

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

July 12, 2017, 5:30 PM.

Assembly Chambers - Municipal Building

Assembly Work Session - No Public Testimony

I. ROLL CALL

II. APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

- A. **June 12, 2017 Assembly Committee of the Whole Meeting**

IV. AGENDA TOPICS

- A. **Recognition - Chief Bryce Johnson Retirement**

- B. **Meander Way - Mendenhall River Bank Stabilization**

- C. **Ordinance 2017-17 An Ordinance Amending the General Provisions Code to Add a New Chapter Relating to Public Records.**

- D. **Ordinance 2017-14 An Ordinance Proposing an Amendment to the Charter of the City and Borough Relating to Competitive Bidding.**

- E. **Attorney Resources - Misdemeanor Prosecution**

An annotated version of Ordinance 2017-18 is included, explaining the purpose behind each of the proposed amendments.

As noted earlier, there was a request that the Assembly also consider adding misdemeanor drug offenses as well. Those changes will be presented separately once staff has a better understanding of the fiscal impact.

- F. **Supplemental Packet Material submitted 7/11/2017**

V. EXECUTIVE SESSION

- A. **City Manager Evaluation**

VI. ADJOURNMENT

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

**ASSEMBLY STANDING COMMITTEE
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THE CITY AND BOROUGH OF JUNEAU, ALASKA**

June 12, 2017, 6:00 PM.

Assembly Chambers - Municipal Building

Assembly Work Session - No public testimony

I. ROLL CALL

Deputy Mayor Jerry Nankervis called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Maria Gladziszewski, Norton Gregory, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, Beth Weldon and Debbie White.

Assemblymembers Absent: None.

Staff present: Rorie Watt, City Manager; Amy Mead, Municipal Attorney, Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk; Roger Healy, Engineering & Public Works Director; John Bohan, Chief CIP Engineer; Tom Mattice, Emergency Program Manager; Beth McKibben, Planning Manager; Jill MacLean, Senior Planner; Greg Chaney, Lands and Resources Manager; Robert Barr, Library Director; Bryce Johnson, Police Chief.

II. APPROVAL OF AGENDA

Mr. Nankervis noted that Ms. Gladziszewski was traveling and attempting to get to the meeting, so he asked, and without objection, the agenda items were reordered.

III. APPROVAL OF MINUTES

A. May 22, 2017 Committee of the Whole Meeting Minutes

Hearing no objection, the minutes of the May 22, 2017 Committee of the Whole meeting were approved.

IV. AGENDA TOPICS

A. Ordinance 2017-16 An Ordinance Amending the Land Use Code Relating to Alternative Development Overlay Districts.

Jill Maclean, Senior Planner, spoke about the proposed ordinance. She said that downtown Juneau and downtown Douglas were built before modern zoning and the current zoning does not "fit" the needs for future development in those areas. Staff was realizing that many projects in those areas were seeking variances for rebuilding on the properties in both areas. Variances are supposed to be used for a true hardship, and we have come up with a temporary, interim solution, called an "overlay zone," until work can be done to revise the zoning in both areas, based on area plans to be done in the near future. These overlay zones sit "on top" of the existing zoning that exists, to give property owners and the planning commissioners more options. The changes in standards regard setbacks, lot coverage and vegetative coverage. No changes will be made to density, height, and parking. The overlay zones are for use by residential projects in order to preserve the character of the neighborhoods. Both overlay zones have a sunset provision: August 1, 2019, for the downtown Juneau area, and August 1, 2020 for downtown Douglas. She reviewed the maps of the overlay districts.

Nathaniel Dye, Planning Commissioner, said the proposed ordinance addressed the concerns of the Planning Commission. The process is similar to the conditional use process, so any proposal would have public notice and a public hearing.

Mr. Kiehl asked what the review standard would be if a permit was appealed. Ms. Mead said the general appeal code section outlined in CBJ 49.20 would apply.

Ms. White said this code change was initiated after it was discovered that someone was trying to rebuild on a site and the neighbors were supportive but the project did not fit within current zoning. It is also meant to avoid the need for variances.

MOTION, by White, to forward to the ordinance to the Assembly for a public hearing. Hearing no objection, it was so ordered.

B. Meander Way - Mendenhall River Bank Stabilization

Mr. Watt said that this proposed LID will impose a large price tag on individual property owners. Most LID's range in value between \$5,000 – \$10,000 per a lot for sewer or paving projects, and the neighbors who object are forced to pay. When the stakes are high, this poses challenges for the neighborhood. We can't minimize the threat of the river erosion, or the opportunity of having funds offered by the federal government. However, we need to take into consideration the cost to the individual property owners. We need to have a frank discussion about the willingness to impose a large assessment on an unwilling owner.

Mr. Healy said the PWFC reviewed an LID for 28 properties (one is a non-voting, assessed CBJ property). Brett Nelson with the National Resource Conservation Service (NRCS) designed the project. Tom Mattice has done much of the organizational work and has met with the neighborhood.

This is not a typical project and it addresses a natural hazard risk. We have generally taken a "hands-off" approach to mitigating risk on private property. Mr. Mattice was contacted by the neighbors and within the last six years we have had 5 100-year flooding events due to the action at the glacier. We were tasked to look at the funding available through the NRCS. The funding requires that this project be represented by a local sponsor and CBJ would have maintenance responsibilities for ten years, including a fence at the top of the bank, removing logs, and keeping an eye on the installation. The assessment method proposed has been an equal assessment for all 28 properties. There is uncertainty in damage and potential damage to properties along this stretch. Some have erosion to the back of their house and others have potential for erosion. Putting a defined number on the damage possible is difficult due to a number of factors in modeling. We have approached this as a whole project, the benefits are to the protection of the property and its value. The start and stop points of the project are a point of contention. He said that the start and stop point of LID's are usually a point of contention, and gave the paving of a cul-de-sac street as an example.

Mr. Mattice presented photo slides of the affected area. The river is becoming detached from its flood plain. On average we have 1 -3 feet of erosion a year. Some of the revetment is failing. We have discussed mitigation, and we discussed removing some houses. The initial project assessment was \$78,000 per home, and with the addition of more homes, we are still at a cost of \$78,000 per home. He spoke about the initial work with the "group of eight" homeowners and the expansion of the project area to include more homes based on the sonar work by NRCS and the observations of the river. He showed a map of the proposed area and said some of the homes have lost 2/3 of their backyards within a 15-month period.

Maria Gladyszewski arrived at 6:40 p.m.

Brett Nelson, Lead Engineer, with NRCS said his program is a division of the US Department of Agriculture and their mission is to manage the emergency watershed protection program. They do conservation on private lands. Projects require a sponsor, a legal subdivision of government or a tribe, with an interest in the project. The purpose of the program is to mitigate the damage to the watershed – to avoid oil tanks, septic tanks, or homes collapsing into the river. NRCS is able to provide up to

75% of the construction costs of the project, perform the design, project management and oversight for free, and the sponsor provides all the permits and the 10-year maintenance. We started this project with one severely affected property but rivers are dynamic and can't be "spot treated." The minimum size project was 8 homes based on a cursory analysis. As we proceeded with the design, we needed better data. We had a sonar survey in the river which showed that the toe of the rock revetment there is gone from the force of the river. During preliminary design, the problem grew from one home to now four homes that have very serious problems, perhaps within losing their home during the next serious event. We have come up with what we believe in our professional judgement to be the best start and stop points. Are these points absolute? Nothing is, but there are properties at both ends of the project with very serious problems and in between it varies. It is not possible to determine which properties benefit to what degree. This project is pending funding in Congress, and is subject to appropriation. The funding in 2016 did not include this project, but he anticipated that the next time the government funded the program, Juneau would be covered. This could be in 6 months to 2 years.

Mr. Nankervis asked how NRCS established project priorities. He said that each project received a ranking modifier when submitted and it was based on immediate threat. There is not a firm definition of immediate. Given a significant flood event and the exposure of the bank, some of those homes are in imminent threat. This project has been submitted for funding at the federal level. We put it in line for funding knowing there is no binding agreement. If the project were to be awarded funds and there was no agreement the money would be moved to another project.

Mr. Kiehl asked Mr. Nelson about his confidence level in the project design to last for 10 years or 100 years. Mr. Nelson said he felt comfortable with ten years, and with proper maintenance up to 25-30 years. There isn't a warranty with this project. It is based on our best work. We have done several projects in Alaska. One complicating factor on the Mendenhall is the limited space. Mr. Kiehl said one project opponent called the design "radical." Mr. Nelson said that was because of the height of the bank provides limited options for stabilization. This is a high stress area and we have looked at rip-rap or sheet pile. We thought sheet pile would be the only option, but we are looking at a 30-foot bank, and the scour can be 28-feet deep. We can't get pile to resist the force, so this is a rip-rap project now and would slope the bank back to 1.5:1 and eats up more back yard. There will be on-going scour and if you lose the toe, you lose the entire project, so we have to build a launchable toe, stacking the rock at the toe and allow the rocks to tumble down to the maximum depth of the river. It is important to remember the head cut is at the top of the stream and it will start to put pressure on the vacant bank. When the oxbow breaks through, that will sent the head cut up and down stream until it re-adjusts and it will destabilize banks.

Ms. Weldon asked what maintenance meant for CBJ. He said the project included sloping the bank back, laying geotextile and sands, to stall piping from water moving from the bank, and covering the sands with rip rap. A 1.5:1 slope is steep, so there are safety implications, and it will need a fence(which can have gates for access). If logs get on the bank they have to be removed, the fence will need to be maintained, if a log dislodges rocks, equipment will be needed to restore the revetment. That is not a strong likelihood, unlike the Yukon with ice chunks that dislodge rip rap.

Ms. White asked if the state could be the governmental sponsor and Mr. Nelson said they have in the past. She asked what happens regarding maintenance after ten years. Mr. Nelson said that NRCS operates differently than the Corps of Engineers which generally owns a project. At the completion of this project, you will have to visit with the attorneys – to determine who owns the project – who does the maintenance after the project is not our concern. He said it was possible the work would still be there in 100 years but he could not predict what the river would do. 25-30 years is a professional guess on his part.

