



TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, City Manager

DATE: January 28, 2021

RE: **Ordinance No. 21-1926 – Amending Chapter 13.10 Of The Ketchikan Municipal Code, Entitled “Passenger Wharfage Fees”; To Impose Such Fees Directly On Passengers And To Provide For The Collection, Payment and Enforcement Of Such Fees; And Establishing An Effective Date**

During its consideration of the proposals the City received in response to Contract No. 19-36, Redevelopment of Port of Ketchikan Berths I, II, III and IV and Other Infrastructure within the City of Ketchikan, the City Council conducted several executive sessions in which outside counsel Robert P. Blasco of Hoffman & Blasco, LLC participated. One of the subjects discussed was the possibility of the City amending the Ketchikan Municipal Code to impose passenger wharfage fees directly on passengers as opposed to the vessel.

The attached ordinance was prepared at the request of Councilmember Flora. If adopted, Ordinance No. 21-1926 provides for amending Chapter 13.10 of the Ketchikan Municipal Code to impose passenger wharfage fees directly on the passenger as opposed to the vessel. The rationale for making this revision to the KMC is detailed in the attached memorandum from Attorney Blasco and requires no elaboration on the part of my office. I concur with Attorney Blasco's analysis.

Two versions of Ordinance No. 21-1926 are attached. The first is a “clean” copy. The second shows the actual modifications to the existing provisions of the KMC.

City Attorney Mitch Seaver and Attorney Blasco will attend the City Council meeting of February 4, 2021, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

RECOMMENDATION

It is recommended the City Council adopt the motion approving in first reading Ordinance No. 21-1926 amending Chapter 13.10 of the Ketchikan Municipal Code, entitled "Passenger Wharfage Fees"; to impose such fees directly on passengers and to provide for the collection, payment and enforcement of such fees; and establishing an effective date.

Recommended Motion: I move the City Council approve in first reading Ordinance No. 21-1926 amending Chapter 13.10 of the Ketchikan Municipal Code, entitled "Passenger Wharfage Fees"; to impose such fees directly on passengers and to provide for the collection, payment and enforcement of such fees; and establishing an effective date.

HOFFMAN & BLASCO, LLC

ATTORNEYS AT LAW

ATTORNEYS

9360 GLACIER HIGHWAY
SUITE 202
JUNEAU, ALASKA 99801
PHONE: (907) 586-3340
FACSIMILE: (907) 586-6818

ALASKA STATEWIDE PRACTICE

ROBERT P. BLASCO
MEGAN J. COSTELLO
BARBARA J. RITCHIE, Of Counsel
PAUL M. HOFFMAN, Retired

ALL ATTORNEYS ADMITTED IN ALASKA

102 EAGLE TREE COURT
CRAIG, ALASKA 99921

January 27, 2021
Email

MEMORANDUM

To: Karl Amylon

Re: Amendment to Chapter 13.10 Wharfage Passenger Fees

From: Bob Blasco

The proposed Amendment changes the current fee imposed on vessels entering the Port to a fee on passengers who visit Ketchikan by way of cruise ships and other passenger vessels. Unlike the current code, and unlike the City and Borough of Juneau fees, the proposed Amendment imposes the fee on the passengers, with the vessel operator (or its agent) as the collection administrator, similar to the collection of sales tax. As the fee in the proposed Amendment is imposed on the passenger, it removes the provision that is in the current code that would allow the City to deny a vessel access to the port if it were delinquent in fees imposed.

The Tonnage Clause, used by CLIAA as the basis to challenge the Juneau fees, was created to prevent "convenient ports" from levying taxes and fees that would preclude vessels from entering, trading or lying in a port for the purposes of commercial activity.¹ The classic example of a tax/fee held unconstitutional under the Tonnage Clause was the tax imposed by the City of Valdez on tankers for entering the port. Valdez put the monies collected in its general fund for all city uses and acknowledged it did not provide any services to the vessels.

There are few Tonnage Clause cases. Challenges to port fees under the Tonnage Clause in the modern era primarily attack the use of the fees as the basis for claiming unconstitutionality. Opponents claim that fees are improperly established for general revenue raising purposes, not related to the actual use of the port by vessels. The legal theory advanced by CLIAA in the Juneau lawsuit was that any expenditure of any fees imposed on the vessel must be solely for a service

¹ 3 Records of the Federal Convention of 1787, pp. 542, 519 (M. Farrand rev. 1966), referenced and quoted in *Polar Tankers v. City of Valdez*, 557 US 1, 7 (2009). The decision goes on to hold that the Tonnage Clause does not prohibit the imposition of all fees levied on vessels for the use of ports.

directly to the vessel “at the water line,” such that using fees for passenger bathrooms on the dock was improper as “vessels don’t use restrooms.” (The language used by CLIAA). In the Juneau case, Judge Holland declined this interpretation. His decision held that the expenditures of fees must be for services to the vessel or that advance the marine enterprise of the vessel. Whether a service was for the vessel or advanced marine enterprise was a question of fact that he did not reach in that case.

