notice requirements, any three board members may call for a special meeting.

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- (1) To be responsible for carrying out all applicable laws, ordinances and regulations.
- (2) To be responsible for carrying out policies established by the aquatics board not in conflict with policies established or adopted by the assembly or manager.
- (3) To prepare an annual budget as required by City and Borough ordinance.

(4) To attend all meetings of the aquatics board and its standing committees except as otherwise directed by the board and not otherwise conflicting with other duties of the position of aquatics manager ~~parks and recreation director~~.

(5) Direct and supervise the maintenance and operation of the municipal pools.

(6) Keep the aquatics board fully advised on the financial circumstances of the program budget, the physical condition, and the maintenance needs of the aquatics facilities.

(7) At the direction of the aquatics board, prepare draft regulations and draft fee changes for consideration.

(8) Assist the aquatics board in all matters, including the preparation of the annual report to the assembly.

Section 8. Amendment of Section. CBJ 67.10.100 Preparation and submission of budget, is amended to read:

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The operating portion of the budget submitted by the aquatics board shall, to the extent practical given safety concerns and maximizing operating hours of the pools, minimize its general fund subsidy. The aquatics board shall make its recommendations and submit the budget to the ~~City and Borough~~ city manager for transmittal to the assembly in the same manner as general government departments.

Section 9. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

DRAFT

Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(Y)

An Ordinance Appropriating to the Manager the Sum of up to \$230,000 as Funding for Phase II of the Amalga Fish Cleaning Station Project; Grant Funding Provided by the Alaska Department of Fish and Game.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of up to \$230,000 for Phase II of the Amalga Fish Cleaning Station CIP.

Section 3. Source of Funds

Alaska Department of Fish and Game	\$230,000
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Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
 Introduced:
 Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-04(b)

An Ordinance Repealing Ordinance 2015-18(am) and Re-establishing the Treadwell Arena Advisory Board.

WHEREAS, on July 21, 2014, the Assembly created the Treadwell Arena Task Force (“Task Force”) to study the feasibility of an empowered board for management of the Treadwell Ice Arena; and

WHEREAS, in its report to the Assembly dated December 12, 2014, the Task Force recommended that the Treadwell Arena Advisory Board be formed; and

WHEREAS, the Assembly created the Treadwell Arena Advisory Board with Ordinance 2015-18(am); and

WHEREAS, the Treadwell Arena Advisory Board proposed these changes to keep its enabling ordinance consistent with its vision and mission.

THEREFORE BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a non-code ordinance.

Section 2. Repeal of Ordinance 2015-18(am). Ordinance 2015-18(am), An Ordinance Establishing the Treadwell Arena Advisory Board, is repealed.

Section 3. Treadwell Arena Advisory Board Established. There is established the Treadwell Arena Advisory Board.

Section 4. Membership Qualifications. The Board shall be comprised of seven voting members appointed from the general public, and one liaison from the Parks and Recreation Advisory Committee. The liaison shall not have the power to vote and shall not be counted in determining whether a quorum of the Board is present. Members shall be appointed to staggered three-year terms. To the extent practicable, each organization that provides activities at Treadwell Ice Arena should have at least one representative on the Board. No more than five members shall be employees or board members of an organization, or the immediate family member of any employee or board member of an organization, that provides activities at the Treadwell Ice Arena.

1. The number and types of annual users as compared to preceding years;
2. Annual cost recovery data;
3. A review of ice scheduling and allocation of rink resources to assess whether the rink provides equity of opportunity for a diversity of community rink users;
4. Any identified opportunities to generate net revenue or increase operational efficiencies; and
5. Any identified opportunities to improve the experience of rink users.

Section 7. Officers, Meetings, Quorum. In accordance with the Advisory Board Rules of Procedure, the Board shall select its own officers, and shall hold regular meetings on a schedule established by the Board, as well as such special meetings as required to conduct business.

Section 9. Effective Date. This ordinance shall be effective 30 days after its adoption.

Beth A. Weldon, Mayor

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-01

An Ordinance Amending the City and Borough Code Relating to the Criminal Penalty for Violating Conditions of Release.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 42.05.110 Violation of condition of release, is amended to read:

(a) A person commits the crime of violation of condition of release if the person

(1) has been charged with a crime or convicted of a crime;

(2) has been released under AS 12.30; and

(3) violates a condition of release imposed by a judicial officer under AS 12.30, other than the requirement to appear as ordered by a judicial officer.

(b) Violation of condition of release is a Class B misdemeanor and is punishable by a term of imprisonment of not more than five days and a fine of not more than \$2,000.00.

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Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(U)

An Ordinance Appropriating to the Manager the Sum of \$600,000 as Funding for the Electronic Fare Boxes Capital Improvement Project for Capital Transit; Grant Funding Provided by Alaska Department of Transportation and Public Facilities.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the manager the sum of \$600,000 for the Electronic Fare Boxes Capital Improvement Project (D71-090), Capital Transit.

Section 3. Source of Funds

Alaska Department of Transportation and Public Facilities	\$600,000
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Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(V)

An Ordinance Appropriating to the Manager the Sum of \$479,653 as Partial Funding for Bus Replacement for Capital Transit; Grant Funding Provided by Alaska Department of Transportation and Public Facilities, With Local Match Funding Provided by the Equipment Replacement Reserve's Fund Balance.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the manager the sum of \$479,653 as partial funding for replacement of a bus, with an Electric Bus and associated charging infrastructure for Capital Transit.

Section 3. Source of Funds

Alaska Department of Transportation and Public Facilities	\$407,630
Equipment Replacement Reserve Fund Balance	\$72,023

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(W)

An Ordinance Appropriating to the Manager the Sum of Up to \$30,000 as Partial Funding for the Cold Weather Emergency Shelter (FY19); Grant Funding Provided by the Alaska Mental Health Trust Authority (The Trust).

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the manager the sum of up to \$30,000 as partial funding for the Cold Weather Emergency Shelter (FY19).

Section 3. Source of Funds

Alaska Mental Health Trust Authority (The Trust) Grant \$30,000

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(X)

An Ordinance Appropriating to the Manager the Sum of \$52,763 as Partial Funding for the Housing and Homelessness Services Coordinator Project; Grant Funding Provided by the Alaska Mental Health Trust Authority.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of \$52,763 for the Housing and Homelessness Services Coordinator Project in the Manager's Office.

Section 3. Source of Funds

Alaska Mental Health Trust Authority	\$52,763
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Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-02

An Ordinance Authorizing the City Manager to Execute a Purchase and Sale Agreement with Archipelago Properties LLC for Real Property located at Lots 1, 2 and 4, Archipelago Subdivision, Plat No. 2013-22, Juneau Recording District, near 356 South Franklin Street.

WHEREAS, Archipelago Properties, LLC (“Archipelago”) owns certain property located near the Alaska Steamship Dock and legally described as a portion of Lots 1 and 2, Archipelago Subdivision, Plat 2013-22, Juneau Recording District, as depicted on Exhibit A of the proposed Purchase and Sale Agreement, included as Attachment A; and

WHEREAS, the number of passengers disembarking from cruise ships onto downtown Juneau docks increased from 36,536 passengers in 1973 to an anticipated 1,360,000 passengers in 2019; and

WHEREAS, from 2010 until 2016, the number of cruise ships calling at the Alaska Steamship Dock in downtown Juneau averaged 81, representing approximately 95,000 disembarking passengers, and increased to 117 ships by 2018, representing approximately 270,000 passengers; and

WHEREAS, although the number of cruise ships calling at the Alaska Steamship Dock has increased 44% since 2010, the number of passengers has increased 182% since 2010; and

WHEREAS, the increase in the number and size of vessels, and corresponding increase in ship passengers, has not been met with proportionate dock infrastructure investment; and

WHEREAS, the growth of passengers has overwhelmed the existing shoreside port infrastructure and construction of this facility would benefit the cruise ships and passengers and allow for their use of the port; and

WHEREAS, in order to accommodate the greater number of cruise ships bringing an increasing number of passengers onto the downtown docks, the City and Borough of Juneau (“CBJ”) proposes to expand the deckover and transportation staging area at the Alaska Steamship Dock; and

Whereas, the cruise ship companies or their subsidiaries or affiliates own, operate, or sell a significant number of the tours accessed by the disembarking passengers from the dock according to studies by the McDowell Group; and

WHEREAS, this proposed conveyance and associated infrastructure project will provide a service to cruise ship passengers and a service to the cruise ships calling at the Alaska Steamship Dock; and

WHEREAS, the proposed expansion of dock infrastructure will provide a service to the cruise ships and a service to the cruise ship passengers because it is an extension of the recently completed floating berth serving visiting cruise ships and vessels with safe and efficient ship to shore connections; and

WHEREAS, this investment into the expansion of dock infrastructure will provide a service to the cruise ships and passengers by increasing the safety and efficiency of commerce on the dock and its facilities, by allowing ships to discharge and embark passengers more efficiently, and thus allowing the vessels to depart on a safe and predictable schedule, which is necessary for the safe operation of the harbor due to the multiple ships embarking each day; and

WHEREAS, a representative of the cruise ship and tourism industry has commented in support of the proposed development at the Alaska Steamship Dock by stating: “the responsible development of additional pick up and drop off space along the waterfront is indeed necessary and prudent. There is currently inadequate space for vehicles to service what will likely very soon be some 6,000 – 8,000 passengers at the Cruise Terminal and Alaska Steamship Dock combined. Not moving forward with this development will simply cause and increase vehicle congestion in the downtown core and send us back to impacts we were dealing with some 15 years ago.”; and

WHEREAS, a representative of the cruise ship and tourism industry has further commented in support of the proposed development at the Alaska Steamship Dock by stating: “there are peak times when we currently do not have space to handle the transport needs and those vehicles end up transiting downtown in circles for sometimes 10-15 minutes waiting for a space. This adds to downtown traffic and also causes tours to run late and creates passenger dissatisfaction [to the cruise ship]”; and

WHEREAS, without this conveyance and associated infrastructure development necessitated by the increased cruise ships and the resulting passengers, the cruise ship marine enterprise would suffer harms like passenger dissatisfaction, negative trip reviews, and departure delays; and

WHEREAS, Archipelago and the CBJ have been working together to create a mutually beneficial purchase and sale agreement whereby the CBJ will acquire submerged lands to expand the deckover at the Alaska Steamship Dock and upland portions to improve ingress and egress to the cruise ship facilities; and

WHEREAS, as part of this purchase and sale agreement, Archipelago will acquire approximately 4,193 square feet of land from the CBJ on the Archipelago Subdivision for commercial development; and

WHEREAS, the value of the property to be acquired by the CBJ has been appraised and is reduced by the sale of CBJ property to Archipelago and other adjustments as considered in the Purchase and Sale Agreement; and

WHEREAS, through this proposed purchase and sale agreement, the CBJ has an opportunity to invest in port facilities to meet demand by the cruise ships at the downtown port given the existing cruise ship volume and anticipated growth of the cruise ship tourism market; and

WHEREAS, such investment in the development of transportation staging and expanded deck space on the dock in downtown Juneau will enhance service to the cruise ship vessels and passengers by providing a highly valued port destination to facilitate commerce and facilitate the marine enterprise of the cruise ships; and

WHEREAS, the use of marine passenger fees to purchase this property, to construct transportation staging, and to expand deckover space is consistent with federal law because this project provides a service to the cruise ships, provides a service to cruise ship passengers, enhances the safety and efficiency of commerce, and facilitates the marine operations of the cruise ships and the owners of the cruise ships.

THEREFORE BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a non-code ordinance.

Section 2. Authorization to Purchase. The Manager is authorized to execute a purchase and sale agreement with Archipelago Properties LLC that is substantially similar to the agreement provided as Attachment A.

Section 3. Archipelago Property to be Purchased. The Manager is authorized to purchase the real property located at or near the Alaska Steamship Dock for fair market value as follows:

- (A) Fair Market Value: \$2,850,135.00 (Two million, eight hundred fifty thousand, one hundred thirty-five dollars).
- (B) Description of the Property: 24,104 square feet portion of Lots 1 and 2, Archipelago Subdivision, Plat No. 2013-22, Juneau Recording District, First Judicial District, State of Alaska, which is further described in Exhibit A of the Purchase and Sale Agreement.

Section 4. CBJ Property to be Sold. The Manager is authorized to sell the real property located at or near the Alaska Steamship Dock for fair market value as follows:

- (A) Fair Market Value: \$1,252,400.00 (One million, two hundred fifty-two thousand, four hundred dollars).

