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THE CITY AND BOROUGH OF JUNEAU, ALASKA

Meeting Minutes – January 25, 2010

MEETING NO. 2010-03: 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 7:00 p.m. by Mayor Bruce Botelho.

I. ROLL CALL

Assembly Present: Jonathan Anderson, Bruce Botelho, Jeff Bush, Ruth Danner, Bob Doll, Johan Dybdahl, Merrill Sanford, David Stone and Randy Wanamaker (telephonic).

Assembly Absent: None.

Staff Present: Rod Swope, City Manager; Kim Kiefer, Deputy City Manager; John Hartle, City Attorney; Laurie Sica, Municipal Clerk; Beth McEwen, Deputy Clerk; Craig Duncan, Finance Director; John Stone, Port Director; Rorie Watt, Engineering Director; Joe Buck, Public Works Director; Mike Scott, Streets Superintendent.

II. SPECIAL ORDER OF BUSINESS

A. Employee Recognition - Mike Scott

Joe Buck and Rod Swope thanked Mike Scott for his service to CBJ as Streets Superintendent and for the common sense, “can-do” approach to the job. Mr. Scott said it has been an honor to work for the CBJ and the staff has been great. He did not think he would move into the new shop during his tenure, but is glad the facility is under construction. He said that after 30 years of filling potholes, plowing snow, and cutting people’s rose bushes, it will be a few years before he will be able to wake up to a snowy day and not say “Oh, &^\$&*^@!”

III. APPROVAL OF MINUTES

A. January 4, 2010 – Regular Assembly Meeting 2010-01 – No objection, adopted.

Hearing no objection, the minutes of the January 4, 2010 – Regular Assembly Meeting 2010-01 were approved.

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

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

John Cooper relayed his concerns about what he said was CBJ’s mishandling of an enforcement case regarding building code issues with a resident on River Road.

VI. CONSENT AGENDA

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

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B. Assembly Requests for Consent Agenda Changes

MOTION, by Anderson, to remove Resolution 2515 from the Consent Agenda and to adopt the remainder of the Consent Agenda as presented. Hearing no objection, it was so ordered.

C. Assembly Action

1. Ordinances for Introduction

a. Ordinance 2010-01

An Ordinance Amending The Official Zoning Map Of The City And Borough Land Use Code To Change The Zoning Of U.S. Survey 752, Lot 2A, On Glacier Avenue, From D-18 To Light Commercial, And U.S. Survey 752, Lots 4, 5, 6, And 7 (A .574-Acre Portion of Evergreen Cemetery), from D-5 to Light Commercial.

Administrative Report: Attached. The manager recommended Ordinance 2010-01 be introduced and set for public hearing at the next regular meeting.

b. Ordinance 2010-02

An Ordinance Authorizing The Port Director To Negotiate And Execute A Lease To Alaska Glacier Seafoods Of A Portion Of Alaska Tidelands Survey No. 357, Located Near The Auke Bay Loading Facility, And To Accept Conveyance From Alaska Glacier Seafoods Of A Perpetual Easement Located Adjacent To The Lease Premises.

Administrative Report: Attached. The manager recommended Ordinance 2010-02 be introduced and set for public hearing at the next regular meeting.

c. Ordinance 2010-03

An Ordinance Adopting The Refuse Collection System Code To Provide For A System Of Mandatory Refuse Collection And Disposal, And Providing For A Penalty.

Administrative Report: Attached. The manager recommended Ordinance 2010-03 be introduced and set for public hearing at the next regular meeting.

d. Ordinance 2009-08(Y)

An Ordinance Appropriating To The Manager The Sum Of \$2,000,000 As Partial Funding For The Consolidated Public Works Facility, Statter Harbor Renovation, And The Juneau International Airport Terminal Capital Improvement Projects, Such Funds Provided By The Sales Tax Fund.

Administrative Report: Attached. The manager recommended Ordinance 2009-08(Y) be introduced and set for public hearing at the next regular meeting.

e. Ordinance 2009-08(Z)

An Ordinance Appropriating To The Manager The Sum Of \$1,752,000 As Partial Funding For North Douglas Sewer Expansion, Phase IV, Grant Funding Provided By The State of Alaska, Department of Environmental Conservation.

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Administrative Report: Attached. The manager recommended Ordinance 2009-08(Z) be introduced and set for public hearing at the next regular meeting.

f. Ordinance 2009-08(AA)

An Ordinance Appropriating To The Manager The Sum Of \$100,000 As Funding For The Lower Highland Drive Sewer And Water Repair, Partial Funding Provided By The Wastewater Utility Operating Budget.

