

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

September 29, 2014 7:00 PM

Assembly Chambers - Municipal Building
Regular Meeting No. 2014-25

Submitted by: _____
Kimberly A. Kiefer
City and Borough Manager

I. FLAG SALUTE

II. ROLL CALL

III. SPECIAL ORDER OF BUSINESS

IV. APPROVAL OF MINUTES

A. September 8, 2014 Regular Assembly Meeting 2014-24 Minutes

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 2014-45 An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of 43 Parcels Along the North Douglas Highway, between mile 1.3 and 1.9, from RR(T)D3, RR(T)D15, and D1(T)D3 to D-3, D-5, and D-15.

In December 2013, the Community Development Department initiated a rezone of 43 parcels along North Douglas Highway extending from mile 1.3 to 1.9. The parcels are currently identified as transition zones, RR(T)D-3, RR(T)D-15, and D-1(T)D-3.

On June 25, staff held an informational meeting to discuss the proposed rezoning with all property owners in the affected area. No one from the public participated in the meeting.

The Planning Commission heard the rezone proposal at its August 26, regular meeting. The Planning Commission recommended approving the rezone with modifications, up-zoning a portion of the lots currently zoned D-1(T)D-3 to D-5 and a portion of the lots zoned RR(T)D-3 to D-15. The Planning Commission

believed the modifications were, needed for consistency with the Land Use Maps of the Comprehensive Plan.

Ordinance 2014-45 reflects the Planning Commission's recommendations.

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

- b. **Ordinance 2014-46 An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of Black Bear, Lot 3, Located at the South End of Silver Street in the Northwest Mendenhall Valley, from D-1 to D-3.**

In July 2014, the applicant applied to have Lot 3 of Black Bear Subdivision, located at the south end of Silver Street, rezoned from D-1 to D-3. On July 28, staff held an informational meeting to discuss the proposed rezoning with all property owners in the affected area.

The areas surrounding the lot at issue are either zoned D-1 or D-3. There are single-family developments in the D-3 neighborhood north of the proposed rezone, which would be consistent with the requested D-3 zoning for Lot 3.

The Planning Commission considered the rezone application at its August 26th, and September 9th meetings. The Planning Commission recommends that the Assembly approve the rezone of the subject parcel from D-1 to D-3.

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

- c. **Ordinance 2014-24(L) An Ordinance Transferring the Sum of \$650,000 of Budget Reserve Fund Balance from the Sales Tax Special Revenue Fund to the General Fund.**

This ordinance would transfer \$650,000 to the General Fund from the Sales Tax Fund in the FY15 Budget.

On June 30, 2014, the Assembly adopted Ordinance 2013-11(AT), effectively consolidating all budget reserve funds in the General Fund. The objective was to make it simple for the Assembly, public and bond rating agencies to determine the balance of the reserve.

When addressing the consolidation of the FY15 \$650,000 allocation, revenue from the 2012 voter-approved 1% sales tax to the budget reserve was not included. A supplemental appropriation is needed to address this. In the future, the sales tax allocation to the budget reserve will be included in the overall operating budget adopted by the Assembly.

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

- d. **Ordinance 2014-24(M) An Ordinance Appropriating to the Manager the sum of \$17,032 as Partial Funding for Research and Mapping of the Evergreen Cemetery for Historic Preservation Purposes, Grant Funding Provided by the State of Alaska, Department of Natural Resources.**

The Evergreen Cemetery Mapping project received funds from the Certified Local Government grant program administered by the Alaska Office of History and Archaeology to hire a consultant to locate and map graves in the Evergreen Cemetery, as well as design and create a pamphlet highlighting key people buried who have ties to Juneau's historic structures.

The work performed under this project will be a combined effort of a contracted mapping consultant, a contracted design professional, the Historic Resources Advisory Committee, Parks and Recreation Department, the City Museum, and the Project Manager. Total project costs are estimated to be \$28,386. In accordance with using Certified Local Government Funds the City is required to provide a 40% match, which will be fulfilled through staff wages from the varied CBJ departments' operating budget.

Total project costs include a 10% State administrative surcharge.

