

THE CITY AND BOROUGH OF JUNEAU, ALASKA

Meeting Minutes – October 14, 2013

MEETING NO. 2013-26: 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, Johan Dybdahl, Loren Jones, Jesse Kiehl, Jerry Nankervis, Merrill Sanford, and Randy Wanamaker.

Assembly Absent: Carlton Smith.

Staff Present: Kim Kiefer, City Manager; Rob Steedle, Deputy City Manager; Amy Mead, City Attorney; Laurie Sica, Municipal Clerk; Beth McEwen, Deputy Clerk; Bob Bartholomew, Finance Director; Brent Fischer, Parks and Recreation Director; Lindsey Brown, Admin Officer, Parks and Recreation; Hal Hart, Community Development Director; Rorie Watt, Engineering Director; Greg Chaney, Lands and Resources Manager; and Matt Lillard, Eaglecrest Ski Area Manager.

II. SPECIAL ORDER OF BUSINESS

A. Recognizing Outgoing Assemblymember Dybdahl

Mayor Sanford recognized Johan Dybdahl for 23 years of service to the City and Borough of Juneau, including the Planning Commission from 1990 – 2004 and the Assembly from 2004-2013. Mayor Sanford presented Mr. Dybdahl with a carved, painted and inlaid yellow cedar paddle with his Sea Lion clan design, carved by Nick Vonda III. Mr. Rick Harris, Executive Vice President of Sealaska, also thanked Mr. Dybdahl for his service to the community and presented a beautiful paddle. Mr. Harris read from a letter from Chris McNeill and Albert Kookesh, on behalf of Sealaska tribal members and shareholders, sharing their appreciation for Mr. Dybdahl's service, while honoring his native values, and setting an example for the people of the region. Mr. Dybdahl said he had the pleasure of serving with many good people but thanked the person who thought of term limits. He thanked his wife, children and grandchildren for "putting up with him." He thanked the CBJ staff for their efforts to make his work easier and left everyone with a parting comment that he had never found a down side to looking at any situation as a glass "half-full." All of the Assemblymembers took turns wishing Mr. Dybdahl well and thanking him for his service and wise counsel. Mr. Dybdahl suggested that when his fellow members missed him, they could imagine him being there via teleconference.

B. Swearing in of Newly-Elected Official

Amy Mead gave the oath of office to Kate Troll, and Mayor Sanford and the Assemblymembers welcomed Ms. Troll to the office of Assemblymember. Ms. Troll took a seat at the Assembly table.

C. Selection of Deputy Mayor

Hearing no objection, Mary Becker was selected as Deputy Mayor for 2013-14.

D. Employee Recognition

Finance Director Bob Bartholomew recognized Debbie Johnson for her 32 years of service to the City and Borough of Juneau, beginning in 1981. She kept the business flowing in the Treasury Division, through her work in the mailroom and in reconciling all checks issued by the CBJ. Her knowledge and experience would be missed by her fellow employees at CBJ.

E. Proclamation-Keeping the Lights On After School Day

Teri Campbell said she was serving as an after school ambassador for the Alaska National After School Alliance, and as a volunteer for the “Body and Mind” after school program in the middle schools. “Lights on Afterschool” was an opportunity to show off the after school programs and raise awareness about the needs. On Thursday, October 17 Juneau would join with other sites across the nation to increase the attendance of students in the program. The hours between 3-5 p.m. could be dangerous times for young people. She thanked the Assembly for the \$50,000 allotment for the program and they were seeing good participation. She invited Assemblymembers to stop by Dzanti ki Heeni or Floyd Dryden Middle Schools Thursday, October 17, when they would be offering sampler programs to get more students involved in a variety of activities.

Mayor Sanford read a proclamation declaring Thursday, October 17, 2013 as “Lights on After School Day.”

III. APPROVAL OF MINUTES

A. September 21, 2013 – Special Assembly Meeting 2013-24

Hearing no objection, the minutes of the September 21, 2013 Regular Assembly Meeting 2013-24 were approved.

B. September 23, 2013 – Regular Assembly Meeting 2013-25

Hearing no objection, the minutes of the September 23, 2013 Regular Assembly Meeting 2013-25 were approved.

