THE CITY AND BOROUGH OF JUNEAU, ALASKA

Meeting Minutes - September 29, 2014

MEETING NO. 2014-25: The Regular Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 7:00 p.m. by Mayor Merrill Sanford.

I. ROLL CALL

Assembly Present: Mary Becker, Karen Crane, Loren Jones (teleconference), Jesse Kiehl, Jerry Nankervis (teleconference), Merrill Sanford, Carlton Smith, Kate Troll and Randy Wanamaker.

Assembly Absent: None.

Staff Present: Rob Steedle, Deputy City Manager; Amy Mead, Municipal Attorney; Laurie Sica, Municipal Clerk; Beth McEwen, Deputy Clerk; Bob Bartholomew, Finance Director; Hal Hart, Community Development Director; Travis Goddard, Planning Manager; Beth McKibben, Planner; Eric Feldt, Planner; Rorie Watt, Engineering Director; Greg Chaney, Lands and Resources Manager; and Matt Lillard, Eaglecrest Ski Area Manager.

II. SPECIAL ORDER OF BUSINESS

None.

III. APPROVAL OF MINUTES

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

Hearing no objection, the minutes of the September 8, 2014 Regular Assembly Meeting 2014-24 were approved.

IV. MANAGER'S REQUEST FOR AGENDA CHANGES

None.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None.

VI. CONSENT AGENDA

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

None.

B. Assembly Requests for Consent Agenda Changes

None.

C. Assembly Action

MOTION, by Becker, to adopt the consent agenda. Hearing no objections, the consent agenda was adopted.

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 sub divider 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.

VII. 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.

<u>Public Comment</u>: None.

<u>Assembly Action:</u>

<u>MOTION</u>, by Becker, to adopt Ordinance 2014-14(c).

<u>MOTION</u>, by Troll, to amend Ordinance 2014-14(c) to change the effective date to read, "...this ordinance shall be effective 30 days after current, outstanding appeals are resolved."

Ms. Troll said she did not want to change any rules mid-stream on any appeals under-way. She understood the reason for the change but wanted to do it in the least disruptive manner. Ms. Mead said the motion was within the Assembly's discretion and there was a current appeal pending that would be directly effected by this ordinance.

Hearing no objections, the amendment passed.

<u>MOTION</u>, by Kiehl, to amend, to insert a new section,

"A challenge of a zoning map amendment is any written communication received by the municipal clerk after notice of a public hearing before the assembly on a zoning map amendment and at least one business day before the time set for the assembly public hearing on the zoning map amendment. In order to be valid, a challenge must object to the zoning map amendment, contain a legal description of the property on behalf of which the protest is made and be signed by the owner of that property, and shall state the basis for the protest.

Assembly approval of a zoning map amendment must be by affirmative vote of six assembly members if the amendment is challenged by the owners of at least one-third in area, excluding rights-of-way, of:

1) the land to which the amendment applies; or

2) the land within 300 feet of the outer boundary of the land to which the amendment applies, excluding land owned by the municipality, except where the municipality joins in the protest."

Mr. Kiehl said he drew from the Municipality of Anchorage Code regarding this motion. This allows that when someone brings forward a rezone to the Assembly, it allows the property owners most impacted to object and if they object in significant quantities, then to make the zoning change would require a super majority of the Assembly, or a vote of six members in the affirmative. The intention is also to defer to the Planning Commission's expertise and review.

Mr. Jones said he did not have the information in front of him and was curious why this was necessary. There are three places in the existing ordinance that provide applicants with a protest of a Planning Commission's recommendation to approve a rezone request and this seems to add a fourth one that doesn't need to be filed until the day before a public hearing. He did not see how the motion contributed or was necessary.

Mr. Kiehl said this was not an additional way to challenge. If the Planning Commission (PC) recommended yes on a rezone it would come before the Assembly as an ordinance. If the PC recommended denial, then someone would have to file to bring forward an ordinance to the Assembly. This amendment would give property owners, either within the rezone area or adjacent to it, the chance to bump up the standard of review, and to demand a higher standard. His concern is that by "bumping up" potentially every rezone to the Assembly the expertise of the PC is replaced by politics.

Mr. Wanamaker said he was troubled by requiring a super majority of the assembly to take action. A super majority was limited to very specific actions, such as emergencies. This places an impediment to people to bring a matter to the Assembly. The more members absent the harder it was to get to an affirmative vote.