Mr. Gregory asked Ms. Mead about HB 146, adopted by the State of Alaska in 2014 that referenced a property tax exemption for deteriorated property, and if there was any way to apply this to the homeowners in this situation. Ms. Mead said that exemption has not been adopted by CBJ, so we would need to adopt a code amendment, and we would need to determine if all of the properties are equally affected and qualify for the exemption.

Ms. Weldon asked if NRCS had ever paid less than 75% on a project. He said yes, but that would not be the case with this project. There are not pieces of this that can be knocked off and done locally. We would put out a federal contract and do the entire project with the 75/25 split cost.

Ms. Gladziszewski said the Assembly has heard that this is overbuilt. Mr. Nelson said there will always be a difference of opinion. He said he has been an engineer since 1997 and with the NRCS since 2005. He provided information about the rest of the team. We have done about a dozen of these projects and have background in the work. If you were to go out and hire two consulting engineers, you will get three different opinions. NRCS will provide the design free of charge. If the homeowners or CBJ wants to hire their own engineers, and it comes under the seal of a licensed engineer in Alaska, that can qualify for this project, but the cost would not be for NRCS to bear. Ms. Gladziszewski asked how sure he was about the start and end points. He demonstrated the points on a map. The benefit of the end is that if there are any offsite effects, this is all uninhabited land, and the river bends after that, so there is limited downstream erosion. The upstream end is more of a fixed point. This is a several million dollar investment and you have to start it at a stable point to not suffer potential loss. The start point is his best professional judgement.

Mayor Koelsch asked Mr. Mattice if there is an evacuation plan for those four houses. Mr. Mattice said that there is a homeowner contact list for notification and there is an evacuation plan.

Ms. White asked what other communities handle this type of project. Mr. Healy said many communities often let the homeowners address the situation on their own. Mr. Healy said that was an option – to do nothing. That is the position in the Mat-su borough. The situation is similar and the river is DNR property with private property abutting. Ms. White asked if CBJ was setting a precedent to fix neighborhood properties considering the variety of hazard zones in CBJ. Ms. Mead said that the Assembly was never obligated to take action due to the discretion to be able to spend money. The LID code has elements in it that require further discussion before moving forward.

Mr. Nankervis said the LID code states LID's address properties specially benefited, and it is a question if some are benefited. He asked about the requirement to maintain for ten years. Ms. Mead said that any time the municipality makes an improvement to a natural situation, there is liability and our ten year window would start from the end of the project and our exposure would last for the ten years from that time. In this case, our ten years could be extended every time we do maintenance.

Mayor Koelsch asked how we get to yes with the five objecting properties. Mr. Healy said that staff believes there are equal benefits for protection of the property. One property owner is questioning the benefit to them being at the start of the project. There is a position to be made that the full benefit is not on that property. If we lower that assessment, the other properties would need to increase their assessment, so we would need another vote. The opposition of those in the middle of the project is more problematic. This riverbank protection project cannot be piecemealed and the potential for damage from starting and stopping is real. The property owners that are opposed do not currently see the benefit in having their property protected. We believe their assessment should be equal to those downstream. Ms. Mead said that we have to assess based on an engineering opinion, and we would need to do an eminent domain for work in backyards if the project required the land and the property owner was not willing. You could also do a capital improvement project by owners, if they all agree, and enter into a contractual agreement with the property owners. This is another method to keep in mind. Mr. Watt said that staff has done its due diligence with a rationale method. This leaves the Assembly in the binary position, impose the will of the many on a few owners, or don't do the project. Neither is satisfying. The property owners need to work this out and if they can resolve proportional assessments among themselves that is a better position. We do have the project by agreement method – it is rarely used but we have done it. It is hard to impose a \$78,000 assessment on an unwilling owner, but it is hard to not do a project for many when the federal government would pay 75%.

Ms. Gladziszewski asked if CBJ was collecting enough in the LID to pay for ten years of maintenance. Mr. Healy said there was an amount in there for permitting, easements, but not for long

term maintenance. In discussions with NRCS, he has not seen maintenance as an enormous burden. Ms. Gladziszewski said that when it is a city project, it is our problem, but at the same time if we don't assist, the property owners are on the entire hook.

Mr. Kiehl asked about the possibility of eminent domain and there is a bunch of property threatened with becoming submerged lands asked and if the state wants an easement to put this project in? Have we looked at making this a CBJ application for the state easement, rather than a private easement, as public easements are less expensive. Mr. Healy said they have not looked at this yet. Private easements can be \$200 per year and public easements can be cheaper and not individually born by the private property owners.

Mr. Kiehl asked about a state cost of \$94,000 and Mr. Bohan said that was the estimate of what CBJ needed for staff time and permits. The final charge would be based on actual cost. Mr. Kiehl said that if CBJ utilities could be eventually affected then the CBJ cost could potentially be waived.

Mr. Jones said he has been on the email strings and the homeowners have had significant discussions. For this to have 22 properties willing to pay this assessment says a lot for the project. They haven't been able to convince all the neighbors. One property is ready to lose its deck and there is damage at both ends of the project. You have to include all in between. Staff has done a good job on this project. We have talked about a lot of ways to mitigate this but we are limited. The homeowners have done a lot of work. They have come to us with their vote and are saying this is the best we can do and they are telling us this is vital and they need our help.

Ms. White said that the Jokuhlhaups happen in July and any decision should be made soon.

MOTION, by Jones, to ask the manager and law department to draft the necessary documents to establish the LID and return the matter to the Assembly.

Ms. Weldon objected to the motion. She said she could not swallow the \$78,000 would prefer to send it back to the homeowners and investigate the potential to exempt blighted property.

Mr. Gregory agreed with Ms. Weldon and wants to be able to investigate the property tax exemption for blighted property. He asked about the estimate of \$78,000 and whether there is any contingency for cost overruns. Mr. Healy said yes, there was a 10% contingency.

Mr. Jones said a geographic area must be defined as blighted and the neighbors across the street might object to being included in a blighted property area, this is why there are questions about adopting that type of code. We are at least six months away from obtaining any federal funds for this and if there are other nationwide issues, the money could be detoured. If we can find a way to help the homeowners, that is good. \$78,000 is an estimate. The project cost could be lower, and hopefully not higher. We need to proceed with a remedy to the problem.

Ms. White said if it is a year to funding, we could have more damage and putting off a decision can have a detrimental effect. We can continue to explore ideas, but she would like to move forward towards a solution.

Mr. Kiehl said HB146 is specific to structures that are on the property – renovation, demolition, removal or remodel to a structure, commercial or residential, where an owner owns at least two dwellings. It is not useful for single family residences. He says he thinks it is worth moving forward. We will hear from the homeowners at the public hearing. Until then the neighborhood has time to work out some issues among themselves. He appreciated all of the staff time spent on this matter.

Ms. Gladziszewski supported moving forward and the neighborhood had worked on this for a long time. 80% support it and the support from the federal government was large. The government can't mitigate every disaster and hopefully we will be able to get those funds. She was concerned about the city getting into mitigating this risk. She supported the motion.

Mr. Gregory removed his objection based on the definition of HB 146.

Mr. Nankervis objected to the motion. He sympathized with the property owners who want the project. It is not palatable either way. He did not support requiring unwilling property owners to pay the large amount. He favored the CIP by agreement of the homeowners.

Roll call:

Aye: Gladyszewski, Jones, Kiehl, White, Koelsch

Nay: Becker, Gregory, Nankervis, Weldon

Motion passed 5 aye, 4 nay.

C. Mining Ordinance - AJ Mine Process

Mr. Watt said he provided a pointed memo in the packet and had pushed hard with his opinion, because in 2010 when the assembly appointed the advisory committee and wrote a report to answer the question about pursuing the AJ mine and under what circumstances, they gave the Assembly a play book. He said this is hard and he recommends picking up where they left off. Many people have read into my words and on this difficult community topic. There are three broad groups with opinions on the AJ. Those in opposition and they should be heartened by my comments suggesting an open and deliberative process. For those who don't know much about the AJ I am suggesting a process in which there is room to learn. And for those who support mining they should be supportive of a deliberative process. We have had such a difficult past on the AJ and the end game for a mine supporter is to find a company willing to invest in this project and if you want that you need to convey a sense of deliberation and clear direction that was absent in the 1980's. The path I've laid out is slower than some would prefer. We need to determine the most prudent way forward.

Mayor Koelsch agreed that it was important to pick up the topic where the AJ committee left off and read his proposal to form a three member Assembly sub-committee to be charged with:

- What action(s) should be taken on the proposed mining ordinance
- Recommend a process including public process to be taken
- Recommend if the sub-committee should include additional members
- Recommend timelines

When there are recommendations, the recommendations come back to the Assembly Committee of the Whole.

Mayor Koelsch said this was similar to the tax exemption sub-committee that made suggestions to the code.

Mr. Jones asked if the Assembly wants to proceed with the question about opening the AJ mine. If we are serious about that taking up where the last committee left off, since we are an owner and a regulator, we need education, and to learn about what we would require in a lease. This proposal does not point us in that direction. This one starts from the point of YES we want to open the AJ and YES we want to change the ordinance. A three person committee will likely recommend no action. I am not ready to open the AJ mine, or open the ordinance and if we were to talk about lease agreements I might be more amenable. This is going to take up a lot of staff and Assembly time and I'm not sure it is time well used.

Ms. White said the easy answer was always no, however, this group doesn't skirt the issues. I am not ready to take the easy way out. This assembly needs to grow a backbone and stop caving in to people who want to enforce mob rule. We want to promote making jobs, not breaking jobs. The pressure that we are getting is not from the majority, they are just better organized. The private sector needs to grow. Everyone in this community that wants meaningful employment should be able to get it. This community needs a strong economy with jobs and to train people for jobs.

Ms. Weldon said she applauded the work to get to the ordinance in the 1980's. economic times have changed, we need to responsibly make jobs in Juneau. Mining jobs are higher paying jobs. We have lost state jobs. We need to look at this and see what is out there. I like the idea of lunch and learns

and to get the public involved. The ordinance I brought forward may not be the final product. This is about mining in Juneau at Herbert River and Peterson River, not just the AJ. I have been hiking a lot and there is a lot of mining history in this town. Mining has changed with the times and we need to do it responsibly. I want to take a look, whether it is a lease or ordinance.