IV. MANAGER’S REQUEST FOR AGENDA CHANGES – None.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

Barb Sheinberg distributed copies to the Assembly and public of two recent publications: “Southeast Alaska by the Numbers,” and “The Maritime Economy of Southeast Alaska,” produced by the Southeast Conference.

Paul Thomas, owner of Alaska Cache Liquor, distributed a letter to the Assembly and asked to bring the Assembly’s attention to what he found to be hardships forced upon Juneau due to the lack of competition in garbage service. Within the last year, the refuse collection company

started by issuing short notice about the use of new cans, which did not physically fit in locations and were too big to handle. No thought was given to the money spent by the public on cans, bear enclosures and equipment that could no longer be used due to the rules of the new pickup. No thought was given to how the public was supposed to deal with 250% larger cans designed to be lifted with hydraulics, in a hilly town. After the initial pitch that the costs to the consumer would be reduced, the company then issued a 58% increase in bills this month. This was on top of the higher prices for the “blue zone,” which included downtown residents and businesses and was implemented when they went to the new cans, which they now want customers to rent. He urged the Assembly to look for alternatives and competition for the community’s garbage disposal needs. Juneau was being held to the whims of a monopoly.

VI. CONSENT AGENDA

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

Susan Baxter, Chair of the Sister City Committee, requested removal of Resolution 2663 regarding Kalibo as Sister City.

B. Assembly Requests for Consent Agenda Changes

C. Assembly Action

MOTION, by Becker, to adopt the consent agenda, with the removal of Resolution 2663. Hearing no objection, it was so ordered.

1. Ordinances for Introduction

a. Ordinance 2013-25

An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of Lots 1-3, Seven Mile Subdivision, Located Near Seven Mile Glacier Highway, Currently Zoned D-5, to D-18.

Administrative Report: Attached. The manager recommended Ordinance 2013-25 be introduced and set for public hearing at the next regular meeting.

b. Ordinance 2013-26

An Ordinance Adopting the 2013 Update to the Comprehensive Plan of the City and Borough of Juneau.

Administrative Report: Attached. The manager recommended Ordinance 2013-26 be introduced and set for public hearing at the next regular meeting.

c. Ordinance 2013-27

An Ordinance Amending the Uniform Sales Tax Code Relating to the Senior Citizen Sales Tax Exemption.

Administrative Report: Attached. The manager recommended Ordinance 2013-27 be introduced and set for public hearing at the next regular meeting.

d. Ordinance 2013-11(U)

An Ordinance Appropriating To The Manager The Sum Of \$10,000 As Funding For Equipment, Maintenance And Training For Juneau HAZMAT Team, Funding Provided By A Memorandum of Understanding With The Alaska Department Of Environmental Conservation.

Administrative Report: Attached. The manager recommended Ordinance 2013-11(U) be introduced and set for public hearing at the next regular meeting.

e. Ordinance 2013-11(V)

An Ordinance Appropriating To The Manager The Sum Of \$110,000 As Funding For The Emergency Management Performance Grant, Grant Funding Provided By The State Of Alaska, Department Of Military And Veterans Affairs.

Administrative Report: Attached. The manager recommended Ordinance 2013-11(V) be introduced and set for public hearing at the next regular meeting.

2. Bid Awards

a. Bid 14-028

Term Contract for Emulsion Polymer

Administrative Report: Attached. The manager recommended award of Bid 14-028 to Northstar Chemical in the amount of \$149,040.00.

Removed from the consent agenda:

3. Resolutions

a. Resolution 2663

A Resolution Endorsing the Creation of a Sister City Relationship with the Municipality of Kalibo, Capital of Aklan Province, in the Republic of the Philippines, and Requesting the Sister Cities Committee to Proceed With the Steps Necessary to Formalize the Sister City Relationship.

Administrative Report: Attached. The manager recommended adoption of Resolution 2663.

Public Comment:

Larry Snyder said he retired from the Coast Guard and had an opportunity to work with the commercial fishing fleet in Juneau. He said his wife was from Aklan and her hometown was Kalibo. This sister city relationship could benefit all. Regarding commercial fishing, this could be a wonderful opportunity to reach out with some of Juneau's products and knowledge of seafood. Kalibo would be receptive and he had spoken with the Alaska Sea Grant program regarding moving Juneau seafood products to the Philippines. He was now a part time resident in Kalibo for six months of the year and he hoped to have an opportunity to assist with the sister city relationship.