- (B) Description of the Property: 4,193 square feet portion of Lot 4, Archipelago Subdivision, Plat No. 2013-22, Juneau Recording District, First Judicial District, State of Alaska, which is further described in Exhibit A of the Purchase and Sale Agreement.

Section 5. Minimum Essential Terms and Conditions. The Purchase and Sale Agreement is subject to the following minimum terms and conditions:

- (A) Transaction Value. The net balance due from the CBJ to Archipelago is \$922,175 (Nine hundred twenty-two thousand, one hundred seventy-five dollars), which was determined by appraisal, given the following:
1. Archipelago land value of \$2,850,135.00;
 2. Minus \$1,252,400.00 for CBJ's land value;
 3. Minus \$420,935.00 for Archipelago's benefit of fill behind retaining wall;
 4. Minus \$60,000.00 for Archipelago's benefit of access along northern property line;
 5. Minus \$194,625.00 for Archipelago's right to object to development on a portion of Lot 1.
- (B) Retaining Wall. The CBJ, in conjunction with the construction of a piling-supported structure over its real property and subject to appropriation, intends to construct and maintain a retaining wall to develop the infrastructure on CBJ property. This retaining wall would create uplands for Archipelago, which the appraisal valued as a \$420,935.00 benefit to Archipelago.
- (C) Archipelago Access Easement along Northern Property Line. The CBJ agrees to provide a public access and utility easement to Archipelago, as owner of the abutting real property, consistent with paragraph #12 of Exhibit A. The appraisal valued this easement as a \$60,000.00 benefit to Archipelago.
- (D) Archipelago Right to Object. Archipelago has requested preserving a right to object to development on a portion of Lot 1 sold to the CBJ. The appraisal valued that right to object as decreasing the property value by fifty percent or \$194,625.00. The Manager may execute the purchase and sale agreement with Archipelago's right to object language, which is in paragraph #14 of Exhibit A.
- (E) Title Insurance, Subdivision, and Closing Costs. Archipelago shall obtain title insurance. Archipelago and the CBJ shall share equally in the cost for survey and subdivision of the property and title insurance. All reasonable and customary closing costs shall be split evenly between Archipelago and CBJ at time of closing. Each party shall pay its own separate attorney fees incurred in negotiations, drafting, and documenting this transaction.
- (F) Type of Deed. The Manager is only authorized to sell the CBJ property by quitclaim deed.

Section 6. Other Terms and Conditions. The Manager may include such other terms and conditions as may be in the public interest and in accordance with CBJ Title 53.

Section 7. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this ____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase Agreement (“Agreement”) is made in duplicate and entered into by and between **Archipelago Properties, LLC**, an Alaska Limited Liability Company, having a mailing address of 725 Broad Street, Augusta, Georgia 30901 (“Archipelago”) and, the **City and Borough of Juneau**, a municipal corporation in the State of Alaska, having its offices at 155 South Seward Street, Juneau, Alaska 99801, (“CBJ”) (collectively, “Parties”).

1. Intent: The Parties wish to execute this Purchase and Sale Agreement (“Agreement”) to facilitate the reconfiguration and development of the below described real property for their mutual benefit. CBJ will acquire the remaining submerged lands in order to expand and make improvements to the CBJ’s cruise ship dock; the Parties will purchase and sell to each other certain upland portions by which CBJ will secure improved ingress and egress to its cruise ship facilities; and Archipelago will retain a portion of its existing uplands for commercial development.

2. Real Property: Subject to the terms and conditions set forth in this Agreement, Archipelago agrees to convey to CBJ, and CBJ agrees to convey to Archipelago, fee simple title to the following described real property located in the Juneau Recording District, First Judicial District, State of Alaska:

A portion of Lots 1 and 2 owned by Archipelago, and Lot 4 owned by CBJ, Archipelago Subdivision, Plat No. 2013-22, Juneau Recording District, First Judicial District, State of Alaska, as further described in Exhibit A.

(hereinafter, the “Property”).

3. Purchase Area: The area of the Property to be conveyed by Archipelago to CBJ consists of approximately 24,104 square feet of land, consisting of portions of Lot 1 and Lot 2; and the area of the Property to be conveyed by CBJ to Archipelago consists of approximately 4,193 square feet of land, consisting of a portion of Lot 4; as described in Exhibit A of this Agreement (hereinafter, the “Purchase Area”).

4. Land Value: The value of the land to be purchased or exchanged by the Parties has been determined by the Appraisal Report of Horan & Company, dated December 10, 2018 (the “Appraisal”). The net balance due from CBJ to Archipelago is \$922,175.00 (Nine Hundred Twenty-two Thousand, One Hundred Seventy-Five Dollars), after offsets for property purchased by Archipelago and other adjustments as set forth in the Appraisal.

5. Evidence of Title: Archipelago and CBJ represent that fee simple title to the Property is vested in Archipelago and CBJ, respectively.

6. Title Insurance: Within 10 calendar days of the execution of this Agreement, the Parties shall jointly obtain an updated preliminary commitment to issue title insurance. Each Party shall have 10 calendar days after receipt of the updated preliminary title report to notify the other of any objections to title conditions stated in the report. After notification of any title objections, if

it appears that either Party will be unable to convey title to the Property free and clear of encumbrances, liens, or exceptions to title, other than those deemed acceptable by the other Party, that Party shall have a further period of 30 days within which to perfect title. If, at the end of such period, the Party is still unable to convey title to the Property free and clear of all encumbrances, liens or exceptions to title except as aforesaid, the other Party may elect to accept such title as that Party can convey, upon the payment of the purchase price stated in Paragraph 3 herein, as may be adjusted by mutual agreement of the parties on account of the encumbrance, or a Party may, without penalty, terminate this Agreement and have no further obligations hereunder.

7. Conveyance: The Parties shall convey title to the Property to the other Party by quitclaim deed, free of any mortgages, liens, encumbrances or other defects in title, other than those deemed acceptable by the other Party.

8. Encumbrances: The Parties agree not to sell, convey, or further encumber the Property prior to closing without concurrence of the other party.

9. Retaining Wall: CBJ, in conjunction with the construction of a piling-supported structure over its submerged portion of the Property, and subject to appropriation, intends to construct and maintain a retaining wall through the Property, as further described in Exhibit B.

10. Construction Easement: Recognizing the extraordinary cost associated with constructing the pile decking and transportation staging parking from the channel side of the Property from barges, Archipelago shall grant to CBJ an exclusive temporary construction easement or license on its uplands portion of the reconfigured Property, as further described in Exhibit C, to allow staging of equipment, material, and personnel, as well as construction from the uplands side of the Property. When CBJ has substantially completed construction of the pile decking and transportation staging area, CBJ shall likewise grant to Archipelago a temporary easement or license to the transportation staging and pile-supported decking areas for construction of Archipelago's upland improvements. Unless terminated earlier, this easement or license shall be for a period of ten (10) months, which may be extended upon mutual agreement of the Parties. The Parties shall indemnify and hold each other harmless during their respective construction activities and maintain appropriate liability insurance. These indemnity terms shall survive after construction is completed. Upon completion of its construction activities on the uplands site, CBJ shall leave a clean and graded uplands site.

11. Construction Timing and Reversion: CBJ shall have until March 29, 2019, to appropriate funding for the transportation staging, shuttle parking and deck-over portion of the project; to advertise such project for bid; and to order construction materials to be supplied by CBJ. If the forgoing actions have not been completed by such date, Archipelago shall have the right, but not the obligation, to terminate the Construction Easement described in Section 10 hereof, and to proceed immediately with Archipelago's commercial development and construction on its upland property. Further, if CBJ has not commenced construction of its project on the adjoining portion of the property within three (3) years of the date on which this Agreement was executed by both parties, Archipelago shall have the right, but not the obligation, to repurchase the property sold or exchanged to CBJ under this Agreement at the then fair market value, including

the value of any improvements made to the property by CBJ prior to that time. Any deadline set forth in this section may be extended for a reasonable time upon mutual agreement of the Parties if the action to be taken has been commenced and is reasonably certain to be completed within a time which will not materially further delay completion of the project.

12. Access between public parking structure and Property: As a condition of this purchase and sale agreement, CBJ agrees to provide a public access and utility easement for the area between the Property and the public parking structure. Archipelago and its tenants, invitees, and contractors shall have the non-exclusive right to access the area in the normal course of conducting business to service the Property. The parties understand and acknowledge that access to this area is from South Franklin Street, which is controlled by Alaska Department of Transportation & Public Facilities. While the CBJ intends the area to be available for access to utilities for the mutual benefit of both Parties, ADOT has final control of road access to the area. This area and easement are further described in Exhibit D.

13. Access and Easements: No barriers shall be constructed between the two reconfigured properties, except as required for pedestrian safety between the transportation staging shuttle parking area and the Archipelago development. In the event a barrier is deemed required for public safety, both Parties prior to installation shall agree upon the design and location. Archipelago will grant an easement for placement, construction, and maintenance of a retaining wall as shown in Exhibit B and described in Section 9 hereof.

Subject to final design, if applicable, CBJ and Archipelago shall grant to one another utility easements for the installation, repair, maintenance, and improvements for utilities as needed. Archipelago and CBJ shall each be responsible for the repair and condition of utility improvements on their respective reconfigured parcels.

Archipelago shall grant to CBJ an access easement across and on its property for the repair and maintenance of the retaining wall as needed from time to time.

CBJ grants to Archipelago and its tenants, invitees, and contractors a non-exclusive limited license for access to the transportation staging shuttle parking area in the normal course of business. At no time, however, shall this license conflict with or impair the primary use of the transportation staging shuttle parking area, which is to serve cruise ships and supporting activities, as designated by CBJ. This non-exclusive limited license shall only be in effect outside of peak usage by commercial passenger transportation vehicles supporting cruise vessels, the primary user of the transportation staging shuttle parking area.

14. Future Improvements on Reconfigured Public Portion of Property: As used herein, the term "Future Improvements" means any permanent or temporary structure or improvement to be placed or constructed upon those portions of the present Archipelago subdivision parcels 1, 2, 3 and 4, after acquisition by CBJ, for public or private use, by either Party hereto or any third party. The term expressly excludes the area designated by CBJ for cruise ship passenger staging, loading and transportation (the "B Permit Parking Lot"); the area and structure designated for covered passenger staging, welcome and assembly; the act of decking over of the remaining open areas of the aforesaid parcels; and the commercial/retail development on the uplands

portion of Lots 1 and 2; all of which are expressly contemplated within this transaction and consented to by the Parties (herein, the “Approved Structures”).

With respect to Future Improvements other than the Approved Structures, Archipelago shall have, and hereby reserves for itself and its successors and assigns, a limited right to object in advance of placement or construction of such improvements on the portion of the subject property designated on Exhibit E hereto, based upon the following considerations: Archipelago may object if the Future Improvement does not provide an identifiable public purpose or benefit, and is reasonably likely to impair, interfere with, or unfairly compete with, the businesses and operations taking place on the adjacent Archipelago premises. If CBJ proposes a Future Improvement it shall notify Archipelago in writing at least 180 days in advance of the intended date of commencement, and Archipelago shall have not more than 60 days to consider and state in writing its objection to the improvement, if any. In the event of objection, the two Parties will work in good faith to attempt to resolve the objectionable issues. Archipelago’s approval shall not be unreasonably withheld, provided the above conditions are met.

15. No Violations: Both Parties represent that at this time and at the time of the closing of title, there shall exist no violations of government (including environmental, zoning and planning) rules, regulations or limitations, unless the same have become legally nonconforming, and no violations of any restrictive covenant, agreement or condition subject to which the title is to be conveyed in accord with the terms hereof.

16. Taxes: All local taxes applicable to the Property shall be prorated and paid through the date of closing.

17. Closing: Closing on the sale of the Property shall occur no later than March 31, 2019, unless the closing date is extended by written agreement of the parties. Such agreement shall not be unreasonably withheld.

18. Costs: CBJ shall be responsible for obtaining survey and subdivision of the Property; provided however that Archipelago and the CBJ shall share equally in the cost for survey and subdivision of the Property and title insurance. All reasonable and customary closing costs shall be split evenly between Archipelago and CBJ at time of closing. Each Party shall pay its own separate attorney fees incurred in negotiations, drafting, and documenting this transaction.

