

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

August 13, 2018 7:00 PM

City Hall, Assembly Chambers  
Regular Meeting 2018-24

Submitted By:

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Duncan Rorie Watt  
City and Borough Manager

**I. FLAG SALUTE**

**II. ROLL CALL**

**III. SPECIAL ORDER OF BUSINESS**

- A. **Proclamation: Honoring Dan Austin**
- B. **Special Recognition: Ronna Craig**
- C. **Special Recognition: Amy Mead**

**IV. APPROVAL OF MINUTES**

- A. **July 19, 2018 Special Assembly Meeting 2018-21**

**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 2017-06(AY) An Ordinance Appropriating to the Manager the Sum of Up to \$16,425 as Partial Funding for the Cold Weather Emergency Shelter (FY18); Grant Funding Provided by the Alaska Mental Health Trust Authority (The Trust).**

The Alaska Mental Health Trust Authority approved a grant request submitted by CBJ staff to cover the cost of rent to operate the CBJ Cold Weather Emergency Shelter program from Dec. 1, 2017 to April 15, 2018. Total rental costs for this time period were \$16,425 which is the amount covered by the grant.

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

- b. **Ordinance 2018-11(H) An Ordinance Appropriating to the Manager the Sum of \$74,000 as Partial Funding for the Project Playground Rebuild Capital Improvement Project; Funding Provided by Community Donations Collected by the Juneau Community Foundation.**

Various community members and organizations are donating \$74,000 to the CBJ for the reconstruction of Project Playground. The Juneau Community Foundation has been receiving these funds and will donate the funding to CBJ. These donated funds will be appropriated into the Playground Rebuild Capital Improvement Project, P41-095. The Public Works & Facilities Committee forwarded this request to the full Assembly at its August 6, 2018, regular meeting.

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

## 2. Resolutions

- a. **Resolution 2831 A Resolution Amending the City and Borough of Juneau Personnel Rules.**

This resolution would approve changes to the Personnel Rules, which, along with the various collective bargaining agreements, govern the rights and responsibilities of CBJ employees, supervisors, and managers. The revised rules, as well as a summary of changes, are set forth in the attachments to the resolution.

Many of the proposed changes are either "housekeeping" in nature, and include minor adjustments proposed to bring language into alignment with current practice or needed to configure and implement a city wide time & attendance system. To the extent that the rules govern pay practices for employees represented by collective bargaining, the unions have been kept apprised of the needed changes and are in agreement.

**The City Manager recommends this resolution be adopted.**

## 3. Bid Award

a. **JNU RSA Improvements Phase II-C Rebid**

Bids were opened on the project on July 27, 2018. SECON was the sole bidder. The bid protest period expired on July 30, 2018. Results of the bid opening are included in your packet.

**The City Manager recommends this bid be awarded to SECON for the total amount bid of \$8,754,856.00.**

4. Other Items for consent

a. **The Fireweed Factory LLC Standard Marijuana Cultivation Facility License AMCO #10266-Renewal**

Renewal of Marijuana License 10266 - Standard Marijuana Cultivation Facility Licensee: The Fireweed Factory LLC at 8415 Airport Blvd. Space B, Juneau.

The above marijuana license renewal is before the Assembly to either protest or waive its right to protest. The Finance, Police, Fire, and Community Development departments have reviewed this renewal and found the business to be in compliance with CBJ Code. Your packet contains the redacted renewal application along with the AMCO notice to the local governing body. Additional license application documents are available through the Clerk's office upon request.

In the event the Assembly does protest this renewal, CBJ Code 20.30 requires notice, with specificity regarding the nature and basis of the protest, to be sent to the licensee and provides the licensee an opportunity to exercise its right to an informal hearing before the Assembly. The sixty-day comment period for local governing body action will expire as of Friday, September 14.

**The City Manager recommends the Assembly waive its right to protest the renewal of AMCO marijuana license #10266.**

b. **The Fireweed Factory LLC Retail Marijuana Store License AMCO #10800-Renewal**

Renewal of Marijuana License 10800 - Retail Marijuana Store Licensee: The Fireweed Factory LLC at 237 Front Street, Juneau.

The above marijuana license renewal is before the Assembly to either protest or waive its right to protest. The Finance, Police, Fire, and Community Development departments have reviewed this renewal and found the business to be in compliance with CBJ Code. Your packet contains the redacted renewal application along with the AMCO notice to the local governing body. Additional license application documents are

available through the Clerk's office upon request.

In the event the Assembly does protest this renewal, CBJ Code 20.30 requires notice, with specificity regarding the nature and basis of the protest, to be sent to the licensee and provides the licensee an opportunity to exercise its right to an informal hearing before the Assembly. The sixty-day comment period for local governing body action will expire as of Tuesday, September 11.

**The City Manager recommends the Assembly waive its right to protest the renewal of AMCO marijuana license #10800.**

**c. The Green Elephant, LLC Retail Marijuana Store License AMCO #10844-Renewal**

Renewal of Marijuana License 10844 - Retail Marijuana Store Licensee: Green Elephant LLC at 101 Mill Street, Suite B, Juneau.

The above marijuana license renewal is before the Assembly to either protest or waive its right to protest. The Finance, Police, Fire, and Community Development departments have reviewed this renewal and found the business to be in compliance with CBJ Code. Your packet contains the redacted renewal application along with the AMCO notice to the local governing body. Additional license application documents are available through the Clerk's office upon request.

In the event the Assembly does protest this renewal, CBJ Code 20.30 requires notice, with specificity regarding the nature and basis of the protest, to be sent to the licensee and provides the licensee an opportunity to exercise its right to an informal hearing before the Assembly. The sixty-day comment period for local governing body action will expire as of Friday, September 14.

**The City Manager recommends the Assembly waive its right to protest the renewal of AMCO marijuana license #10844.**

**d. The Green Elephant, LLC (Cultivation-Mill St.) Standard Marijuana Cultivation Facility License AMCO #10315-Renewal**

Renewal of Marijuana License 10315 - Standard Marijuana Cultivation Facility: Green Elephant LLC (Cultivation-Mill St.) at 101 Mill Street, Suite A, Juneau.

The above marijuana license renewal is before the Assembly to either protest or waive its right to protest. The Finance, Police, Fire, and Community Development departments have reviewed this renewal and found the business to be in compliance with CBJ Code. Your packet contains the redacted renewal application along with the AMCO notice to

the local governing body. Additional license application documents are available through the Clerk's office upon request.

In the event the Assembly does protest this renewal, CBJ Code 20.30 requires notice, with specificity regarding the nature and basis of the protest, to be sent to the licensee and provides the licensee an opportunity to exercise its right to an informal hearing before the Assembly. The sixty-day comment period for local governing body action will expire as of Friday, September 14.

**The City Manager recommends the Assembly waive its right to protest the renewal of AMCO marijuana license #10315.**

e. **Top Hat, LLC Standard Marijuana Cultivation Facility License AMCO #10270-Renewal**

Renewal of Marijuana License 10270 - Standard Marijuana Cultivation Facility: Top Hat, LLC at 2315 Industrial Blvd. Suite A, Juneau.

The above marijuana license renewal is before the Assembly to either protest or waive its right to protest. The Finance, Police, Fire, and Community Development departments have reviewed this renewal and found the business to be in compliance with CBJ Code. Your packet contains the redacted renewal application along with the AMCO notice to the local governing body. Additional license application documents are available through the Clerk's office upon request.

In the event the Assembly does protest this renewal, CBJ Code 20.30 requires notice, with specificity regarding the nature and basis of the protest, to be sent to the licensee and provides the licensee an opportunity to exercise its right to an informal hearing before the Assembly. The sixty-day comment period for local governing body action will expire as of Monday, August 27.

**The City Manager recommends the Assembly waive its right to protest the renewal of AMCO marijuana license #10270.**

f. **Top Hat Concentrates, LLC Marijuana Product Manufacturing Facility License AMCO #10271-Renewal**

Renewal of Marijuana License 10271 - Marijuana Product Manufacturing Facility: Top Hat Concentrates, LLC at 2315 Industrial Blvd. Suite B, Juneau.

The above marijuana license renewal is before the Assembly to either protest or waive its right to protest. The Finance, Police, Fire, and Community Development departments have reviewed this renewal and found the business to be in compliance with CBJ Code. Your packet

contains the redacted renewal application along with the AMCO notice to the local governing body. Additional license application documents are available through the Clerk's office upon request.

In the event the Assembly does protest this renewal, CBJ Code 20.30 requires notice, with specificity regarding the nature and basis of the protest, to be sent to the licensee and provides the licensee an opportunity to exercise its right to an informal hearing before the Assembly. The sixty-day comment period for local governing body action will expire as of Monday, August 27.

**The City Manager recommends the Assembly waive its right to protest the renewal of AMCO marijuana license #10271.**

5. Transfers

a. **T-1004 - Transfer Request of \$160,000 from the Pavement Management Capital Improvement Project to the Industrial Boulevard Match Capital Improvement Project.**

This is a transfer request of \$160,000 from the Pavement Management CIP to the Industrial Boulevard Match CIP to provide additional funding for the Alaska Department of Transportation and Public Facilities' (ADOT) Industrial Boulevard Reconstruction Project.

The Industrial Boulevard reconstruction project was funded in ADOT's Statewide Transportation Improvement Plan (STIP) a number of years ago with the CBJ committing to providing 25% match. ADOT has committed to bidding the project this fall for construction of the project during the 2019 construction season. CBJ is required to pay ADOT the 25% match for construction and contingency, which totals \$1.3 million, in advance of ADOT bidding the project. This transfer of \$160,000 is required to provide adequate funding in the CIP to allow the CBJ to make this payment.

The Public Works and Facilities Committee reviewed this transfer at its July 9, 2018, regular meeting.

**The City Manager recommends this transfer be approved.**

## VIIIPUBLIC HEARING

A. **Ordinance 2017-06(AV) An Ordinance Appropriating to the Manager the Sum of \$9,387 as Partial Funding for the Industrial Boulevard Capital Improvement Project; Funding Provided by the State of Alaska Department of Transportation.**

The State of Alaska, Department of Transportation and Public Facilities (ADOT)

has refunded \$9,387.37 to the City & Borough of Juneau (CBJ) for matching funds attributed to the ADOT reconstruction of Riverside Drive. The CIP was included in the CBJ's FY13 CIP program, and eventually closed out in FY16.

The refunded amount was originally made available with sales tax funding, and will now be added to the Industrial Boulevard CIP.

This item was heard by the Public Works and Facilities Committee at its regular meeting on August 6, 2018.

**The City Manager recommends this ordinance be adopted.**

- B. Ordinance 2018-11(D) An Ordinance Appropriating to the Manager the Sum of up to \$29,492 as Funding for Multiple Training Events for the Juneau Police Department; Grant Funding Provided by the United States Department of Justice, Office of Justice Programs, FY17 Edward Byrne Memorial Justice Assistance Grant (JAG) Program.**

The grant funds are not available for appropriation; the City Manager recommends tabling this ordinance at this time. When grant funding is available, the issue will be brought forward. Given that the funding is not available, this ordinance cannot be acted upon at this time.

**The City Manager recommends that this item be pulled from public hearing.**

- C. Ordinance 2018-11(E) An Ordinance Appropriating to the Manager the Sum of \$2,245,538 as Funding for various Capital Improvement Projects at the Juneau International Airport; Funding Provided by Passenger Facility Charge Fees.**

This ordinance would appropriate \$2,245,538 to various Airport capital improvement projects (CIPs). These funds will reimburse amounts that were forward-funded from the Airport Fund Balance and Airport revolving CIP accounts, and will also provide new match for grants.

Funding is provided by FY18 & FY19 Passenger Facility Charge (PFC9) collections, for the following CIPs:

Conduct Master Plan Study	\$ 61,227
Rehabilitate Taxiways A & E (Design and Construction)	\$1,125,000
Rehabilitate Airport Access Road	\$ 64,610
Construct NE and NW Apron	\$ 228,251
Rehabilitate ARFF Building	\$ 50,000
Construct Snow Removal Equipment Building (SREB)	\$ 72,750
Construct Sand and Chemical Building	\$ 643,700

Total approved collections for PFC9 are over nine-million dollars, and anticipated to take 8 years. They will be appropriated year-to-year; this is the first.

At its July 10, 2018, meeting, the Airport Board approved this action.

This item was heard by the Public Works and Facilities Committee at its regular meeting on August 6, 2018.

**The City Manager recommends this ordinance be adopted.**

**D. Ordinance 2018-11(F) An Ordinance Appropriating to the Manager the Sum of \$1,972,000 as Funding for the Juneau International Airport Gate 2 Passenger Boarding Bridge Capital Improvement Project; Funding Provided by the Federal Aviation Administration and Sales Tax Revenue.**

This ordinance would appropriate \$1,972,000 to the Airport Gate 2 Passenger Boarding Bridge capital improvement project. Funding is provided as follows:

Federal Aviation Administration (FAA) grant:	\$1,801,875
Sales Tax Revenue:	\$ 170,125

The FAA funds 93.75% of the project with local match provided by Juneau International Airport from sales tax revenue, which also includes \$50,000 contingency funds.

The Airport Board approved this action at its March 13, 2018, meeting. The Assembly approved forward funding this project in the amount of \$1,801,875 via Ordinance 2017-06(AJ) at its meeting on April 4, 2018. If the Assembly adopts Ordinance 2018-11(F), the forward funding of \$1,801,875 will be refunded to the Airport Fund's fund balance.

**The City Manager recommends this ordinance be adopted.**

**E. Ordinance 2018-11(G)(b) An Ordinance Appropriating to the Manager the Sum of \$361,000 as Supplemental Funding for Capital City Fire & Rescue; Funding Provided by General Fund's Fund Balance.**

This supplemental appropriation of \$361,000 provides funding to support an immediate need to add additional staffing to Capital City Fire & Rescue (CCFR) operations. The additional staffing is being added for the purpose of providing expanded EMS service and fire response readiness.

This ordinance will appropriate the funds needed to pay for the additional personnel costs within CCFR. The funds will come from the general fund's fund balance.



This issue was discussed with the Committee of the Whole (COW) at its July 11, 2018, meeting. The COW directed staff to prepare an appropriating ordinance and move it to the full Assembly for introduction and public hearing.

At the Assembly meeting held on July 23, 2018, the Assembly referred the ordinance to the Assembly Finance Committee (AFC) for review at its meeting on August 8, 2018.

**The City Manager recommends this ordinance be adopted.**

**F. Ordinance 2018-28 An Ordinance Amending the Land Use Code Relating to Mining.**

This ordinance would amend the City and Borough's Land Use Code as directed by the City and Borough of Juneau Mining Committee. As instructed by the Committee, Title 49.65 was rewritten and reorganized to improve clarity, without removing any substantive provisions.

The Planning Commission considered the ordinance at its meeting on June 26, 2018, recommending it be forwarded to the Assembly with one substantive change: to require the release of the financial warranty relating to mining exploration to occur within six months. That change is shown by strikethroughs and italics.

**The City Manager recommends this ordinance be adopted.**

**G. Ordinance 2018-42 An Ordinance Authorizing the Manager to Sell City and Borough of Juneau Property, Located at 9290 Hurlock Avenue, to Alaska Legacy Partners.**

This ordinance would authorize the Manager to sell the 9290 Hurlock Avenue property to Alaska Legacy Partners for \$350,000 for the development of a senior assisted living housing project.

After a lengthy committee process, on April 16, 2018, the Assembly Committee of the Whole chose the Alaska Legacy Partners (ALP) proposal. ALP proposes to purchase the property and redevelop it into a senior assisted living facility; this ordinance requires development that conforms with ALP's proposal.

**The City Manager recommends this ordinance be adopted.**

**H. Resolution 2824(b) A Resolution Calling for an Advisory Ballot Proposition on City and Borough Financial Support for Improving and Expanding Access for all Juneau Families to Affordable High Quality Child Care and Early Learning/Pre-school.**

This resolution places before the voters of Juneau, on October 2, 2018, an advisory question regarding CBJ providing financial support for improving and expanding access for all Juneau families to affordable high quality child care and early learning/pre-school. This is a non-binding measure.

This effort is expected to cost up to \$2.8 million of CBJ funding in the fifth year when the program is fully implemented, thereafter adjusted for inflation annually. In accordance with the taxable value in the CBJ in 2018, a \$2.8 million expenditure would ultimately require the equivalent of 0.58 mill rate increase, resulting in a property tax increase of \$58 for each \$100,000 of assessed property value.

The Assembly Finance Committee discussed this resolution at its July 25, 2018, meeting.

**Whether to place this on the ballot or not is a policy question for the Assembly. The City Manager has no recommendation at this time.**

## **IX. UNFINISHED BUSINESS**

### **X. NEW BUSINESS**

#### **A. Tom Williams vs. Airport Board - Appeal #2018-04**

On July 30, 2018, the Clerk's office received an appeal of the Airport Board's decision regarding the Terminal Reconstruction Phase II project.

In accordance with the Appeals Code, the Assembly must decide whether to accept or reject the appeal. If you determine, after liberally construing the notice of appeal in order to preserve the rights of the appellant, 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.

If the appeal is accepted, you must 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, a presiding officer should be appointed.

In hearing an appeal, the Assembly sits in its quasi-judicial capacity and must avoid discussing the case outside of the hearing process. (See CBJ 01.50.230, Impartiality.)

**As this is a quasi-judicial matter, the City Manager makes no recommendation.**

## **XI. STAFF REPORTS**

## **XII. ASSEMBLY REPORTS**

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

## **XIII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA**

## **ITEMS**

### **XIV.EXECUTIVE SESSION**

#### **A. City Attorney Replacement**

### **XV. ADJOURNMENT**

### **XVISUPPLEMENTAL MATERIALS**

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

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

Meeting Minutes - July 19, 2018

**MEETING NO. 2018-21:** The Special Meeting of the City and Borough of Juneau Assembly, held in Room 224 of the Municipal Building, was called to order at 12:06 p.m. by Deputy Mayor Jerry Nankervis.

**I. CALL TO ORDER / ROLL CALL**

Assembly Present: Jerry Nankervis, Maria Gladziszewski, Beth Weldon, Norton Gregory, Jesse Kiehl, Rob Edwardson, Loren Jones (teleconference), Mayor Ken Koelsch and Mary Becker joined the meeting at 12:06 p.m.

Assembly Absent: None.

Staff Present: City Manager Rorie Watt; Deputy City Manager Mila Cosgrove; Municipal Clerk Beth McEwen; Human Resources/Risk Management Director Dallas Hargrave (telephonic).

**II. AGENDA TOPICS**

**A. Municipal Attorney Replacement**

Ms. Gladziszewski stated that since she was the one to have given Notice of Reconsideration at the last meeting on this topic (July 11, 2018 Assembly Committee of the Whole), that she should make a motion to bring it back from reconsideration.

**MOTION** by Ms. Gladziszewski to take up reconsideration of the motion made at the July 11, 2018 Assembly Committee of the Whole.

*The motion being reconsidered from the 7/11/18 meeting was as follows: "Motion to look for the City Attorney internally before we go outside [for recruitment]."*

*Hearing no objection, the topic of Municipal Attorney Replacement was brought back to the Assembly for reconsideration.*

Mayor Koelsch joined the meeting at that time and Jerry Nankervis turned the gavel over to him.

### III. EXECUTIVE SESSION

#### A. Municipal Attorney Replacement

***MOTION by Ms. Gladziszewski to go into executive session to discuss matters which may prejudice the reputation or character of any persons. Hearing no objection, the Assembly adjourned into executive session at 12:06p.m.***

*The Assembly returned from Executive Session at 12:58p.m.*

***MOTION by Ms. Gladziszewski that the Assembly recruit for a city attorney, open to all applicants, for a 2 week period with a minimum salary of \$140,000 which will be negotiable depending on experience.***

Mayor Koelsch asked Mr. Hargraves what work staff has done on this so far. Mr. Hargraves noted that he has put together a draft recruitment bulletin. Ms. Cosgrove distributed a copy of the draft bulletin and said that she had emailed it to Mr. Jones as well.

Ms. Becker asked for clarification regarding the motion on the floor and whether the motion is to open up the recruitment across the country all at the same time. Ms. Gladziszewski said that her intent with the motion is to open up the recruitment to anyone interested, locally or nationally, and gets their paperwork submitted within the 2 week recruitment period.

Ms. Becker objected to the motion. She said she doesn't feel it necessary to recruit outside of CBJ but if they do, they should go in stages by starting internally first and then if they aren't satisfied with that pool of applicants, then to advertise outside of CBJ.

#### **Roll call vote on the motion:**

Aye: Gladziszewski, Gregory, Jones, Kiehl, Nankervis, Weldon, Edwardson

Nay: Becker, Koelsch

#### **MOTION passed 7:2**

Discussion took place regarding the next steps in the process. Mr. Kiehl suggested delegating this to a small group of 2-3 Assemblymembers to go over the draft posting. Mr. Koelsch asked if the previous members Jones, Weldon, and Nankervis would be willing to serve in that capacity. Mr. Jones noted that he would have to be traveling again for medical reasons and would prefer not to be a member of the subcommittee. Mr. Kiehl was substituted for Mr. Jones on the subcommittee.

Mr. Hargraves was asked to speak to his draft bulletin. He noted that most of the wording is the same from the previous opening but that the salary was the main change.

Additional discussion took place regarding timing and the subcommittee status and requirements for public notice of their meetings. The Assemblymembers agreed to take a brief at ease to review the document provided by Mr. Hargraves.

*An at ease was called and Mr. Jones excused himself from further participation in the meeting. The meeting resumed at 1:12 p.m.*

The committee reviewed the document, discussed the previous process and whether or not background checks are routinely done for this type of position. Ms. Cosgrove and Mr. Hargraves explained the usual hiring/recruiting practices used by CBJ. Ms. Cosgrove also explained that since this is an exempt position that the Assembly has a lot of discretion on the process they decide upon.

They asked Mr. Hargraves to begin the recruitment process as of Monday (7/23/18) with an August 6 deadline to submit applications. Members asked that a cover letter be requested along with the application. Ms. Cosgrove explained that the last time the Assembly went through this process, the Assembly asked staff to contact each of the candidates and run them through a short script/questionnaire to address their experience, etc... No one was weeded out through that process but staff reported back to the committee about the outcome of those conversations. Ms. Cosgrove noted that while a cover letter would provide some of that information, it shows those applicants who can write, or get someone who can write for them, but it does not provide the insights into their ability to communicate verbally, which for an attorney, is a big deal. Mr. Kiehl noted that had been extremely helpful, professional and neutral and very well done when staff provided that service for the Assembly when they went through this same process five years ago.

Mr. Koelsch asked about the background check process. Ms. Cosgrove said that generally it includes reference checking, to see what it out in the electronic sphere in terms of an internet search and they also look at court view.

Mr. Gregory asked if a credit check was done and suggested they go through a full background check from DMV similar to what their agency does when they do housing checks. That includes a full check in all 50 states as well as the TSA watchlist, etc... Ms. Cosgrove said they do not do that within regular CBJ processes, she asked Mr. Hargraves what they do with Hospital staff. Mr. Hargraves noted that they do not do a credit check but there is a comprehensive background check, including with fingerprints, but that is done through a state agency due to state laws

relating to health care. Ms. Cosgrove said there are some legal issues with checking people's credit and while she is not an expert in that, there is some cautions around that. She said that if that is something the Assembly is interested in, they can look into it and get back to the Assembly with answers. She noted that whomever is appointed to the position has to be a member in good standing of the Alaska Bar. She said they have not done those checks in the past for this type of position but they do that for other positions such as individuals who work with children, police officers, firefighters, vulnerable populations, etc...

Mr. Edwardson said he would agree that background checks would be cheap insurance and although the Bar Association does have high standards for certain things, complaints against lawyers are not public.

The Assembly then turned to discussing possible changes to the job announcement. Members asked for clarification of the August 6 date and whether applications would be considered if they were received after August 6. Mr. Hargrave stated that what this message communicates is that if you don't get it in by August 6, you may not have it reviewed but that you can still submit it after and it is possible that it may be reviewed.

Ms. Weldon said this provides latitude for the Assembly to begin the process and continue to accept applications after the August 6 date if they feel they have not found their chosen candidate. Ms. Cosgrove also explained that this is an exempt position and the Assembly is free to consider whomever they want at whatever time period they become aware that they are interested, regardless of what is written in the recruitment bulletin. It is not like a classified position and the Assembly has a lot of latitude with this process.

Ms. Weldon asked whether they need to address the appointment of an acting City Attorney for the interim period. Ms. Cosgrove said that as a practical matter, department heads appoint their acting replacement during personal leave periods. If it is a matter of appointing a vacant position, that would be appropriate for the Assembly to appoint an acting attorney. Mr. Koelsch asked what date is slated for Ms. Mead's last day in the office. Mr. Watt explained that at this time, it is anticipated to be August 17 unless they have to go to trial on the Gastineau litigation matter. He said if they are not on trial in that matter, it may be vacant earlier than August 17.

Mr. Nankervis suggested that they revisit this matter at the August 13 Assembly meeting during executive session if necessary.

#### **IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**

*None.*

**V. ADJOURNMENT**

There being no further business to come before the Assembly, the meeting was adjourned at 1:25 p.m.

Signed: \_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Signed: \_\_\_\_\_  
Kendell D. Koelsch, Mayor



Presented by: The Manager  
Introduced: August 13, 2018  
Drafted by: Finance

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2017-06(AY)**

**An Ordinance Appropriating to the Manager the Sum of Up to \$16,425 as Partial Funding for the Cold Weather Emergency Shelter (FY18); Grant Funding Provided by the Alaska Mental Health Trust Authority (The Trust).**

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

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

**Section 2. Appropriation.** There is appropriated to the manager the sum of up to \$16,425 as partial funding for the Cold Weather Emergency Shelter (FY18).

**Section 3. Source of Funds**

Alaska Mental Health Trust Authority (The Trust) Grant \$16,425

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager  
Introduced: 8/13/2018  
Drafted by: Finance

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2018-11(H)**

**An Ordinance Appropriating to the Manager the Sum of \$74,000 as Partial Funding for the Project Playground Rebuild Capital Improvement Project; Funding Provided by Community Donations Collected by the Juneau Community Foundation.**

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

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

**Section 2. Appropriation.** There is appropriated to the Manager the sum of \$74,000 as Partial Funding for the Project Playground Rebuild Capital Improvement Project.

**Section 3. Source of Funds:**

Juneau Community Foundation	\$74,000
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**Section 4. Effective Date.** This ordinance shall become effective upon adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager  
Introduced:  
Drafted by: A. G. Mead

**RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2831**

**A Resolution Amending the City and Borough of Juneau Personnel Rules.**

WHEREAS, the City and Borough Personnel Rules govern the rights and responsibilities of City and Borough employees, supervisors, and managers; and

WHEREAS, the Personnel Rules must be accurate, internally consistent, and in compliance with state and federal law; and

WHEREAS, the Personnel Rules should reflect modern human resource management practices; and

WHEREAS, from time to time, the Personnel Rules require review and update; and

WHEREAS, the Human Resources / Risk Management Department has reviewed and revised the Personnel Rules to provide clarification and general housekeeping, and to include new policies and procedures.

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

**Section 1. Amendment of Rules.** That the CBJ Personnel Rules are amended by the revision shown in the attached Exhibit "A".

**Section 2. Effective Date.** This resolution shall be effective immediately after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Kendell D. Koelsch, Mayor

Attest:

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Elizabeth J. McEwen, Municipal Clerk



# MEMORANDUM

DATE: August 9, 2018

TO: CBJ Assembly

FROM: Dallas Hargrave, HRRM Director

RE: Personnel Rule Changes

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## Background:

The CBJ is in the process of implementing a new automated time and attendance system. While defining business rules for that purpose, staff has identified a variety of housekeeping and minor rule changes that are needed to process payroll accurately and effectively. The overall effect is minor and the changes below primarily apply to non-represented staff.

To the extent that these rules also impact the pay practices of union members, the unions have been involved in discussing the needed changes and are in agreement with the necessary modifications. If needed, separate letters of agreement modifying the terms of existing collective bargaining agreements have been or will be negotiated.

## Modified Rules:

### 10 PR 100 Shift Differentials

This is a housekeeping change to clarify that an employee must work in excess of 2 continuous hours to be eligible for shift differential. In addition, language was added to clarify that employees working at the Fire Department in a 56 hour shift under the FLSA 7(k) exemption are not eligible for Shift Differentials.

### 10 PR 105 Standby Pay

This rule change allows Standby Pay to be calculated to the quarter hour. Previously this was paid in one tenth of an hour increment. In addition, language was added to clarify that employees working at the Fire Department in a 56 hour shift under the FLSA 7(k) exemption are not eligible for Standby Pay.

### 10 PR 145 Holiday Pay

This is rule change allows employees to remain eligible for holiday pay provided they are in some amount of pay status the day before and the day after the holiday. Prior to this rule change employees lost eligibility for holiday pay if they were not in full pay status either the day before or the day after the holiday.

Additionally, the calculation used to determine the holiday benefit for employees working less than a 37.5-hour schedule was revised. The new rules provides for the same calculation to be used for all part time employees regardless of whether they work a set or fluctuating schedule. The new method of calculation provides an almost identical benefit as the previous method. As a housekeeping item,

compensatory time taken was removed from the list of pay status items used in calculating the holiday benefit.

**11 PR 030 Minimum Leave Use**

This rule change sets a specific date that minimum leave must be used by and a date by which the unused required minimum leave will be deducted from an employee's leave bank. Minimum leave must be used by December 31 of each year and excess will be deducted on January 1.

**11 PR 035 Maximum Leave Carry-over**

This rule change sets a specific date of January 1<sup>st</sup> to review leave balances for leave accrued in excess of 150 days. This rule change provides that leave in excess of the maximum leave balances will be paid out to the employee rather than put into a banked medical leave account.

**19 PR 135 Instructor Pay**

This is a new rule created to be consistent with current practice at Eaglecrest and to correct a previous omission of this practice when Rule 19 was created. The Eaglecrest Board has approved this change with unanimous consent.

