THE CITY AND BOROUGH OF JUNEAU, ALASKA

March 10, 2008

MEETING NO. 2008-07: The Regular meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 7 p.m. by Mayor Bruce Botelho.

I. FLAG SALUTE was led by Mayor Bruce Botelho.

II. ROLL CALL

Assembly Present: Bruce Botelho, Sara Chambers, Johan Dybdahl, Merrill Sanford, David Stone, Randy Wanamaker.

Assembly Absent: Jonathan Anderson, Jeff Bush, Bob Doll.

Staff Present: Rod Swope, City Manager; John Hartle, City Attorney; Laurie Sica, Municipal Clerk; Roger Healy, Engineering Director; John Stone, Port Director.

III. SPECIAL ORDER OF BUSINESS

A. Purchasing Month Proclamation

CBJ Employees Anne Stadnychenko, CBJ Purchasing Officer; Renee Loree, Senior Buyer; Diane Andresen, Buyer and Jennifer Mannix, Engineering Contract Administrator were present as Mayor Botelho proclaimed March 2008 as “Purchasing Month.”

Anne Stadnychenko thanked the Manager and the Assembly for the recognition of the role of governmental purchasing. They issue approximately 1000 purchase orders a year ranging in total value from $35 Million to $95 Million per year. It is important for us to maintain the integrity of the purchasing process. Mayor Botelho thanked the purchasing staff for doing their work with integrity and transparency.

IV. APPROVAL OF MINUTES

A. February 25, 2008 – Regular Assembly Meeting 2008-05

Hearing no objections, the minutes of February 25, 2008, Regular Assembly meeting 2008-05, were approved.

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

VI. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

*Chip Thoma*, Downtown Juneau, spoke about the Marine Passenger Fee and encouraged the Assembly to move forward on the seawalk and the dock improvement projects on the municipal waterfront. We have a model passenger fee which has never been challenged by the industry. There is some hydrostatic testing that needs to be done prior to the work on the docks, at the cost of about $1 million, and he encouraged the Assembly to move forward on this.

*Karla Hart*, Mendenhall Valley, thanked the Assembly for taking on the clean air issue of second hand smoke, please take on another clean air issue, which is “second hand noise.” There are efforts to expand the dock capacity. There is talk about building a dock at Gold Creek which the community has said multiple times that we don’t want. Northstar Helicopters has in an application to expand their...
tourism facility infrastructure at the airport before the Planning Commission tomorrow. The U.S. Forest Service now has under review the expired five year permit for helicopter tour landings. They have hired a consulting firm to look at this and will conduct a meeting on March 26 to take comments. There is expanded housing in the West Mendenhall Valley area and the investment in the expanded trail system is being polluted with noise from helicopters. The noise of helicopters has driven away people who value quiet and can take their jobs and move elsewhere. Many professionals have left Juneau with their jobs because the Assemblies have not done anything, have not resolved this noise issue, and are driving away people who would like to be here. It is hard to calculate the damage to the economy. The helicopter companies are not local with one exception and employ pilots from out of town. Noise is a public health issue. CBJ’s lack of attention to this issue is making the noise issue worse.

Robert Garrison, Downtown Juneau, spoke about litter, particularly the area on the waterfront by the old Standard Oil Dock and the steps below the Fosbey Apartments, where people congregate and scatter litter. Please drive by and take a look. The police know this is going on. Stop by when they are drinking, and tell them to either clean up the area or cite them for open container laws. This option works and the area is a mess – they are young people who are creating the problems.

VII. CONSENT AGENDA

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

B. Assembly Requests for Consent Agenda Changes

C. Assembly Action

MOTION, by Wanamaker, to adopt the consent agenda as presented. Hearing no objection, it was so ordered.

1. Ordinances for Introduction

   a. Ordinance 2008-08

      An Ordnance Authorizing The Port Director To Negotiate And Execute A Lease Of Approximately 40,510 Square Feet Of Land Within U.S. Survey 16, For Operation Of The Auke Bay Boatyard, Travel Lift, And Related Equipment And Improvements At Dehart’s Marina In Auke Bay.

      Administrative Report: Attached. The manager recommended Ordinance 2008-08 be introduced and set for public hearing at the next regular Assembly meeting.

   b. Ordinance 2007-21(AU)

      An Ordnance Appropriating To The Manager The Sum Of $1,120,000 As Partial Funding For The West Mendenhall Valley Sewer Expansion Project, Grant Funding Provided By The Alaska Department Of Environmental Conservation.