19. Conditions Precedent: The parties acknowledge that closing is subject to the following conditions:

a. Both Parties’ receipt of a preliminary commitment to issue title documenting clear title to the Property, acceptable to each Party.

b. First American Title Insurance Company shall serve as closing and escrow agent for the parties hereunder.

c. Each Party and its representatives, consultants and contractors shall have the privilege, opportunity and right of entering upon the Property, in order to inspect and examine

same and perform (i) a comprehensive inspection and review of the physical condition of the property; (ii) such environmental analysis as each Party deems necessary; (iii) a review of all plans, drawings, specifications and surveys pertaining to the property boundary, as well as other tests and inspections of same (including, without limitation, environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions); (iv) a land survey to establish the purchase area.

d. If any of these conditions are not satisfied within the timeframe provided, and the deadline has not been waived, then either party may elect to terminate this Agreement upon written notice.

20. General Agreement Terms:

a. Possession. Each Party shall continue in possession of its portion of the Property until closing. Possession shall be transferred at closing, subject to the easements granted herein.

b. Assignment. This Agreement is binding on the heirs, successors, and assigns of the parties, but shall not be assigned by either party without prior written consent of the other party.

c. Modifications. Any changes to this Agreement must be mutually agreed upon in writing before they will be regarded as part of this Agreement.

d. Notices. Any notice to be delivered pursuant to the terms hereof shall be in writing and shall be sent by certified mail, hand delivered, or by facsimile to the parties at the addresses set forth above, unless written notice of a different address shall be given to the other party.

e. Construction. This Agreement should not be construed in favor of or against any party, as both parties participated in negotiating and drafting it. This Agreement contains the entire agreement between the parties and supersedes all previous communications, representations or agreements, either oral or written, between the parties.

f. Choice of Law; Jurisdiction. This Agreement shall be governed by the law of the State of Alaska. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive jurisdiction and venue for all actions of any kind and any nature arising out of or relating to this Agreement or arising out of or relating to any performance under this Agreement. In the event that one party is required to take legal action to enforce any portion of this Agreement, the parties agree the non-prevailing party will pay the reasonable attorney fees incurred by the prevailing party.

g. Compliance with Applicable Laws. Both parties shall, at their sole cost and expense, comply with all applicable requirements of federal, state, and local laws, ordinances and regulations now in force, or which may be in force, during the performance of this Agreement.

h. Taxes and Other Obligations. Archipelago shall pay all federal, state and local taxes incurred by Archipelago, and shall require their payment by any subcontractor or any other persons in the performance of this Agreement. Archipelago has paid or will pay CBJ 2018 property taxes on its portion of the property; thereafter, the area of the Property, for taxation purposes shall be reduced by the amount of the conveyance herein/and the taxes for the remainder of the current tax year apportioned accordingly.

i. Conflict of Interest. Archipelago warrants that no employee or officer of the CBJ has violated the conflict of interest provisions of the CBJ code regarding this Agreement. Archipelago also warrants that Archipelago has not solicited or received any prohibited action, favor or benefit from any employee or officer of CBJ, and that it will not do so as a condition of this Agreement. If Archipelago learns of any such conflict of interest, Archipelago shall without delay inform the City Attorney or CBJ representative for this Agreement.

j. Agreement Execution. This Agreement is not binding or effective until fully executed by all parties. This Agreement may be executed in two or more counterparts, which when taken together shall constitute a single, integrated and binding document. A facsimile signature of an authorized party shall be binding and valid as an original.

k. Brokers. It is understood by the parties that no agent or broker has been employed by either Party in this transaction. No claims of agents or brokers shall be recognized by CBJ or Archipelago regarding the Property.

ARCHIPELAGO: ARCHIPELAGO PROPERTIES, LLC

Archipelago Properties, LLC

Date:

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____, 2018, by _____, Member/Manager of Archipelago Properties, LLC, an Alaska limited liability company, on behalf of the limited liability company for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day, month and first year in the certificate first above written.

(Seal)

Notary in and for the State of Alaska
My Commission Expires:

Real Property Purchase Agreement
Archipelago Properties, LLC

Initials /

Page 6 of 8

DRAFT

CBJ: CITY AND BOROUGH OF JUNEAU

_____ Date: _____
Rorie Watt, City Manager

Approved as to form: _____ CBJ Law Department
Approved as to content: _____ Lands and Resources Manager
Approved to content: _____ Docks & Harbors Director

ACKNOWLEDGEMENT

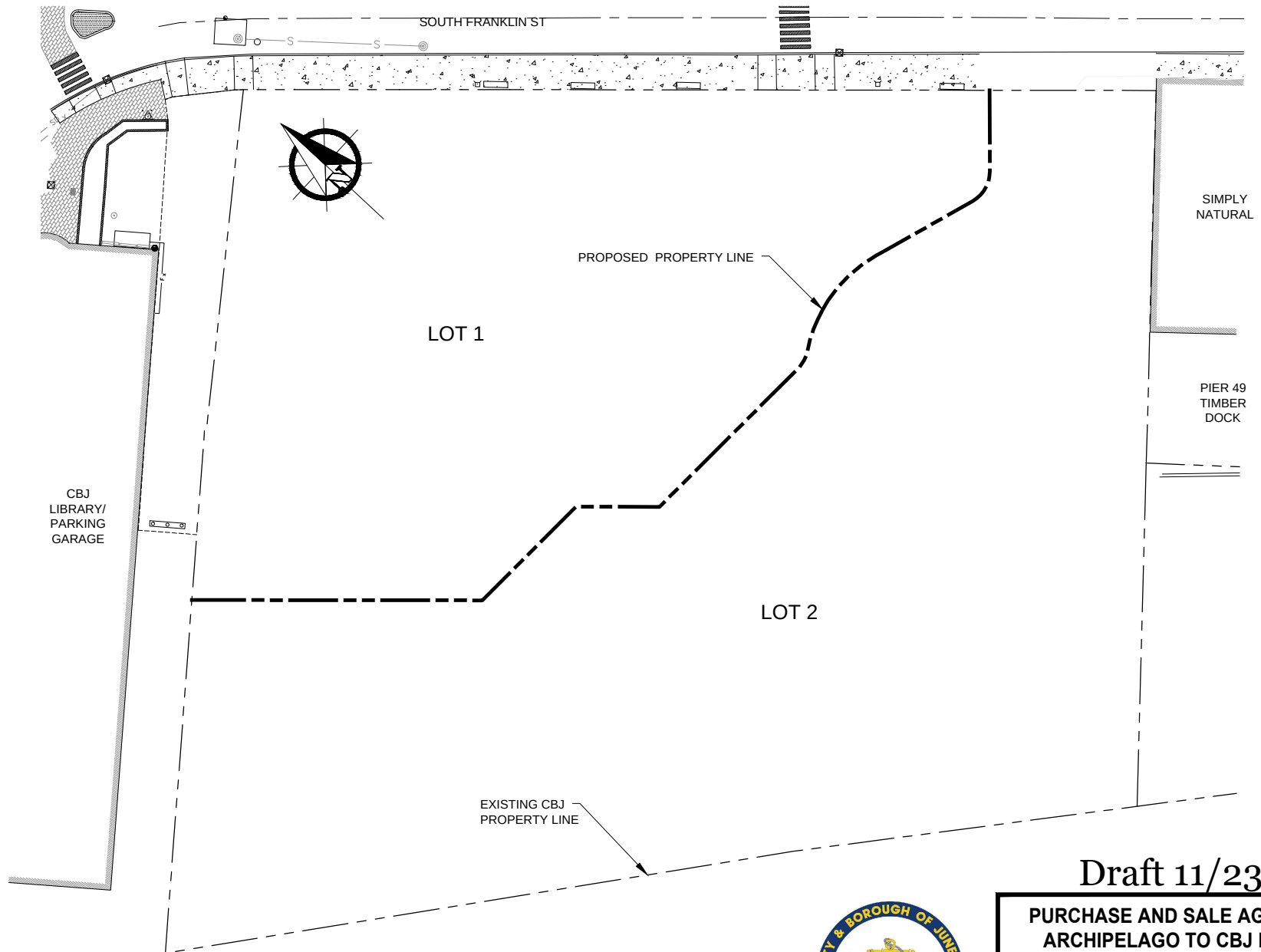
STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____, 2018, by Rorie Watt, the City Manager of the City and Borough of Juneau, an Alaska municipal corporation on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day, month and first year in the certificate first above written.

(Seal)

Notary in and for the State of Alaska
My Commission Expires: _____

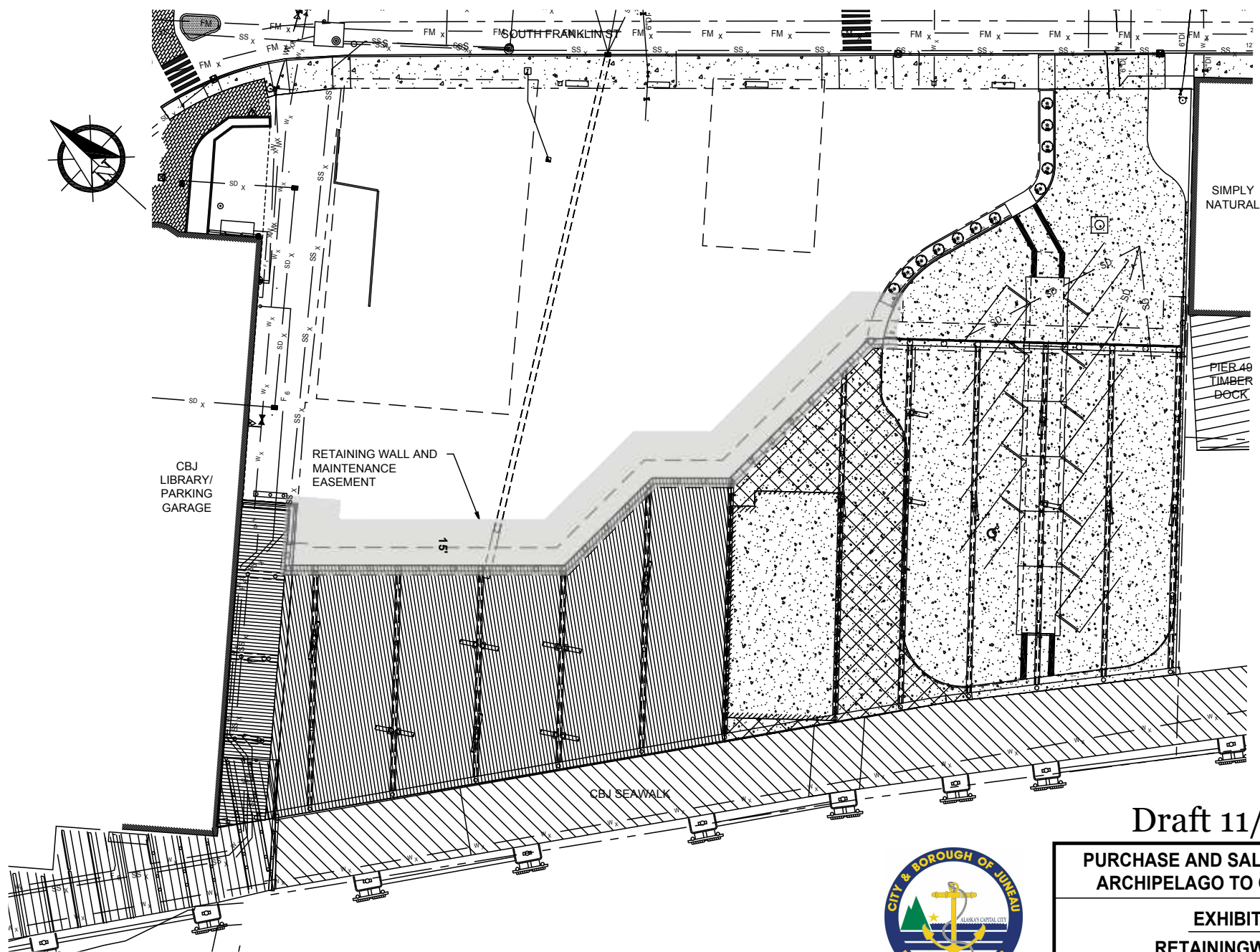
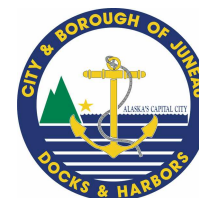