- (a) An employee assigned as a ski/snowboard instructor for a regular group lesson of 2 hours or for a regular private lesson shall receive an additional 1.00 for each student in the lesson.
- (b) An employee who is requested as a private ski/snowboard instructor shall receive an additional 5.00 for each student in the lesson.

The actual language changes to the Personnel Rules have been provided in the Resolution packet using the track changes function so that the changes what will be incorporated with the approval of the Resolution are evident. Thank you to your attention to this matter.

**RULE 10**  
**PAY**

**Section**

- 005. Scope**
  - 010. General**
  - 015. Basis of Pay**
  - 025. Beginning Pay**
  - 030. Advanced Step Placement**
  - 035. Former Employee**
  - 040. Promoted Employee**
  - 045. Pay Range Increase**
  - 050. Involuntary Demotion**
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  - 055. Voluntary Demotion**
  - 060. Transferred Employee**
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  - 070. Appointment Effective Date**
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  - 125. Overtime Rate**
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  - 135. Maximum Compensatory Time**
  - 140. Compensatory Time Payment**
  - 145. Holiday Pay**
  - 150. Total Remuneration**
- (Res. No. 2370, 2006; 2422(c), 2007)*

**10 PR 005. Scope.**

This Rule covers all employees in the classified and partially exempt service except the City Manager, the City Attorney, and classified employees of the Eaglecrest Ski Area. Classified employees of the Eaglecrest Ski Area are covered under Rule 19. *(Res. No. 2370, 2006)*

**10 PR 010. General.**

The Human Resources and Risk Management Director shall allocate classifications to pay ranges based on the classification plan. (*Res. No. 2370, 2006*)

**10 PR 015. Basis of Pay.**

(a) An employee is paid according to the pay range assigned to the position occupied by the employee.

(b) An employee paid on a salary basis who works less than full time shall be paid on a prorated basis.

(c) An employee paid on a salary basis who consistently works in excess of 45 hours per week shall be paid on an alternate schedule. (*Res. No. 1875, 1997; 2370, 2006; 2582; 2011*)

**10 PR 025. Beginning Pay.**

Except as provided in 10 PR 030 (advanced step placement), 10 PR 035 (former employee), 10 PR 040 (promoted employee), 10 PR 050 (involuntary demotion), 10 PR 051 (ADA Reassignment) or 10 PR 055 (voluntary demotion), the beginning pay of a newly appointed employee is step 1 of the pay range of that classification. (*Res. No. 2370, 2006; 2422(c), 2007; 2649, 2013*)

**10 PR 030. Advanced Step Placement.**

(a) The City Manager may authorize advanced step placement when the applicant selected for the position is exceptionally qualified or when recruitment is exceedingly difficult. For the purposes of this rule, exceptionally qualified shall be defined as education or work experience that exceeds the minimum qualifications for the position and job class.

(b) The City Manager may authorize advance step placements for a specific job classification when recruitment is exceedingly difficult. In such instances, the step placement of employees occupying the same job classification may be reviewed and adjusted upward based on the service of the employee, the step at which the employee was originally appointed, and the advanced step that is authorized for the new appointee. (*Res. No. 2370, 2006*)

**10 PR 035. Former Employee.**

(a) A department director may make an advanced step placement for a former employee eligible for non-competitive re-employment under 5 PR 060 provided the appointment is to the same job classification and the advanced step does not exceed a step formerly held by the employee.

(b) A department director, with the approval of the Human Resources and Risk Management Director, may make an advanced step placement for a former employee eligible for non-

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competitive re-employment under 5 PR 060 to a closely related job classification at the same or a lesser pay range than that formerly held by the employee. (*Res. No. 2370, 2006*)

**10 PR 040. Promoted Employee.**

(a) A promoted employee shall be provided at least a two step increase in the range of the classification from which promoted but shall not be placed in the new pay range at a step higher than his or her current step. If the monetary equivalent of a two step increase places an employee at a step higher than his or her current step, the employee shall receive the dollar amount of the two step increase and be placed in a holding step until the additional step is earned. When this occurs, the City Manager may authorize a wage increase on the employee's next merit anniversary date.

(b) The merit anniversary of a promoted employee is the first day of the regular pay period following the completion of the probationary period. (*Res. No. 2370, 2006; 2740, 2016*)

**10 PR 045. Pay Range Increase.**

(a) An employee occupying a position that is reallocated to a higher pay range is placed in a step of the higher range in the same manner as a promoted employee.

(b) The merit anniversary of an employee advanced in pay range because the position is reallocated will not change.

**10 PR 050. Involuntary Demotion.**

(a) An employee demoted for cause enters the new range at a step no higher than the one occupied in the former range.

(b) The merit anniversary of an employee involuntarily demoted to a job classification formerly held will not change.

(c) An employee involuntarily demoted because the position the employee occupies is allocated to a lower pay range enters the new range as follows:

(1) If the current pay rate is the same as a step in the lower range, the employee enters the lower range at that step.

(2) If the current pay rate falls between steps in the lower range the rate remains frozen until the next merit anniversary, at which time the employee is placed at the higher step.

(3) If the current pay rate exceeds the maximum of the lower range:

(A) The employee's pay rate is frozen for a maximum of 24 months. If adjustments to the pay schedule cause the assigned range to encompass the frozen rate, the employee is placed at that step in the range closest to, but not less than the frozen rate.



(B) If the frozen rate continues to exceed the assigned range after the passage of 24 months, the employee is placed in the maximum step of the range and the pay rate reduced, at which time the employee shall be paid a lump sum equal to the difference between the value of the employee's accumulated leave calculated at the former rate of pay and the value calculated at the new rate of pay. (*Res. No. 1961, 1998; 2370, 2006*)

**10 PR 051. ADA Reassignment.**

(a) An employee who is reassigned as a reasonable accommodation under the Americans with Disabilities Act shall enter the new range at a step no higher than the one the employee occupied in the former range.

(b) The employee shall serve a new probationary period and establish a new merit anniversary.

(c) An employee who undergoes a reduction in pay due to an ADA Reassignment shall be paid a lump sum equal to the difference between the value of the employee's accumulated leave calculated at the former rate of pay and the value calculated at the new rate of pay. (*Res. No. 2422(c), 2007*)

**10 PR 055. Voluntary Demotion.**

(a) An employee who is voluntarily demoted to a classification formerly held shall enter the lower range at the step the employee would have earned had the employee remained in the former classification. The merit anniversary of the employee shall not change, and the employee shall not serve a new probationary period, if the employee formerly held permanent status in the job class.

(b) An employee who requests a voluntary demotion to a classification not formerly held enters the lower range at a step determined by the department director provided, however, that the step placement does not exceed the rate one step below the higher range placement. The employee shall serve a new probationary period and establish a new merit anniversary.

(c) An employee who undergoes a voluntary demotion shall be paid a lump sum equal to the difference between the value of the employee's accumulated leave calculated at the former rate of pay and the value calculated at the new rate of pay. (*Res. No. 1961, 1998*)

**10 PR 060. Transferred Employee.**

(a) The merit anniversary and step placement of an employee transferred with no change in job classification will not change due to the transfer.

(b) The step placement of an employee transferred to a closely related job classification will not change. The merit anniversary will not change unless the employee serves an amended probationary period. (*Res. No. 2370, 2006*)

**10 PR 065. Change of Occupation.**

(a) Except as otherwise provided in these Rules, the beginning pay for an employee appointed to a position in an unrelated classification is step 1 of the pay range.

(b) The merit anniversary of an employee who changes occupations will be the first day of the regular pay period following completion of the probationary period. (*Res. No. 2370, 2006; 2649, 2013*)

**10 PR 070. Appointment Effective Date.**

The normal effective date of all appointments is the employee's first day of work. However, when the first day of the pay period is Saturday, Sunday or a holiday and the employee's first day of work is the first scheduled work day of the pay period the effective date of the appointment is the first day of the pay period.

**10 PR 075. Merit Anniversary Date.**

(a) The merit anniversary date of a probationary employee appointed is the first day of the regular pay period following completion of the probationary period.

(b) The merit anniversary date of a full time partially exempt employee is the first day of the regular pay period following 26 pay periods of service.

(c) The merit anniversary date of a full time employee shall be advanced one pay period for each 10 days of leave without pay. (*Res. No. 1875, 1997; 2051, 2000; 2370, 2006*)

**10 PR 080. Merit Increase.**

(a) Steps 2 through 13 in the pay schedule recognize merit. Permanent and partially exempt employees are eligible for merit increases.

(b) A merit increase of 1 step in the pay range is given to a permanent or partially exempt employee who receives an overall performance rating of "acceptable" or better. Such increase is due when the employee establishes a merit anniversary date in accordance with 10 PR 075 and on the employee's merit anniversary date thereafter according to the following schedule:

(1) Steps 2 through 6: 1 year of service. One year of service is defined as 1,950 hours in pay status or twelve months of continuous service, whichever is greater.

(2) Steps 6 through 13: 2 years of service. Two years of service is defined as 3,900 hours in pay status or 24 months of continuous service, whichever is greater.

(A) For the purpose of implementing steps "11" through "13", any employee who has served at least two years at "10" step shall move to "11" step effective July 30, 2012. Such employees shall

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be eligible to move to “12” step on their established merit anniversary date subsequent to serving two years at “11” step, as defined in (2) above.

(B) For the purpose of implementing revisions to the percentage increments between step “6” and step “13”, effective July 1, 2013, the following conversion shall be implemented:

Former Step	New Step	Effect on Merit Anniversary Date Advancement
F	6	No change
J	7	Increase by 26 pay periods
K	7	No change
L	8	Increase by 26 pay periods
M	8	No change
N	9	Increase by 26 pay periods
O	9	No change
P	10	Increase by 26 pay periods

(3) Employees who are appointed at Steps 6 through 13 must serve an additional one year of service defined as 1,950 hours in pay status or twelve months of continuous service, whichever is greater, after establishing a merit anniversary date prior to receiving a merit increase unless the provisions of 10 PR 080(c) are invoked.

(c) The City Manager may grant an additional merit increase or advance the merit anniversary date by twelve months to an employee who receives an overall performance rating of “outstanding”, and where other exceptional circumstances exist.

(d) A Department Director may grant a merit increase to a long term temporary project employee on the same basis as a partially exempt employee provided the employee’s performance is overall “acceptable” or better. (*Res. No. 1875, 1997; 2328, 2005; 2320, 2005; 2370, 2006; 2422(c), 2007; 2582, 2011; 2622, 2012; 2649, 2013*)

#### **10 PR 085. Merit Increase Not Earned.**

(a) If an employee receives an overall performance rating of “acceptable –“ (acceptable minus) the employee shall not be eligible for a merit increase.

(b) The employee’s merit anniversary date does not change when a step increase has not been earned due to less than acceptable performance.

(c) If the employee’s overall performance rating reaches “acceptable” a step increase will be given effective the first day of the pay period following the “acceptable” evaluation.

(d) Should a merit increase be withheld, the supervisor must implement a performance improvement plan consistent with the provisions of 8 PR 025. (*Res. No. 2370, 2006*)

**10 PR 090. Step Reduction.**

- (a) If an employee receives an overall performance rating of “unacceptable” the department director may reduce the employee’s step placement by one step in accordance with 13 PR 025.
- (b) The employee’s merit anniversary date does not change when a step has been reduced or restored. The reduction is effective the first day of the pay period following written notice to the employee. Not less than 2 pay periods must pass before a step reduction may be restored.
- (c) If the employee’s overall performance rating reaches “acceptable” the former step will be restored effective the first day of the pay period following the “acceptable” evaluation.
- (d) If an employee receives a step reduction, the supervisor must implement a performance improvement plan consistent with the provisions of 8 PR 025. (*Res. No. 2370, 2006; 2422(c), 2007*)

**10 PR 095. Increased Responsibilities Differential.**

- (a) An hourly employee temporarily assigned some of the duties of a higher level position because the incumbent is on leave or the position is vacant is paid an increased responsibilities differential.
- (b) When two or more employees are assigned to work without an on-site supervisor the department director may designate one of the employees as a temporary lead worker. The temporary lead worker is paid an increased responsibilities differential for each hour of the assignment.
- (c) To be eligible for an increased responsibilities differential an employee must assume the responsibilities for not less than 7.5 hours; however, the differential is retroactive to the first hour of the assignment.
- (d) Temporary assignment of duties under this section may not exceed 26 weeks.
- (e) Increased responsibilities pay is available only to an employee paid an hourly rate.

**10 PR 097. Temporary Supervision Pay.**

When two or more employees in different pay ranges are assigned to a work function while the supervisor is not available for more than 1 work day and up to 2 pay periods, the department director may designate in writing one of the employees as temporary supervisor. It will be the temporary supervisor’s responsibility to direct the work in order to continue to fulfill the function. This section does not apply to employees paid on a salary basis or employees whose position description includes responsibility for assuming the duties of the supervisory position in the absence of the supervisor. (*Res. No. 2342, 2005; 2370, 2006*)

**10 PR 098. Acting in a Higher Range Pay.****(a) Regular Compensation for Acting in a Higher Range**

(1) When an employee is assigned to perform the duties of a higher classification under 5 PR 025, the employee shall be paid according to the pay range allocation of the higher level position. Step placement in the higher pay range shall be the same as if the employee were promoted to the higher classification.

(2) An employee who is acting in a higher range is not eligible for the higher job class rate of pay when on leave. Leave time shall not reduce the overall duration of the acting in a higher range appointment.

**(b) Overtime Compensation for Acting in a Higher Range Appointment.** An hourly employee appointed to a higher level job class in a salaried position remains eligible for overtime pay.

**(c) Overtime Compensation for a Salaried employee working in an Hourly position.** A salaried employee who works out of class in an hourly position and who works the majority of his or her work day performing the duties that are normally compensated at an hourly rate of pay, shall be eligible for overtime compensation for hours exceeding the thresholds defined in 10 PR 120(a)-(c) (Overtime Defined). (*Res. No. 2342, 2005; 2370, 2006; 2422(c), 2007; 2582, 2011*)

**10 PR 100. Shift Differentials.**

Only those employees who are paid on an hourly basis, who regularly work 37.5 hours per week or more, and whose work schedule includes in excess of 2 continuous hours between the hours of 4:00 p.m. and 8:00 a.m. are eligible for shift differentials.

**(a)** Hours worked between 4:00 p.m. and midnight will be paid at shift differential "A". The hourly premium pay rate associated with shift differential provided in 18 PR 015.

**(b)** Hours worked between midnight and 8:00 a.m. will be paid at shift differential "B". The hourly premium pay rate associated with shift differential provided in 18 PR 015.

**(c)** An hourly employee working at the Fire Department who is assigned to a 56 hour shift under the FLSA 7(k) exemption is not eligible for shift differential pay.  
(*Res. No. 1875, 1997; 2370, 2006; 2831, 2018*)

**10 PR 105. Standby Pay.**

**(a)** An employee assigned to standby duty is paid standby pay for each hour of standby duty. For purposes of calculating standby pay, time shall be rounded to the nearest quarter-hour.

**(b)** If called back the employee is paid at the overtime rate and standby pay ceases.

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(c) An employee monitoring a pager is not on standby duty unless specifically instructed to monitor and respond to pager calls.

(d) Standby duty is not credited to an employee for purposes of determining overtime eligibility.

(e) Standby pay is available only to an employee paid an hourly rate and who regularly works 37.5 hours or more per week.

(f) An hourly employee working at the Fire Department who is assigned to a 56 hour shift under the FLSA 7(k) exemption is not eligible for Standby Pay.

*(Res. No. 1875; 2831, 2018)*

#### **10 PR 110. Call Out.**

(a) The supervisor shall notify an employee at least 24 hours prior to the beginning of any extra duty, excluding the extension of an employee's regular shift. If less than 24 hours notice is given the extra duty is a call out

(b) The minimum call out is for 1 hour of work.

(c) An employee is paid at the overtime rate for all hours worked as the result of a call out.

(d) Call out pay is available only to an employee paid an hourly rate and who regularly works 37.5 hours or more per week. *(Res. No. 1875, 1997; 2370, 2006)*

#### **10 PR 115. Sixth and Seventh Day.**

(a) A full time employee paid an hourly rate who works a sixth or seventh day is paid for a minimum of 2 hours.

(b) In those instances that the minimum work is not available the difference between the employee's actual duty and the minimum is recorded and paid as show-up compensation.

(c) Show-up compensation is not credited to an employee for purposes of determining overtime eligibility. *(Res. No. 2370, 2006)*

#### **10 PR 120. Overtime Defined.**

(a) Except as otherwise provided, all work in excess of 40 hours in a week, excluding those hours already paid at the overtime rate, is paid at the overtime rate.

(b) The employer may establish an alternative overtime threshold for fire protection and law enforcement employees under the 7(k) exemption of the Fair Labor Standards Act. Employees subject to the alternative overtime threshold will be notified.

(c) The overtime rate of pay is time and one-half (1 ½) an employee's regular hourly rate of pay.

(d) All work on a holiday as defined in these Rules is paid at the overtime rate of pay, unless the holiday has been compensated for by an alternate day off or by increased personal leave credit.

(e) An employee who works 7.5 hours or more without a lunch break of at least 0.5 hour in duration will be paid at the overtime rate for 0.5 hour.

(f) Overtime pay is available only to an employee paid an hourly rate.

(g) If an operational exigency causes an employee to work for a period of time such that the employee is unable to achieve sufficient rest before the start of a scheduled shift, a department director is authorized to grant the employee up to eight hours of administrative leave so that the employee receives sufficient rest before reporting to work. A new workday or new work week shall not cause an employee who has not had a sufficient rest period to lose overtime eligibility. "Sufficient rest" is generally defined as 8 hours away from work.

*(Res. No. 2342, 2005; 2370, 2006; 2476, 2009; 2797, 2017)*

#### **10 PR 125. Overtime Rate.**

The overtime rate for an hourly paid employee is 1.5 times the normal hourly rate.

#### **10 PR 130. Overtime Payment.**

(a) Overtime is paid as wages or as compensatory time.

(b) An employee may request that overtime be credited as compensatory time.

(c) The department director must determine that the crediting or use of compensatory time will not result in any increased costs or scheduling hardships prior to authorizing the crediting or use of compensatory time.

#### **10 PR 135. Maximum Compensatory Time.**

(a) An employee's compensatory time balance may not exceed 100 hours on the first day of any pay period. All excess hours are to be paid as wages.

(b) No compensatory time other than that earned during pay periods starting between November 21 through December 31 may remain credited to the account of an employee after the first day of the first pay period starting in January.

(c) Compensatory time may not be taken in the same pay period that it is earned. The Department Director can authorize such use under extenuating circumstances. *(Res. No. 1875, 1997; 2069, 2001; 2370, 2006; 2582, 2011)*

**10 PR 140. Compensatory Time Payment.**

An employee is paid at the employee's regular rate of pay for all time that is deducted from the employee's compensatory time account.

**10 PR 145. Holiday Pay.**

(a) Permanent and probationary employees, , who are not compensated for holidays by accruing additional personal leave, are paid for each holiday provided the employee was in pay status the work day immediately preceding the holiday and the work day immediately following the holiday. Employees occupying part-time limited and seasonal part-time positions are not eligible for holiday pay except as provided in 7 PR 025(f). For the purposes of this provision, pay status shall include an employee who is in furlough status.

(1) Employees with a regular work schedule of 37.5 hours per week receive 7.5 hours pay for each holiday.

(2) Employees with a regular work schedule of 40 hours or more per week will receive 8 hours pay for each holiday

(3) Employees with a regular work schedule of less than 37.5 hours per week shall receive holiday pay that is based on the average number of hours worked per week over the 10 weeks immediately preceding the pay period the holiday falls in. For the purposes of computing the amount of time per week, all hours credited to regular pay, personal leave, or holiday pay shall count. Time worked in overtime status, or call back or show up pay shall not be included. (*Res. No. 2282, 2004; 2370, 2006; 2622; 2012; 2831, 2018*)

**10 PR 150. Total Remuneration.**

No salary, wage or benefit may be paid to an employee except as provided in these rules, by ordinance or resolution of the Assembly, or as required by state or federal law

**RULE 11  
LEAVE**

**Section  
005. Scope**



**010. Accrual Rates**  
**012. Personal Leave Cash-in**  
**016. Reserved**  
**017. Reserved**  
**020. Accrual During Unauthorized Leave**  
**025. Leave Anniversary**  
**030. Minimum Leave Use**  
**035. Maximum Leave Carry-over**  
**040. Use of Personal Leave**  
**045. Direction to Take Leave**  
**050. Bereavement Leave**  
**055. Banked Medical Leave**  
**060. Use of Leave to Supplement Workers' Compensation**  
**065. Leave Without Pay**  
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**070. Cancellation of Leave**  
**075. Effect of Leave Without Pay**  
**080. Adjustment of Anniversary Dates**  
**081. Employee Furlough**  
**085. Court Leave**  
**090. Military Leave Without Pay**  
**095. Military Leave with Pay**  
**100. Emergency Service Leave**  
**105. Maximum Paid Military and Emergency Service Leave**  
**110. Donation of Leave**  
**115. Seasonal Leave**  
**120. Medical Leave on Separation**  
**125. Personal Leave on Separation**  
**130. Parent-Teacher Conference Leave**  
*(Res. No. 2069, 2001; 2370, 2006; 2422(c), 2007; 2476, 2009; 2618, 2012)*

**11 PR 005. Scope.**

This Rule covers absences from regularly scheduled work for employees with probationary, permanent, partially exempt, long term temporary or acting in a higher range status. Part time limited and short term temporary employees shall not be subject to personal leave accrual or use.  
*(Res. No. 2370, 2006; 2618, 2012)*

**11 PR 010. Accrual Rates.**

(a) Employees who are assigned to a 37.5 hour work week and who are paid an hourly rate accrue personal leave at the rate of:

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(1) 6.1 hours for each full biweekly pay period of work for employees with less than one year of service;

(2) 7 hours for each full biweekly pay period of work for employees with one but less than two years of service;

(3) 7.8 hours for each full biweekly pay period of work for employees with two but less than five years of service;

(4) 8.7 hours for each full biweekly pay period of work for employees with five but less than ten years of service;

(5) 10.4 hours for each full biweekly pay period of work for employees with ten years or more of service.

(b) Employees who are assigned to a 40 hour work week and who are paid an hourly rate accrue personal leave at the rate of:

(1) 6.5 hours for each full biweekly pay period of work for employees with less than one year of service;

(2) 7.4 hours for each full biweekly pay period of work for employees with one but less than two years of service;

(3) 8.3 hours for each full biweekly pay period of work for employees with two but less than five years of service;

(4) 9.3 hours for each full biweekly pay period of work for employees with five but less than ten years of service;

(5) 11.1 hours for each full biweekly pay period of work for employees with ten years or more of service.

(c) Full time employees who are paid a salary accrue personal leave at the rate of:

(1) .81 of a day for each full biweekly pay period of work for employees with less than one year of service;

(2) .93 of a day for each full biweekly pay period of work for employees with one but less than two years of service;

(3) 1.04 of a day for each full biweekly pay period of work for employees with two but less than five years of service;

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(4) 1.16 of a day for each full biweekly pay period of work for employees with five but less than ten years of service

(5) 1.39 of a day for each full biweekly pay period of work for employees with ten years or more of service.

(d) Leave accrual for part-time employees and other employees not assigned to a 37.5 hour work week is prorated according to a schedule established by the Human Resources and Risk Management Director.

(e) Years of service for the purpose of computing personal leave includes all full-time probationary, permanent, acting in a higher range, long term temporary, and partially exempt service with the CBJ that is subject to these rules. Less than full-time probationary, permanent, acting in a higher range, and partially exempt service is prorated according to a schedule established by the Human Resources and Risk Management Director.

(f) Reserved.

(g) If a former employee who left in good standing returns to CBJ service within 10 years of separation, the employee shall be placed at the level of leave accrual formerly held.

(h) The City Manager may, at his or her discretion, authorize an advanced leave accrual rate.

(i) Reserved. (*Res. No. 1875, 1997; 2370, 2006; 2422(c), 2007; 2618, 2012*)

#### **11 PR 012. Personal Leave Cash-in.**

(a) An employee may cash in personal leave if the following requirements are met:

- 1) the employee's leave balance after the cash-in is not less than 21 days;
- 2) the leave cash-in does not exceed the equivalent of 15 work days per calendar year; and
- 3) the leave cash-in request is for a minimum of 5 days.

(b) 21 days is equal to:

- 1) 157.5 hours for an employee assigned to a 37.5 hour work week
- 2) 168 hours for an employee assigned to a 40 hour work week
- 3) 236 hours for an employee assigned to a 24/48 hour duty cycle

(c) 15 days is equal to:

- 1) 112.5 hours for an employee assigned to a 37.5 hour work week
- 2) 120 hours for an employee assigned to a 40 hour work week
- 3) 168 hours for an employee assigned to a 24/48 hour duty cycle

**(d) Administration.**

- (1) Application for personal leave cash-in shall be made in writing to the Payroll Supervisor.
- (2) Leave cash-in will be included in the employee's regular payroll check.
- (3) A request for leave cash-in must be received no later than the last Friday of the pay period if the leave cash in is to be included in the paycheck for that pay period.
- (4) The equivalencies established in subsection (a) shall be proportionately reduced for an employee assigned to work less than a full time schedule.
- (5) The personal leave cash-in does not count toward minimum leave use requirements.

(e) An employee may cash in personal leave as necessary and without regard to the limitations in subsection (a) in order to purchase health insurance through the employer while on leave without pay.

(f) Notwithstanding the provisions of 11 PR012 (a), an employee may cash in an unlimited amount of accrued personal leave provided that the employee's leave balance is not less than 21 days and the employee has taken a minimum of 21 days of leave in the leave year in which the cash in request is made. (*Res. No. 2016, 2000; 2223, 2003; 2370, 2006; 2476, 2009*)

**11 PR 016. Reserved.** (*2370, 2006; 2500, 2009; 2618; 2012*)

**11 PR 017. Reserved.** (*Res. No. 2370, 2006; 2500, 2009; 2618; 2012*)

**11 PR 020. Accrual During Unauthorized Leave.**

Leave is not accrued for any pay period during which an employee is absent without approved leave or due to disciplinary leave. (*Res. No. 2370, 2006; 2740, 2016*)

**11 PR 025. Leave Anniversary.**

(a) An employee's leave anniversary is the first day of the pay period immediately following the pay period in which the employee is appointed.

(b) A change to an employee's rate of accrual is effective on the employee's leave anniversary.

**11 PR 030. Minimum Leave Use.**

(a) An employee must use not less than one-third of personal leave accrued by December 31<sup>st</sup>. Leave cashed in or donated shall not count as use for purposes of this rule.

(b) An employee is exempt from the minimum use requirement to the extent the employee's personal leave balance would be reduced to less than 30 days.

(c) Minimum leave not used will be deducted from the employee's leave balance on January 1st. An employee may not receive any credit or compensation for deducted leave. (*Res. No. 2069, 2001; 2370, 2006; 2618; 2012; 2831, 2018*)

**11 PR 035. Maximum Leave Carry-over.**

(a) Accrued personal leave may not exceed 150 days on January 1, except with the written authorization of the City Manager. Leave in excess of 150 days on January 1 will be paid out to the employee.

(b) At the request of the department director, the City Manager may permit the carry-over of leave in excess of 150 days when the City Manager determines that the employee made every reasonable effort to schedule leave and the department director denied the leave requests because of extraordinary circumstances.

(1) The department director must submit to the City Manager a plan providing for the timely use of the excess leave.

(2) Granting carry-over of leave may not cause any hardship to the CBJ beyond the benefit to be gained by granting such leave carry-over. (*Res. No. 1875, 1997; 2069, 2001; 2342, 2005; 2370, 2006; 2422(c), 2007; 2618, 2012; 2831, 2018*)

**11 PR 040. Use of Personal Leave.**

(a) Personal leave may be granted at any time the work load permits with the prior approval of the employee's supervisor.

(b) Personal leave for medical reasons must be granted if the supervisor is satisfied that:

(1) The employee is sick or disabled to the extent that the employee cannot perform regular duties;

(2) The employee's presence on the job would jeopardize the health or safety of fellow employees;  
or

(3) To care for the employee's child, spouse, domestic partner, or parent who is ill or injured if such illness or injury requires the employee's presence.

(c) Personal leave may also be used for Family Medical Leave purposes consistent with the provisions of 11 PR 067.

(d) A department director may require an employee to provide a statement from a health care provider or other acceptable proof that the conditions of this section have been satisfied before authorizing use of personal leave.

(e) An employee is required to promptly advise the supervisor or department director of his or her absence and the reason for his or her absence when requesting the use of unscheduled leave.

(f) An employee may be authorized to take no more than two weeks of personal leave for the period immediately preceding his or her resignation. The Department Director, with approval

from the Human Resources and Risk Management Director, may grant an additional two weeks of personal leave for extenuating circumstances. The employee must return to work status prior to separating from service. (*Res. No. 1619, 1993; 2370, 2006*)

#### **11 PR 045. Direction to Take Leave**

A supervisor or department director may direct an employee to use accrued leave when necessary to assure the employee uses the minimum required leave or when the employee's accumulated leave may exceed the maximum carry-over.

#### **11 PR 050. Bereavement Leave.**

An employee may use personal or banked medical leave when the employee notifies his or her supervisor or department director that a member of the employee's immediate family has died. Bereavement leave entitlement is limited to 2 weeks. (*Res. No. 1619, 1993, 2223; 2370, 2006; 2618, 2012*)

#### **11 PR 055. Banked Medical Leave.**

(a) An employee who has banked medical leave may take such leave only when one of the following conditions exists:

(1) The employee has no accrued personal leave and the employee is sick or disabled to the extent that the employee cannot attend to the employee's regular duties.

(2) The employee has no accrued personal leave and the illness or disability of a member of the employee's immediate family requires the attendance of the employee.

(3) The employee has an FMLA qualifying condition exceeding one working day. In such instances the use of banked medical leave begins on the second day of absence.

(4) The employee's absence is due to an on-the-job injury with the Employer which qualifies as a workers' compensation claim to the extent that the employee's absence is not covered by workers' compensation.

(5) The employee has no accrued personal leave and the absence is due to the death of the employee's immediate family member, in which case the use of medical leave is limited to 2 weeks. A department director may require a physician's statement or other acceptable proof that an employee's condition meets the requirements of this section before authorizing the use of banked medical leave.