Dante Reyes, President of the Filipino Community, Inc. spoke on behalf of the Filipino community. He was originally from the province of Aklan. There were more than 800 Filipino people in Juneau who were from this area and he thanked the Assembly for this opportunity.

Assembly Action:

MOTION, by Kiehl, to adopt Resolution 2663. Hearing no objection, it was so ordered.

VII. PUBLIC HEARING

A. Ordinance 2013-23

An Ordinance Authorizing The Manager To Execute A Site Lease With Alaska Wireless Network, LLC For The Construction, Operation And Maintenance Of A Telecommunication Tower Facility At Eaglecrest Ski Area.

Administrative Report: Attached. The manager recommended adoption of Ordinance 2013-23.

Public Comment:

Margo Waring urged the Assembly to reject this ordinance. Construction of this telecommunication facility would mean there would be three towers in the area, one at Spuhn Island, one at the quarry on the mountain and one at the base of the ski area, and she did not understand why so many were needed. Cell service had improved greatly at Eaglecrest over the past few years. There had been some boasting about dramatic improvements in cell service at the ski area and that was her experience. CBJ's Community Development Department was developing a plan for the siting of cell towers and this process was underway. At the same time there was a rush from companies to site their towers before the plan went into effect. She urged delay until the community had a better understanding of the overall picture and plan. This was a fifteen year lease at a favorable rate for what seemed to her to be a redundant tower.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2013-24.

Ms. Crane asked about the status of the cell tower plan. Ms. Kiefer said there was a contract with a person who was working on the plan and the contract had expired. Staff was working to negotiate an extension. Ms. Crane said that Ms. Waring made a good point, and if it would be another two years until the plan was complete, this was concerning.

Mayor Sanford hoped to have this project moving again within the next six months – the issue was also on his list for the Law Department to review.

Mr. Jones said he was not aware that there was a cell tower in the quarry at Eaglecrest and asked if all of the towers, including the one on Spuhn Island, were owned by the same company.

Mr. Kiehl said the tower at the quarry was owned by Atlas which did not operate cell service, but leased space on towers to cell service providers. This proposed lease was at the same terms as the lease at Fish Creek quarry – it was leased at a market rate.

Mr. Jones said the lease was favorable at \$750 per month. He asked if there was an actual appraisal of this land and would this lease rate go up or down based on this rate, and would that factor into the negotiation of this lease.

Mr. Chaney said the lands division recently received an appraisal of the land for the tower and \$750 per month was right on target for that facility.

Ms. Becker asked to hear about the condition of cell service at the ski area today. Mr. Lillard said there had been some improvement based on towers installed elsewhere in the city. There was a significant break in service from the Fish Creek tower service to the base of the ski area, which was essentially a “black hole.” It was rare to get cell service in the ski area parking lot. Cell phones were now a necessity for people. Juneau Mountain Rescue based a rescue out of the ski area this weekend and if the family of one of the lost hikers been able to use their cell phone the rescue would have been sped up. Staff at the ski area saw this installation as a huge benefit.

Ms. Troll asked what would be the down side of delaying this lease if it were to be held up until information could be received in the cell tower plan. Ms. Kiefer said the safety concern was mentioned by the Ski Area Manager and she thought that a six month time frame was optimistic for the plan to work its way through the public process and adoption by the Assembly.

Mr. Wanamaker said he would support this ordinance for safety concerns. The staff had the incentive to complete the cell phone tower siting plan and the Assembly should move forward.

Hearing no objection, it was so ordered.

B. Ordinance 2013-11(Q)

An Ordinance Appropriating To The Manager The Sum Of \$106,000 As Funding For The Empty Chair Memorial, Grant Funding Provided By The US Department Of The Interior, National Park Service And Donations Provided By The Empty Chair Committee.

Administrative Report: Attached. The manager recommended adoption of Ordinance 2013-11(Q).

Public Comment: None.