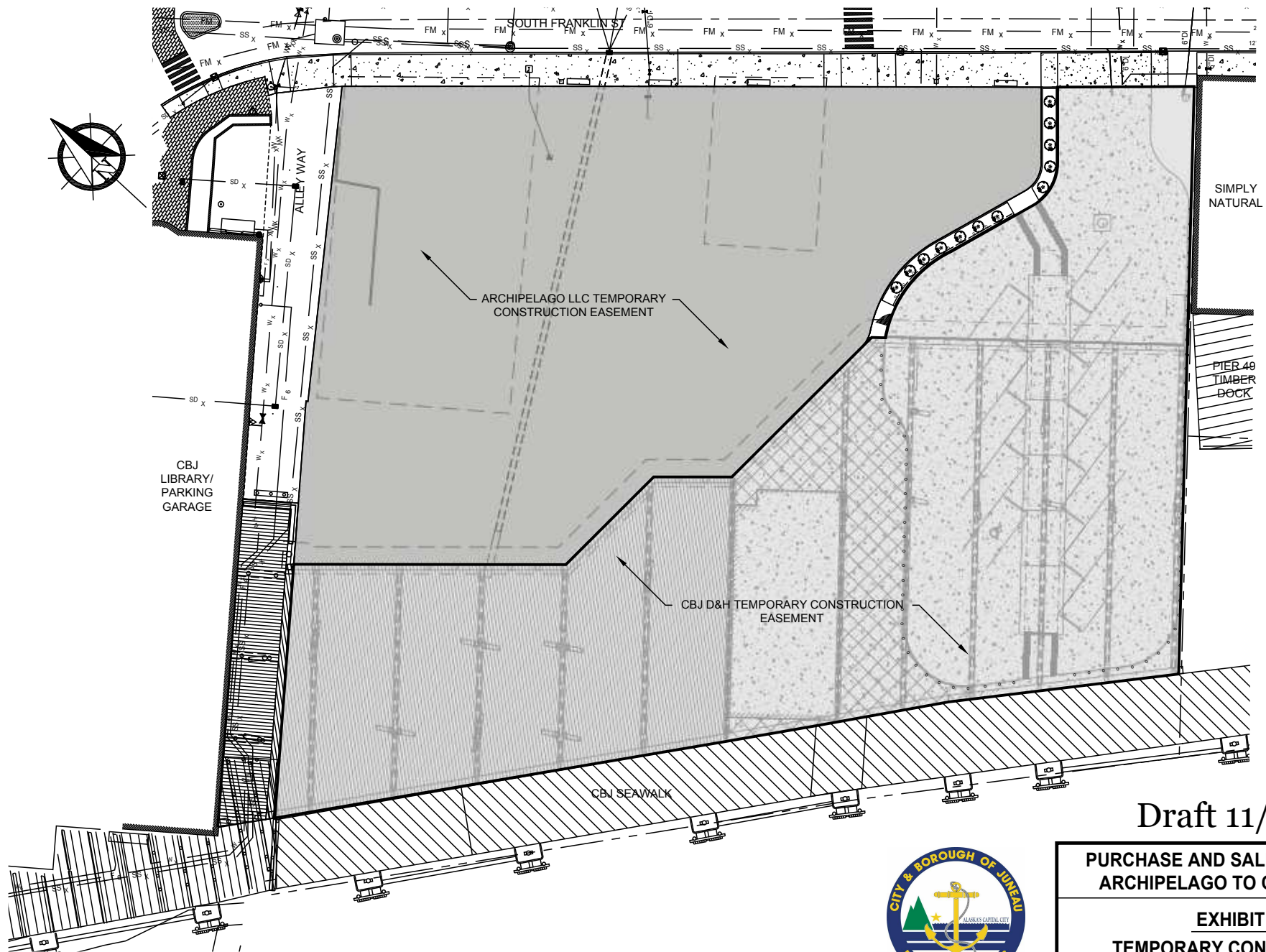
Draft 11/23/18

PURCHASE AND SALE AGREEMENT
ARCHIPELAGO TO CBJ EXHIBITS

EXHIBIT A
SURVEY PLAT

Draft 11/23/18

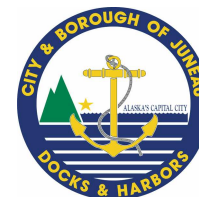




Draft 11/23/18

**PURCHASE AND SALE AGREEMENT
ARCHIPELAGO TO CBJ EXHIBITS**

**EXHIBIT C
TEMPORARY CONSTRUCTION
EASEMENTS**

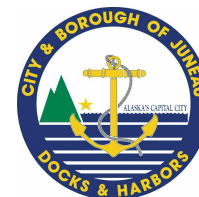




Draft 11/23/18

PURCHASE AND SALE AGREEMENT
ARCHIPELAGO TO CBJ EXHIBITS

EXHIBIT D
PUBLIC ACCESS &
UTILITY EASEMENT

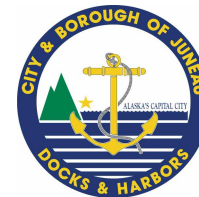




Draft 11/23/18

PURCHASE AND SALE AGREEMENT
ARCHIPELAGO TO CBJ EXHIBITS

EXHIBIT E
FUTURE IMPROVEMENTS AREA



Presented by: The Manager
 Introduced: November. 26, 2018
 Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(S)

An Ordinance Appropriating to the Manager the Sum of \$11,000,000 as Funding for the Downtown Waterfront Improvement Project; Funding Provided by Cruise Passenger Vessel Excise Tax, Port Development Fees, Marine Passenger Fees Fund's Fund Balance, and Dock Fund's Fund Balance.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of \$11,000,000 as Funding for the Downtown Waterfront Improvement Project.

Section 3. Source of Funds.

Cruise Passenger Vessel Excise Tax Revenue	\$5,000,000
Port Development Fund's Fund Balance	\$2,800,000
FY19 Port Development Revenue	\$ 900,000
Marine Passenger Fees Fund's Fund Balance	\$ 300,000
Dock Fund's Fund Balance	<u>\$2,000,000</u>
Grand Total	\$11,000,000

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2018.

 Beth A. Weldon, Mayor

Attest:

 Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
 Introduced: 12/17/2018
 Drafted by: Finance

TRANSFER REQUEST FOR THE CITY AND BOROUGH OF JUNEAU,
 ALASKA

SERIAL NUMBER T-1007

It is hereby ordered by the Assembly of the City and Borough of Juneau, Alaska, that \$6,000,000 be transferred:

From: CIP

H51-108	Statter Harbor Improvements – Phase III	\$4,500,000
D12-070	Open Space Waterfront Land Acquisition	\$1,500,000

To: CIP

H51-116	MP to Taku Uplands Improvement	\$6,000,000
---------	--------------------------------	-------------

The \$6,000,000 consists of:

State Marine Passenger Fees	\$4,500,000
Marine Passenger Fees	\$1,500,000

Moved and Approved this _____ day of _____, 2018.

 D. Rorie Watt, City Manager

Attest:

 Elizabeth J. McEwen, Municipal Clerk

City and Borough of Juneau

Capital Project Budget Summary Report

Impact of Budget Action:Transfer T-1007

Budget Action and Project Funding Impacts

The effect of this transfer on the project budgets and available funds to complete the projects is summarized below:

Project No.	Transfer From	Transfer	Project Budget		Remaining Funds		Comments	Funding Source	Funding Source
			Before	After	Before	After		State Marine Passenger Fees	MPF
H51-108	Statter Improvements - Phase III	4,500,000	\$ 9,890,000	\$ 5,390,000	\$ 8,437,076	\$ 3,937,076	Ongoing	4,500,000.00	
D12-070	Open Space Waterfront Land Acquisition	1,500,000	\$ 3,934,404	\$ 2,434,404	\$ 1,910,564	\$ 410,564	Ongoing	-	1,500,000.00
	Total Transfer	6,000,000	\$ 13,824,404	\$ 7,824,404	\$ 10,347,640	\$ 4,347,640		4,500,000.00	1,500,000.00

Project No.	Transfer To	Transfer	Project Budget		Remaining Funds		Comments		
			Before	After	Before	After			
H51-116	MP to Taku Uplands Improvement	4,500,000	\$ 3,512,876	\$ 8,012,876	\$ 2,271,680	\$ 6,771,680	Ongoing	4,500,000.00	
H51-116	MP to Taku Uplands Improvement	1,500,000	\$ -	\$ 1,500,000	\$ -	\$ 1,500,000	Ongoing		1,500,000.00
	Total Transfer	6,000,000	\$ 3,512,876	\$ 9,512,876	\$ 2,271,680	\$ 8,271,680		4,500,000.00	1,500,000.00



Port of Juneau

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

MEMORANDUM

TO: Bidders Date: January 16, 2019

FROM: *Carl Uchytel*
Carl Uchytel, PE
Port Director

SUBJ: POSTING NOTICE OF BIDS
Downtown Waterfront Improvements – Materials Procurement
Contract No.: DH19-038

This memo is to post a notice of the results of the bid opening on January 15, 2019 for the subject project. The bidders and their total bids are as follows:

BIDDERS	TOTAL BID
Island Contractors	\$783,820.00
Trucano Construction	\$849,017.00
Western Marine Construction	\$840,600.00
<i>Engineer's Estimate</i>	<i>\$833,000.00</i>

The apparent low bidder is Island Contractors. The CBJ intends to award the Total Bid in the amount of \$783,820.00. The Bid will be presented at the January 23, 2019 Docks and Harbors Board meeting for recommendation. The Board recommendation will be forwarded to the CBJ Assembly for approval on January 28, 2019.

This notice begins the protest period per Purchasing Code 53.50.062. Protests will be executed in accordance with CBJ Ordinance 53.50.062 "Protests", and 53.50.080 "Administration of Protest", available online at www.juneau.org/law/code/purchasing.pdf, or from the CBJ Purchasing Division at (907) 586-5258.

The apparent low bidder has until **4:30 p.m. on January 23, 2019**, to submit the Subcontractor Report, Section 00360 to the CBJ Port Director's Office. The Subcontractor Report must be submitted even if there are no subcontractors planned for the job.

c. Gary Gillette, Port Engineer

Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(Z)

An Ordinance Appropriating to the Manager the Sum of up to \$200,000 as Funding for Visitor Information Kiosk Replacement Capital Improvement Project; Funding Provided by the Dock Fund's Fund Balance.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of up to \$200,000 for the Visitor Information Kiosk Replacement CIP.

Section 3. Source of Funds

Dock Fund's Fund Balance	\$200,000
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Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

MEMORANDUM

DOCKS AND HARBORS
CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

EMAILED MEMORANDUM

TO: Bidders Date: January 23, 2019

FROM: *Carl Uchytel*
Carl Uchytel
Port Director

SUBJ: POSTING NOTICE OF BIDS
Visitor's Information Kiosk Replacement
Contract No. DH19-039

This memo is to post a notice of the results of the bid opening on January 22, 2019, for the subject project. The bidders and their total bids are as follows:

Bidders	Total bid
<i>Island Contractors, Inc.</i>	<i>\$163,873</i>
Dawson Construction, LLC	\$204,300
Silver Bow Construction Co.	\$219,000
Carver Construction, LLC	\$220,642
<i>Engineer's Estimate</i>	<i>\$150,000</i>

The apparent low bidder is Island Contractors. The CBJ intends to award the Total Bid in the amount of \$163,873. Award will be forwarded to the January 23, 2019, Docks and Harbors Board meeting for approval. Recommendation to award the Total Bid in the amount of \$163,873 will be forwarded to the CBJ Assembly for approval at the Regular Assembly Meeting on January 28, 2019.

Orion Construction submitted a timely bid but failed to acknowledge changes to the Work in Addendum number 3, therefore Orion Construction is deemed Non-Responsive per Section 00100, Article 5.0, paragraph F.

This notice begins the protest period per Purchasing Code 53.50.062. Protests will be executed in accordance with CBJ Ordinance 53.50.062 "Protests", and 53.50.080 "Administration of Protest." The CBJ Purchasing Code is available online at: <http://www.juneau.org/law> or from the CBJ Purchasing Division at (907) 586-5258.

The apparent low bidder has until **4:30 p.m. on January 30, 2019**, to submit Section 00360 - Subcontractor Report and Section 00370 - Contractor's Financial Responsibility to the Engineering Department Contracts Office. The Subcontractor Report must be submitted even if there are no subcontractors planned for the job.

c. Gary Gillette, Port Engineer



Presented by: The Manager
Introduced: January 7, 2019
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(AA)

An Ordinance Appropriating to the Manager the Sum of up to \$170,000 as Funding for Dock Security Stations Capital Improvement Project; Funding Provided by Marine Passenger Fees.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of up to \$170,000 for the Dock Security Stations CIP.

