CITY AND BOROUGH OF JUNEAU ADMINISTRATIVE CODE

TITLE 05 — DOCKS AND HARBORS
Part 1: Docks
Chapter 10. Waterfront Sales Permits

Section:
10.010 Policy.
10.020 Prohibitions.
10.030 Permit Duration, Reissuance Options, Transferability, Refunds, Actively Sell Requirement, Eligibility, Number of Permits Available.
10.040 Tour Sales Permits.
10.050 Tour Broker Permits.
10.060 Loading Permits.
10.070 General Operating Requirements.
10.080 Enforcement & Penalties.
10.090 Definitions.

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. (Eff. 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. (Eff. 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) The holder of a reissuance option may be requested to provide evidence of "actively sell" with notice of intent to seek reissuance.

(E) These regulations apply to any permits and reissuance options authorized by 05 CBJAC 10.010 - 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) Actively sell requirement. A requirement that a permit holder “actively sells” 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.

(1) A permit holder shall be deemed to derive a significant portion of its income from sales made through a waterfront Tour Sales or Broker’s permit if the amount of its gross income from such sales is not less than 10% of the permit holder’s gross revenue in Juneau between May 1 and October 15.

(2) A permit holder shall be deemed to be making substantial use of the permit by showing gross revenue from sales through the permit of over $25,000.

(3) If required by these regulations, the director, or a form issued hereunder, a person shall demonstrate satisfaction of the “actively sell” requirement by submitting the following:

(A) A month by month report of gross permit revenue during the entire term of the permit which required active selling, together with a written explanation of how waterfront sales were calculated. If the applicant proposes to demonstrate that it derived a “significant portion of its income from sales made through a waterfront Tour Sales or Broker’s permit” the holder shall also provide a report of the permit holder’s gross revenue from all other sources in Juneau from May 1 through October 15 for the year in which the permit was used.

(B) Copies of City and Borough of Juneau sales tax returns for the permit period subject to the requirement for active selling. Copies of the tax returns shall be accompanied by a written waiver of confidentiality with respect to the returns.

(4) A failure to demonstrate and satisfy the “actively sell” requirement to the City’s satisfaction may result in the revocation of the permit and any reissuance options purchased with the permit, and an ineligibility to bid for a waterfront permit of the same kind for a period of one year.

(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 10 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 shall have an interest in more than one permit. As used in this section, “interest” means an equity interest in a permit or in a legal entity owning a permit, which interest is held by the person or a spouse, minor child, dependent, or a regular member of the person’s household, but does not include the financial relationship between a permit holder and a tour provider for whom the holder sells tours. This subsection (3) only applies to Tour Sales and Tour Broker permits.

(4) Tour Sales permit holders and Tour Broker permit holders must actively sell during the tour season.

(g) Number of Permits Available. The director shall publicly announce the number, type and schedule for application for permits. (Eff. 01/19/98; Amended 05/16/2000).

05 CBJAC 10.040 TOUR SALES PERMITS. A Tour Sales permit shall authorize the sale or solicitation for sale of only those tours and experiences conducted by employees of the permit holder.

(a) Application process.

(1) Tour Sales permit application forms shall be available at the Harbor office no less than fourteen days before the close of the application period.

(2) Applications must be made on the form provided by the department, and must be complete, including all required attachments. No incomplete application will be considered.

(3) Applications received after 4:30 p.m. on the final day of the application period will not be considered for a permit.

(4) The process for awarding permits shall be determined by the director. A written description of the process shall be available with the application forms. The director may award permits based upon a bid or other reasonable method for distributing permits to qualified applicants.

(b) Permit requirements and conditions of operation. All parts of the tour or experience which is sold or provided to a customer must be provided by employees of the Tour Sales permit holder. Tour Sales permit holders shall not provide any additional services to customers whether or not that service is charged to the customer unless those services are conducted by the permit holder’s employees.

(c) Tour sales area rules.

(1) A Tour Sales permit shall authorize vending only within a specified sales space. Sales spaces shall be grouped in sales areas. There shall be two sales areas at Marine Park and one each at
the Columbia Lot and Visitor Center Lot. The exact locations of the sales areas and the sales spaces shall be determined by the director. The director will endeavor to ensure that sales spaces are of approximately equal size within each sales area. It is within the discretion of the director to relocate or close any sales area as required for public safety, security or other good cause.

(2) Sales spaces will not be assigned and may not be reserved. A permittee is entitled to a space only while using it.

(3) A permittee may have no more than one representative in or near a sales space.

(4) Within each sales space, each permit holder may have no more than one sign no larger than two feet by two feet. Signs must be related to the sales activity permitted and must be in the physical possession of the permittee’s representative at all times.

(5) The director may designate an area in the Marine Park area for Tour Sales structures.

(A) No structure may be located on the designated Tour Sales structure area except as approved by the director in advance. The director shall approve a structure only upon a finding that its design is consistent with that of other structures on the waterfront.

(B) Any structure used by a Tour Sales permittee in the downtown waterfront area shall meet all applicable building standards for structures of that type and shall be reviewed and approved by the city and borough building division.

(C) A permittee operating from a Tour Sales structure may not operate in any other sales area in Marine Park but may operate in the sales areas in the Columbia Lot and Visitor Center Lot.

(D) Any structure shall be constructed, maintained and promptly removed at the sole expense of the permit holder.