Assembly Action:

MOTION, by Wanamaker, to adopt Ordinance 2013-11(Q).

Mr. Wanamaker said that he supported this ordinance with all of his heart. Some of the people that were relocated from Juneau were his relatives and some of his classmates were born in the internment camps. This was a fitting way of honoring their memory and the sacrifices they made, even though the sacrifices were involuntary.

Hearing no objection, it was so ordered.

C. Ordinance 2013-11(R)

An Ordinance Appropriating To The Manager The Sum Of \$50,000 As Funding For A Parking Manager, Funding Provided By The Parking In Lieu Fund and the Downtown Parking Fund Fund Balances.

Administrative Report: Attached. The manager recommended adoption of Ordinance 2013-11(R).

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2013-11(R).

Mr. Nankervis and Mr. Wanamaker objected.

Mr. Nankervis said once a job was created, the municipality seemed to have it for a long time. The city was facing the probability of reduced state and federal funding and the Assembly had not looked at ways to decrease the cost of government. The number of parking spaces had increased, it was easier to enforce and there were fewer complaints about downtown. The function may be misplaced in Parks and Recreation and CDD, but there were people in the police department that were tasked with enforcing parking. CBJ had 1741 employees which worked out to one city employee for every 18 citizens and he could not imagine that current staff could not address the issue. Mr. Wanamaker agreed with Mr. Nankervis' comments.

Ms. Crane said she supported the ordinance and did not know if she would support it beyond this fiscal year but believed there were some significant problems that needed to be addressed with the parking vendor and other issues. She said some concentrated attention needed to be given to solving those problems by the end of the fiscal year.

Ms. Becker asked if there was something in the position description that would outline resolving the problems with the contractor. Ms. Kiefer said yes. Ms. Becker said she did not support the ordinance but hoped the problems would be resolved.

Mayor Sanford asked Ms. Kiefer to review the funding sources for this ordinance. Ms. Kiefer said there was \$15,000 from the Fee in Lieu of Parking fund and \$35,000 from out of the Downtown Parking Funds through the end of the fiscal year. There was general fund funding that was already allocated in the Downtown Parking Funds for this year, but there was no additional general fund funding for this ordinance.

Mr. Kiehl said the Finance Committee discussed the short term needs for a position to get a handle on the downtown parking problems, which were significant. He did not know if it was a six month or 18 month fix, but the assembly had left open the funding for many positions in the past and many CBJ positions were open now. While this is some portion of an employee funded now for parking, it was a job and a half in terms of the work burden and those resources were being pulled from other places. This could be done without becoming a permanent addition, but the resources were needed in the short term to get the work accomplished.

Mr. Jones said there was an executive session listed at the end of this meeting about parking management and recommended delaying the vote on this ordinance until after the executive

session. Ms. Kiefer said there would be additional information provided and a motion to table was appropriate.

MOTION, by Jones, to table the motion until after the executive session. Hearing no objections, it was so ordered.

D. Ordinance 2013-11(S)

An Ordinance Appropriating To The Manager The Sum Of \$100,000 As Funding For An Economic Development Plan, Funding Provided By Closed Capital Projects.

Administrative Report: Attached. The manager recommended adoption of Ordinance 2013-11(S).

Public Comment: None.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2013-11(S).

Mr. Jones objected. He had reviewed the RFP. He was concerned that by ordinance, the Assembly established the Juneau Economic Development Council to be the economic development organization for the borough, and the Assembly seemed to by-passing that group. He understood that JEDC could apply to do the work, but he did not know why CBJ did not ask JEDC to find the funding and to do the work, however they saw fit. He asked what the source of the CIP funds were. At the PWFC meeting, it was reported that most of it came from sales tax revenues, which he assumed if they were not spent returned to the general fund as part of the fund balance. It was part of the 3% tax and not the 1% people voted on for particular projects. The Assembly could make this part of the ordinary budget process and not a CIP. Coming up with an Economic Development Plan was a good idea but he objected to the process and leaving JEDC out of the loop.

Roll call:

Aye: Becker, Crane, Nankervis, Wanamaker, Sanford.

Nay: Jones, Kiehl, Troll

Motion passed, 5 ayes, 3 nays.