Section 3. Source of Funds

Marine Passenger Fees	\$170,000
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Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced: 1/28/2019
Drafted by: Finance

TRANSFER REQUEST FOR THE CITY AND BOROUGH OF JUNEAU,
ALASKA

SERIAL NUMBER T-1011

It is hereby ordered by the Assembly of the City and Borough of Juneau,
Alaska, that \$129,000 be transferred:

From: CIP

H51-110	Visitor Info Kiosk CIP	\$129,000
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To: CIP

H51-122	Dock Security Stations CIP	\$129,000
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The \$129,000 consists of:

Harbor Funds	\$129,000
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Moved and Approved this _____ day of _____, 2019.

D. Rorie Watt, City Manager

Attest:

Elizabeth J. McEwen, Municipal Clerk

**BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE
CITY AND BOROUGH OF JUNEAU**

VOLUNTEERS OF AMERICA,

Appellant,

vs.

CBJ ASSESSOR,

Appellee,

Appeal of: April 6, 2018
Notice of Decision March 7, 2018,
Appeal Case No. 2018-01

FINAL DECISION ON APPEAL

I. Introduction

The above captioned appeal was timely filed by Appellant Volunteers of America (VOA), on April 6, 2018. VOA appealed from the March 7, 2018, decision of the City and Borough of Juneau (CBJ) Assessor denying the request from VOA for a property tax exemption of two parcels based upon their use as non-profit charitable use property or non-profit religious use property under AS 29.45.030(a)(3) and CBJ Code 69.10.020(8).¹

The two parcels which are the subject of this appeal are related. One is identified variously as Terraces at Lawson Creek, 2570 Vista Drive², assessor Parcel ID 2D040C050075³, and Lot 2, Emerald 3 Subdivision, according to plat 2014-21 recorded in the Juneau Recording District, First Judicial District, State of Alaska.⁴ This parcel will be referred to as Terraces I. The other is

¹ Record on Appeal (R.) at 554-555. Citations are to the Record as supplemented and distributed October 26, 2018.

² R. 552, 616

³ R. 1-2.

⁴ R.269.

Terraces at Lawson Creek II⁵, 2578 Vista Drive⁶, Assessor Parcel ID 2D040C050073.⁷ This parcel will be referred to as Terraces II.

Terraces I is a four-building complex of 40 residential low-income housing units constructed in 2014.⁸ The land is owned by Intrepid VOA, LLC.⁹ The improvements for Terraces I are owned by Juneau I VOA LLC.¹⁰ Juneau I LLC is owned by JI VOA MM LLC, its managing member, NHT Equity, LLC, an Ohio limited liability Company, as a non-managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.¹¹ JI VOA MM LLC is in turn owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).¹²

Terraces II is a two-building complex of 35 residential low-income housing units constructed in 2017.¹³ The land is owned by Intrepid VOA, LLC.¹⁴ The improvements for Terraces II are owned by Juneau II VOA LLC.¹⁵ Juneau II VOA LLC is owned by JII VOA MM LLC, its managing member, Key Community Development Corporation, as a non-managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.¹⁶ JII VOA MM LLC is in turn owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).¹⁷ VOANS is asserted to be the sole owner of

⁵ R. 335-336.

⁶ R. 335-336.

⁷ R. 335-336.

⁸ R. 8-9.

⁹ R.610.

¹⁰ R. 609.

¹¹ R. 8 and 13.

¹² R. 8, 6090.

¹³ R. 3340-341.

¹⁴ R. 610.

¹⁵ R.609.

¹⁶ R. 340, 349-350, 415.

¹⁷ R. 609.

Intrepid LLC.¹⁸ However, other parts of the record discuss the real property as being owned by a new company formed by VOANS and the developers Trapline and V2.¹⁹

Terraces I and Terraces II were constructed in reliance on the Low-Income Housing Tax Credit (LIHTC) program. This program allows entities which have substantial taxable income to invest in low-income housing projects and receive a tax credit for doing so.²⁰ The Appellants applied for an exemption under AS 29.45.030(a)(3) as property used exclusively for nonprofit charitable purposes.²¹ The City and Borough of Juneau (CBJ) Assessor reviewed the materials submitted and consulted other Assessors.²² The CBJ Assessor reviewed the materials and sought additional information.²³ The CBJ Assessor issued a decision on March 7, 2018.²⁴ The CBJ Assessor's decision effectively denied four requests: 1) the request for an exemption for Terraces I as religious use property under AS 29.45.030(a)(3); 2) the request for exemption of Terraces I as charitable use property under AS 29.45.030(a)(3); 3) the request for an exemption for Terraces II as religious use property under AS 29.45.030(a)(3); and 4) the request for exemption of Terraces II as charitable use property under AS 29.45.030(a)(3).²⁵

II. Procedural posture

A. General Proceedings.

This case is an appeal to the Assembly Sitting as the Board of Equalization (Board) under CBJ Code Chapter 1.50. The Board appointed a hearing officer under CBJ Code 1.50.040. The

¹⁸ R. 610.

¹⁹ R. 568.

²⁰ R. 573-602.

²¹ R. 1-314 for Terraces I and R. 335-539 for Terraces II.

²² R. 315-316.

²³ R. 544-553.

²⁴ R. 554-555.

²⁵ Id.

appeal was timely filed by the Appellant.

A pre-hearing conference was held telephonically on June 29, 2018. At that time, the parties jointly agreed that the case should be briefed on the record with no in-person hearing. A pre-hearing order was issued July 2, 2018, setting the schedule for preparation of the record, requests for supplementation of the record, and briefing. The record was supplemented by unopposed requests. The briefing scheduled was modified by unopposed extensions for both parties and was complete on November 26, 2018. The case is now ripe for decision.

The Proposed Decision on Appeal was issued January 2, 2019. Timely objections were filed by the Appellant pursuant to CBJ Code 1.50.140 on January 9, 2019. A statement in support was timely filed by Appellee January 14, 2019. Under CBJ Code 1.50.140(c) the hearing officer shall reconsider the Proposed Decision in light of timely filed objections and statements of support and shall either prepare amendments to proposed decision or shall issue a statement that the objections and statements of support have been considered and that no change in the decision shall be made.

B. Consideration of Objections.

Here the objections and statement in support have been considered and amendments to the decision have been made to clarify the decision in the following respects:

1. The Objection noted that all 35 of the units in Terraces II are for low income or disabled tenants, and only the 15 units in Terraces I rent for over 90% of market rates, and stated that the Proposed Decision improperly focused on the units which rent at near market rates. The Objection appears to misunderstand the Proposed Decision. I have modified that portion to clarify that I find that the Appellant failed to meet the burden to establish that the properties are

used for exclusively charitable purposes because 1) the use of the properties established by Appellant was use as deed restricted LIHTC property, and 2) establishing that the properties are deed restricted LIHTC projects is not sufficient, absent other charitable use, to entitle the properties to a mandatory exemption. The comment in the Proposed Decision regarding units with near market rents was not directly controlling, but was more in the nature of dicta observing that even if use of the property for LIHTC purposes were sufficient to qualify for a mandatory exemption, the Terraces I project would likely require apportionment due to the higher rents charged on up to 15 units. I have revised the findings in the conclusion to be more declarative statements in order to make this more clear.

2. The Objection argued that the Proposed Decision erroneously stated that a deed restriction limiting the property to LIHTC uses alone would not be sufficient to entitle a property to an exemption as non-profit charitable property. In support of this argument the Objection referenced legislative history statements that there is no profit in low income housing, and referenced other states which exempt low income rental properties from property tax.

The legislative history for HB 272, which became Ch. 79 SLA 2000, does not support the Objection. The Bill Sponsor, Representative Halcro stated in the House Community and Regional Affairs Committee hearing on the bill that deed restrictions should be taken into account when valuing property, but did not indicate that they should entitle property to an absolute exemption.²⁶ Later in the hearing Representative Halcro stated that: "since the property is not exempted and has to be assessed based upon the deed restriction, the community receives a net gain because there are property taxes on the roll that would not be present if these tax credits

²⁶ House Community and Regional Affairs Committee hearing on HB 272, February 1, 2000.

were not in place.”²⁷ This statement makes clear that LIHTC properties like this were intended to receive a reduced assessment under AS 29.45.110(d) but would still have some assessed value included on the tax roll. Interpreting AS 29.45.030(a)(3) to give deed restricted LIHTC properties a mandatory exemption based upon their LIHTC status and associated deed restrictions would be inconsistent with the intent behind AS 29.45.110(d), a statute which is *in pari materia* with the exemption statute AS 29.45.030(a)(3), and must be read consistently, giving meaning to all terms.²⁸ Granting a mandatory exemption to LIHTC deed restricted property where those are the only charitable use attributes identified would be inconsistent with the clear legislative intent behind AS 29.45.110(d) that such properties be included on the tax roll, albeit at a reduced value.

Clearly the legislation contemplated that a deed restriction would be considered for a reduced assessment, but would not provide a complete exemption. Further, were this so, then all LIHTC property with a deed restriction to qualify for the program would be entitled to a full exemption and there would be no reason for the legislation calling for a reduced assessment of such property. This point of objection is rejected. The deed restriction for LIHTC property does not, by itself, qualify property for a mandatory exemption under AS 29.45.030(a)(3).

3. The Objection disputes the hearing officer’s consideration of the financial interests of parties to the transaction other than the nominal non-profit entity which owns and operates a LIHTC project. Instead, the Objection argues for focus only on the use of the property by Juneau I VOA, LLC and Juneau II VOA LLC. This Objection is not well taken. Juneau I LLC is owned by JI VOA MM LLC, its managing member, NHT Equity, LLC, an Ohio limited liability Company, as a non-

²⁷ House Community and Regional Affairs Committee hearing on HB 272, February 1, 2000.

²⁸ See Hafiling v. Inland Boatmen’s Union, 585 P.2d 870, 878 (Alaska 1978) and Alaska Airlines v. Darrow, 403 P. 3d 1116, 1122 (Alaska 2017).

managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.²⁹ NHT Equity LLC is a for profit entity which earns a return on its investment in Terraces I from the tax credits and depreciation it obtains due to its participation. Were there no low-income housing units complying with the LIHTC program requirements, NHT Equity LLC would not receive these profits. As explained by Mr. Sieberts in the debate on HB 272, "the purchase of tax credits are an investment with considerable federal restrictions and oversight. It would be like making an investment in a municipal bond or loan or home mortgage."³⁰ The participation of NHT Equity LLC, one of the two members of the LLC owning Terraces I, is clearly an investment for purposes of financial gain to NHT Equity LLC, and is thus motivated by a dominant profit motive. The other member, JI VOA MM LLC is, in turn, owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).³¹ VOANS, as owner of the underlying real property through a separate LLC, receives an annual payment of land rent.

Similarly, Terraces II are owned by Juneau II VOA LLC.³² Juneau II VOA LLC is owned by JII VOA MM LLC, its managing member, Key Community Development Corporation, as a non-managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.³³ JII VOA MM LLC is in turn owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).³⁴ For Terraces II it is Key Community Development Corporation who, like NHT Equity LLC, is the owner

²⁹ R. 8 and 13.

³⁰ House Community and Regional Affairs Committee hearing on HB 272, February 1, 2000.

³¹ R. 8, 6090.

³² R.609.

³³ R. 340, 349-350, 415.

³⁴ R. 609.

of the project with a dominant profit motive in providing the low income housing.

The hearing officer has considered this Objection, and maintains the position that it is appropriate to look to the financial motivations of the underlying owners of the nominal LLC entity owning and operating the project.

C. Issues.

The issues stated in the appeal filed April 6, 2018, were:

"A. The Assessor's decision erroneously concluded that the property, (identified as parcels 2D040C050073 and 2D040C050075) fails to qualify as being used exclusively for charitable purposes because "the Articles of Incorporation [do not] include any charitable program or purpose statements to establish the purpose of the organization as charitable." The property is owned by limited liability companies with Operating Agreements, rather than by corporations with Articles of Incorporation. The Operating Agreements set forth the charitable purpose and use of the property.

B. The Assessor's decision erroneously cites to the definition of "tax-exempt use" within the Code by the Internal Revenue Service ("IRS"), as referenced in the Operating Agreements of Juneau I VOA LLC and Juneau II VOA LLC, as support for denying the requested real property tax exemption pursuant to Alaska Statute 29.45.030(a)(3). The IRS definition of "tax-exempt use" is not controlling with regard to determining real property tax exemption under Alaska Statute 29.45.030(a)(3).

C. The Assessor's decision failed to recognize that Terraces at Lawson Creek is operated in a manner that furthers the charitable purposes of providing decent, safe, sanitary, and affordable housing for low-income persons and families, (including the elderly or physically handicapped, as applicable), as set forth in sections 1.06 of the Operating Agreements of Juneau I VOA LLC and Juneau II VOA LLC.

