


TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Delilah A. Walsh, City Manager Initials: 

DATE: December 28, 2022 File # MGR22-096

RE: **Ordinance No 23-1958 – Amending the Ketchikan Municipal Code §13.09.025 to Provide for Use of Lottery System to Award Port Dock Vendor Leases**

The attached ordinance was prepared by the Legal Department in conjunction with the Ports & Harbors Department and Manager's Office. The Ports & Harbors Director Darryl Verfaillie, with my concurrence, asked that it be placed before the City Council for consideration at its meeting of January 5, 2023.

If adopted by the City Council in first reading, Ordinance No. 23-1958 provides for enacting a lottery system, rather than a sealed bid system, to award annual dock vendor leases.

In my review of the program history, it is my understanding that the original intent was to allow for local tour and guide vendors, particularly those without storefronts, to have periodic opportunities to occupy a dock booth. However, the bidding process and past practices under the KMC have allowed for legacy users rather than providing an opportunity for all local independent tour operators. Mr. Verfaillie has provided further information in his attached memorandum.

The change would create a lottery system in which vendors would submit an application and related application fee and vendors are selected in a blind public lottery within a pool of valid and complete applicants.

With a reset of the regular cruise season, now is an ideal time to try something new to better align with the original intent of the program. As this would be a change to the KMC, we have the opportunity for public input and public comment. Of course, determining and achieving the will of the Council is our objective.

No matter the method of selection of dock vendors, the leases will be updated to ensure clear operational objectives of the program as well as clear guidelines to the awarded lessors. The City as well as our tour operators all want to ensure a positive experience for cruise visitors to the City of Ketchikan.

Mr. Verfaillie will be attending the City Council meeting on January 5, 2023 and I will attend for this portion of the discussion via WebEx to address any questions and/or concern that Councilors may have.

A motion has been prepared for City Council consideration.

Recommended Motion:

I move the City Council approve the first reading of Ordinance № 23-1958 amending the Ketchikan Municipal Code Section 13.09.025 to provide for the lease of dock vending locations by lottery; and establishing an effective date.



**2933 Tongass Avenue
Ketchikan, Alaska 99901
Phone (907) 228-5632
Fax (907) 247-3610**

MEMORANDUM

TO: Delilah A. Walsh, City Manager

CC: Myrna Johannsen, Executive Assistant

FROM: Darryl Verfaillie, Port and Harbors Director

DATE: 15 December 2022

SUBJECT: USE OF LOTTERY TO AWARD PORT DOCK VENDOR LEASES

Prior to the opening of the 2022 Cruise Ship Season, a review of the existing Dock Vendor Lease Award process drew my attention and garnered much discussion between the staff and several community members, with regard to the mechanics of awarding leases and the larger overall “intent” of the program. From its inception, it appears that the program was created to generate opportunities for local businesses to maximize the use of community-owned infrastructure, rather than focusing the program on generating a revenue stream for the Port. With this in mind, it became readily apparent – right from the start – that the existing sealed-bid process created significant disparities among potential users. In some instances, there were monetary differences exceeding \$39,000 per season between the highest and lowest award recipients, for which the recipients received identical services and facilities provided by the Port of Ketchikan. These disparities were further exacerbated by the appearance of collusionary practices among some past lease holders that had the potential to secure an advantage over other bidders. The result of these practices may have inadvertently created a sustained/long term environment of exclusion, thereby limiting the potential for smaller or newer businesses from being competitive when bidding as individual entities.

As such, a review of archived Dock Vendor Program Contracts between 2004 and 2022 was conducted to either dispel or support this hypothesis. As a result, it was quickly noted that the Dock Vendor Program had changed very little over its nearly two decades of implementation. As previously noted in a July 1, 2022 Memo to Council, a records review over the past 10 years indicated that (essentially) the same six independent tour operators (ITOs) had been awarded all six leases since 2012. Additional paper-records indicated several of these same six ITOs, had held dock vendor leases as far back as 2004 – all while under the sealed-bid award process.

RECOMMENDATION: After nearly two decades, it is time to conduct a hard reset of the vendor program and return to the program’s original purpose of generating opportunities for local small businesses over generating revenue for the City. The use of a lottery system will unquestionably; level the playing field for all ITOs, eliminate perceived bias in the award process, provide an equitable fiscal environment for all applicants, and provide an opportunity for 1st time ITOs to benefit from the City’s largest economic driver – the Port of Ketchikan.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 23-1958

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AMENDING SUBSECTION (C)(1) OF THE KETCHIKAN MUNICIPAL CODE SECTION 13.09.025 ENTITLED, “LEASE OF DOCK VENDING LOCATIONS”; AND TO PROVIDE FOR THE LEASE OF SUCH LOCATIONS BY LOTTERY; AND ESTABLISHING AN EFFECTIVE DATE.

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

Section 1: Amendment. Subsection (c)(1) of Section 13.09.025 of the Ketchikan Municipal Code, entitled “Lease of dock vending locations,” is hereby amended to read as follows:

“Process for Awarding Leases. The city will award leases in the following manner:

(1) The city manager may award leases for dock vendor areas by ~~[sealed competitive bids]~~ **lottery** after such notice as the manager deems feasible. The city manager may also award leases in the same ~~[sealed competitive bid]~~ manner if the number of lessees offering tours falls below six, or the number of lessees selling food falls below two, or in the alternative may award such leases to the next ~~[highest qualified bidder]~~ **in order eligible lottery participant** that submitted a responsive ~~[bid]~~ **application** pursuant to the original ~~[bid]~~ **lottery** solicitation. **The city manager shall determine the terms and conditions of the lottery except that the city council shall establish the lease rental amount by resolution.**

Section 2: Effective Date. This ordinance is effective one (1) month after its final passage and publication.

PASSED ON FIRST READING _____.

FINAL PASSAGE _____.

Dave Kiffer, 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 |
| BRADBERRY | | | |
| FINNEGAN | | | |
| FLORA | | | |
| GAGE | | | |
| GASS | | | |
| KISTLER | | | |
| MAHTANI | | | |
| MAYOR | | | |