      Administrative Report: Attached. The manager recommended Ordinance 2007-21(AU) be introduced and set for public hearing at the next regular Assembly meeting.

VIII. PUBLIC HEARING

A. Ordinance 2008-06

   An Ordnance Amending the Commercial Passenger Vehicle Code.


   Public Comment: None.
Assembly Action:

MOTION, by Dybdahl, to adopt Ordinance 2008-06. Hearing no objection, it was so ordered.

B. Ordinance 2008-07(b)
An Ordinance Amending the Marine Passenger Fee Code Regarding The Passenger Fee Proceeds Committee.

Administrative Report: Attached. The manager recommended Ordinance 2008-07(b) be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Chambers, to adopt Ordinance 2008-07(b). Hearing no objection, it was so ordered.

C. Ordinance 2007-21(AQ)(b)
An Ordinance Appropriating To The Manager The Sum Of $700,000 As Partial Funding For The Mid-Mountain Chairlift, Beginning Chairlift, Multipurpose Corridor To The Top Of The Mountain, Alpine Race Training Center And Ski Patrol Room Capital Improvement Projects, And As Funding For The Challenge Grant, Grant Funding Provided By The Rasmuson Foundation.


Public Comment: None.

Assembly Action:

MOTION, by Chambers, to adopt Ordinance 2007-21(AQ)(b). Hearing no objection, it was so ordered.

D. Ordinance 2007-21(AT)
An Ordinance Appropriating To The Manager The Sum Of $2,550 As Funding For The Purchase Of Artworks For The Juneau-Douglas City Museum, Funding Provided By Museums Alaska, Incorporated.


Public Comment: None.

Assembly Action:

MOTION, by Sanford, to adopt Ordinance 2007-21(AT). Hearing no objection, it was so ordered.

IX. UNFINISHED BUSINESS

A. Ordinance 2008-05(b)
An Ordinance Renaming, Amending, And Extending The Smoking In Public Places Code.

Administrative Report: Attached. The manager recommended Ordinance 2008-05(b) be adopted. Mr. Swope said that Version B included recommendations from the Committee of the Whole, and the only change is that smoking in outdoor seating areas is specifically allowed.

Assembly Action:
MOTION, by Wanamaker, that the Committee of the Whole refers Ordinance 2008-05, version (b) back to the Assembly and recommends approval of this ordinance by the Assembly. Hearing no objection, it was so ordered.

X. NEW BUSINESS

A. Pusich/Corrigan v Planning Commission Appeal

Administrative Report: Attached. The manager had no recommendation. Mr. Hartle said he knew no reason that the Assembly should not hear this appeal and no reason why the Assembly should not hear the appeal itself.

Assembly Action:

MOTION, by Wanamaker, that the Assembly hear the appeal, that the Assembly hear this appeal itself, and that the Mayor serve as Presiding Officer. Hearing no objection, it was so ordered.

Mr. Sanford asked that this appeal be heard in as timely a manner as possible, as they tend to extend themselves over time. Mayor Botelho agreed, acknowledging this is time for Finance Committee meetings as well.

XI. STAFF REPORTS

A. Project Labor Agreements (PLA) Update

Mr. Swope said the Assembly had requested an update at the last meeting on this topic. Staff sent a memo from City Attorney John Hartle and a memo from Roger Healy to the Assembly. There are many projects lined up for the coming year, including the High School, the pool, the hospital, the parking garage, several school projects, and the airport terminal. Mr. Healy looked at this and suggested a blanket policy whereby when a $4 million threshold was reached on project costs, the projects would be automatically bid with a PLA. We failed to have this decision reviewed by the legal department, and Mr. Hartle found that PLA’s required review on a case-by-case basis. He also indicated there are nine points, as laid out in a prior Attorney General’s opinion, by which any project must be evaluated to determine whether a PLA would or would not apply. Mr. Healy provided such a review on those nine points for the Glacier Valley school project under bid in his memo. It has been asked whether this is a legal issue or a policy issue. Mr. Swope said it is both. The nine points address the legal issues, and Mr. Healy has to evaluate how the points apply, administratively. Arguments can be made on both sides. We have legal guidelines, but there will be debate and disagreement. We are looking for policy direction with a clear definition, however, that is difficult to do legally.

Mayor Botelho acknowledged that in the last hour, the Assembly received a letter from the Juneau and Vicinity Building and Construction Trades Council, Inc., with a communication challenging the determination that has been made on the Glacier Valley school project with regard to the PLA issue.

Mr. Swope said that the letter referred to a February 28, 2008 memo from Mr. Swope, however, it was actually referring to Mr. Healy’s memo to Mr. Swope.