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

- e. **Ordinance 2014-24(N) An Ordinance Appropriating to the Manager the Sum of \$1,800,000 as Funding for Water Main Replacement - Egan Drive – 10th to Main, Loan Funding Provided by the State of Alaska Department of Environmental Conservation, Alaska Drinking Water Fund State Revolving Fund.**

This Ordinance would appropriate to the Manager \$1,800,000 of loan funds from the State of Alaska, Department of Environmental Conservation (ADEC), Alaska Drinking Water Fund (ADWF) State Revolving Fund.

The loan funds would be used to fund the construction phase of the Water Main Replacement – Egan Drive - 10th to Main Street Capital Improvement Project.

The terms of the low interest loan are 20 years at 1.5-percent per annum.

Assembly Resolution 2668, adopted on November 25, 2013, authorized the City Manager to enter into this loan agreement with ADEC.

The Public Works and Facilities Committee reviewed this action at its June 2, 2014 meeting and recommended forwarding it to the full Assembly for approval.

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

- f. **Ordinance 2014-24(O) An Ordinance Appropriating to the Manager the Sum of \$2,000,000 as Funding for the Last Chance Basin Well Field Capacity Improvements Project, Loan Funding Provided by the State of Alaska Department of Environmental Conservation, Alaska Drinking Water Fund State Revolving Fund.**

This Ordinance would appropriate to the Manager \$2,000,000 of loan funds from the State of Alaska, Department of Environmental Conservation (ADEC), Alaska Drinking Water Fund (ADWF) State Revolving Fund.

The loan funds would be used to fund the Last Chance Basin Well Field Capacity Improvements Project.

The terms of the low interest loan are 20 years at 1.5-percent per annum.

Assembly Resolution 2679, adopted on February 24, 2014, authorized the City Manager to enter into this loan agreement with ADEC.

The Public Works and Facilities Committee reviewed this action at its June 2, 2014 meeting, and recommended forwarding it to the full Assembly for approval.

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

- g. **Ordinance 2014-24(P) - An Ordinance Forfeiting a \$2,500 Performance Bond and Appropriating to the Manager the Sum of \$2,500 as Funding to Complete the Installation of Water Service on Lot 7A, Curry Subdivision according to Plat 95-3, Juneau, Recording District, First Judicial District, State of Alaska, Funding Provided by a Cash Bond.**

This Ordinance would appropriate to the Manager \$2,500 for the installation of water service for Lot 7A, Curry Subdivision. The funds are a cash bond that were posted to guarantee the installation of a water service. The original subdivider of the property posted the bond, but failed to install the required water service and is non-responsive. The new owner of the property has agreed to accept the funds and install the water service.

The Public Works and Facilities Committee heard this request at its September 22, 2014 regular meeting and recommended forwarding it to the full Assembly for approval.

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

2. Bid Award

- a. **B15-027 - Term Contract for Trucking Services**

The purpose of this bid is to establish a term contract for dump trucks with drivers, primarily for snow removal as well as other needs such as, debris hauling or material hauling. All services will be used on an as needed basis. The Streets Division of Public Works will be the primary user of this contract; however other departments may use the contract for trucking services as needed.

The resulting contract would be awarded based on a "per hour" payment schedule. \$109,000 was committed for this project, based on prior term contract pricing. Final actual costs would be dependent on the amount of snowfall and CBJ hauling needs.

The Manager recommends the award of Bid No. 15-027 to Alaska Juneau Construction, Inc., for \$131,668.75.

VIII. PUBLIC HEARING

A. Ordinance 2014-14(c) An Ordinance Amending the Land Use Code Relating to

Rezoning Procedures.

This ordinance was introduced on May 19, 2014, and referred to the Assembly Committee of the Whole on June 16th. At that meeting, the Assembly Committee of the Whole discussed the matter in a joint meeting with the Planning Commission, and forwarded the matter to the Assembly for public hearing on June 30, 2014. At the June 30th Assembly meeting, the Assembly referred the matter back to the Committee of the Whole. The Committee of the Whole considered the ordinance at its July 28th meeting and decided to continue its discussion to the September 22nd Committee of the Whole meeting.

The Committee of the Whole, at its September 22nd meeting, recommended forwarding the ordinance, with changes, to the full Assembly for approval. Version (c) reflects the changes, in bold font, recommended by the Committee of the Whole.

The Manager recommends this ordinance be adopted.

B. Ordinance 2014-32(e) An Ordinance Amending the Land Use Code of the City and Borough to Provide for the Regulation of Wireless Communication Facilities and Providing for a Penalty.

