



Kenai City Council - Regular Meeting

March 18, 2020 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

AGENDA

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS

(Public comment limited to ten (10) minutes per speaker)

C. UNSCHEDULED PUBLIC COMMENTS

(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)

D. PUBLIC HEARINGS

1. **Resolution No. 2020-15** – Extending the Disaster Emergency Declaration for the City of Kenai made on March 18, 2020 in Response to the COVID-19 Pandemic. (City Manager)
2. **Ordinance No. 3114-2020** – Authorizing the Suspension and Modification of Various Sections of Kenai Municipal Code Regarding Council Meetings and Other Public Meetings and Participation in order to Protect the Health Safety and Welfare of Our City and Declaring and Emergency. (Legal)
 1. Motion for Introduction
 2. Motion for Second Reading (Requires a Unanimous Vote)
 3. Motion for Adoption (Requires Five Affirmative Votes)
3. **Ordinance No. 3106-2020** - Amending Title 11 - Harbor and Harbor Facilities, to Remove Provisions that are No Longer Historically Relevant, Recognize Changes

to Other Chapters of City Code That Now Provide for Lease and Sale of Harbor Lands and Provide the Harbor Commission a Platform to Move Forward. (Council Members Peterkin and Glendening)

- 4. Ordinance No. 3110-2020** - Amending Kenai Municipal Code Section 23.55.030 - Qualification Pay, to Add Additional Qualification Pay Items to the List of Those for Which Employees Continue to Receive While on Annual Leave or When Receiving Holiday Pay. (Administration)
- 5. Ordinance No. 3111-2020** - Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Blazy Construction, Inc. (Administration)
- 6. Ordinance No. 3112-2020** - Increasing Estimated Revenues and Appropriations in the Airport Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Kirila Fire, Inc. (Administration)
- 7. Resolution No. 2020-14** - Approving the Execution of a Lease of Airport Reserve Lands Using the Standard Lease Form Between the City of Kenai and Schilling Rentals, LLC for Lot 5A, Block 1, FBO Subdivision 2018 Replat. (Administration)
- 8. Resolution No. 2020-16** – Supporting the Appointment of Robert Ruffner to the Alaska Board of Fisheries. (Mayor Gabriel)

E. MINUTES

- 1.** *Regular Meeting of March 4, 2020 (City Clerk)

F. UNFINISHED BUSINESS

G. NEW BUSINESS

- 1. *Action/Approval** - Bills to be Ratified. (Administration)
- 2. *Action/Approval** - Purchase Orders Over \$15,000. (Administration)
- 3. *Action/Approval** - Non-Objection to the Renewal of the Liquor License for American Legion Post #20. (City Clerk)
- 4. *Ordinance No. 3113-2020** - Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund, and Authorizing an Increase to the Design Agreement with Wince Corthell Bryson. (Administration)
- 5. Action/Approval** - Special Use Permit to State of Alaska Department of Natural Resources - Forestry Division, for Aircraft Loading and Parking. (Administration)
- 6. Action/Approval** - Adopt a New City Logo. (City Manager)
- 7. Discussion** - Set Dates for Council Employee Evaluations. (Mayor Gabriel)

8. Discussion - Parks and Recreation Commission and City Council Student Representative Policies. (Vice Mayor Molloy)

9. Discussion - Public Official Financial Disclosure Statements. (Vice Mayor Molloy)

10. Action/Approval – Support the City Manager’s Emergency Disaster Declaration. (City Manager)

H. COMMISSION / COMMITTEE REPORTS

1. Council on Aging
2. Airport Commission
3. Harbor Commission
- 4.** Parks and Recreation Commission
5. Planning and Zoning Commission
6. Beautification Committee
7. Mini-Grant Steering Committee

I. REPORT OF THE MAYOR

J. ADMINISTRATION REPORTS

- 1.** City Manager
2. City Attorney
3. City Clerk

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comment limited to five (5) minutes per speaker*)
2. Council Comments

L. EXECUTIVE SESSION

1. Discussion of the Facility Management Agreement for the Kenai Visitor and Cultural Center, pursuant to AS 44.32.310(c)(1)(3) a matter of which the immediate knowledge may have an adverse effect upon the finances of the City, and a matter by which law, municipal charter, or ordinance are required to be confidential.

M. PENDING ITEMS

N. ADJOURNMENT

O. INFORMATION ITEMS

1. Purchase Orders Between \$2,500 and \$15,000.

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.



Sponsored by: Council Members Glendening and Peterkin

CITY OF KENAI

ORDINANCE NO. 3106-2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING TITLE 11 – HARBOR AND HARBOR FACILITIES, TO REMOVE PROVISIONS THAT ARE NO LONGER HISTORICALLY RELEVANT, RECOGNIZE CHANGES TO OTHER CHAPTERS OF CITY CODE THAT NOW PROVIDE FOR LEASE AND SALE OF HARBOR LANDS AND PROVIDE THE HARBOR COMMISSION A PLATFORM TO MOVE FORWARD.

WHEREAS, on January 6, 1977 the state conveyed certain tidelands and submerged lands to the City; and,

WHEREAS, with the conveyance came responsibilities for the City including surveying, platting and adjudication of commercial fisheries rights; and,

WHEREAS, many of these responsibilities, codified in Title 11-Harbor and Harbor Facilities, were required to be completed within a two-year period or less; and,

WHEREAS, there is no longer a need to maintain in City Code, ordinances pertaining to a process that expired over 30 years ago; and,

WHEREAS, the City recently updated Title 22-City Owned Lands, which now encompasses the sale, lease and acquisition of harbor lands, negating the need for separate provisions for the same in Title-11; and,

WHEREAS, the City's Harbor Commission has long recognized a need for clarification and focus in its duties; and,

WHEREAS, the most recent review of Title 11 by the Harbor Commission and its subcommittee in 2019, recommended many revisions to the Title recognizing the expertise of other City bodies in land use and planning and a desire to focus on regulation of the harbor and its associated activities; and,

WHEREAS, removing provisions from Title 11 that are no longer necessary is intended to be the first step in allowing the Harbor Commission to focus on harbor related projects and activities and move forward with future potential recommended code changes relevant to such projects and activity; and,

WHEREAS, the Harbor Commission at its meeting on _____ recommended _____ of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. Amendment of Title 11 of the Kenai Municipal Code: That Kenai Municipal Code, Title 11 – Harbor and Harbor Facilities, is hereby amended as follows:

Title 11

HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master**
- 11.10 Harbor Commission**
- 11.15 Tidelands**
- 11.20 Leasing of Tidelands**

Chapter

11.05

HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.**
- 11.05.020 Harbor ~~[D]~~Defined.**
- 11.05.030 Harbor ~~[R]~~Regulations.**
- ~~[11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.~~**
- 11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.**
- 11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.**
- 11.05.070 FACILITY RATES AND CHARGES.]**
- 11.05.080 Leasing ~~[N]~~Not ~~[P]~~Prohibited.**
- 11.05.090 Use of ~~[L]~~Launch ~~[R]~~Ramp and ~~[F]~~Float.**
- 11.05.100 No ~~[W]~~Wake ~~[Z]~~Zones.**

11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law.

11.05.020 Harbor [D]Defined.

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor [R]Regulations.

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

[11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.