Mr. Gregory supported the Mayor's proposal and said the Assembly should continue to look at mining in Juneau areawide.

Ms. Becker supported the Mayor's proposal. It does not say "AJ." It should apply to any mine in the area. Mining companies should know we are serious about mining in Juneau. We have learned from the last time to do things that are not done in a damaging way. We should talk about this. She supported the three person sub-committee. There will need to be ways to include the public and this should not go on for too long.

Ms. Gladziszewski said she knows what a huge lift this work is. She learned a lot in the three months she worked on the last report. This will engage the entire Assembly. This work belongs in the Assembly. This needs to be durable. The unanimity on the Assembly was hard won. This needs to be done with a sense of fairness, with an understanding that the good of the community is at the base of it. If our goal is to promote environmentally sustainable mining, it would be best to be unanimous. I don't know what mining firms think if we send 5-4 vote messages and swing votes year after year. This is the work of the Assembly, not a three person committee.

Mr. Kiehl said he does not understand the three member approach. It appears the 3 member committee is supposed to recommend the final action, and recommend the process to final action, and whether it should be a committee at all. He was also concerned about the way a three member committee looks. It doesn't have enough people to have a variety of viewpoints and expertise. When we implemented marijuana it was 4 Assemblymembers and 3 Planning Commissioners with a 62% approval in the community on the marijuana initiative vote. A durable process is a concern. If it looks like it was railroaded through we will not end up with a durable ordinance. The manager's proposal makes more sense to me, is better for the community and if you want to open the AJ Mine.

Ms. Becker said the ordinance we had did not work last time, so we need a review of that and make it work for next time.

Mr. Kiehl said durable does not mean no changes. I don't think this is the best process. If we go about this without taking a balanced approach things will whip-saw, and whip-sawed rules are not good for investors.

Mr. Jones said that the ordinance was not the reason the AJ did not work. I think we have a good ordinance to allow the city to know if the mine will protect Juneau and to allow for mining. I think the committee is small and maybe not tasked correctly. I think we should look at the manager's proposal.

Ms. White asked if Mayor Koelsch intended that three people would work by themselves? Mayor Koelsch said the subcommittee should make the recommendations to outline.

Mr. Kiehl asked Mr. Watt, regarding the direction on May 1, there was to be a mayor and manager to come up with a plan. What was the scope of the discussion and how we arrived at two proposals when a joint plan was the vote of nine members. Mr. Watt said the more he thought about the request from the Assembly, he thought it was the wrong question. When I heard the members of the public coming forward to work on the mining ordinance, I heard that they wanted to work on the AJ. I wanted to answer the question –what is the best way to work on the AJ, and that is what I provided in my comments. Regardless of where you stand on the issue, I think it is the best way to work on the issue. If you went back to the previous advisory committee and asked them to work on the mining ordinance, they would have fallen apart as that is not where they were in the discussion. You asked and I gave you something entirely different, and I should have clarified at the retreat when the topic was discussed. The people who brought forward the mining ordinance change are trying to do something good. The AJ is a city asset and they believe the best way to approach this is through an ordinance and good on them, but I think we should follow a different sequencing in our approach.

Ms. Gladziszewski spoke about the nature of the report and said that there were five pages of things everyone could agree on and building on that would be best, rather than diving into the contentious issues at the beginning. If we move forward with the manager's path, we may get there, or we will just split.

Mr. Nankervis said he was disappointed in the manager's memo. I think there are two separate issues. Should we look at revising the mining ordinance? Under what circumstances do we open the AJ mine? I think we need to look at the ordinance first. A three or four member sub-committee can look at adding additional members, bring that back to the COW, bring back a public process, and what action, if any, to be taken on the mining ordinance. We shouldn't have people hanging out forever and the sub-committee can lay out the timeline. The large subdivision ordinance took 5- 7 years. You have people pro-mine, anti-mine, and many in the middle. I am willing to help with educating the public. The TERC (tax exemption review committee) process worked well and it can work here. We spoke about this at the retreat. First, let's look at the ordinance, which applies borough wide. The AJ has specific issues.

Mr. Jones said he would like the mayor and manager to look at the charge to the sales tax exemption committee, the Treadwell committee, and flesh out the charge of the committee and the process for the committee to take. This would help us understand what the process will be.

MOTION, by Jones, that the COW request the mayor put together his charge to the committee and actions in a format similar to the ones in the past and appoint the subcommittee and go from there.

MOTION, by Kiehl, to amend to include all 9 Assemblymembers on the committee.

Ms. White objected. She said the mayor made his idea clear. This committee is subject to the open meetings act. He can say who he wants on a committee. The group meeting tomorrow to discuss the homeless issue is three members and we will eventually appoint more people to the group. This is an initial sub-committee. Say yes or no, and don't put it off and waste people's time.

Ms. Weldon said members of the public should be on the committee and if adding all 9 Assemblymembers, that is too much.

Ms. Gladziszewski supported adding the full Assembly.

Roll call on motion to amend to add all Assemblymember:

Aye: Gladziszewski, Kiehl

Nay: Becker, Gregory, Jones, Nankervis, Weldon, White, Koelsch

Motion failed, 2 aye, 7 nay.

Mr. Nankervis restated the main motion: that the matter be returned to Mayor Koelsch to draft a charging memo that outlines with more specificity the tasks for the subcommittee. Mr. Jones added that this document would be presented at the next Assembly meeting under the Mayor's report.

Mr. Kiehl objected to the main motion.

Roll call:

Aye: Nankervis, Weldon, Koelsch

Nay: Becker, Gladziszewski, Gregory, Jones, Kiehl, White

Motion failed, 3 ayes, 6 nays.

MOTION, by White, to allow the Mayor to create the sub-committee without writing a big description, similar to the Homelessness Committee.

Ms. White said this would be an open meeting and the members could decide to add members of the

public. The Mayor needs more autonomy and should be able to form committees as he sees fit.

Mr. Kiehl objected and said the best course was in Ms. Weldon's request that the Assembly agreed to unanimously, that the Mayor and Manager jointly prepare a proposal.

Roll call:

Aye: Becker, Gregory, Nankervis, Weldon, White, Koelsch

Nay: Gladziszewski, Jones, Kiehl

Motion passed, 6 ayes, 3 nays.

Mayor Koelsch said he would present the information to the Assembly at the next Assembly meeting and would accept letters of interest from the Assembly on service on the sub-committee.

D. Transportation Network Companies

Mr Watt said he provided a copy of the letter to the Governor about the Assembly's concerns about the Uber/Lyft Bill in the packet. He spoke with an Uber representative today to discuss the logistics they would be dealing with in Juneau, at the docks, the airport and the Glacier.

Ms. White wanted the letter to speak to local control and not ask for a veto. I read the letter as to recommend a veto. Mr. Watt said the governor could not make amendments – he could only veto or not veto.

Ms. Becker asked if the representative today had any authority to say they would comply with CBJ regulations, particularly at the airport. Mr. Watt said we learned how they work and how they use their software to limit and guide the drivers. I don't know if the people here visiting are in a position to change their nationwide models, but they seemed willing to be responsive at some level to our local issues.

Ms. Gladziszewski asked if the airport and docks would be acting in uniformity. Ms. Mead said CBJ was only allowed to enforce traffic laws and impose sales tax. This would not prohibit or preclude TNC's from entering into a voluntary agreement. CBJ has no hammer – so it would be voluntary. We can't enforce a/ b zones. We can't charge them money at the airport. Ms. Mead said the state law allowed state airports to regulate, but Juneau is a municipal airport and was not addressed in the bill. We may be able to use the traffic ordinance for enforcement if the code were rationally based and equally applied.

E. Attorney Resources - Misdemeanor Prosecution

Ms. Mead spoke to her memo to the Assembly requesting the hire of an additional attorney for a number of duties, including misdemeanor prosecution and collections of past due sales tax, Confessions of Judgment, civil violations and risk cases. She reviewed the request from Chief Johnson to amend code to align CBJ Code with state statutes to make misdemeanors under CBJ code. The District Attorney's office is extremely limited and they are taking virtually no misdemeanors at this point. CBJ is getting more calls for prosecution and the cases sent to the state for prosecution are not receiving attention. Chief Johnson would like to add the criminal code sections, but she would need additional staff to assist with this and collections. She discussed the dollar amounts of tax, fines and penalties due to CBJ that could be collected. She discussed the workload of the criminal section currently as compared to previous years. and the changes with the law department providing legal service to Bartlett Regional Hospital and the School District. She said CBJ law does not have the resources to provide the level of service that the community and staff expect.

Mr. Nankervis said the criminal code changes are a separate request. It comes with work and a need for a worker.

Mr. Jones asked, even if CBJ added to attorney resources, would there be an issue with court

resources or jail resources. Ms. Mead said there was not an issue with court resources and because of SB91, CBJ had sufficient jail resources.

Ms. Weldon asked if this would help alleviate the issues of thefts. Ms. Mead said it would help, but not with burglaries, which still to to the District Attorney, but the DA is not focusing on property crime – that would take a change in DA policy.

Ms. Weldon asked how many cases could an attorney handle and if there was a need for more than one additional attorney. Ms. Mead said at this time, the position she was asking for was sufficient.

Mr. Jones asked if we would pay more for public defender if more went to trial. Ms. Mead said the city public defender is paid by the city and is not based on the number of cases. Our current defender may be retiring and it may go out to bid.

Mr. Kiehl said judicial resources are not the reason for the changes, but Juneau judges have the highest case load and asked if she anticipated a timeliness issue. Ms. Mead said in other parts of Southeast there are no judges and no DA's office, so the Juneau staff is overwhelmed with the addition of SE cases.

The Assembly and Ms. Mead discussed the anticipated costs of an additional attorney and the potential revenue from increased collections. Ms. Mead said that the amount of money to be collected and the time and the nature of the work was not suited to hiring outside counsel.

Ms. White said she would like to have staff draft a supplemental to the budget to rehire the CSO position.