D. The Assessor's decision erroneously denied real property tax exemption for the subject property pursuant to Alaska Statute 29.45.030(a)(3) without any legal reasoning or analysis. Specifically, the Alaska Supreme Court in Dena Nena Henash, 88

P.3d at 130, set forth a two-part analysis: “first, whether there is a nonprofit, charitable purpose, and second, whether the property is being exclusively used for an exempt purpose.”

The briefs filed by the parties focus the issues on whether Terraces I or Terraces II qualify for the mandatory tax exemption as property owned by a non-profit entity which is exclusively used for charitable purposes.

III. Standard of Review

Under CBJ Code section 1.50.070, the Assessor’s decision may be set aside if:

- “(1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
- (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency or the hearing officer of the basis upon which the decision appealed from was made; or
- (3) The appeal agency or hearing officer failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.”

This section also provides that the burden of proof is on the Appellant.

This case involves an appeal from the denial of a request by Appellants for a property tax exemption for two parcels based upon their use as non-profit charitable use property or non-profit religious use property under AS 29.45.030(a)(3) and CBJ Code 69.10.020(8).³⁵ The appeal challenges the merits of an Assessor’s decision regarding application of the law to the facts. Questions of law are subject to review under a substantial evidence standard.³⁶ Substantial evidence is “evidence that a ‘reasonable mind might accept as adequate to support a conclusion’.”³⁷

³⁵ R. 1-2, 335-336, 554-555.

³⁶ Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124, 128 (Alaska 2004).

³⁷ Williams v. Ketchikan Gateway Borough, 295 P.3d 374, 375 (Alaska 2013).

Here, there is apparently not a dispute about the underlying facts, only the interpretation of those facts as they relate to the charitable exemption. The Appellant argues that the entitlement to an exemption should be interpreted in accordance with the rule that ambiguity is resolved in favor of the taxpayer.³⁸ Appellee points out that exemptions from ad valorem taxes are narrowly construed.³⁹

"A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Furthermore, the courts must narrowly construe statutes granting such exemptions." But, as the superior court observed, "[t]his canon of strict construction 'is an aid to, not a substitute for, statutory interpretation; the interpretation must still be a reasonable one.'"⁴⁰ "A taxpayer claiming a tax exemption must produce evidence sufficient to prove the property's eligibility for the exemption."⁴¹

IV. Discussion

A. Issues not in Dispute.

1. Any request for religious exemption is withdrawn.

³⁸ See Union oil v. dept of rev, 560 P.2d 21 at 25 (Alaska 1977).

³⁹ "A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Furthermore, the courts must narrowly construe statutes granting such exemptions. The policy behind these rules was expressed in Animal Rescue League of Boston v. Assessors of Bourne, 310 Mass. 330, 37 N.E.2d 1019, 1021 (1914): All property is benefited by the security and protection furnished by the State, and it is only just and equitable that expenses incurred in the operation and maintenance of government should be fairly apportioned upon the property of all. An exemption from taxation releases property from this obligation to bear its share of the cost of government and serves to disturb to some extent, that equality in the distribution of this common burden upon all property which is the object and aim of every just system of taxation. While reasonable exemptions based upon various grounds of public policy are permissible, yet taxation is the general rule. . . . It is for this reason that statutes granting exemptions from taxation are strictly construed. A Taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him." Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, 553 P.2d 467, 469 (1976). And See Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124, 129 (Alaska 2004).

⁴⁰ See Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124, 129 (Alaska 2004) (Footnotes omitted.)

⁴¹ See City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870, (1985) citing Sisters of Providence in Washington v. Municipality of Anchorage, 672 P.2d 446, 447 (Alaska 1983).

The initial application for an exemption forms submitted by Appellants asserted entitlement to an exemption under AS 29.45.030(a)(3) as exclusively religious property as well as charitable use property.⁴² The CBJ Assessor denied any exemption for religious use.⁴³ The Appellants have withdrawn or waived any claim to entitlement to an exemption as property used for exclusively religious purposes. Appellants did not address arguments regarding entitlement to a religious use exemption, except when Appellant's Reply Brief specifically stated that "Appellants did not request or imply that the LIHTC Property was used for religious purposes or seek exemption on that basis."⁴⁴ This statement is notwithstanding the fact that the application for an exemption indicates a claim of religious use exemption.⁴⁵ Moreover, the operating agreements and corporate documents do not address religion or religious use. Accordingly, I find that any request for an exemption for property used exclusively for non-profit religious purposes is withdrawn, and the CBJ Assessor's denial of such request is upheld.

2. Review of the CBJ Assessor's determination of entitlement to exemptions is subject to de novo review as a question of law.

Appellants have argued that the decision of the Assessor regarding charitable exemptions are questions of law, and no deference is due the Assessor's determination.⁴⁶ Appellees argue that the case presents an issue of law, and notes that the facts are not in dispute so much as the interpretation of those facts and application of the law.⁴⁷ Appellees maintain that the Assessor's conclusions regarding the tax exemption based upon the Assessor's interpretation of statutory and case law is the subject to de novo review, but the Assessor's factual findings are subject to

⁴² R. 2.

⁴³ R. 554.

⁴⁴ Appellant's Reply Brief at 7.

⁴⁵ R. 2, 336.

⁴⁶ Appellant's Brief at 7.

⁴⁷ Appellee's Brief at 2.

the substantial evidence standard of review.⁴⁸

B. Issues in Dispute.

The parties generally agree that the issues are those questions identified in the standard in Dena Nena Henash⁴⁹: 1) Is the property used for exclusively charitable purposes; 2) if the use is in exchange for payment, is the payment incidental to and reasonably necessary for the accomplishment of the exempt activity and does not exceed operating costs; and 3) is the payment sought as part of a dominant profit motive? The parties disagree as to the answers to these questions.

1. Are Terraces I and Terraces II used for exclusively non-profit charitable purposes?

Both parties briefed arguments regarding the proper interpretation of AS 29.45.110(d) and whether it precludes an exemption under AS 29.45.030(a)(3).

(a) Does AS 29.45.110(d) preclude an exemption under AS 29.45.030(a)(3)?

The CBJ Assessor's opinion also made reference to the Low-Income Housing Tax Credit reduced assessment program and the qualification of projects in Juneau for the LIHTC exemption program.⁵⁰ Appellants challenge the CBJ Assessor's apparent interpretation that LIHTC properties cannot be mandatorily exempt under AS 29.45.030(a)(3) due to the reduced assessment program under AS 29.45.110(d). Appellants argue that the availability of a reduced assessment for LIHTC properties under AS 29.45.110(a) does not preclude an exemption as charitable property under AS 29.45.030(a)(3), and that the two statutes can be interpreted

⁴⁸ Appellee's Brief at 3.

⁴⁹ 88 P.3d 124, 132-33.

⁵⁰ R. 554. Presumably the reference is the reduced assessment program under AS 29.45.110(d) for LIHTC property.

compatibly.⁵¹

Appellants argue that a separate decision challenging the CBJ Assessor's treatment of the assessment reduction statute applicable to conservation easements, AS 29.45.062(a), was similarly interpreted as allowing a non-profit organization to seek an exemption in addition to the reduction in assessment.⁵² Appellants also argue that because the exemption for charitable property is derived from Article IX, Section 4 of the Alaska Constitution, the legislature could not override or remove the entitlement to a non-profit charitable use exemption by adopting AS 29.45.110(d).⁵³

Appellee argues that, while the Alaska Supreme Court has not ruled on the issue of whether AS 29.45.110(d) providing for a reduced assessment for LIHTC properties is mutually exclusive with an exemption under AS 29.45.030(a)(3), the entitlement to a complete exemption for LIHTC properties under AS 29.45.0630(a)(3) would render AS 29.45.110(d) largely superfluous, contrary to rules of statutory construction.⁵⁴ Appellee also argues that the underlying purpose of AS 29.45.110(d) was not meant to exempt LIHTC projects, and that it was recognized that LIHTC projects were generally run by non-profits.⁵⁵ Appellee relies on references to legislative history and hearings on the legislation.

Appellee also relies upon the decision in Horan v. Kenai Peninsula Borough Board of Equalization⁵⁶, in support of its interpretation of AS 29.45.110(d). Appellee argues that SEAL Trust v. CBJ Assessor, a prior case appealed to the Assembly sitting as a Board of Equalization,

⁵¹ Appellant's Brief at 8.

⁵² Appellant's Brief at 9.

⁵³ Appellant's Reply Brief at 4-5.

⁵⁴ Appellee's Brief at 4-5.

⁵⁵ Appellee's Brief at 6-7.

⁵⁶ 247 P.3d 995 (Alaska 2011)

does not apply to entitle a property owner to both a reduction and an exemption in this case. The SEAL Trust matter is not a reported case, and thus is not binding precedent, but may be persuasive authority.⁵⁷ Appellee also argues that exemption treatment of LIHTC property in Anchorage is not a relevant guide because the Anchorage Assessor did not consistently treat such property as exempt under AS 29.45.030(a)(3), and corrected an erroneous exemption in 2012.⁵⁸

In response, Appellants argue that the legislature intended AS 29.45.110(d) and AS 29.445.030(a)(3) to be read in harmony and not to eliminate eligibility of LIHTC projects from qualification for an exemption under AS 29.45.030(a)(3). Appellant asserts the legislative debate was focused on costs and benefits of LIHTC projects and that there was no discussion of AS 29.45.030(a)(3) and therefore no intent to override that section.⁵⁹ Appellee argues that Horan only addressed assessment methodology, not entitlement to an exemption, and further, that Horan is distinguishable because “[t]hat property was owned by for-profit entities with no charitable intent and at no time was exemption or AS 29.45.030(a)(3) discussed or interpreted.”⁶⁰

The parties offered competing arguments regarding the legislative intent behind AS 29.45.110(d) and whether it precludes a mandatory exemption. “The goal of statutory construction is to give effect to the legislature’s intent, with due regard for the meaning the statutory language conveys to others.”⁶¹ This involves consideration of “three factors: the language of the statute, the legislative history, and the legislative purpose behind the statute.”⁶²

⁵⁷ See McCoy v. State, 80 P.3d 757 (Alaska App. 2002) and cases cited therein.

⁵⁸ Appellee’s Brief at 9. And See R. 312-316, 338-339, and 541-543

⁵⁹ Appellee’s Reply at 3.

⁶⁰ Appellees Reply Brief at 3.

⁶¹ Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896 (Alaska 1987).

⁶² Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc., 101 P.2d 1047, 1050 (Alaska 2004). See also, Theresa L. v. State, Dept. of Health & Social Services, 353 P.3d 831, 838 (Alaska 2015) (“We interpret a statute according to

The Alaska Supreme Court has "rejected a mechanical application of the plain meaning rule in favor of a sliding scale approach."⁶³ However, the language of the statute is the "primary guide."⁶⁴ It is presumed "that every word in the statute was intentionally included, and must be given some effect."⁶⁵ "The language of the statute is 'construed in accordance with [its] common usage,' unless the word or phrase in question has 'acquired a peculiar meaning, by virtue of statutory definition or judicial construction'."⁶⁶ "The plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be."⁶⁷

"When statutory language is ambiguous, [the court is to] look to the purpose of the legislation and the legislative history for indications of legislative intent."⁶⁸ Statutes addressing common subject matter are read "as a whole in order that a total scheme evolves which maintains the integrity of each act and avoids ignoring one or the other."⁶⁹ "When interpreting statutes . . . seemingly conflicting provisions must be harmonized unless such interpretation would be at odds with statutory purpose."⁷⁰

Appellants argue that there may be any number of LIHTC projects which are not owned or operated by non-profit entities, and which would not qualify for a mandatory exemption under

reason, practicality, and common sense taking into account the statute's language, its legislative history, and its purpose.").

⁶³ Municipality of Anchorage v. Suzuki, 41 P.3d 147, 150 (Alaska 2002).

⁶⁴ State v. Strane, 61 P.3d 1284, 1286 (Alaska 2003) (quoting Commercial Fisheries Entry Commission v. Apokedak, 680 P.2d 486, 489-90 (Alaska 1984)).

⁶⁵ Suzuki, 41 P.3d at 151. See also, Tesoro Alaska Petroleum Co., 746 P.2d at 906.

⁶⁶ Suzuki, 41 P.3d 147, 150-51 (quoting Muller v. BP Exploration Alaska Inc., 923 P.2d at 783, 788 (Alaska 1996) (citations omitted)).