(A) ALL LESSEES, OWNERS, OR OCCUPANTS OF PROPERTY WITHIN THE HARBOR OR CONTIGUOUS TO IT WHO WISH TO CONSTRUCT OR OPERATE TERMINAL OR TRANSPORTATION FACILITIES OF ANY KIND THEREIN, INCLUDING, BUT NOT LIMITED TO, DOCKS AND WAREHOUSES, SHALL APPLY TO THE LANDSCAPING/SITE PLAN REVIEW BOARD FOR A PERMIT. APPLICATION THEREFOR SHALL BE MADE IN ACCORDANCE WITH REGULATIONS DESCRIBED IN KMC 14.25, ENTITLED "LANDSCAPING/SITE PLAN REGULATIONS," AND SHALL BE ACCOMPANIED BY A PLAN OF THE PROPOSED CONSTRUCTION, WHICH SHALL MEET ALL STANDARDS AND REQUIREMENTS WHICH MAY BE SET FORTH BY THE COUNCIL.

(B) THE APPLICANT SHALL REFER ALL PLANS OF THE TYPE OR LOCATION OF ANY PROPOSED CONSTRUCTION WHICH ARE OR MAY BE IN CONFLICT WITH THE GENERAL CITY PLAN TO THE HARBOR COMMISSION AND THE LANDSCAPING/SITE PLAN REVIEW BOARD TO DETERMINE WHETHER SUCH PROPOSED CONSTRUCTION IS IN KEEPING WITH THE OBJECTIVES OF THE GENERAL PLAN. THE DECISION OF THE LANDSCAPING/SITE PLAN REVIEW BOARD SHALL BE BINDING UNLESS APPEALED BY COUNCIL. THE BUILDING OFFICIAL MAY ISSUE PERMITS UPON SUCH TERMS AND CONDITIONS AND FOR SUCH DURATION AS IT MAY DEEM PROPER, AND NO CONSTRUCTION MAY BEGIN OR OPERATION CARRIED ON WITHOUT A PERMIT FROM THE BUILDING OFFICIAL.]

[11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.

IT SHALL BE A CONDITION OF ALL PERMITS GRANTED BY THE CITY COUNCIL THAT THE FACILITIES TO BE CON-STRUCTED AND THE SERVICES TO BE SUPPLIED IN CONNECTION WITH THEM SHALL BE MADE AVAILABLE TO ALL CARRIERS UPON EQUAL TERMS, AT EQUAL RATES, AND WITHOUT DISCRIMINATION OF ANY KIND.]

[11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.

THE CITY COUNCIL MAY INQUIRE INTO THE MANNER IN WHICH OBLIGATIONS UNDER THE PERMITS ISSUED BY IT ARE CARRIED OUT, AND INTO THE RATE SCHEDULES AND PRACTICES OF THE PERMIT HOLDERS FOR PURPOSES OF DETERMINING WHETHER THE PROVISIONS OF THE PERMITS ARE BEING COMPLIED WITH. IT SHALL HAVE ACCESS TO BOOKS AND RECORDS AND TO TERMINAL AND TRANSPORTATION FACILITIES AS MAY BE REASONABLY NECESSARY TO ENABLE IT TO MAKE SUCH A DETERMINATION. SHOULD THE COUNCIL AT ANY TIME FIND THE PERMIT HOLDER IS NOT COMPLYING WITH THE TERMS OF HIS OR HER PERMIT, IT MAY CANCEL THE PERMIT UPON SUCH NOTICE AND IN ACCORDANCE WITH SUCH PROCEDURE AS IT MAY, BY REGULATION, PRESCRIBE.]

[11.05.070 FACILITY RATES AND CHARGES.

THE CITY SHALL FIX THE RATES AND CHARGES FOR THE USE OF ANY AND ALL TERMINAL OR TRANSPORTATION FACILITIES CONSTRUCTED ON PROPERTY UNDER ITS JURISDICTION, INCLUDING CHARGES ASSESSED AGAINST VESSELS, THEIR OWNERS, AGENTS OR OPERATORS WHICH LOAD OR DISCHARGE CARGO AT ANY OF THE TERMINALS WITHIN THE HARBOR AREA; CHARGES FOR BERTHAGE WHILE LOADING OR DISCHARGING CARGO; CHARGES FOR ADMINISTRATIVE EXPENSES IN SERVING THE CARRIER'S CHARGES FOR FREIGHT HANDLING, LOADING, UNLOADING AND WHARF DEMURRAGE RATES. SUCH RATES AND CHARGES SHALL BE JUST AND REASONABLE. THE RATES AND CHARGES SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL.]

11.05.080 Leasing [N]Not [P]Prohibited.

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations.

11.05.090 Use of [L]Launch [R]Ramp and [F]Float.

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC 11.05 within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).
- (c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.

- (d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC 13.05.010(b).
- (e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties.

11.05.100 No [W]Wake [Z]Zones.

- (a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.
- (b) No wake zones may be established on a temporary or permanent basis.
- (c) A “no wake zone” is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.
- (d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.
- (e) A violation of this section shall be punishable as provided in KMC 13.05.010.

Chapter

11.10

HARBOR COMMISSION

Sections:

11.10.010 Duties and [P]owers.

11.10.010 Duties and [P]Powers.

- (a) The Harbor Commission shall be required to do the following:
 - (1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission’s recommendations for the development of the City Harbor facilities may include, among other things:
 - (i) development of the type, location, and sequence of all public harbor facilities;
 - (ii) the relocation, removal, extension, or change of use of existing harbor facilities;
 - (2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

(3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.

[(4) ACT IN THE CAPACITY AS DIRECTED AND AUTHORIZED BY A TIDELANDS ORDINANCE ADOPTED BY THE CITY.]

[(5)4] Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.

[(6)5] Make and prepare reports and plans for approval by the City Council.

[(7)6] Coordinate public efforts, individual and group, to the effectuation of approved plans.

[(8)7] Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council.

Chapter

11.15

TIDELANDS

Sections:

11.15.010 Short [T]Title.

[11.15.020 DEFINITIONS.]

11.15.030 Approval and [A]Acceptance of State [C]Conveyance.

11.15.040 Approval and [A]Adoption of [S]Subdivision [P]Plat.

[11.15.050 TIME AND PLACES OF POSTING PLAT.

11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.

11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.

11.15.080 PROCEDURE FOR FILING APPLICATIONS.

11.15.090 INITIAL REVIEW BY COMMISSION.

11.15.100 PRELIMINARY PLAT.

11.15.110 PRELIMINARY PLAT REQUIREMENTS.

11.15.120 SURVEY PROCEDURE.

11.15.130 PROCEDURE ON FINAL PLAT.

11.15.140 FINAL PLAT REQUIREMENTS.

11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.

11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.

11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.

11.15.180 APPRAISAL.

11.15.190 REVIEW BY CITY ENGINEER.

11.15.200 RECOMMENDED APPROVAL BY COMMISSION.

- 11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.**
- 11.15.220 DEEDS—PERMANENT REGISTER.**
- 11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.**
- 11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.**
- 11.15.250 DETERMINATION UPON STIPULATION OF FACTS.**
- 11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.**
- 11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.**
- 11.15.280 FORFEITURE OF PREFERENCE RIGHTS.**
- 11.15.290 FORMS.]**

11.15.010 Short [T]Title.

This ordinance shall be known as the “Kenai Tidelands Ordinance.”

[11.15.020 DEFINITIONS.