Mayor Botelho requested a break in the meeting from 7:29 p.m. – 7:39 p.m. for the Assembly to review the letter.

Mr. Dybdahl asked if this was an issue that could be appealed and if there were time constraints in moving ahead on the project.

Mr. Hartle said it was not a decision that could be appealed. There was no CBJ appeal of a department director’s decision or the manager’s decision, therefore, time frames were not relevant. With regard to
whether this question is a policy question or a legal question, the Assembly and the manager can set a policy of whether or not it wishes to employ PLAs for projects that qualify, then the legal question is a factual analysis of the nine points from the Attorney General’s opinion, which Mr. Healy’s memo has set out. Because they are questions of fact, people will disagree. The letter from Mr. Notar of the Juneau and Vicinity Building and Construction Trades Council, Inc., says there can be other factors than outlined by the nine factors. Mr. Hartle agreed, and the Attorney General’s opinion said as much, that the list of nine factors was not exhaustive. Mr. Notar’s letter suggests two additional factors: labor market supply and demand, and those are reasonable factors that can be analyzed as well. He said he had just received a copy of the letter, so had not done a thorough review.

Mr. Sanford said there are two questions – if we can do a policy overall or individually. The other issue is the current school issue and he asked the timing for the Glacier Valley School project.

Mr. Healy said Glacier Valley School project is set to bid this Wednesday, March 12, and does not currently have a PLA in the bid. The bids will be opened on Wednesday, with assembly approval at the next meeting.

Mayor Botelho said the Assembly was in a position to say that it supports PLA’s to the extent allowed by law, recognizing on a case by case basis they would be applying the law. We can adopt a policy that we generally support PLA’s. Mr. Hartle said that was accurate. Mayor Botelho asked, in the longer term, if there was anything that precluded the Assembly from reviewing prospective projects and seeking comments on the applicability of the nine points plus for the propriety of a PLA early in the process. Mr. Healy said it would be a good public process, but he would fall back to some of the conclusions he made and the facts were ultimately in dispute, depending on one’s view of either the bidding climate or the labor climate. You won’t come to a set conclusion on each of the nine points. Mayor Botelho said he understood that ultimately there were judgment calls to be made by the manager or department heads.

Mayor Botelho asked about the specific questions from Mr. Notar that CBJ had not adequately considered the factors regarding the decision on a PLA for Glacier Valley School. What would be the ramification of a delay of any sort to allow a review of the decision based on the information in the letter, and its impact for a decision to be brought forward to the Assembly on April 7. Mr. Healy said delay would be substantive – we are looking at the summer window for school construction. The original bid opening date was March 4 and we are already at somewhat of a crunch. We need sufficient time to order materials so that when school closes, the contractor can move in and start work. Material delivery, submittal reviews, and mobilization takes time and if that takes place in July, we have lost the season and this can delay the project a year. Inflation will be hard on this project.

Mayor Botelho asked if there was anything he read in the letter that caused him concern about his decision. Mr. Healy said that a major point was that CBJ had employed PLA’s on eight projects to date. Whether or not that track record should have been brought forth may be a subject for review. He maintained that labor supply is one major issue on a project, but it is only one component on a project’s challenges.

Mr. Dybdahl asked what the possible consequences of the decision were and who might challenge the decision. Mr. Hartle said the first time a PLA was used, the decision was challenged by McGraw Construction and the decision was held up in court. Courts generally uphold PLA’s and they are used, if the factors support one, all over the country. There was an equal protection issue and a bidding/procurement code issue. The decision was defensible either way if there had been a proper up-front analysis.

Mr. Healy said McGraw Construction’s challenge to the PLA was on Riverbend School in 1996.

Mr. Sanford asked when Mr. Healy received Mr. Notar’s letter. He said about one hour ago. Mr. Sanford said that may not be sufficient time to review the letter in depth. Mr. Healy agreed.
Mr. Swope said Mr. Healy is concerned about adequate labor supply, given the list of projects which are set to come on line. When you look at the nine points, there is not one that specifically addresses adequate labor force (so that a PLA would ensure an adequate supply of labor.) That may be a consideration here. That seems like one of the most compelling arguments for all of our projects. I don’t relish an argument on each project, as we know where the trade unions and non-union labor stands on these issues.

Mayor Botelho said that the challenge, if there was one, would be at the time of the bid award, not at the opening. Mr. Hartle said that was true. Mayor Botelho asked if there might be bid preparation costs for which the CBJ could be liable. Mr. Hartle said there was some risk as the specifications had changed.