⁶⁷ Suzuki, 41 P.3d at 150 (quoting Muller, 923 P.2d at 788 (citation omitted)).

⁶⁸ Municipality of Anchorage v. Adamson, 301 P.3d 569, 576-77 (Alaska 2013).

⁶⁹ Strane, 61 P.3d at 1286 n. 4 (quoting Hafting v. Inlandboatmen's Union of the Pacific, 585 P.2d 870, 878 (Alaska 1978)).

⁷⁰ Davis Wright Tremaine LLP v. State, Dept. of Administration, 324 P.3d 293, 299 (Alaska 2014) (citing Progressive Ins. Co. v. Simmons, 953 P.2d 510, 516-17 (Alaska 1998)).

AS 29.45.030(a)(3), but which would qualify for a reduced assessment under AS 29.45.110(d). The legislative history discussion cited by the parties makes clear that the reduced assessment was intended to benefit non-profit owners and operators of LIHTC projects. The reduced rental income of such projects as compared to market rent projects made it inequitable to assess them based upon a full value when the income approach, taking into account actual rents, would provide a reduced assessed value. Thus, it is clear that a reduced assessment under AS 29.45.110(d) was intended to be available to non-profit owners and operators of LIHTC projects, and the scope of that section was not limited to for-profit LIHTC projects. That legislative history does not support the conclusion that AS 29.45.110(d) was intended to prevent owners of LIHTC projects, in appropriate circumstances, from also qualifying for a mandatory exemption which may apply to the particular property.

While the legislative history clearly supports the intent to entitle LIHTC projects to a reduced tax assessment value, it does not clearly indicate the understanding that non-profit LIHTC projects are entitled to a charitable exemption. In fact, the legislative history supports the opposite conclusion. If every LIHTC project was entitled to a charitable use exemption, then AS 29.45.110(d) would only apply to for profit LIHTC projects. However, the legislative history shows that it was intended to apply to non-profit LIHTC projects. Thus, simply being a LIHTC non-profit project might entitle a property to a reduced assessment under AS 29.45.110(d), but unless there are additional attributes which qualify the property for a mandatory or optional exemption, it will not be entitled to a complete exemption.

Therefore, I conclude that AS 29.45.110(d) was not intended to foreclose application of AS 29.45.030(a)(3) in appropriate factual circumstances. This does not end the inquiry into

whether the use is exclusively for charitable purposes. The parties disputed whether the purpose here is a qualifying charitable purpose. In order to qualify for a mandatory exemption as non-profit charitable use property under AS 29.45.030(a)(3), the property owner here must show entitlement to that exemption.

(b) Is use of the property for the LIHTC project a charitable use?

Appellants argue that Terraces I and Terraces II are both used exclusively for charitable purposes, and therefore qualify for the charitable tax exemption under Article IX, Section 4 of the Alaska Constitution, and the parallel provisions of AS 29.45.030(a)(3) and CBJ Code 69.10.020(8).⁷¹ Appellants argue that the only relevant factor for eligibility for a charitable exemption under AS 29.45.030(a)(3) is whether the subject property is being used for exclusively charitable purposes.⁷²

Appellants argue that the Operating Agreement for the LLC which operates Terraces I requires the managing member of the LLC to manage the properties for charitable purposes.⁷³ Appellants assert the same for Terraces II. Appellants also identify the stated purpose of providing “decent, safe, sanitary, and affordable housing for low-income persons and families (including the elderly or physically handicapped, as applicable).”⁷⁴ Appellants argue that these purposes qualify as charitable purposes.

The CBJ Assessor’s decision had stated in part that the Articles of Incorporation did not include any charitable program or purpose statements to establish the purpose of the

⁷¹ Appellants Brief at 7.

⁷² Appellant’s Brief at 9-10.

⁷³ Appellant’s Brief at 10 citing R. 19-20 and 349. See also R. 341.

⁷⁴ Appellant’s Brief at 10 R. 8,19-20 and 341.

organization as charitable.⁷⁵ Appellants argue that the Assessor erred in concluding that entitlement to a federal tax exemption as a 501(c)(3) charitable organization had no impact on qualification for an exemption from property tax as a non-profit charitable organization.⁷⁶

AS 29.45.030(a) provides in the relevant part:

“(a) The following property is exempt from general taxation:

...

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes.”

CBJ Code 69.10.020 provides:

“The following property shall be exempt from the general tax levied pursuant to CBJ 69.10.010 and the flat tax levied pursuant to CBJ 69.10.015:

(8) The property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter. In order for property to be considered used exclusively for community purposes, its use must benefit a significant portion of the public and the organization seeking the exemption must have a current 501(c)(3) or 501(c)(4) exemption ruling from the Internal Revenue Service. In order to qualify for this exemption, the claimant must file a written application for the exemption no later than January 31 of each assessment year for which the exemption is sought. The application shall be on a form prescribed by the City and Borough Assessor and shall include all information determined necessary by the assessor to determine the character of the organization and the nature of the uses made of the property. An exemption granted under this subsection shall be only for the assessment year for which the exemption was sought.”

The CBJ Code defines charitable use as “that property owned by a nonprofit charitable

⁷⁵ R. 554.

⁷⁶ Appellant’s Brief at 11.

corporation and which is used only for the purpose of improving the moral, mental and physical welfare of the public generally.”⁷⁷

The parties did not argue or brief the CBJ Code requirements which are more specific than AS 29.45.030(a)(3) regarding what will show a charitable use, in particular, the requirement to benefit a significant portion of the public and the requirement for a 501c3 or 501c4 exemption ruling from the IRS. The lack of these attributes was part of the basis for the CBJ Assessor’s decision.⁷⁸ Indirectly, the issue was addressed by both parties in the context of arguments over whether the charitable program or purpose statement was adequate. To the extent that CBJ 69.10.020(8) conflicts with AS 29.45.030(a)(3), it will be preempted.⁷⁹ Thus, if the property qualifies under AS 29.45.030(a)(3), that is sufficient.

The Court has discussed various definitions of charitable use. Charity is “A gift to the general public use, which extends to the poor as well as the rich.”⁸⁰ “What is done out of goodwill and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally comes within this meaning of the word “charity.” To crowd out coarseness, cruelty, brutality from social man undoubtedly results in this betterment.”⁸¹

Appellants argue that the Assessor failed to analyze the use of the property in rendering a decision on the exemption.⁸² Appellants requested that the hearing officer review the record,

⁷⁷ CBJ Code 69.10.005.

⁷⁸ R. 554.

⁷⁹ Where there is a conflict between an ordinance and a statute, and the statute and ordinance are so irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law, then the ordinance must give way to the statute. See Jefferson v. State, 527 P.2d 37, 43 (Alaska 1974) and see Chugach Electric v. City of Anchorage, 476 P.2d 115, 122 (Alaska 1972). “When interpreting statutes . . . seemingly conflicting provisions must be harmonized unless such interpretation would be at odds with statutory purpose.

⁸⁰ Kings Lake Camp, quoting Topeka Presbyterian Manor, Inc. v. Board of County Comm’rs of Shawnee County, 195 Kan 90, 402 P.2d 802, 808 (1965).

⁸¹ Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124, 132 (2004)

⁸² Appellant’s Reply Brief at 6-8.

including portions cited by Appellant, and ascertain that the VOA property is exempt under AS 29.45.030(a)(3).⁸³

The Appellant argues that providing low-income housing is a charitable purpose. That purpose is identified as providing “decent, safe, sanitary, and affordable housing for low-income persons and families (including the elderly or physically handicapped, as applicable).”⁸⁴ While it is true that providing decent affordable housing may be done out of the goodwill to improve the physical welfare of the public served generally⁸⁵, the provision of low-income housing through a deed restricted LIHTC project alone does not qualify as a real property tax-exempt charitable use of property.

The factual circumstances will require more than just nominal compliance with the LIHTC program rental rate limits and deed restrictions. If all that was required were minimally qualifying as a LIHTC project under the federal program and not charging more than the maximum rents permitted by the LIHTC program, then every LIHTC project operated by a non-profit entity would be mandatorily exempt, and AS 29.45.110(d) would only apply to a small subset of the potential LIHTC projects. While the legislative history does not clearly show an intent that a LIHTC project would never qualify for a mandatory exemption, it does indicate that the legislature did not intend that all non-profit LIHTC projects would be exempt. The legislative history does indicate that AS 29.45.110(d) was intended to apply to non-profit operated LIHTC projects, and in fact, the testimony offered by Alaska Housing Finance Corporation and other non-profits in support

⁸³ Appellant’s Reply Brief at 8.

⁸⁴ Appellant’s Brief at 10, R. 8,19-20, 341 and 349.

⁸⁵ It is debatable whether the benefits are to the public generally, as called for in the CBJ Code definition, **Kings Lake** and **Dena Nena Henash**. The parties have not briefed the distinction between the residents of the LIHTC project who are benefitted as compared with the benefits to the general public.

of the legislation would be unnecessary if all that were required were being a non-profit corporation and owning a federally qualified LIHTC project. Thus, the legislative history of AS 29.45.110(d) supports the conclusion that minimal compliance with the LIHTC program requirement is insufficient, by itself, to qualify for a mandatory charitable exemption.

Additionally, qualification requires more than a provision in the Articles of Incorporation or an Operating Agreement that property will be used for charitable purposes. Many non-profit charitable organizations operate enterprises which generate funding for their programs and are taxable. See for example Greater Anchorage Area Borough v. Sisters of Charity House of Providence⁸⁶ and Evangelical Covenant Church of America v. City of Nome.⁸⁷ Thus, the fact that the Operating Agreements for the LLC which operates Terraces I and Terraces II require the managing member of the LLC to manage the properties for charitable purposes⁸⁸ is not dispositive.

Similarly, the legislative history quoted by Appellee indicates that the legislature contemplated that a deed restriction for LIHTC properties would not be sufficient to entitle it to an exemption.⁸⁹ While this was not a debate on the scope of AS 29.45.030, it was directly on the topic of exemption and assessment of LIHTC properties and indicates the legislature did not contemplate that a deed restriction was sufficient to qualify for a mandatory exemption.

Therefore, I conclude that the Appellant has shown that the use of the property is as a LIHTC project with a deed restriction for use for low-income housing. However, this showing is

⁸⁶ 553 P.2d 467 (Alaska 1976).

⁸⁷ 394 P.2d 882 (Alaska 1964).

⁸⁸ Appellant's Brief at 10 citing R. 19-20 and 349.

⁸⁹ Appellee's Brief at 7 and legislative history cited therein.

insufficient to meet the Appellant's burden to show that the property qualifies for a mandatory exemption under AS 29.45.030(a)(3) as property used for exclusively charitable purposes. Use for low-income housing in compliance with the LIHTC program may entitle a property to a reduced assessment under AS 29.45.110(d). Such use is not automatically a charitable use under AS 29.45.030(a)(3).

Even if the LIHTC program were to be entitled to an exemption for a portion of the property, apportionment would be necessary. While the parties here did not apportion the projects between exempt and non-exempt units, even if the Appellant were correct and the units rented to very low-income persons qualified for an exemption, the Assessor would likely need to review whether the units required apportionment between exempt and non-exempt use. The charitable use exemption requires that the property be owned by a non-profit entity, and to be used exclusively for non-profit charitable purposes. Use of portions of the property for non-charitable purposes does not necessarily disqualify the entire property, but if the non-charitable use is severable may call for spatial apportionment of the exempt and non-exempt use areas of the property and taxation of the portion used for non-charitable purposes.⁹⁰

Factually, the record indicates that there are 40 units in Terraces I⁹¹ and 35 slated for Terraces II.⁹² The precedent supports looking at them on a unit-by-unit basis and denying an exemption for any which are not used for charitable purposes. The rental assumptions for Terraces I⁹³ contemplate 1 unit for a manager, 7 two bedroom units rented at over 90% of market

⁹⁰ See **Ketchikan Indian Community v. Ketchikan Gateway Borough**, 75 P.3d 1042, 1045, n. 8 (Alaska 2003) (citing **City of Nome v. Catholic Bishop of Northern Alaska**, 707 P.2d 870, 875 and 881 (Alaska 1985)).

⁹¹ R. 8.

⁹² R. 340.