FOR THE PURPOSE OF THIS ORDINANCE, THE TERMS DEFINED HEREIN SHALL HAVE THE MEANING PROVIDED UNLESS THE CONTEXT REQUIRES OTHERWISE:

- (A) “ALASKA” MEANS THE STATE OF ALASKA.
- (B) “AGRICULTURAL LANDS” MEANS TIDELANDS CHIEFLY VALUABLE FOR AGRICULTURAL PURPOSES.
- (C) “ASSESSOR” MEANS THE ASSESSOR OF THE CITY OF KENAI, ALASKA, OR OTHER INDIVIDUAL DESIGNATED BY THE CITY MANAGER TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE ASSESSOR.
- (D) “CITY” MEANS THE CITY OF KENAI, ALASKA.
- (E) “CITY ENGINEER” MEANS THE CITY ENGINEER OF THE CITY, OR OTHER CITY OFFICIAL DESIGNATED TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE CITY ENGINEER.
- (F) “CLASS I PREFERENCE RIGHT” MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS SEAWARD OF A SURVEYED TOWNSITE ON AND PRIOR TO SEPTEMBER 7, 1957, AND WHO HAVE EXECUTED A WAIVER TO THE CITY AND STATE OF ALL RIGHTS SUCH OCCUPANT MAY HAVE HAD PURSUANT TO PUBLIC LAW 85-303. UPON EXECUTION OF THE WAIVER, SUCH PERSONS OR THEIR SUCCESSORS IN INTEREST, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FROM THE CITY FOR CONSIDERATION OF THE COSTS OF SURVEY, AND TRANSFERRING AND CONVEYING THE TITLE.
- (G) “CLASS II PREFERENCE RIGHT” MEANS THE RIGHT EXTENDED TO CLASS I PREFERENCE RIGHT CLAIMANTS WHO REFUSE TO EXECUTE A WAIVER TO THE CITY OF ANY RIGHTS SUCH OCCUPANTS MAY HAVE ACQUIRED PURSUANT TO

PUBLIC LAW 85-303. IT SHALL BE MANDATORY FOR THE CITY TO EXPEDITIOUSLY HONOR THE APPLICATION FROM THE OCCUPANT AFTER THE SECRETARY OF THE ARMY HAS SUBMITTED TO THE SECRETARY OF THE INTERIOR AND GOVERNOR OF THE STATE MAPS SHOWING THE PIERHEAD LINE ESTABLISHED BY THE CORPS OF ENGINEERS WITH RESPECT TO THE TRACT SO GRANTED. THE MOST EXPEDITIOUS METHOD OF SECURING TITLE TO SUCH LANDS IS TO EXECUTE THE WAIVER OF CLASS II RIGHTS AND PROCEED TO APPLY FOR TITLE UNDER A CLASS I PREFERENCE RIGHT.

(I) "CLASS III PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS AFTER SEPTEMBER 7, 1957, AND WHO CONTINUED TO OCCUPY THE SAME ON JANUARY 3, 1959. SUCH PERSONS, OR THEIR SUCCESSORS, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FOR A CONSIDERATION NOT TO EXCEED THE COSTS OF APPRAISAL, AND THE ADMINISTERING AND TRANSFERRING, INCLUDING SURVEY, TOGETHER WITH THE APPRAISED FAIR MARKET VALUE THEREOF, EXCLUSIVE OF ANY VALUE OCCURRING FROM IMPROVEMENTS OR DEVELOPMENT, SUCH AS FILL MATERIAL, BUILDING, OR STRUCTURES THEREON.

(J) "CLERK" MEANS THE CLERK OF THE CITY.

(K) "COMMISSION" MEANS THE CITY OF KENAI ADVISORY HARBOR COMMISSION UNLESS NOTED OTHERWISE.

(L) "DIRECTOR" MEANS THE DIRECTOR OF LANDS, STATE OF ALASKA.

(M) "DIRECTOR'S LINE" MEANS A LINE SEAWARD OF THE CITY, APPROVED BY THE DIRECTOR, WITH THE CONCURRENCE OF THE COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA, SEAWARD OF ALL TIDE AND SUBMERGED LANDS OCCUPIED OR SUITABLE FOR OCCUPATION AND DEVELOPMENT WITHOUT UNREASONABLE INTERFERENCE WITH NAVIGATION.

(N) "FAIR MARKET VALUE" MEANS THE HIGHEST PRICE, DESCRIBED IN TERMS OF MONEY, WHICH THE PROPERTY WOULD BRING IF EXPOSED FOR SALE FOR A REASONABLE TIME IN THE OPEN MARKET, WITH A SELLER, WILLING BUT NOT FORCED TO SELL, AND A BUYER, WILLING BUT NOT FORCED TO BUY, BOTH BEING FULLY INFORMED OF ALL THE PURPOSES FOR WHICH THE PROPERTY IS BEST ADAPTED OR COULD BE USED.

(O) "FILL" SHALL MEAN EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS PLACED UPON TIDE OR CONTIGUOUS SUBMERGED LANDS TO A HEIGHT ABOVE THE HIGH WATER LINE FOR THE PURPOSE OF ELEVATING THE LANDS FOR A SPECIAL USEFUL PURPOSE. EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS, PLACED ON TIDE OR CONTIGUOUS SUBMERGED LAND SOLELY FOR THE PURPOSE OF SPOILS DISPOSAL SHALL NOT BE CONSIDERED FILL

UNLESS SUCH FILL WAS USED FOR USEFUL AND BENEFICIAL PURPOSE ON AND PRIOR TO JANUARY 3, 1959.

(P) "HEARINGS OFFICER" MEANS THAT CITY OFFICIAL EMPLOYED TO HEAR DISPUTES BETWEEN CLAIMANTS, SUMMARIZE THE TESTIMONY, ATTEMPT TO REACH STIPULATIONS OF FACT BETWEEN THE PARTIES, ASSEMBLE THE RECORD OF THE DISPUTE, AND SUBMIT THE SAME TO THE COUNCIL FOR DETERMINATION.

(Q) "IMPROVEMENTS" MEANS BUILDINGS, WHARVES, PIERS, DRY DOCKS, AND OTHER SIMILAR TYPES OF STRUCTURES PERMANENTLY FIXED TO THE TIDE OR CONTIGUOUS SUBMERGED LANDS THAT WERE CONSTRUCTED AND/OR MAINTAINED BY THE APPLICANT FOR BUSINESS, COMMERCIAL, RECREATION, RESIDENTIAL, OR OTHER BENEFICIAL USES OR PURPOSES. FLOATS SECURED BY GUIDE PILES USED AS FLOATING WHARVES, WHERE ACCESS IS PROVIDED TO THE SHORE, SHALL BE IMPROVEMENTS WITHIN THE MEANING OF THIS SECTION, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE OF MEAN HIGH TIDE OF JANUARY 3, 1959 AND ACTUALLY UTILIZED FOR BENEFICIAL PURPOSES ON JANUARY 3, 1959 BY THE APPLICANT SHALL BE CONSIDERED A PERMANENT IMPROVEMENT, BUT IN NO EVENT SHALL FILL BE CONSIDERED A PERMANENT IMPROVEMENT WHEN PLACED ON THE TIDELANDS SOLELY FOR THE PURPOSE OF DISPOSING OF WASTE OR SPOILS. FILL MATERIAL NOT UTILIZED FOR A BENEFICIAL PURPOSE ON AND PRIOR TO JANUARY 3, 1959, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE MEAN HIGH TIDE ON JANUARY 3, 1959 SHALL NOT BE THE BASIS FOR AN APPLICATION, NOR SHALL IT BE INCLUDED IN ANY APPLICATION, FOR THE EXERCISE OF PREFERENCE RIGHTS HEREUNDER.