Mr. Watt said that each department had made cuts and that each department had discretion within its budget on how the staffing and funding would be directed. He recommended waiting a year to review the matter.

MOTION, by Gladyszewski, to direct the Attorney to work with the Police Chief to bring forward changes to criminal code. Hearing no objection it was so ordered.

MOTION, by Weldon, to direct the Attorney to move forward with hiring an additional attorney and to bring forward a supplemental budget ordinance to the Committee of the Whole for further review. Hearing no objection so ordered.

MOTION, by White, to direct the Manager to meet with the Finance Director to draft an ordinance to fund the CSO position.

Mayor Koelsch supported the motion. He receives numerous calls about a need for crime enforcement. Public safety is and must be the number one priority in this town. He recommended this be brought back to the COW to see if there is a will to fund this.

Mr. Jones, Ms. Weldon and Mr. Nankervis objected.

Roll call:

Aye: Gregory, Kiehl, White, Koelsch

Nay: Becker, Glazyszewski, Jones, Nankervis, Weldon.

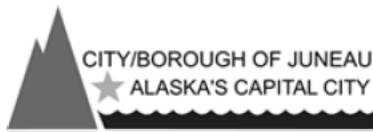
Motion failed, 4 ayes, 5 nays.

Mr. Kiehl noticed the Finance Committee meeting Wednesday, June 14 and said the packet had been delivered.

V. ADJOURNMENT

There being no further business to come before the Committee, the meeting adjourned at 9:50 p.m.

Submitted by Laurie Sica, Municipal Clerk



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: CBJ Assembly

FROM: Amy Gurton Mead, Municipal Attorney

DATE: July 3, 2017

SUBJECT: Local Improvement District Process

The local improvement district (LID) process is codified at CBJ Code Chapter 15.10.

I. GENERAL INFORMATION

LIDs can be established for municipal improvements¹ with the costs assessed against any property specially benefitted by the improvement. The costs assessed each parcel must be apportioned in accordance with the benefit received by each.

CBJ 15.10.010 states:

The City and Borough may create and establish a local improvement district for any municipal improvement and may levy assessments against properties

¹ Municipal enactments, such as the creation of an LID, are presumed constitutional. *Weber v. Kenai Peninsula Borough*, 990 P.2d 611, 614 (Alaska 1999).

[W]e will reverse a special assessment decision only upon proof of fraud or conduct so arbitrary as to be the equivalent of fraud, or [where a decision is] so manifestly arbitrary and unreasonable as to be palpably unjust and oppressive.

...

[Whether a public purpose is being served] turns not on who is being paid but on what will be provided. And there are no rigid categories establishing public versus private purposes; in each case, the analysis of public purpose must be made within the context of specific facts.

Id. (citations omitted.) The Court will defer to the municipality's determination of "public good" and will overturn a municipality's decision "only if it is arbitrary or without any reasonable basis in fact or is so unreasonable as to transgress the limitations of our constitution such that it is plainly foolhardy or without any discernible benefit." *Id.* (quotations omitted)

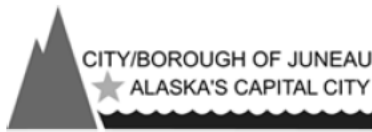
specially benefitted thereby to pay part or all of the costs thereof. In proportion to the benefits, the method of apportioning shall be established in the ordinance initiating the district.

II. LID PROCESS

1. An ordinance is drafted describing the project and giving notice of the estimated cost along with the following:
 - How much of the cost will be paid by the homeowners and how much the CBJ will pay (and the source of the public funds to be used).
 - The estimated costs to be paid by each parcel (with the cost to each parcel apportioned in proportion to the benefit received by each parcel).
 - Authorization for the manager to commence any necessary eminent domain proceedings and a provision for assessment proceedings that might be required to pay any eminent domain awards.
 - An appropriation of funds for the total cost of the project.
2. Special notice of the public hearing on the ordinance initiating the local improvement district is given (published in newspaper for two weeks 30 days prior to the hearing and mailed to all property owners within the proposed district.)
3. The LID cannot go forward if owners who will bear 50% or more of the total homeowners' estimated cost (not including that portion paid by the CBJ) protest unless the Assembly, by an affirmative vote of eight, authorizes the LID by ordinance despite the protest.

III. Assessment

Once the project is completed and the actual cost of the project finalized, an assessment roll is created apportioning the property owners' costs to each lot in proportion to the benefit each lot received. There is a hearing held on the assessment roll and a time for protest. Once finalized, the assessment becomes a lien on the properties and has priority over all other liens except a lien for a prior assessment or for property taxes. A special assessment lien is enforced using the same process as property tax liens.



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: CBJ Assembly

FROM: Amy Gurton Mead, Municipal Attorney

DATE: July 5, 2017

SUBJECT: Ordinance 2017-17 – Public Records Act

The CBJ is required to comply with the Alaska Public Records Act (Alaska Statute 40.21.110 - 220) regarding the disclosure of public records. Although state statute outlines the legal obligations that must be complied with, the state regulations outlining the procedural process state agencies must follow in responding to requests do not apply to the municipalities.

The purpose of this ordinance is to provide a uniform process for staff to follow in responding to requests for the disclosure of public records.

In drafting the ordinance, I looked to the State regulations and code and administrative rules from other municipalities in Alaska. The draft was reviewed by the Municipal Clerk and incorporates her suggestions.

Except for “routine requests” for documents that are either already intended to be disseminated to the public or that will take a minimal amount of effort to respond to, the proposed process is as follows:

1. Requests will need to be in writing and handled through the Clerk’s Office (as is currently the case);
2. The Clerk will keep a log of requests (to assist in tracking fees, etc.);
3. The timeline for response is described as prompt without interrupting the orderly conduct of other CBJ business.
4. Records do not need to be provided in the format kept but alteration can’t change the substance. This means that the CBJ would have the option of providing a PDF copy of an email and not the Outlook PST file, for example, if it would be more convenient or efficient for the CBJ to do so.
5. The proposed code allows for both copying and review and production fees. The time spent for any privilege review as well as time spent reviewing documents for responsiveness would be recoverable. (The fee amounts haven’t changed; the

amounts identified in Resolution 2288, which will need to be repealed if this ordinance is adopted, would apply.)

6. Because the CBJ is looking at imposing fees for privilege and document review, I've proposed a waiver process in the case of indigency like the one used in Homer (which also charges for privilege review). The other waivers (if the amount of fees is less than \$5 or if the manager finds there is a public purpose behind the request) are already the case in the CBJ per Resolution 2288 (but the proposed ordinance does give a guideline for the public purpose finding that does not exist under Resolution 2288).

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

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2017-17

An Ordinance Amending the General Provisions Code to Add a New Chapter Relating to Public Records.

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 Title. Title 1 General Provisions, is amended by adding a new chapter to read:

Chapter 01.70 PUBLIC RECORDS

01.70.010 Purpose.

The purpose of this chapter is to establish uniform procedures to ensure that requests for disclosure of public records are handled in a timely, reasonable, and responsive manner. All disclosable public records shall be made available upon request and upon compliance with the requirements of AS 40.25.110 - AS 40.25.220 and this chapter.

01.70.020 Form of requests.

This section applies to all requests except for routine requests processed under CBJ 01.70.030. Requests for the inspection or copying of records shall be made in writing addressed to the

1
2 municipal clerk. The municipal clerk shall maintain a log of all requests for the disclosure of
3 public records that shall include the date and time of the request and fee charged, if any. If a
4 requester is unable to write a request due to a physical or mental disability, the municipal
5 clerk shall either assist the requester in preparing a written request or treat the requester's
6 oral request as a written request.
7

8 **01.70.030 Routine Requests.**

9 Routine requests for inspection or copying of records may be processed by the director of the
10 department in which the records are located. For purposes of this section, a routine request is
11 a request for records that are clearly to be made available to the public and that can be
12 responded to quickly with a minimal amount of effort or time by staff. Routine requests may be
13 submitted orally or in writing. Routine requests do not include requests for records that might
14 be exempt from disclosure, requests that will or might be denied for any reason, requests that
15 will take more than one person-hour of staff time to respond to, or requests from a person
16 involved in litigation with the City and Borough. If it is determined that a request being
17 processed under this section is not a routine request, the request shall be transmitted to the
18 municipal clerk for processing under CBJ 01.70.060.
19
20

21 **01.70.040 Description of records requested.**

22 (a) A request for records must describe the records sought in sufficient detail to enable staff
23 to locate and identify the records. If the records are described by the requestor in general
24 terms, the municipal clerk shall attempt to communicate with the requestor to identify the
25 records requested and lessen the administrative burden of processing an overly broad request.

(b) If it is determined that the description of records sought is not sufficient to allow staff to identify the requested records, the requestor shall be notified promptly that the request cannot be approved or processed until a sufficient description of the records is received.

(c) A requester may not be asked to provide a justification or explanation of need or intended use, but the municipal clerk may inquire whether the person making the request is a party, or represents a party, involved in litigation, including any judicial or administrative proceeding, arbitration, or mediation, with the City and Borough to which the requested record is relevant or could be relevant. If so, the requester shall be informed to make the request in accordance with applicable court rules.

01.70.050 Access to records, format.

(a) The City and Borough shall not be required to manipulate data to create new records in response to a request for public records, nor is it required to compile or summarize records in response to a request for information.

(b) Except as provided by law, if the request is for a public record that contains confidential information, the confidential information shall be masked or deleted before the record is provided.

(c) Records will be made available in the format in which the City and Borough maintains or disseminates records. Exact reproduction shall not be required, but any alteration of the form or medium of the record must not change the substantive content of the information.

01.70.060 Response to requests for public records.

(a) All municipal officers and employees shall, consistent with the orderly conduct of

municipal business, make a good faith and diligent effort to provide a prompt response to requests for inspection or copying of records.

(b) Requests will be responded to as staff time allows without interrupting the orderly conduct of City and Borough business. The municipal clerk will make a good faith effort to keep the requester apprised of the estimated time in which the response will be made.

(c) As soon as practicable and upon payment of any fee established under this chapter, the municipal clerk shall furnish all requested records that are disclosable. If any of the records are not disclosable, the requester shall be provided a written denial in accordance with CBJ 01.70.090.