Judge Holland held the Juneau fee ordinance was constitutional under the Tonnage Clause. Judge Holland did not evaluate the use of the fees by the CBJ, instead required CLIAA to go to trial for each expenditure CLIAA wanted to challenge. CLIAA reached an agreement with CBJ and avoided having to prove their case at trial. Judge Holland did not make any to decision as to the constitutionality of CBJ’s use of state CPV funds, which are fees imposed on the passengers, not the vessels. Judge Holland did not decide that fees imposed on passengers to be used for services to passengers was unconstitutional.

Courts that have reviewed fees imposed on passengers analyze whether the fees are reasonably related to the costs of the services provided the passengers. Expenditures for security, lighting, parking, restrooms, walkways have been upheld as constitutional.²

The proposed Amendment shows a good faith effort to not violate the Tonnage Clause or the cases currently decided under the Tonnage Clause. The following factors in the proposed Amendment demonstrate the intent to comply with the Tonnage Clause:

- 1) There is no tax or fee levied on the vessel for entering, trading or lying in the port, instead the fees are imposed on the passengers like the State CPV fee;
- 2) The fees collected are not deposited in the general fund and are not for general revenue raising purposes;
- 3) The expenditures of the fees are used for services that benefit the passengers or the vessels (or both), not open ended for use for any city purpose;
- 4) The non-payment of the fees by one or more passengers does not result in the vessel being denied access to or use of the port.

In summary, the proposed Amendment on its face does not contain provisions which violate the Tonnage Clause and is not precluded by or contrary to the decision by Judge Holland.

The issue in any challenge will be whether the use of the fees provides services related to the passengers or the vessels and whether the amount of the fees collected bears a reasonable relationship to the cost of the services. If the proposed Amendment is passed, we recommend the City maintain detailed records related to the use of the fees and the costs to the City of the services specified in Section 13.10.140.

² Some cases have indicated that the Tonnage Clause does not preclude the use of fees for services such as restrooms, security, lighting and walkways, even though the fees are imposed on the vessels.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 21-1926

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AMENDING CHAPTER 13.10 OF THE KETCHIKAN MUNICIPAL CODE; ENTITLED “PASSENGER WHARFAGE FEES”; TO IMPOSE SUCH FEES DIRECTLY ON PASSENGERS AND TO PROVIDE FOR THE COLLECTION, PAYMENT AND ENFORCEMENT OF SUCH FEES; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Amendment. Chapter 13.10 of the Ketchikan Municipal Code, entitled “Passenger Wharfage Fees,” is hereby amended to read as follows:

**“Chapter 13.10
PASSENGER WHARFAGE FEES**

Sections:

- 13.10.010 Purpose.
- 13.10.020 Definitions.
- 13.10.030 Imposition of passenger wharfage fees.
- 13.10.040 Fee amounts.
- 13.10.050 Payment of fees.
- 13.10.060 Protest of fees.
- 13.10.070 Exemptions.
- 13.10.080 Administration and returns.
- 13.10.090 Record-keeping and investigations.
- 13.10.100 Penalty and interest.
- 13.10.120 Liens and other costs.
- 13.10.130 Liability.
- 13.10.140 Use of fees.

13.10.010 Purpose.

The purpose of imposing fees under this chapter is to provide for the safety, efficiency and access of passenger ships and visiting passengers and offset costs

heretofore and hereafter incurred by the city of Ketchikan in acquiring, leasing, constructing, repairing, improving and equipping its port facilities to provide services for ships and their passengers who visit Ketchikan, and to partially mitigate the burden and impacts of increased utilization of city services and city infrastructure by ships and their passengers on the residents of the city.

13.10.020 Definitions.

The following definitions shall apply for purposes of this chapter:

“Agent” or “authorized agent” means the master or person in charge of the ship or any other person authorized by the owner or operator of the ship to act on behalf of the owner or operator with respect to the ship.

“City manager” or “manager” means the city of Ketchikan city manager or his or her designee.

“Entry into any port” means anchoring or mooring and allowing passengers to embark or disembark.

“Passenger” means any person whom a common carrier has contracted to carry from one place to another aboard a passenger ship and including a passenger provided carriage under a promotion, contest or other agreement for which the passenger did not compensate the person who provided travel aboard the passenger ship.”

“Passenger fee” or “fee” means the passenger wharfage fee imposed by this chapter.

“Passenger manifest” means a document stating the total number of passengers aboard a ship at the time it visits the city.

“Passenger ship” or “ship” means a commercial vessel, ship or boat that is used in the common carriage of passengers in commerce.

“Person” means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

“Port of call” means a place at which a passenger ship commences or ends a voyage or stops during a voyage and at which the passenger ship intends either to embark or disembark passengers or to which a passenger ship intends to lighter passengers.

“State’s marine waters” means the meaning given to “waters” in AS 46.03.900 except that they include only marine waters.

“Visit” means an instance where the city is a port of call occurring more than 24 hours before or after another such instance by the same ship, excluding visits for emergency purposes.

“Voyage” means any travel on the State’s marine waters.

13.10.030 Imposition of passenger wharfage fees.

There is imposed a passenger wharfage fee on passengers traveling on passenger ships for which the city is a port of call.