(R) "INDUSTRIAL AND COMMERCIAL LANDS" MEANS TIDE LANDS CHIEFLY VALUABLE FOR INDUSTRIAL, MANUFACTURING, OR COMMERCIAL PURPOSES.

(S) "KENAI" MEANS THE CITY OF KENAI, ALASKA.

(T) "MANAGER" MEANS THE MANAGER OF THE CITY OF KENAI, ALASKA.

(U) "MEAN HIGH TIDE" AT ANY PLACE SUBJECT TO TIDAL INFLUENCE SHALL BE INTERPRETED AS THE TIDAL DATUM PLANE DERIVED FROM AVERAGING ALL THE HIGH WATERS OBSERVED AT THAT PLACE OVER A PERIOD OF NINETEEN (19) YEARS. MEAN HIGH WATER SHALL BE INTERPRETED TO BE AS THE INTERSECTION OF THE DATUM PLACE OF MEAN HIGH WATER WITH THE SHORE.

(V) "MEAN LOW TIDE" SHALL BE INTERPRETED TO BE MEAN LOWER LOW WATER WHICH IS THE MEAN OF THE LOWER OF THE TWO LOW WATERS OF EACH DAY FOR A TIDAL CYCLE OF NINETEEN (19) YEARS.

(W) "OCCUPANT" MEANS ANY PERSON AS DEFINED HEREIN, OR HIS SUCCESSOR IN INTEREST, WHO ACTUALLY OCCUPIED FOR ANY BUSINESS, RESIDENTIAL, OR OTHER BENEFICIAL PURPOSE, TIDE OR SUBMERGED LAND, WITHIN THE CONVEYANCE OF SUCH BY THE STATE TO THE CITY, ON OR PRIOR TO JANUARY 3,

1959, WITH SUBSTANTIAL PERMANENT IMPROVEMENTS. NO PERSON SHALL BE CONSIDERED AN OCCUPANT BY REASON OF HAVING:

- (1) PLACED A FISH TRAP IN POSITION FOR OPERATION OR STORAGE UPON THE TIDE, SHORE, OR SUBMERGED LAND;
- (2) PLACED A SET NET OR PILING THEREFOR OR ANY OTHER DEVICE OR FACILITY FOR TAKING OF FISH;
- (3) PLACED PILINGS OR DOLPHINS FOR LONG STORAGE OR OTHER MOORAGE;
- (4) PLACED TELEPHONE, POWER, OR OTHER TRANSMISSION FACILITIES, ROADS, TRAILS, OR OTHER CONTIGUOUS SUBMERGED LANDS; OR
- (5) CLAIMED THE LAND BY VIRTUE OF SOME FORM OF CONSTRUCTIVE OCCUPANCY. WHERE LAND IS OCCUPIED BY A PERSON OTHER THAN THE OWNER OF THE IMPROVEMENTS THEREON, THE OWNER OF THE IMPROVEMENTS SHALL, FOR THE PURPOSE OF THIS ORDINANCE, BE CONSIDERED THE OCCUPANT OF SUCH LANDS.

(X) "OCCUPIED OR DEVELOPED" MEANS THE ACTUAL USE, CONTROL, AND OCCUPANCY, BUT NOT NECESSARILY RESIDENCE, OF THE TIDE OR SUBMERGED LAND BY THE ESTABLISHMENT THEREON OF SUBSTANTIAL PERMANENT IMPROVEMENTS.

(Y) "ORDINANCE" MEANS THE KENAI TIDELANDS ORDINANCE.

(Z) "PARK AND RECREATION LANDS" MEANS TIDELANDS CHIEFLY VALUABLE FOR PUBLIC PARK AND RECREATION USE, INCLUDING SCENIC OVERLOOKS.

(AA) "PERSON" MEANS ANY PERSON, FIRM, CORPORATION, COOPERATIVE ASSOCIATION, PARTNERSHIP OR OTHER ENTITY LEGALLY CAPABLE OF OWNING LAND OR ANY INTEREST THEREIN.

(BB) "PIERHEAD LINE" IS A LINE FIXED BY THE CORPS OF ENGINEERS ROUGHLY PARALLEL TO THE EXISTING LINE OF MEAN LOW TIDE AT SUCH DISTANCE OFFSHORE THEREFROM THAT SAID PIERHEAD LINE SHALL ENCOMPASS LANDWARD ALL STATIONARY, MANMADE STRUCTURES UNDER THE AUTHORITY OF PUBLIC LAW 85-303.

(CC) "PREFERENCE RIGHT" SUBJECT TO THE CLASSIFICATIONS THEREOF HEREIN ESTABLISHED MEANS THE RIGHT OF AN OCCUPANT TO ACQUIRE BY GRANT, PURCHASE, OR OTHERWISE, AT THE ELECTION OF THE OCCUPANT, EXCEPT AS OTHERWISE LIMITED OR PRESCRIBED IN THIS ORDINANCE, ANY LOT, PIECE, PARCEL, OR TRACT OF TIDELAND OR SUBMERGED LAND OCCUPIED OR DEVELOPED BY SUCH OCCUPANT ON AND PRIOR TO JANUARY 3, 1959.

(DD) "STATE" MEANS THE STATE OF ALASKA.

(EE) "SUBMERGED LANDS" MEANS LAND COVERED BY TIDAL WATERS BETWEEN THE LINE OF MEAN LOW WATER AND SEAWARD TO A DISTANCE OF THREE (3)

GEOGRAPHICAL MILES, IN THEIR NATURAL STATE, WITHOUT BEING AFFECTED BY MANMADE STRUCTURES, FILL, AND SO FORTH.

(FF) "SUBSTANTIAL PERMANENT IMPROVEMENTS" SHALL FOR THE PURPOSES OF THE ORDINANCE HAVE THE SAME MEANING AS IMPROVEMENTS, AS HEREIN DEFINED.

(GG) "TIDELANDS" MEANS LANDS PERIODICALLY COVERED BY TIDAL WATERS BETWEEN THE ELEVATIONS OF MEAN HIGH TIDE AND MEAN LOW TIDES, WITHOUT REGARD TO ARTIFICIAL INTERFERENCE WITH TIDAL FLOWS CAUSED BY MANMADE STRUCTURES, BREAKWATERS, FILL, AND THE LIKE. WHEN USED IN THIS ORDINANCE, IT SHALL ALSO INCLUDE SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY.

(HH) "TIDELANDS SUBDIVISION PLAT" IS THAT CERTAIN PLAT OF SUBDIVISION OF TIDELANDS AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY MADE BY H.H. GALLIETT, JR., REGISTERED ENGINEER, DATED DECEMBER, 1968, KNOWN AS ALASKA TIDELANDS SURVEY NO. 272 AND FILED AS 76-179 IN THE KENAI RECORDING DISTRICT SHOWING ALL STRUCTURES AND IMPROVEMENTS THEREON AND THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED, TOGETHER WITH THE NAME OF THE OWNER OR CLAIMANT THEREOF, INCLUDING WITHIN THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED SUCH SURROUNDING TIDE AND SUBMERGED LANDS AS SHALL BE REASONABLY NECESSARY IN THE OPINION OF THE COUNCIL FOR THE USE AND ENJOYMENT OF THE STRUCTURES AND IMPROVEMENTS THEREON BY THE OWNER OR CLAIMANT, BUT SHALL NOT INCLUDE ANY TIDE OR SUBMERGED LANDS WHICH IF GRANTED TO SUCH OCCUPANT, WOULD UNJUSTLY DEPRIVE ANY OCCUPANT OF ADJOINING LANDS FROM HIS REASONABLE USE AND ENJOYMENT THEREOF.]