E. Ordinance 2013-11(T)

An Ordinance Appropriating To The Manager The Sum Of \$160,000 As Funding For Legal Services Provided By The City And Borough of Juneau's Law Department To Bartlett Regional Hospital And The Juneau School District, Funding Provided By Interdepartmental Charges.

Administrative Report: Attached. The manager recommended adoption of Ordinance 2013-11(T).

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2013-11(T). Hearing no objection, it was so ordered.

VIII. UNFINISHED BUSINESS – None.

IX. NEW BUSINESS

- A. Richard Harris – RH Development - Appeal Of A Planning Commission Notice of Decision Regarding AME2013-0006 – Denial of a Request for a Zone Change from D-10 – LC at 9050 Atlin Drive or 2600 Mendenhall Loop Road.

Administrative Report: Attached. The manager made no recommendation.

Public Comment: None.

Assembly Action:

Ms. Becker asked if there was any legal reason to not hear the appeal. Ms. Mead said she saw no reason to deny hearing the appeal.

Hearing no objection, the Assembly accepted the appeal.

Mr. Nankervis said the Assembly should hear it itself and volunteered to serve as the presiding officer. Hearing no objection, it was so ordered.

Ms. Mead spoke about the rules of conduct regarding appeal matters before the Assembly.

X. STAFF REPORTS

Ms. Kiefer said the lobbyist contract was finalized and signed. Staff was continuing to work with businesses that were requiring local seniors to use a sales tax exemption card issued by the store, to get the stores to stop that practice and accept the cards issued by CBJ. The Economic Plan Request for Proposals was issued and available to the public. The evaluation committee included Carlton Smith and scoring of the proposals would begin approximately in December. Ms. Kiefer, along with a staff committee, would revise the CBJ tree policy based on a number of recent issues and a re-evaluation of the current tree policy showed it was out of date.

Ms. Crane asked for an update regarding Mr. Hohman's property the property in Douglas at some point. Ms. Mead said that the lawsuit was still pending. The judge had a motion for summary judgment in which CBJ filed to put a lien on the property for the cost of the construction. There was no trial date. The court vacated the trial date and she suspected that the entire matter would be addressed on summary judgment. That included all the matters that the CBJ could affirmatively deal with that were of imminent and emergency nature. There were other issues with the home that were still pending. The Building Official's order was still in place prohibiting occupancy or entry of the property without noticing the Building Official. The sale that was pending with the contractor fell through. Once the court decided the issue there may be further steps to take. The court had six months from the date the briefing was completed to issue a decision.

XI. ASSEMBLY REPORTS

A. Mayor's Report

Mayor Sanford reported on his trip to Skagway where he met with Yukon Government officials. They talked about an economic development corridor over the Klondike Highway for telecommunications, power and general economic development. The meetings included Minister Scott Kent from the Ministry of Energy, Mines and Resources; Minister Curry Dixon from the Ministry of Economic Development, Shirley Abercrombie, Assistant Deputy Minister from the Ministry of Energy, Mines and Resources; Commissioner Susan Bell, Alaska Department of Commerce and Community Development; Gene Therriault, Deputy Director of the Alaska Energy Authority, Robert Venables, Energy Coordinator of Southeast Conference; Mark Schaeffer, Mayor of Skagway, Stan Selmer, Former Mayor of Skagway, and himself as Mayor of Juneau and Southeast Conference Board member.

Mayor Sanford said there was a news release regarding the Alaska Industrial Development and Export Authority (AIDEA) MOU with Niblack Mines for a mill site close to Ketchikan.

Mayor Sanford said Dawson Construction was busy with the work on the Walter Soboleff Center. They were learning new tactics to address the tidal influence on the site. The tower crane was installed and in operation and the slab was set, so steel would be going up soon.

Mayor Sanford said that all the Assembly was invited to participate in the Alaska Association of Student Government Leadership conference for a dinner on Friday, October 18, at 7 p.m. at JDHS Main Gym.

B. Committee Reports

Committee of the Whole: Chair Becker said the COW meeting of Monday, October 28 would be held as a Special Assembly meeting instead, to allow action to be taken, and would include meeting with the Planning Commission, starting at 6 p.m.