⁹³ R. 200.

rent, and 8 three bedroom units rented at over 94% of market rent.⁹⁴ The restrictive covenant on the project reserves the right to rent 38.46% of the units (15 of 40) as “workforce housing” unencumbered by the household income and occupancy restrictions.⁹⁵

Rentals at so close to market rent do not meet the standard for charity. The overall complex cannot be considered as a unit any more than the medical offices in Greater Anchorage Area Borough v. Sisters of Charity house of Providence can be combined with the related exclusive hospital use portions. If the project meets the remaining factors, the status of each unit should be evaluated by the Assessor to determine which units qualify as charitable. Accordingly, even if some of the 25 units in Terraces I and the 35 units in Terraces II used for lower income residents were to be determined entitled to an exemption under AS 29.45.030(a)(3), which I conclude they are not, the Assessor would need to look at the remaining units and apportion the projects between taxable and mandatorily exempt portions.

2. Do rental payments for occupancy of the apartments at Terraces I and Terraces II disqualify the property from a charitable use exemption?

Appellee argues that providing low-income housing, while laudable, is not charitable as that term is used in AS 29.45.030(a)(3).⁹⁶ Appellee argues that the rent payments are more analogous to the use in Greater Anchorage Area Borough v. Sisters of Charity house of Providence⁹⁷ and Evangelical Covenant Church of America v. City of Nome⁹⁸; and that the nominal fee payments were not disqualifying in Kings Lake Camp.⁹⁹ Appellee argues that the

⁹⁴ R. 200.

⁹⁵ R. 269, 273.

⁹⁶ Appellees Brief at 9-12.

⁹⁷ 553 P.2d 467 (Alaska 1976).

⁹⁸ 394 P.2d 882 (Alaska 1964).

⁹⁹ Appellees Brief at 12-17.

fees allowed in City of Nome v. Catholic Bishop and Kings Lake Camp are distinguishable because people were not turned away from those housing facilities, while people who do not pay rent to VOA are evicted.¹⁰⁰ Appellee further argues that the rent payment and potential eviction make the use not charitable. Appellants argue in their Reply Brief that the collection of rent does not negate a finding that property is used for exclusively charitable purposes.¹⁰¹ Appellants also counter that the possibility of eviction does not defeat the charitable purpose because rents are needed to provide the benefits to all remaining qualified tenants.¹⁰²

The fact that City of Nome v. Catholic Bishop and Kings Lake Camp did not refuse service to persons who could not pay is not dispositive. The Court has held that:

“We have never interpreted charitable purpose to require, as the borough proposes, a "material gap" between what the charity gives and what the charity receives.

Rather, our decisions have recognized that the existence of a gap between what the beneficiary pays and the value of the services the beneficiary receives could be evidence of a charitable purpose. We held that operating a youth hostel that provided temporary lodging for travelers for a low daily fee was a "gift to the general public," because we concluded that "although some who stay at the Hostel are not needy and could pay more, no one is turned away if the fees are not paid."

Although providing services free of charge is evidence of a charitable purpose, we have not explicitly conditioned charitable purpose eligibility on whether the property supports programs that are free to those who cannot pay. Thus, we have held that properties supporting programs that charge a user fee were exempt, as long as the user fee is "not inspired by a dominant profit motive" or does not exceed operating costs."¹⁰³

¹⁰⁰ Appellee's Brief at 16.

¹⁰¹ Appellant's Reply Brief at 9.

¹⁰² Appellant's Reply Brief at 11.

¹⁰³ Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124, 136 (2004) (Internal footnotes omitted.)

Thus, when there is a charge, the focus is on the relationship of the fee to costs and the profit motive. The receipt of income and rentals by the property does not disqualify the property if the fees are incidental to and reasonably necessary for the carrying out of the primary charitable purposes, and payment is not sought as a result of a dominant profit motive.¹⁰⁴

The Appellant asserts that the overall project is charitable, and the revenues from all rents are required to serve the charitable purpose. Further, Appellant argues that all of the funds generated by the rents are required for this purpose. Appellants also argue that the balance sheets for Terraces I and Terraces II show no profits above costs for the first 15 years of operation, and any rental fees collected are like the payments in Kings Lake Camp.¹⁰⁵ Assuming that Appellant is correct and each property should be treated as an undivided whole for purposes of evaluating charitable purposes, the question remains “how much revenue is necessary for the charitable purposes?”

While the plan is not to produce profit, the budgets and data in the record indicate that the operators and financiers of Terraces I and Terraces II are charging rents based upon the intention of at least having enough operating revenue above expenses to pay real property taxes.¹⁰⁶ The lease and management agreement contemplate that the managing agent will pay all real property taxes¹⁰⁷, and the tenant is responsible for real property taxes.¹⁰⁸ These agreements and budgets illustrate that the project is intended to operate in a manner which generates sufficient funds to pay real property taxes, and allocates responsibility to do so. To the

¹⁰⁴ City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870, 880 (1985).

¹⁰⁵ 439P.2d 441, 445 (Alaska 1968) Appellant’s Brief at 12 and 15. R. 18-107, 345-449; 199-219; 430-446.

¹⁰⁶ See R. at 202; 301.

¹⁰⁷ R. at 520.

¹⁰⁸ R. at 475.

extent that those taxes are not paid, the rents represent revenue in excess of charitable purpose needs. While there is a complicated priority list for how excess revenues are applied, one of the possible applications is to the members.¹⁰⁹

In addition, the rental units which are "workforce housing" are producing returns competitive with market rates. To the extent that Appellant is arguing that the funds generated are needed to support the charitable purpose of lower rents in other units, the Court's decision in Evangelical Church of America v. City of Nome supports the conclusion that such rental units are not exempt.

Accordingly, as presented, the revenues are not entirely incidental, and are not all required for charitable purposes. Thus, the property fails this prong of the test.

3. Are the payments received the result of a dominant profit motive?

The Alaska Supreme Court has held that:

"Our "charitable purposes" doctrine also requires analyzing whether the property sustains activities motivated by a "dominant profit motive." This factor parallels the nonprofit requirement discussed above. Exemption is foreclosed if there is a "real profit motive" in the undertaking."¹¹⁰

Appellants explain how the sponsors of LIHTC projects include a mix of entities, and there are for-profit investors which use the federal tax credits available under the program, along with depreciation credits, to benefit from the project, and then exit the project after 10-15 years.¹¹¹ Appellants assert that no entity participating in the project will receive a profit from their

¹⁰⁹ R. 94 and 411.

¹¹⁰ Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124, 132-33 (2004)

¹¹¹ Appellant's Brief at 12 and see R. 574-602.

participation in the project.¹¹²

Appellants argue that the participation of for-profit investors does not alter the fact that the properties are being operated for charitable purposes.¹¹³ Similarly, Appellant's argue that the fact that Intrepid VOA¹¹⁴ is leasing the property to Juneau II does not alter the fact that the property is being used for exclusively charitable purposes.¹¹⁵ Appellants argue that the Appellee's characterization of rent as related to a profit motive is unsupported because investors in the VOA property are permitted no management authority, are contractually beholden to the nonprofit purposes of the 501(c)(3) managing entity, and will receive no income from operations nor return on the potential sale of the property.¹¹⁶

This factor is the most difficult hurdle for the Appellant to clear. Here, the nominal owner of the building is a non-profit entity. The non-profit nature of the nominal owner of the project is not dispositive. Were it otherwise, any manner of use which provides decent housing for low-income persons could be portrayed as providing some benefit to the public and the beneficial interests structured such that the real party in interest receives payments in the form of management fees, ground rent, or other expenses paid by the nominal non-profit entity owner which enable that entity to report zero income and no distributions to investors. Thus, it is important to look not just at the nominal owner, but the structure of the transaction to determine whether there is a dominant profit motive behind the project purposes.

Here, nearly everyone involved in the project besides the nominal owner has a profit

¹¹² Appellant's Brief at 12.

¹¹³ Appellant's Brief at 13.

¹¹⁴ Intrepid VOA is the LLC which owns the ground under the structures at Terraces II.

¹¹⁵ Appellant's Brief at 14.

¹¹⁶ Appellant's Reply Brief at 11-12, Note 32.

motive. The owner of the land with a long-term lease receives substantial rents.¹¹⁷ The investors, who are members of LLC which is the owner, receive a return on investment which exceeds the return they would receive on bonds.¹¹⁸ The developers who organized and packaged the project get a fee of over \$1 million on Terraces II.¹¹⁹ The lenders receive funds and interest.¹²⁰ Some of the lenders are also developers receiving developer's fees as well.¹²¹

Appellants point out that investors do not have a share in the operating revenues¹²², but this is not the entire story. The investors make significant profits or returns on their investment from the tax credits and depreciation allocations they enjoy. Once those credits are exhausted, they normally exit the project.¹²³ The LIHTC program was structured to provide incentives for private entities to invest in low-income housing. They do so for their own profit motive because federal subsidy for the program has made it attractive to do so.¹²⁴

Even the members remaining may see financial rewards in the future when the project satisfies the program requirements and the LLC is dissolved. Any remaining assets after satisfying obligations are not provided to another charitable organization, but instead, are distributed to members.¹²⁵

Against this background, the record does not support the conclusion that the Terraces I

¹¹⁷ 26,000 per year with a 3% annual escalation (R. 473). This long-term lease creates a separate issue. The property owner likely has a taxable interest in the land separate from the interest of the Appellants in the building and leasehold interest, but that issue is not raised in this case.

¹¹⁸ R. 580.

¹¹⁹ R. 569 - \$1,315,000 developer fee paid 50% (\$675,500) to Trapline/V2, 35% (\$460,250) to VOANS, 15% (\$197,250) to VOA.

¹²⁰ R. 208-213.

¹²¹ R. 128-129, Developer's fee of \$1,350,000, 40% to VONS, 10% to VOAAK, 30% to Trapline and 20% to V2.

¹²² Investors receive no income from operations nor return on the potential sale of the property. (Appellant's Reply Brief at 11-12, Note 32).

¹²³ R. 586.

¹²⁴ R. 573.

¹²⁵ R. 310.

or the Terraces II were developed with a purely charitable purpose in mind. I find that the entities developing the project, investing in the project, and benefitting from the development of the project were acting with a dominant profit motive.

V. Conclusion

With the burden on the applicant to show entitlement to the exemption, the record submitted by the applicant must meet the standards that 1) the property is used exclusively for non-profit charitable purposes; 2) any remuneration must be incidental and necessary to accomplish the charitable purposes; and 3) there must not be an underlying profit motive in the undertaking. Based upon the record, I find that the Appellant has failed to satisfy its burden of proof to establish entitlement to an exemption for Terraces I as property used exclusively for non-profit charitable purposes. Similarly, I find that that the Appellant has failed to satisfy its burden of proof to establish entitlement to an exemption for Terraces II as property used exclusively for non-profit charitable purposes. For both properties, I find that the use of the property for deed restricted low-income housing under the LIHTC program is insufficient on its own to qualify as a charitable use. The Appellant has not offered any evidence or argument for a charitable use apart from the fact that it is a LIHTC qualified property. Therefore, the Appellant has failed to satisfy its burden of establishing entitlement to a charitable use exemption under AS 29.45.030(a)(3).

Findings:

1. The Appellant has shown that the use of the property is as a LIHTC project with a deed restriction for use for low-income housing.

2. The use of property as a deed restricted LIHTC project alone is insufficient to meet the Appellant's burden to show that the property qualifies for a mandatory exemption under AS 29.45.030(a)(3) as property used for exclusively charitable purposes.

3. Use for low-income housing in compliance with the LIHTC program may entitle a property to a reduced assessment under AS 29,45,110(d). Such use is not automatically a charitable use under AS 29.45.030(a)(3).

4. As presented in the record, the revenues from the project are not entirely incidental, and are not all required for charitable purposes.

5. The property is owned by a multi-tiered series of limited liability corporations. The beneficial owners are VOA AK, VOANS and NHT Equity for Terraces I, and VOA AK, VOANS and Key Community Development for Terraces II.

6. Substantial beneficial owners, NHT Equity for Terraces I and Key Community Development for Terraces II, participate as an investment and recover a return in the form of tax credits and tax deductions, and thus participate out of a dominant profit motive.

7. VOANS received a substantial fee as a developer and receives land rents from the projects through a separate subsidiary limited liability corporation.

8. I therefore conclude that the beneficial owners of the project have an underlying profit motive in providing the low-income housing in these two LIHTC projects. While the rents charged may not yield profits available for cash distribution, nonetheless they receive beneficial financial remuneration for their participation in the project because the project is operated within the LIHTC program.

9. Because the project fails all 3 of the criteria from Dena Nena Henash¹²⁶, the property does not qualify for a charitable use exemption under AS 29.45.030(a)(3).

Submitted this 17th day of January, 2019.



Scott A. Brandt-Erichsen
Hearing Officer

¹²⁶ 88 P.3d 124, 132-33.