

Presented by: The Manager
Introduced: 04/29/2013
Drafted by: J. W. Hartle

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2013-15(c)

An Ordinance Relating to Parking, Other Violations, Civil Fines and Civil Fine Procedure, and Providing for a Penalty.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Code.

Section 2. Amendment of Section. CBJ 03.30.051 Traffic fine schedule, is amended to read:

03.30.051 Traffic fine schedule.

Pursuant to sections 03.30.010—03.30.015 of this chapter, those of the following traffic offenses which are amenable to disposition without court appearance may be disposed of upon payment of the fines listed to the clerk of the court. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense listed in the following schedule:

TRAFFIC FINE SCHEDULE

CBJ	Offense	Fine
72.01	Duties and Authorities	
72.01.090(b)	Pass street barricade	25.00
...		
72.02	Rules of the Road	
...
72.02.330	Racing vehicles on highway	MCA + 300.00
72.02.395	Riding on bicycles	25.00
...		

Chapter 72.12	Parking	
72.12.080	Residential use of vehicles prohibited	25.00
72.14	Parking Payment Equipment	
72.14.035	Tampering with parking payment equipment	MCA
...		

Section 3. Amendment of Section. CBJ 03.30.052 Boat harbor fine schedule, is amended to read:

03.30.052 - Boat harbor fine schedule.

Pursuant to sections 03.30.010—03.30.015 of this chapter, those of the following boat harbor offenses which are amenable to disposition without court appearance may be disposed of upon payment of the fines listed to the clerk of the court. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense listed in the following schedule:

BOAT HARBOR FINE SCHEDULE

CBJ	Offense	No. of Offenses	Fine
85.25.020	Fail to identify vessel	Any	25.00
...			

Section 4. Amendment of Section. CBJ 03.30.053 Health and sanitation fine schedule, is amended to read:

03.30.053 Health and sanitation fine schedule.

Pursuant to sections 03.30.010—03.30.015 of this chapter, the following health and sanitation offenses are amenable to disposition without court appearance and may be disposed of upon payment of the fines to the clerk of the court. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense listed in the following schedule.

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HEALTH AND SANITATION FINE SCHEDULE

CBJ	Offense	No. of Offenses	Fine
...			
36.20.055	Storage and disposal of appliances	1 st	100.00
		2 nd within 2 years	250.00
		3 rd and subseq. within 2 years	MCA
36.20.057	Barbed wire fence	1 st	250.00
		2 nd within 2 years	500.00
		3 rd and subsequent	MCA
...			

Section 5. Amendment of Section. CBJ 03.30.055 Woodsmoke control fine schedule, is amended to read:

03.30.055 Reserved.

Section 6. New Article. A new Article IV. Violations; Civil Fines, is created at CBJ 03.30.070 – CBJ 03.30.85, to read:

03.30.070 Violations; civil fines.

(a) Notwithstanding any provision of the CBJ Code to the contrary, the offenses listed in the table below shall be considered violations subject to a civil fine not to exceed that set forth in the table below; payment of the listed civil fine shall be accepted in satisfaction of the violation; and the violation shall be subject to the procedure set forth in CBJ 03.30.075 – 03.30.085:

CBJ	Type of Violation	Civil Fine
	JUNEAU INTERNATIONAL AIRPORT	
05.10	Airport Operations	
05.10.050(g)	Airport parking	25.00
	HEALTH AND SANITATION	
36.20	Nuisances	

CBJ	Type of Violation	Civil Fine
36.20.056	Bear attraction nuisance	
	1st offense	50.00
	2 nd offense within 2 years	100.00
	3 rd offense within 2 years, and subseq.	300.00
36.40	Solid Fuel-Fired Burning Devices	
36.40.040(b)	Burning during air pollution emergency condition	
	1 st offense	100.00
	2 nd offense	200.00
	3 rd and subseq.	300.00
36.40.060(a)	Open burning within smoke hazard area prohibited from November 1 to March 31; burning without a permit; in violation of a permit; which creates a danger or nuisance, etc.	
	1 st offense	100.00
	2 nd offense	200.00
	3 rd and subseq.	300.00
36.40.080(a)	Solid fuel-fired heating device-combustion of materials other than paper, cardboard, or untreated wood	
	1 st offense	100.00
	2 nd offense	200.00
	3 rd and subseq. offense	300.00
36.40.080(b)	Visible smoke emissions	
	1 st offense	100.00
	2 nd offense	200.00