The Assembly and Ms. Mead continued discussion on the motion to amend.

Roll call:
Aye: Crane, Kiehl, Troll
Nay: Becker, Jones, Nankervis, Smith, Wanamaker, Sanford
Motion failed, 3 ayes, 6 nays.

Ms. Crane said she could not support this ordinance because there was a lack of clarity as to what the public process would be on these matters. Until one was outlined in the ordinance she could not support it.

Roll call on main motion, as amended:
Aye: Becker, Nankervis, Smith, Troll, Wanamaker, Sanford
Nay: Crane, Jones, Kiehl
Motion passed, 6 ayes, 3 nays.

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.

Public Comment:

Sue Ann Randall spoke in favor of the balloon test in addition to the photo simulation. She said that photo simulation in the case of the tower on Spuhn Island failed. She spoke on behalf of residents in neighborhoods in rural reserve. She spoke about the negative affects of the flashing strobe lights and said she had trouble sleeping and could not leave her windows open to see the view from their home. She said her sister who had epilepsy could not stay at her home because of the view of the flashing light that could cause seizures. She asked the Assembly to have empathy with her situation.

Margo Waring thanked everyone for their patience in working on this ordinance. She provided additional suggestions, which included:

- Require a post installation testing to determine if a tower is functioning properly.

- Require that lighting on older towers come in to compliance within a year, so that baffles and louvers could be installed, if possible.

- The photo simulation should include the extent of land clearance, which would help the public identify what the site would look like after development.

- Regarding public notice, consider adding the wording "or those within direct visual connection," so if it was clear there were one or more houses in the direct line of site, those would be included in the public notice.

Doug Mertz thanked the Assembly for its work. He said the main problem with this ordinance was that there was nothing addressing existing cell towers. He said this sent a message that Verizon had a free pass. The people negatively affected by the Spuhn Island tower had been trying to meet with Verizon and had no response. Some of this ordinance should be applicable to existing towers.

Mr. Jones asked Mr. Mertz what remedy might be available regarding Spuhn Island, given the location of the tower and the testimony by Mr. Wahto of the FAA at the recent Committee of the Whole meeting.

Mr. Mertz said the FAA official seemed to say the Borough could not mandate a particular change if it was opposed to an FAA mandate, but if all the parties could have community mediation, there was no barrier to accomplishing change. Community mediation was necessary. Their alternative was litigation, but that was their last option. We should try to reach agreement on a better configuration.

Mary Irvine distributed written comments and focused on three points. 1) She asked the Assembly to insert "legally permitted" on page 3, line 14, as a modifier to all existing tower installations. 2) Correct the description of the North Douglas Scenic Area on page 19 to be consistent with the language of the comprehensive plan. 3) She asked the Assembly to consider to naming a joint citizen-stakeholder task force to address currently existing lighted cell towers. She was surprised that no one had consulted with Mr. Wahto regarding the siting of the cell tower on Spuhn Island. She spoke about the intrusive impacts of lighted cell phone towers and said the permitting of those in Juneau was frought with inconsistencies, and had to be addressed now.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2014-32(e).

Mr. Keihl clarified that all changes made in the Committee of the Whole meeting were included in version (e) and Ms. Mead said that was true.

Ms. Mead said a letter was sent to the Assembly by the AT&T attorney referencing the special use permit process needing to track federal law more clearly. Ms. Mead agreed and distributed her recommended change to the Assembly.

MOTION, by Keihl, to amend to add the words "less any tolling periods under federal law" to page 11, line 23, and on page 12, line 20. Hearing no objection, it was so ordered.

MOTION, by Troll, to reinsert the requirement for a balloon test for public notification, in additon to photo simulation.

Mr. Wanamaker said there was significant discussion on the balloon test previously and he objected to adding that language back in to the ordinance.

Roll call:
Aye: Crane, Jones, Kiehl, Smith, Troll
Nay: Becker, Nankervis, Wanamaker, Sanford
Motion passed, 5 ayes, 4 nays.

Hearing no objection, the Assembly accepted recommended changes from Ms. Mead for clarification as follows on Page 16, lines 25 - 27: "The applicant shall inform the director, in writing, of the dates and times of the test, at least two days in advance, and abide by any federal law requirements." The line, "The applicant may also need to notify the Federal Aviation

Administration" was removed.