(b) Banked medical leave cannot be cashed in when an employee separates from CBJ service. Employees who are reemployed with the CBJ to a position that accrues leave within three calendar years of separation, and who had banked medical leave upon separation, shall have their medical leave bank restored. (*Res. No. 1875, 1997; 2223, 2003; 2370, 2006; 2618, 2012*)

**11 PR 060. Use of Leave to Supplement Workers' Compensation.**

(a) An employee may supplement workers' compensation payments with the use of personal or banked medical leave provided the employee's net compensation does not exceed what the employee would have received had the employee worked a regular schedule.

(b) Employees receiving workers' compensation are on leave without pay for that time covered by the payments. (*Res. No. 1875, 1997; 2370, 2006; 2618, 2012*)

**11 PR 065. Leave Without Pay.**

(a) An employee may be granted leave without pay provided the leave does not cause hardships to the CBJ. Except as provided in 11 PR 067, 11 PR 115, and 13 PR 020, and employee may not take leave without pay if the employee has accrued compensatory or personal leave available for use.

(b) An employee who is paid a salary may not be charged leave without pay for less than a full day increment.

(c) An employee who is paid a salary and who has no accrued personal leave will be advanced personal leave in increments of less than one day to prevent being charged leave without pay for less than one day.

(d) The maximum personal leave indebtedness for an employee who is paid a salary is two days.

(e) Leave without pay in excess of 20 days in a calendar year must be approved by the City Manager unless authorized as family/medical leave under the provisions of 11 PR 067.

(f) An employee who has no accrued personal or banked medical leave will be granted leave without pay for family/medical leave purposes consistent with 11 PR 067.

(g) An employee may be granted up to ten days of leave without pay, regardless of hardship caused to the CBJ, if the absence is due to the death of a member of the employee's immediate family. (*Res. No. 1875, 1997; 2015, 2000; 2223, 2003; 2370, 2006; 2582, 2011; 2618, 2012*)

**11 PR 067. Family/Medical Leave.**

Administrative Policy 08-03R, Family Medical Leave Policy, or the successor policy(ies) is hereby incorporated by reference at Appendix A. (*Res. No. 1875, 1997; 2370, 2006; 2618, 2012*)

**11 PR 070. Cancellation of Leave.**

The CBJ retains the right to cancel pre-approved leave when circumstances require such cancellation. (*Res. No. 2370, 2006*)

**11 PR 075. Effect of Leave Without Pay.**

During each pay period an employee uses leave without pay, the employee accrues leave and other benefits on the same prorated basis as a part-time employee. Employer provided contributions to the employee's health insurance coverage may also be impacted as provided in 17 PR 015. (*Res. No. 2740, 2016*)

**11 PR 080. Adjustment of Anniversary Dates.**

The leave anniversary and the merit anniversary of a full time employee are set forward 1 pay period for each 10 days of leave without pay. (*Res. No. 1875, 1997; 2370, 2006*)

**11 PR 081. Employee Furloughs.**

The City Manager may, at his or her discretion, authorize a period of employee furlough on a voluntary or mandatory basis to reduce the operating costs of the organization. An employee may be placed on furlough even if the employee has a personal leave balance. The provisions of 11 PR 075 and 11 PR 080 shall not apply to furlough periods. (*Res. No. 2476, 2009; 2622, 2012*)

**11 PR 085. Court Leave.**

(a) An employee called to serve as a juror or subpoenaed as a witness to testify concerning matters within the scope of employment or incidents observed while on duty may receive court leave.

(b) An employee required on his or her regularly scheduled workday to serve as a juror or witness shall be paid his or her regular wage for the time spent in court or the length of the shift, whichever is less. The employee shall remit to CBJ all juror or witness fees for such service.

(c) Court leave must be supported by written documents such as a subpoena or court clerk's statement of attendance. (*Res. No. 2069, 2001*)

**11 PR 090. Military Leave Without Pay.**

An employee is entitled to leave without pay to serve on active duty in the United States uniformed services and is entitled to the reemployment benefits granted under the Uniformed Services Employment Reemployment Rights Act (USERRA). (*Res. No. 2370, 2006*)

**11 PR 095. Military Leave with Pay.**

(a) An employee who is a member of a reserve component of the United States uniformed services is entitled to a leave of absence without loss of pay for that time during which the employee is ordered to training duty, as distinguished from active duty, or for field exercises, for instruction with troops or when under direct military control for search and rescue missions.



(b) An employee who is called to active duty by the governor is entitled to 5 paid work days of military leave per year (January 1 through December 31).

**11 PR 100. Emergency Service Leave.**

An employee who is a member of an auxiliary or rescue component of the United States armed forces or a federal, state, or local emergency services organization may be granted emergency service leave with pay for the performance of fire suppression, search, rescue or similar emergency missions under direct military, federal, state or CBJ control.

**11 PR 105. Maximum Paid Military and Emergency Service Leave.**

The combined total of paid military leave and paid emergency service leave for an employee may not exceed 16.5 days in a calendar year.

**11 PR 110. Donation of Leave.**

(a) The City Manager may allow an employee to donate a maximum of 30 days or 50 percent of accrued personal leave, whichever is less, provided that the donation does not reduce the employee's total leave balance to less than 12 days.

(b) The transfer of leave may only be made:

(1) To an employee who is on leave without pay and whose absence from work is due to:

(A) Authorized Family Medical Leave or Family Medical Leave qualifying event,

(B) The death of a member of the employee's immediate family, or

(C) The employee is on approved military or emergency service leave per 11 PR 100.

(2) To a member of the immediate family of a deceased employee.

(c) Unused donated leave will be returned to the donor.

(d) Leave donated to another employee may not be credited toward the donor's minimum leave use requirement.

(e) Leave donated by an employee who is paid an hourly rate is given a cash value by multiplying the number of hours donated by the regular hourly rate of the donor. Leave donated by an employee who is paid a salary must be in full day increments which will be given a value as provided for in these rules.

(1) The cash value is given to the family of the deceased employee, or

(2) The cash value is divided by the regular hourly rate or the daily pay rate of the recipient and the recipient's medical leave bank is credited with that number of hours or days resulting from the calculation.

(f) Notwithstanding the provisions of (a) above, an employee who holds more than one leave accruing position may donate leave to themselves for periods of approved leave when leave accrued in one leave accruing assignment is needed to prevent the employee from going into a period of leave without pay in another leave accruing assignment. In such cases, leave donated from one position to the other will be credited on the same basis as if the employee was donating leave to another employee as provided in (e) above. (*Res. No. 2004, 1999; 2370, 2006; 2618, 2012; 2740, 2016*)

#### **11 PR 115. Seasonal Leave.**

(a) A seasonal employee will receive the cash value of his or her personal leave at the end of the season and be placed in leave without pay status until the work season resumes except that,

(b) A seasonal employee may retain a personal leave balance not to exceed 160 hours if the employee so requests prior to the end of the work season.  
(*Res. No. 2618, 2012*)

#### **11 PR 120. Medical Leave on Separation.**

All banked medical leave is canceled on separation from service. An employee may not receive any credit or compensation for canceled leave. (*Res. No. 2370, 2006; 2618, 2012*)

#### **11 PR 125. Personal Leave on Separation.**

(a) An employee separating from employment will receive, within 30 days of separation, terminal leave in the form of a lump sum payment for the personal leave balance at time of separation.

(b) An employee reemployed during terminal leave must refund an amount equal to the compensation covering the period between the date of reemployment and expiration of the terminal leave. The leave represented by the refund will be credited to the personal leave account of the employee. (*Res. No. 2069, 2001; 2370, 2006; 2618, 2012*)

#### **11 PR 130. Parent-Teacher Conference Leave.**

A parent or guardian of a student enrolled in a school or a licensed day care facility within the city and borough may apply for a maximum of 1.5 hours leave to attend a conference with that child's teacher. Such leave will be without loss of pay, and may be granted no more than twice in a single school year to the same employee for conferences regarding the same child. A supervisor may grant parent-teacher conference leave only in advance upon presentation by the employee of

written verification of the date and time of the conference and a written finding by the supervisor that the leave can be accommodated without imposing added cost or inefficiencies in the work place. Supervisors shall make every reasonable effort to accommodate parent-teacher conference leave. (*Res. No. 1835, 1996*).

**RULE 19**  
**EAGLECREST SKI AREA PAY**

**Section**

**005. Scope**

**010. General**

**015. Basis of Pay**

**025. Beginning Pay**  
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**035. Former Employee**  
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**045. Pay Range Increase**  
**050. Involuntary Demotion**  
**051. ADA Reassignment**  
**055. Voluntary Demotion**  
**060. Transferred Employee**  
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**120. Maximum Compensatory Time**  
**125. Compensatory Time Payment**  
**130. Holiday Pay**  
**133. Instructor Pay**  
**135. Total Remuneration**  
*(Res. No. 2370, 2006; 2422(c), 2007; 2500, 2009)*

**19 PR 005. Scope.**

This Rule covers the pay provisions for all Eaglecrest employees. *(Res. No. 2422(c), 2007)*

**19 PR 010. General.**

The Human Resources and Risk Management Director shall allocate classifications to pay ranges based on the classification plan.

**19 PR 015. Basis of Pay.**

(a) An employee is paid according to the pay range assigned to the position occupied by the employee.

(b) An employee paid on a salary basis who works less than full time shall be paid on a prorated basis.

**19 PR 025. Beginning Pay.**

Except as provided in 19 PR 030 (advanced step placement), 19 PR 035 (former employee), 19 PR 040 (promoted employee), 19 PR 050 (involuntary demotion), 19 PR 051 (ADA Reassignment) or 19 PR 055 (voluntary demotion), the beginning pay of a newly appointed employee is step A of the pay range of that classification. *(Res. No. 2422(c), 2007)*

**19 PR 030. Advanced Step Placement.**

The Eaglecrest General Manager may authorize advanced step placement when the applicant selected for the position is exceptionally qualified. For the purposes of this rule, exceptionally qualified shall be defined as education or work experience that exceeds the minimum qualifications for the position and job class, as well as the education and work experience of the other candidates in the applicant pool. Advanced step placement will limit or preclude the probationary employee's eligibility for proficiency steps under 19 PR 075.

**19 PR 035. Former Employee.**

(a) The Eaglecrest General Manager may make an advanced step placement for a former employee eligible for non-competitive re-employment under 5 PR 060 provided the appointment is to the same job classification and the advanced step does not exceed a step formerly held by the employee.

(b) The Eaglecrest General manager, with the approval of the Human Resources and Risk Management Director, may make an advanced step placement for a former employee eligible for non-competitive re-employment under 5 PR 060 to a closely related job classification at the same or a lesser pay range than that formerly held by the employee.

**19 PR 040. Promoted Employee.**

A promoted employee shall be placed at a step in the new pay range at least equal to the hourly rate of pay in the previous range, but shall not be placed in the new pay range at a step higher than his or her current step. *(2582, 2011)*

**19 PR 045. Pay Range Increase.**

An employee occupying a position that is reallocated to a higher pay range is placed in a step of the higher range in the same manner as a promoted employee.

**19 PR 050. Involuntary Demotion.**

(a) An employee demoted for cause enters the new range at a step no higher than the one occupied in the former range.

(b) An employee involuntarily demoted because the position the employee occupies is allocated to a lower pay range enters the new range as follows:

- (1) If the current pay rate is the same as a step in the lower range, the employee enters the lower range at that step.
- (2) If the current pay rate falls between steps in the lower range the rate remains frozen until the employee is eligible for a step increase in accordance with 19 PR 085, at which point the employee is placed at the next higher step.
- (3) If the current pay rate exceeds the maximum of the lower range:
  - (A) The employee's pay rate is frozen for a maximum of 24 months. If adjustments to the pay schedule cause the assigned range to encompass the frozen rate, the employee is placed at that step in the range closest to, but not less than the frozen rate.
  - (B) If the frozen rate continues to exceed the assigned range after the passage of 24 months, the employee is placed in the maximum step of the range and the pay rate reduced, at which time the employee shall be paid a lump sum equal to the difference between the value of the employee's accumulated leave calculated at the former rate of pay and the value calculated at the new rate of pay.

#### **19 PR 051. ADA Reassignment**

- (a) An employee who is reassigned as a reasonable accommodation under the Americans with Disabilities Act shall enter the new range at a step no higher than the one the employee occupied in the former range.
- (b) The employee shall serve a new probationary period and establish a new merit anniversary.
- (c) An employee who undergoes a reduction in pay due to an ADA Reassignment shall be paid a lump sum equal to the difference between the value of the employee's accumulated leave calculated at the former rate of pay and the value calculated at the new rate of pay. (*Res. No. 2422(c), 2007*)

#### **19 PR 055. Voluntary Demotion.**

- (a) An employee who is voluntarily demoted to a classification formerly held shall enter the lower range at the step the employee would have earned had the employee remained in the former classification. The employee shall not serve a new probationary period if the employee formerly held permanent status in the job class.
- (b) An employee who requests a voluntary demotion to a classification not formerly held enters the lower range at a step determined by the Eaglecrest General Manager provided, however, that the step placement does not exceed the rate one step below the higher range placement. The employee shall serve a new probationary period.

Effective August 13, 2018 Resolution No. 2831

(c) An employee who undergoes a voluntary demotion shall be paid a lump sum equal to the difference between the value of the employee's accumulated leave calculated at the former rate of pay and the value calculated at the new rate of pay.

**19 PR 060. Transferred Employee.**

(a) The status and step placement of an employee transferred with no change in job classification will not change due to the transfer.

(b) The step placement of an employee transferred to a closely related job classification will not change. The Eaglecrest General Manager, in conjunction with the Human Resources and Risk Management Director, will determine if the employee shall serve a new probationary period.

**19 PR 065. Change of Occupation.**

Except as otherwise provided in these Rules, the beginning pay for an employee appointed to a position in an unrelated classification is step A of the pay range.

**19 PR 070. Appointment Effective Date.**

The normal effective date of all appointments is the employee's first day of work. However, when the first day of the pay period is Saturday, Sunday or a holiday and the employee's first day of work is the first scheduled work day of the pay period the effective date of the appointment is the first day of the pay period.

**19 PR 075. Proficiency Steps.**

(a) A probationary employee shall be eligible for proficiency steps provided that the employee has made acceptable progress in completing his or her training plan. Proficiency steps shall be granted at the beginning of the pay period.

(b) Except in the case of 19 PR 086, the granting of a proficiency step shall not place the probationary employee above "D" step.

(c) Acceptable progress in completing the training plan shall be documented in writing by the employee's supervisor. The decision to award a proficiency step shall be at the sole discretion of the Eaglecrest General Manager.

(d) The Eaglecrest General Manager shall provide a specific methodology for what demonstrates acceptable progress in completing a training plan. The methodology must be approved by the Human Resources and Risk Management Director. (*Res. No. 2422(c), 2007; 2649, 2013*)

**19 PR 080. Merit Anniversary Date.**

The merit anniversary date is the first day of the pay period that begins on or after July 1<sup>st</sup>. (*Res. No. 2422(c), 2007; 2500, 2009*)

**19 PR 085. Merit Increase.**

(a) A merit increase of 1 step in the pay range shall be given to an employee who is at step D or above and receives an overall performance rating of “acceptable plus”.

(b) A merit increase of 2 steps in the pay range shall be given to an employee who is at step D or above and receives an overall performance rating of “outstanding”.

(c) The Eaglecrest General Manager may grant an additional merit increase to an employee who is at step D or above and receives an overall performance rating of “outstanding”, and where other exceptional circumstances exist.

(d) Notwithstanding subsections (a) – (c) above, the decision to grant merit increases during any fiscal year is at the sole discretion of the Eaglecrest General Manager. (*Res. No. 2422(c), 2007; 2582, 2011*)

**19 PR 086. Step Increase for Instructor Certifications.**

Certified Instructors of the Snow Sports School shall be eligible to earn a step increase for obtaining additional PSIA/AASI certifications outside of the employee’s primary discipline. Step increases shall be limited to one step for each additional snow sport discipline. Certified Instructors shall also be eligible to earn a step increase for obtaining PSIA/AASI accreditation. No more than two step increases can be earned as a result of accreditation. The earned step increase will go into effect the first day of the pay period following approval by the Snow Sports Director. (*Res. No. 2500, 2009*)

**19 PR 090. Step Reduction.**

(a) If an employee receives an overall performance rating of “acceptable minus” the Eaglecrest General Manager may reduce the employee’s step placement by one step in accordance with 13 PR 025.

(b) The reduction is effective the first day of the pay period following written notice to the employee. Not less than 2 pay periods must pass before a step reduction may be restored.

(c) If the employee’s overall performance rating reaches “acceptable” the former step will be restored effective the first day of the pay period following the “acceptable” evaluation.

(d) If an employee receives a step reduction, the supervisor must implement a performance improvement plan consistent with the provisions of 8 PR 025. (*Res. No. 2422(c), 2007*)

**19 PR 095. End of Season Bonus.**

The Eaglecrest General Manager, in consultation with the Human Resources and Risk Management Director, may authorize an end of season bonus to be paid to employees who successfully complete the ski season.



**19 PR 100. Acting in a Higher Range Pay.**

(a) Regular Compensation for Acting in a Higher Range

(1) When an employee is temporarily assigned to perform the duties of a higher classification under 5 PR 025, the employee shall be paid according to the pay range allocation of the higher level position. Step placement in the higher pay range shall be the same as if the employee were promoted to the higher classification.

(2) An employee who is acting in a higher range is not eligible for the higher job class rate of pay when on leave. Leave time shall not reduce the overall duration of the acting in a higher range appointment.

(b) Overtime Compensation for Acting in a Higher Range Appointment. .

(1) An hourly employee appointed to a higher level job class in a salaried position is not eligible for overtime pay for time worked in the salaried position, regardless of whether the duties performed are associated with an hourly or salaried position.

(2) A salaried employee who works out of class in an hourly position shall be eligible for overtime compensation for hours exceeding the thresholds defined in 19 PR 105.

**19 PR 105. Overtime Defined.**

(a) All work in excess of 40 hours in a week, excluding those hours already paid at the overtime rate, is paid at the overtime rate.

(b) Overtime pay is available only to an employee paid an hourly rate.

**19 PR 110. Overtime Rate.**

The overtime rate for an hourly paid employee is 1.5 times the normal hourly rate.

**19 PR 115. Overtime Payment.**

(a) Overtime is paid as wages or as compensatory time.

(b) An employee may request that overtime be credited as compensatory time.

(c) The Eaglecrest General Manager must determine that the crediting or use of compensatory time will not result in any increased costs or scheduling hardships prior to authorizing the crediting or use of compensatory time.

**19 PR 120. Maximum Compensatory Time.**

(a) An employee's compensatory time balance may not exceed 100 hours on the first day of any pay period. All excess hours are to be paid as wages.

(b) No compensatory time other than that earned during pay periods starting between November 21 through December 31 may remain credited to the account of an employee after the first day of the first pay period starting in January.

(c) Compensatory time shall not be used in the pay period it is earned. The Eaglecrest General Manager may grant an exception to this rule under extenuating circumstances. (*Res. No. 2582, 2011*)

**19 PR 125. Compensatory Time Payment.**

An employee is paid at the employee's regular rate of pay for all time that is deducted from the employee's compensatory time account.

**19 PR 130. Holiday Pay.**

Permanent full time employees and Eaglecrest seasonal employees who work on a holiday listed in 7 PR 026 shall have a day of leave credited to their leave account. Eaglecrest limited positions are not eligible for Holiday pay. (*Res. No. 2618, 2012*)

**19 PR 133 Instructor Pay**

- (a) An employee assigned as a ski/snowboard instructor for a regular group lesson of 2 hours or for a regular private lesson shall receive an additional 1.00 for each student in the lesson.
- (b) An employee who is requested as a private ski/snowboard instructor shall receive an additional 5.00 for each student in the lesson.

(Res. No. 2831, 2018)

**19 PR 135. Total Remuneration.**

No salary, wage or benefit may be paid to an employee except as provided in these rules, by ordinance or resolution of the Assembly, or as required by state or federal law.

# MEMORANDUM

CITY/BOROUGH OF JUNEAU  
155 SOUTH SEWARD STREET, JUNEAU, ALASKA 99801

TO: Rorie Watt  
City and Borough Manager

DATE: August 8, 2018

FROM: Greg Smith  
Contract Administrator

File No.: 1970

SUBJ: BID RESULTS: JNU RSA IMPROVEMENTS – PHASE 2C – RE-BID  
Contract No. BE18-213

Bids were opened on the subject project on July 27, 2018. SECON was the sole bidder. The bid protest period expired at 4:30 p.m. on July 30, 2018. Results of the bid opening are as follows:

Responsive Bidders	Base bid 1 (NWDA)	Base bid 2 (NEDA)	Alternate No. 1	Alternate No. 2	Alternate No. 3	Total Bid
<b>SECON</b>	<b>\$3,580,360.00</b>	<b>\$1,722,326.00</b>	<b>3,153,920.00</b>	<b>165,600.00</b>	<b>132,650.00</b>	<b>\$8,754,856.00</b>
<i>Architect's Estimate</i>	\$3,345,759.00	\$1,468,854.00	3,391,065.00	118,600.00	105,825.00	\$8,430,103.00

Airport Project Manager: Mike Greene

Project Description: This project consists of drainage improvements, aircraft tie downs, asphalt pavement, taxiway edge lighting adjustments,) to the Northwest Development Area (NWA) and Northeast Development Area (NEDA), extension of geothermal loop field (NEDA and Alternates. Additive Alternate No. 1

NE Development Area (NEDA)-East Side generally consists of drainage improvements; aircraft tie-downs; hot mix asphalt pavement; pavement marking.

Additive Alternate 2

NW Development Area Water & Sewer (Non-AIP Eligible) generally consists of installation of water and sewer mains; installation of service connections to existing hangars; installation of service stub outs to future hangars.

Additive Alternate 3

Aircraft Wash Down Facility generally consists of construction of a new aircraft wash down facility in the NWDA and associated power, water, and sanitary sewer utilities.

Funding Source:

AIP 3-02-0133-073-2017 FAA - \$10,103,038

F215 Temp AIP 73 Match \$392,515

F215 Temp Contingency \$393,800

F215 Sales Tax Temporary \$281,020

PFC 8 AIP 73 Match \$281,020

Total Project Funds: \$11,451,393.00  
CIP No. A50-091  
Construction Encumbrance: \$8,754,856  
Construction Contingency: \$875,485  
In-House or Consultant] Design: \$96,472  
In-House or Consultant] Contract Administration/Inspection: \$700,390  
CBJ Administrative costs: \$262,645

Staff recommends award of this project to SECON for the total amount bid of \$8,754,856.00

Approved: \_\_\_\_\_  
Duncan Rorie Watt, City & Borough Manager

\_\_\_\_\_  
Date of Assembly Approval:

C: CBJ Purchasing  
Patricia Wahto, Airport Manager  
Mike Greene, Airport Project Manager



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

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

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

Main: 907.269.0350

July 16, 2018

City & Borough of Juneau

Attn: City Clerk

Via Email: [mcb\\_notice@juneau.org](mailto:mcb_notice@juneau.org)

<b>License Number:</b>	10266
<b>License Type:</b>	Standard Marijuana Cultivation Facility
<b>Licensee:</b>	The Fireweed Factory LLC
<b>Doing Business As:</b>	THE FIREWEED FACTORY LLC
<b>Physical Address:</b>	8415 Airport Blvd. Space B Juneau, AK 99801
<b>Designated Licensee:</b>	Paul Disdier
<b>Phone Number:</b>	907-957-2670
<b>Email Address:</b>	pvdalaska@gci.net

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

3 AAC 306.060 states that the board will uphold a local government protest and deny an application for a marijuana establishment license unless the board finds that a protest by a local government is arbitrary, capricious, and unreasonable.

At the May 15, 2017, Marijuana Control Board meeting, the board delegated to me the authority to approve renewal applications with no protests, objections, or notices of violation. However, if a timely protest or objection is filed for this application, or if any notices of violation have been issued for this license, the board will consider the application. In those situations, a temporary license may be issued pending board consideration.

If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,

*Erika McConnell*

Erika McConnell  
Director



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Commerce, Community,  
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

Main: 907.269.0350

July 13, 2018

City & Borough of Juneau

Attn: City Clerk

Via Email: [mcb\\_notice@juneau.org](mailto:mcb_notice@juneau.org)

<b>License Number:</b>	10800
<b>License Type:</b>	Retail Marijuana Store
<b>Licensee:</b>	The Fireweed Factory LLC
<b>Doing Business As:</b>	THE FIREWEED FACTORY LLC
<b>Physical Address:</b>	237 Front Street Juneau, AK 99801
<b>Designated Licensee:</b>	Paul Disdier
<b>Phone Number:</b>	907-957-2670
<b>Email Address:</b>	thefireweedfactory@gmail.com

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

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At the May 15, 2017, Marijuana Control Board meeting, the board delegated to me the authority to approve renewal applications with no protests, objections, or notices of violation. However, if a timely protest or objection is filed for this application, or if any notices of violation have been issued for this license, the board will consider the application. In those situations, a temporary license may be issued pending board consideration.

If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,

*Erika McConnell*

Erika McConnell  
Director



THE STATE  
of **ALASKA**  
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Department of Commerce, Community,  
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

Main: 907.269.0350

July 16, 2018

City & Borough of Juneau

Attn: City Clerk

VIA Email: [mcb\\_notice@juneau.org](mailto:mcb_notice@juneau.org)

<b>License Number:</b>	10844
<b>License Type:</b>	Retail Marijuana Store
<b>Licensee:</b>	Green Elephant, LLC
<b>Doing Business As:</b>	GREEN ELEPHANT, LLC
<b>Physical Address:</b>	101 Mill St. Suite B Juneau, AK 99801
<b>Designated Licensee:</b>	Jennifer Canfield
<b>Phone Number:</b>	907-209-7663
<b>Email Address:</b>	greenelephantalaska@gmail.com

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

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If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,

*Erika McConnell*

Erika McConnell  
Director



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

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

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

Main: 907.269.0350

July 16, 2018

City & Borough of Juneau

Attn: City Clerk

VIA Email: [mcb\\_notice@juneau.org](mailto:mcb_notice@juneau.org)

<b>License Number:</b>	10315
<b>License Type:</b>	Standard Marijuana Cultivation Facility
<b>Licensee:</b>	Green Elephant, LLC
<b>Doing Business As:</b>	GREEN ELEPHANT, LLC
<b>Physical Address:</b>	101 Mill St. Suite A Juneau, AK 99801
<b>Designated Licensee:</b>	Richard Dudas
<b>Phone Number:</b>	907-321-5886
<b>Email Address:</b>	greenelephantalaska@gmail.com

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

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If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,

*Erika McConnell*

Erika McConnell  
Director





THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

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

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

Main: 907.269.0350

June 28, 2018

City & Borough of Juneau

Attn: City Clerk

Via Email: [mcb\\_notice@juneau.org](mailto:mcb_notice@juneau.org)

<b>License Number:</b>	10270
<b>License Type:</b>	Standard Marijuana Cultivation Facility
<b>Licensee:</b>	Top Hat, LLC
<b>Doing Business As:</b>	TOP HAT, LLC
<b>Physical Address:</b>	2315 Industrial BLVD Suite A Juneau, AK 99801
<b>Designated Licensee:</b>	John Nemeth
<b>Phone Number:</b>	907-290-3433
<b>Email Address:</b>	<a href="mailto:john@thcalaska.com">john@thcalaska.com</a>

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

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Sincerely,

*Erika McConnell*

Erika McConnell  
Director



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

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

Main: 907.269.0350

June 28, 2018

City & Borough of Juneau

Attn: City Clerk

Via Email: [mcb\\_notice@juneau.org](mailto:mcb_notice@juneau.org)

<b>License Number:</b>	10271
<b>License Type:</b>	Marijuana Product Manufacturing Facility
<b>Licensee:</b>	Top Hat Concentrates, LLC
<b>Doing Business As:</b>	TOP HAT CONCENTRATES, LLC
<b>Physical Address:</b>	2315 Industrial BLVD Suite B Juneau, AK 99801
<b>Designated Licensee:</b>	John Nemeth
<b>Phone Number:</b>	907-290-3433
<b>Email Address:</b>	john@thcalaska.com

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

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If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,

*Erika McConnell*

Erika McConnell  
Director

Presented by: The Manager  
Introduced: 8/13/2018  
Drafted by: Finance

TRANSFER REQUEST FOR THE CITY AND BOROUGH OF JUNEAU,  
ALASKA

SERIAL NUMBER T-1004

It is hereby ordered by the Assembly of the City and Borough of Juneau,  
Alaska, that \$160,000 be transferred:

From: CIP

R72-128	Pavement Management	\$160,000
---------	---------------------	-----------

To: CIP

R72-061	Industrial Boulevard Match	\$160,000
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The \$160,000 consists of:

Sales Tax Areawide	\$160,000
--------------------	-----------

Moved and Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
D. Rorie Watt, City Manager

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

City and Borough of Juneau

Capital Project Budget Summary Report

Impact of Budget Action:                      Transfer T-1004

Budget Action and Project Funding Impacts

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

Project No.	Transfer From	Transfer	Project Budget		Remaining Funds		Comments	Sales Tax Areawide
			Before	After	Before	After		
R72-128	Pavement Management	160,000	\$ 890,000	\$ 730,000	\$ 406,415	\$ 246,415	Ongoing	160,000.00
				\$ -		\$ -		
	Total Transfer	160,000	\$ 890,000	\$ 730,000	\$ 406,415	\$ 246,415		160,000.00

Project No.	Transfer To	Transfer	Project Budget		Remaining Funds		Comments	Sales Tax Areawide
			Before	After	Before	After		
R72-061	Industrial Boulevard Match	160,000	\$ 1,365,428	\$ 1,525,428	\$ 1,143,589	\$ 1,303,589	Ongoing	160,000.00
			\$ -	\$ -	\$ -	\$ -		
	Total Transfer	160,000	\$ 1,365,428	\$ 1,525,428	\$ 1,143,589	\$ 1,303,589		160,000.00

Presented by: The Manager  
Introduced: July 23, 2018  
Drafted by: Finance

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2017-06(AV)**

**An Ordinance Appropriating to the Manager the Sum of \$9,387 as Partial Funding for the Industrial Boulevard Capital Improvement Project; Funding Provided by the State of Alaska Department of Transportation.**

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

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

**Section 2. Appropriation.** There is appropriated to the manager the sum of \$9,387 as partial funding for the Industrial Boulevard CIP.