Public Works and Facilities Committee: Chair Wanamaker said PWFC met today at Noon. At the meeting, the committee recommended to the Assembly that the City Manager or Mayor send a letter to the Alaska Department of Transportation (DOT) about some of the Statewide Transportation Improvement Projects (STIP) changes.

MOTION, by Wanamaker, authorize the Mayor to sign a letter encouraging DOT to work with CBJ staff to find suitable solutions to the Auke Lake Wayside problem in the STIP amendments.

Mayor Sanford asked if the PWFC had been presented with a letter from Mr. Watt in that regard. Mr. Wanamaker said yes, that was appropriate and they encouraged the Mayor or City Manager to sign that.

Hearing no objection, it was so ordered.

Finance Committee: Chair Crane said the next meeting was on Wednesday, October 16, at 5:30 p.m. and the packet had been distributed.

C. Liaison Reports

Juneau Economic Development Committee: Liaison Jones said the JEDC Board would meet on Tuesday, October 15 at Noon, part of agenda was to review the applications for board members on JEDC, which would be forwarded to the Assembly for approval.

Airport Board: Liaison Nankervis said the Airport Board met on Wednesday, October 9th. Abby's Kitchen was selected as the new food and beverage concessionaire at the Airport. JPD assumed responsibility for security at the airport on October 1. An emergency drill was held at the airport on September 14. There would be an Eagle Scout award ceremony on November 4 for landscaping work done at the airport. Mr. Nankervis said the Red Cross was recently at the airport teaching staff the new CPR and Heimlich maneuvers and the same day the airport bartender had an opportunity to save a choking patron.

Parks and Recreation Advisory Committee: Liaison Nankervis said the PRAC met recently and issued comments on the Auke Lake wayside for the STIP.

Juneau Commission on Sustainability: Liaison Nankervis said JCOS had been meeting to discuss solid waste and recycling issues. JCOS sent a letter regarding the heating, design and materials plan for long term energy savings for the new library.

Hospital Board: Liaison Crane said the CEO had resigned and the board proceeded quickly for recruitment of an interim CEO and there was a transition plan in place.

Eaglecrest Board: Liaison Kiehl said season pass sales were proceeding at pace.

Affordable Housing Commission: Liaison Kiehl said AHC expressed support of the Assembly for the housing development on Vista Drive and AHC strongly recommends this to the Assembly for its support.

Alaska Committee: Liaison Becker said discussion items included Gavel to Gavel programming. CBJ funds half of the cost, which was much less expensive than 25 other states' programs. There was significant discussion regarding confusion over parking which must be alleviated before the legislature arrives. It was important to get information about parking to all the rental car agencies. The Legislative Reception committee was meeting again and the annual event will be held on January 23. CBJ's new lobbyist would be attending Alaska Committee meetings.

UAS Campus Council: Liaison Becker said there is a lot of construction going on at the University, including the new dorms and preparation for the siting of the whale statue, which will be dedicated on October 25 from 5 – 7 p.m. UAS was working on accreditation issues and there was a new Arts and Science Bachelor degree was being offered this year.

D. Presiding Officer Reports

Mr. Jones said all appeals were moving forward in a timely manner and the first hearing would be on October 30 for the O'Brien v. CBJ Assessor.

Mayor Sanford asked to suspend the order of business and hold Assembly comments and the questions and action on Ordinance 2013-11(R) until after executive session. Ms. Becker asked to make her comments before the break. Hearing no objection, it was so ordered.

Ms. Becker said there would be 323 students from around the state in Juneau for the Alaska Association of Student Government event and they would really like people to come to the event on Friday October 18 at 7 p.m. at JDHS and talk to the students. Participants need not be an Assemblymembers and the public was invited.

Ms. Becker said on October 24, there would be a ground breaking ceremony for the Seward Statue at the court building at 11 a.m.

XII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None.

XIII. EXECUTIVE SESSION

A. Parking Management

MOTION, by Becker, to enter into executive session, to discuss a financial matter, specifically parking management. Hearing no objection, the Assembly entered executive session at 8:50 p.m. and returned to regular session at 9:30 p.m.

Mayor Sanford called the meeting back into session.