<u>MOTION</u>, by Jones, to insert the words "legally permitted" on Page 3, Line 14.

Mr. Wanamaker objected and asked who would determine whether something was legally permitted. He said it sounded like an invitation to litigation.

Ms. Mead said the Community Development Department was responsible for enforcement.

Ms. Becker said any installation permitted under the code would be legal, or appealed.

Roll call:

Aye: Crane, Jones, Kiehl, Nankervis, Troll

Nay: Becker, Smith, Wanamaker, Sanford

Motion passed, 5 ayes, 4 nayes.

Mr. Nankervis objected to the adoption of the ordinance.

Mr. Jones asked about the language in Table 1 regarding "recognized neighborhood associations," if there was a geographic description of the area of the association on file. Ms. Mead said that CBJ Code 11.35 did require a recognized neighborhood association to provide a description of the geographic area of the neighborhood.

Ms. Troll offered a motion regarding the concern of Ms. Irvine regarding the scenic viewshed cited in the ordinance and the comprehensive plan. She withdrew the motion following explanation by Ms. Mead regarding the reference in the comprehensive plan about scenic viewsheds in general and a very specific scenic corridor viewshed directly from the comprehensive plan - the only one identified specifically, and said that the ordinance as written was consistent with the comprehensive plan.

Mr. Wanamaker objected to the ordinance based on what he said was development of the ordinance under a violation of the open meetings act.

Mr. Nankervis objected to the ordinance due to the number of amendments at the point of public hearing, the requirement for dismantling of unused towers that was more strict than that of abandoned buildings, the requirement for camoflague of the accoutrements of a tower, and that the Spuhn Island tower permit prompted this "hoop-jumping."

Mr. Kiehl spoke in favor of the ordinance. It did not have everything in it that he desired, but the vast majority of towers erected would go up "the easy way" with limited permitting and review, those that had the least impact. Those with more impact on the public would require the more difficult permitting process.

Ms. Crane agreed with Mr. Kiehl and said she supported creating a joint citizen stakeholder and city task force separately from the adoption of the ordinance.

Ms. Troll agreed with Ms. Crane and Mr. Kiehl and said CBJ had created a fast track, business friendly ordinance for cell tower permitting, which was balanced with more extensive public notice for potentially problematic towers.

Roll call on Ordinance 2014-32(e) as amended:

Aye: Becker, Crane, Jones, Kiehl, Smith, Troll, Sanford

Nay: Nankervis, Wanamaker

Motion passed, 7 ayes, 2 nays.

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.

Public Comment: None.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2014-40.

MOTION, by Becker, to amend on page 2, line 22/23 - after the word "that" add " the issuance of the permit is in the best interest of the city and borough and that the..."

Ms. Becker said the amendment was meant to clarify that a permit must be found to be in the best interest of the city, and it was not just an automatic permit. Ms. Mead said it also clarified what the word "may" meant to the public, it showed that it is discretionary to the city as the permit was perpetual in nature. If there was an application and the city had a use for the property even if all the permit requirements were met, the city could say it was not in the best interest of the city.

Mr. Kiehl asked the process for a disagreement with the best interest determination. Ms. Mead said there was no right to an encroachment in a right of way, it was purely discretionary.

Hearing no objection, the amendment was adopted.

Hearing no objection, Ordinance 2014-40 was adopted as amended.

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.

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2014-43. Hearing no objection, it was so ordered.

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.

Public Comment: None.

Assembly Action:

MOTION, by Kiehl, to adopt Ordinance 2013-11(BF).

Mr. Jones asked if Bartlett Regional Hospital was a part of this ordinance or would there be a separate ordinance. It was determined that BRH would appear in a separate ordinance.

Hearing no objection, it was so ordered.

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.

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2014-24(I). Hearing no objection, it was so ordered.

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.

Public Comment: None.

Assembly Action:

MOTION, by Smith, to adopt Ordinance 2014-24(J). Hearing no objection, it was so ordered.

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
Alaska Department of Transportation match:	$ 2,187

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.

Public Comment: None.

Assembly Action:

-

MOTION, by Keihl, to lay Ordinance 2014-24(K) on the table. Hearing no objection, it was so ordered.