Administrative Report: Attached. The manager recommended Ordinance 2009-08(AA) be introduced and set for public hearing at the next regular meeting.

2. Resolutions

a. Resolution 2513

A Resolution Authorizing The Manager To Submit To The State Of Alaska An Application For A Federal Grant To Prepare A Historic Structure Report Of The Office Building At The Treadwell Mine Complex.

Administrative Report: Attached. The manager recommended Resolution 2513 be adopted.

b. Resolution 2514

A Resolution Authorizing The Manager To Submit To The National Trust For Historic Preservation An Application For A Grant To Prepare A Historic Structure Report Of The Office Building At The Treadwell Mine Complex.

Administrative Report: Attached. The manager recommended Resolution 2514 be adopted.

3. Transfers

a. Transfer T-904

Transferring \$350,000 From Two Capital Improvement Projects (CIP); Pump Station And Water System CIP (\$100,000) and Casey Shattuck Phase II CIP (\$250,000) To Create A New Project, Lower Highland Drive Water And Sewer Replacement CIP.

Administrative Report: Attached. The manager recommended this transfer be approved.

4. Bid Award

a. Engineering Bid # E10-086

Downtown Seawalk - Taku Fisheries to Miner's Cove

Administrative Report: Attached. The manager recommended award of this project to North Pacific Erectors, Inc., in the total bid amount, for a total award of \$2,589,324.90.

Removed from the Consent Agenda:

Resolution 2515

A Resolution De-Appropriating \$2,000,000 From The Downtown Transportation Center Project To The Sustainability Fund, And De-Appropriating \$2,000,000 From The Sustainability Fund To The Sales Tax Fund.

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Administrative Report: Attached. The manager recommended Resolution 2515 be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Anderson, to adopt Resolution 2515.

Mr. Anderson said it seems the \$2 million is remaining in the sustainability fund, and he thought it was part of the package to fund the shortfall in the CIP projects.

Mr. Swope said the funds are sitting in a project where it is no longer needed. This proposes to move the funds into the sustainability fund, where it originated. This same resolution would deappropriate it out of the sustainability fund into the sales tax fund for use in the CIP projects.

Mr. Anderson said as long as Mr. Hartle is satisfied that the wording is correct he was satisfied. Mr. Hartle said he worked with Craig Duncan on this matter to make it correct.

Ms. Danner asked the original intention behind the sustainability fund and the move now in advance of the ordinance that will come before the Assembly for public hearing at the next meeting.

Mr. Swope said the money in the sustainability fund is used as a loan to projects with an energy saving component. It was loaned to the pool project for the ground source heat pump; the funds were not needed because the project received other grants. The intention is the money is paid back within a ten-year period with some interest, due to the savings in energy. The money saved goes back to replenish the fund. Regarding the question of why we are moving the funds from the Sustainability Fund to the Sales Tax Budget Reserve, we do not have to do this. There is not really a connection between this and the ordinance up at the next meeting. That ordinance simply puts the question to the Assembly regarding whether we should take funds from the Sales Tax Budget Reserve to make the projects currently under construction whole in funding. Whether it comes from the budget reserve is a separate question. He said he could not speak for the Assembly, but thought that it felt there were rainy days to come and if we are going to tap the Reserve for any purposes, it would be good to have as much money in the fund, not only for current use but future use.

Ms. Danner said she understood that at the PWFC meeting, the intention of the \$2 million from the Sustainability Fund was to cover the shortfall on CIP projects and she supported that strategy. She is concerned about moving the funds from Sustainability into Sales Tax Budget Reserve before the Assembly knows for sure that the whole Assembly will support that proposal.

Mr. Sanford said that PWFC asked for an avenue to do this and this was the recommendation from Finance and the Law Department.

MOTION, by Danner, to table this resolution.

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Mr. Bush said this resolution is necessary to adopt before we can adopt the ordinance. Tabling it to the next meeting will allow it to come up before the ordinance, which is necessary.

Ms. Danner said she understood that this resolution could be removed from the table at any time during the next meeting and she could do so after adoption of the ordinance.

Mr. Bush said the funds were needed to be available to fund the ordinance. He said he would be uncomfortable to adopt the ordinance if he was not sure the funds were available.

The roll call to table the motion failed, 1 aye, 8 nays.

Hearing no objection, Resolution 2515 was adopted.

VII. PUBLIC HEARING

No Items for Public Hearing.