01.70.070 Fees for copying, production, and review.

(a) *Copying fee.* The fee for copying public records may not exceed the applicable standard unit cost established by the City and Borough of Juneau print shop. “Copying” includes paper copies as well as the production of scanned PDF pages and the actual cost of paper, tapes, microfiche, disks or other media used.

(b) *Review and production fee.* Except as otherwise provided, if the review and production of records for one requestor in a calendar month exceeds five-person hours, the requestor must pay all costs associated with the review and production of the records. The review and production fee is the equivalent of the actual salary plus benefits for the time spent by City and Borough staff to search, review, and copy the records. A “search” of records shall include, but is not limited to, any computer programming work required to extract or copy electronically-stored records. A “review” of records shall include the time spent to examine the records for the purposes of determining whether the document is responsive to the request, and if so, whether

the document will be disclosed or withheld based on privilege, exemption, or other exception.

The production and review fee will be in addition to the copying fee.

(c) *Electronic services and products.* The fee for electronic services and products shall be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the City and Borough.

(d) *Payment of applicable fees.*

(1) The requester shall pay all required fees before the records are disclosed, except the manager may waive this requirement in accordance with CBJ 01.70.080.

(2) The manager may require payment in advance of the review and production of records when the manager reasonably believes that the review and production will require more than five hours to complete and will generate a fee under this section that is not waivable under CBJ 01.70.080.

01.70.080 Waivers and reductions in fees.

(a) The fees required by this chapter may be reduced or waived by the city manager when

(1) The amount of the fee is \$5 or less;

(2) In the case of indigency; or

(3) If the manager finds the records or electronic services and products are to be used for a public purpose.

(b) Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) *Fee reduction in the case of indigency.* If a person is unable to pay a fee and signs an affidavit on a form provided by the manager to that effect, the manager will waive all or part of the applicable fees in accordance with the table below. No waiver or reduction will be granted if the manager finds, based upon reliable information, that the affidavit of indigency was made fraudulently or in bad faith.

Annual gross income(from all sources in the prior year), as a percent of current Health and Human Services Poverty Guidelines for Alaska	Amount of Waiver
1 – 100%	100% waiver
101 – 149%	75%
150 – 174%	50%
175 – 199%	25%
200% plus	No waiver

(d) *Public purpose waiver or reduction.* A waiver or reduction of fees may be granted if the requester certifies, and the manager finds, that

- (1) The records are likely to contribute significantly to the public's understanding of the operations or activities of the municipality;
- (2) The records are not sought primarily for a purpose that is commercial or financial;
- (3) The records are not sought by or on behalf of a person involved in litigation, including any judicial or administrative proceeding, arbitration, or mediation, with the City and Borough in which the records are or could be relevant; or
- (4) The combined amount of all fees, including the amount of any waiver or reduction granted to the requester or to any other requesters acting in concert with the

requester in making requests for the same or related records, does not exceed \$500 during any period of 12 consecutive months.

01.70.090 Denial.

(a) A request for a public record that complies with this chapter may be denied only if

(1) The record is not known to exist after a diligent search is made for it;

(2) The record is not in the City and Borough's possession, and after a diligent search, where the record is to be found remains unknown or outside the City and Borough's control;

(3) The record has been destroyed in accordance with an applicable record-retention schedule; or

(4) Nondisclosure of the record is authorized by federal or state law or regulation.

(b) A denial under this section is a final administrative order for purposes of appeal. The denial must be in writing, must specify the specific ordinance, statute, regulation, or court decision that is the basis for the denial, and must briefly state the reason for the denial. A denial must further state that, as provided by AS 40.25.124, the requester may obtain judicial review by appealing the denial to the superior court.

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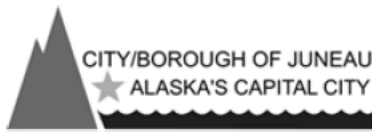
Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2017.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: CBJ Assembly

FROM: Amy Gurton Mead, Municipal Attorney

DATE: July 5, 2017

SUBJECT: Charter Amendment

On June 12, 2017, the Public Works and Facilities Committee approved staff's request to forward a proposed charter amendment to the full assembly that would allow for greater flexibility in procurement.

Ordinance 2017-14 was introduced on June 26, 2017. Although the end result is the same – allowing for greater flexibility in the procurement process - the ordinance proposes different language than that presented to the PWFC. The reason for the change in language is because the proposal presented to PWFC would not have accomplished the stated goal.

The proposed amendment being considered when the issue went to the PWFC was as follows:

Section 9.14 Competitive bidding.

- (a) The assembly by ordinance shall provide for competitive bidding and procedures for competitive bidding.
- (b) Contracts for public improvements, and whenever practicable, other purchases of supplies, materials, equipment, and services, shall be by competitive bid and awarded to the most ~~lowest~~ qualified bidder. This subsection (b) shall not apply to purchases of:

...

But case law suggests that “most” in this context is usually interpreted to mean “lowest.”

Ordinance 2017-14 instead proposes an amendment to subsection (b)(6) (one of the already existing exceptions to the competitive bid process) by adding the underlined text as follows:

(6) Public improvements which, upon a written finding by the Manager that it would be in the best interests of the City and Borough based on cost, timing, and other relevant criteria, may be procured by supplemental agreements amending existing capital improvement contracts, by competitive sealed proposals, or

other alternative procurement methods adopted by ordinance. The maximum dollar amount, the criteria utilized, and the methodology shall be set by ordinance.

If approved, the charter section would read as follows:

Section 9.14. Competitive bidding.

(a) The assembly by ordinance shall provide for competitive bidding and procedures for competitive bidding.

(b) Contracts for public improvements and, whenever practicable, other purchases of supplies, materials, equipment, and services, shall be by competitive bid and awarded to the lowest qualified bidder. This subsection (b) shall not apply to purchases of:

- (1) Professional services,
- (2) Services of officers and employees of the municipality acting within the scope of their office or employment,
- (3) Services of officers and employees of the State of Alaska or the federal government if such services are provided pursuant to a written agreement with the employer,
- (4) Services of students and members of the faculty of an accredited high school, college, or university if such services are provided pursuant to a written agreement with the school, or
- (5) Services of members and employees of a nonprofit corporation registered as such with the State of Alaska, if:
 - (A) The services are provided pursuant to a written agreement with the corporation, and
 - (B) The total amount paid by the municipality divided by the number of hours of service provided by the members and employees of the corporation does not exceed double the minimum hourly wage established by the Alaska Wage and Hour Act.
- (6) Public improvements which, upon a written finding by the Manager that it would be in the best interests of the City and Borough based on cost, timing, and other relevant criteria, may be procured by supplemental agreements amending existing capital improvement contracts, **competitive sealed proposals, or by other alternative procurement methods adopted by the assembly by ordinance.** The maximum dollar amount, the criteria utilized, and the methodology shall be set by ordinance.

(c) All contracts and purchases exceeding an amount to be established by ordinance shall require prior assembly approval.

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

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2017-14

An Ordinance Proposing an Amendment to the Charter of the City and Borough Relating to Competitive Bidding.

WHEREAS, the City and Borough of Juneau Charter requires that contracts for public improvements, and where practicable, purchases of supplies, materials, equipment, and services be by competitive bid; and

WHEREAS, the Charter language can be interpreted to limit the CBJ's ability to award competitively solicited contracts on anything other than a cost basis; and

WHEREAS, the ability to allow for competitively bid contracts to be awarded based on terms other than pure cost would be of benefit to the public by allowing greater flexibility in project delivery; and

WHEREAS, this type of competitive procurement method is in widespread use by other public entities within the State of Alaska.

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

Section 1. Classification. Section 2 of this ordinance, if approved by the voters pursuant to Section 3, is of a general and permanent nature and shall become a part of the City and Borough of Juneau Home Rule Charter. Sections 3, 4, and 5 of this ordinance are noncode sections.

Section 2. Charter Amendment. The Charter of the City and Borough of Juneau is amended at Section 9.14 Competitive bidding, to read as follows:

Section 9.14. Competitive bidding.

(a) The assembly by ordinance shall provide for competitive bidding and procedures for competitive bidding.

(b) Contracts for public improvements and, whenever practicable, other purchases of supplies, materials, equipment, and services, shall be by competitive bid and awarded to the lowest qualified bidder. This subsection (b) shall not apply to purchases of:

- (1) Professional services,
- (2) Services of officers and employees of the municipality acting within the scope of their office or employment,
- (3) Services of officers and employees of the State of Alaska or the federal government if such services are provided pursuant to a written agreement with the employer,
- (4) Services of students and members of the faculty of an accredited high school, college, or university if such services are provided pursuant to a written agreement with the school, or
- (5) Services of members and employees of a nonprofit corporation registered as such with the State of Alaska, if:
 - (A) The services are provided pursuant to a written agreement with the corporation, and
 - (B) The total amount paid by the municipality divided by the number of hours of service provided by the members and employees of the corporation does not

exceed double the minimum hourly wage established by the Alaska Wage and Hour Act.

(6) Public improvements which, upon a written finding by the Manager that it would be in the best interests of the City and Borough based on cost, timing, and other relevant criteria, may be procured by supplemental agreements amending existing capital improvement contracts, competitive sealed proposals, or by other alternative procurement methods adopted by the assembly by ordinance. The maximum dollar amount, the criteria utilized, and the methodology shall be set by ordinance.

(c) All contracts and purchases exceeding an amount to be established by ordinance shall require prior assembly approval.

Section 3. Submission to the Voters. An amendment to Section 9.14 of the Charter of the City and Borough of Juneau, Alaska, shall be submitted to the qualified voters of the City and Borough at the next regular municipal election. The City and Borough Clerk shall prepare the ballot title as provided by this ordinance and shall perform all necessary steps in accordance with law to place this proposition before the voters at the next regular municipal election.

Section 4. Proposition. The proposition to be submitted to the voters as required by Section 3 shall read substantially as follows:

PROPOSITION NO. _____

CHARTER AMENDMENT

Shall Section 9.14 of the Charter of the City and Borough of Juneau, Alaska, be amended as set forth in Ordinance No. 2017-14?