Ordinance 2014-32 was introduced on June 9, 2014, set for public hearing on June 30th, and discussed by the Committee of the Whole in a joint work session with the Planning Commission on June 16th. At the June 30th Assembly meeting, public testimony was heard and the Assembly referred the ordinance back to the Committee of the Whole. The Committee of the Whole considered the ordinance at its July 28th meeting, after which the Committee moved to continue its consideration of the ordinance to its September 22nd meeting.

At the September 22nd meeting, the Committee discussed a number of proposed amendments to the ordinance. At the close of the meeting, the Committee approved forwarding the ordinance to the Assembly along with its proposed amendments for public hearing on September 29th.

The motion to move the ordinance to the September 29th hearing, as well as a motion to propose amending Table 1 of the ordinance with respect to towers located in the Rural Reserve districts, was passed by the Committee after 9 p.m. At 9 p.m., the doors to City Hall were inadvertently locked without the Committee's knowledge.

Subsection (f) of the Open Meetings Act states that "Action taken contrary to [the Open Meetings Act] is voidable."

Subsection (g), however, reads: "Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity."

Since the Assembly was sitting as the Committee of the Whole, which is an advisory body to the Assembly (for example, the Committee cannot amend an ordinance, it can only recommend amendments to be adopted by the Assembly), the last two motions voted on at the Committee of the Whole meeting are not voidable under the Open Meetings Act. Additionally, since the motions to amend the ordinance were only recommendations to amend, the Assembly must, as per its usual practice, consider and vote on the proposed amendments.

Version (e) of Ordinance 2014-32 includes all of the changes previously considered at the June 16th, June 30th, and July 28th meetings. In addition, it reflects the changes recommended by the Committee of the Whole on September 22nd. The changes recommended by the Committee at the September 22, 2014 meeting were as follows:

- 1) An amendment to Table 1 (49.65.950) with respect to towers in Rural Reserve districts. Instead of specifying the minimum distance the towers in RR districts may be to the nearest dwelling, the ordinance now references the minimum distance to a recognized neighborhood association established in accordance with CBJ 11.35. (Note that the reference to neighborhood associations in 49.65.970(e)(18) was amended to include a reference to CBJ 11.35 for consistency.)
- 2) The section on photo-simulation representations in 49.65.970 was amended to clarify that the director would determine the reference locations for the pictorial representations. (The section was also amended by to fix some typographical and grammar errors and for clarity.)
- 3) The balloon test requirement was deleted.
- 4) The Committee also approved forwarding the changes made as a result of its July 28, 2014 meeting (indicated in bold type.)

The Manager recommends this ordinance be adopted.

C. Ordinance 2014-40 An Ordinance Amending the Public Ways and Property Code Relating to Right-of-Way Encroachment Permits.

This ordinance would amend CBJ 62.55 with respect to right-of-way encroachment permits. The proposed amendments would expand the availability of such permits, especially when the street vacation requirements (CBJ 49.15.450) cannot be satisfied.

The current purpose of CBJ 62.55 is to make a parcel that had an encroachment into the right-of-way prior to 1960 a marketable parcel, thus enabling prospective buyers the opportunity to obtain a traditional 30-year loan.

The proposed amendments would expand the availability of an encroachment permit in two ways. First, it makes the permits available to parcels that encroached into the right-of-way prior to 1990, instead of 1960. Second, it removes the 30 year permit duration. Once obtained, an encroachment permit would be perpetual unless the structure is substantially damaged.

The Public Works and Facilities Committee reviewed this ordinance at its August 18, 2014 meeting, and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be adopted.

D. Ordinance 2014-43 An Ordinance Amending the Penal Code Relating to Offenses Against Property.

This ordinance would make the CBJ penal code with respect to certain property crimes consistent with State law. The ordinance would make the CBJ code sections directed at larceny and related offenses (specifically: larceny of money or property; concealment of merchandise; issuing a bad check; theft of services; and criminal mischief) consistent with

newly enacted State law (SB 64).

Additionally, this ordinance makes certain housekeeping changes to correct inconsistencies both internally in the code, as well as with State law.