Mr. Sanford asked if this project was open to any bidder – labor or non-labor. Mr. Healy said that regardless of whether there is a project labor agreement on the project or not, no bidder was prevented from bidding on any job. The requirement of the PLA was that after award, the contractor must sign an agreement that outlines labor conditions with the respective trades.

Ms. Chambers asked for the attachments to the letter. Mayor Botelho said he would so distribute.

Ms. Chambers asked what the next major project would be with this issue. Mr. Healy said it would be the Harborview School Renovation – roughly estimated at $14 million, and then the consolidated public works shop, if we stay on schedule.

Mr. Wanamaker asked Mr. Hartle if he would be reviewing this letter for its legal aspects. Mr. Hartle said yes, it would take several hours to properly look at this letter. Mr. Wanamaker said assuming there are no legal issues, the Assembly could make a policy call to say that we want to see a PLA with this project. Mr. Hartle said that was correct.

Mr. Wanamaker said there were four points that were compelling in the letter delivered by Mike Notar. The time compression of the project and the benefits a PLA would bring to it, the cost savings that a PLA would bring, the labor availability and the history of use of PLA’s in the community. He thought a PLA was appropriate for this project.

Mayor Botelho said he sensed that caution was necessary, as this decision is not one that can be appealed. The Assembly can make a decision based on its conclusions or ask staff to review its decision based on the materials provided. His apprehension of the Assembly giving a direction was the concern that it may create vulnerability in terms of not making detailed findings.

Mr. Hartle said that the Assembly could adopt a policy to support PLA’s to the extent allowed by law. Mr. Sanford said that Mr. Wanamaker was pointing to this specific PLA on Glacier Valley School – which are good points and guidelines for future projects. Mr. Sanford does not want to see this summer season lost and CBJ can’t risk inflation costs. We need to be aware of this and we can’t lose the season on this particular job.

Mr. Wanamaker said that both Mr. Sanford and Mayor Botelho made good points. One way to address this is to adopt a formal policy that we support PLA’s to the extent allowed by law. Any decision that staff makes in reviewing this letter and the attachments will have to be made carefully and will need to be defended.

Mr. Stone said he agreed with Mr. Sanford on timing, and with Mr. Wanamaker that we should have a policy, but this is too short a timeframe on this particular project.

MOTION, by Wanamaker, that the Assembly express its support for PLA’s to the full extent allowed by law.
Ms. Chambers asked if the effect of that statement bound the staff to lean toward finding a way to make PLAs happen, with a bias to make them legally defensible. What was the point of the statement.

Mr. Wanamaker said it would give staff direction that the Assembly supported PLAs to the extent allowed by law. The staff would have to review each project based on their best professional judgment, and outline their rationale, and make their management decision.

Mr. Stone supported the motion.

Mr. Dybdahl said the staff had done their professional review already on this project, absent our policy statement.

Mr. Sanford agreed, however, there are points to be reviewed beyond the nine points that could be added. Mr. Sanford supported the motion.

Mr. Swope asked what this motion changed, and said if the Assembly wanted to see PLAs applied as liberally as possible on this project, he urged the Assembly to come forth with more criteria. Mr. Healy has done his best job on this. He was trying to read between the lines – did the Assembly want staff to bias decisions toward PLAs? In this case staff has done an objective job.

Mayor Botelho said the discussion was not a directive to the manager to do anything different than had been done, which is to apply the standards as understood and take them into account with the state of the law – long term. We have the nine points and he understands Mr. Hartle will review the information from Mr. Notar and any other information that suggests there may be other factors we should be looking at that are legally either acquired or acceptable, and to apply those criteria to any other projects. This is not a subtle directive to reverse any decision made. He encouraged Mr. Healy, Mr. Swope and Mr. Hartle to review the decision and look at the letter, in their timeframe, to reach the conclusion that it doesn’t add anything to the debate or that you should reverse course.

Mr. Sanford said he did not want staff to be biased. He preferred setting a dollar amount for criteria to determine the appropriateness of a PLA, however, that was not an option. Not all projects have to have PLA’s, and there may be other criteria. He wants staff to be open-minded, to give us opinions whether for or against PLAs, so the Assembly has all the information upon which to base a decision.

Mr. Dybdahl said that there may be more points that would provide due diligence, but whatever decision was made, it could still be challenged.

Mr. Healy asked for any more specific direction on Glacier Valley School. He will review any type of delay and Mr. Notar’s letter with his staff first thing in the morning. He needed to evaluate any extension of the bid. His goal was delivery of the project and he did not want to jeopardize that.