13.10.040 Fee amounts.

The amount of the fee imposed on passengers by KMC 13.10.030 shall be assessed per passenger on the passengers listed on the passenger manifest of the passenger ship as follows:

(a) Upon each visit by a passenger ship docking at a city owned or leased wharf port facility a passenger fee of \$9.00 per passenger shall be assessed;

(b) Upon each visit by a passenger ship that lighters passengers to or from a wharf or leased by the city or any private person or entity, a passenger fee of \$6.00 shall be assessed.

(c) Upon each visit by a passenger ship docking at a wharf or port facility owned by a private person or entity a passenger wharfage fee of \$6.00 per passenger shall be assessed.

13.10.050 Payment of fees.

A passenger subject to the fee imposed by this chapter is liable for the payment of the fee. The fee shall be collected from the passenger by the person who provides travel aboard a passenger ship and shall be paid to the city in the manner and at the times specified by this chapter.

13.10.060 Protest of fees.

(a) A passenger may protest the payment of the passenger wharfage fee charged under this chapter by paying the fee within the time established for payment of the fee and providing the manager with a written statement of protest specifying the amount of fees paid and the basis for the protest. The manager's decision regarding the protest shall be in writing and shall be a final decision. Such decision may be appealed to the Superior Court in the First Judicial District for the State of Alaska at Ketchikan, Alaska.

(b) If the person responsible for collecting the fee protests liability on an assessment under KMC 13.10.090(d) which has become final, that person shall pay the fee under written protest setting forth the basis for the protest. No action for a refund may be maintained nor may a defense to nonpayment be maintained in a civil action unless the amount in dispute has been paid by that person under written protest filed with the manager at or before the time of payment. Such decision may be appealed to the Superior Court in the First Judicial District for the State of Alaska at Ketchikan, Alaska.

13.10.070 Exemptions.

The passenger wharfage fees provided for in KMC 13.10.030 shall not apply to noncommercial vessels, warships, ships without berths or other overnight accommodations for passengers and vessels operated by the state, the United States, or a foreign government. The burden of proving an exemption shall be on the person claiming the exemption. Persons claiming an exemption shall be required to obtain an exemption certificate from the city manager in accordance with procedures established by the manager under KMC 13.10.080.

13.10.080 Administration and returns.

(a) A person required under this chapter to collect from a passenger and remit to the city the fees imposed by this chapter shall:

(1) collect the fee from the passenger on or before completion of the visit, regardless of billing practices, installment agreements, credit procedures, or bad debts; and

(2) pay the fee to the city on or before the end of the month following the month in which the visit ended.

(b) A person required to collect and remit the fee imposed by KMC 13.10.010 shall file with the city a separate return for each passenger ship for each calendar month for all passengers for each visit that ended in that month.

(c) The return must be signed under penalty of perjury by the person filing the return. The return must include the following information:

(1) the name, federal taxpayer identification number, address, telephone number, and other contact information of the person filing the return;

(2) the name and call sign of the passenger ship providing the visit; and

(3) a schedule of all visits that the commercial passenger vessel completed during the month; the schedule must include, by visit,

(A) the beginning and ending date of the visit;

(B) the total number of passengers subject to the passenger fee;

(d) The filing of the return and the remittance of the total fees must be made not later than the end of the month following the month in which the visit ended.

(e) Confidential and private material.

(1) Except as otherwise provided in this section, returns filed with the city for the purpose of complying with the terms of this chapter and all information obtained from such returns are private and confidential and such returns and information shall be kept from inspection by private persons.

(2) This section does not prohibit the delivery to a person, or the person's duly authorized representative, of a copy of any return filed by that person.

(3) This section does not prohibit the publication of statistics presented in a manner that prevents the identification of particular persons.

(4) This section does not prohibit the disclosure of such returns or information through enforcement or collection proceedings, or when required by court order, or prohibit furnishing such returns and information on a reciprocal basis to other agencies or political subdivisions of the State or United States concerned with the enforcement of tax laws.

(5) This section does not prohibit making the following information available to the public: the names of ships subject to the collection and payment of fees, whether or not the ship is current in payment of fees, the total fees due, and names of ships which have been issued an exemption certificate. The manager may, from time to time, make public the names of the ships and owners, operators or agents delinquent in payment of fees and the amount thereof; provided, that the names of owners, operators or

agents who have executed a confession of judgment for the delinquent fees and penalties, and who are current in their fee payments under such confession of judgment as of the date on which the names are made public, will not be made public.

(f) The city manager may adopt policies, procedures, rules and/or regulations to administer and enforce this chapter.

13.10.090 Record-keeping and investigation.

(a) A person required to file a return under this chapter shall preserve in hard copy or electronic format for three years all books, records, and any other data utilized to complete the return, including, but not limited to:

(1) passenger manifests; and

(2) passenger names, addresses, and telephone numbers;

(b) A book, record, or other piece of data required to be preserved under this section must be available for inspection and copying in the city at any time upon oral or written demand by the city.

(c) For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of fees collected or which should have been collected by any person, the city manager or designee may hold investigations and hearings concerning any matters covered by this chapter and may examine any relevant books, papers, records, or memoranda of any such person, and may require the attendance of such person or any officer or employee of such person.

