From: Carl Uchytil, Port Director  
To: Docks & Harbors Board  
Via: (1) Docks & Harbors Operations-Planning Committee  
(2) Docks & Harbors Finance Committee  
Copy: CBJ Law  
Date: January 29th, 2015  
Re: VENDOR BOOTH – FEE REVIEW

On January 6, 2015 the Docks Enterprise Fee Review Committee met to consider changes affecting the Waterfront Sales Permit activity which is codified under 05 CBJAC Chapter 10. The recommendation of the committee is attached as enclosure (1). Previously, this committee met on September 17th, October 28th and November 18th. The agenda and minutes of each of these meetings are available on the Docks & Harbors website.

The committee thoughtfully deliberated on several modifications including: perpetual permits, firm fixed permits, permitting by lottery and adjustment by CPI. Throughout the debate, the committee maintained a vision that fair treatment of persons wishing to sell tours included an opportunity for new businesses to participate in a competitive manner. Although the committee was sympathetic to existing vendor booth holders having the stability in knowing a permit would be available in future years, it was unable to reconcile the potential monopoly resulting from a closed permit issuing process. CBJ Law also provided a legal brief recommending not pursuing a perpetual permit as it exposes CBJ to risk associated with “a taking”.

After hearing from industry representative, Docks & Harbors staff and CBJ Law, the most significant change is to increase the minimum outcry bid amount to $30,000. For consideration of this increased bid amount and to provide greater predictability for vendor booth applicants, the committee directed the Port Director to establish three-year permits, renewable for another three years. After the six-year period, vendor booth would be subjected to an outcry auction. The management of how many and terms of each permit are not specified in regulations; therefore only the bid amount requires Assembly approval.

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Encl (1) 05 CBJAC Chapter 10 – Waterfront Sales Permits with proposed changes  
(2) Waterfront Sales Permit Application
Chapter 10 - WATERFRONT SALES PERMITS

05 CBJAC 10.010 - Policy.

These regulations are intended to implement the following policies:

(a) To provide desirable commercial services to cruise ship passengers.

(b) To provide for orderly administration by the department of appropriate vending in the downtown waterfront area.

(c) To ensure that vending uses shall remain incidental to the principle uses of the downtown waterfront area. The principle uses are pedestrian, vehicular, and recreational access to the docks and waterfront. The director may order the suspension of vending activities as necessary to avoid conflict with the principle uses.

(d) To collect revenues in support of management of and improvements to City and Borough harbor and waterfront facilities.

(e) To assure fair treatment of persons wishing to sell tours in the downtown waterfront area.

(f) Establish a system of tour sales and tour brokerage permits in order to effectuate the purposes listed above. The administration of such system shall be for the benefit of the general public, and the grant or denial of a permit, or any act or omission by the city with respect to such permit is not intended to regulate the private business relationships or to protect the business interests of one party against the other. It shall be the individual responsibility of the permit holders and their clients to enforce their rights and liabilities through civil actions or such other private relief as may be available.

(g) To provide reasonable opportunity for entrepreneurs to enter the business market.

(01/19/98)

05 CBJAC 10.020 - Prohibitions.

(a) A person shall not conduct any commercial activity within the downtown waterfront area except as authorized by a permit issued under this chapter by the director. Except as authorized by a permit, a person shall not within the downtown waterfront area:

(1) Sell or offer to sell goods or services,
(2) Construct, maintain, or use any structure, or
(3) Use any loading zone.

(b) Solicitation, advertisement, sales, use of loading zones or any other commercial activities without a permit issued pursuant to this chapter is a violation of CBJ 85.25.090 (11).

(c) A person delinquent in the payment of fines, taxes, judgments or other monies owed to the city may not receive a permit.

(d) No permit may be issued or reissued to any person whose prior permit hereunder was revoked.

(01/19/98)

05 CBJAC 10.030 - Permit duration, reissuance options, transferability, refunds, actively sell requirement, eligibility, number of permits available.

Permits may be issued by the director. Permits are valid only for the dates, times, areas, and activity specified.

(a) Duration.

(1) Tour sales, tour broker, and loading permits shall be valid only from May 1 through October 15 of each permit year.
(2) No permit may be issued for a period in excess of one calendar year.