CBJ	Type of Violation	Civil Fine
	3 rd and subseq.	300.00
	TRAFFIC VIOLATIONS	
72.01	Duties and Authorities	
72.01.070	Violate Traffic Control Device	25.00
72.02	Rules of the Road	
72.02.340	Stop, stand, park—highway (excluding (d)(1)(B); and (d)(1)(L) below.	25.00
72.02.340(d)(1)(B)	Stop, stand or park a vehicle - On a sidewalk	35.00
72.02.340(d)(1)(L)	Stop, stand or park a vehicle - In a designated handicapped zone	100.00
72.02.365	Additional parking regulations	25.00
72.02.367(b)	Loading zone signs	50.00
72.02.368	Freight loading zone	50.00
72.02.372	Public carrier stops	50.00
72.12	Parking	
72.12.010	Parking not to obstruct traffic	25.00
72.12.035	Parking of trailers restricted	25.00
72.12.070	Off-street parking place—owner or lessee permitted to remove unauthorized vehicles	25.00
72.12.076	Additional restrictions in time-limited parking spaces	25.00
72.14	Parking Payment Equipment	
72.14.020	Improper parking; vehicle other than motor vehicle	25.00
72.14.025	Failure to deposit money	25.00
	WATERS AND HARBORS	
Title 85	Boat Harbor	

CBJ	Type of Violation	Civil Fine
85.10.050(k)	Violate posted parking	\$25.00
85.20.030(a)	Boat launch ramp fee and permit required	\$75.00
85.25.010	Fail to register	\$25.00

(b) Late Payment Fee. The above civil fines shall be increased by an additional fifteen dollars (\$15.00) in the event that the fine is not paid in full within thirty (30) days of the date the notice of violation was issued. In computing the thirty (30) day period, the period during which a properly filed and timely appeal is pending shall not be considered. In addition to the civil fines described above, the violator or presumed violator shall pay all collection and legal costs incurred in collection of a civil fine exclusive of the costs of administrative appeal described in CBJ 03.30.085 and the costs of mailing the notice described in CBJ 03.30.075(b).

(c) Collection of Civil Fines, and Costs. An alleged violator of any of the ordinances described in subsection (a) of this section who has failed to pay all applicable fines, late payment fees, and costs described in this section shall, upon the expiration of any time for appeal, be indebted to the City and Borough in the amount of such fines, late payment fees, and costs. In addition to or in lieu of any other provision for collection of such fines, late payment fees, and costs, the City and Borough may collect these amounts as a debt and may use such collection services and methods as are determined by the manager.

03.30.075 Violations; responsibility and penalty.

(a) Penalty for Violation. Any person, firm, or corporation who violates any of the ordinances listed in CBJ 03.30.070(a), shall be guilty of a violation, and upon conviction thereof, shall be punished by a civil fine in the amount set forth in CBJ 03.30.070(a). Any person given notice of a violation subject to a civil fine shall have the option of paying the civil fine by mail at the address listed on the notice, or contesting the violation as set forth below.

(b) Notices of Violation. Code enforcement officers are authorized to give notice to persons accused of violating an ordinance listed in CBJ 03.30.070(a) by delivering notices of violation to such persons, or, in cases where vehicles without drivers are parked or stopped in violation of CBJ Code listed in CBJ 03.30.070(a), by affixing a notice of violation to the vehicles by means of which the alleged violation occurred, or, in appropriate cases, by conspicuously affixing the notice to a house or other building or property where the alleged violation occurred, or by delivering the notice by certified mail. The notices of violation shall include at least the following:

- (1) A brief description of the violation;
- (2) The registration number and/or other identification of the vehicle, house, or other building, if available;

- (3) The approximate time and place of the violation;
- (4) The civil fine for the violation;
- (5) The City and Borough office and address where the civil fine must be paid;
- (6) A statement that unless an appeal is filed within twenty (20) days from the date of notice of the violation or the civil fine is paid within thirty (30) days of the violation an additional fee of fifteen dollars (\$15.00) will be imposed;
- (7) A brief description of the procedure for appealing the notice of violation, the office where such appeal must be filed and the time for filing an appeal;
- (8) A notice that timely payment of the civil fine will waive all rights to appeal or contest the notice of violation or civil fine;
- (9) A notice that the person has a right to an administrative hearing at which the person may be represented by counsel, confront and question witnesses, testify, and subpoena witnesses;
- (10) A notice that failure to timely and properly file an appeal or pay the civil fine will be deemed an admission of the violation, will waive all rights to appeal or contest the notice of violation or civil fine, will cause the civil fine and late payment fee to become immediately due and payable, and will subject the person to additional collection costs if the civil fine and fee are not paid; and
- (11) Such other relevant information as the manager may require.

(c) Failure to timely pay the civil fine shown on the notice of violation or failure to timely and properly appeal the notice of violation shall constitute a waiver of all right to appeal or contest the notice of violation, shall be deemed an admission of the violation described in the notice of violation, and shall cause the civil fine and late payment fee described in CBJ 03.30.070 to become immediately due and payable. Timely payment of the civil fine will waive all rights to appeal or contest the notice of violation or civil fine.