BE IT ENACTED by the City and Borough of Juneau, Alaska, that Section 9.14 Competitive bidding, reading as follows, is adopted as part of the Charter of the City and Borough of Juneau, Alaska:

Section 9.14. Competitive bidding.

(a) The assembly by ordinance shall provide for competitive bidding and procedures for competitive bidding.

(b) Contracts for public improvements and, whenever practicable, other purchases of supplies, materials, equipment, and services, shall be by competitive bid and awarded to the lowest qualified bidder. This subsection (b) shall not apply to purchases of:

- (1) Professional services,
- (2) Services of officers and employees of the municipality acting within the scope of their office or employment,
- (3) Services of officers and employees of the State of Alaska or the federal government if such services are provided pursuant to a written agreement with the employer,
- (4) Services of students and members of the faculty of an accredited high school, college, or university if such services are provided pursuant to a written agreement with the school, or
- (5) Services of members and employees of a nonprofit corporation registered as such with the State of Alaska, if:
 - (A) The services are provided pursuant to a written agreement with the corporation, and
 - (B) The total amount paid by the municipality divided by the number of hours of service provided by the members and employees of the corporation does not exceed double the minimum hourly wage established by the Alaska Wage and Hour Act.
- (6) Public improvements which, upon a written finding by the Manager that it would be in the best interests of the City and Borough based on cost, timing, and other relevant criteria, may be procured by supplemental agreements amending existing capital improvement contracts, competitive sealed proposals, or by other alternative procurement methods adopted by the assembly by ordinance. The maximum dollar amount, the criteria utilized, and the methodology shall be set by ordinance.

(c) All contracts and purchases exceeding an amount to be established by ordinance shall require prior assembly approval.

FOR THE AMENDMENT []

AGAINST THE AMENDMENT []

Section 5. Effective Dates. (a) The Charter amendment proposed in Section 2 of the ordinance shall become effective on the day following the date the election results are certified for the regular municipal election held October 3, 2017, if a majority of the qualified voters voting on the proposition set forth in Section 4 vote for the amendment.

(b) Section 3 of this ordinance authorizing the submission of the ballot proposition to the qualified voters of the City and Borough shall become effective thirty days after adoption of this ordinance.

Adopted this _____ day of _____, 2017.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk

DRAFT BALLOT LAYOUT / LANGUAGE – Municipal Clerk – June 26, 2017

CHARTER AMENDMENT

Explanation

The CBJ Charter is written as follows:

Section 9.14. - Competitive bidding.

- (a) The assembly by ordinance shall provide for competitive bidding and procedures for competitive bidding.
- (b) Contracts for public improvements and, whenever practicable, other purchases of supplies, materials, equipment, and services, shall be by competitive bid and awarded to the lowest qualified bidder. This subsection (b) shall not apply to purchases of:
 - (1) Professional services,
 - (2) Services of officers and employees of the municipality acting within the scope of their office or employment,
 - (3) Services of officers and employees of the State of Alaska or the federal government if such services are provided pursuant to a written agreement with the employer,
 - (4) Services of students and members of the faculty of an accredited high school, college, or university if such services are provided pursuant to a written agreement with the school, or
 - (5) Services of members and employees of a nonprofit corporation registered as such with the State of Alaska, if:
 - (A) The services are provided pursuant to a written agreement with the corporation, and
 - (B) The total amount paid by the municipality divided by the number of hours of service provided by the members and employees of the corporation does not exceed double the minimum hourly wage established by the Alaska Wage and Hour Act.
 - (6) Public improvements which, upon a written finding by the Manager that it would be in the best interests of the City and Borough based on cost, timing, and other relevant criteria, may be procured by supplemental agreements amending existing capital improvement contracts. The maximum dollar amount, the criteria utilized, and the methodology shall be set by ordinance.
- (c) All contracts and purchases exceeding an amount to be established by ordinance shall require prior assembly approval.

Proposition No. _____

Shall Section 9.14 section (b), item (6) of the Charter of the City and Borough of Juneau, Alaska, be amended as set forth in Ordinance No. 2017-14, **to add the following underlined words?**

- (6) Public improvements which, upon a written finding by the Manager that it would be in the best interests of the City and Borough based on cost, timing, and other relevant criteria, may be procured by supplemental agreements amending existing capital improvement contracts, **by competitive sealed proposals, or by other alternative procurement methods adopted by the assembly by ordinance.** The maximum dollar amount, the criteria utilized, and the methodology shall be set by ordinance.

FOR THE AMENDMENT []

AGAINST THE AMENDMENT []

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

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2017-18 ANNOTATED

An Ordinance Amending the Penal Code.

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

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

Section 2. Amendment of Section. CBJ 42.15.020 Larceny of money or property, is amended to read:

This is a 'housekeeping' amendment that should be made regardless. Current code leaves out the CBJ's existing "buying or receiving" code section from the list of violations that count for purposes of bumping a B misdemeanor level crime to an A misdemeanor. (A B misdemeanor can be bumped to an A even if the value of property stolen is less than \$250 when the defendant has had at least two prior larceny convictions in the preceding five years.)

42.15.020 Larceny of money or property.

...

(b) Larceny of money or property is a:

(1) Class A misdemeanor if:

(A) The value of the money or property, adjusted for inflation as provided in AS 11.46.982, is \$250.00 or more but less than \$1,000.00; or

(B) The value of the money or property, adjusted for inflation as provided in AS 11.46.982, is less than \$250.00 and, within the preceding five years, the person

has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of larceny of money or property, concealment of merchandise, ~~or~~ theft of services, or buying, receiving, concealing, or disposing of stolen property, or an offense under another law or ordinance with similar elements.

...

Section 3. Amendment of Section. CBJ 42.15.030 Buying, receiving or concealing stolen property, is amended to read:

This amendment does three things:

- 1. It adds "disposing" to the list of things one cannot do with stolen property;*
- 2. It changes the mens rea to "reckless disregard" rather than "knowingly." "Mens rea" refers to a guilty state of mind. To convict someone of a crime requires the prosecution to prove not just that the act occurred, but that the defendant had the requisite guilty state of mind. The statute criminalizing buying, receiving, etc., stolen property requires the prosecution to prove the defendant acted with "reckless disregard" that the property was stolen. CBJ Code currently requires that the defendant acted "knowingly." "Knowingly" means someone is aware that the circumstances exist. "Recklessly" means the person is aware of and consciously disregards a substantial and unjustifiable risk that the circumstances exist and where disregard of the risk is a gross deviation from the way a reasonable person would act. If you answer a Craigslist ad to buy a pink riding lawnmower with a camo steering wheel and a "My Kid's an Honor Student" bumper sticker, and it looks exactly like the lawnmower recently stolen from your neighbor including the bumper sticker, the prosecutor might not be able to prove you had actual knowledge the lawnmower you're buying is stolen, but could very likely prove you acted with reckless disregard.*
- 3. The last change is a housekeeping change that should be made regardless. Under SB 91, municipalities are prohibited from imposing a penalty different than state law for similar conduct. State law provides receiving stolen property can be either a B or an A misdemeanor depending on the value of the property. Current CBJ code only provides for an A misdemeanor.*

42.15.030 Buying, receiving, ~~or~~ concealing, or disposing of stolen property.

(a) It is unlawful for a person to buy, receive, ~~or~~ conceal, or dispose of money, goods, bank notes or other things which may be the subject of larceny and which has been taken, embezzled, or stolen from another person, with reckless disregard that the property was

taken, embezzled, or stolen.

(b) ~~(1)~~ Reckless disregard that the property was stolen ~~The requisite knowledge or belief is~~
presumed in the case of a dealer who:

(1) ~~(A)~~ Is found in possession or control of property stolen from two or more persons on
separate occasions;

(2) ~~(B)~~ Has received stolen property in another transaction within the year preceding
the transaction; or

(3) ~~(C)~~ Being a dealer in property of the sort received, acquires it for a consideration
which the dealer knows is far below its reasonable value.

(c) ~~(2)~~ As used in this section: "Dealer" as used in this section means a person in the business
of buying or selling goods.

(1) "Dealer" means a person in the business of buying or selling goods.

(2) "Receive" includes acquiring the possession, control, or title, or lending on the
security of the property.

(d) ~~(3)~~ Buying, receiving, or concealing, or disposing of stolen property is a: Class A
misdemeanor.

(1) Class A misdemeanor if:

(A) The value of the property, adjusted for inflation as provided in AS
11.46.982, is \$250.00 or more but less than \$1,000.00; or

(B) The value of the property, adjusted for inflation as provided in AS
11.46.982, is less than \$250.00 and, within the preceding five years, the person has
been convicted and sentenced on two or more separate occasions in this or another
jurisdiction of larceny of money or property, concealment of merchandise, theft of

services, or buying, receiving, concealing, or disposing of stolen property, or an offense under another law or ordinance with similar elements.

(2) Class B misdemeanor if the value of the property is less than \$250.00, adjusted for inflation as provided in AS 11.46.982. A court may not impose a sentence under this subsection of more than:

(A) Five days of suspended imprisonment and a term of probation of more than six months if the person has been convicted two or more times of an offense under CBJ 42.15.020—42.15.080 or 42.15.120 or a law or ordinance of this or another jurisdiction with substantially similar elements; or

(B) A sentence of active or suspended imprisonment if the person has not been previously convicted, or has previously been convicted once, of an offense under CBJ 42.15.020—42.15.080 or 42.15.120 or a law or ordinance of this or another jurisdiction with substantially similar elements.

Section 4. Amendment of Section. CBJ 42.15.040 Concealment of merchandise, is amended to read:

This amendment is the same housekeeping amendment explained in Section 2, above.

42.15.040 Concealment of merchandise.

...

(c) Concealment of merchandise is a:

(1) Class A misdemeanor if:

(A) The merchandise is a firearm;

(B) The value of the merchandise, adjusted for inflation as provided in AS

11.46.982, is \$250.00 or more but less than \$1,000.00; or

(C) The value of the merchandise, adjusted for inflation as provided in AS 11.46.982, is less than \$250.00 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of the offense of larceny of money or property, concealment of merchandise, ~~or~~ theft of services, or buying, receiving, concealing, or disposing of stolen property, or an offense under another law or ordinance with similar elements.