VIII. 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.

MOTION, by Jones, to adopt the decision previously reviewed and provided in the meeting packet. Hearing no objection, it was so ordered

IX. 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.

Ms. Mead recommended that the Assembly reject the matter without prejudice, as untimely and unripe, and as it would be subsumed in conditional use process that would be heard by the Planning Commission on October 14. Mr. Kiehl asked to ensure that the appellant's rights were preserved by taking that action. Ms. Mead said yes.

MOTION, by Wanamaker, to decline to accept the appeal, without prejudice. Hearing no objection, it was so ordered.

X. STAFF REPORTS

None.

XI. ASSEMBLY REPORTS

A. Mayor's Report

Mayor Sanford asked staff to review the public notice requirements in Title 49 for consistency and clarity within the next six months. Hearing no objection, the Assembly gave that direction to the staff.

Mayor Sanford said he attended the Southeast Conference annual meeting in Wrangell and it was a very good meeting.

B. Committee Reports

Committee of the Whole: Chair Becker said the committee met and discussed the draft economic development plan, the rezoning ordinance, the cell tower ordinance, and heard an update on the Spuhn Island Cell tower from Doug Wahto of FAA. The next meeting was set for October 6.

Tax Exemption Review Committee: Chair Becker said the subcommittee met on September 26 and discussed the sales tax cap, out of borough sales and lobbyist exemption. The next meeting was set for October 23 and would be in the Assembly Chambers at 5 p.m.

Public Works and Facilities Committee: Chair Wanamaker said the PWFC met on September 22 and discussed Last Chance Basin Well Field construction and Salmon Creek Water Filtration. The next meeting was set for October 6.

Human Resources Committee: Chair Kiehl said the HRC met and heard Annual Reports from the Americans with Disabilities Act Committee, the Douglas Advisory Board, the Social Services Advisory Committee and the Utility Advisory Board.

Hearing no objections, the following appointments were confirmed:

Americans with Disabilities Act Committee:

Reappointment of Marianne Milles, Allen Hulett and Melanie Zahasky for terms expiring 8/31/2017.

Douglas Advisory Board:

Reappointment of Joyce Vick and Marcheta Moultonto terms expiring 9/30/2017.

Jensen Olson Arboretum Advisory Board:

Appointment of Dr. Bridget Weiss to represent the Juneau School District for a term expiring 1/31/2017.

Juneau Human Rights Commission:

Appointment of Markus Bressler to a term expiring 5/31/2105.

Sister Cities Committee:

Appointment of Eli Olson to a term expiring 1/31/2018.

Social Services Advisory Board:

Appointment of Elizabeth Lange and Scott McAdams to terms expiring 9/30/2017.

Mr. Kiehl said the HRC wished the outgoing chair well, there were still a number of vacancies, and there were some questions about work the work of the committee and staff. There is significant grant administration and HRC planned to schedule a worksession with the remaining members to determine how to move forward, clarify the mission and provide adequate support for the work.

Mr. Kiehl said the HRC reviewed applications for the Community Development Block Grant and directed staff work with Tlingit Haida Regional Housing Authority to develop a project proposal and resolution for the proposal. $850,000 was available to communities outside of Anchorage, and this project allowed the state to spread the funds to several communities.

Finance Committee: Chair Crane said the next meeting was set for October 22.

Lands and Resources Committee: Chair Smith said the next meeting was set for October 6.

C. Liaison Reports

Treadwell Arena Task Force: Liaison Jones said the task force would meet October 2 to get a report from Eaglecrest and Parks and Recreation regarding historical and background information.

Downtown Business Association: Liaison Jones said the next meeting was set for October 1.

Docks and Harbors Board: Liaison Jones said the Board had directed the Port Director and Engineer to pursue options at Douglas Harbor to reduce the dredging depth so movement could happen on an amendment to the Army Corps of Engineers permit. All vessels have been moved from the project area in Aurora Harbor and construction would begin in October. The Alaska Marine Exchange was looking at constructing a building with Docks and Harbors as a long term tenant at the area of the old Public Works shop near the Douglas Bridge, however, the Marine Exchange has purchased the property next to the Juneau Electronics Building and would no longer be pursuing the CBJ property.