**Section 3. Source of Funds**

Alaska Department of Transportation Refund \$9,387

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Beth J. McEwen, Municipal Clerk

Presented by: The Manager  
Introduced: July 23, 2018  
Drafted by: Finance

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2018-11(D)**

**An Ordinance Appropriating to the Manager the Sum of up to \$29,492 as Funding for Multiple Training Events for the Juneau Police Department; Grant Funding Provided by the United States Department of Justice, Office of Justice Programs, FY17 Edward Byrne Memorial Justice Assistance Grant (JAG) Program.**

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

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

**Section 2. Appropriation.** There is appropriated to the Manager the sum of up to \$29,492 as funding for multiple training events for the Juneau Police Department.

**Section 3. Source of Funds**

U.S. Department of Justice	\$29,492
----------------------------	----------

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager  
 Introduced: 7/23/2018  
 Drafted by: Finance

## ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-11(E)

**An Ordinance Appropriating to the Manager the Sum of \$2,245,538 as Funding for various Capital Improvement Projects at the Juneau International Airport; Funding Provided by Passenger Facility Charge Fees.**

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

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

**Section 2. Appropriation.** There is appropriated to the Manager the sum of \$2,245,538 as reimbursement for forward funding previously provided for the following Juneau International Airport Capital Improvement Projects.

Conduct Master Plan Study	\$ 61,227
Rehabilitate Taxiways A&E (Design & Construction)	\$1,125,000
Rehabilitate Airport Access Road	\$ 64,610
Construct NE & NW Apron	\$228,251
Rehabilitate ARFF Building	\$ 50,000
Construct Snow Removal Equipment Building (SREB)	\$ 72,750
Construct Sand, Chemical & Fueling Facility	<u>\$643,700</u>
<b>Total</b>	<b>\$2,245,538</b>

### Section 3. Source of Funds

FY18/FY19 Passenger Facility Charge (PFC9) collections: \$2,245,538

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



Presented by: The Manager  
Introduced: 7/23/2018  
Drafted by: Finance

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2018-11(F)**

**An Ordinance Appropriating to the Manager the Sum of \$1,972,000 as Funding for the Juneau International Airport Gate 2 Passenger Boarding Bridge Capital Improvement Project; Funding Provided by the Federal Aviation Administration and Sales Tax Revenue.**

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

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

**Section 2. Appropriation.** There is appropriated to the Manager the sum of \$1,972,000 as Funding for the Juneau International Airport Gate 2 Passenger Boarding Bridge Capital Improvement Project.

**Section 3. Source of Funds**

Federal Aviation Administration (FAA) grant:	\$1,801,875
Sales Tax Revenue	\$ 170,125

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager  
Introduced: 7/23/2018  
Drafted by: Finance

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2018-11(G) (b)**

**An Ordinance Appropriating to the Manager the Sum of \$361,000 as Supplemental Funding for Capital City Fire & Rescue; Funding Provided by General Fund's Fund Balance.**

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

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

**Section 2. Appropriate.** There is appropriated to the Manager the sum of \$361,000, as supplemental funding to Capital City Fire & Rescue for additional staffing.

**Section 3. Source of Funds.**

General Fund's Fund Balance	\$ 361,000
-----------------------------	------------

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

Adopted this \_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager  
Introduced:  
Drafted by: A. G. Mead

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2018-28**

**An Ordinance Amending the Land Use Code Related to Mining.**

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

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

**Section 2. Amendment of Article.** CBJ 49.65 Article I Exploration and Mining, is repealed in its entirety and reenacted to read:

**ARTICLE I EXPLORATION AND MINING**

**49.65.110 Purpose.**

(a) The purpose of this article is to foster the development of a safe, healthy, and environmentally sound mining industry while protecting the overall interests of public health, safety, and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. To the extent the City and Borough is not preempted from doing so under state or federal law, this article:

(1) Establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct mining operations, and to provide for final

reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface;

(2) Reasonably regulates areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law;

(3) Authorizes the commission to condition a mining permit to the extent necessary to mitigate external adverse impacts and for the protection of the environment and public health, safety, and general welfare.

(b) This article does not regulate surface or subsurface water; geothermal resources; sand or gravel; common varieties of construction aggregate; or natural oil, gas, coal, or peat or their associated byproducts, except to the extent that such substances are developed or extracted as a mining byproduct in a mining operation of a large or small mine.

(c) The director may require a permit to be obtained or notice given for federally approved activities on federal lands, including unpatented mining claims, to allow for the director's review, so long as the purpose of the review process is not to deny use or expressly prohibit mining.

(d) To minimize the burden on the applicant to provide duplicative information required by this article, at the applicant's request, the director may rely on information provided in permit applications submitted to state or federal agencies for the proposed mining operation.

**49.65.115 General applicability.**

(a) For the purpose of identifying those areas within the City and Borough within which surface disturbance or subsidence in support of exploration or mining activities is prohibited,

1  
2  
3 the Mining and Exploration Surface Activities Exclusion District Maps A—F, dated June 5,  
4 2006, as may be amended by the assembly by ordinance, is adopted. Except as otherwise  
5 provided, mining and related activities may be conducted elsewhere within the City and  
6 Borough subject to the provisions of this article.

7 (b) This article does not regulate subsurface mining within or outside of the district except  
8 that subsidence within the district is prohibited. It is not the intent of this article to  
9 unreasonably limit or nullify private property rights.  
10

11 (c) For the purpose of regulating exploration and mining activities within the City and  
12 Borough, the Urban/Rural Mining District Map, dated June 5, 2006, as may be amended by the  
13 assembly by ordinance, is adopted.

14 (d) Mines located in the Rural Mining District that will undergo environmental review by  
15 state agencies, federal agencies, or both, shall be permitted as allowable uses pursuant to CBJ  
16 49.15.320 and shall not be subject to this article. In permitting such mines, the commission  
17 may impose conditions under CBJ 49.15.320(f)(1)—(8) and any additional conditions relating to  
18 traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches,  
19 landslides, and erosion deemed necessary by the commission.  
20

21 (e) For the purposes of this article:

22 (1) *Exploration* means the process of advanced mineral commodity investigation  
23 subsequent to prospecting and prior to development.

24 (2) *Large mine* means a mining operation involving more than 20 acres of affected  
25 surface disturbance; or having 75 or more personnel employed at the mining operation in  
the City and Borough, whether direct employees or employees of independent contractors,

1  
2  
3 in any consecutive three-month period; or a mining operation that a federal agency has  
4 determined would involve a major federal action significantly affecting the quality of the  
5 human environment so that the preparation of an environmental impact statement in  
6 accordance with NEPA is required.

7 (3) *Mining operation* means the development, construction or reclamation of a mine,  
8 including associated infrastructure, or the exploitation or extraction of a mineral  
9 commodity from its occurrence on or in the earth, or the operation of a mine. The term  
10 "mining operation" includes open pit mining, placer mining and underground mining, and  
11 the disposal of refuse, tailings or waste rock from any such operation. The term "mining  
12 operation" also includes transporting, concentrating, milling, evaporating and other on-site  
13 processing. The term "mining operation" does not include off-site smelting, refining,  
14 cleaning, preparing, transportation or other surface operations not conducted on the  
15 affected surface.  
16

17 (4) *Small mine* means a mining operation other than a large mine.  
18

19  
20 **49.65.120 Exploration notices and procedures.**

21 (a) In order to ensure that mining exploration is conducted in accordance with the  
22 environmental, health, safety, and general welfare concerns of the City and Borough, mining  
23 exploration activities are prohibited except as provided in this section.

24 (b) Any applicant intending to conduct exploration operations must submit to the director a  
25 notice of mining exploration application, on a form specified by the director, and the processing  
fee specified in CBJ 49.85.100.

(c) A notice of mining exploration application must include the following information:

(1) A map identifying the area of the intended exploration activities on a scale no smaller than a scale of 1: 1,000, where one inch equals one mile;

(2) The proposed exploration schedule;

(3) The plan for reclamation of the area to be disturbed by the exploration activities, including information about the methodology and cost of such reclamation sufficient to enable the director to determine an appropriate financial warranty; and

(4) Copies of any prospecting permits, notices of intent to conduct exploration, or operating plans filed with any federal or state agency. An applicant shall supplement this information as needed with all modifications, revisions, and amendments to any permit application or plan submitted to any federal or state agency by the applicant, or with copies of any amended permits or plan approvals received by the applicant from any state or federal agency.

(d) Upon determining that the exploration application is complete and that the required processing fee has been paid, the director shall determine whether a financial warranty will be required in accordance with CBJ 49.65.140, unless preempted by state or federal law. The director shall notify the applicant within 20 days after receiving the applicant's notice of intent whether a financial warranty will be required or waived. The requirement of a financial warranty may be waived if the director determines that a financial warranty is not necessary to ensure compliance with the requirements of this article. The waiver shall be in writing and shall set for the reasons for the waiver.

(e) When the applicant has either submitted the required financial warranty or the director has notified the applicant that the financial warranty requirement is waived or the CBJ preempted from requiring a warranty, the applicant shall be authorized to conduct exploration activities in accordance with the exploration notice. In conducting exploration operations, the applicant shall comply with all applicable federal, state and City and Borough laws, rules, and regulations.

(f) Upon completion of exploration activities and all necessary reclamation, the applicant shall notify the director that exploration and reclamation are complete and shall submit a map on a scale no smaller than a scale of 1: 1,000, where one inch equals one mile, showing the location of the exploration and reclamation activities.

(g) *Procedure for release of financial warranty.*

(1) Unless preempted by state or federal law, the director shall ~~may~~ inspect the area of exploration to determine whether reclamation has been completed in accordance with CBJ 49.65.149. ~~within 60 days of receiving notification of completion, or as soon as weather conditions permit.~~ If the director finds that the reclamation satisfies the standards of CBJ 49.65.149(b), either by the director's own review or in reliance upon a state or federal reclamation inspection or both, the financial warranty shall be ~~promptly~~ released. If the director finds that the standards have not been satisfied, the director shall notify the applicant of the additional steps necessary to achieve compliance with CBJ 49.65.149. The director shall give the applicant a reasonable time to complete reclamation and request another inspection. If the director, after re-inspection or review, is not satisfied that the standards of CBJ 49.65.149(b) have been met, the director may declare so much of the financial warranty as



necessary forfeited and, after notice and an opportunity for the applicant to appeal pursuant to CBJ 49.65.176, apply the financial warranty to complete reclamation.

(2) Release of the financial warranty or notice to the applicant that the reclamation standards have not been met shall be given to the applicant no later than six months after the applicant has provided notice that exploration and reclamation are complete, as required by subsection (f) of this section.

#### **49.65.125 Permit application requirements for all mines.**

(a) Except as provided in CBJ 49.65.115(c), no new mine shall commence mining operations unless the applicant has obtained a conditional use permit pursuant to Chapter 49.15, Article III, as modified by this article.

(b) Applications, on a form specified by the director, shall be submitted to the director along with the fee required by CBJ 49.85.100, unless modified as provided in this section, and the following information:

- (1) Information establishing the right to use the affected surface;
- (2) A map showing the location of the mine site and the affected surface for that mine on a scale no smaller than a scale of 1: 1,000, where one inch equals one mile;
- (3) A description and timetable of the proposed mining operation, including:
  - (i) The anticipated duration of the mining operation;
  - (ii) A description of all roads, buildings, processing, and related facilities or proposed infrastructure;
  - (iii) The mining plan;

- (iv) The plan for reclamation;
  - (v) The potential environmental, health, safety, and general welfare impacts of the proposed operation, including neighboring property impacts, and a description of the measures to be taken to mitigate the adverse effects of such impacts; and
  - (vi) A description of the methods to be used to control, treat, transport, and dispose of any hazardous substances, sewage, and solid waste;
- (4) Certification that there will be no affected surface or significant subsidence within the boundaries of the Mining and Exploration Surface Activities Exclusion District;
  - (5) Any additional information determined by the director to be necessary to allow the director, after reviewing the application, to evaluate the proposed mining operation's compliance with CBJ 49.15.330 and 49.65.145;
  - (6) Any other information requested by the director in relation to the pre-application conference held under CBJ 49.15.330(b); and
  - (7) Copies of any state or federal permits issued in relation to the proposed mining operation, including the reclamation plan approved by the state under AS 27.19.030 and information related to any financial assurance required by the state under AS 27.19.040.
- (c) In addition to the materials required by subsection (b), permit applications for large mines must include the following additional information:
- (1) The mining operations labor force characteristics and timing;
  - (2) Payroll projections; and

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3 (3) Unless waived by the director, the socioeconomic impact assessment required by  
4 CBJ 49.65.130, and any additional information determined by the director to be necessary  
5 to complete the assessment.

6 (d) To the extent that the information required by this section has been provided by the  
7 applicant as part of any application submitted by the applicant to a state or federal agency, the  
8 applicant may rely on that application. The applicant shall provide the director with a copy of  
9 each state or federal application being relied upon, a cross-reference to the relevant portions of  
10 those applications, and a report on the current status of the applications.

11 (e) The requirement to provide information under this section is continuing throughout the  
12 duration of the application process, and supplemental information regarding any changes in  
13 the information reasonably requested must be provided to the director.

14 (f) *Processing fee.* The fee for processing the application shall be as specified in CBJ  
15 49.85.100, and is in addition to any fee required by CBJ 49.65.130 for the socioeconomic impact  
16 assessment, or any fee for a professional consultant as provided by CBJ 49.65.135. While this  
17 fee is intended to cover the City and Borough's reasonable costs of review, after receipt of the  
18 application the director may determine that the cost of review is likely to substantially exceed  
19 the fee specified in CBJ 49.85.100. In that case, the director may, after consultation and  
20 discussion with the applicant, recommend an additional fee to the assembly. Such additional  
21 fee shall be approved by the assembly by motion and shall be set in an amount that will, as far  
22 as can be determined, cover the cost of reviewing the application, including reasonable  
23 administrative and overhead expenses. In recommending the additional fee, the director may  
24 consider any factors deemed relevant, including: the amount of staff effort required to  
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adequately review the application; the involvement in the review process of other governmental agencies, either through a federal environmental review process or other procedure; the necessity for extraordinary travel and transportation costs that may be incurred by the director during review; the potential benefit of information generated by the application review to other mining operations or to the City and Borough; and the necessity for extraordinary communication, duplication, or publication costs arising from the review.

**49.65.130 Socioeconomic impact assessment for large mines.**

(a) A socioeconomic impact assessment evaluating the reasonable and foreseeable beneficial and adverse impacts, both direct and indirect, of the proposed mining operation on existing and future local conditions, facilities, and services shall be prepared by the director, or a consultant retained by the director for that purpose, unless waived. The director may waive all or part of the socioeconomic impact assessment when the director determines either that the information is not essential to evaluate the impacts the mining operation will have on the City and Borough, or that the proposed mining operation will cause no meaningful or significant impacts. A waiver shall be in writing and shall set forth the reasons for the waiver.

(b) The impact assessment should include an evaluation of all reasonable, foreseeable, and demonstrable impacts of the proposed mining operation on transportation and traffic; sewer and water; solid waste; public safety and fire protection; education, native history and culture; health; recreation; housing; employment; local businesses; the rate, distribution, and demographic characteristics of any population changes induced by the mining operation; and

the fiscal impacts of the mining operation on public facilities and services, including general government functions.

(c) If information necessary to conduct the assessment is contained in a final Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act, the director shall rely on the EIS and may require the applicant to provide such supplemental information deemed necessary by the director to complete the assessment.

(d) All reasonable costs and expenses required to prepare the assessment shall be paid to the director by the applicant prior to the initiation of the assessment.

(e) The purpose of the impact assessment is to provide information to the director concerning possible beneficial and adverse impacts of the proposed mining operation for use in the preparation of the mitigation agreement required by CBJ 49.65.155.

**49.65.135 Director's review procedures.**

(a) The director shall review the application in accordance with CBJ 49.15.330(d), as modified by this article.

(b) The director's recommendation for approval or denial, with or without conditions, as required by CBJ 49.15.330(d)(3) or 49.65.145, shall be forwarded to the commission within the timelines specified below:

(1) *Small mines.* In the case of small mine applications, the recommendation shall be forwarded to the commission within thirty-five days after the application has been accepted as complete by the director.

(2) *Large mines.*

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3 (A) The director shall conduct a preliminary review of an application for a  
4 large mine within 20 days of its submission to determine whether the application is  
5 complete. The director shall then promptly schedule a meeting with the applicant  
6 for the following purposes:

7 (i) To notify the applicant if the application is complete, and if not, to  
8 notify the applicant what additional information is needed to make the  
9 application complete.  
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11 (ii) The director and the applicant shall establish the procedures for  
12 coordinating the review of the application with any review being undertaken  
13 by other agencies as part of a state or federal permit process.

14 (B) Unless an Environmental Impact Statement (EIS) is required by the  
15 National Environmental Policy Act (NEPA), or unless the applicant agrees to an  
16 extension, the director shall complete the review of the application within 90 days  
17 after the director has determined that the application is complete. If an EIS is  
18 required, then the timing of the review of the application shall be in accordance  
19 with the provisions of subsection (C), below.  
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21 (C) If an EIS for the proposed mining operation is required under NEPA, then  
22 the application will not be considered complete until the draft environment impact  
23 statement (DEIS), the final environment impact statement (EIS), and all comments  
24 and testimony have been submitted to the director. The director may begin review  
25 of the application at any time after the filing of the DEIS with the director, but the  
recommendation may not be presented to the commission until the department has

considered the final EIS. The applicant shall advise the department immediately at any time during the application process or thereafter if NEPA is involved so that the City and Borough may participate in the NEPA process.

(c) The director's recommendation must consider whether the proposed mining operation will mitigate adverse environmental, health, safety, and general welfare impacts. The director's recommendation must include consideration of the following:

(1) Whether air and water quality standards will be maintained in accordance with federal, state, and local laws, rules, and regulations;

(2) Whether sewage, solid waste, hazardous and toxic materials will be properly contained and disposed of in accordance with federal, state, and local laws, rules, and regulations;

(3) Whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and to mitigate adverse impacts on the public and on neighboring properties such as those from traffic, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides, and erosion; and

(4) Whether historic sites designated by the City and Borough as significant will be protected; and

(5) The sufficiency of the proposed reclamation plan.

(d) In making the determinations under subsection (c), the director shall find that the proposed mining operation will comply with state and federal law as to any standard or subject addressed by an applicable state or federal permit issued to the applicant for the proposed mining operation. However, the issuance of a state or federal permit shall not prohibit the

director from recommending more stringent conditions on the proposed operation to the extent the City and Borough is not preempted by state or federal law, or from making a recommendation for denial if the director deems it is warranted in accordance with this article.

(e) The director's recommendation for approval may include any conditions or stipulations the director deems to be reasonably necessary to mitigate adverse environmental, health, safety, or general welfare impacts that may result from the proposed mining operation. If the director makes a recommendation for approval, the director shall also make a recommendation on the amount of any financial warranty required by CBJ 49.65.150.

(f) If the director determines that the proposed mining operation does not meet the standards required by CBJ 49.65.145 and 49.15.330, the director shall notify the applicant. The applicant may then withdraw the application, amend and resubmit the application, or allow the director's recommendation to be forwarded to the commission as written. If the application is resubmitted within 180 days of the initial submission, no new application fee will be required but the applicant shall pay any additional processing fee determined by the director to be reasonably necessary to defray the cost of reviewing the revised application to the extent that it is different from the original submittal.

(g) If the director determines that proper review of the application will require the department to retain outside professional assistance, the director may, in the director's discretion, obtain an outside professional consultant. The fee for the consultant shall be borne by the applicant.



**49.65.140 Commission review.**

(a) Once complete, the director's recommendations shall be provided to the applicant and placed on the agenda for the next regularly scheduled meeting after public notice has been given as required by CBJ 49.15.230.

(b) The commission shall hear the application as a conditional use permit application as provided in chapter 49.15, article III, as modified by this article.

(c) If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of CBJ 49.65.145 and 49.15.330, it shall approve the application, including the reclamation plan or any cooperative management agreement with the state under 11 AAC 97.700, and set the amount of the financial warranty under CBJ 49.65.150. When the applicant has submitted a financial warranty in the amount set by the commission in a form satisfactory to the municipal attorney, and executed any mitigation agreement required by CBJ 49.65.155, the permit shall be promptly issued by the director.

**49.65.145 Required conditions for all conditional use mining permits.**

(a) The commission shall impose as a condition of any permit issued by the commission the following requirements:

(1) The mining operation must be conducted in accordance with this article, CBJ 49.15.330, and any other applicable provisions of the City and Borough Code in such a way as to mitigate adverse environmental, health, safety, and general welfare impacts;

(2) Air and water quality must be maintained in accordance with any applicable federal, state, and local laws, rules and regulations, or permits;

(3) Hazardous and toxic materials, sewage, and solid waste shall be properly contained and disposed of in accordance with applicable federal, state, and local laws, rules and regulations;

(4) All mining operations shall be conducted according to the standards of the City and Borough as contained in this article, CBJ 49.15.330, the conditional use mining permit, and any other applicable provisions of the City and Borough Code, so as to minimize to the extent reasonably practicable safety hazards, and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion;

(5) Appropriate historic sites designated as significant by the City and Borough shall be protected;

(6) Reclamation of all affected surfaces, imposed as part of a conditional use permit in accordance with CBJ 49.65.149 or as set by the state under AS 27.19.030, be completed as soon as is reasonable after affected surface areas are no long being used in exploration and mining operations; and

(7) In the case of large mines, that the applicant comply with the mitigation agreement required by CBJ 49.65.155;

(8) The applicant will maintain the financial warranty in the amount approved by the director or the commission, including any amendments to the required financial warranty amount under CBJ 49.65.150(g); and

(9) The loss of any applicable state or federal permit may result in the revocation of the conditional use permit.

(10) In the event mining operations violate or threaten to violate this article, CBJ 49.15.330, or a permit issued under this article, the applicant shall notify the director of such fact and of the steps to be taken to return to compliance, or to resolve the potential noncompliance.

**49.65.149 Reclamation.**

(a) As required by CBJ 49.65.145, and to the extent not preempted by state or federal law, it shall be a condition of all permits issued under this article that reclamation of all affected surfaces, imposed as part of a conditional use permit issued under this article or as set by the state under AS 27.19.030, be completed as soon as is practicable after affected surface areas are no longer being used in exploration and mining operations. The reclamation plan shall be submitted with the mining application, as required by CBJ 49.65.125(b)(3)(iv).

(b) If not addressed in a reclamation plan approved by the state under AS 27.19.030, and to the extent not preempted by state or federal law, reclamation required under this article shall include the following requirements:

- (1) Cleanup and disposal of dangerous, hazardous or toxic materials;
- (2) Regrading of steep slopes of unconsolidated material to create a stable slope;
- (3) Backfilling underground shafts and tunnels to the extent appropriate;
- (4) Adequate pillaring or other support to prevent subsidence or sloughing;
- (5) Plugging or sealing of abandoned shafts, tunnels, adits or other openings;

- (6) Adequate steps to control or avoid soil erosion or wind erosion;
- (7) Control of water runoff;
- (8) Revegetation of tailings and affected surface areas with plant materials that are capable of self-regeneration without continued dependence on irrigation and equipment where appropriate;
- (9) Rehabilitation of fisheries and wildlife habitat; and
- (10) Any other conditions imposed by the commission to prevent unnecessary or undue degradation of land and water resources. For the purposes of this subsection, “unnecessary and undue degradation” has the same meaning as defined by AS 27.19.100.

(c) Subsequent to the issuance of a permit or the grant of authority under an exploration notice, the applicant's compliance shall be measured against the requirements contained in that permit or the conditions of the exploration notice and the applicant's plans submitted with the permit application or the notice.

(d) If a reclamation plan has been required by the state under AS 27.19.030, and upon approval by the state, the City and Borough may enter into a cooperative management agreement as provided by 11 AAC 97.700 to coordinate oversight and implementation of reclamation activities required of the applicant with other agencies.

#### **49.65.150 Financial warranty.**

(a) The purpose of the financial warranty is to ensure that, if the applicant fails to comply with any obligation, requirement, or condition imposed by any permit or exploration notice issued under this article, there will be sufficient funds available to the City and Borough to

enable it to complete the required work.

(b) To the extent not preempted by state or federal law, no permit shall be issued or exploration authorized pursuant to this article until any required financial warranty has been submitted by the applicant, approved by the municipal attorney, and accepted by the director.

(c) The director reserves the right to seek forfeiture of the financial warranty, in whole or in part, in the interest of protecting the environmental, health, safety and general welfare requirements of the City and Borough if the director determines that the applicant has violated the obligations, requirements, or conditions imposed by any permit or exploration notice issued under this article. The forfeiture shall be limited to the extent necessary to satisfy the obligations, requirements, or conditions that the applicant has violated.

(d) The amount of the financial warranty for an exploration notice shall be set by the director. The amount of the financial warranty for small mines and large mines shall be determined by the commission. The financial warranty shall be set in the amount necessary to ensure the completion of all work required by any permit or exploration notice issued under this chapter that the City and Borough may require to the extent not preempted by state or federal law. In recommending and setting the amount of the financial warranty, the director and the commission, respectively, shall take into consideration the amount and scope of any financial warranties that have been submitted to other agencies. When the performance of such obligations is guaranteed by financial warranties that have been submitted to other agencies, the applicant may be required to post a separate financial warranty with the City and Borough if the municipal attorney determines that the financial warranty submitted to another agency does not create a lien or interest sufficient to protect the interests of the City and Borough.

Examples of obligations to be covered by the financial warranty required under this section may include but are not limited to:

- (1) Construction of berms, dikes, spillways, channels, or other facilities to control, detain, retain, or reduce runoff, soil erosion, and siltation, or to divert water around waste, tailings, stockpiles or other facilities or disturbed areas;
- (2) Installation and maintenance of landscaping, including berming, tree planting and other required grading or planting to provide visual and sound barriers and to eliminate or reduce the appearance of scarring;
- (3) Installation and maintenance of road or highway improvements to mitigate the impact of increased traffic or heavy trucking that is measurable and directly attributable to the mining operation; such facilities may include speed access ramps or lanes, turn lanes, intersection improvements, traffic-control devices or private haulage ways where necessary to avoid the use of public roads or highways. The cost of installation or maintenance described in this subsection shall be shared by the applicant and the City and Borough in relation to the proportion of the directly attributable and measurable impact on traffic of the applicant's activities or the facilities being maintained, installed or improved;
- (4) Reclamation of affected surfaces during and following exploration and mining operations;
- (5) Regrading of steep slopes of unconsolidated materials to create a stable slope;
- (6) Installation of facilities required to prevent or reduce degradation of air or water quality or to contain or control toxic or hazardous wastes;
- (7) Removal of buildings, structures or equipment where appropriate;

(8) Any other obligations as necessary to conform to the commission's determinations under CBJ 49.15.330 and 49.65.145.

(d) The financial warranty required under this article for a large or small mine permit or an exploration notice may be in any one or a combination of the following forms at the option of the applicant, provided that the cumulative amount is equal to the amount provided in subsection (b) of this section:

(1) Cash;

(2) Certificate of deposit;

(3) An irrevocable standby letter of credit from a United States bank; or

(4) A surety bond from a bonding company licensed to do business in Alaska that is satisfactory to the director for credit worthiness. Interest on cash deposits or certificates of deposit will accrue to the credit of the applicant.

(e) In addition to the forms of financial warranty set forth in this section, with respect to a small mine permit or an exploration notice, the applicant may elect to use a property bond as a form of financial warranty; provided, that at least ten percent of the total amount of the financial warranty shall be cash or a certificate of deposit; and provided further, that the commission determines that the value of the property is equivalent to the amount required to be generated for satisfaction of the obligation and the municipal attorney determines that the bond creates a lien with sufficient priority to permit its collection should such become necessary.

(f) The form of financial warranty shall provide that the funds may be used by the City and Borough to satisfy the obligations described in this section when there has been a

determination by the director that the applicant has not completed its obligations in a timely manner or has otherwise violated the terms of its permit or conditions of its exploration notice, and after notice and opportunity to perform the obligation has been given to the applicant.

(g) The amount of the financial warranty shall be reviewed annually by the director, and a determination shall be made whether the amount should be increased or decreased, taking into account changes in the obligations of the applicant to be undertaken during the ensuing year, cost of current obligations of final reclamation, and changes due to inflation or deflation.

(h) If the amount of financial warranty is to be increased or decreased by the determination made in subsection (g) of this section, then the actual increase or decrease shall be made according to the procedure in subsection (d) of this section.

#### **49.65.155 Mitigation agreements for large mines.**

(a) With respect to a large mine permit application, the applicant shall negotiate and enter into a mitigation agreement with the City and Borough.

(b) The mitigation agreement shall establish responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts of the mining operation not addressed by the reclamation plan, including direct impacts and indirect impacts. The applicant shall be responsible for mitigating the direct impacts. The City and Borough shall be responsible for mitigating indirect impacts except where the costs of mitigating specific indirect impacts are found by the manager to:

- (1) Exceed the amount of any City and Borough nonproprietary revenue increase attributable to the mining operation; and



(2) Require a direct and significant increase in local taxes or fees to adequately mitigate the impact.

(c) Highly speculative impacts shall not be included in the mitigation agreement. Taxes and nonproprietary revenues generated as a result of the proposed mining operation shall be a factor considered in negotiating the mitigation agreement. This agreement shall be incorporated as part of the permit, as required by CBJ 49.65.145.

(d) This subsection does not limit or otherwise affect the authority of the director or the commission to condition or place stipulations on a permit pursuant to this article or the conditional use process as provided in chapter 49.15, article III.