MOTION, by Kiehl, to remove Ordinance 2013-11(R) from table for consideration. Hearing no objection, Ordinance 2013-11(R) was before the Assembly. Mayor Sanford said there was a motion on the floor for adoption. Mr. Wanamaker maintained his objection.

Mr. Jones asked if it was appropriate to make a motion to table until after the next briefing by the Administration in November. Ms. Mead said that was an appropriate motion.

MOTION, by Jones, to table Ordinance 2013-11(R) until the next Administrative report had been provided.

Roll call:

Aye: Becker, Jones, Nankervis, Wanamaker

Nay: Crane, Kiehl, Troll, Sanford

Motion failed, 4 ayes, 4 nays.

Roll call to adopt Ordinance 2013-11(R):

Aye: Crane, Kiehl, Troll, Sanford

Nay: Becker, Jones, Nankervis, Wanamaker

Motion failed, 4 ayes, 4 nays.

XIV. ASSEMBLY COMMENTS AND QUESTIONS

Mayor Sanford distributed the draft Committee and Liaison assignment list and asked the Assemblymembers to take time to review and provide any concerns to him.

Hearing no objection, the annual Assembly Retreat was set for Wednesday, October 30 at 8 a.m. – Noon, in the Assembly Chambers. Mayor Sanford asked the Assemblymembers to provide any topics of special interest to him and the group would discuss Assembly goals. He asked members to provide specific ideas for goals to him.

MOTION, by Crane, that the assembly confirm its policy that Project Labor Agreements (PLA's) will be used to the fullest extent of the law, and further request that the Docks and Harbors Director engage with the Juneau Building Trades to reconcile any legal issues that may prevent attachment of a PLA to project 16b.

Mr. Wanamaker supported the motion. He said the PWFC would work with the city attorney to develop a uniform program so the city could follow the CBJ PLA policy without inconsistency to set up a standardized review process that would involve multiple personnel arriving at a group determination rather than an individual review, which may lead to arbitrariness or misunderstanding. This program could be applied across all entities uniformly.

Mr. Kiehl supported the motion and the effort to set up the review process. Dock Project 16b would benefit greatly from the PLA policy. Juneau saw the impact of missed cruise ship visits and we run the risk of not delivering dock projects on time. When the Assembly began getting letters from the Building Trades about this, he asked for information from the manager on the last five years of projects and the on-time performance of projects with PLA's was dramatically better than those without.

Mr. Jones said that Project 16b was out to bid on a sealed bid and its due date was within a few weeks and asked what impact the potential requirement for a PLA would have on the bid process, especially regarding the timing of the project. Would CBJ be required to pay bidders for their prep time if the bid was delayed or pulled? Ms. Mead said most of the bids issued by CBJ, and she was not familiar with this one in particular, stated CBJ could pull the bid for the CBJ's reasons. With a PLA to be legally defensible, the entity making the decision had to articulate a legitimate, strong, government interest in having the PLA. The PLA needed to be drafted in such a way that the language met those government interests. That was essentially what a court would review if a lawsuit was filed – the legitimate interest and how the PLA met those goals. A policy discussion would need to take place with reasons articulated before discussing what was to go into the bid before making it a PLA bid. In regards to Project 16b, the bid would need to be pulled, and Docks and Harbors would need to define policy reasons to move forward with a PLA, and then the bid would need to be resolicited.

Mr. Jones said if all of that took place and the decision remained the same, i.e., to not have a PLA, what impact would there be on the RFP process and any cost to CBJ for pulling the bid. Ms. Mead said there would not be costs for pulling the bid.

Ms. Crane asked if CBJ had a policy to use PLA's within the full extent of the law, why was this evaluation not done before the RFP was created instead of looking at this after the fact.