VIII. UNFINISHED BUSINESS

IX. NEW BUSINESS

A. Liquor Licenses 2010-2011 Renewals:

- License #3507 Oaken Keg Spirit Shops #1820 – Package Store

MOTION, by Doll, to accept the Human Resources Committee recommendation to waive the right to protest License #3507 Oaken Keg Spirit Shops #1820 – Package Store. Hearing no objection, it was so ordered.

- License #175 Q Enterprise Inc. d/b/a Breakwater Inn Restaurant & Lounge

MOTION, by Doll, to accept the Human Resources Committee recommendation to maintain its protest of License #175 Q Enterprise Inc. d/b/a Breakwater Inn Restaurant & Lounge.

Public Comment:

Marc Whitman, said the site of the Breakwater and Troxel's Restaurant and Bar has historically been a knot of community activity with the boat harbor, Egan Drive, the turnoff to the high school, the hotel and restaurant/bar, and the neighborhood all separated by the width of a street. Cooperation was needed. Friendly relations can resolve the problems rather than litigation. The needs of the neighborhood, as well as the needs of the enterprise, which employs up to 40 residents, all need to be considered. Troxel's has taken positive steps already to address the concerns of the neighborhood, including a new smoking area, a chauffer service, a doorman, and they will close at midnight seven nights a week. Many of the late night incidents may be residents from the Inn with no connection to the restaurant and bar, or high school students in the area. Some of the litter, parking, and damages are result of the students in the area. The revenue from home ownership taxes is just as important as the revenue from sales tax from successful businesses. Please do not protest the license and work in cooperation with the business owners. He appreciates the mediation provided to date by the CBJ.

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Mr. Doll said the HRC has mixed reactions to the need to maintain this protest. If we waive the right to protest, we have no way to know that the positive actions they are offering will be proven. If we protest, there will be an extended period of time for the improved relations to happen, and the Committee believes this is the best solution. This is not draconian, they will not be closed tomorrow, and they will have the opportunity to comment to the ABC Board regarding their license and actions on the premises.

Mayor Botelho asked the legal representative of the license holder to address the assembly.

Chris Kim, General Manager of the Breakwater Inn and Troxel's restaurant said he and his management team have discussed this and it is unfortunate this has come this far. We are CBJ residents. The restaurant has been established for over 35 years and we have established a good place for visitors and residents to enjoy. We have over 40 employees and we are establishing good relations with the neighborhood. We hired a new management team as of November to solve these problems. I am part of this as well as Jamie, to resolve this issue. We have changed the smoking location to downstairs next to Egan Drive, not Glacier Avenue, and are using the downstairs area as a lobby, have hired a doorman, and hired a limousine to address noise and driving issues. We have hired an escort to go with guests to their vehicles so they are not hanging out on Glacier Avenue. With these efforts, we hope you will renew our license and allow us to continue our business. We do not want any employees to lose their jobs if the liquor license is lost. This opportunity is a good bridge to agree with neighbors to understand their issues and change in a positive way. We had a chance to talk with the neighbors tonight and it was a good, positive meeting. We hope you will not object to our license renewal.

Mayor Botelho said one dilemma is that if the Assembly waives its right to protest, it loses the ability to shape the conduct of the business. The protest will have some delay period before action is taken by the ABC board. This will allow CBJ to have an opportunity to see that you have exercised control over the situation. Other than the license, is there any other major disadvantage to you?

Mr. Kim said their request was to have time to remedy this situation – they were first notified November 1 of the problem issues. We, as a management team, have made effective changes, and changing the hours to close at midnight will affect our revenues, but we believe this change will make better relationships.

Mr. Dybdahl asked what the actual renewal date is, and through the hearing process by ABC, would there be any interruption to doing business.

Mr. Doll asked Mr. Hartle to describe the procedure, as he understood it. Mr. Hartle said the Assembly is making a recommendation to the ABC board to approve the renewal or not, and the amount of time that is taken varies. The ABC Board would not take action to take away a license before due process was provided to the license holder with a full and fair hearing. There is an internal appeal process within the ABC board and an administrative appeals procedure within the state. In the past, it has taken many months before any action was taken by the ABC Board on a license protested by the CBJ. Usually it was unpaid taxes, which was a clear issue, and generally, taxes were paid in full before the ABC took action.

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Mr. Dybdahl said the issues the city has are different from the issues the Board might have. Mr. Doll said he assumed the ABC would do similar action done by HRC, to review testimony and police reports.

Mr. Bush asked the basis for the protest. He asked if the ABC Board becomes the decision-maker on the application of CBJ code.