**49.65.160 Term of notices and permits; temporary cessation.**

(a) Exploration notices and permits for mining operations shall remain in effect for the duration of the operation identified in the notice or in the application, subject to the conditions of this section and providing that the following conditions are met:

(1) The financial warranty must remain in full force and effect;

(2) The operator must not be found to be in substantial violation of this article; and

(3) With respect to a large or small mine permit, mining operations must be continued in accordance with the plan contained in the application for at least 90 days in each year as to a large mine, and for at least 30 days in each year as to a small mine.

(b) During the term of any exploration notice or permit, the director may, pursuant to CBJ 49.65.150(g), revise the amount of the financial warranty. If the amount of the financial

warranty is increased, the operator shall submit the appropriate amount of additional financial warranty within 60 days of the director's determination.

(c) The operator shall advise the director within ten days of the date upon which the applicant receives notice that a financial warranty that has been submitted to any other agency is reduced or released.

(d) If at any time during the term of a permit the operator determines that it will not conduct mining operations for the applicable time minimums established in CBJ 49.65.160(a)(3), the operator shall notify the director and request that the mining operation be placed in an inactive status. In conjunction with this notification, and as a condition to granting a request for inactive status, the operator shall advise the director of the measures it will employ to prevent hazardous or dangerous conditions, erosion, or other environmental damage that may result from the operator's activities, and the security measures it will employ at the mining operation during the inactive period. An applicant may continue in inactive status for a five-year period and may, with the permission of the director, obtain successive five-year extensions of that status. At the conclusion of inactive status, the operator shall either resume operations or commence final reclamation in accordance with the approved reclamation plans. If an operator ceases operations for more than one year but does not request inactive status, the director may require the operator to commence final reclamation in accordance with its plans.

(e) Throughout the duration of a large mine permit, the operator of a large mine shall also notify the director not less than 60 days prior to requesting placement on inactive status. The operator and the City and Borough shall maintain a process to exchange information regarding

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3 the impact on the City and Borough that may result from a change in mining operations. In  
4 addition, the operator shall provide the director with copies of any notification it may be  
5 required to provide to federal agencies under federal law concerning proposed personnel layoffs  
6 at its mining operation. The director may waive any of these notification requirements in the  
7 event of an unforeseen act of God or disaster.  
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10 **49.65.165 Annual reports; monitoring; monitoring fee.**

11 (a) During the term of each exploration notice, the operator shall submit annual progress  
12 reports to the director on or before March 31 of each year. The progress report must describe  
13 the areas in which exploration was conducted during the preceding year, the amount of acreage  
14 that was disturbed by such exploration, and the nature and extent of associated reclamation  
15 activities.

16 (b) During the term of each small mine permit or large mine permit, including any inactive  
17 period, the operator shall submit an annual progress report to the director on or before March  
18 31 of each year describing the status of the mining operation in relation to the approved mining  
19 plan and timetable, and describing reclamation activities during the year.  
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21 (c) The director shall have ongoing authority to monitor any mining operation for which a  
22 permit has been issued in order to ascertain whether the mining operation is in compliance  
23 with the requirements, terms, conditions and mitigation measures in the permit. The operator  
24 shall, upon reasonable notice, provide the director with access, at reasonable times, to the  
25 premises and to the records of the mining operation to the extent such access is necessary to  
ascertain whether the mining operation is in compliance.

(d) Throughout the duration of the term of a small mine permit or a large mine permit, the operator shall pay to the director an annual monitoring fee to defray the costs of inspecting and reviewing the affected surface and compliance with the permit. The annual monitoring fee shall be such amount as may be established by the commission as necessary to cover the reasonable costs of inspection and review.

**49.65.170 Technical revisions, summary approval, and amendments.**

(a) During the term of a permit, the operator shall notify the director of all technical revisions to its operations. As used in this section a "technical revision" is a change in operations that does not, in the judgment of the director, have more than a minor effect on reclamation and that does not change the total amount of disturbance or the overall environmental or socioeconomic impact of the mining operation. After the technical revision is submitted to the director, the director shall within 30 days determine and notify the operator whether a permit amendment or summary approval of the change is necessary or whether the technical revisions may be accomplished under the operator's existing permit.

(b) If the operator or the director determines that the change to the mining operations are more than a technical revision, or if the changes will require preparation of a new or supplemental environmental impact statement, the permit shall be amended unless summary approval of the change is granted pursuant to (b)(2) of this section.

(1) Except as provided in subsection (2) of this section, the operator shall file with the director an application for amendment to its original permit, together with an application with the same content as required for an original application, except that no

operator will be required to resubmit any information that duplicates applicable previous submittals. The permit amendment application shall be processed in accordance with the same procedure as established for processing permits under CBJ 49.65.125, 49.65.135 and 49.65.140. The operator shall not commence changes requested in its amendment application until the permit amendment has been approved and, if appropriate, additional financial warranties submitted.

(2) Summary approval.

(A) Upon request of the operator, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

- (i) The mine is located entirely outside the roaded service area established in CBJ 01.30.320;
- (ii) The application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);
- (iii) The proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and
- (iv) The proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

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3 (B) The director shall make the determination required by this subsection (2)  
4 within 45 days unless additional information is required. If the director requires  
5 additional information to make the determination, upon written notification to the  
6 operator, the time for determination may be extended for up to 20 additional days  
7 after submittal by the operator of the additional information. If an environmental  
8 impact statement is required by one or more federal agencies, completion of the  
9 draft environmental impact statement is necessary for summary approval.  
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11 (C) Planning commission review.

12 (i) The director shall promptly forward the proposed summary approval to  
13 the planning commission after the determination is completed. The planning  
14 commission may ratify or reject the proposed summary approval.

15 (ii) If the commission rejects the proposed summary approval, it may:

16 (a) Return the matter to the director for further consideration of  
17 whether the director, in consultation with the operator, can address  
18 issues identified by the commission through imposition of conditions  
19 or changes in the proposed mining operation; or  
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21 (b) Direct that the proposed change be processed by the director as  
22 an application for an allowable use permit for which the commission  
23 may impose conditions under CBJ 49.15.320(f)(1)—(8) and such  
24 additional conditions as are necessary to reduce to non-significant  
25 any impacts in the roaded service area on habitat, sound, screening,

drainage, traffic, lighting, safety, dust, surface subsidence,  
avalanches, landslides, or erosion.

**49.65.175 Enforcement.**

This article shall be enforced in accordance with chapter 49.10, article VI and CBJ 49.65.195.

**49.65.176 Appeal.**

Any person who is aggrieved by a decision of the director or the commission with respect to this article, other than one under CBJ 49.65.175, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

**49.65.180 Release of warranties for mining operations.**

(a) Upon completion of mining operations, the operator shall file a written notice of completion with the director when it believes it has completed any or all requirements of this article, CBJ 49.15.330 and its permit with respect to any or all of its affect surfaces. The director shall, within 90 days after receiving the notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine whether the operator has complied with all applicable requirements.

(b) If the director determines that the operator has successfully complied with all the requirements of this article, CBJ 49.15.330 and the permit, it shall release all financial warranties applicable to said requirements. Release shall be in writing and shall be delivered to the operator promptly after the date of such filing.

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3 (c) If the director finds that the operator has not complied with the requirements of this  
4 article, CBJ 49.15.330 or the permit, it shall so advise the operator not more than 90 days after  
5 the date of the inspection. The operator shall be given a reasonable time to comply with  
6 requirements before a second inspection. If the operator does not complete the requirements, or  
7 if after reinspection the director is not satisfied that the operator has complied with all the  
8 requirements of this article, CBJ 49.15.330 or the permit, the financial warranty shall be  
9 subject to forfeiture to the extent necessary to satisfy any outstanding requirements.  
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12 **49.65.185 Successor operators.**

13 (a) Any operator desiring to transfer its rights under an exploration notice or a conditional  
14 use mining permit shall submit a request for transfer to the director, on a form specified by the  
15 director.

16 (b) The director may approve the request for transfer if the director finds:

17 (1) The proposed operator will conduct the operations covered by the notice or  
18 permit in accordance with the requirements of this article and any additional  
19 requirements set by the director;  
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21 (2) The proposed operator has submitted a financial warranty at least equivalent to  
22 the financial warranty of the original operator and such other amount as may be  
23 determined using the procedures in CBJ 49.65.140;

24 (3) The proposed operator will continue to conduct the operations involved in full  
25 compliance with the terms and conditions of the original notice or permit; and all



obligations and responsibilities undertaken by the original operator shall be accepted and assumed by the proposed operator.

(c) The director may deny approval of the request for transfer if the original operator has any existing notice or permit violations at the time of the request until such time as the violations have been remedied. If the director approves the transfer, the financial warranty submitted by the original operator shall be released.

(d) Director decisions on transfer requests must be in writing.

#### **49.65.190 Confidentiality.**

Upon request of any applicant or operator, information in any application or report relating to the location, size, grade, geology or geochemistry of any ore deposit, proprietary process information, or information as to cost of mine construction or operation shall be kept confidential to the extent permitted by law. Information to be maintained as confidential must be separately presented to the director and must be marked "Confidential."

#### **49.65.195 Suspension or revocation of notices and permits.**

(a) Subject to the procedures of this section, the commission may suspend or revoke a permit issued under this article, or the authority to operate under an exploration notice pursuant to CBJ 49.65.120, upon a determination by the commission that:

(1) The exploration of mining operations are not in material and substantial compliance with the requirements of the exploration notice or permit issued under this chapter or by any state or federal agency, and such material and substantial

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3 noncompliance remains unremedied after issuance of a compliance order issued pursuant  
4 to CBJ 49.10.620; or (2) The exploration of mining operations under the notice or permit  
5 have a history or pattern of intentional or grossly negligent noncompliance and compliance  
6 orders have previously been issued for such past events of noncompliance. Good faith  
7 efforts to remedy events of noncompliance shall create an inference that such  
8 noncompliance is not a cause for suspension or revocation.  
9

10 (b) The director shall provide the operator with written notification that the director is  
11 recommending that the commission consider the entry of a suspension or revocation order  
12 under subsection (a) of this section. The written notification shall set forth the reasons for the  
13 director's recommendation and the operator's right to a hearing before the commission. The  
14 commission shall schedule a hearing within 30 days after the operator has received the written  
15 notification. At the hearing, the director shall have the burden of establishing that the operator  
16 is not in material and substantial compliance with the permit or authority to operate under an  
17 exploration notice, or that there is a past history or pattern on noncompliance sufficient to  
18 justify suspension or revocation.  
19

20 (c) Upon written notification of the entry of a suspension or revocation order to the operator  
21 or to any person operating under the authority of the permit or exploration notice, all  
22 exploration or mining operations shall cease except those specifically authorized by the  
23 commission in the order or if the assembly stays the order pending appeal.

24 (d) A suspended notice or permit may be reinstated by the commission upon a  
25 determination that the exploration or mining operations have been brought into compliance  
with the conditions of the notice or permit. A notice or permit that has been revoked may not be

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3 reissued by the commission until the commission determines that the exploration or mining  
4 operation has been brought into compliance with the terms and conditions of the notice or  
5 permit, and the operator has clearly and convincingly demonstrated that preventative  
6 measures have been taken to ensure that those conditions giving rise to the revocation will not  
7 reoccur.

8  
9 (e) A suspension or revocation order may be appealed to the assembly in accordance with  
10 chapter 49.20, article I. Pending appeal, the assembly may in its discretion stay an order of  
11 suspension or revocation.

12 (f) The rights of suspension or revocation provided for in this section are in addition to any  
13 rights or powers vested in the City and Borough in CBJ 49.65.175 or chapter 49.10, article VI.  
14

15 **49.65.196 Effect of article on operations in annexed territory.**

16 Large mine, small mine, and exploration operations occurring in territory annexed by the City  
17 and Borough that have been issued the federal and state permits or approvals necessary for the  
18 operation, including, if applicable, permits or approvals necessary to operate in accordance with  
19 the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a  
20 large mine permit, a small mine permit, or an exploration notice, as applicable, under this  
21 article and to otherwise be eligible to operate pursuant to this article upon the effective date of  
22 annexation; provided, that all such federal and state permits or approvals are currently valid.  
23 With the exception of the initial permit application and exploration notice filing requirements,  
24 the operator shall be subject to all of the requirements of this article in effect upon the effective  
25 date of annexation, including the technical revisions and permit amendment requirements, and

the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator. The terms of the City and Borough permit or notice shall be deemed to be the terms of the state and federal permits or approvals, unless and until a permit amendment is required. The operator shall be required to execute documentation acknowledging that the permit or notice deemed to be issued under this article shall have the same terms as the federal and state permits or approvals unless and until a permit amendment is required, and that the operator, and the permit or notice deemed issued, shall be subject to all of the requirements of this article in effect upon the effective date of annexation with the exception of the initial permit application and exploration notice filing requirements.

**49.65.197 Severability.**

If any section, subsection, paragraph, sentence, clause or phrase of this article is for any reason held unlawful or otherwise invalid, such holding shall not affect the remaining portions of the article. The City and Borough declares that it would have enacted this article and each and every part thereof, irrespective of the fact that any one or more parts might be held unlawful or otherwise invalid.

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Attest: \_\_\_\_\_  
Kendell D. Koelsch, Mayor

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



## Planning Commission

(907) 586-0715  
PC\_Comments@juneau.org  
www.juneau.org/plancomm  
155 S. Seward Street • Juneau, AK 99801

### **PLANNING COMMISSION NOTICE OF RECOMMENDATION**

Date: July 3, 2018

Case No.: AME2018 0008

City and Borough of Juneau  
City and Borough Assembly  
155 South Seward Street  
Juneau, AK 99801

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding a text amendment to revise Title 49.65, Article 1, the Exploration and Mining Code.

Hearing Date: June 26, 2018

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 14, 2018, and recommended that the City and Borough Assembly adopt staff's recommendation for a text amendment to revise Title 49.65, Article 1, the Exploration and Mining Code. The Commission suggested one substantive change: to require release of the financial warranty related to mining exploration within six months.

Attachments: June 14, 2018 memorandum from Laura Boyce, Community Development, to the CBJ Planning Commission regarding AME2018 0008.

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ 01.50.020 (b).

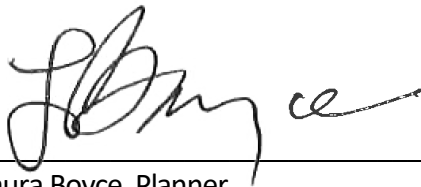
City and Borough Assembly

Case No.: AME2018 0008

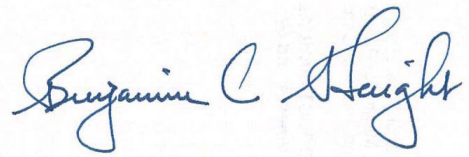
July 3, 2018

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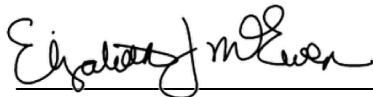
Project Planner:



Laura Boyce, Planner  
Community Development Department



Benjamin Haight, Chair  
Planning Commission



Filed With Municipal Clerk

7/6/2018

Date

**cc: Plan Review**

**NOTE:** The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.



(907) 586-0715  
CDD\_Admin@juneau.org  
www.juneau.org/CDD  
155 S. Seward Street • Juneau, AK 99801

**DATE:** June 14, 2018

**TO:** Planning Commission

**FROM:** Laura A. Boyce, AICP, Senior Planner  
Community Development Department

**CASE NO.:** AME2018 0008

**PROPOSAL:** A text amendment to revise Title 49.65, Article 1, the Exploration and Mining Code

A handwritten signature in black ink, appearing to read 'L. Boyce', is positioned to the right of the 'FROM:' field.

The City and Borough of Juneau Code states in CBJ 49.10.170(d) that the Commission shall make recommendations to the Assembly on all proposed amendments to this title, zonings and re-zonings, indicating compliance with the provisions of this title and the Comprehensive Plan.

#### **ATTACHMENTS**

Attachment A Law Department Memo from Amy Mead, dated May 31, 2018

Attachment B Draft Ordinance No. 2018-28 (P.C. v. 1)

#### **SUMMARY**

The proposed ordinance would amend Title 49 regarding mining. The Law Department was tasked with amending the existing mining ordinance. The resulting ordinance reorganizes and clarifies the existing mining ordinance with no substantive changes. Please see the Law Department's memo in Attachment A describing the changes in the ordinance. The Draft Ordinance is included as Attachment B.

#### **BACKGROUND**

The City and Borough of Juneau first adopted a mining ordinance, Ordinance 86-43, in July, 1986. The ordinance resulted from the work of the Ad Hoc Mining Ordinance Committee which was established by the Assembly in January, 1985. The ordinance's stated purposes was "to foster the development of a safe, healthy and environmentally sound mining industry while protecting the overall interest of public health, safety and the general welfare...."



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Case No.: AME2018 0008  
June 14, 2018  
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The original mining ordinance was then amended in 1989 to include a requirement for socio-economic impact assessments. Two additional ordinances in 2003 were adopted that amended the mining ordinance. Ordinance 2003-26 provided for summary approval of mining operations in existing mines outside of the roaded service area. Ordinance 2003-27 created urban and rural mining districts and also provided that large mines located in the rural mining district be permitted through the Allowable Use Permit process.

The most recent amendment to the mining ordinance was in 2006. Ordinance 2006-15 adopted maps to include with Title 49. The Mining and Exploration Surface Activities Exclusion District Maps and the Urban and Rural Mining District Map were adopted as part of this ordinance. This amendment did not include any policy changes.

The current amendment was requested by the Assembly Mining Committee. The committee met in January, 2018, through March, 2018. At the April 16, 2018, Committee of the Whole meeting, the Assembly moved the proposed ordinance to the Planning Commission. The draft ordinance in Attachment B incorporates the committee's work.

#### **COMPLIANCE WITH THE COMPREHENSIVE PLAN**

The Comprehensive Plan and the Juneau Economic Development Plan, adopted as an addition to the Comprehensive Plan (CBJ 49.05.200(b)(1)(M)) recognize and discuss the importance of mining to the City and Borough of Juneau. The following goals, policies, and actions discuss mining and are relevant to the proposed mining ordinance.

#### **Comprehensive Plan Contents**

The following discussions, policies, and objectives in the 2013 Comprehensive Plan are relevant to the proposed amendment:

**POLICY 5.11. TO ENCOURAGE THE LOCATION AND GROWTH OF LOCALLY-BASED BASIC SECTOR INDUSTRIES THAT PROVIDE YEAR-ROUND, FULL-TIME EMPLOYMENT AND PROVIDE TAX REVENUES THAT SUPPORT PUBLIC SERVICES.**

**POLICY 5.13. TO SUPPORT THE EXTRACTION AND PROCESSING OF MINERAL RESOURCES IN AN ENVIRONMENTALLY-SOUND MANNER, GIVING PROPER RECOGNITION TO THE UNIQUE VALUES OF THIS COMMUNITY.**

#### **Standard Operating Procedure**

**5.13 – SOP1 Utilize the socioeconomic impact assessment required at CBJ 49.65.130(c) to ensure that capital improvements are scheduled so as to support and be relevant to relieving the impacts of large mines.**

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### **Development Guidelines**

**5.13 - DG1 Consult and coordinate with appropriate state and federal permitting agencies to review mining permit applications submitted under the provisions of the CBJ Mining Ordinance.**

**5.13 - DG2 Encourage coordination and cooperation among the mining, tourism, fishing and recreation industries in both development and operation of mining activities. Mining operations should not operate in a manner that would be detrimental to the natural environment needed by these other industries or to human and wildlife neighbors.**

**5.13 - DG3 Where gravel resources have been depleted by extraction activities, utilize these land resources to the most efficient extent possible by filling open pits with construction debris or other non-toxic materials and engineering the lands to be suitable for other uses, such as habitat mitigation, public facilities, recreation resources or residential, commercial, or industrial development.**

### **Juneau Economic Development Plan – 2015:**

The 2015 Economic Development Plan discusses mining. Mines are one of the largest private sector employers in Juneau and have one of the highest average wage jobs. The mines are two of the largest property tax payers, according to the Plan, and they have an above average dependence on non-resident labor. The mining industry in Juneau was one of the fastest growing industries in the past decade. Mining jobs are high paying, averaging twice the local average salary. “Juneau has a rich mining heritage and continues to enjoy the economic benefits of a rich natural endowment of mineral resources. Making the most of that natural endowment, in terms of direct, indirect, and induced economic benefits, is Juneau’s challenge and opportunity.”

One of the elements in the Economic plan is:

**1. Support, retain, and expand Juneau’s existing ‘economic pillars’ - our traditional, proven mainstay sectors and businesses.**

- **This element focuses on the top economic sectors and activities that comprise Juneau’s economy today. These sectors include the existing businesses and industries that provide the bulk of today’s jobs and wages in the community. State and federal government, the visitor industry, commercial fishing and seafood processing, mining, construction, education, and health care are among Juneau’s economic pillars, along with local government and other key support sector service and supply providers.**

**Goal: Building on our strengths to expand business opportunities where we have natural/competitive advantages.**

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**Objective 4: Enhance mining's role in Juneau's economy.**

**Goal: Prepare and attract the professional, technical, skilled, entrepreneurial, and creative labor force that Juneau's diverse employers, businesses, and non-profits need.**

**Objective 5: Take steps to covert the non-resident workforce to a resident workforce.**

Discussion

Mining, both in general and at specific locations in the borough, has been addressed in the Comprehensive Plan and the Juneau Economic Development Plan. It is an activity that is both anticipated and supported in the Plans. The proposed changes to the existing mining ordinance re-order and clarify existing language, as well as remove duplicative state requirements. No substantive changes are made that result in the existing mining ordinance being inconsistent with existing plans.

Findings

Based on the discussion above, staff finds that the proposed Ordinance 2018-28 is consistent with the Comprehensive Plan.

**COMPLIANCE WITH CBJ LAND USE CODE**

Title 49 Contents

The following sections of Title 49 have been examined to determine whether or not the proposed ordinance is in compliance with the Code:

49.70. Article IX. Coastal Management.

49.80.120 Definitions, specifically "Affected surface and surface disturbance", "direct impact", "impact", "indirect impact", "large mine", "large mine permit", "mining", "mining development", "mining operation", "operator", "other agency", "other regulatory program", "separate development", "small mine", "small mine permit", and "socioeconomic impact assessment".

49.70.210 (Hillside development) Applicability and scope.

Discussion

The above sections of Title 49 were reviewed for consistency with the proposed ordinance. The proposed changes to the existing mining ordinance re-order and clarify existing language, as well as remove duplicative state requirements. No substantive changes are made that result in the existing mining ordinance being inconsistent with existing plans.

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Findings

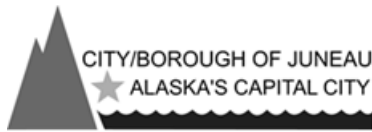
Based on the discussion above, staff finds that the proposed Ordinance 2018-28 is consistent with Title 49.

**FINDINGS**

Based upon the above analysis, staff finds that the proposed text amendment to Title 49 is consistent with the goals and policies of the Comprehensive Plan and Title 49. Additionally, this change would not create any internal inconsistencies within any plans or codes.

**STAFF RECOMMENDATION**

Staff recommends that the Planning Commission forward a recommendation for approval to the Assembly.



**Law Department  
City & Borough of Juneau**

**MEMORANDUM**

TO: CBJ Planning Commission

FROM: Amy Gurton Mead, Municipal Attorney

DATE: May 31, 2018

SUBJECT: Ordinance 2018-28, amending 49.65, Article I, the Exploration and Mining Code

---

The CBJ Mining Committee directed me to reorganize the current mining code for clarity, without removing any substantive provisions. That draft was used by the Committee as a starting point for its discussion and was vetted by the Assembly, which forwarded the draft to the Commission with one anticipated change. The Assembly authorized me to add language recognizing the state's reclamation plan and financial warranty requirements, and the ability to enter into cooperative management agreements with the state to oversee reclamation efforts.

Given the extensive reorganization, it wasn't possible to provide you with a "striketrough and underline" ordinance that was readable. Instead, the draft is annotated, explaining the changes made. As to the reclamation and financial warrant sections, the following information may be helpful.

State law chapter on reclamation applies to municipal land subject to mining operations. AS 27.19.010(b). The state requires, and will review, reclamation plans for mining to be conducted on municipal land. AS 27.19.030. State law, however, "does not alter or diminish the authority of . . . a municipality under its laws and regulations." AS 27.19.010(d). *See also* 11 AAC 97.100(c) stating:

Nothing in AS 27.19 precludes a federal or state agency (including the Department of Natural Resources), a state corporation, the University of Alaska, a municipality, or a private landowner, acting under its own regulatory or proprietary authority, from establishing and enforcing additional requirements or higher standards for reclamation. Compliance with this chapter does not waive or excuse compliance with those additional requirements or higher standards.

All mining operations, regardless of size, are required to reclaim the land disturbed under state law (AS 27.19.020):

A mining operation shall be conducted in a manner that prevents unnecessary and undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.

Under AS 27.19.100, "unnecessary and undue degradation":

(A) means surface disturbance greater than would normally result when an activity is

being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and considering site specific conditions;

(B) includes the failure to initiate and complete reasonable reclamation under the reclamation standard of AS 27.19.020 or an approved reclamation plan under AS 27.19.030(a).

Although they are required to reclaim the land after mining operations cease, state law (AS 27.19.050) exempts small mines from needing to file a reclamation plan or from submitting the “reclamation financial assurance” (the “financial warranty” under CBJ code). State statute defines a “small mine” as being one:

(1) where less than five acres are mined at one location in any year and there is a cumulative unreclaimed mined area of less than five acres at one location; or

(2) where less than five acres and less than 50,000 cubic yards of gravel or other materials are disturbed or removed at one location in any year and there is a cumulative disturbed area of less than five acres at one location.

Current code requires all mining operations to file a reclamation plan. For purposes of comparison, a small mine under CBJ code is defined as anything that isn’t a large mine:

*(CBJ) Large mine* means a mining operation involving more than 20 acres of affected surface disturbance; or having 75 or more personnel employed at the mining operation in the City and Borough, whether direct employees or employees of independent contractors, in any consecutive three-month period; or a mining operation that a federal agency has determined would involve a major federal action significantly affecting the quality of the human environment so that the preparation of an environmental impact statement in accordance with NEPA is required.

As noted above, under state law, municipalities may provide their own rules and requirements for reclamation and financial warranties (or financial assurances) to the extent not preempted by state (or federal) law. There are provisions in our code that we would arguably be preempted from enforcing. For example, the requirement that the CBJ reclamation plan require rehabilitation of fisheries or wildlife habitat. (*See, Jacko v. State of Alaska, Pebble Lt. Partnership, and Pebble Mines Corp.*, 353 P.3d 337 (Alaska 2015), where the Supreme Court invalidated a Lake and Peninsula Borough initiative prohibiting mining activities that would have a significant adverse impact on anadromous waters within the borough, finding that the initiative impermissibly gave the borough “veto power” over mining projects on state land within borough borders.) Without removing any of the potential overreach, I qualified both the reclamation and financial warranty sections<sup>1</sup> to make clear that the CBJ could exercise its authority only to the extent not preempted by state or federal law.

Lastly, if the state finds it’s in the state’s best interest, it can enter into a cooperative management agreement with a municipality with respect to reclamation oversight. 11 AAC 97.700. A reference to this process was also included.

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<sup>1</sup> Tied to the reclamation plan is the financial warranty (or, as the state refers to it, the financial assurance). The CBJ’s financial warranty section is much broader, tied to more than just reclamation efforts. The draft ordinance includes a reference to the state and any cooperative management agreement, but otherwise is unchanged.

Presented by: The Manager  
Introduced:  
Drafted by: A. G. Mead

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2018-28 (P.C. v. 1a)**

**An Ordinance Amending the Land Use Code Related to Mining.**

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

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

**Section 2. Amendment of Article.** CBJ 49.65 Article I Exploration and Mining, is repealed in its entirety and reenacted to read:

**ARTICLE I EXPLORATION AND MINING**

**49.65.110 Purpose.**

*No changes to the original purpose section (49.65.110) except reorganizing for clarity, and adding the language at subsection (d), as requested by the committee.*

(a) The purpose of this article is to foster the development of a safe, healthy, and environmentally sound mining industry while protecting the overall interests of public health, safety, and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. To the extent the City and Borough is not preempted from doing so under state or federal law, this article:

- (1) Establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct mining operations, and to provide for final

reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface;

(2) Reasonably regulates areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law;

(3) Authorizes the commission to condition a mining permit to the extent necessary to mitigate external adverse impacts and for the protection of the environment and public health, safety, and general welfare.

(b) This article does not regulate surface or subsurface water; geothermal resources; sand or gravel; common varieties of construction aggregate; or natural oil, gas, coal, or peat or their associated byproducts, except to the extent that such substances are developed or extracted as a mining byproduct in a mining operation of a large or small mine.

(c) The director may require a permit to be obtained or notice given for federally approved activities on federal lands, including unpatented mining claims, to allow for the director's review, so long as the purpose of the review process is not to deny use or expressly prohibit mining.

(d) To minimize the burden on the applicant to provide duplicative information required by this article, at the applicant's request, the director may rely on information provided in permit applications submitted to state or federal agencies for the proposed mining operation.

#### **49.65.115 General applicability.**

*Edited for clarity; nothing substantively removed from original 49.65.115. At the request of the committee, a definition section was added at subsection (e) for convenience. All four definitions are currently found in CBJ 49.80.120 Definitions.*



- 1
- 2 (a) For the purpose of identifying those areas within the City and Borough within which
- 3 surface disturbance or subsidence in support of exploration or mining activities is prohibited,
- 4 the Mining and Exploration Surface Activities Exclusion District Maps A—F, dated June 5,
- 5 2006, as may be amended by the assembly by ordinance, is adopted. Except as otherwise
- 6 provided, mining and related activities may be conducted elsewhere within the City and
- 7 Borough subject to the provisions of this article.
- 8
- 9 (b) This article does not regulate subsurface mining within or outside of the district except
- 10 that subsidence within the district is prohibited. It is not the intent of this article to
- 11 unreasonably limit or nullify private property rights.
- 12
- 13 (c) For the purpose of regulating exploration and mining activities within the City and
- 14 Borough, the Urban/Rural Mining District Map, dated June 5, 2006, as may be amended by the
- 15 assembly by ordinance, is adopted.
- 16
- 17 (d) Mines located in the Rural Mining District that will undergo environmental review by
- 18 state agencies, federal agencies, or both, shall be permitted as allowable uses pursuant to CBJ
- 19 49.15.320 and shall not be subject to this article. In permitting such mines, the commission
- 20 may impose conditions under CBJ 49.15.320(f)(1)—(8) and any additional conditions relating to
- 21 traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches,
- 22 landslides, and erosion deemed necessary by the commission.
- 23 (e) For the purposes of this article:
- 24 (1) *Exploration* means the process of advanced mineral commodity investigation
- 25 subsequent to prospecting and prior to development.