This ordinance would:

1. Amend the threshold levels for larceny and related crimes and impose a cap for A misdemeanors in order to be consistent with State law. The threshold level for an A misdemeanor would be more than \$250 but less than \$750, and for a B misdemeanor, would be less than \$250.
2. Provide that if the value of the item or service stolen or concealed is less than \$250, but the person being charged has been convicted and sentenced with two or more convictions for larceny or a related offense in the preceding five years, the offense would be charged as an A misdemeanor.
3. Amends CBJ 42.15.025 to be an A misdemeanor rather than a B, in order to be consistent with State law.
4. Amends certain code sections to remove the distinction between A and B misdemeanor charges based on dollar amount thresholds. The purpose of this amendment is to make these code sections (retention of lost property and theft by deception) consistent with State law.

The Manager recommends this ordinance be adopted.

E. Ordinance 2013-11(BF) An Ordinance Appropriating to the Manager the Sum of \$4,881,535 to Fund the City and Borough of Juneau's Fiscal Year 2014 Public Employee Retirement System Contribution; Funding Provided by the Alaska Department of Administration.

This ordinance would appropriate \$4,881,535, which is the State's FY14 13.68% on-behalf PERS benefit paid for CBJ. Funding is provided by the Alaska Department of Administration which was authorized by passage of HB65 during the 2013 legislative session.

This is a housekeeping ordinance to properly account for this on-behalf payment and has no impact on the CBJ's finances.

The Manager recommends this ordinance be adopted.

F. Ordinance 2014-24(I) An Ordinance Appropriating to the Manager the Sum of \$2,792 as Funding for Travel, Training, and Technology for the Juneau Public Library; Grant Funding Provided by the Alaska State Library.

This ordinance would appropriate an additional \$2,792 in grant funds from the Alaska State Library for employee travel, training, and technology funding.

The current Public Library Assistance grant operating budget for FY15 is \$17,158. This ordinance would increase the grant budget to \$19,950.

There is no CBJ match requirement for this grant.

The Manager recommends this ordinance be adopted.

G. Ordinance 2014-24(J) An Ordinance Appropriating to the Manager the Sum of \$3,228 as Funding for the Reimbursement of Bullet Proof Vests for JPD Officers, Funding Provided by the U.S. Department of Justice.

This ordinance would appropriate \$3,228 as partial reimbursement for bullet proof vests for JPD Officers.

This funding is provided by the U.S. Department of Justice. The Department of Justice offers a Bulletproof Vest Partnership program to law enforcement agencies across the nation. JPD has a mandatory vest wear-policy which makes our agency eligible for this partial reimbursement. JPD's estimated total cost for FY15 is \$6,744.

The Manager recommends this ordinance be adopted.

H. **Ordinance 2014-24(K) An Ordinance Appropriating to the Manager the Sum of \$67,812 as Funding for the Purchase of Used Equipment to Facilitate the Wheelchair Boarding of Passengers at the Juneau International Airport, Grant Funding Provided by Federal Aviation Administration and Match by Alaska Department of Transportation.**

This ordinance would appropriate \$67,812 to the Terminal Expansion Capital Project. Funding is provided as follows:

Federal Aviation Administration grant:	\$65,625
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Alaska Department of Transportation match:	\$ 2,187
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These funds would have been used to purchase used equipment to facilitate the wheelchair boarding of passengers from the two gates that have no boarding bridge to the terminal. The FAA was slated to fund 93.75% of the project, with the remainder split between Alaska DOT and the Juneau International Airport.

The Airport Board reviewed this request at its August 13, 2014 meeting and recommended forwarding it to the full Assembly for approval. However since that time, the FAA notified the CBJ that the federal funds are not available at this time.

As the funds are no longer available, the Assembly should table or postpone indefinitely this ordinance.

IX. UNFINISHED BUSINESS

A. **Zenk et.al. v Planning Commission - Appeal Of Notice Of Decision Approving A Conditional Use Permit USE20130027 To Landscape Alaska For A Commercial Greenhouse In A D-3 Zoning District.**

On February 11, 2014, the Planning Commission issued a final decision granting Conditional Use Permit USE20130027 for a commercial greenhouse in a D-3 zoning district to David Lendrum. A petitioner's group including members Anthony Zenk, G Ole Olson, David W. Wilson, Ruth Baumgartner and Elizabeth Miyasato, filed a timely Notice of Appeal of the decision with the Municipal Clerk's Office on February 26th.