(d) In the event the city is unable to ascertain the fees due to be remitted by a the person responsible for their collection by reason of the failure of that person to keep accurate books, allow inspection, failure to file a return, or falsification of records, the city may make an estimate of fees due based upon all of the information available. Such estimate may be referred to as a "forced filing." Notice of the estimate of fees due shall be furnished by certified mail or by hand delivery to the person or the person's agent, and shall become final for the purposes of determining liability of that person to the city in 10 working days unless that person earlier files an accurate return, supported by satisfactory records, indicating a lesser liability. If the city prepares a forced filing return on behalf of a person which has failed to file a timely return, the city may recover its actual costs incurred in preparing such return.

13.10.100 Penalty and interest.

(a) In the event the person responsible for the collection and payment of fees fails or neglects to file a return when due, or fails to remit the fees collected, or which should have been collected, in a timely manner as required by this chapter, then such return and fees due are delinquent and the city shall add thereto penalties as follows:

If Payment Made:	Additional Penalty (Percentage of Fees Due)
(1) Within seven working days after delinquency date	1%
(2) More than seven working days up to and including 30 days after delinquency date	15%
(3) More than 30 days up to and including 60 days after delinquency date	20%
(4) More than 60 days after delinquency date	25%

(b) Interest shall accrue on the unpaid fees, not including penalty, from the date of delinquency to the date of payment at the rate of one percent per month. All remedies available to the city to collect fees, penalties and interest, plus collection costs, including attorney fees, shall commence on the date of the delinquency. Payments received after the date of delinquency shall be applied first to payment of any collection costs, next on interest, next on penalty, and next on the fees. In the event of partial payment, penalties shall continue to accrue on the unpaid portion of the fees as provided for in subsection (a) of this section. Interest at the rate of one percent per month shall also accrue on any unpaid amount of fees until paid in full.

(c) The city may file a civil action for collection of any fees, penalties, interest and costs including attorney fees due the city under this section or for any other legal or equitable remedy in the Superior or District Court for the First Judicial District, State of Alaska, at Ketchikan, Alaska.

13.10.120 Liens and other costs.

The amount of delinquent fees, interest, penalties and costs, including attorney fees shall constitute a lien on real and personal property of the owner, operator or agent of a ship to the extent authorized by AS 29.35.010(17) and not otherwise precluded by federal law.

13.10.130 Liability.

Any person violating any of the provisions of this chapter or failing or refusing to comply with a lawful request or demand of the manager authorized or made under this chapter shall be subject to the general penalty provision in KMC 1.02.030.

13.10.140 Use of fees.

The fees and other amounts collected under this chapter shall be deposited in the Ketchikan port fund established pursuant to KMC 13.04.050 and applied to pay and reimburse costs heretofore and hereafter incurred to:

(a) acquire, lease, develop, construct and equip port facilities or infrastructure and related city facilities or infrastructure that benefit or serve or facilitate the passenger ships and/or their visiting passengers;

- (b) improve, maintain, repair or replace existing port equipment, facilities or infrastructure and related city equipment, facilities or infrastructure that benefit or serve or facilitate passenger ships and/or their visiting passengers;
- (c) provide services to passenger ships and the passengers on board those ships; or
- (d) improve the safety and efficiency of the interstate and foreign commerce activities in which the passenger ships and the passengers on board those ships are engaged.
- (e) otherwise facilitate the marine enterprise and associated enterprises of the passengers and passenger ships;
- (f) or for any other lawful purpose in any lawful manner.”

Section 2: Effective Date. After final passage and publication, this ordinance shall be effective at 12:01 a.m. on November 1, 2021.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 21-1926

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AMENDING CHAPTER 13.10 OF THE KETCHIKAN MUNICIPAL CODE; ENTITLED “PASSENGER WHARFAGE FEES”; TO IMPOSE SUCH FEES DIRECTLY ON PASSENGERS AND TO PROVIDE FOR THE COLLECTION, PAYMENT AND ENFORCEMENT OF SUCH FEES; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Amendment. Chapter 13.10 of the Ketchikan Municipal Code, entitled “Passenger Wharfage Fees,” is hereby amended to read as follows:

**“Chapter 13.10
PASSENGER WHARFAGE FEES**

Sections:

- 13.10.010 Purpose.
- 13.10.020 Definitions.
- 13.10.030 Imposition of passenger wharfage fees. [~~(Effective until April 1, 2021)]~~ [~~13.10.030 Imposition of passenger wharfage fees. (Effective April 1, 2021)~~]
- 13.10.040 **Fee amounts.** [~~Calculation of fees~~].
- 13.10.050 Payment of fees [~~and penalties~~].
- 13.10.060 Protest of fees.
- 13.10.070 Exemptions.
- 13.10.080 Administration and **returns** [~~enforcement~~].
- 13.10.090 Record-keeping **and investigations.**
- [~~13.10.100 Use of passenger manifests by the city.~~]
- 13.10.1[+]00 **Penalty and interest** [~~Delinquency~~].
- [~~13.10.115 Failure to provide passenger manifests.~~]
- 13.10.120 Liens and other costs.
- 13.10.130 Liability.
- 13.10.140 Use of fees.