(b) Reissuance. Permits may be reissued only as authorized by these regulations. A reissued permit shall be subject to the regulations in effect for the year in which the permit is used. Permittees and option holders assume the risk that changes in regulations could affect their business through reduced
revenues, increased costs, or both; that the number, location and rules for permits may be changed from year to year without liability to the city, compensation to permittees or option holders, and that municipal regulation hereunder shall be immune from liability pursuant to AS 09.65.070 and other applicable law.

(1) Reissuance options.

(A) A reissuance option entitles the holder to apply for and receive a permit for the tour season designated in the option, provided that the holder meets all the requirements for permit applicants and holders in the year the reissued permit will be operated.

(B) The fee for any permit issued pursuant to a reissuance option shall be the same as the fee paid for the original permit.

(C) The holder of a reissuance option shall notify the director of its intention to seek reissuance. Written notice must be received by the director no later than December 1 preceding the year in which the reissued permit will be operated. If the notice is not so received, if application is not made, or if for any other reason the permit is not reissued, the director may consider the permit, including any remaining reissuance periods, as forfeit and either available for issuance to others or withdrawn from any issuance.

(D) Reserved.

(E) These regulations apply to any permits and reissuance options authorized by 05 CBJAC 10.010—10.090.

c) Transferability.

(1) A permit, other than a limited loading permit, may be transferred, together with any reissuance options, provided that such transfer includes the transferor's entire business interest in activities conducted under the permit. The transferor's business interest includes all assets used in the business conducted under the permit.

(2) No permit may be leased or rented, nor may the permittee allow the permit to be used by any person who is not an employee of the permittee.

(3) A transferred permit is not valid until it has been approved and reissued by the director.

d) Refunds. No permit fees shall be refunded after the issuance of a permit.

e) Reserved.

(f) Permit eligibility and requirements.

(1) To be eligible to bid on a tour sales or tour broker permit, the permit applicant must:

(A) Hold a current Alaska business license, and

(B) Maintain a place of business under the name on the Alaska business license within the boundaries of the city and borough.

(2) Any person holding a permit must maintain a year round place of business and mailing address in the City and Borough of Juneau, Alaska, and must designate a single individual by physical address, mailing address and phone number in Juneau upon whom service of notices and legal proceedings may be made. Service of any notice concerning the permit to that person shall be legal and sufficient notice to any of the holders, owners or any other with an interest in the permit. The director must be notified in writing no less than ten days before there is a change in the name, address or phone number of the designated person for a permit. Failure to timely notify the director shall be considered a violation of the permit conditions.

(3) No person, individual, business or corporation shall have an ownership interest in more than one tour sales or tour broker permit, meaning the person shall not pay for the operation of another permit holder's sales booth, direct or manage the activities of another permit holder's sales booth, or in any way financially contribute to the purchase of more than one permit. A permit holder who operates tours may have its tours sold by another permit holder, provided the permit holder operating the tour does not direct the activities of the other permit holder's sales booth or obtain any financial benefit from the other permit holder's sales booth other than that provided by the sale of the tour. Violations will result in permit revocation per 05 CBJ 10.080(e).

(4) Tour sales permit holders and tour broker permit holders must actively sell during the tour season. "Actively sell" means that the permit holder either derives a significant portion of its income from
sales made through a tour sales or broker's permit, or that the permit holder is making substantial use of the permit.

(g) **Number of permits available.** The director shall publicly announce the number, type and schedule for application for permits.

(01/19/98; Amended 5-2-2000, eff. 5-16-2000; Amended 6-28-2010, eff. 7-16-2010; Amended 2-7-2011, eff. 2-15-2011)

05 CBJAC 10.040 - Tour sales permits.

A tour sales permit authorizes the solicitation and sale of tours and experiences.

(a) **Application process and permit award.**

(1) **How to apply.** No later than December 1, of each year, the port director will publicly announce an application period for tour sales permits. The notice will include a description of how to apply for a permit, the number and type of permits available, and the process that will be used to award the permits. Persons must apply on an application form provided by the port director and must include all required information and attachments.