...

Section 5. Amendment of Section. CBJ 42.15.070 Theft of services, is amended to read:

This amendment is the same housekeeping amendment explained in Section 2, above.

42.15.070 Theft of services.

...

(c) Theft of service is a:

(1) Class A misdemeanor if:

(A) The value of the merchandise, adjusted for inflation as provided in AS 11.46.982, is \$250.00 or more but less than \$1,000.00; or

(B) The value of the service, adjusted for inflation as provided in AS 11.46.982, is less than \$250.00 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of the offense of larceny of money or property, concealment of merchandise, ~~or~~ theft of services, or buying, receiving, concealing, or disposing of

stolen property, or an offense under another law or ordinance with similar elements.

...

Section 6. Amendment of Chapter. Chapter 42.15 Offenses against property, is amended by adding the following section:

This code section would allow the CBJ to prosecute people who use, without permission, another person's credit card, debit card, or the like to pay for goods or services.

42.15.085 Fraudulent use of an access device.

(a) A person commits the crime of fraudulent use of an access device if, with intent to defraud, the person uses an access device to obtain property or services with knowledge that:

- (1) The access device is stolen or forged;
- (2) The access device is expired or has been revoked or cancelled; or
- (3) For any other reason, that person's use of the access device is unauthorized by either the issuer or the person to whom the access device is issued.

(b) Fraudulent use of an access device is a class A misdemeanor if the value of the property or services obtained, adjusted for inflation as provided in AS 11.46.982, is less than \$1,000.

Section 7. Amendment of Section. CBJ 42.20.060 Carrying deadly weapons, is deleted in its entirety and replaced with the following to read:

This amendment to current code does two things: it repeals a law on the books that is no longer enforceable (requiring a permit to carry a concealed weapon) and it incorporates new language that allows the CBJ to prosecute weapons violations. The text of this code section was taken almost verbatim from state law.

42.20.060 Misconduct involving weapons.

(a) A person commits the crime of misconduct involving weapons, an A misdemeanor, if the person:

(1) Possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body in circumstances other than described in AS 11.61.200(a)(7); *11.61.200(a)(7): criminally trespasses on someone's land with intent to commit a crime or in someone's home while in possession of a firearm and when the person is under the influence, a class C felony.*

(2) Discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person under circumstances other than those described in AS 11.61.195(a)(3)(A); *11.61.195(a)(3)(A) discharges a firearm at or in the direction of a building with reckless disregard of physical injury to a person or at a dwelling, a class B felony.*

(3) Manufactures, possesses, transports, sells, or transfers metal knuckles;

(4) Sells or transfers a switchblade or a gravity knife to a person under 18 years of age without the prior written consent of the person's parent or guardian;

(5) Knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(6) Except for a peace officer acting within the scope and authority of the officer's employment, other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief

administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess:

(A) A deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) A defensive weapon.

(7) Being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession.

(b) A person commits the crime of misconduct involving weapons, a B misdemeanor, if the person:

(1) Is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon:

(A) That is concealed on the person, and, when stopped, detained, questioned, or addressed in person by a peace officer for an official purpose, the person fails to:

(i) Immediately inform the peace officer of that possession; or

(ii) Allow the peace officer to secure the deadly weapon, or fails to secure the weapon at the direction of the peace officer, during the duration of the contact.

(B) That is concealed on the person within the residence of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence.

(2) Knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(A) This subsection does not apply to a peace officer acting within the scope and authority of the officer's employment.

(B) It is an affirmative defense *(facts that, if proven by the defendant, provide a complete defense to the crime, even if prosecutor can prove facts establishing crime committed)* under this subsection that:

(i) The loaded firearm was a concealed handgun as defined in AS 18.65.790; and

(ii) The possession occurred at a place designated as a restaurant for the purposes of AS 04.16.049 and the defendant did not consume intoxicating liquor at the place.

(C) It is a defense *(facts that can be raised which might impede prosecutor's ability to establish crime committed)* under this subsection if the defendant, at the time of possession, was on business premises:

(i) Owned by or leased by the defendant; or

- (ii) In the course of the defendant's employment for the owner or lessee of those premises.
 - (3) Being an unemancipated minor under 16 years of age, possesses a firearm, switchblade, or gravity knife without the consent of a parent or guardian of the minor;
 - (4) Except for a peace officer acting within the scope and authority of the officer's employment, knowingly possesses a firearm:
 - (A) Within the grounds of or on a parking lot immediately adjacent to an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children, except that a person 21 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed container of a motor vehicle;
 - (B) Within a
 - (i) Courtroom or office of the Alaska Court System; or
 - (ii) Courthouse that is occupied only by the Alaska Court System and other justice-related agencies;
 - (iii) It is a defense under this section if, at the time of possession, the person was authorized to possess the firearm under a rule of court.
 - (C) Within a domestic violence or sexual assault shelter that receives funding from the state. It is a defense under this subsection if the person, at the time of possession, was authorized in writing by the administrator of the shelter to possess the firearm.
 - (5) Is less than 21 years of age and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person, unless, at

the time of possession, the person was:

(A) In the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) Actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(c) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; a deadly weapon on a person is not concealed if it is an unloaded firearm encased in a closed container designed for transporting firearms.

(d) For purposes of this section, a firearm is loaded if the:

(1) Firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge; and

(2) Chamber, magazine, clip, or cylinder is installed in or on the firearm.

(e) For purposes of this section, a "peace officer" means a peace officer of this state or a municipality within this state, or a peace officer employed by another state or a political subdivision of another state who, at the time of the possession, is:

(1) Certified by this or another state as a peace officer; and

(2) Acting within the scope and authority of the officer's employment.

Section 8. Amendment of Section. CBJ 42.20.110 Harassment, is amended to read:

This amendment would do two things: it would allow the CBJ to prosecute the more serious A misdemeanor harassment cases and it amends the current B misdemeanor code section to allow CBJ to prosecute two fact patterns CBJ code currently does not explicitly address.

42.20.110 Harassment.

(a) A person commits the crime of harassment, a class B misdemeanor, if, with intent to harass or annoy another person, that person:

(1) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) Telephones another or fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) Makes repeated telephone calls at extremely inconvenient hours;

(4) Makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;

(5) Subjects another person to an offensive physical contact;

(6) Except as provided in AS 11.61.116, publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act;

(7) Repeatedly sends or publishes an electronic communication that insults, taunts, challenges, or intimidates a person under 18 years of age in a manner that places the person in reasonable fear of physical injury.

(b) A person commits the crime of harassment, a class A misdemeanor, if, with intent to

harass or annoy another person, that person: Harassment is a Class B misdemeanor.

(1) Subjects another person to an offensive physical contact and the contact is with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces;

(2) Under circumstances not proscribed under Alaska statute concerning sexual abuse of a minor, the person subjects another person to offensive physical contact and the offensive physical contact is contact by the person touching through clothing another person's genitals, buttocks, or female breast.

Section 9. Amendment of Section. CBJ 42.30.040 False reports to law enforcement authorities, is amended to read:

This change would make CBJ code and state law consistent with respect to this particular criminal violation.

42.30.040 False reports to law enforcement authorities.

(a) It is unlawful for a person knowingly to give false information to any law enforcement officer;

(1) With ~~with~~ the purpose of implicating another person; or

(2) Concerning the person's identify while the person is

(i) Under arrest, detention, or investigation for a crime; or

(ii) Being served with an arrest warrant or being issued a citation.

(b) It is unlawful for a person to:

(1) Report to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretend to furnish such authorities with information relating to an offense or

incident when that person knows he or she has no information relating to such offense or incident.

- (c) Violation of this section shall be punished as a Class A misdemeanor.

Section 10. Amendment of Section. CBJ 42.30.060 Violating a domestic violence protective order, is amended to read:

This amendment would allow the CBJ to prosecute violations of stalking protective orders as well as domestic violence restraining orders. The addition of the "reckless disregard" mens rea in subsection (a) is just to make the code section easier to read and understand. The "reckless disregard" mens rea is already the existing legal standard even though it isn't specifically articulated. (See State v. Strane, 61 P.3d 1284 (Alaska 2007).)

42.30.060 Violating a ~~domestic violence~~ protective order.

- (a) A person commits the crime of violating a protective order if the person is subject to a protective order containing a provision listed in subsection (b) of this section and knowingly commits or attempts to commit an act with reckless disregard that the act violates or would violate a provision of the protective order. ~~in violation of that provision.~~

- (b) This section applies to a protective order which:

- (1) Prohibits the respondent from threatening to commit or committing domestic violence, stalking, or harassment;
- (2) Prohibits the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner or a designated household member of the petitioner specifically named by the court;
- (3) Removes and excludes the respondent from the residence of the petitioner, regardless of ownership of the residence;
- (4) Directs the respondent to stay away from the residence, school, or place of

employment of the petitioner or any specified place frequented by the petitioner or any designated household member;

(5) Prohibits the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;

(6) Prohibits the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence; or

(7) Directs the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence.

(c) Violation of this section is a Class A misdemeanor.

(d) In this section, "protective order" means an order issued, ~~or~~ filed, or recognized under AS 18.66.100—AS 18.66.180, 18.65.850, 18.65.855, 18.65.860, or 18.65.867.

Section 11. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2017.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk

City and Borough of Juneau
Committee of the Whole
July 12, 2017

Supplemental Packet

1. Supporting Documents for Attorney Resources - FY18 Department of Law Operating Budget Increment/Supplemental (pg. 2-3)
2. Additional Information on Financing Meander Way LID (pg. 4)
3. Roger Healy Memo re: Meander Way River Erosion (pg. 5-6)

City and Borough of Juneau
FINANCE DEPARTMENT
Assembly Committee of the Whole Meeting
July 12, 2017

FY18 Law Department Operating Budget Increment/Supplemental

Issue:

Should the CBJ provide an FY18 budget increment/supplemental appropriation for the department of Law to fund a new attorney position?