Ms. Mead said that when PLA's were challenged, the challenge was based on equal protection grounds and the procurement code grounds. For the equal protection challenge, the court would look at whether or not the municipality had articulated a legitimate government interest that outweighed the non-union members right to seek their economic fortunes, and whether the PLA met the government interest. The procurement code challenge was similar, it was whether the PLA met the goals articulated in the CBJ procurement code. The cases that had

been discussed as examples all went the same way. There was an Attorney General opinion in 1999 that laid out the two analyses that the court made and the opinion discussed different projects that had passed equal protection and procurement code challenges by courts. One was a case where timing was a factor. One was a case in which it was a particularly complex project. The summarizing of the different types of cases that went before the court became understood to be a “factor test.” When the Assembly made the motion to use PLA’s to the extent legally defensible, the piece that was missing was that a “no” decision on a PLA was always legally defensible as they were not challenged, there was nothing to challenge. The “yes” to a PLA was what got challenged and a “yes” had nothing to do with a factor test, it was a “balancing test.” The articulation of the policy was the only way to determine if the use of a PLA was legally defensible and that policy articulation had not happened. The PLA decisions came over with a “factor” analysis which was not enough for the Law Department to determine if it was legally defensible. The Assembly could move forward with a resolution or motion that articulated its intent that the departments go through this policy analysis and when reasons could be articulated that made it worthwhile to go ahead and use it – that is what Mr. Wanamaker would like me to draft up for review.

Mayor Sanford said the question was whether the Airport and the Docks and Harbors departments did a written analysis on their projects that had to do with the “nine criteria” that the Assembly reviewed when it adopted its resolution about PLA’s and Ms. Mead said they did do that analysis.

Mr. Wanamaker said that the Assembly had a policy and the message to departments needed to be it was a city wide policy for everyone to use – it was not up to people whether to choose to follow it or not. The motion encouraged discussion and he asked for a favorable vote on the motion.

Mr. Jones said the original motion urged doing whatever is legally defensible. The attorney advises us that not doing a PLA is always legally defensible. Until PWFC developed a policy that everyone could follow, it appears that Docks and Harbors and other projects have followed the current policy if they have done the analysis and this use of a PLA on Dock Project 16b could delay this project.

Mr. Nankervis said it seemed that there was an effort to look for reasons *not* to use a PLA and that seemed against the policy.

Ms. Becker asked how the Docks and Harbors decided not to use a PLA and did they review this with the Law Department. Ms. Mead said Docks and Harbors went through the “nine factor test,” and sent it to the Law Department for review. Because it was a decision to not use a PLA, there was nothing for her to review. She could not analyze the legal defensibility as there was nothing to look at. The breakdown of focusing on the “nine factors” was artificially narrowing the focus because just because those cases found those projects to be justified in using a PLA, there could be 50 other types of cases. It was all about coming up with the policy and articulating the reasons. One problem was that the way the analysis has happened, it has been one staff member making a decision. What was being considered was having a multi-person effort. The met the process in place but there was nothing for her to review and that was a change from past Law Department practice.

Ms. Crane restated the motion. Hearing no objection, it was so ordered.

Mr. Wanamaker said he would be out of town November 11 – 17 and would attend the dedication of a new memorial for the USS Juneau in Hudson County, New Jersey, on November 13, the anniversary of the sinking of the ship. The ceremony would be on the site of the building of the original USS Juneau. He requested a proclamation from CBJ to become part of the program and hearing no objection, it was so ordered.

Mr. Wanamaker thanked the Assembly and staff for the work on the Empty Chair project.

Mr. Kiehl invited the Assembly to join him and Mr. Nankervis when they helped a large group of volunteers to teach an outdoor skills program to Floyd Dryden students on October 21 and 22, focusing on safety, including firearms, planning, cold water issues and more.

Mr. Kiehl welcomed Ms. Troll to the Assembly.

Ms. Troll said she was honored to be on the Assembly and Mr. Dybdahl's service had been exemplary. She was learning the ropes and invited all the Assemblymembers to educate her along the way.

Mr. Nankervis encouraged committees and boards to try to avoid conflicting meeting dates and times when possible.

Mr. Jones attended an event to honor former Bartlett Regional Hospital Board members, which was a good experience. He attended the Fallen Firefighter memorial which was very moving. He invited everyone to attend the Juneau World Affairs Council Canadian forum and said there was a breakfast at the Senior Center for Alaska Day on October 18.

XV. ADJOURNMENT - 10:08 p.m.

Signed: _____
Laurie Sica, Municipal Clerk

Signed: _____
Merrill Sanford, Mayor