Mayor Botelho said the Board based its decisions on state statutes and its criteria were general. After review, if it were “not in the best interest of the public” a license could be removed. CBJ would be given the job of defending its protest before the Board. There is a list of criteria in the code 20.025 – it is incumbent on the Assembly to make the basis of the protest clear and to give the owner an opportunity to respond.

Mr. Anderson said he was uncomfortable with the process.

Mr. Doll said the Assembly can waive or maintain the protest. Mayor Botelho said the Assembly must determine the findings.

Mr. Sanford said too there seems to be some confusion regarding the use of the property and the type of license that is issued. There are unanswered questions about the use of the hotel as residences, and the current license is a specific type issued to tourism/hotels. Those issues needed to be investigated by the Community Development Department (CDD) and the ABC Board.

Mr. Wanamaker said the protest was the increased incidence of police calls to the premises, which were documented by the JPD in the record and the effects on neighborhood harmony. He supported that the Assembly withdraw the protest if the neighborhood members were to signal that meetings have taken place and they and the police department determine there are effective tools in place to address the problems.

Mr. Anderson asked if there was a formal recommendation to protest. Mr. Doll said there was a protest from JPD, but not from the CDD. The reason for protest from JPD was the increase in calls to the premises.

Mr. Anderson said it is not in the Assembly’s purview to determine if the business had the right type of license. If the Assembly determines they are in compliance, then it can withdraw the protest. If the calls go down, the protest can be withdrawn. There is a clear process and he was not willing to delegate that to the citizens in the neighborhood. It has to be the Assembly’s decision.

Mayor Botelho asked if a protest was the only tool to buy time to see whether there is compliance. Mr. Doll said yes, that is correct. Mayor Botelho said he understood that money could be spent to protest before the ABC Board and asked if there were an alternative. Since this falls to the next ABC meeting, he suggested asking the ABC Board to delay its review of this license to the next quarterly meeting. This would allow additional time to review the situation.

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Mr. Wanamaker asked if that was something that was allowed, and he would not object to this. He said it had taken this type of action to get a response from the business, so he was reluctant to let it go.

Mr. Dybdahl said it was unclear that if the Assembly chose to not object to the license renewal, if this would still be heard by the ABC Board and what would be part of the hearing next month on this issue.

Mr. Hartle said the 60-day window for CBJ to protest this license expires on February 5.

Mr. Anderson asked if proper to suggest to the ABC Board to move its decision to its next quarterly meeting. Mr. Hartle said he had found no statute to this effect, but the Assembly could make the request. A local governing body may protest a license halfway through its two-year license period, which would be a year from now. Mr. Hartle said if there was no protest from CBJ, the ABC board still review the license at its meeting, which happened to be scheduled to be in Juneau, and citizens could lodge their concerns with the ABC Board. Mr. Hartle clarified that the assembly was determining whether to protest or not to protest at this meeting, and the proper notice had been issued.

Mr. Bush said he did not see grounds to maintain a protest and he did not want the applicant to have to prove some standard the Assembly has not defined. The information provided by JPD regarding calls made to the premises from Dec 4 – Jan 22 are in the majority complaints regarding parking issues, and almost all are coming from basically one individual. He did not want to determine the future of a successful Juneau business based on this type of complaint. Parking has been an issue at this facility for many years. He did support a delay to encourage the neighborhood and business owners to be involved, and the city should be involved as well.

Mr. Doll said the neighborhood residents that were present to testify at the HRC meeting were not present. There were about eight people associated with a three-page letter, and Chief Browning said there has been a dramatic difference in activity at the restaurant than in the last 30 years. This protest is not frivolous and is backed up by statistical evidence.

MOTION, by Bush, to instruct manager to ask the ABC Board to extend its review for three months or to the meeting following its next regular meeting, in order to defer the Assembly's comments on the matter.

Mr. Dybdahl asked if the license would expire in that period. Mr. Hartle said the ABC Board would not take action without a proper hearing and the license would continue to be in effect until the ABC Board took an affirmative action to stop business under that license.

Mr. Doll asked if this motion passed, would the matter stay before the Assembly. Mr. Bush said he assumed there would be another 60-day protest period issued and if that was not formally done, the Assembly could react in that interim. The Assembly will hear from the neighborhood how things are going.

Mr. Hartle said he did not know what the ABC Board would do and it may or may not afford the CBJ time to delay. This was not in the statutes.

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Mr. Sanford asked if, how, and when the information from this meeting would be forwarded to the appropriate agencies. Mr. Bush said there was nothing that would prohibit CDD from looking into this issue, or providing information. There is not a protest request from CDD, and without an investigation, we cannot make a basis for a protest. There is nothing incompatible with the motion to move forward with information gathering now.