Mr. Stone said he thought we are beyond this particular project and we are discussing this issue in the long term.

Mayor Botelho said he thought it was slightly different, the decision has been entrusted to the City Manager and the Engineering Director, and Mr. Sanford has spoken for the body that this project has to move forward for this summer. Mr. Healy will take a close look at Mr. Notar’s letter to see if his initial judgment was wrong, however, given the totality of the circumstances, staff will conclude whether to proceed to open the bid on Wednesday.

Ms. Chambers asked for information on projects to allow a conversation to occur with more decision time.

Hearing no objection, the Assembly supported the motion to support PLA’s to the extent allowed by law.
XII. ASSEMBLY REPORTS

A. Committee Reports

Committee of the Whole: Chair Wanamaker said the COW met on March 5 regarding the Clean Air Ordinance.

Finance Committee – Chair Stone said that Mr. Swope and the city was getting a lot of pressure due to an impression that some have that the city will be awash in cash. We are going to be meeting regularly as the Finance Committee in April. He proposed to the committee members the question, “Can we sustain it?” He asked the Assemblymembers to consider this.

Human Resources:

MOTION, by Chambers, to accept the Human Resources Committee recommendation and reappoint Patricia Macklin to the Juneau Public Library Endowment Board for a term expiring January 31, 2011. Hearing no objection it was so ordered.

MOTION, by Chambers, to accept the Human Resources Committee recommendation and reappoint Adrian Wayne Longacre to the Sales Tax Board of Appeals for a term expiring December 31, 2010. Hearing no objection it was so ordered.

Chair Chambers said the matter of the Performing Arts Commission sunset date was referred to the Human Resources Committee by the Mayor.

MOTION, by Chambers, to request the Mayor extend the Performing Arts Commission in its present form for one more year from this date. Hearing no objection, it was so ordered.

The Performing Arts Commission would like to schedule a time to meet with the Finance Committee of the Committee of the Whole to discuss past feasibility studies and to discuss the future configuration of the commission and its fundraising efforts. The Assembly discussed the timing and Mayor Botelho left this as a trailing agenda item with the Finance Committee.

Ms. Chambers said the HRC received a report from Glenn Gray, who would like to speak to HRC regarding the Juneau International Relations Advisory Committee. The HRC will schedule this discussion on a future agenda.

B. Liaison Reports

Bartlett Regional Hospital: Liaison Sanford said the next board meeting would be March 25 at 5:15 p.m.

Airport Board: Liaison Stone said the next board meeting was March 12 at 7 p.m., and he would not be able to attend. The Board was working on its budget.

C. Presiding Officer Reports

Mayor Botelho appointed Merrill Sanford and Johan Dybdahl to serve on an ad hoc joint committee with Budd Simpson and Greg Fisk of the Docks and Harbors Board. Hearing no objection, it was so ordered. Mayor Botelho asked Mr. Sanford to convene the group.

Mayor Botelho said there will be a hearing on Tuesday, March 11 in the House Finance Committee regarding HB54 – to create a competition for a legislative hall and repeal the FRANK initiative.
XIII. ASSEMBLY COMMENTS AND QUESTIONS

Ms. Chambers said she was concerned about the smoking ordinance and hoped the Assembly would be open to receiving more information from the industries impacted by this decision regarding smoking, and to discussing how a compromise can be achieved.

Mr. Sanford said there are two or three capitol move bills. He feels the city has not done enough to put a local face on the issue. At some of the presentations, the Alaska Committee and Mayor Botelho have been there. The road issue has been brought up. Do we have a policy or strategy to attack these issues and put a Juneau face on this issue? It seems we are absent.

Mayor Botelho said at every opportunity to testify either the mayor or deputy mayor have been present. We rely on Clark Gruening to notify us of bills and he has worked with the Alaska Committee and others, and there have been private citizens present as well. Whether it is enough that is hard to say. The road has come up, not as part of the bills, but in comments about Juneau.

Mr. Sanford said he knew these issues would be raised and he would be glad to attend – all nine of the Assembly members should be sitting in the front row.

Mayor Botelho said he would ask that all Assembly members be directly notified by Mr. Gruening about upcoming hearing dates.

Mr. Stone said he had the plague and thanked the Assembly for the opportunity to participate by teleconference.

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

XV. EXECUTIVE SESSION

XVI. ADJOURNMENT – 8:32 p.m.

Signed: _______________________________   Signed: _______________________________
Laurie Sica, Municipal Clerk               Bruce Botelho, Mayor