(2) **Application review.** The port director will review each application to determine if it is complete. The port director will reject incomplete applications. The port director will review complete applications to determine if the applicant meets the permit eligibility requirements set out in 05 CBJAC 10.030(f).

(3) **How the permits are awarded.** The port director will manage and award the permits by public outcry auction. The minimum bid for a permit is $5,000.00–$30,000. Applicants meeting the permit eligibility requirements set out in 05 CBJAC 10.030(f) will be allowed to bid on a permit provided the applicant posts a $5,000.00–$30,000 bid bond payable to CBJ. The applicant must agree to forfeit the bid bond in the event the applicant does not honor a winning bid on a permit.

(b) **Permit requirements.** The port director may issue permits and require permit holders to comply with stipulations as necessary to assure compliance with applicable requirements of this chapter and the Maritime Transportation Security Act of 2002. Permit holders shall also comply with the prohibitions set out in 05 CBJAC 10.020, the tour sales area rules set out in 05 CBJAC 10.040(c), and the general operating requirements set out in 05 CBJAC 10.070.

(c) **Tour sales area rules.**

(1) A permit holder shall only sell tours in a booth provided by the port director. The port director will provide booths at the Steamship Wharf Plaza, the Visitor's Center Lot, and the Columbia Lot sales areas. The port director reserves the right to relocate or close booths as required for public safety, security, or other good cause. The booths at each sales area will be assigned by lot. In order to assure equitable exposure for each permit holder, the port director will cause the permit holders to shift one booth on each day of operation. A permit holder shall only occupy the booth assigned by the port director.

(2) A permit holder shall not have more than one representative selling tours at a booth, except when training new employees and then for no longer than is necessary to adequately train the employee. A permit holder shall make its best effort to maintain a presence at its booths during all hours when cruise ship passengers are likely to purchase tours in a sales area. The permit holder shall provide the port director with a list of all individuals that will sell tours at its booths and, if requested, staff identification documentation, booth staffing schedules, and other documentation, as determined by the director necessary to demonstrate the permit holder complies with this requirement.

(3) The permit holder shall not sell, or permit to be sold, tours on any vouchers or receipts other than their own.

(4) The permit holder shall provide the port director with a list of all tours sold pursuant to its permit, including the name of the company providing the tour.

(5) The permit holder may display up to two large signs on a single booth provided the signs do not extend beyond the front profile of the booth. The permit holder may also display a one-foot by one-foot sign for each tour the permit holder sells. These signs may not extend more than six inches beyond the front profile of the booth.

(6) The permit holder or its representatives shall not engage in hawking or disruptive behavior or interfere with the operations of other sales booths.
05 CBJAC 10.050 - Reserved.

Editor's note—

Regulation adopted January 7, 2008, effective January 15, 2008, repealed 05 CBJAC 10.050, which pertained to tour broker permits.

05 CBJAC 10.060 - Loading permits.

No person shall operate, park, stand, or stop a commercial vehicle, or cause or direct the same, within the designated loading zones in the downtown waterfront area except as authorized by a permit issued hereunder. Vehicular use of designated loading zones for commercial purposes without a permit is a violation of CBJ 85.25.090(11).

(a) Application process.

(1) Application forms for loading permits will be available at the Harbor office between April 1 and October 15.

(2) Applications must be made on the form provided by the department, and must be complete, including all required attachments. Any incomplete application will not be considered for a permit.

(b) Permit requirements and conditions of operations.

(1) The port director is authorized to designate loading zones in the downtown waterfront area and establish rules to assure safety, security, and efficiency of operation.

(2) The port director may issue loading zone permits and require permit holders to comply with stipulations as necessary to assure safety, security, and efficiency of operation. Permit holders shall also comply with the loading zone rules set out in 05 CBJAC 10.060(c) and the general operating requirements set out in 05 CBJAC 10.070.

(3) An applicant for a loading zone permit must show that use of the permit will be limited to transportation of passengers and/or crew to or from cruise ships. If the applicant will be transporting passengers, the showing must consist of at least one of the following:

A. A tour sales permit in the applicant's name;
B. A contract for the sale of tours onboard a cruise ship;
C. A contract with a cruise ship for the transportation of passengers;
D. A contract for the sale of tours with a tour sales permit holder. An applicant may enter into a contract with one tour sales permit holder only; or
E. If the applicant sells tours without the aid of the cruise lines, a cruise ship, or a tour sales permit holder, the applicant must show that it will only transport persons who have purchased tours directly from the applicant, and the applicant shall, upon request, provide the port director with a daily manifest showing the names of passengers to be transported.