13.10.010 Purpose.

The purpose of imposing fees under this chapter is to **provide for the safety, efficiency and access of passenger ships and visiting passengers and** offset costs heretofore and hereafter incurred by the city of Ketchikan in acquiring, **leasing,** constructing, **repairing, improving** and equipping its port facilities to provide [related] services for ships and their passengers who visit Ketchikan, and to **partially** mitigate **the burden and** impacts of increased utilization of city services **and city infrastructure** by ships and their passengers **on the residents of the city.**

13.10.020 Definitions.

The following definitions shall apply for purposes of this chapter:

“Agent” or “authorized agent” means the master or person in charge of the ship or any other person authorized by the owner or operator of the ship to act on behalf of the owner or operator with respect to the ship.

“City manager” or “manager” means the city of Ketchikan city manager or his or her designee.

“Entry into any port” means anchoring or mooring and allowing passengers to embark or disembark.

“Passenger” means any person who **m a common carrier has contracted to carry from one place to another aboard a passenger ship and including a passenger provided carriage under a promotion, contest or other agreement for which the passenger did not compensate the person who provided travel aboard the passenger ship.** ~~[has paid any amount for a ticket contract entitling that person to transportation aboard the ship. The term does not include:~~

- ~~(1) The owner’s or operator’s employees or their immediate family members sharing their quarters;~~
- ~~(2) The owner’s or operator’s contractors or subcontractors; or~~
- ~~(3) Musicians, artists, guest speakers, art auctioneers, interpreters, rangers, or similar persons traveling without charge and providing passenger services for the ship’s owner or operator.]~~

“Passenger fee” or “fee” means the passenger wharfage fee imposed by this chapter.

“Passenger manifest” means a document stating the total number of passengers aboard a ship at the time it ~~[enters or leaves the boundaries of]~~ **visits** the city.

“Passenger ship” or “ship” means a **commercial** vessel ~~[carrying]~~, **ship or boat that is used in the common carriage of** passengers ~~[for compensation]~~ **in commerce.**

“Person” means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

“Port of call” means a place at which a passenger ship commences or ends a voyage or stops during a voyage and at which the passenger ship intends either to embark or disembark passengers or to which a passenger ship intends to lighter passengers.

“State’s marine waters” means the meaning given to “waters” in AS 46.03.900 except that they include only marine waters.

“Visit” means an **instance where** ~~[entry into a port or dock within the boundaries of]~~ the city **is a port of call occurring** more than 24 hours before or after another ~~[entry]~~ **such instance** by the same ship, excluding visits for emergency purposes.

“Voyage” means any travel on the State’s marine waters.

13.10.030 Imposition of passenger wharfage fees. ~~[(Effective until April 1, 2021)]~~

There is imposed a passenger wharfage fee on passengers traveling on passenger ships for which the city is a port of call.

~~[(a) Beginning January 1, 2007, upon each visit by a passenger ship docking at a city-owned or city-leased port facility, a passenger wharfage fee of \$7.00 per passenger shall be assessed:~~

~~(b) Beginning January 1, 2007, upon each visit by a passenger ship that lighters passengers to or from a wharf or port facility owned or leased by the city or any private entity, a passenger wharfage fee of \$4.00 per passenger shall be assessed:~~

~~(c) Beginning January 1, 2007, upon each visit by passenger ship docking at a wharf or port facility owned by a private entity, a passenger wharfage fee of \$4.00 per passenger shall be assessed.]~~

~~**[13.10.030 Imposition of passenger wharfage fees. (Effective April 1, 2021)**~~

~~—— (a) Beginning April 1, 2021, upon each visit by a passenger ship docking at a city-owned or city leased port facility, a passenger wharfage fee of \$9.00 per passenger shall be assessed:~~

~~—— (b) Beginning April 1, 2021, upon each visit by a passenger ship that lighters passengers to or from a wharf or port facility owned or leased by the city or any private entity, a passenger wharfage fee of \$6.00 per passenger shall be assessed:~~

~~—(c) Beginning April 1, 2021, upon each visit by a passenger ship docking at wharf or port facility owned by a private entity, a passenger wharfage fee of \$6.00 per passenger shall be assessed.]~~

13.10.040 Fee amounts. ~~[Calculation of fees.]~~

The amount of the fee imposed on passengers by KMC 13.10.030 shall be assessed per passenger on the passengers listed on the passenger manifest of the passenger ship as follows:

(a) **Upon each visit by a passenger ship docking at a city owned or leased wharf port facility a passenger fee of \$9.00 per passenger shall be assessed;** ~~The total amount of passenger wharfage fees for each ship shall be calculated based on the passenger manifest upon arrival or departure, whichever is greater, for the ship upon its entry into or departure from any port within the city. Only one passenger wharfage fee shall be assessed per passenger per ship per visit.~~

(b) **Upon each visit by a passenger ship that lighters passengers to or from a wharf or leased by the city or any private person or entity, a passenger fee of \$6.00 shall be assessed.** ~~Upon entry into or departure from any port within the city, the owner, operator or authorized agent from each ship shall provide the city manager with a passenger manifest.~~