The Assembly accepted the appeal and appointed Assemblymember Loren Jones as the presiding officer at its regular meeting of March 17, 2014. The Assembly held a hearing on August 18th. The draft decision was served on the parties pursuant to CBJ 01.50.140.

The packet contains the draft Notice of Decision, and comments from the appellants and the appellee-intervener.

CBJ Code 01.50.140, Decisions on Appeal, provides:

(b) *Appeal agency decisions.* In an appeal heard by the appeal agency:

(1) The attorney, if any, who advised the appeal agency at the hearing may be present during the deliberation on the decision of the case, and if requested, shall assist and advise the appeal agency;

(2) A member of the appeal agency who has not heard the evidence in person at the hearing may not participate in the decision;

(3) Deliberation shall be in executive session unless the agency votes to deliberate in open session; and

(4) The appeal agency shall itself prepare and adopt a written decision no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any; or the appeal agency may direct the attorney who advised the appeal agency, if any, or the prevailing party to prepare a proposed decision. A proposed decision prepared by the advising attorney or the prevailing party shall be filed with the municipal clerk and served on each party to the appeal or the party's representative no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any. The parties may file written objections to the proposed decision with the municipal clerk within five days after service of the proposed decision. The proposed decision and any objections to the proposed decision shall be placed before the appeal agency at the first regular meeting at which the matter may be scheduled or at a special meeting called for that purpose.

X. NEW BUSINESS

A. Notice of Appeal - Tall Timbers N.A. v. Planning Commission - Board of Adjustment - UNL20140001

On August 26, 2014, the Planning Commission, acting as the Board of Adjustment, made a "Similar Use Determination" under CBJ 49.20.320 as to Haven House, Inc.'s application to provide re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320 (UNL 2014-0001). The Board's Notice of Decision indicated that the decision was not appealable until a final decision is made on the conditional use permit requested by Haven House, Inc., for its transitional housing use. The public hearing on the conditional use permit application is scheduled for October 14th. (USE 2014-0008).

On September 15th, Tall Timbers Neighborhood Association filed an appeal of the Board of Adjustment's unlisted use determination.

CBJ 01.50.020 provides that appeals "shall be filed only from a final agency decision." CBJ 01.50.030(e) provides that within 30 days of receipt of a notice of appeal, you must provide notice of the acceptance or rejection of the appeal (and if the latter, the reasons for rejection.) CBJ 01.50.030(e)(2) states that you must liberally construe the notice of appeal in order to preserve the rights of appellants and if, after doing so, you find that there has been a failure to comply with the appellate rules, or if the notice of appeal does not state grounds upon which any of the relief requested may be granted, you may reject the appeal.

The City Attorney recommends that the appeal be rejected, without prejudice, as untimely and unripe. The Board of Adjustment's similar use determination is not dispositive.

Though the determination results in Haven House, Inc.'s ability to apply for a conditional use permit, the ultimate decision as to whether the use will be permitted has not been made. CBJ 49.15.330 states "a conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses."

The Board's similar use determination is subsumed in the issue coming before the Commission on October 14th. The Commission's final decision on the proposed use, including its similar use determination, would be appropriately appealable after a decision in USE 2014-0008.

Should the Assembly decline to hear the appeal at this time, the notice should make clear that the Board of Adjustment's similar use determination will be appealable after the Commission issues a final decision in USE 2014-0008.

Alternatively, if you decide to accept the appeal, you must then decide whether the Assembly will hear the appeal itself or if it will assign the appeal to a hearing officer. If you decide to hear the appeal yourselves, you will be sitting in your quasi-judicial capacity and must avoid discussing the case outside of the hearing process. Additionally, you must comply with section 01.50.230 on impartiality.

The City Attorney recommends that the Assembly reject this appeal, without prejudice, as untimely and unripe.

XI. STAFF REPORTS

XII. ASSEMBLY REPORTS

- A. Mayor's Report
- B. Committee Reports
- C. Liaison Reports
- D. Presiding Officer Reports

XIII. ASSEMBLY COMMENTS AND QUESTIONS

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

XV. EXECUTIVE SESSION

- A. **Honsinger Pond Appeal Update from City Attorney**
- B. **Gastineau Apartments Update from City Attorney**

XVI. ADJOURNMENT

Note: Agenda packets are available for review online at www.juneau.org.

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@ci.juneau.ak.us