(2) *Large mine* means a mining operation involving more than 20 acres of affected surface disturbance; or having 75 or more personnel employed at the mining operation in the City and Borough, whether direct employees or employees of independent contractors, in any consecutive three-month period; or a mining operation that a federal agency has determined would involve a major federal action significantly affecting the quality of the human environment so that the preparation of an environmental impact statement in accordance with NEPA is required.

(3) *Mining operation* means the development, construction or reclamation of a mine, including associated infrastructure, or the exploitation or extraction of a mineral commodity from its occurrence on or in the earth, or the operation of a mine. The term "mining operation" includes open pit mining, placer mining and underground mining, and the disposal of refuse, tailings or waste rock from any such operation. The term "mining operation" also includes transporting, concentrating, milling, evaporating and other on-site processing. The term "mining operation" does not include off-site smelting, refining, cleaning, preparing, transportation or other surface operations not conducted on the affected surface.

(4) *Small mine* means a mining operation other than a large mine.

#### **49.65.120 Exploration notices and procedures.**

*Clarified original 49.65.120 in the following ways:*

- 1. Reorganized section.*
- 2. Added statement in subsection (a) making clear that compliance with this section is required in order to conduct exploration.*
- 3. Added requirement that form specified by director be used, which is consistent with current CDD practice (form is already posted on CDD website).*

***4. Added language to this section requiring operator to supplement information as necessary (this is a condition in existing code; added here for clarity purposes).***

(a) In order to ensure that mining exploration is conducted in accordance with the environmental, health, safety, and general welfare concerns of the City and Borough, mining exploration activities are prohibited except as provided in this section.

(b) Any applicant intending to conduct exploration operations must submit to the director a notice of mining exploration application, on a form specified by the director, and the processing fee specified in CBJ 49.85.100.

(c) A notice of mining exploration application must include the following information:

(1) A map identifying the area of the intended exploration activities on a scale no larger than 1:63,360;

(2) The proposed exploration schedule;

(3) The plan for reclamation of the area to be disturbed by the exploration activities, including information about the methodology and cost of such reclamation sufficient to enable the director to determine an appropriate financial warranty; and

(4) Copies of any prospecting permits, notices of intent to conduct exploration, or operating plans filed with any federal or state agency. An applicant shall supplement this information as needed with all modifications, revisions, and amendments to any permit application or plan submitted to any federal or state agency by the applicant, or with copies of any amended permits or plan approvals received by the applicant from any state or federal agency.

1  
2 (d) Upon determining that the exploration application is complete and that the required  
3 processing fee has been paid, the director shall determine whether a financial warranty will be  
4 required in accordance with CBJ 49.65.140, unless preempted by state or federal law. The  
5 director shall notify the applicant within 20 days after receiving the applicant's notice of intent  
6 whether a financial warranty will be required or waived. The requirement of a financial  
7 warranty may be waived if the director determines that a financial warranty is not necessary  
8 to ensure compliance with the requirements of this article. The waiver shall be in writing and  
9 shall set for the reasons for the waiver.  
10

11 (e) When the applicant has either submitted the required financial warranty or the director  
12 has notified the applicant that the financial warranty requirement is waived or the CBJ  
13 preempted from requiring a warranty, the applicant shall be authorized to conduct exploration  
14 activities in accordance with the exploration notice. In conducting exploration operations, the  
15 applicant shall comply with all applicable federal, state and City and Borough laws, rules, and  
16 regulations.  
17

18 (f) Upon completion of exploration activities and all necessary reclamation, the applicant  
19 shall notify the director that exploration and reclamation are complete and shall submit a map  
20 on a scale no larger than 1:63,360, showing the location of the exploration and reclamation  
21 activities.  
22

23 (g) *Procedure for release of financial warranty.* The director may inspect the area of  
24 exploration to determine whether reclamation has been completed in accordance with CBJ  
25 49.65.145 within 60 days of receiving notification of completion, or as soon as weather  
conditions permit. If the director finds that the reclamation satisfies the standards of CBJ

49.65.145(b), either by the director's own review or in reliance upon a state or federal reclamation inspection or both, the financial warranty shall be promptly released. If the director finds that the standards have not been satisfied, the director shall notify the applicant within 30 days of the additional steps necessary to achieve compliance with CBJ 49.65.145. The director shall give the applicant a reasonable time to complete reclamation and request another inspection. If the director, after re-inspection or review, is not satisfied that the standards of CBJ 49.65.145(b) have been met, the director may declare so much of the financial warranty as necessary forfeited and, after notice and an opportunity for the applicant to appeal pursuant to CBJ 49.65.165, apply the financial warranty to complete reclamation.

*While no substantive changes were made to the following sections, I did do some major reorganization of current code. Current code has one ordinance addressing the process (application, review, commission procedure) for small mines, and a separate code section addressing the process for large mines that, in large part, repeats the same information (application, review, commission procedure). I revised these sections using the same organizational structure used in the article addressing cell towers. First, I organized the current requirements into three new code sections that apply to both large and small mines: a general application section; a general review section; and a general section on commission process. I then added new code sections to cover those specific additional requirements imposed under current code for large mines.*

*Other changes:*

- 1. I specified that the application should be on a CBJ form – which already exists and is consistent with CDD practice for all other permits.*
- 2. I adding language specifying how the CBJ uses permit or application information from other agencies (see 49.65.125(d)).*
- 3. The following paragraph is from current code – 49.65.130(b), middle of paragraph – and requires large mine applicants to provide information normally provided as part of a mining plan or “feasibility” study. My notations in red explain where these requirements are now found:*

The application shall also contain additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface *(this was information that was actually required of both small and large mines so is now in the general application subsection (b)),*

labor force characteristics and timing, payroll projections (*see subsection (c) identifying additional information required of large mines*) , anticipated duration of the mining operation, construction schedules, infrastructure description, and other information reasonably requested by the department in the pre-application conference held pursuant to subsection 49.15.330(b). (*This was information that was actually required of both small and large mines so is now in the general application subsection (b).)*

**49.65.125 Permit application requirements for all mines.**

(a) Except as provided in CBJ 49.65.115(c), no new mine shall commence mining operations unless the applicant has obtained a conditional use permit pursuant to Chapter 49.15, Article III, as modified by this article.

(b) Applications, on a form specified by the director, shall be submitted to the director along with the fee required by CBJ 49.85.100, unless modified as provided in this section, and the following information:

- (1) Information establishing the right to use the affected surface;
- (2) A map showing the location of the mine site and the affected surface for that mine on a scale no larger than 1:63,360;
- (3) A description and timetable of the proposed mining operation, including:
  - (i) The anticipated duration of the mining operation;
  - (ii) A description of all roads, buildings, processing, and related facilities or proposed infrastructure;
  - (iii) The mining plan;
  - (iv) The plan for reclamation;
  - (v) The potential environmental, health, safety, and general welfare impacts of the proposed operation, including neighboring property impacts, and a

description of the measures to be taken to mitigate the adverse effects of such impacts; and

(vi) A description of the methods to be used to control, treat, transport, and dispose of any hazardous substances, sewage, and solid waste;

(4) Certification that there will be no affected surface or significant subsidence within the boundaries of the Mining and Exploration Surface Activities Exclusion District;

(5) Any additional information determined by the director to be necessary to allow the director, after reviewing the application, to evaluate the proposed mining operation's compliance with CBJ 49.15.330 and 49.65.145;

(6) Any other information requested by the director in relation to the pre-application conference held under CBJ 49.15.330(b); and

(7) Copies of any state or federal permits issued in relation to the proposed mining operation, including the reclamation plan approved by the state under AS 27.19.030 and information related to any financial assurance required by the state under AS 27.19.040.

*Current code recognizes reclamation plans from the state; this citation to the state code section was added for clarity.*

(c) In addition to the materials required by subsection (b), permit applications for large mines must include the following additional information:

(1) A description of the proposal for the sealing of open shafts, adits, and tunnels upon the completion or temporary cessation of mining operations;

(2) The mining operations labor force characteristics and timing;

(3) Payroll projections; and

(4) Unless waived by the director, the socioeconomic impact assessment required by CBJ 49.65.130, and any additional information determined by the director to be necessary to complete the assessment.

(d) To the extent that the information required by this section has been provided by the applicant as part of any application submitted by the applicant to a state or federal agency, the applicant may rely on that application. The applicant shall provide the director with a copy of each state or federal application being relied upon, a cross-reference to the relevant portions of those applications, and a report on the current status of the applications. *(Note: this section clarifies that operators can rely on permits or applications submitted to other agencies.)*

(e) The requirement to provide information under this section is continuing throughout the duration of the application process, and supplemental information regarding any changes in the information reasonably requested must be provided to the director.

(f) *Processing fee.* The fee for processing the application shall be as specified in CBJ 49.85.100, and is in addition to any fee required by CBJ 49.65.130 for the socioeconomic impact assessment, or any fee for a professional consultant as provided by CBJ 49.65.135. While this fee is intended to cover the City and Borough's reasonable costs of review, after receipt of the application the director may determine that the cost of review is likely to substantially exceed the fee specified in CBJ 49.85.100. In that case, the director may, after consultation and discussion with the applicant, recommend an additional fee to the assembly. Such additional fee shall be approved by the assembly by motion and shall be set in an amount that will, as far as can be determined, cover the cost of reviewing the application, including reasonable



administrative and overhead expenses. In recommending the additional fee, the director may consider any factors deemed relevant, including: the amount of staff effort required to adequately review the application; the involvement in the review process of other governmental agencies, either through a federal environmental review process or other procedure; the necessity for extraordinary travel and transportation costs that may be incurred by the director during review; the potential benefit of information generated by the application review to other mining operations or to the City and Borough; and the necessity for extraordinary communication, duplication, or publication costs arising from the review.

*This next section is from the current code section on large mines (49.65.130(c)). No substantive deletions made, primarily just amended for readability and reorganized. Although the proposed code already specifies that documents provided to another federal or state agency can be resubmitted in lieu of duplication, a new subsection (c) specifies that if information contained in an EIS would cover any of the material needed for a socioeconomic impact statement, the CDD director will rely on the EIS. Conceptually, this report is tied to the mitigation agreement (see 49.65.155, below).*

#### **49.65.130 Socioeconomic impact assessment for large mines.**

(a) A socioeconomic impact assessment evaluating the reasonable and foreseeable beneficial and adverse impacts, both direct and indirect, of the proposed mining operation on existing and future local conditions, facilities, and services shall be prepared by the director, or a consultant retained by the director for that purpose, unless waived. The director may waive all or part of the socioeconomic impact assessment when the director determines either that the information is not essential to evaluate the impacts the mining operation will have on the City and Borough, or that the proposed mining operation will cause no meaningful or significant impacts. A waiver shall be in writing and shall set forth the reasons for the waiver.

(b) The impact assessment should include an evaluation of all reasonable, foreseeable, and demonstrable impacts of the proposed mining operation on transportation and traffic; sewer and water; solid waste; public safety and fire protection; education, native history and culture; health; recreation; housing; employment; local businesses; the rate, distribution, and demographic characteristics of any population changes induced by the mining operation; and the fiscal impacts of the mining operation on public facilities and services, including general government functions.

(c) If information necessary to conduct the assessment is contained in a final Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act, the director shall rely on the EIS and may require the applicant to provide such supplemental information deemed necessary by the director to complete the assessment.

(d) All reasonable costs and expenses required to prepare the assessment shall be paid to the director by the applicant prior to the initiation of the assessment.

(e) The purpose of the impact assessment is to provide information to the director concerning possible beneficial and adverse impacts of the proposed mining operation for use in the preparation of the mitigation agreement required by CBJ 49.65.155.

#### **49.65.135 Director's review procedures.**

*Current code uses "director" and "department" interchangeably. I use director exclusively in this rewrite. Current code defines "director" at 49.80.100 to mean either the director or the director's designee, which includes staff or the "department."*

(a) The director shall review the application in accordance with CBJ 49.15.330(d), as modified by this article.

1  
2 (b) The director's recommendation for approval or denial, with or without conditions, as  
3 required by CBJ 49.15.330(d)(3) or 49.65.145, shall be forwarded to the commission within the  
4 timelines specified below:

5 (1) *Small mines.* In the case of small mine applications, the recommendation shall  
6 be forwarded to the commission within thirty-five days after the application has been  
7 accepted as complete by the director.  
8

9 (2) *Large mines.*

10 (A) The director shall conduct a preliminary review of an application for a  
11 large mine within 20 days of its submission to determine whether the application is  
12 complete. The director shall then promptly schedule a meeting with the applicant  
13 for the following purposes:

14 (i) To notify the applicant if the application is complete, and if not, to  
15 notify the applicant what additional information is needed to make the  
16 application complete.

17 (ii) The director and the applicant shall establish the procedures for  
18 coordinating the review of the application with any review being undertaken  
19 by other agencies as part of a state or federal permit process.  
20

21 (B) Unless an Environmental Impact Statement (EIS) is required by the  
22 National Environmental Policy Act (NEPA), or unless the applicant agrees to an  
23 extension, the director shall complete the review of the application within 90 days  
24 after the director has determined that the application is complete. If an EIS is  
25

required, then the timing of the review of the application shall be in accordance with the provisions of subsection (C), below.

(C) If an EIS for the proposed mining operation is required under NEPA, then the application will not be considered complete until the draft environment impact statement (DEIS), the final environment impact statement (EIS), and all comments and testimony have been submitted to the director. The director may begin review of the application at any time after the filing of the DEIS with the director, but the recommendation may not be presented to the commission until the department has considered the final EIS. The applicant shall advise the department immediately at any time during the application process or thereafter if NEPA is involved so that the City and Borough may participate in the NEPA process.

(c) The director's recommendation must consider whether the proposed mining operation will mitigate adverse environmental, health, safety, and general welfare impacts. The director's recommendation must include consideration of the following:

- (1) Whether air and water quality standards will be maintained in accordance with federal, state, and local laws, rules, and regulations;
- (2) Whether sewage, solid waste, hazardous and toxic materials will be properly contained and disposed of in accordance with federal, state, and local laws, rules, and regulations;
- (3) Whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and to mitigate adverse impacts on the

public and on neighboring properties such as those from traffic, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides, and erosion; and

(4) Whether historic sites designated by the City and Borough as significant will be protected; and

(5) The sufficiency of the proposed reclamation plan.

*The following subsection was added to clarify that if a state or federal permit has been granted to the applicant, the CBJ will accept the permit as a statement of the state/federal law requirements the mining operator must comply with for purposes of state/federal law. I read current code language to say the same thing, but this says it more directly. (See for example, current code section 49.65.130(b), specifically the last third of paragraph.)*

(d) In making the determinations under subsection (c), the director shall find that the proposed mining operation will comply with state and federal law as to any standard or subject addressed by an applicable state or federal permit issued to the applicant for the proposed mining operation. However, the issuance of a state or federal permit shall not prohibit the director from recommending more stringent conditions on the proposed operation to the extent the City and Borough is not preempted by state or federal law, or from making a recommendation for denial if the director deems it is warranted in accordance with this article.

(e) The director's recommendation for approval may include any conditions or stipulations the director deems to be reasonably necessary to mitigate adverse environmental, health, safety, or general welfare impacts that may result from the proposed mining operation. If the director makes a recommendation for approval, the director shall also make a recommendation on the amount of any financial warranty required by CBJ 49.65.150.

(f) If the director determines that the proposed mining operation does not meet the standards required by CBJ 49.65.145 and 49.15.330, the director shall notify the applicant. The applicant may then withdraw the application, amend and resubmit the application, or allow the director's recommendation to be forwarded to the commission as written. If the application is resubmitted within 180 days of the initial submission, no new application fee will be required but the applicant shall pay any additional processing fee determined by the director to be reasonably necessary to defray the cost of reviewing the revised application to the extent that it is different from the original submittal.

*The following concept is already in current code but with one change. Because the group proposing changes to the code have stated they agree that obtaining outside consultants at the cost of the applicant should be available to the CBJ, I removed the requirement that approval for that process go through a code process. (See current code section 49.65.130(e).)*

(g) If the director determines that proper review of the application will require the department to retain outside professional assistance, the director may, in the director's discretion, obtain an outside professional consultant. The fee for the consultant shall be borne by the applicant.

*One small addition in subsection (c) to specify that the commission approves the reclamation plan or cooperative management agreement (to implement a reclamation plan jointly with the state). It isn't clearly stated in current code that the reclamation plan must be approved prior to mining.*

#### **49.65.140 Commission review.**

(a) Once complete, the director's recommendations shall be provided to the applicant and placed on the agenda for the next regularly scheduled meeting after public notice has been given as required by CBJ 49.15.230.

(b) The commission shall hear the application as a conditional use permit application as provided in chapter 49.15, article III, as modified by this article.

(c) If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of CBJ 49.65.145 and 49.15.330, it shall approve the application, including the reclamation plan or any cooperative management agreement with the state under 11 AAC 97.700, and set the amount of the financial warranty under CBJ 49.65.150. When the applicant has submitted a financial warranty in the amount set by the commission in a form satisfactory to the municipal attorney, and executed any mitigation agreement required by CBJ 49.65.155, the permit shall be promptly issued by the director.

*The next section addresses permit requirements. Current code section addressing permit requirements is at 49.65.135. I amended the language to clarify that these are required permit conditions, and then in the sections above on director and commission review, clarified that in evaluating applications, these concepts have to be considered.*

**49.65.145 Required conditions for all conditional use mining permits.**

(a) The commission shall impose as a condition of any permit issued by the commission the following requirements:

- (1) The mining operation must be conducted in accordance with this article, CBJ 49.15.330, and any other applicable provisions of the City and Borough Code in such a way as to mitigate adverse environmental, health, safety, and general welfare impacts;
- (2) Air and water quality must be maintained in accordance with any applicable federal, state, and local laws, rules and regulations, or permits;

- (3) Hazardous and toxic materials, sewage, and solid waste shall be properly contained and disposed of in accordance with applicable federal, state, and local laws, rules and regulations;
- (4) All mining operations shall be conducted according to the standards of the City and Borough as contained in this article, CBJ 49.15.330, the conditional use mining permit, and any other applicable provisions of the City and Borough Code, so as to minimize to the extent reasonably practicable safety hazards, and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion;
- (5) Appropriate historic sites designated as significant by the City and Borough shall be protected;
- (6) Reclamation of all affected surfaces, imposed as part of a conditional use permit in accordance with CBJ 49.65.149 or as set by the state under AS 27.19.030, be completed as soon as is reasonable after affected surface areas are no long being used in exploration and mining operations; and
- (7) In the case of large mines, that the applicant comply with the mitigation agreement required by CBJ 49.65.155;
- (8) The applicant will maintain the financial warranty in the amount approved by the director or the commission, including any amendments to the required financial warranty amount under CBJ 49.65.145(f) and (g); and



(9) The loss of any applicable state or federal permit may result in the revocation of the conditional use permit.

*The following language is now clearly incorporated as a condition to be specified in the permit. It currently resides in 49.65.135(c).*

(10) In the event mining operations violate or threaten to violate this article, CBJ 49.15.330, or a permit issued under this article, the applicant shall notify the director of such fact and of the steps to be taken to return to compliance, or to resolve the potential noncompliance.

*Reclamation is now proposed as its own code section. It's currently found in 49.65.135, which combines permit requirements and staff review requirements. I've separated those issues for clarity in this draft. It's been amended to recognize the reclamation provisions under AS 27.19, as well as the possibility of entering into cooperative agreements with the state.*

#### **49.65.149 Reclamation.**

(a) As required by CBJ 49.65.145, and to the extent not preempted by state or federal law, it shall be a condition of all permits issued under this article that reclamation of all affected surfaces, imposed as part of a conditional use permit issued under this article or as set by the state under AS 27.19.030, be completed as soon as is practicable after affected surface areas are no longer being used in exploration and mining operations. The reclamation plan shall be submitted with the mining application, as required by CBJ 49.65.125(b)(3)(iv).

(b) If not addressed in a reclamation plan approved by the state under AS 27.19.030, and to the extent not preempted by state or federal law, reclamation required under this article shall include the following requirements:

(1) Cleanup and disposal of dangerous, hazardous or toxic materials;

- (2) Regrading of steep slopes of unconsolidated material to create a stable slope;
- (3) Backfilling underground shafts and tunnels to the extent appropriate;
- (4) Adequate pillaring or other support to prevent subsidence or sloughing;
- (5) Plugging or sealing of abandoned shafts, tunnels, adits or other openings;
- (6) Adequate steps to control or avoid soil erosion or wind erosion;
- (7) Control of water runoff;
- (8) Revegetation of tailings and affected surface areas with plant materials that are capable of self-regeneration without continued dependence of irrigation and equipment where appropriate;
- (9) Rehabilitation of fisheries and wildlife habitat; and
- (10) Any other conditions imposed by the commission to prevent unnecessary or undue degradation of land and water resources. For the purposes of this subsection, “unnecessary and undue degradation” has the same meaning as defined by AS 27.19.100.

***This catchall was amended to incorporate the same standard identified in state statute (27.19.020).***

(c) Subsequent to the issuance of a permit or the grant of authority under an exploration notice, the applicant's compliance shall be measured against the requirements contained in that permit or the conditions of the exploration notice and the applicant's plans submitted with the permit application or the notice.

(d) If a reclamation plan has been required by the state under AS 27.19.030, and upon approval by the state, the City and Borough may enter into a cooperative management agreement as provided by 11 AAC 97.700 to coordinate oversight and implementation of

reclamation activities required of the applicant with other agencies. *This section allows the CBJ to enter into a cooperative agreement with the state (if approved by the state) so as to reduce duplication of efforts.*

*Amended to add reference to the state's reclamation plans and cooperative management agreements.*

**49.65.150 Financial warranty.**

(a) The purpose of the financial warranty is to ensure that, if the applicant fails to comply with any obligation, requirement, or condition imposed by any permit or exploration notice issued under this article, there will be sufficient funds available to the City and Borough to enable it to complete the required work.

(b) To the extent not preempted by state or federal law, no permit shall be issued or exploration authorized pursuant to this article until any required financial warranty has been submitted by the applicant, approved by the municipal attorney, and accepted by the director.

(c) The director reserves the right to seek forfeiture of the financial warranty, in whole or in part, in the interest of protecting the environmental, health, safety and general welfare requirements of the City and Borough if the director determines that the applicant has violated the obligations, requirements, or conditions imposed by any permit or exploration notice issued under this article. The forfeiture shall be limited to the extent necessary to satisfy the obligations, requirements, or conditions that the applicant has violated.

1  
2 (d) The amount of the financial warranty for an exploration notice shall be set by the  
3 director. The amount of the financial warranty for small mines and large mines shall be  
4 determined by the commission. The financial warranty shall be set in the amount necessary to  
5 ensure the completion of all work required by any permit or exploration notice issued under  
6 this chapter that the City and Borough may require to the extent not preempted by state or  
7 federal law. In recommending and setting the amount of the financial warranty, the director  
8 and the commission, respectively, shall take into consideration the amount and scope of any  
9 financial warranties that have been submitted to other agencies. When the performance of such  
10 obligations is guaranteed by financial warranties that have been submitted to other agencies,  
11 the applicant may be required to post a separate financial warranty with the City and Borough  
12 if the municipal attorney determines that the financial warranty submitted to another agency  
13 does not create a lien or interest sufficient to protect the interests of the City and Borough.  
14 Examples of obligations to be covered by the financial warranty required under this section  
15 may include but are not limited to:  
16

- 17 (1) Construction of berms, dikes, spillways, channels, or other facilities to control,  
18 detain, retain, or reduce runoff, soil erosion, and siltation, or to divert water around waste,  
19 tailings, stockpiles or other facilities or disturbed areas;  
20  
21 (2) Installation and maintenance of landscaping, including berming, tree planting  
22 and other required grading or planting to provide visual and sound barriers and to  
23 eliminate or reduce the appearance of scarring;  
24  
25 (3) Installation and maintenance of road or highway improvements to mitigate the  
impact of increased traffic or heavy trucking that is measurable and directly attributable

to the mining operation; such facilities may include speed access ramps or lanes, turn lanes, intersection improvements, traffic-control devices or private haulage ways where necessary to avoid the use of public roads or highways. The cost of installation or maintenance described in this subsection shall be shared by the applicant and the City and Borough in relation to the proportion of the directly attributable and measurable impact on traffic of the applicant's activities or the facilities being maintained, installed or improved;

(4) Reclamation of affected surfaces during and following exploration and mining operations;

(5) Regrading of steep slopes of unconsolidated materials to create a stable slope;

(6) Installation of facilities required to prevent or reduce degradation of air or water quality or to contain or control toxic or hazardous wastes;

(7) Removal of buildings, structures or equipment where appropriate;

(8) Any other obligations as necessary to conform with the commission's determinations under CBJ 49.15.330 and 49.65.145.

(d) The financial warranty required under this article for a large or small mine permit or an exploration notice may be in any one or a combination of the following forms at the option of the applicant, provided that the cumulative amount is equal to the amount provided in subsection (b) of this section:

(1) Cash;

(2) Certificate of deposit;

(3) An irrevocable standby letter of credit from a United States bank; or

1  
2 (4) A surety bond from a bonding company licensed to do business in Alaska that is  
3 satisfactory to the director for credit worthiness. Interest on cash deposits or certificates of  
4 deposit will accrue to the credit of the applicant.

5 (e) In addition to the forms of financial warranty set forth in this section, with respect to a  
6 small mine permit or an exploration notice, the applicant may elect to use a property bond as a  
7 form of financial warranty; provided, that at least ten percent of the total amount of the  
8 financial warranty shall be cash or a certificate of deposit; and provided further, that the  
9 commission determines that the value of the property is equivalent to the amount required to  
10 be generated for satisfaction of the obligation and the municipal attorney determines that the  
11 bond creates a lien with sufficient priority to permit its collection should such become  
12 necessary.  
13

14 (f) The form of financial warranty shall provide that the funds may be used by the City and  
15 Borough to satisfy the obligations described in this section when there has been a  
16 determination by the director that the applicant has not completed its obligations in a timely  
17 manner or has otherwise violated the terms of its permit or conditions of its exploration notice,  
18 and after notice and opportunity to perform the obligation has been given to the applicant.  
19

20 (g) The amount of the financial warranty shall be reviewed annually by the director, and a  
21 determination shall be made whether the amount should be increased or decreased, taking into  
22 account changes in the obligations of the applicant to be undertaken during the ensuing year,  
23 cost of current obligations of final reclamation, and changes due to inflation or deflation.  
24  
25

(h) If the amount of financial warranty is to be increased or decreased by the determination made in subsection (g) of this section, then the actual increase or decrease shall be made according to the procedure in subsection (d) of this section.

*This next section is in current code at 49.65.130, the section on large mines. In subsection (d), language was added to make clear that the mitigation agreement addresses issues not covered by the reclamation plan. The mitigation agreement is conceptually tied to the socioeconomic report.*

**49.65.155 Mitigation agreements for large mines.**

(a) With respect to a large mine permit application, the applicant shall negotiate and enter into a mitigation agreement with the City and Borough.

(b) The mitigation agreement shall establish responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts of the mining operation not addressed by the reclamation plan, including direct impacts and indirect impacts. The applicant shall be responsible for mitigating the direct impacts. The City and Borough shall be responsible for mitigating indirect impacts except where the costs of mitigating specific indirect impacts are found by the manager to:

(1) Exceed the amount of any City and Borough nonproprietary revenue increase attributable to the mining operation; and

(2) Require a direct and significant increase in local taxes or fees to adequately mitigate the impact.

(c) Highly speculative impacts shall not be included in the mitigation agreement. Taxes and nonproprietary revenues generated as a result of the proposed mining operation shall be a

factor considered in negotiating the mitigation agreement. This agreement shall be incorporated as part of the permit, as required by CBJ 49.65.145.

(d) This subsection does not limit or otherwise affect the authority of the director or the commission to condition or place stipulations on a permit pursuant to this article or the conditional use process as provided in chapter 49.15, article III.

***No substantive changes.***

**49.65.160 Term of notices and permits; temporary cessation.**

(a) Exploration notices and permits for mining operations shall remain in effect for the duration of the operation identified in the notice or in the application, subject to the conditions of this section and providing that the following conditions are met:

- (1) The financial warranty must remain in full force and effect;
- (2) The operator must not be found to be in substantial violation of this article; and
- (3) With respect to a large or small mine permit, mining operations must be continued in accordance with the plan contained in the application for at least 90 days in each year as to a large mine, and for at least 30 days in each year as to a small mine.

(b) During the term of any exploration notice or permit, the director may, pursuant to CBJ 49.65.150(g), revise the amount of the financial warranty. If the amount of the financial warranty is increased, the operator shall submit the appropriate amount of additional financial warranty within 60 days of the director's determination.



(c) The operator shall advise the director within ten days of the date upon which the applicant receives notice that a financial warranty that has been submitted to any other agency is reduced or released.

(d) If at any time during the term of a permit the operator determines that it will not conduct mining operations for the applicable time minimums established in CBJ 49.65.160(a)(3), the operator shall notify the director and request that the mining operation be placed in an inactive status. In conjunction with this notification, and as a condition to granting a request for inactive status, the operator shall advise the director of the measures it will employ to prevent hazardous or dangerous conditions, erosion, or other environmental damage that may result from the operator's activities, and the security measures it will employ at the mining operation during the inactive period. An applicant may continue in inactive status for a five-year period and may, with the permission of the director, obtain successive five-year extensions of that status. At the conclusion of inactive status, the operator shall either resume operations or commence final reclamation in accordance with the approved reclamation plans. If an operator ceases operations for more than one year but does not request inactive status, the director may require the operator to commence final reclamation in accordance with its plans.