(c) **Upon each visit by a passenger ship docking at a wharf or port facility owned by a private person or entity a passenger wharfage fee of \$6.00 per passenger shall be assessed.** ~~The city manager shall develop procedures in accordance with KMC 13.10.080 for transmission of the passenger manifest from the owner, operator or authorized agent to the city manager.]~~

13.10.050 Payment of fees ~~[and penalties].~~

A passenger subject to the fee imposed by this chapter is liable for the payment of the fee. The fee shall be collected from the passenger by the person who provides travel aboard a passenger ship and shall be paid to the city in the manner and at the times specified by this chapter. ~~[Passenger wharfage fees shall be paid by the owner, operator or agent of the ship to the city within 25 days after the billing date in accordance with payment procedures established by the manager under KMC 13.10.080. Such payment procedures shall provide for the payment of a penalty of five percent of fees due if not paid within 25 days.]~~

13.10.060 Protest of fees.

~~[An owner, operator or agent]~~ (a) **A passenger** may protest the payment of the passenger wharfage fee charged under this chapter by paying the fee within the time established for payment of the fee and providing the manager with a written statement of protest specifying the amount of fees paid and the basis for the protest. The manager's decision regarding the protest shall be in writing and shall be a final decision. Such

decision may be appealed to the ~~[s]~~Superior ~~[e]~~Court in the ~~[f]~~First ~~[j]~~Judicial~~[d]~~District for the ~~[s]~~State of Alaska at Ketchikan, Alaska.

(b) If the person responsible for collecting the fee protests liability on an assessment under KMC13.10.090(d) which has become final, that person shall pay the fee under written protest setting forth the basis for the protest. No action for a refund may be maintained nor may a defense to nonpayment be maintained in a civil action unless the amount in dispute has been paid by that person under written protest filed with the manager at or before the time of payment. Such decision may be appealed to the Superior Court in the First Judicial District for the State of Alaska at Ketchikan, Alaska.

13.10.070 Exemptions.

~~[(a)]~~ The passenger wharfage fees provided for in KMC 13.10.030 shall not apply to noncommercial vessels, warships, ships without berths or other overnight accommodations for passengers and vessels operated by the state, the United States, or a foreign government.

~~[(1) Ships without berths or overnight accommodations for passengers;~~

~~[(2) Ships operated by entities described in Section 501(c) of the Internal Revenue Code of 1986, as amended; or~~

~~[(3) Ships operated by a state or political subdivision of the state, the United States government, or a foreign government.]~~

~~[(b)]~~ The burden of proving an exemption shall be on the person claiming the exemption. Persons claiming an exemption shall be required to obtain an exemption certificate from the city manager in accordance with procedures established by the manager under KMC 13.10.080.

13.10.080 Administration and returns ~~[enforcement]~~.

(a) A person required under this chapter to collect from a passenger and remit to the city the fees imposed by this chapter shall:

(1) collect the fee from the passenger on or before completion of the visit, regardless of billing practices, installment agreements, credit procedures, or bad debts; and

(2) pay the fee to the city on or before the end of the month following the month in which the visit ended.

(b) A person required to collect and remit the fee imposed by KMC 13.10.010 shall file with the city a separate return for each passenger ship for each calendar month for all passengers for each visit that ended in that month. ~~[The city manager shall take all steps necessary and appropriate to administer and enforce this chapter including but not limited to establishing policies, procedures, rules and/or regulations to administer and enforce this chapter, and conducting audits or examinations of the records~~

and books of owners, operators, or agents of passenger ships.]

(c) The return must be signed under penalty of perjury by the person filing the return. The return must include the following information:

- (1) the name, federal taxpayer identification number, address, telephone number, and other contact information of the person filing the return;**
- (2) the name and call sign of the passenger ship providing the visit; and**
- (3) a schedule of all visits that the commercial passenger vessel completed during the month; the schedule must include, by visit,**
 - (A) the beginning and ending date of the visit;**
 - (B) the total number of passengers subject to the passenger fee;**

(d) The filing of the return and the remittance of the total fees must be made not later than the end of the month following the month in which the visit ended.

(e) Confidential and private material.

(1) Except as otherwise provided in this section, returns filed with the city for the purpose of complying with the terms of this chapter and all information obtained from such returns are private and confidential and such returns and information shall be kept from inspection by private persons.

(2) This section does not prohibit the delivery to a person, or the person's duly authorized representative, of a copy of any return filed by that person.

(3) This section does not prohibit the publication of statistics presented in a manner that prevents the identification of particular persons.

(4) This section does not prohibit the disclosure of such returns or information through enforcement or collection proceedings, or when required by court order, or prohibit furnishing such returns and information on a reciprocal basis to other agencies or political subdivisions of the State or United States concerned with the enforcement of tax laws.

(5) This section does not prohibit making the following information available to the public: the names of ships subject to the collection and payment of fees, whether or not the ship is current in payment of fees, the total fees due, and names of ships which have been issued an exemption certificate. The manager may, from time to time, make public the names of the ships and owners, operators or agents delinquent in payment of fees and the amount thereof; provided, that the names of owners, operators or agents who have executed a confession of judgment for the delinquent fees and penalties, and who are current in their fee payments under such confession of judgment as of the date on which the names are made public, will not be made public.