11.15.030 Approval and ~~A~~Acceptance of State ~~C~~Conveyance.

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City.

11.15.040 Approval and ~~A~~Adoption of ~~S~~Subdivision ~~P~~Plat.

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District.

[11.15.050 TIME AND PLACES OF POSTING PLAT.

SAID PLAT SHALL BE POSTED FOR A PERIOD OF NOT LESS THAN SIXTY (60) DAYS, COMMENCING WITH THE DATE FOLLOWING THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, IN THE OFFICE OF THE CLERK, CITY HALL BUILDING.

11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.

THE CLERK SHALL CAUSE TO BE ISSUED AND PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, COMMENCING THE DAY AFTER THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, A NOTICE OF THE POSTING OF SAID PLAT CONTAINING THE FOLLOWING STATEMENTS:

- (A) TIME AND PLACE OF POSTING.
- (B) THE DAY OF FINAL PASSAGE AND THE EFFECTIVE DATE OF THIS ORDINANCE WHICH ADOPTS THE PLAT AS THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE TIDE AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY ON JANUARY 6, 1977.
- (C) THAT ANY AND ALL PERSONS HAVING OR CLAIMING PREFERENCE RIGHTS PROVIDED BY LAW AND AS HEREIN DEFINED TO ANY PART OR PARTS OF THE SUBDIVIDED LAND EMBRACED WITHIN THE BOUNDARIES OF SAID PLAT, WHO FAIL TO APPLY TO EXERCISE SUCH RIGHTS UNDER THE PROVISIONS OF THIS ORDINANCE WITHIN TWO (2) YEARS FROM AND AFTER OCTOBER 6, 1979, WHICH IS HEREBY DECLARED TO BE THE DATE UPON WHICH APPLICATIONS THEREFOR WILL BE FIRST ACCEPTED BY THE CITY, SHALL HAVE FORFEITED THEIR PREFERENCE RIGHTS PROVIDED BY LAW AND THIS ORDINANCE.
- (D) THAT THIS ORDINANCE WAS ENACTED TO PROTECT OCCUPANTS HAVING PREFERENCE RIGHTS, TO AFFORD DUE PROCESS OF LAW, TO PROVIDE PROCEDURES FOR APPLYING FOR EXERCISE OF PREFERENCE RIGHTS, FOR HEARING AND ADJUDICATING ADVERSE CLAIMS, AND FOR CONVEYING TITLE TO OCCUPANTS HOLDING PREFERENCE RIGHTS DEFINED BY LAW AND THIS ORDINANCE.
- (E) THAT COPIES OF THIS ORDINANCE AND APPLICATION FORMS ARE AVAILABLE AT THE OFFICE OF THE CLERK OF THE CITY.

11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.

APPLICATION FORMS, IN SUBSTANTIALLY THE FORM SET FORTH IN KMC 11.15.290(A) WILL BE ACCEPTED FOR FILING ONE BUSINESS DAY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, AND ENDING TWO CALENDAR YEARS THEREAFTER AND AT THE

CLOSE OF BUSINESS AT 5:00 P.M., AFTER WHICH NO APPLICATION FORMS WILL BE FURNISHED AND AFTER WHICH NO APPLICATIONS WILL BE ACCEPTED FOR FILING.

11.15.080 PROCEDURE FOR FILING APPLICATIONS.

APPLICATIONS SHALL BE SUBMITTED, AND WILL BE RECEIVED FOR FILING, ONLY FOR THE PURPOSE OF CLAIMING PREFERENCE RIGHTS HEREIN DEFINED TO THE TIDELANDS CONVEYED TO THE CITY BY THE STATE.

(A) APPLICATION FORMS WILL BE PROVIDED BY THE CLERK WITHOUT CHARGE AT THE CITY CLERK'S OFFICE IN THE CITY HALL BUILDING.

(B) APPLICATIONS MUST BE SUBMITTED IN TRIPPLICATE.

(C) APPLICATIONS NOT CLEARLY LEGIBLE NOR PROPERLY COMPLETED AND CERTIFIED BY THE APPLICANT WILL NOT BE ACCEPTED FOR FILING. SINCE THE FACT ALLEGED MAY BE USED IN HEARINGS OF DISPUTES THEIR TRUTH MUST BE CERTIFIED. THE FACTS ALLEGED WILL ALSO BE THE BASIS FOR THE CONVEYANCES OF VALUABLE PROPERTY. WILLFUL AND DELIBERATE MISSTATEMENTS OF FACT WILL BE EQUIVALENT TO ATTEMPTING TO OBTAIN VALUABLE PUBLIC PROPERTY BY MISREPRESENTATION AND MAY BE PROSECUTED AS OBTAINING PROPERTY UNDER FALSE PRETENSES.

(D) APPLICATIONS MAY BE MAILED TO THE CITY CLERK, [P.O. BOX 580] 210 FIDALGO AVENE, KENAI, ALASKA, 99611, WITH THE PROPER DEPOSIT COMPUTED ACCORDING TO THE NATURE OF THE APPLICATION MADE. APPLICATIONS PROPERLY COMPLETED ACCOMPANIED WITH THE PROPER DEPOSIT WILL BE STAMPED WITH THE TIME AND DATE OF FILING AND SIGNED BY THE PERSON ACCEPTING THE DEPOSIT. THE TRIPPLICATE COPY WILL THEN BE DELIVERED TO THE APPLICANT, OR MAILED TO HIM IF A RETURN ENVELOPE WITH POSTAGE AFFIXED IS FURNISHED OR DELIVERED TO THE CITY CLERK, CITY ADMINISTRATION OFFICES, AIRPORT TERMINAL BUILDING, KENAI, ALASKA.

(E) ANY APPLICATION FOR A DEED BASED ON AN ASSERTED RIGHT OTHER THAN A PREFERENCE RIGHT SHALL BE REJECTED.

(F) ANY APPLICATIONS NOT WAIVING THE CLASS II PREFERENCE RIGHT SHALL BE FILED BY THE CLERK, TOGETHER WITH ALL OTHERS OF LIKE NATURE, TO AWAIT THE OFFICIAL PROMULGATION OF THE PIERHEAD LINE. THEREAFTER SUCH APPLICATIONS SHALL BE PROCESSED AS APPLICATIONS UNDER THE CLASS I RIGHTS.

(G) APPLICATIONS NOT ACCOMPANIED BY THE PROPER DEPOSIT FOR COSTS SHALL BE REJECTED.

11.15.090 INITIAL REVIEW BY PLANNING & ZONING COMMISSION.

AFTER INITIAL REVIEW OF THE APPLICATION BY THE COMMISSION, THE APPLICANT SHALL HAVE PREPARED AT HIS OWN COST A PRELIMINARY AND FINAL PLAT AS DESCRIBED IN THE FOLLOWING SECTION.

11.15.100 PRELIMINARY PLAT.

(A) THE APPLICANT SHALL PREPARE, OR HAVE PREPARED, A PRELIMINARY PLAT OF THE TIDE, SHORE, OR SUBMERGED LANDS WHICH HE CLAIMS. THIS PLAT SHALL COMPLY WITH THE REQUIREMENTS HEREINAFTER SET FORTH.

(B) THE PURPOSE OF A PRELIMINARY PLAT IS TO AFFORD THE OCCUPANT AN OPPORTUNITY OF RECEIVING PRELIMINARY REVIEW AND PREVENT THE UNNECESSARY EXPENDITURE OF MONEY AND TIME THAT WOULD BE NECESSITATED IF MAJOR CHANGES WERE REQUIRED.