(e) Throughout the duration of a large mine permit, the operator of a large mine shall also notify the director not less than 60 days prior to requesting placement on inactive status. The operator and the City and Borough shall maintain a process to exchange information regarding the impact on the City and Borough that may result from a change in mining operations. In addition, the operator shall provide the director with copies of any notification it may be

required to provide to federal agencies under federal law concerning proposed personnel layoffs at its mining operation. The director may waive any of these notification requirements in the event of an unforeseen act of God or disaster.

***No substantive changes.***

**49.65.165 Annual reports; monitoring; monitoring fee.**

(a) During the term of each exploration notice, the operator shall submit annual progress reports to the director on or before March 31 of each year. The progress report must describe the areas in which exploration was conducted during the preceding year, the amount of acreage that was disturbed by such exploration, and the nature and extent of associated reclamation activities.

(b) During the term of each small mine permit or large mine permit, including any inactive period, the operator shall submit an annual progress report to the director on or before March 31 of each year describing the status of the mining operation in relation to the approved mining plan and timetable, and describing reclamation activities during the year.

(c) The director shall have ongoing authority to monitor any mining operation for which a permit has been issued in order to ascertain whether the mining operation is in compliance with the requirements, terms, conditions and mitigation measures in the permit. The operator shall, upon reasonable notice, provide the director with access, at reasonable times, to the premises and to the records of the mining operation to the extent such access is necessary to ascertain whether the mining operation is in compliance.

(d) Throughout the duration of the term of a small mine permit or a large mine permit, the operator shall pay to the director an annual monitoring fee to defray the costs of inspecting and reviewing the affected surface and compliance with the permit. The annual monitoring fee shall be such amount as may be established by the commission as necessary to cover the reasonable costs of inspection and review.

***No substantive changes.***

**49.65.170 Technical revisions, summary approval, and amendments.**

(a) During the term of a permit, the operator shall notify the director of all technical revisions to its operations. As used in this section a "technical revision" is a change in operations that does not, in the judgment of the director, have more than a minor effect on reclamation and that does not change the total amount of disturbance or the overall environmental or socioeconomic impact of the mining operation. After the technical revision is submitted to the director, the director shall within 30 days determine and notify the operator whether a permit amendment or summary approval of the change is necessary or whether the technical revisions may be accomplished under the operator's existing permit.

(b) If the operator or the director determines that the change to the mining operations are more than a technical revision, or if the changes will require preparation of a new or supplemental environmental impact statement, the permit shall be amended unless summary approval of the change is granted pursuant to (b)(2) of this section.

(1) Except as provided in subsection (2) of this section, the operator shall file with the director an application for amendment to its original permit, together with an

application with the same content as required for an original application, except that no operator will be required to resubmit any information that duplicates applicable previous submittals. The permit amendment application shall be processed in accordance with the same procedure as established for processing permits under CBJ 49.65.125, 49.65.135 and 49.65.140. The operator shall not commence changes requested in its amendment application until the permit amendment has been approved and, if appropriate, additional financial warranties submitted.

(2) Summary approval.

(A) Upon request of the operator, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

- (i) The mine is located entirely outside the roaded service area established in CBJ 01.30.320;
- (ii) The application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);
- (iii) The proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv) The proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(B) The director shall make the determination required by this subsection (2) within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the operator, the time for determination may be extended for up to 20 additional days after submittal by the operator of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(C) Planning commission review.

(i) The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii) If the commission rejects the proposed summary approval, it may:

(a) Return the matter to the director for further consideration of whether the director, in consultation with the operator, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(b) Direct that the proposed change be processed by the director as an application for an allowable use permit for which the commission may impose conditions under CBJ 49.15.320(f)(1)—(8) and such

additional conditions as are necessary to reduce to non-significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

*No substantive changes.*

**49.65.175 Enforcement.**

This article shall be enforced in accordance with chapter 49.10, article VI and CBJ 49.65.195.

*No substantive changes.*

**49.65.176 Appeal.**

Any person who is aggrieved by a decision of the director or the commission with respect to this article, other than one under CBJ 49.65.175, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

*No substantive changes.*

**49.65.180 Release of warranties for mining operations.**

(a) Upon completion of mining operations, the operator shall file a written notice of completion with the director when it believes it has completed any or all requirements of this article, CBJ 49.15.330 and its permit with respect to any or all of its affect surfaces. The director shall, within 90 days after receiving the notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine whether the operator has complied with all applicable requirements.

(b) If the director determines that the operator has successfully complied with all the requirements of this article, CBJ 49.15.330 and the permit, it shall release all financial warranties applicable to said requirements. Release shall be in writing and shall be delivered to the operator promptly after the date of such filing.

(c) If the director finds that the operator has not complied with the requirements of this article, CBJ 49.15.330 or the permit, it shall so advise the operator not more than 90 days after the date of the inspection. The operator shall be given a reasonable time to comply with requirements before a second inspection. If the operator does not complete the requirements, or if after reinspection the director is not satisfied that the operator has complied with all the requirements of this article, CBJ 49.15.330 or the permit, the financial warranty shall be subject to forfeiture to the extent necessary to satisfy any outstanding requirements.

*No substantive changes. Formatting changes, and required the request for transfer be on a form specified by the director (for consistency). Changed title to "operators" from "applicants" since this would be post-application process/permit issuance.*

#### **49.65.185 Successor operators.**

(a) Any operator desiring to transfer its rights under an exploration notice or a conditional use mining permit shall submit a request for transfer to the director, on a form specified by the director.

(b) The director may approve the request for transfer if the director finds:

- (1) The proposed operator will conduct the operations covered by the notice or permit in accordance with the requirements of this article and any additional requirements set by the director;

(2) The proposed operator has submitted a financial warranty at least equivalent to the financial warranty of the original operator and such other amount as may be determined using the procedures in CBJ 49.65.140;

(3) The proposed operator will continue to conduct the operations involved in full compliance with the terms and conditions of the original notice or permit; and all obligations and responsibilities undertaken by the original operator shall be accepted and assumed by the proposed operator.

(c) The director may deny approval of the request for transfer if the original operator has any existing notice or permit violations at the time of the request until such time as the violations have been remedied. If the director approves the transfer, the financial warranty submitted by the original operator shall be released.

(d) Director decisions on transfer requests must be in writing.

*No substantive changes.*

#### **49.65.190 Confidentiality.**

Upon request of any applicant or operator, information in any application or report relating to the location, size, grade, geology or geochemistry of any ore deposit, proprietary process information, or information as to cost of mine construction or operation shall be kept confidential to the extent permitted by law. Information to be maintained as confidential must be separately presented to the director and must be marked "Confidential."

*No substantive changes.*



**49.65.195 Suspension or revocation of notices and permits.**

(a) Subject to the procedures of this section, the commission may suspend or revoke a permit issued under this article, or the authority to operate under an exploration notice pursuant to CBJ 49.65.120, upon a determination by the commission that:

(1) The exploration of mining operations are not in material and substantial compliance with the requirements of the exploration notice or permit issued under this chapter or by any state or federal agency, and such material and substantial noncompliance remains unremedied after issuance of a compliance order issued pursuant to CBJ 49.10.620; or (2) The exploration of mining operations under the notice or permit have a history or pattern of intentional or grossly negligent noncompliance and compliance orders have previously been issued for such past events of noncompliance. Good faith efforts to remedy events of noncompliance shall create an inference that such noncompliance is not a cause for suspension or revocation.

(b) The director shall provide the operator with written notification that the director is recommending that the commission consider the entry of a suspension or revocation order under subsection (a) of this section. The written notification shall set forth the reasons for the director's recommendation and the operator's right to a hearing before the commission. The commission shall schedule a hearing within 30 days after the operator has received the written notification. At the hearing, the director shall have the burden of establishing that the operator is not in material and substantial compliance with the permit or authority to operate under an exploration notice, or that there is a past history or pattern on noncompliance sufficient to justify suspension or revocation.

(c) Upon written notification of the entry of a suspension or revocation order to the operator or to any person operating under the authority of the permit or exploration notice, all exploration or mining operations shall cease except those specifically authorized by the commission in the order or if the assembly stays the order pending appeal.

(d) A suspended notice or permit may be reinstated by the commission upon a determination that the exploration or mining operations have been brought into compliance with the conditions of the notice or permit. A notice or permit that has been revoked may not be reissued by the commission until the commission determines that the exploration or mining operation has been brought into compliance with the terms and conditions of the notice or permit, and the operator has clearly and convincingly demonstrated that preventative measures have been taken to ensure that those conditions giving rise to the revocation will not reoccur.

(e) A suspension or revocation order may be appealed to the assembly in accordance with chapter 49.20, article I. Pending appeal, the assembly may in its discretion stay an order of suspension or revocation.

(f) The rights of suspension or revocation provided for in this section are in addition to any rights or powers vested in the City and Borough in CBJ 49.65.175 or chapter 49.10, article VI.

***No substantive changes.***

**49.65.196 Effect of article on operations in annexed territory.**

Large mine, small mine, and exploration operations occurring in territory annexed by the City and Borough that have been issued the federal and state permits or approvals necessary for the

1  
2 operation, including, if applicable, permits or approvals necessary to operate in accordance with  
3 the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a  
4 large mine permit, a small mine permit, or an exploration notice, as applicable, under this  
5 article and to otherwise be eligible to operate pursuant to this article upon the effective date of  
6 annexation; provided, that all such federal and state permits or approvals are currently valid.  
7 With the exception of the initial permit application and exploration notice filing requirements,  
8 the operator shall be subject to all of the requirements of this article in effect upon the effective  
9 date of annexation, including the technical revisions and permit amendment requirements, and  
10 the monitoring fee enforcement and revocation or suspension provisions, in the same manner  
11 as any other operator. The terms of the City and Borough permit or notice shall be deemed to  
12 be the terms of the state and federal permits or approvals, unless and until a permit  
13 amendment is required. The operator shall be required to execute documentation  
14 acknowledging that the permit or notice deemed to be issued under this article shall have the  
15 same terms as the federal and state permits or approvals unless and until a permit amendment  
16 is required, and that the operator, and the permit or notice deemed issued, shall be subject to  
17 all of the requirements of this article in effect upon the effective date of annexation with the  
18 exception of the initial permit application and exploration notice filing requirements.  
19  
20

21 *No substantive changes.*

22 **49.65.197 Severability.**

23 If any section, subsection, paragraph, sentence, clause or phrase of this article is for any reason  
24 held unlawful or otherwise invalid, such holding shall not affect the remaining portions of the  
25

1  
2 article. The City and Borough declares that it would have enacted this article and each and  
3 every part thereof, irrespective of the fact that any one or more parts might be held unlawful or  
4 otherwise invalid.

5  
6 **Section 3. Effective Date.** This ordinance shall be effective 30 days after its  
7 adoption.

8  
9 Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

10  
11 \_\_\_\_\_  
Kendell D. Koelsch, Mayor

12 Attest:

13 \_\_\_\_\_  
Laurie J. Sica, Municipal Clerk

Presented by: The Manager  
Introduced:  
Drafted by: A. G. Mead

# ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-42

## **An Ordinance Authorizing the Manager to Sell City and Borough of Juneau Property, Located at 9290 Hurlock Avenue, to Alaska Legacy Partners.**

WHEREAS, Juneau Youth Services notified the CBJ in November of 2017 that it no longer had need for the Hurlock facility; and

WHEREAS, CBJ staff recognized that the facility had long served an important community purpose; and

WHEREAS, CBJ staff recommended that the community be given the opportunity to propose uses that would continue to serve necessary public purposes; and

WHEREAS, housing is in short supply in the community and through the adopted Housing Action Plan it has been an Assembly goal to support the development of all types of housing, including senior housing; and

WHEREAS, the proposal by Alaska Legacy Partners, to use the property for an assisted senior living facility, was ranked highest in a competitive process; and

WHEREAS, the Assembly Committee of the Whole recommended the approval of the sale of the property to Alaska Legacy Partners at its meeting on April 16, 2018.

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

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

**Section 2. Authorization to Dispose of Land by Negotiated Sale.** The Manager is authorized to negotiate and execute the sale, by quitclaim deed, of the property identified as

9290 Hurlock Ave., A fraction of U.S. Survey 381, Juneau Recording District, First Judicial District, State of Alaska containing approximately 36,122 square feet

as shown on Exhibit A, subject to reservations, easements, exceptions, covenants, conditions, and restrictions of record, in accordance with the minimum terms and conditions specified in this ordinance.

**Section 3. Conditions of Sale.** Conveyance of the property shall be pursuant to a purchase and sale agreement, which must include the following minimum essential terms:

(A) The purchase price of the property shall be the fair market value, to be Three Hundred and Fifty Thousand Dollars (\$350,000.00), determined by appraisal dated December 14, 2017. Alaska Legacy Partners shall finance the purchase amount through the City and Borough of Juneau under the following terms:

(1) Alaska Legacy Partner shall pay a 10% (ten percent) down payment of Thirty-Five Thousand Dollars (\$35,000.00) at the closing date identified in the purchase and sales agreement.

(2) Interest on any unpaid balance shall be at a rate of 6% (six percent) per annum.

(3) The loan term is five years. The first twenty-four months of payments are deferred to the last payment. Interest accrues during the first twenty-four month period. Payments twenty-five through the second to last payment shall be made monthly based on a 30-year amortization schedule. The last payment is a balloon payment in which all outstanding principal and accrued interest is due.

(B) Alaska Legacy Partners shall be required to purchase title insurance and pay for all closing and recording costs.

(C) Alaska Legacy Partners shall be required to develop the property in accordance with its proposal as presented to the Assembly, specifically, a senior assisted living facility.

**Section 4. Other Terms and Conditions.** The Manager may include such other terms and conditions as may be in the public interest and in accordance with CBJ Title 53.

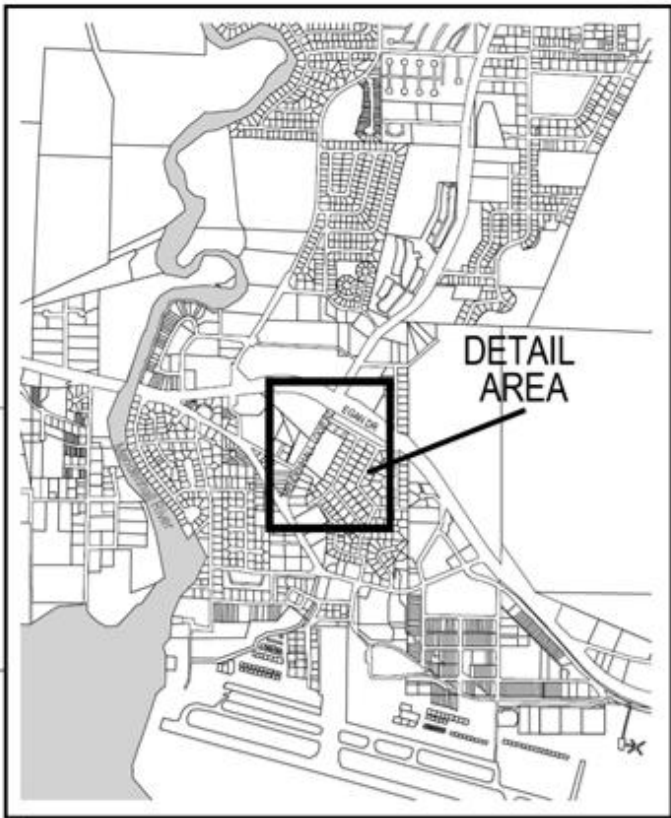
**Section 5. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



Subject parcel

EGAN DR

MENDENHALL LOOP RD

HURLOCK AVE

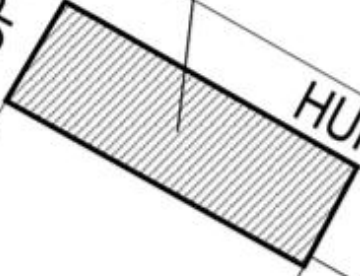
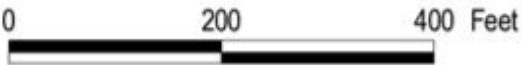


EXHIBIT A – Ord. 2018-



Presented by: The Manager  
Introduced:  
Drafted by: The Assembly

## **RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

### **Serial No. 2824(b)**

#### **A Resolution Calling for an Advisory Ballot Proposition on City and Borough Financial Support for Improving and Expanding Access for all Juneau Families to Affordable High Quality Child Care and Early Learning/Pre-school.**

WHEREAS, the Juneau Economic Development Final Plan – adopted by the Assembly by Ordinance No. 2015-10, survey results showed that approximately 75 percent of business/employer respondents found Juneau’s availability and cost of child care services a “very significant” or “somewhat significant” barrier to Juneau’s economic development. Adopted goals of the plan include: “Ease the Child Care Barrier: Increasing the capacity, quality, and affordability of child care,” and “Support Quality Pre K-12 Education”; and

WHEREAS, on May 9, 2017, the Juneau Board of Education unanimously approved Resolution 2017-02, “A Resolution Supporting High Quality Pre-K and to Improve Kindergarten Readiness and Student Success”; and

WHEREAS, there is great deal of scientific research indicating that ages 0-5 are the most important years for healthy brain development, learning preparation, and development of skills and personality traits that will have a major impact on becoming a successful adult; and

WHEREAS, more than two out of three of Juneau’s kids are “not ready” for Kindergarten according to Alaska Department of Education measures; and

WHEREAS, Alaska exceeds most other states in Adverse Childhood Experiences (ACES). Juneau exceeds the Alaska average in half the ACES categories including sexual and emotional abuse and household substance abuse; and

WHEREAS, high quality child care and pre-school with a proven curriculum, trained teachers, and parental involvement can increase Kindergarten readiness and can reduce the incidence and impacts of ACES through parent involvement, early intervention, and building resilience in youth; and

WHEREAS, Juneau has a well-documented child care and early learning shortage. Juneau lost approximately 20 percent of its child care/early learning providers in the last 12 months. Juneau has less than half of the child care/early learning it is estimated to need for its families, and very few of the current providers have the resources from parent support



alone to provide appropriately qualified and trained teachers and high quality learning and care; and

WHEREAS, the Assembly has decided to call for an advisory vote on the City and Borough providing financial support for improving and expanding child care and early learning to be presented to the voters at the October 2, 2018 municipal election.

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

**Section 1. Submission of Proposition to Voters.** A proposition as set forth in Section 2 of this resolution shall be submitted to the qualified voters of the City and Borough at the next regular election to be held on October 2, 2018. The City and Borough Clerk shall prepare the ballot proposition to be submitted to the qualified voters as provided by this resolution and shall perform all necessary steps in accordance with law to conduct the election and place this proposition before the qualified voters at said election.

**Section 2. Proposition.** The proposition to be submitted to the voters as required by Section 1 shall read substantially as follows:

**Proposition No. \_\_\_\_\_**  
**Advisory Proposition on Child Care and Early Learning/Pre-school**

**Explanation of Proposition**

Through this ballot measure, the Assembly asks for your advice on providing City and Borough financial support for improving and expanding access for all Juneau families to affordable high quality child care and early learning/pre-school. This is a non-binding measure.

The primary goals of this effort would be to increase the **available child care to meet the needs of Juneau families and businesses, increase the** percentage of 5 year old children who are “prepared to learn” (by annual State assessment process) when entering kindergarten from 32 percent to at least 70 percent, and reduce the incidence and impact of “Adverse Childhood Experiences (ACES)” on Juneau’s children.

This effort is expected to cost up to \$2.8 million of CBJ funding in the ~~fifth~~ **third** year when the program is fully implemented, thereafter adjusted for inflation annually. **In accordance with the taxable value in the CBJ in 2018, a \$2.8 million expenditure would require the equivalent of 0.58 mill increase, resulting in a property tax increase of \$58 for each \$100,000 of assessed property value of property tax in 2018.**

**PROPOSITION NO. \_\_\_\_**

Do you support this effort to improve and expand access for all Juneau families to affordable high quality child care and early learning/pre-school?

- ☐ Yes
- ☐ No

**Section 3.        Effective Date.** This resolution shall be effective immediately after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



## OFFICE OF THE MUNICIPAL CLERK

155 S. Seward St., Room 202  
Phone: (907)586-5278 Fax: (907)586-4552  
email: [city.clerk@juneau.org](mailto:city.clerk@juneau.org)

# Notice of Appeal

This appeal is governed by CBJ 01-50, the Municipal Appellate Code. This code establishes the standards and procedures for appeals.<sup>1</sup> Anyone who files an appeal should be familiar with the appellate code. The clerk can give you a copy of the code.

Attach a copy of the decision being appealed. Do not attach any other documents, exhibits, or additional pages to this form, except for any pages needed to continue the answers to the requested information below. The clerk will accept this form only if the appropriate filing fee is attached. The fee to file an appeal to the assembly is \$500.00. To be timely, an appeal must be filed within 20 days of the date the decision being appealed is filed with the clerk.

### Action Being Appealed

*Board decisions are appealable: board recommendations and most staff decisions are not.*

- ☒ Agency Appealed From: CBJ Airport Board
- ☐ Description and Date of Decision: Its July 10, 2018 Regular Meeting approval of Board member Angela Rodell's motion under agenda item X.B. "to concur with Concept Option 2 Terminal Reconstruction Phase II, and direct staff to move forward with design documents, and forward the proposed funding plan and Capital Improvement Plan to the Airport Board Finance Committee."

### Concerned Parties

*Identify the people who have an interest in the action being appealed: yourself and others.*

- |  |  |              |     |  |
|--|--|--------------|-----|--|
| <input type="checkbox"/> Party Filing Appeal                   | Mailing Address                          | Telephone    | Fax | Email  |
| Thomas C. Williams   | 3170 Fritz Cove Road<br>Juneau, AK 99801 | 907-789-3170 |     | <a href="mailto:tcw-ak@gci.net">tcw-ak@gci.net</a> |
| <input type="checkbox"/> Parties Who Won the Decision Appealed | Mailing Address                          | Telephone    | Fax | Email  |

1 01.50.070 STANDARD OF REVIEW AND BURDEN OF PROOF. (a) The appeal agency may set aside the decision being appealed only if:

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

(b) The burden of proof is on the appellant. (Serial No. 92-36

☐ 2 (part), 1992).

-over-

CBJ CLERK

JUL 30 2018

RECEIVED

2016 - Appeal Form  
Page 2 of 2

## Issues on Appeal<sup>2</sup>

*Concisely describe the legal and factual errors that form the basis for your appeal. Do not argue them: argument will be heard later.*

The Airport Board's decision:

1. Cedes a significant portion of ownership and control of the publicly financed public airport terminal to a private company or companies;
2. Unnecessarily precludes future airport growth without a requiring a significant future cost to the Airport, the CBJ and the public;
3. Inhibits current and future competition;
4. Will preclude the CBJ Airport from an option that could save the Airport and taxpaying public millions of dollars to significantly improve 121 (large airline) carrier check-in counter space for the traveling public;
5. Was made without providing a sound public financial analysis of the effect on Airport revenues and expenses, despite public requests for the information;
6. Places a priority on the Airport's administrative offices instead of giving priority to the providing better facilities for the traveling public using the 135 scheduled carrier facilities;

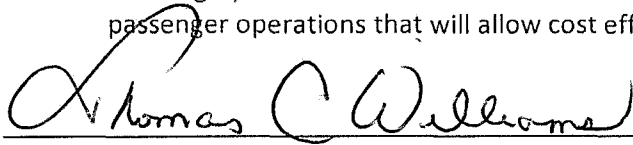
(Continued of attached page)

## Relief Requested

*What should the Assembly do with the action being appealed: send it back, modify it, or something else?*

The Assembly should direct the Airport Board to:

- A. rescind their current decision with respect to making lease lots immediately adjacent to the North Wing of the Airport Terminal;
- B. ensure any future plan allows a significant area for future terminal expansion between the North Wing of the Airport Terminal and lots to be leased to private companies for development;
- C. Have CBJ Engineering or a private engineering firm evaluate the condition of the North Wing to determine if it would be more cost effective to refurbish the existing North Wing of the terminal rather than demolish it and build a new facility; and
- D. Thoroughly evaluate the cost effectiveness of alternative plans that provide additional space for passenger operations that will allow cost effective future expansion.



Signature

7/30/2018

Date

*If you are representing any group, or a person other than yourself, you must sign a notarized statement that you are authorized to represent them.*

2 01.50.030(b)(5) COMMENCEMENT OF ACTION.

The notice of appeal shall include a concise statement of the legal and factual errors in the decision that form the basis of the appeal.

-over-

## **APPEAL OF AIRPORT BOARD DECISION**

July 30, 2018

### **Issues on Appeal (Continued)**

7. Will grant the current largest 135 scheduled carrier (CL135SC) a competitive advantage over other current and future 135 schedule carriers by leasing Airport property immediately adjacent to the North Wing terminal to the CL135SC for the CL135SC to build their own freight and mail facility;
8. Will enrich the CL135SC operating at the CBJ Airport at public expense;
9. Was made primarily in consultation and coordination with the CL135SC with very limited consultation with other 135 carriers currently operating at the airport;
10. Can be challenged as violating the FAA grant assurances requirements for the Airport due to the favoritism granted to the CL135SC;
11. Was made without addressing a number of significant and relevant questions posed by the other 135 scheduled carriers currently operating in the North Wing;
12. Was made without a completing or making available to the public an engineering analysis of the need to replace the North Wing of the Airport Terminal instead of refurbishing the existing terminal, as was reportedly recently done by the CBJ when deciding whether to demolish or refurbish the NOAA facility buildings near Auke Bay Statter Harbor;
13. Dismissed alternate proposals for reconstructing the North Wing and for the location of the leased lots for tenant cargo and mail operations;
14. Will set in stone the mixing of passenger terminal operations with potentially conflicting freight and mail operations;
15. Authorizes the leasing of lots for private development immediately adjacent to a public terminal without design criteria; and
16. Made the decision without a comprehensive public financial disclosure of the funds available and how those funds would be spent, contrary to the process used when the Airport Board approved moving forward with the Airport snow removal equipment building.

# AIRPORT BOARD MEETING

July 10, 2018

Page 2

VIII. **ELECTION OF OFFICERS:** Dennis Harris moved that David Epstein be elected Chair of the Board. The motion passed by unanimous consent. Chair Epstein said Jerry Godkin will continue as Vice Chair. Angela Rodell will serve as the Board Secretary.

IX. **COMMITTEE APPOINTMENTS:**

A. **Finance Committee:** Angela Rodell (Chair), Jerry Godkin, Chris Peloso

B. **Operations Committee:** Al Clough (Chair), Dennis Harris, and Dennis Bedford

X. **UNFINISHED BUSINESS:**

A. **'Kendler Way' Road Naming (Attachment #1).** Airport Manager Patty Wahto said that the Board discussed naming a road and Mr. Harris suggested naming it after long-time family members who are in the audience tonight – the Kendler family. The Airport is situated on Kendler Dairy Farm that was acquired back in the 1930's by Pacific Alaska Airways (PAA) when they started the first airport here. In honor of the land that was homestead as a dairy with the Kendler family, as well as the aviation history within that family. The signs have been made to officially name the road that comes in through Gate Echo going through the airport, past the snow removal equipment facility (SREF) and down through the float pond. Scott and Sandy Spickler and some others are in attendance. Pictures were taken of the family members and the Board Members. Sandy Spickler thanked everyone. She said it is a very nice honor for the family. It means a lot. Her sister had at one time tried to get something spearheaded after her grandparents and dad had passed away. She said it means even more to have something done. She said she had one Kendler book if anyone was interested. Chair Epstein thanked Mr. Harris for stepping up and making the motion. He is the Board's finest spearhead.

B. **Terminal Reconstruction Phase II (Attachments #2, #3, #4 and #8).** Mrs. Wahto said the attachments are correspondence received from some of the 135 carriers that were sent after the June 12 terminal meeting, as well as the Board meeting. There was another letter sent today from Harris, Island and Ward Air with regard to their comments on the North Terminal Reconstruction (Attachment #8). Also included was what was presented at the June terminal meeting and described at the June 12 Board meeting – the Option 2 Concept. Staff has looked at this and tried to mesh various things. This project has been quite a work in progress for a number of years. What it comes down to is finding out what everyone needs. Not building something that is too large or too small. However, the Airport has limited funding and the funding matrix is particularly complex in this matter because of the size of airport, the funding received, the PFCs (Passenger Facility Charge fees, which might as well be considered AIP (Airport Improvement Program) dollars). It becomes very difficult for what is eligible mixed with the \$6.9 million GO (General Obligation) bond. Staff did a quick overview of the concept and how staff came up with it.

Airport Architect Catherine Fritz said the poster presented this evening is the same one that was discussed at the June meeting and is in their packet. Staff discussed the

## AIRPORT BOARD MEETING

July 10, 2018

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assumption that 135 operators would build their own spaces and the Airport would connect them. Once this was further discussed, it was found that some limited 135 services located in the terminal were agreed to by all tenants and the public. The concourse connector, utilities and infrastructure required for the amount of money are very good ideas. Staff believes those things can be allowed for in the future should they be needed, especially the concourse, but it is not critical to the functioning of the building. One tenant is very interested in building a cargo facility, something more than passenger services, but the other tenants are only interested in passenger services. Input was solicited from operators not currently tenants and some operators participated by phone. No one else is currently interested. The appropriate audience is the current tenants.

The Airport wants to provide for as much future growth, but there is not a budget to build a bunch of extra space that is not needed. This is the next step of the project. It is believed that the current budget of \$20.2 million will fund this program and will be shared in more detail with the Finance Committee. This project will provide the essential passenger service counters and back counter space for the current operators and allow the one tenant who wants to build more than the minimum for passengers to construct things immediately adjacent to the spaces for the passenger services. Many design meetings will occur. The site work has not been included in the current budget because this concept will not require extensive site work. The intersection will not be rebuilt. Should a private development by Alaska Seaplanes or anyone else be brought forward, then staff will look at using existing curb cuts and finding a loading zone that is off of the front curb with simple fencing and painting and an internal access point so as not to exacerbate the curb condition with loading and those activities that go with freight. This should mean that the several million dollars that were identified earlier for intersection and utilities will not be needed at this time, if the current proposal is used.