(c) Loading zone rules.

(1) No signs are allowed in the loading zone.

(2) Loading zone permits shall be prominently displayed in the lower right corner of the front windshield of the vehicle, or as specified by the director.

(3) No person shall sell or solicit the sale of any goods or services in any loading zone.

(4) Goods and passengers shall be staged at loading zones so as to minimize vehicular standing time. No vehicle shall be present in a loading zone except as reasonably necessary for loading or unloading goods or passengers.

(5) The driver of a vehicle must remain in the driver's seat unless assisting in the loading or unloading of passengers or luggage in the immediate vicinity of the vehicle. No driver may leave a vehicle unattended in a loading zone for any period of time.

(6) "A" loading zones.
(A) Vehicles containing 18 or more passenger seats may be operated only in loading zones marked "A."

(B) Permittees using "A" loading zones shall submit a schedule of all cruise ships they will be meeting. For each meeting, permittees must use the "A" loading zone closest to the terminal or lightering dock designated on the schedule. Permittees may not depart from the schedule unless approval is obtained from the director at least 24 hours in advance. Approval shall be contingent upon the impact of changes upon other permittees, users of the park, and traffic conditions.

(7) "B" loading zones. Vehicles containing fewer than 18 passenger seats may be operated only in loading zones marked "B."

(8) A vehicle without the appropriate permit may use a loading zone as necessary for a health or safety emergency. Such use shall be the minimum necessary to resolve the emergency.

(d) Limited loading permits. A person may apply for a limited loading permit for designated vehicles to provide services in a designated loading zone to a cruise ship or cruise ship passengers for occasional or off-peak-hour use. Application must be made to the director no less than one business day in advance of use.

(1) Nonpassenger vehicles. If the vehicle will be left standing in a loading zone for any amount of time, or if the driver will not remain with the vehicle for any period of time, the applicant must schedule that time with the director so as not to interfere with the efficient use of the loading zone by other permittees. The permittee must conduct all business efficiently so as to minimize any standing in the loading zone.

(2) Passenger vehicles. All requirements of subsection (c) of this section apply to vehicles providing passenger services to a cruise ship pursuant to a limited loading permit.

(e) Fees.

(1) The fee for a loading permit shall be established at least annually by the docks and harbors board.

(2) The fee for a limited loading permit shall be $15.00 per vehicle for each permit day or $250.00 per year, whichever is less.

(01/19/98; Amended 1-7-2008, eff. 1-15-2008)

05 CBJAC 10.070 - General operating requirements.

(a) Permittees are responsible for complying with all state, federal, and local laws applicable to their activities.

(b) Permittees shall police the area immediately around their vending area and shall properly dispose of all litter accumulating there during the course of their activities.

(c) Permittees shall reimburse the City and Borough of Juneau for any damage to municipal property caused by the permittee's activities, including the cost of litter abatement.

(d) No permittee may store equipment or supplies in the downtown waterfront area except as approved by the director in advance.

(e) Permittees shall prominently display the permit issued pursuant to these regulations, as well as all other required permits and licenses, at all times during their activities hereunder.

(f) Permittees may not engage in hawking or make an unreasonably loud noise. Written information may be distributed to interested parties only when requested.

(g) Permittees, as a condition of receiving a permit, shall execute an instrument under the terms of which the permittee shall agree to indemnify, defend, and hold harmless the City and Borough of Juneau from any and all claims for injury or damage to persons or property suffered in connection with the permittee's activities unless such injury or damage is caused by the gross negligence of the City and Borough of Juneau.

(h) Prior to issuance of a permit, the prospective permittee must provide the department with a broker's certificate of insurance showing that the permittee has obtained at least $500,000.00 or, in case of courtesy vehicles, $300,000.00, of public liability insurance. The certificate must establish that the City and Borough is named as an additional insured on such policy, and that the insurer thereof shall notify the City and Borough if the policy is modified, canceled, or terminated. Vehicles operated under and in conformity with CBJ Chapter 20.40 are exempt from the requirements of this subsection.
Permit holders are responsible for compliance with permit conditions. Any entity or person listed on a permit issued to a partnership, joint venture or other form of association or joint ownership, shall be deemed to be jointly and severally liable for any violations of these regulations by any person operating under the permit.