(E) The permit holder shall move the structure as requested by the director. Structures shall be removed within five days of the end of the tour season, or sooner as requested by the director.

(d) Fees. Each Tour Sales permit shall be sold to the highest qualified bidder after a competitive process conducted according to procedures established by the director. The minimum bid for a Sales Permit shall be set annually by the Docks and Harbors Board. (Eff. 01/19/98; Amended 05/16/2000).

05 CBJAC 10.050 TOUR BROKER PERMITS. A Tour Broker permit shall authorize the sale or solicitation for sale of only those tours and experiences conducted by other companies. A person operating pursuant to a Tour Broker permit shall not sell a tour or experience which is conducted by the permit holder’s own employees.

(a) Application process.

(1) Tour Broker permit application forms shall be available at the Harbor office no less than fourteen days before the close of the application period.

(2) Applications must be made on the form provided by the department, and must be complete, including all required attachments. No incomplete application will be considered.

(3) The applicant shall be required to provide evidence prior to bidding that the applicant has or, in the judgment of the director can readily obtain a bond in an amount determined by the
director to be sufficient to guarantee payment of all funds held by Broker on behalf of persons selling
tours through the Broker.

(4) Applications received after 4:30 p.m. on the final day of the application period will not be considered for a permit.

(5) The process for awarding permits shall be determined by the director. A written description of the process shall be available with the application forms. The director may award permits based upon a bid or other reasonable method for distributing permits to qualified applicants.

(b) Permit requirements and conditions of operation

(1) All parts of the tour or experience which is sold or provided to a customer must be provided by persons other than employees of the Tour Broker. Tour Brokers shall only sell other businesses’ products, they shall not provide any additional services to customers whether or not that service is charged to the customer. A Tour Broker shall not sell or provide any part of a tour or experience conducted by the permit holder or the permit holder’s employees.

(2) Tour Brokers must plan to sell tours for others throughout the tour season.

(3) A Tour Broker must maintain a business presence in the sales area during all hours when cruise ship passengers are likely to purchase tours.

(4) A Tour Broker shall not own or operate a business selling tours in the downtown waterfront area but may own or operate a business which sells tours on board cruise ships.

(5) The director shall determine the appropriate amount of a bond to be maintained by the Tour Broker during the tour season. Prior to the commencement of the tour season, Tour Brokers must provide the director with evidence that the bond is in effect.

(c) Sales area rules

(1) Each Tour Broker shall have a sales space in each sales area. The size and location of sales spaces shall be determined by the director. It is within the discretion of the director to relocate or close any sales area as required for public safety, security or other good cause.

(2) A reasonable number of the Broker’s employees, and no other persons, may be present in the Broker’s sales space.

(3) A Tour Broker may display one sign which shall be affixed to the Broker’s sales structure and which shall not exceed one square foot per number of clients represented. The sign must be approved by the Community Development Department for conformity with applicable provisions concerning signs.

(4) Structures.

(A) No structure may be located on the designated Tour Broker sales structure area except as approved by the director in advance. The director shall approve a structure only upon a finding that its design is consistent with that of other structures on the waterfront.

(B) Any structure used by a Tour Broker in the downtown waterfront area shall meet all applicable building standards for structures of that type and shall be reviewed and approved by the city and borough building division.

(C) Any structure shall be constructed, maintained and promptly removed at the sole expense of the permit holder.
(D) The permit holder shall move the structure as requested by the director. Structures shall be removed within five days of the end of the tour season, or sooner as requested by the director. (Eff. 01/19/98).

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 operation.
   (1) A loading permit allows use of the designated loading zone only according to subsection (c) of this section.
   (2) An applicant for a loading zone permit must present evidence that use of the permit will be limited to transportation of goods or services to or from cruise ships or cruise ship passengers. If the proposed use is for transportation of cruise ship passengers, the evidence shall consist of a Tour Sales permit issued pursuant to this chapter, a contract for the pre-sale of tours onboard a tour ship, or a contract for representation with a Tour Broker.

(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 reasonable 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 eighteen 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 eighteen 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) Non-passenger 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. (Eff. 01/19/98).

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 or, in case of courtesy vehicles, $300,000, 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.

(i) 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. (Eff. 01/19/98).

05 CBJAC 10.080 ENFORCEMENT & PENALTIES. (a) Any permit issued hereunder may be summarily suspended without a hearing by the director for a period not to exceed 10 days if any activity conducted under the permit presents an immediate danger to the public health, welfare, or safety.

(b) Any permit issued hereunder may be suspended or revoked by the director after an informal hearing before the director and upon written findings that the permittee has violated these regulations.

(c) A hearing to suspend or revoke a permit shall be conducted as follows:

(1) The permittee shall be provided at least 10 days notice of the hearing. The notice shall include a brief statement of the facts giving reason to believe that the permit should be suspended or revoked.

(2) The permittee shall have an opportunity to be heard at the hearing but shall not have the right to call or cross-examine witnesses.

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

(4) An audio tape recording of the hearing shall be made. The director’s decision may be appealed to the docks and harbors board by filing a notice of appeal setting forth the reason therefor with the office of the director within 10 days of the director’s decision.

(d) Failure to follow any permit condition is a violation of CBJ 85.25.090(11), and may carry a fine of up to $300.00 for each instance of a violation. (Eff. 01/19/98).

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, and 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” or “permit holder” or “holder” means 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. (Eff. 01/19/98; Amended 05/16/2000).