(C) THE APPLICANT MUST FILE HIS APPLICATION ACCOMPANIED BY FOUR BLACK OR BLUE-LINED PLATS OF THE LAYOUT.

(D) THE PLANNING & ZONING COMMISSION SHALL FORWARD THE PRELIMINARY PLAT TO AN ENGINEER TO BE DESIGNATED BY THE PLANNING & ZONING COMMISSION, WHO SHALL REPORT TO THE PLANNING & ZONING COMMISSION HIS APPROVAL OR DISAPPROVAL OF THE PLAT FOR TECHNICAL OR ENGINEERING REASONS AND THE PLANNING & ZONING COMMISSION SHALL, WITHIN NINETY (90) DAYS AFTER SUBMISSION OF THE PRELIMINARY PLAT, NOTIFY THE APPLICANT OF THE TENTATIVE APPROVAL OR DISAPPROVAL OF THE PLAT AND HIS REASONS THEREFOR.

(E) CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT SHALL NOT CONSTITUTE APPROVAL OF THE FINAL PLAT. RATHER, IT SHALL BE DEEMED AN EXPRESSION OF APPROVAL AS A GUIDE TO PREPARATION OF THE FINAL PLAT.

11.15.110 PRELIMINARY PLAT REQUIREMENTS.

THE PRELIMINARY PLAT SHALL SHOW THE FOLLOWING INFORMATION:

(A) LEGAL DESCRIPTION OF LOCATION TO INCLUDE LATITUDE AND LONGITUDE TO THE NEAREST MINUTE AT ONE CORNER OF THE SURVEY AND THE TOTAL ACRES OF THE AREA OCCUPIED OR CLAIMED.

(B) NAME AND ADDRESS OF APPLICANT AND NAME OF LAND SURVEYOR, IF ANY, WHO PREPARED THE PRELIMINARY LAYOUT.

(C) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.

(D) DATE OF PREPARATION AND NORTH POINT.

- (E) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.
- (F) THE LOCATION OF ALL ROADS WITHIN 200' OF THE TRACT, FILL MATERIAL, EXISTING PERMANENT BUILDINGS, OR OTHER STRUCTURES WITHIN THE PARCEL, EXISTING UTILITY LINES, MEAN HIGH AND LOW TIDE LINES WITH REFERENCE TO PERMANENT STRUCTURES AND OTHER PERMANENT FEATURES SUCH AS SECTION LINES, AND SUCH OTHER INFORMATION AS MAY BE REQUESTED BY THE CITY.
- (G) SPACE FOR APPROVAL AND/OR COMMENT BY THE PLANNING & ZONING AND HARBOR COMMISSIONS.
- (H) THE NAMES OF ADJACENT OWNERS OR CLAIMANTS, IF ANY, OTHER THAN THE CITY.
- (I) ADJACENT U.S. SURVEYS, IF ANY, GIVING THE NUMBER OF THE SURVEY.
- (J) A VICINITY SKETCH OR KEY MAP SHOULD BE SHOWN ON THE PRELIMINARY LAYOUT. THE SCALE SHALL NOT BE LESS THAN ONE-HALF INCH TO THE MILE. THE RELATIVE LOCATION OF THE PARCEL BEING APPLIED FOR, THE PRINCIPAL ROAD SYSTEMS AND SECTION OR SPECIAL SURVEY LINES SHALL ALSO BE SHOWN.

11.15.120 SURVEY PROCEDURE.

WHEREVER FEASIBLE, DATA AS SET FORTH IN ATS 272, RECORDED IN THE KENAI RECORDING DISTRICT AS 76-179 SHALL BE USED. WHERE ADDITIONAL DATA IS REQUIRED THE FOLLOWING PROCEDURES SHALL GOVERN:

- (A) *DETERMINING THE LINE OF MEAN HIGH TIDE.*
 - (1) IN THE CASE OF U.S. SURVEY WHICH ABUTS THE TIDELANDS, SUCH U.S. SURVEY BEING MADE PRIOR TO THE DATE OF STATEHOOD, THE LINE OF MEAN HIGH TIDE SHALL BE CONSTRUED TO BE EITHER THE MEANDER LINES ESTABLISHED ON THE SEAWARD SIDE OF THE U.S. SURVEY OR THE LINE AS DEFINED UNDER SECTION 2(S) OF THESE REGULATIONS, WHICHEVER IS THE LOWER.
 - (2) FOR TIDELANDS SURVEYS ABUTTING ANY U.S. SURVEY MADE AFTER THE DATE OF STATEHOOD OR IN ANY LOCATION WHERE NO UPLANDS SURVEY EXISTS, THE LINE OF MEAN HIGH TIDE SHALL BE DETERMINED BY USING U.S.C. & G.S. BENCH MARKS (OR ANY OTHER BENCH MARKS WHICH HAVE BEEN ESTABLISHED FROM THAT SOURCE), AND TIDE TABLE DATUM. THE UPLAND BOUNDARY NEED NOT FOLLOW THIS LINE IN ITS ENTIRE EXACTNESS, BUT MAY FOLLOW IN A "MEANDER" OR "AVERAGE" LINE OF MEAN HIGH TIDE. EACH END OF THE BOUNDARY SHOULD BE ESTABLISHED ON THE ELEVATION OF MEAN HIGH TIDE. PROVIDED, HOWEVER, THAT WHERE THE TRUE LINE OF MEAN HIGH TIDE HAS BEEN ALTERED BY FILL OR ARTIFICIAL ACCRETION, THE LINE OF HIGH TIDE AS IT EXISTED PRIOR TO SUCH ALTERATION SHALL GOVERN.

(3) IN THE CASE THAT NO U.S.C. & G.S. BENCH MARK EXISTS WITHIN ONE MILE OF THE PROPERTY BEING SURVEYED, THE SURVEYOR MAY, BY USING THE TIDE TABLES FOR THE IMMEDIATE BODY OF WATER, AND APPLYING TIDAL READINGS HE HAS TAKEN, DETERMINE THE LINE OF MEAN HIGH TIDE AND USE IT IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SECTION. IN SOME CASES, SUCH AS SALT OR MUD FLAT AREAS WHERE THE AVERAGE GRADE OF THE BENCH IS TEN PERCENT (10%) OR LESS AND DETERMINING THE ELEVATION OF THE LINE OF MEAN HIGH TIDE COULD CREATE A LENGTHY HORIZONTAL DISTANCE, THE CITY COUNCIL MAY REQUIRE THAT THE TRUE LINE OF MEAN HIGH TIDE BE ESTABLISHED, REGARDLESS OF THE DISTANCE FROM A KNOWN BENCH MARK.

(B) *METHOD OF ESTABLISHING SIDE BOUNDARY LINES.*

(1) IN FIXING THE SIDE BOUNDARY LINES, THE GENERAL RULES OF EXTENDING RIPARIAN BOUNDARY LINES, AS OUTLINED BY SUCH AUTHORS AS RAYNER, CLARK OR BROWN, SHALL BE FOLLOWED. IN THE EVENT THAT ACTUAL OCCUPANCY DOES NOT MATCH THE RIPARIAN BOUNDARIES, THE SURVEY SHALL BE MADE TO INCLUDE THE OCCUPANT'S HOLDINGS AND NOT TO ENCROACH ON THE ADJOINING OCCUPANT.