(d) Additional Notice. If the civil fine set forth in CBJ 03.30.070(a) has not been paid within thirty (30) days from the date the notice of violation was issued and if a timely appeal has not been filed, an additional notice shall be sent to the person alleged to have been in violation. The notice shall contain:

- (1) A brief description of the violation;
- (2) The registration number and/or other identification of the vehicle if available;
- (3) The approximate time and place of the violation;
- (4) A statement that the civil fine and additional fee of fifteen dollars (\$15.00) is due;

- (5) A statement that the time for appeal has passed unless within ten (10) days from the date the notice was mailed the person files a written appeal and proves to the hearing officer by satisfactory evidence that the person did not receive the notice of violation and that the failure to receive the notice was not the result of any act or omission of the person, of any registered owner of the vehicle, or of anyone else who operated the vehicle with the consent of any registered owner;
- (6) A brief statement of the procedure for appealing and the address where any such appeal must be filed;
- (7) The City and Borough office and address where the civil fine and fees may be paid; and
- (8) Such other relevant information as the manager may require.

03.30.080 Violations hearing officer.

(a) The function of violations hearing officer ("hearing officer") is hereby created. The violations hearing officer shall be the manager, or such person as the manager may designate. The hearing officer shall have authority and jurisdiction to dispose of cases arising out of violations of ordinances listed in CBJ 03.30.070(a).

(b) The hearing officer shall hear appeals under CBJ 03.30.085.

03.30.085 Administrative appeal.

(a) Right to Appeal Notice of Violation. Any person to whom a notice of violation as described in CBJ 03.30.075(b) or 03.03.075(d) has been issued, and any person who is the registered owner of a vehicle or other property to which a notice of violation was affixed, may appeal the notice of violation in the manner set forth below.

(b) Time for Appeal. Within twenty (20) days of the date the notice of violation was issued, any person appealing a notice of violation shall file with the hearing officer a written appeal. Failure to file a written appeal within the time limits set forth above shall waive any right to appeal or contest the notice of violation or the penalties, fees and costs imposed for the violation.

(c) Contents of Written Appeal. The written appeal must be on a form provided by the hearing officer and shall state:

- (1) The name and mailing address of the appellant;
- (2) The number or other sufficient identification of the notice of violation;
- (3) A description of the vehicle, if the alleged violation involved a vehicle;
- (4) Any facts, documents, photographs, witness statements or other evidence supporting the appeal;

- (5) A statement of the reasons for the appeal;
- (6) A statement as to whether the appellant requests a hearing before a hearing officer or desires to have the hearing officer decide the matter without a hearing. Unless a hearing is requested, the appellant's rights to a hearing, to be represented by counsel at appellant's cost, and the opportunity to present evidence and to examine and cross-examine witnesses will be waived. If the appellant waives the hearing, the hearing officer may determine the case based upon the written statements of the appellant, the issuing officer and any witnesses and upon the hearing officer's own observations;
- (7) The signature of the appellant and the date of signing; and
- (8) Such other relevant information as the manager may require.

(d) Hearing Procedures.

- (1) Date. Unless otherwise agreed by the appellant and the hearing officer any hearing requested pursuant to this section shall take place no later than thirty (30) days from the date the written notice of appeal is filed with the City and Borough.
- (2) Procedure. The City and Borough shall bear the burden of proof by clear and convincing evidence. The hearing shall be conducted informally and may be governed by such rules and procedures as the hearing officer may choose to establish, except that:
 - (A) Parties may appear in person or by telephone at their own expense. An appellant may represent himself or herself, or hire a duly licensed attorney to represent them in the hearing;
 - (B) Parties may present witnesses and evidence on their own behalf;
 - (C) Parties or their counsel may cross-examine opposing witnesses on matters relevant to the issues, impeach witnesses regardless of which party first called the witness to testify, and rebut evidence against them;
 - (D) The hearing procedure shall not be bound by the formal rules of evidence. The hearing officer may consider evidence which the officer reasonably deems to be relevant and material to the contested issue. 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 which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence the proponent can procure by reasonable efforts;

- (E) All proceedings shall be open to the public;
- (F) All parties shall have the right to subpoena witnesses and documents using a form provided by the municipal clerk and submitted to the clerk for issuance at least five (5) working days before the date of the hearing;
- (G) The hearing shall be memorialized by an electronic recording or a stenographic record; and
- (H) Failure of an appellant to appear at a hearing when such hearing has been requested by appellant shall waive all right to a hearing and shall render the amount of the fines, penalties and costs due and owing.