Mr. Dybdahl asked if it was possible to know before February 5 if the ABC Board would allow this type of delay. Mr. Hartle said the Board would need to take action on this request and that would not be done before the present comment window expired.

Mr. Anderson said the situation needs to improve and the Assembly can protest at the mid-year review if it proved necessary. This allows room for improvement.

Mr. Wanamaker asked for clarification that there was a recommendation on the floor from HRC to protest.

Mayor Botelho said Mr. Bush's motion on the floor was to defer that action.

Mr. Wanamaker said the ABC Board might not offer another window to protest and everyone wants a resolution to this matter. He urged the Assembly to protest, to provide the protest to the ABC Board with a request for it to defer its action to a later date or at its next quarterly meeting, at which time the Assembly could withdraw the protest if it was appropriate. If the Assembly gave up the protest, it gave up the one meaningful tool the citizens have to effect change.

Mr. Doll said he shared many apprehensions, but could await comments from ABC staff before going any further.

Mr. Dybdahl said the motion to defer created too much uncertainty and did not support the HRC recommendation. He would support a motion to waive the right to protest.

Mr. Wanamaker asked if the record before the HRC could be compiled and forwarded to the ABC Board before its next regular meeting. Mayor Botelho said his assumption was that this information should be made available to the ABC Board.

The roll call on the motion to request that the ABC Board defer its review of License #175 Q Enterprise Inc. d/b/a Breakwater Inn Restaurant & Lounge to the ABC Board meeting following its February 26 scheduled meeting passed, 6 ayes, 3 nays.

X. STAFF REPORTS – None.

XI. ASSEMBLY REPORTS

A. Committee Reports

Human Resources Committee: Hearing no objection, the Assembly approved the following HRC recommendations for appointments to the Personnel Board:

Nicki Neal to a term expiring January 31, 2013

Donna Pierce to a term expiring January 31, 2013

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Finance Committee: The next meeting is Wednesday, February 3, at 5:30 p.m. Chair Stone requested that the Assembly send him their suggestions for how to address the budget shortfalls.

B. Liaison Reports

Planning Commission: Liaison Doll said the next meeting is Tuesday, January 27, at 7 p.m. Downtown parking management planning was on the agenda.

Sustainability Commission: Liaison Doll said the next meeting is Wednesday, February 10, at 5:15 p.m.

Hospital Board: Liaison Stone said the next meeting is Tuesday, January 27, at 5:15 p.m.

Docks and Harbors Board: Liaison Dybdahl said the next meeting is Thursday, January 28, at 7 p.m.

Eaglecrest Board: Liaison Anderson attended a recent meeting and said the Eaglecrest Board has begun its strategic planning.

Juneau Economic Development Council: Liaison Danner said JEDC participated in the Juneau Homeless Connect Project on Monday, January 25 at Centennial Hall. It was an amazing collaboration today with many services and agencies connecting the homeless to services and it also provided a census count of homeless people in the community.

XII. ASSEMBLY COMMENTS AND QUESTIONS

Ms. Danner asked if follow-up was done regarding the concerns expressed at the last meeting about the operation of Rainforest Recovery Center. Mr. Swope said he has met with Bartlett staff and is working with Hospital Board Liaison David Stone on this issue. Ms. Danner said she took a tour of the facility and is anxious to settle the matter.

Mr. Sanford said he assumed Mr. Cooper's comments will be considered by Mr. Swope and Mr. Hartle. Mr. Hartle reported on the law department action on the case and that a vacation of judgment on the second citation had been prepared and would be filed. Mr. Sanford asked that administration look at this issue to resolve any further issues.

Mr. Anderson said this case has been ongoing for quite a long time and he had visited the property with city staff during his first term on the Assembly.

XIII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS- None.

XIV. EXECUTIVE SESSION

Mr. Swope asked to provide the Assembly with an update regarding ongoing contract negotiations with the Fire Department.

***MOTION**, by Bush, to enter executive session to discuss contract labor negotiations with the Fire Fighter's Union.*

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Public Comment: None.

Assembly Action:

Hearing no objection, the Assembly entered executive session at 8:32 p.m. and returned to regular session at 9:00 p.m. Mayor Botelho said that during executive session the Assembly discussed the status of negotiations with the Fire Fighters union. The Assembly made no specific decision. The Assembly will reconvene in a Special Assembly meeting, immediately following the Finance Committee meeting on February 3, to continue discussion on labor contracts.

XV. ADJOURNMENT – 9:04 p.m.

Signed: _____
Laurie Sica, Municipal Clerk

Signed: _____
Bruce Botelho, Mayor