(f) The city manager may adopt policies, procedures, rules and/or regulations to administer and enforce this chapter.

13.10.090 Record-keeping and investigation.

(a) A person required to file a return under this chapter shall preserve in hard copy or electronic format for three years all books, records, and any other data utilized to complete the return, including, but not limited to:

- (1) passenger manifests; and**
- (2) passenger names, addresses, and telephone numbers;**

(b) A book, record, or other piece of data required to be preserved under this section must be available for inspection and copying in the city at any time upon oral or written demand by the city. ~~[To facilitate the administration and enforcement of the provisions of this chapter, each owner, operator or agent of a ship subject to payment of fees under this chapter shall maintain and keep for a period of three years after the date of transmission to the city all of the passenger manifests, forms and supporting records, and any other books and records prescribed by the city manager in accordance with KMC 13.10.080. Upon the request of the city manager, the owner, operator or agent of the passenger ship shall make available for examination in the city all such passenger manifests, books, records and other documents unless the manager authorizes the examination to be conducted at a different location.]~~

(c) For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of fees collected or which should have been collected by any person, the city manager or designee may hold investigations and hearings concerning any matters covered by this chapter and may examine any relevant books, papers, records, or memoranda of any such person, and may require the attendance of such person or any officer or employee of such person.

(d) In the event the city is unable to ascertain the fees due to be remitted by a the person responsible for their collection by reason of the failure of that person to keep accurate books, allow inspection, failure to file a return, or falsification of records, the city may make an estimate of fees due based upon all of the information available. Such estimate may be referred to as a "forced filing." Notice of the estimate of fees due shall be furnished by certified mail or by hand delivery to the person or the person's agent, and shall become final for the purposes of determining liability of that person to the city in 10 working days unless hat person earlier files an accurate return, supported by satisfactory records, indicating a lesser liability. If the city prepares a forced filing return on behalf of a person which has failed to file a timely return, the city may recover its actual costs incurred in preparing such return.

[13.10.100 Use of passenger manifests by the city:

~~—(a) Except as otherwise provided herein or by applicable law, all passenger manifests transmitted to the city, obtained in the course of an audit, or~~

otherwise by the city under this chapter, shall be kept confidential and shall not be subject to public inspection. Except upon court order, such manifests shall be made available only to employees, officials, attorneys and other representatives of the city whose responsibilities are directly related to such manifests; and to the person supplying such documents and information; as well as persons authorized in writing by the person supplying such documents and information.

(b) subsection (a) of this section, the following information shall be made available to the public: the names of ships subject to payment of fees, whether or not the ship is current in payment of fees, the total fees due, and names of ships which have been issued an exemption certificate. The manager may, from time to time, make public the names of the ships and owners, operators or agents delinquent in payment of fees and the amount thereof; provided, that the names of owners, operators or agents who have executed a confession of judgment for the delinquent fees and penalties, and who are current in their fee payments under such confession of judgment as of the date on which the names are made public, will not be made public. Information may also be made available to the public in the form of statistical reports if the identity of a particular passenger is not revealed by the reports.

(c) Notwithstanding subsection (a) of this section, the city manager may use the information in a manifest as reasonably necessary to respond to an emergency involving the ship that provided the manifest.

13.10.1[1]00 [Delinquency:] Penalty and interest.

(a) In the event the person responsible for the collection and payment of fees fails or neglects to file a return when due, or fails to remit the fees collected, or which should have been collected, in a timely manner as required by this chapter, then such return and fees due are delinquent and the city shall add thereto penalties as follows:

<u>If Payment Made:</u>	<u>Additional Penalty (Percentage of Fees Due)</u>
<u>(1) Within seven working days after delinquency date</u>	<u>1%</u>
<u>(2) More than seven working days up to and including 30 days after delinquency date</u>	<u>15%</u>
<u>(3) More than 30 days up to and including 60 days after delinquency date</u>	<u>20%</u>
<u>(4) More than 60 days after delinquency date</u>	<u>25%</u>

(b) Interest shall accrue on the unpaid fees, not including penalty, from the date of delinquency to the date of payment at the rate of one percent per month. All remedies available to the city to collect fees, penalties and interest, plus collection costs, including attorney fees, shall commence on the date of the delinquency.

Payments received after the date of delinquency shall be applied first to payment of any collection costs, next on interest, next on penalty, and next on the fees. In the event of partial payment, penalties shall continue to accrue on the unpaid portion of the fees as provided for in subsection (a) of this section. Interest at the rate of one percent per month shall also accrue on any unpaid amount of fees until paid in full.

(c) The city may file a civil action for collection of any fees, penalties, interest and costs including attorney fees due the city under this section or for any other legal or equitable remedy in the Superior or District Court for the First Judicial District, State of Alaska, at Ketchikan, Alaska.