Tongass Advisory Committee: Liaison Troll attended recent meetings in Juneau and said she was serving on subcommittee tasked with finding additional acreages of young growth forest and the committee would next meet on Prince of Wales Island.

Eaglecrest Board: Liaison Smith said the next meeting was set for October 2.

Affordable Housing Commission: Liaison Kiehl said the next meeting was set for October 7.

Juneau School District: Liaison Kiehl said the next meeting was October 21, preceded by a worksession on the budget process.

Juneau Economic Development Council: Liaison Wanamaker said the next meeting was set for October 1.

Alaska Committee: Liaison Becker said the Alaska Committee would be meeting with groups of citizens meeting in town to facilitate their experience in the capital.

Downtown Improvement Group: Ms. Becker said the group held a clean up day on October 24.

UAS Campus Council: Liaison Becker said there was a recent meeting with the Board of Regents, there was a tour of the new dormitory, and the next meeting would be on Title 9 and gender equity.

Chamber of Commerce: Liaison Becker said the candidate forums were very well done.

Body and Mind Afterschool Activity Program: Ms. Becker said the middle school programs were underway and they would be making a video of the projects.

JSD Activity Advisory Committee: Ms. Becker said the group met and discussed the philosophy of middle school activities - inter and intra-mural sports and travel. Other towns travel to Juneau to play and tournaments are held for Southeast, and the two Juneau middle schools competed with each other.

D. Presiding Officer Reports

None.

XII. ASSEMBLY COMMENTS AND QUESTIONS

Mayor Sanford requested that the Assemblymembers let him know their interest in committee and liaison assignments.

Ms. Becker reported on attendance at the 9/11 Memorial Service at Rotary Park, the Totem Pole Raising ceremony and the BRH Foundation fundraiser.

Mr. Wanamaker provided his travel plans and said he would be available at the October 20 Assembly meeting.

Mr. Kiehl said he attended the Southeast Conference meeting, which was an excellent event for the region and showcased good examples of Wrangell projects. The new UAS dormitory was a beautiful facility and an enhancement to the sustainability to the campus as far as supporting the freshman year program as a four year institution. He also attended the totem pole raising and it was a privilege and honor to be there in the rain. He thanked the League of Women Voters for rescheduling the candidate forum to honor a religious holiday. He asked for a report on the direction CBJ would be taking with social media.

Ms. Crane notified the public about the LOWV candidate forum. She also attended the totem pole raising event. She would like to know what was happening with the CBJ social media policy.

Mr. Smith said he was pleased to be at the totem pole raising. It was unique event and an unusual gathering of three tribes, which signalled a reestablishment of native identity in that area and downtown revitalization. His hope is that Juneau becomes capital of Northwest coast art and this is a signal/switch/change in identify in that area.

Ms. Troll took away a wonderful sense of community pride, wide open, youth there, and combination of people and said she was happy to be a part of the event. Just as the totem poles went up, the ravens came out, and a bear came out. She attended the high school home build event. She thanked people for the Juneau Votes participation. She will continue to work with Mayor Sanford on the honorary mayor program. She would like feedback from CDD regarding idea of stakeholder or task force to deal with existing towers - through city manager - to get the ideas from staff on how to proceed.

Mr. Nankervis encouraged everyone to get out and vote.

Mr. Jones encouraged people to vote in October and November.

Mayor Sanford acknowledged an invitation from Juneau NAMI to participate in their 5K walk or run on October 11 at Riverbend School. He said VIGOR shipyards in Ketchikan would get the contract to build the new ferries, which would be a big boost to Southeast - 180 employees building two boats over the next four years.

XIII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None.

XIV. EXECUTIVE SESSION

MOTION, by Becker,to enter executive session to discuss two matters with the City Attorney, the Honsinger Pond Appeal and the Gastineau Apartments.

Hearing no objection, the Assembly entered executive session at 9:20 p.m. and returned at 9:44 p.m. to regular session. Upon returning to regular session, Ms. Becker said the Assembly received an update and provided direction to the City Attorney.

A. Honsinger Pond Appeal Update from City Attorney

B. Gastineau Apartments Update from City Attorney

XV. ADJOURNMENT

There being no further business to come before the Assembly, the meeting adjourned at 9:45 p.m.

Signed:__________________________ Signed:______________________________

Laurie Sica, Municipal Clerk Merrill Sanford, Mayor