11.15.130 PROCEDURE ON FINAL PLAT.

(A) THE FINAL PLAT SHALL CONFORM SUBSTANTIALLY TO THE PRELIMINARY LAYOUT AS APPROVED BY THE COMMISSION.

(B) THE FINAL PLAT SHALL BE SUBMITTED TO THE CITY CLERK ON GOOD QUALITY TRACING CLOTH, IN INK, OR MYLARS TOGETHER WITH FIVE PRINTS.

(C) THE FINAL PLAT SHALL BE DRAWN TO SCALE OF 1" EQUALS 100', WITH AN OPTION OF USING 1" EQUALS 20' OR 40', ON SHEETS OF ONE OF THREE SIZES: 18" X 24", 31 1/2" X 34", OR 22" X 36", UNLESS OTHERWISE APPROVED BY THE COMMISSION. WHEN MORE THAN ONE SHEET IS REQUIRED, AN INDEX SHALL BE FILED SHOWING THE ENTIRE PARCEL WITH THE SHEETS IN NUMERICAL ORDER, AND EACH SHEET SHOWING THE TOTAL NUMBER, I.E., SHEET 1 OF 3. WHEN MORE THAN ONE SHEET IS SUBMITTED, ONLY THE LAST MUST HAVE THE APPROVAL BLOCKS, BUT ALL SHEETS MUST BE THE SAME SIZE.

(D) WHEN THE FINAL PLAT HAS BEEN APPROVED BY THE PLANNING & ZONING COMMISSION, ONE COPY SHALL BE SENT, ALONG WITH THE DEED TO THE PROPERTY, TO THE MAGISTRATE OF THE RECORDING DISTRICT IN WHICH THE TRACT LIES FOR OFFICIAL RECORDING. SPECIAL INSTRUCTIONS SHALL BE SENT TO THE MAGISTRATE INSTRUCTING HIM TO SEND THE DEED TO THE OCCUPANT AFTER RECORDING. ONE COPY OF THE PLAT WILL BE RETURNED TO THE OCCUPANT. THE ORIGINAL TRACING CONTAINING THE CERTIFICATION BY THE

PLANNING & ZONING COMMISSION WILL BE RETAINED BY THE CITY. PRINTS OR DUPLICATE TRANSPARENCIES WILL BE FURNISHED AT COST OF REPRODUCTION.

11.15.140 FINAL PLAT REQUIREMENTS.

(A) THE FINAL PLAT SHALL INCLUDE ALL INFORMATION REQUIRED ON THE PRELIMINARY PLAT.

(B) THE FINAL PLAT MUST REPRESENT AN ACTUAL SURVEY MADE BY A PERSON WHO HAS BEEN QUALIFIED BY THE STATE OF ALASKA, BOARD OF ENGINEERS & ARCHITECTS EXAMINERS TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA.

(C) IN ADDITION THERETO, THE FOLLOWING INFORMATION SHALL BE SHOWN ON THE FINAL PLAT:

(1) BOUNDARY LINES OF THE PARCEL WITH LENGTH AND BEARINGS WHICH MUST CLOSE WITHIN THE LIMITS OF ONE TO 5,000. IF THE SEAWARD LIMITS OF THE SURVEY FALLS WITHIN THE LINE OF MEAN LOW TIDE, THE SEAWARD BOUNDARY MUST REPRESENT LINES ACTUALLY ESTABLISHED BY THE SURVEYOR.

(2) ALL EASEMENTS AS REQUIRED BY THE CITY.

(3) BASIS OF BEARINGS USED.

(4) A PROPERLY LABELED LEGEND SHOWING MONUMENTS AS FOUND OR ESTABLISHED.

(5) THE COURSE OF THE SHORELINE FOR AN ADDITIONAL 400' FROM EACH SIDE OF THE SURVEY.

(D) *MONUMENTS.*

(1) MINIMUM REQUIREMENTS: MONUMENTS SHALL CONSIST OF A 1 1/2" GALVANIZED IRON PIPE, 30 OR MORE INCHES LONG. THIS PIPE SHALL HAVE A FOUR-INCH FLANGE ACROSS THE BOTTOM AND SHALL BE FILLED WITH CONCRETE. FIRMLY EMPLACED IN THE CONCRETE AT THE TOP SHALL BE A BRASS OR BRONZE CAP. THE PIPE SHALL BE THOROUGHLY TAMPED WHEN SET.

(2) THE BRASS OR BRONZE CAP SHALL HAVE A MINIMUM OF TWO-INCH DIAMETER ACROSS THE TOP AND 3/4" BY 2 1/2" SHANK. EACH CAP SHALL BE MARKED IN ACCORDANCE WITH THE MANUAL OF SURVEYING INSTRUCTIONS AS COMPILED BY THE BUREAU OF LAND MANAGEMENT AND SHALL ALSO SHOW THE REGISTRATION NUMBER OF THE SURVEYOR.

(3) WHERE IMPRACTICABLE TO SET AN IRON PIPE MONUMENT, A TABLET CONTAINING A MINIMUM OF ONE THOUSAND (1,000) CUBIC INCHES OF CONCRETE AND A BRASS OR BRONZE CAP MARKING THE ACTUAL CORNER POINT MAY BE USED. SHOULD THE POINT FOR A CORNER BE IN A PLACE WHICH

WOULD BE IMPRACTICABLE TO MONUMENT, WITNESS CORNERS SHALL BE SET IN A SAFE PLACE ON THE SURVEY BOUNDARY LINE OR HAVE TWO (2) REFERENCE MONUMENTS SET. THE MONUMENTS ON THE UPLANDS SIDE OF THE SURVEY SHALL BE REFERENCED TO BEARING OBJECTS, SUCH AS TREES, ROCKS, PILING, BUILDINGS, ETC., OR HAVE TWO (2) REFERENCE MONUMENTS SET MARKING THE CORNER.

(E) THESE REFERENCES MAY BE SHOWN ON THE PLAT OF SURVEY OR MAY BE LISTED SEPARATELY ON A PLAT AS DESCRIBED UNDER KMC 11.15.130(C).

(1) UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL, EACH SURVEY SHALL HAVE AT LEAST FOUR (4) MONUMENTS, EACH FULLY DESCRIBED IN THE PLAT OF SURVEY. IT IS DESIRABLE BUT NOT MANDATORY THAT MONUMENTS BE SET AT ALL EXTERIOR ANGLE POINTS OF THE PARCEL. THE LINE OF SIGHT BETWEEN ADJACENT MONUMENTS SHALL BE UNOBSTRUCTED. THE DISTANCE BETWEEN ADJACENT MONUMENTS SHALL NOT EXCEED ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320'). NO PART OF THE PARCEL SHALL BE FARTHER THAN ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320') FROM A MONUMENT UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL.

(2) IF THE POINT FOR THE SEAWARD CORNER FALLS IN AN UNSAFE PLACE, A WITNESS CORNER SHALL BE ESTABLISHED ON THE SIDE BOUNDARY LINE.

(F) *RELATIONSHIP TO KNOWN MONUMENT.*

(1) BEARINGS OF ALL LINES SHALL BE REFERRED TO THE TRUE MERIDIAN. THE MAGNETIC NEEDLE MAY NOT BE USED FOR THIS PURPOSE. BEARINGS SHALL BE OBTAINED BY DEFLECTION FROM EXISTING OFFICIAL SURVEYS AT THE G.L.O., B.L.M., U.S.C., AND G.S., U.S.G.S., THE ALASKA DIVISION OF LANDS, OR MONUMENTS WITH PROPER IDENTIFICATION WHICH ARE DELINEATED ON RECORDED PLATS, UNLESS OTHERWISE PROVIDED FOR IN THESE REGULATIONS.