05 CBJAC 10.080 - Enforcement and penalties.

(a) The port director may summarily suspend a permit issued under 05 CBJAC 10 without a hearing for a period not to exceed ten days if any activity conducted under the permit presents an immediate danger to the public health, welfare, or safety.

(b) The port director may suspend a permit, revoke a permit, deny a permit, deny the reissuance of a permit, or deny the ability to bid on a permit under 05 CBJAC 10 after an informal hearing before the port director and upon written findings that the permittee or applicant has violated these regulations, engaged in fraud or gross negligence, or misrepresented the nature and substance of a tour product.

(c) The port director shall conduct the hearing called for in 05 CBJAC 10.080(b) as follows:

(1) The permittee or applicant shall be provided with at least ten days notice of the hearing. The notice shall include a brief statement of the facts giving reason for the proposed suspension, revocation, or denial.

(2) The permittee or applicant shall have an opportunity to be heard at the hearing and shall have the right to call or cross-examine witnesses.

(3) Relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence, but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

(4) The hearing shall be recorded by audio tape.

(d) The port director shall issue a written decision. The permittee or applicant may appeal the port director's decision to the docks and harbors board by filing a notice of appeal, setting forth the reasons for the appeal, with the port director within ten days of the director's decision.

(e) A permittee whose permit is revoked loses all rights and privileges under that permit, shall deliver copies of the permit to the port director, and may not apply for a new waterfront sales permit for a period of one year after the revocation. In addition, for a period of one year after revocation, no application for a waterfront sales permit shall be approved for an applicant who was an owner, operator, partner, director, manager, officer, assignor, or transferor, of any operation or business which required a waterfront sales permit, regardless of its form of legal entity, if the waterfront sales permit for that operation or business was revoked.

(f) Failure to follow any permit condition is a violation of CBJ 85.25.090, and may carry a fine of up to $250.00 for each instance of a violation.

05 CBJAC 10.090 - Definitions.

As used in this chapter:

"Courtesy vehicle" means a vehicle owned or operated by a business and used to transport passengers without additional charge, where such transportation is provided in conjunction with and in furtherance of a related primary business purpose or enterprise of that person.

"Department" means the City and Borough of Juneau Docks and Harbors Department.

"Director" means the port director or the port director's designee.

"Downtown waterfront area" and "facility" means that property owned by the City and Borough of Juneau located adjacent to the city cruise ship wharves, which is under the regulation of the Docks and Harbors Department and/or the Parks and Recreation Department. This includes all public spaces, loading zones, parking areas, and any wharves or trestles or portions thereof designated for enforcement hereunder by resolution of the harbor board.

"Employee" means a person who provides services at the direction and under the control of another. An employee is an integrated part of the employer's business, is hired, supervised and paid by the employer for hours set by the employer, and the employer furnishes tools and materials for the employee's use. For purposes
of this chapter, drivers operating vehicles pursuant to CBJ Chapter 20.40 shall be considered the employees of
the holder of that certificate.

"Hawking" means the loud or continuous audible solicitation of business by a permittee to the general public.

"Permittee" [and] "permit holder" [and] "holder" mean the business entity or its authorized representatives
conducting activities in the downtown waterfront area according to a permit issued under these regulations.

"Person" means a natural person, partnership, corporation, association, or other legal entity.

"Tour season" means May 1 through October 15 of one calendar year.

"Tours and experiences" means tours, transportation, transfers, entertainment, meals and services sold to
customers and includes all services provided whether or not incidental to, advertised with, or specifically offered in
the sale. All transportation provided to a customer by a permittee, or arranged by a permittee is considered a part
of the tour or experience.

"Vehicle" means a device in, upon or by which a person or property may be transported or drawn including
devices moved by human, animal, mechanical or other power source.

(01/19/98; Amended 5-2-2000, eff. 5-16-2000)