Narrative:

The requested appropriation would fund a new attorney position. The position would have a dual focus, working for both the criminal and civil sections. The position would alleviate the strain on the criminal side created by a dramatic increase in criminal cases being prosecuted as a result both of the criminal justice reform bill as well as the impact that bill has had on the local District Attorney's Office's resources and ability to handle a share of the misdemeanor caseload. The addition of the new position would also allow the civil section to significantly increase the CBJ's collections efforts with respect to unremitted sales tax, as well as civil and criminal fines that have gone unpaid and the recovery of damages through the initiation of civil litigation.

Budget Effect:

The attached schedule details the projected net FY18 Personal Services cost increase of \$109,000 over the recently adopted budget.

The FY18 funding source is an increased draw on General Fund fund balance of \$109,000 over the recently adopted budget. The FY18 adopted Law budget reduced their budgets draw on the general fund due to \$100,000 increased cost reimbursement from BRH. Thus this requested increment only draws \$13,000 more on the general fund than their FY17 budget.

It is expected that the FY19 Personal Services budget will also increase slightly as 2 positions (including the new one) did not need to be funded for a full year in FY18. It is anticipated that this increased cost could be offset by increased revenue collections.

Recommendation:

The Manager recommends this increment be adopted by the Finance Committee and direct staff to prepare an ordinance for consideration by the full Assembly.

City and Borough of Juneau
Law Department Draw on General fund by Fiscal Year
7/7/2017

	FY14 Actuals	FY15 Actuals	FY16 Actuals	FY17 Amended Budget	FY18 Adopted Budget	FY18 New Request	FY17 Amended vs. FY18 New Request Increase (Decrease)	FY18 Adopted vs. FY18 New Request Increase (Decrease)
EXPENDITURES:								
Personnel Services	1,217,500	1,363,700	1,350,900	1,450,900	1,497,300	1,607,100	156,200	109,800
Commodities and Services	616,500	666,400	732,700	718,300	675,200	675,200	(43,100)	-
Capital Outlay	-	-	20,000	-	-	-	-	-
Total Expenditures	1,834,000	2,030,100	2,103,600	2,169,200	2,172,500	2,282,300	113,100	109,800
FUNDING SOURCES:								
Interdepartmental Charges/Fees & Fines	286,200	544,000	530,200	531,700	631,700	631,700	100,000	-
Draw on General Fund	1,547,800	1,486,100	1,573,400	1,637,500	1,540,800	1,650,600	13,100	109,800
Total Funding Sources	1,834,000	2,030,100	2,103,600	2,169,200	2,172,500	2,282,300	113,100	109,800

City and Borough of Juneau
FINANCE DEPARTMENT
Assembly Committee of the Whole Meeting
July 12, 2017

Information on the Funding Source for the Estimated \$2 million Property Owner Contribution, Financed by CBJ Central Treasury, to Protect Mendenhall River Banks at Meander Way.

Overview:

CBJ is working with local property owners and National Resources Defense Council (NRCS) regarding a potential \$8million capital project to stabilize the river bank at Meander Way. Minutes from the minutes of June 12th COW meeting explain the overall issues. This issue paper is to provide information regarding the CBJ financial involvement to provide financing, via Local Improvement District (LID) process, to local property owners for their estimated \$2 million of required capital project improvements.

Financial Risk:

CBJ LID financing is generally administered by adding the property owner LID debt service payment to the annual property tax bill. The CBJ loan (potentially \$78,000 per property owner, paid back over 15 years) becomes a lien against the property. Normally this is a low risk situation where the LID improvement increases the value of the LID property (e.g. paved road, sewer connection, etc.) Generally LID loans are much smaller and paid back over shorter time frames than 15 years.

The potential Meander Way bank stabilization project appears to have a higher level of loan payback risk. Given the existing bank erosion issues and future risks property values, for certain Meander Way properties, are volatile and the LID improvements are more focused on preserving property value versus increasing it. The CBJ risk is that a property owner fails to repay the LID loan and the CBJ remedy of foreclosing on the property only works if the market value exceeds the mortgage debt. This debt recovery method is less assured in the Meander Way situation. While CBJ staff are not privy to individual homeowner financial details, imposition of a LID assessment of this size is likely to create situations where a homeowner could have negative equity on a property – the outstanding mortgage and LID lien would exceed the value of the property.

Property Assessment/Tax Status:

The CBJ Assessor, in accordance with state and local assessment codes, has reduced the assessed value (and thus property tax), for 8 properties to loss of land from erosion. 3 properties received a 50% reduction and 5 properties received a 25% reduction.



TO: Jerry Nankervis, Chair Committee of the Whole DATE: July 12, 2017

FROM: Roger Healy, PE, Director

SUBJECT: Meander Way River Erosion

Background. Repeated flooding of the Mendenhall River (including effects from Jökulhlaups) has resulted in riverbank erosion of several properties along Meander Way in the Mendenhall Valley. Starting in 2014, residents contacted the CBJ regarding erosion threatening property and homes. Advised to investigate sources of non-CBJ funding for riverbank protection measures, the CBJ opened discussions with the Natural Resources Conservation Service (NRCS) to provide technical analysis and determine the applicability of NRCS (federal) funding to the project conditions. In short, the NRCS determined that a rip-rap revetment spanning 28 properties along Meander Way would meet their program constraints for funding. Because of the urgent nature of substantial property loss and the mostly annual recurrence of major Jökulhlaup events, the concepts for CBJ's role, funding, project delivery processes, and other project complexities have evolved quickly, and are dynamic.

CBJ Role. CBJ staff have proposed that the CBJ's role be limited to being a conduit for federal funding. Other than one lot that provides drainage and public river access, the CBJ does not own property in the proposed construction area. Without a clear property interest, CBJ staff has –to date - limited our potential role to being a conduit for federal funds for the project. If this project moves forward, there will be CBJ costs associated with activities not provided by the NRCS, including but not limited to: permitting, property acquisition, maintenance, financing costs, and potential litigation. While limiting the CBJ's role to a conduit for federal funding has been the goal, proceeding with this project requires the CBJ's active participation in these activities. The costs for CBJ participation are to be borne by the residents as a portion of the assessment cost.

Informal Vote. Eighty percent of the voting property owners approved of the project at the proposed assessment of ~\$78,500. CBJ staff met with most of the opposing property owners. In summary, other than the proposed assessment cost, there is not one centralizing issue that sparks opposition. Each homeowner has valid and differing reasons for opposing the project, ranging from little perceived benefit, to project scale/aesthetics, to increased risks in property financing and resale.

Property. The Mendenhall River, below Mean High Water (MHW), is 'owned' by the State of Alaska, Department of Natural Resources (DNR). The property above MHW is private property. It is our understanding that the property line between the two owners is a Meander line. In other words, if riverbank erosion occurs, DNR gains property and the property owner loses property. If accretion (i.e., sandbars above MHW), the property owner gains land. To construct the project as designed by NRCS, the CBJ – as the local sponsor – would need to acquire for the NRCS the following, at a minimum, from each of the residents: a temporary construction easement to build the project; and a 10-year (minimum) maintenance easement. For the purposes of the informal Local Improvement District (LID) ballot and assessment, we assumed that these two easements would be little or no cost to the CBJ (a portion of the LID Assessment). There was opposition to the project from some of the 27 property owners, and it is safe to say, there will be more

opposition if the current assessment of ~\$78,500 increases. Minimal cost easements may no longer be assumed. To acquire the necessary easements for the project, the CBJ would have to negotiate purchase of these easements at best, and at worst, proceed with eminent domain and associated court proceedings. Eminent domain is a strong, but infrequently used, power of the CBJ.

Assessments. In accordance with code, the apportionment of property owner's costs must be in proportion to the benefit each lot receives. This project's purpose is protection of property and home values. The CBJ has recommended a uniform assessment method of ~\$78,500 on all properties that would have permanent constructed improvements thereon. The federal share of project costs is roughly \$208,000 per property, totaling nearly \$290,000 worth of improvements, per property. Due to the dynamic nature of the river and its riverbanks, staff has found that a uniform assessment method is fair because over the long term riverbank erosion is unpredictable and all properties would equally benefit from a stable river bank. Given the predominant federal participation, a uniform CBJ assessment is valid due to the equal protections provided by the entire project to each property, with one exception: the first lot on the project.

The first lot on the project has been defined as a 'stable point'. For riverbank revetment projects, a stable point is needed on the upstream and downstream ends. Downstream the stable point is CBJ lands associated with Dimond Park. On the upstream end, if the property is defined as stable, there are no benefits received by the property, thus no assessment should be applied.

Permitting. The Mendenhall River is an anadromous river (it is also a meandering river – meaning it is prone to alignment change, hence the name of the local street). Permitting this type of rip-rap revetment project, even though there are other rip-rap slopes along this river, will be time consuming and consultant intensive. Our proposed cost of \$100,000 for this task is an estimate.

Costs. The elimination of one lot (privately owned 'stable point') from the LID and potential cost increases from acquiring or taking property, the LID property assessments would increase. The initial estimate of ~\$2,200,000 of property owner costs (divided equally amongst 28 lots) could increase to roughly ~\$2,800,000 accounting for uncertainties in easement negotiations, potential eminent domain proceedings, and associated legal costs. Equal assessments to the remaining 27 properties, the individual property assessments could be in the range of \$105,000. If more property owners required payment for construction and maintenance easements, this cost would increase proportionally (or decrease proportionally if less properties require payment).

Findings.

To move forward with a LID, the Assembly must determine that the project is a municipal improvement, that only the properties specially benefitted will be assessed and that due to the uncertainties in environmental change processes that each assessed lot should have the same assessment as it affords each property the same protection against riverbank erosion.

Options. There are two options for proceeding:

LID Ordinance. The Assembly can direct staff to revise the uniform property assessment amount to reasonably cover expected easement negotiation and/or eminent domain proceedings and set a date for the LID Hearing.

Capital Improvement by Agreement. CBJ Code provides for constructing municipal improvements if there is 100% agreement on financial participation from all property owners. Given the other project constraints (i.e., project's limits and purposes), the Assembly could direct staff to coordinate with the neighborhood regarding an assessment apportionment that meets with all homeowners' approval and covers all project sponsor (CBJ) costs. Ultimately, this would be a neighborhood driven effort.