(e) Scope of Review. The hearing officer's decisions shall be based solely upon the law and the facts applicable to the case. If a violation is legally determined to have occurred, the hearing officer shall not substitute his or her judgment for that of the enforcement officer or parking enforcement officer as to whether a notice of violation should have been issued. If a violation is legally determined to have occurred, the hearing officer shall furthermore not substitute his or her judgment for the assembly or manager regarding the regulation or ordinance.

(f) Decision. The hearing officer may exercise reasonable discretion in deciding the appeal. The hearing officer may dismiss the violation when necessary in the interest of justice. The hearing officer shall promptly issue a written or oral decision on the record.

(g) Payment. If the hearing officer upholds the notice of violation, the appellant shall pay the civil fine, any applicable late fees, and costs of collection within fifteen (15) days of the decision unless a timely request for reconsideration is filed.

(h) Reconsideration and Appeal. The decision of the hearing officer reached at the conclusion of a quasi-judicial proceeding or administrative hearing may be reconsidered or reheard only if:

- (1) There was substantial procedural error in the original proceedings;
- (2) The hearing officer acted without jurisdiction; or
- (3) The original decision was based on fraud or misrepresentation.

Any person seeking reconsideration or rehearing must file a request with the municipal clerk together with the materials supporting one or more of the grounds stated above within fifteen (15) days of the decision for which reconsideration or rehearing is requested. A rehearing shall be conducted in the same manner as the original proceeding. The decision of the hearing officer may be appealed to the superior court pursuant to the Alaska Rules of Court, Appellate Rules, if such appeal is filed within thirty (30) days of the issuance of the decision.

Section 7. Amendment to Section. CBJ 36.20.056 Bear attraction nuisance, is amended to read:

36.20.056 Bear attraction nuisance.

...

- (b) *Classification of offense.* Violation of this section is:
 - (1) A class A misdemeanor if the offense is committed intentionally, knowingly, or recklessly;
 - (2) A class B misdemeanor if the offense is committed with criminal negligence;
 - (3) A violation, subject to a civil fine, if the offense is not committed intentionally, knowingly, recklessly, or with criminal negligence;
 - (4) Terms in this subsection identifying culpable mental states shall have the meaning ascribed to them in CBJ 42.05.010.
- (c) *Reserved.*
- (d) *Defenses.*

...

Section 8. Amendment to Section. CBJ 36.40.090 Penalties, is amended, to read:

36.40.090 Penalties.

- (a) Violation of any section of this chapter is a violation, subject to a civil fine.
- (b) *Reserved.*

Section 9. Amendment to Section. CBJ 72.02.368 Freight loading zones, is amended, to read:

72.02.368 Freight loading zones.

...

(c) During the period May 1 through September 30, between the hours of 12:01 a.m. and 6:00 a.m., and the hours of 11:00 a.m. and 12:00 midnight, no person shall load or unload freight on or across a pedestrian way except to or from a designated freight loading zone. For purposes of this section, "pedestrian way" shall have the meaning set forth in CBJ 62.10.020(n).

Section 10. Amendment to Section. CBJ 72.14.050 Penalties, is amended, to read:

72.14.050 Penalties.

Violation of section 72.14.020 or section 72.14.025 is a violation, subject to a civil fine pursuant to CBJ 03.30.070(a). Violation of section 72.14.035 is a Class B misdemeanor.

Section 11. Amendment to Section. CBJ 85.20.030 Boat launch ramp fee and permit required; penalty, is amended to read:

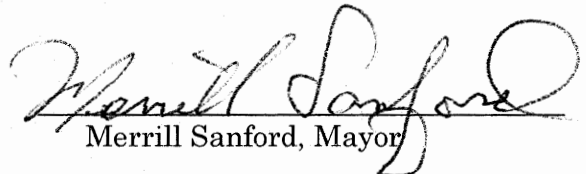
85.20.030 Boat launch ramp fee and permit required; penalty.

(a) Any person using one or more of the Douglas Harbor Boat Launches, the Harris Harbor Boat Launch, the North Douglas Boat Launch, the Statter Harbor Boat Launch, the Tee Harbor Boat Launch, the Amalga Harbor Boat Launch, the Echo Cove Boat Launch, or the Auke Bay Landing Craft Freight Ramp, to launch and recover recreational vessels, or use of the launch ramp for access by off-highway or other vehicles, or for any type of commercial use, must pay the applicable fee as provided by regulation and must display the launch ramp permit provided by docks and harbors upon payment of the fee.

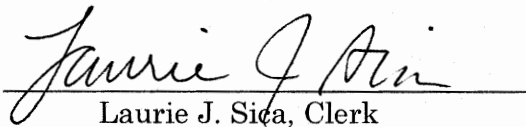
(b) Use of a boat launch ramp in violation of this section is a violation, subject to a civil fine.

Section 12. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 13th day of May, 2013.


Merrill Sanford, Mayor

Attest:


Laurie J. Sica, Clerk