Chair Epstein said the proposal rebuilds/renovates the north wing, correct? Ms. Fritz said that is correct, but it does not rebuild everything that is there now, i.e., the Aurora Room, the Seaplanes cargo area, another set of rest rooms, the fish bowl, the gift shop is not rebuilt. The gift shop will be a smaller version that would move to the second floor when the next work is done. Chair Epstein said that the proposal will accommodate all three 135 operators. Ms. Fritz said that the project will build approximately 2,250 square feet of counter space. Currently Island and Harris Air share a space that equates to about 750 square feet, which has been called a module. The space would equate to three modules. If Seaplanes has more passengers, they might choose to use two modules. They may use only one and do enhanced services adjacent in facilities that they build. The knuckle comes down and is all replaced. It would mean that all of the terminal will be on the geothermal heat system with a single floor and no grade change. It will be less operating cost and it will all be new. Mrs. Wahto said that the eligibility for FAA (Federal Aviation Administration) funds for the whole project is greater than if only the leased area for the north end would be. Board Member Dennis Harris asked if the lease space for the gift shop was eligible. Ms. Fritz said lease space itself is not eligible, but it is not as direct as

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lease or not leased, there are other things. In this case, since we are a small hub, the gift shop is not eligible. It is believed that 70% of the project will be eligible for AIP funding.

Mrs. Wahto said the current public circulation area for the 135 operators is roughly 1,800 square feet. This concept alternate would open the waiting area to 3,100 square feet. It will be quite a bit more than what is currently available. Mr. Harris said the 135 area gets crowded when planes are not flying in the winter. He was concerned that people have sufficient area to be there and not be sitting on top of each other. Mrs. Wahto said that although weather delays are an important part of it, you have to look at how many people are moving every couple of hours. She didn't think that a terminal can be planned around weather delays. This is what is done for Alaska Airlines and Delta Air Lines. It is what the Airport can afford.

Board Member Al Clough paraphrased a friend, Paul Swanson, "you don't build a church for Easter Sunday." He said Mr. Harris is correct, it is a bit of a zoo at times, as is the whole terminal. If additive alternate 1 came to pass, you are gaining space over what is currently available. It is unfortunate that people get stacked in there every now and then, but that is the way it is. Ms. Fritz said that in relocating the stairway and escalator down to the north orientation, it opens up the possibility for the 135 area to flow into the general lobby, utilizing the small waiting area around the main entry or have people drift upstairs easily. It will mean that a good PA system will be needed.

Tom Williams, Ward Air, pointed out a letter (Attachment #8) that was delivered late that day relative to the issue of Option 2 that there is leased area directly adjacent to the terminal. They recommended a better approach, which is listed in their letter. There are basically seven reasons why they think it is a much better approach that still allows any entity to build a cargo facility and keeps the cargo facility further away from the terminal. First of all, it will allow unimpeded future expansion of the airport should there be that sort of need. If there is a need to expand the north terminal, it is not too-blocked out by a lot and a building that has been leased there. It allows more flexibility of a design of a publicly owned facility in conjunction with the facility as opposed to having to coordinate something with a private cargo facility. It would provide direct entry into the north wing passenger terminal from off-street access.

The Manager had said earlier in the day that there may be problems on their chart with the north wing in yellow and the loading area, which would depend on whether or not that could actually be done. Nevertheless, it allows entry from that end without having to go around another cargo facility. It does not mix passenger, freight and mail operations in the main terminal. It provides all future 135 carriers space to construct their own freight/mail handling facilities on the north end up towards the other cargo facility area (FedEx) and is consistent with the Master Plan. By being further away, it would potentially allow customers not having the quick turn-around on dropping off their cargo because it would be a distance away from the terminal itself. He believed if this were adopted, it would allow cargo folks the ability to move ahead faster on building a cargo facility than it would



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if they have to wait for construction of the terminal and then try to build in there. It reduces the conflicts. He said those are the highlights of the reasons.

He realized that this is the last minute. He suggested the Board adopt their plan, but he recognized it had not been vetted that much. The only thing he asked is if the Board was going to move ahead with the adoption of the plan recommended by the Airport, that they specifically exclude any provision from the lease lot that is shown in there until this issue can be discussed further by the Board. The idea of leasing lots directly next to the terminal should not impede anything relative to moving ahead with the terminal itself. However, if the Board makes a rash decision now to do that without fully vetting this other alternative and discussing that, the Board runs a risk of setting up a long-term problem. He urged the Board to at least take that action if they were going to take this proposal by the Airport.

Scott Currier, Island Air, asked if the distance of the escalator/stairs would create a problem and box the front area out, but Ms. Fritz had mentioned it would open up the lobby. Ms. Fritz said this is the difference of a one-story ceiling and a two-story open space. The area around the escalator/stair would be a high volume space. The idea is that the spaces will be very open and flowing. In the packet, the \$20.2 million budget that the Finance Committee will be asked to review in more detail will take the maximum given in this range and it adds a little over \$2.5 million more so that alternate space can be included as essential base space. The Airport realizes how important the alternate really is and there is a plan that will put that into the base. Mr. Currier said it would be very important to have more depth behind the counter to handle bags. He said if Alternate 1 is something that could be seriously considered this plan will work for them by having more depth and also being able to possibly set them back some from the entry to the escalator. They would still be interested in looking into the opportunity to lease ground to the north.

He thanked everyone for working through this. The design workshop tried to bring some ideas together. It really comes down to what can everyone afford; how can it all be blended together; and some of the comments that were made before about ceding ownership of prime real estate north of the existing main terminal is something that he didn't think anyone wants to go down the road and say, "Why'd we do this." He thought it was valuable space and something that if the Airport could afford to do, they would be building their own terminal there.

Board Member Al Clough asked if not moving on the lease lot issue would cause any delay in the terminal project? Mrs. Wahto said yes, the Airport needs to get into design. It is a big part of it. It also talks about how things will be phased. Ms. Fritz said the next step is a meeting tomorrow with the design team to look at the next things that need to happen. One is to blow this thing up in detail and make sure that the Airport is proposing a concept that is really viable. Another is to vet the AIP calculation with the FAA. Another is put the concept on the land aurally and look at exactly what is available for lease lots. Details like where the generator and the dumpster will need to go will be

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discussed. The Airport hopes that it all will be available for lease, but there are some things that need to be confirmed for the Airport. A deadline of early August is in place to have a design fee and AIP grant ready to go, which has to have agreement of that AIP ratio and all of the other aspects – a fee proposal from the consultants that is agreeable – to bring the project through to construction documents and be able to get the grant. The Airport needs to have time to bring it to the tenants to make sure it will work for them and, if not, have time to really look at details of what land is being offered to them. All of this has to happen within the next four weeks. Authorizing a piece of it to go could be pretty detrimental.

Chair Epstein interpreted Mr. Clough's question that some of the operators are concerned about leasing to a private entity. His interest tonight is moving forward on the design piece for this work. He said he did not see this foreclosing any options that we have for the land beyond the end of Option 2. Ms. Fritz said there is accuracy in that. The piece that is not being heard is what the tenant's response would be if the Airport proceeds on this just assuming at some point we'll tell them where the lease line is. Mrs. Wahto said part of what is being done is taking away a large piece of the north end that is cargo area. If there is not a plan in place, will they still want to move forward. What will they do with that if that is a huge piece of their business. Mr. Currier has even said they could potentially be interested in land lease in that area, too. She thought it would affect how the project will be phased and what will be done with the current cargo facility. What will the Airport allow the tenants to do when they are pushed out of that space and they need to do something. So the decision has to be made as we move forward today.

Mr. Harris said there is a tiny little area noted as Customs. He asked how this will work. Ms. Fritz replied that all of that arrangement is a reality. They will be served as a side-access point like they are now. They are the size they need to be and have general proximity to the things that are important to them. In other words, Customs is on the first floor with airfield access. The details of exactly how they will work have not been worked out. Chair Epstein said he will be voting in favor of the motion. He said the Board had heard from several parties that the Airport needs to get with the program. He did not see any good reason why this first step should not be taken. *Angela Rodell moved to concur with Concept Option 2 Terminal Reconstruction Phase II, and direct staff to move forward with design documents, and forward the proposed funding plan and Capital Improvement Plan to the Airport Board Finance Committee. The motion passed by unanimous consent.*

XI. **NEW BUSINESS:**

**A. Snow Removal Equipment Facilities (SREF) – Sand/Chemical Building and Fueling Station.** Mrs. Wahto said the Airport is in a unique situation after talking with the FAA, the Airport is already working on design from AIP entitlement funds. There is a possibility of taking advantage of the \$1 billion omnibus for additional FAA funds at airports. It is for smaller airports. After talking with the FAA because this all came together in the shadow of having an Alaska OSHA inspection, which happened to hit upon the sand shed building. The building has been de-energized and requires a hard hat to go

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Footnotes:

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**Charter reference**— Municipal proceedings, § 15.6.

**State Law reference**— Administrative appeals, AS 44.62.340 et seq.

01.50.010 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Agency* means a division, department, board, commission, body, officer or employee with the authority to:

- (1) Make decisions from which an appeal may be taken to another municipal agency;
- (2) Hear appeals of decisions of a municipal agency; or
- (3) Initiate hearings which may result in the revocation of a right.

*Appeal agency* means the agency which will hear the appeal or the assembly, if the assembly is to hear the appeal.

*Hearing officer* means a qualified, unbiased, and impartial individual assigned by the assembly to conduct hearings and perform other duties in connection with the administration of this chapter.

*Pleadings* means the notice of appeal, memoranda, briefs, and any motions required or permitted to be submitted to the appeal agency.

*Presiding officer* means the presiding officer of the appeal agency or the presiding officer's designee.

*Right* whether used singly or in combination with other similar words, means and includes authority, license, permit and privilege. Where an appeal hearing under the chapter is authorized, it shall be assumed that a right exists.

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(Serial No. 92-36, § 2, 1992)

**Cross reference**— Definitions generally, CBJ Code § 01.15.010.

01.50.020 - Application of chapter.

- (a) The provisions of this chapter shall apply to the following administrative and quasi-judicial proceedings in which legal rights, duties and privileges or penalties of persons are to be determined:
  - (1) The appeal to the assembly of the decision of any board or commission under Section 3.16(b) of the Charter;
  - (2) Appeals or other actions to which this chapter is made applicable by other provisions of this Code, the Charter or resolution approved by the assembly. In such cases, all procedures of this chapter shall apply unless modified or made not applicable by the Code, Charter section or resolution approved by the assembly.
- (b) An appeal shall be filed only from a final agency decision. Decisions which are not appealable include, but are not limited to, decisions to recommend, advise or request an action, even if the

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recommendation, advice or request is procedurally required as a prerequisite to some other decision, which latter decision is dispositive of the matter.

(Serial No. 92-36, § 2, 1992; Serial No. 96-30, § 2, 1996)

01.50.030 - Commencement of action.

- (a) *Forfeiture of the office.* Forfeiture of the office of mayor or any other assemblymember shall be declared by the assembly, as provided in Charter section 3.7.
- (b) *Other appeals.* All other appeals shall be initiated by filing a notice of appeal with the municipal clerk. The notice of appeal shall include the following:
  - (1) The name, mailing address, telephone and facsimile numbers, if any, of each appellant;
  - (2) The signature of the appellant or the appellant's representative;
  - (3) If the notice of appeal is signed by a representative of the appellant, a notarized statement signed by the representative that the representative is authorized to sign and file the appeal on behalf of the appellant;
  - (4) A copy of the decision being appealed;
  - (5) A concise statement of the legal and factual errors in the decision that form the basis of the appeal;
  - (6) The relief requested by the appellant; and
  - (7) A filing fee established by the assembly by resolution. The assembly may establish additional fees and charges for particular appellate services. The assembly may as part of any relief awarded to the appellant, order a refund of all or a portion of any such fee.
- (c) *Time for filing a notice of appeal.* Unless otherwise provided in the Code, ordinance, resolution, or other provision which creates the right of appeal, no person shall be entitled to an appellate review of a decision who fails to file a proper notice of appeal with the municipal clerk within 20 days of the date the decision is filed with the municipal clerk if the decision is one which is required to be so filed; or, if the decision is not one which is required to be filed with the municipal clerk, then within 20 days of the later of:
  - (1) The date the decision becomes effective; or
  - (2) The date the appellant received personal notice of the decision, if such notice is required.
- (d) *Action by municipal clerk upon receiving a notice of appeal.* The municipal clerk shall deliver copies of the notice of appeal to the City and Borough manager, the City and Borough attorney, the agency whose action is challenged, other parties to the agency action challenged, and to the presiding officer of the appeal agency.
- (e) *Action by appeal agency upon receipt of a notice of appeal.*
  - (1) Within 30 days of the first regular meeting after receipt of a notice of appeal by the municipal clerk, the appeal agency shall notify the appellant of the acceptance or rejection of the appeal and, if rejected, the reasons for the rejection.
  - (2) The notice of appeal shall be liberally construed in order to preserve the rights of the appellant. The appeal agency may reject the appeal for failure to comply with these rules or if the notice of appeal does not state grounds upon which any of the relief requested may be granted.
  - (3) When more than one notice of appeal has been accepted on the same agency decision, including appeals on different issues related to the same agency decision, the appeal agency may consolidate the appeals in a single proceeding. Notice of consolidation will be given to all parties within 30 days after the acceptance of the last notice of appeal.

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- (4) If the appeal is accepted, the appeal agency shall:
  - (A) Determine whether the appeal agency will conduct the hearing or whether the appeal will be assigned to a hearing officer;
  - (B) If the appeal is to be heard by the appeal agency, it shall:
    - (i) Schedule a prehearing conference to be conducted by the presiding officer,
    - (ii) Schedule and conduct a hearing and issue a written decision;
  - (C) If the appeal is assigned to a hearing officer, the hearing officer shall schedule and conduct a prehearing conference and a hearing, and shall issue a proposed decision to the appeal agency.
- (f) *Scope of review.* The appeal will be heard on the record supplemented by such new information as the appeal agency or hearing officer finds relevant and admissible under section 01.50.110. "New information" means information that was not presented to the agency whose decision is being appealed and which the appeal agency finds could not have been so presented for reasons beyond the control of the party seeking to submit it to the appeal agency.
- (g) *Preparation of record on appeal.* The municipal clerk, with the assistance of the agency whose action is being appealed, shall prepare the record and an index of the record. The record shall consist of the decision being appealed, written public comment received thereon by the agency, and memoranda, minutes and other related materials collected by the agency as part of the proceeding challenged in the appeal. The appeal agency, the hearing officer, or a party at that party's expense, may request a transcript of all or part of the proceeding challenged be made a part of the record.
- (h) *Stay pending appeal.* Unless ordered otherwise by the appeal agency, the decision being appealed shall not be stayed pending appeal but action by any person in reliance on the decision shall be at the risk that the decision may be set aside on appeal.
- (i) *Additional advise.* The appeal agency may appoint or retain an attorney or other person to advise the appeal agency.

(Serial No. 92-36, § 2, 1992; Serial No. 96-30, § 3, 1996; Serial No. 97-01, § 2, 1997)

#### 01.50.040 - Appointment of hearing officers.

The assembly may assign a qualified, unbiased and impartial hearing officer to conduct hearings under this chapter. The hearing officer may perform other duties in connection with the administration of this chapter.

(Serial No. 92-36, § 2, 1992)

#### 01.50.050 - Prehearing conference.

- (a) The presiding officer of the appeal agency or the hearing officer shall, unless the parties agree otherwise, conduct a prehearing conference with the parties to consider and issue orders related to the following:
  - (1) Intervention by additional parties;
  - (2) Simplification or settlement of the issues;
  - (3) Preparation and distribution of the record;
  - (4) Preparation and submission of stipulations, admissions, depositions, subpoenas, affidavits, exhibits and other forms of prefiled evidence to the extent permitted by subsection 01.50.110(e);
  - (5) Briefing schedule;

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- (6) Submission of witness lists;
  - (7) The date for the hearing;
  - (8) The order and time limits for presentation of the appeal; and
  - (9) Any other matter that may assist in the disposition of the appeal.
- (b) The presiding officer or the hearing officer shall issue a prehearing order setting forth the time and place of the hearing and such other information as may aid in the disposition of the appeal. The order shall be delivered to all parties no more than five days after the prehearing conference.

(Serial No. 92-36, § 2, 1992; Serial No. 95-38, § 2, 1995; Serial No. 96-30, § 4, 1996)

### **01.50.070 - Standard of review and burden of proof.**

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

(Serial No. 92-36, § 2, 1992)

### **01.50.080 - Subpoena.**

- (a) Before the hearing begins, the appeal agency or the hearing officer shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with this chapter and the Alaska Rules of Civil Procedure. After the hearing begins, the appeal agency, if it is hearing the case, or the hearing officer may issue subpoenas and subpoenas duces tecum in accordance with this chapter and Alaska Rules of Civil Procedure.
- (b) A subpoena issued under subsection (a) of this section extends to all parts of the City and Borough and shall be served in accordance with the Alaska Rules of Civil Procedure.
- (c) A witness who is not a party and who appears under a subpoena is entitled to receive witness fees and expenses in accordance with the Alaska Administrative Rules, except a witness who is an officer or employee of the City and Borough. Witness fees and expenses shall be paid by the party at whose request the witness is subpoenaed.

(Serial No. 92-36, § 2, 1992)

### **01.50.090 - Depositions.**

- (a) The testimony of a witness residing inside or outside the City and Borough may be taken by deposition in accordance with this chapter and in the manner prescribed by the Alaska Rules of Civil Procedure.
- (b) If the witness resides outside the City and Borough, the party seeking the deposition shall obtain an order of court by filing a petition for the taking of the deposition in the superior court in Juneau,

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Alaska. The proceedings on this order shall be in accordance with provisions governing the taking of depositions in a civil action in the superior court.

(Serial No. 92-36, § 2, 1992)

**01.50.100 - Hearing on appeal.**

- (a) The presiding officer or the hearing officer shall rule on the admission and exclusion of evidence.
- (b) A hearing officer or appeal agency member shall voluntarily withdraw from a case in which the hearing officer or appeal agency member cannot accord a fair and impartial hearing. A party may request the disqualification of a hearing officer or appeal agency member by filing an affidavit, before the taking of evidence at the hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the request concerns an appeal agency member, the issue shall be determined by the other members of the appeal agency. If the request concerns the hearing officer, the issue shall be determined by the appeal agency.
- (c) The hearing shall be tape recorded.

(Serial No. 92-36, § 2, 1992)

**State Law reference—** Hearings, AS 44.62.450.

**01.50.110 - Evidence.**

- (a) Evidence may be taken only on oath or affirmation.
- (b) Each party may:
  - (1) Call and examine witnesses;
  - (2) Introduce exhibits;
  - (3) Cross-examine opposing witnesses on matters relevant to the issues, even though that matter was not covered in any written testimony or in direct examination;
  - (4) Impeach a witness regardless of which party first called the witness to testify; and
  - (5) Rebut adverse evidence.
- (c) If a party does not testify on the party's own behalf, the party may be called and examined as if under cross-examination.
- (d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence, but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded. New information is not admissible if the appeal agency finds that the party seeking to have new information admitted could have by exercising reasonable diligence presented it to the agency whose decision is being appealed.
- (e) No issue, and no testimonial, physical or documentary evidence may be advanced or introduced at the hearing or included in the submission to the appeal agency or hearing officer which was not previously submitted to the agency whose decision is being appealed. The presiding officer or the hearing officer may waive this prohibition if the failure previously to submit or disclose was due to:

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- (1) Newly discovered evidence which by due diligence could not have been discovered previously and disclosed during the prehearing process, and further could not have been submitted to the agency whose decision is being appealed; or
- (2) Fraud, misrepresentation, or other misconduct of an opposing party.
- (f) The prohibition of subsection (e) of this section does not apply to evidence offered solely to rebut or impeach evidence admitted pursuant to subsection (e).

(Serial No. 92-36, § 2, 1992; Serial No. 95-38, § 3, 1995; Serial No. 96-30, § 6, 1996)

**01.50.120 - Evidence by affidavit.**

Evidence by affidavit may be allowed as set forth in the prehearing order. Cross-examination of the affiant may be allowed upon a motion by the opposing party for good cause shown.

(Serial No. 92-36, § 2, 1992; repealed and reenacted by Serial No. 96-30, § 7, 1996)

**01.50.130 - Official notice.**

In reaching a decision, the appeal agency or the hearing officer may take official notice, either before or after submission of the case for decision, of a generally accepted technical or scientific matter within the appeal agency's or hearing officer's special field, and of a fact which is judicially noticed by the courts of the state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noticed in the record, referred to in the record, or appended to it. A party present at the hearing shall, upon request, be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority.

(Serial No. 92-36, § 2, 1992)

**01.50.140 - Decision on the appeal.**

- (a) *Form and contents.* All decisions shall be written and must contain findings of fact and a determination on each of the issues presented. A decision may affirm, modify, or set aside an agency decision in whole or in part. A decision may be to remand any issue to the agency. Following adoption of the decision by the appeal agency or hearing officer, the municipal clerk shall deliver or mail the decision to the parties or their representatives.
- (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



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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.

- (c) *Hearing officer decisions.* In an appeal heard by a hearing officer, the hearing officer shall prepare a proposed decision and shall serve copies of the proposed decision with the municipal clerk and on each party in the appeal or the party's attorney no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any.
  - (1) Within five days of service of the hearing officer's proposed decision on a party, a party may file a written objection to all or any part of the proposed decision. The objection shall set forth with specificity the parts of the proposed decision to which objection is taken, the basis for the objection, and the action which the objecting party seeks to have the appeal agency take. Within three days of the service on a party of objections, a party may file a written statement in support of the proposed decision. The hearing officer shall reconsider the proposed decision in light of timely filed objections and statements of support and shall promptly prepare any amendments to be made to the proposed decision or shall issue a statement that the objections to and the statements in support of the proposed decision have been considered and that no change in the proposed decision should be made. The hearing officer shall set forth the reason for any amendment or for the rejection of timely filed objections.
  - (2) If no timely objections are filed, at the first regular meeting at which the matter may be scheduled or at a special meeting held for that purpose following the close of business on the last day upon which objections to the decision could have been filed, the proposed decision shall be placed before the appeal agency. If a timely objection is filed, at the first regular meeting at which the matter may be scheduled or at a special meeting held for that purpose following the day upon which the hearing officer's response to the objections is filed with the appeal agency, the proposed decision, the timely filed written objections, the timely filed statements in support, and the hearing officer's response to the objections shall be placed before the appeal agency. Unless rejected or modified by an affirmative vote of the appeal agency on a motion to reject or modify, the proposed decision, as amended by the hearing officer if such an amendment has been filed, shall be deemed adopted by the appeal agency and shall be the appeal agency decision. No testimony or evidence of any nature other than that contained in a timely filed objection may be received by the appeal agency at the meeting at which the proposed decision is presented.
  - (3) If the proposed decision is rejected by the appeal agency, the matter shall be immediately referred to the hearing officer for a rehearing of the appeal after notice to the parties; provided, the appeal agency may refer the appeal to a different hearing officer, may limit the scope of the rehearing to specified issues, may request the hearing officer to reconsider the proposed decision solely in light of new evidence raised in an objection, may place similar or different limits or conditions on the rehearing or reconsideration by the hearing officer, may remand the matter, or may rehear the matter itself after notice to the parties.

(Serial No. 92-36, § 2, 1992; Serial No. 95-38, § 4, 1995)

**State Law reference**— Decision in a contested case, AS 44.62.500.

**01.50.150 - Allocation of costs of appeals.**

- (a) The appeal agency in the decision, or hearing officer in the proposed decision, may allocate all or a portion of the costs of an appeal among the parties in such amounts or proportions as the appeal agency or hearing officer determines fairly compensates the parties for the cost of the appeal. If the decision of the appeal agency or hearing officer does not address the allocation of costs, the manager may, no later than ten days after the issuance of the decision, apply for an allocation of costs to the appeal agency. The manager shall provide to each party a copy of the application for

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allocation of costs. Each party shall have ten days from the date of the mailings of such application in which to file with the appeal agency written comments or objections to the proposed allocation of costs. The appeal agency may make its decision based on the written comments and objections of the parties and the application of the manager and without a hearing.

- (b) A party entitled to costs may be allowed fees paid as a condition of filing the appeal; the necessary expense of taking depositions for use at the hearing and producing exhibits; the expense of service and publication of summonses or notices, and postage when the same are served by mail; filing fees and other charges made by the municipal clerk and fees for transcripts required in the appeal, and any other expenses, not including attorney's fees or the value of that party's time, necessarily incurred by that party in order to secure some right accorded that party in the action or proceeding.
- (c) If a refund of an appeal filing fee is authorized by ordinance or resolution, the appeal agency shall determine whether all or a portion of the refundable part of the fee is to be refunded to the successful appellant. In making this determination, the appeal agency may consider such factors as the degree to which the appellant prevailed on all the points raised in the appeal, the degree to which the decision was changed as a result of the appeal, and similar factors.
- (d) Any amount allocated to a party to an appeal shall be paid to the municipal clerk within 30 days of the date notice of the amount is mailed to the party. Amounts not paid within 30 days shall bear interest thereafter at the maximum lawful rate and may be collected in a civil action.

(Serial No. 92-36, § 2, 1992; Serial No. 94-03, §§ 2, 3, 1994)

**01.50.160 - Effective date of decision.**

- (a) A decision becomes effective 30 days after it is delivered or mailed to the parties or their representatives unless:
  - (1) A reconsideration is ordered within that time;
  - (2) The appeal agency orders that the decision become effective sooner; or
  - (3) A stay of execution is granted for a particular purpose and not to postpone judicial review.
- (b) A stay of execution may be included in the decision, or if not included in it, may be granted by the appeal agency at any time before the decision becomes effective. The stay of execution may be accompanied by an express condition that the respondent comply with just and reasonable terms during the stay.

(Serial No. 92-36, § 2, 1992)

**State Law reference**— Effective date of decision, AS 44.62.520.

**01.50.170 - Default.**

If a party does not appear in the proceedings, the appeal agency may take action based upon the evidence presented by parties who do appear.

(Serial No. 92-36, § 2, 1992)

**State Law reference**— Default, AS 44.62.530.

**01.50.180 - Reconsideration.**

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- (a) The appeal agency may, within 30 days after the delivery or mailing of a decision to the parties, order a reconsideration of all or part of the appeal on its own motion or on petition of a party. To be considered by the appeal agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. A petition for reconsideration filed by a party will 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. Unless granted by an affirmative vote of the appeal agency, the petition for reconsideration is deemed denied.
- (b) An appeal may be reconsidered by the appeal agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in section 01.50.140. If oral evidence is introduced before the appeal agency, an appeal agency member may participate in the decision only if the appeal agency member has heard the evidence in person at the initial hearing and the hearing on reconsideration.

(Serial No. 92-36, § 2, 1992)

**State Law reference**— Reconsideration, AS 44.62.540.

### 01.50.190 - Judicial review.

Judicial review by the superior court of a final decision of the appeal agency may be had by filing a notice of appeal in accordance with the applicable rules of court.

(Serial No. 92-36, § 2, 1992)

**Charter reference**— Judicial review of forfeiture of office, § 3.7(d).

### 01.50.200 - Continuances.

The appeal agency or the hearing officer may grant continuances for good cause shown.

(Serial No. 92-36, § 2, 1992)

### 01.50.210 - Contempt.

- (a) In a proceeding before an appeal agency or a hearing officer, the appeal agency or hearing officer may apply to the court in the judicial district where the proceeding is held, alleging contempt if a person in the proceedings:
  - (1) Disobeys or resists a lawful order;
  - (2) Refuses to respond to a subpoena;
  - (3) Refuses to take oath or affirmation as a witness;
  - (4) Refuses to be examined; or
  - (5) Is guilty of misconduct at a hearing or so near the hearing as to obstruct the proceedings.
- (b) Upon a proper showing under subsection (a) of this section, the court shall issue an order directing the person to appear before the court and show cause why the person should not be punished for contempt. The order and a copy of the motion for contempt shall be served on the person.
- (c) After service under subsection (b) of this section, the court has jurisdiction of the matter.

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- (d) The law applicable to contempt committed by a person in the trial of a civil action before the superior court applies to contempt under this section as to:
  - (1) The proceedings taken; and
  - (2) The penalties imposed.

(Serial No. 92-36, § 2, 1992)

**State Law reference**— Contempt, AS 44.62.590.

01.50.220 - Power to administer oaths.

The presiding officer of the appeal agency, an appeal agency member, the municipal clerk, or the hearing officer may administer oaths and affirmations and certify official acts.

(Serial No. 92-36, § 2, 1992)

**State Law reference**— Power to administer oaths, AS 44.62.620.

01.50.230 - Impartiality.

The functions of hearing officers and those appeal agency members participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. Hearing officers and appeal agency members, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews concerning the appeal with, or receive evidence or argument on the appeal from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with a hearing officer or appeal agency member concerning the appeal shall be served upon all parties.

(Serial No. 92-36, § 2, 1992)

**State Law reference**— Impartiality, AS 44.62.630.

01.50.240 - Service and filing of pleadings.

- (a) Where service is required under this chapter, service may be accomplished by any means authorized for service in civil actions. Service may be proved in the manner authorized for civil actions.
- (b) Original copies of all pleadings or other papers must be filed with the appeal agency or the hearing officer, as allowed by Civil Rule 5(d).

(Serial No. 92-36, § 2, 1992)

01.50.250 - Time limits.

- (a) In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When

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the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

- (b) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

(Serial No. 92-36, § 2, 1992)

**Cross reference**— Computation of time, CBJ Code § 01.15.010.

**State Law reference**— Computation of time, AS 01.10.080.

01.50.260 - Relaxation of requirements.

This chapter is designed to facilitate the business of the appeal agency or hearing officer, and shall be construed to secure the reasonable, speedy and inexpensive determination of every appeal. The procedural requirements of this chapter may, in the discretion of the appeal agency or hearing officer, be relaxed in any case where it is manifest to the appeal agency that a strict adherence to them will work injustice.

(Serial No. 92-36, § 2, 1992)