~~[Whenever the city manager reasonably believes any ship has become delinquent in the payment of fees or penalties, the city manager shall mail to the owner, operator or agent's last known address a written demand by certified mail, return receipt requested, for payment of such fees and penalties within 10 days of receipt of such written demand. In the event of noncompliance with such demand, the manager may prepare a passenger wharfage fee and penalty billing statement ("billing statement") for the delinquent ship, based on the ship's passenger manifest(s), or if such manifest(s) have not been provided to the city, any reasonable estimate of the passenger count during the period of delinquency. The billing statement shall be sent to the owner, operator or agent at the owner, operator or agent's last known address by certified mail, return receipt requested. The owner, operator or agent shall have a right to a hearing before the manager at which time the owner, operator or agent shall make available for examination by the manager the books, papers, records and other documents pertaining to the fees or penalties for the period of delinquency. The owner, operator or agent may exercise the right to a hearing by delivering to the manager within 15 days of the date that the billing statement was mailed a written request for such a hearing. The manager shall establish a date and time for the hearing to be held within 10 days of receipt of the request unless a later time is mutually agreed to. The hearing shall be informal. At the hearing, the manager may uphold the original billing statement or issue an amended billing statement based on the information received at the hearing. The amended billing statement, or the original billing statement if it is not amended by the manager, shall be the final billing for the purpose of determining the amount owed to the city. If no timely request for a hearing is made, the original billing shall become the final billing.~~

~~(b) The city may file a civil action for collection of any fees and penalties due in the superior court or the first judicial district, state of Alaska, at Ketchikan, Alaska.~~

~~(c) Whenever any owner, operator or fails to pay delinquent fees after notice is given as provided in subsection (a) of this section, the manager may require such owner, operator or agent to pay fees payment of the amounts due the city immediately upon entry into a port or may deny the ship, or any lightering craft carrying passengers to or from such ship, berth or moorage at any city owned port until payment is received in full]~~

~~[13.10.115 Failure to provide passenger manifests:~~

~~——(a) Whenever the city manager does not receive a manifest, or whenever the city~~

~~manager reasonably believes a manifest provided by a ship contains inaccurate information, the city manager shall mail to the owner, operator or agent's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required manifest within 10 days of receipt of such written demand. The owner, operator or agent shall have the same hearing rights provided for in KMC 13.10.110(a):~~

~~—— (b) In the event of noncompliance with such demand, the manager may take any lawful action to bring about compliance with such demand, including but not limited to denying the ship, or any lightering craft carrying passengers to or from such ship, berth or moorage at any city owned port until the ship has provided an accurate manifest.~~

~~—— (c) The city may also collect from the owner, operator or agent of a ship all expenses that relate to the city's effort to bring about compliance with such a demand, including but not limited to:~~

- ~~—— (1) Costs of bringing about compliance;~~
- ~~—— (2) Attorney's fees and costs; and~~
- ~~—— (3) Court costs.]~~

13.10.120 Liens and other costs.

~~[(a)]~~ The amount of delinquent fees, **interest**, [and] penalties **and costs, including attorney fees** shall constitute a lien on real and personal property of the owner, operator or agent of a ship **to the extent authorized by AS 29.35.010(17) and not otherwise precluded by federal law.**

~~[(b) The city may also collect from the owner, operator or agent of a ship all expenses that relate to the city's effort to collect, including but not limited to:~~

- ~~—— (1) Costs of collection;~~
- ~~—— (2) Attorney's fees and costs;~~
- ~~—— (3) Recorder's fees; and~~
- ~~—— (4) Court costs.]~~

13.10.130 Liability.

Any person violating any of the provisions of this chapter or failing or refusing to comply with a lawful request or demand of the manager authorized or made under this chapter shall be subject to the general penalty provision in KMC 1.02.030.

13.10.140 Use of fees.

The fees **and other amounts** collected under this chapter shall be deposited in the Ketchikan port fund established pursuant to KMC 13.04.050 and applied to pay and reimburse costs heretofore and hereafter incurred **to:**

(a) acquire, lease, develop, construct and equip port facilities or infrastructure and related city facilities or infrastructure that benefit or serve or facilitate the passenger ships and/or their visiting passengers;

(b) improve, maintain, repair or replace existing port equipment, facilities or infrastructure and related city equipment, facilities or infrastructure that benefit or serve or facilitate passenger ships and/or their visiting passengers;

(c) provide services to passenger ships and the passengers on board those ships; or

(d) improve the safety and efficiency of the interstate and foreign commerce activities in which the passenger ships and the passengers on board those ships are engaged.

(e) otherwise facilitate the marine enterprise and associated enterprises of the passengers and passenger ships;

(f) or for any other lawful purpose in any lawful manner. ~~[to acquire, construct and equip port facilities and other city infrastructure and facilities and to pay and reimburse costs of:~~

~~———(a) Services provided, made available to, or required as a result of passenger ships and passengers.]”~~

Section 2: Effective Date. After final passage and publication, this ordinance shall be effective at 12:01 a.m. on November 1, 2021.

PASSED ON FIRST READING _____.

FINAL PASSAGE _____.

Robert Sivertsen, Mayor

ATTEST:

Kim L. Stanker
City Clerk

FYI: Bracketed language is intended to be removed from the existing ordinance, and underlined language in bold type is intended as an addition to the existing Ketchikan Municipal Code.

EFFECTIVE		DATE: *	
ROLL CALL	YEA	NAY	ABSENT
BERGERON			
BRADBERRY			
KIFFER			
FLORA			
GAGE			
GASS			
ZENGE			
MAYOR			