(2) TRUE BEARINGS AND DISTANCES TO THE NEAREST ESTABLISHED SURVEY LINES, SUCH AS THOSE LISTED PREVIOUSLY, WHICH SHALL BE ACCURATELY DESCRIBED ON THE PLAT, SHALL BE SHOWN.

11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.

THE APPLICATION FORM WILL ASSIST THE APPLICANT IN DETERMINING THE PROPER COSTS TO ADVANCE, WHICH WILL DEPEND UPON THE NATURE OF THE RIGHT CLAIMED. IN ALL CASES A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL SHALL BE REQUIRED. SURVEY COSTS DEPEND UPON THE AREA CLAIMED AT A PER FOOT RATE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES. IF THE AREA CLAIMED IS DIFFERENT FROM THE LOT AS IT APPEARS ON THE PLAT, THE APPLICANT SHALL SHOW THE MEASUREMENTS OF THE ADDITIONAL OR

LESSER AREA CLAIMED AND COMPUTE AND PAY THE DIFFERENT SURVEY COST ACCORDINGLY. TRANSFER COSTS WILL BE THE SAME IN ALL CASES. THEY COVER THE COST OF TIME ESTIMATED TO BE REQUIRED TO EXAMINE, PROCESS, AND APPROVE THE APPLICATION, AS WELL AS TO PREPARE AND EXECUTE THE DEED, PUBLISH NOTICE, GIVE NOTICE OF ADDITIONAL COSTS, IF ANY, AND GIVE NOTICE TO APPLICANT. IN ALL CASES, TRANSFER COSTS WILL BE IN AN AMOUNT AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL. DEPOSIT FOR APPRAISAL COSTS WILL BE REQUIRED IN ALL CASES OF CLASS III PREFERENCE RIGHTS, OR WHERE ANOTHER ASSERTED RIGHT IS DETERMINED BY THE COUNCIL TO BE A CLASS III RIGHT. APPRAISAL COSTS SHALL DEPEND UPON THE AREA INVOLVED AND THE COMPLEXITY OF THE APPRAISAL SOUGHT. WHERE REQUIRED AS A DEPOSIT, THE MINIMUM AND MAXIMUM DEPOSIT FOR THE APPRAISAL FEE SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES.

11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.

ASIDE FROM DEPOSITS REQUIRED AT THE TIME OF FILING APPLICATIONS, ADDITIONAL COSTS WILL BE REQUIRED TO BE PAID PRIOR TO HEARINGS WHERE DISPUTES REQUIRE HEARINGS, AND FOR COST OF LAND UNDER A CLASS III RIGHT AS WELL AS APPRAISAL THEREOF WHEN A PREFERENCE RIGHT SOUGHT TO BE EXERCISED IS DETERMINED TO BE A CLASS III RIGHT, AS FOLLOWS:

(A) WHEN THE AREA CLAIMED DOES NOT COMPLY WITH THE BOUNDARIES OF THE LOT SHOWN ON THE PLAT, IT IS NECESSARY TO HAVE A HEARING TO ESTABLISH THE VALIDITY OF THE RIGHT CLAIMED AND WHETHER IT IS NECESSARY FOR THE PLAT TO BE CHANGED TO COMPLY WITH THE APPLICATION. THIS MAY REQUIRE NOTICE TO BE GIVEN TO ADJACENT OCCUPANTS INTERESTED IN THE DIFFERENCE BETWEEN THE LANDS CLAIMED AND LAND AS SHOWN ON THE PLAT SO THAT ALL PARTIES IN INTEREST MAY BE HEARD AT THE HEARING.

(B) WHEN APPLICATIONS CONFLICT WITH THE SAME AREA OR PORTIONS THEREOF, IT SHALL BE NECESSARY TO CONDUCT A HEARING TO DETERMINE THE FACT AND THE ISSUE IN QUESTION. CONFLICTING CLAIMS WILL BE CAREFULLY SCRUTINIZED AND EACH DISPUTING PARTY WILL BEAR THE BURDEN OF PROVING FACTS SUFFICIENT TO ESTABLISH THE VALIDITY OF HIS OR HER CLAIM.

(C) THE PARTY FILING AN APPLICATION CONFLICTING WITH A CLAIM PREVIOUSLY FILED SHALL BE REQUIRED TO DEPOSIT HEARINGS COSTS IN THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00). IF THE CONFLICT IS NOT KNOWN AT THE TIME OF FILING, THE APPLICANT SHALL BE ADVISED OF THE CONFLICT AS SOON AS IT IS KNOWN AND OF THE NEED TO DEPOSIT THE HEARING COST DEPOSIT.

(D) THE APPLICANT WHO AFTER HEARING AND DETERMINATION BY THE COUNCIL IS DETERMINED TO HAVE CLAIMED THE LAND OF ANOTHER SHALL BE THE PARTY

TO BEAR THE COST OF THE HEARING. IF SUCH PARTY DID NOT DEPOSIT SUCH COSTS, NO DEED SHALL BE DELIVERED TO HIM OR HER UNTIL THE COST IS PAID. WHERE THE DEPOSITOR IS THE PREVAILING PARTY, THE HEARING COST DEPOSITED SHALL BE REFUNDED TO HIM OR HER BY THE CITY.

(E) WHEN TITLE BY CLASS III PREFERENCE RIGHT IS CLAIMED, THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE APPRAISED PURCHASE PRICE AFTER APPRAISAL HAS BEEN MADE AND THE PURCHASE PRICE HAS BEEN SO DETERMINED. THE SAME PROCEDURE WILL BE APPLIED WHEN NO APPLICATION UNDER ANOTHER CLASS OF RIGHT IS SOUGHT BUT IS DETERMINED THAT THE ONLY AVAILABLE RIGHT TO THE APPLICANT IS A CLASS III RIGHT.

(F) WHEN A PREFERENCE RIGHT IS SOUGHT TO BE EXERCISED OTHER THAN A CLASS III RIGHT AND SUCH RIGHT IS DETERMINED TO BE A CLASS RIGHT, THEN THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE ESTIMATED COST OF APPRAISING THE PROPERTY CLAIMED.

(G) THE APPLICANT WHO RECEIVES THE DEED FROM THE CITY SHALL AT HIS OR HER OWN COST BEAR THE COST OF RECORDING THE DEED.

11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.

THE CLERK SHALL CAUSE THE FOLLOWING PROCEDURES TO BE CARRIED OUT:

(A) ALL COPIES OF APPLICATIONS ACCEPTED FOR FILING SHALL BE STAMPED WITH TIME AND DATE OF FILING AND AN APPLICATION NUMBER IN CHRONOLOGICAL ORDER OF FILING.

(B) ALL ORIGINAL APPLICATIONS SHALL BE FILED IN A PERMANENT REGISTER AND THE NAMES OF THE APPLICANTS ENTERED IN AN ALPHABETICAL INDEX WHICH SHALL BE A PERMANENT PART OF SUCH REGISTER.

(C) THE APPLICATION REGISTER SHALL BE AVAILABLE FOR PUBLIC INSPECTION DURING OFFICE HOURS OF THE CLERK EXCEPT WHEN IN ACTUAL USE FOR FILING AND INDEXING.

(D) CERTIFIED COPIES OF ALL APPLICATIONS SHALL BE PREPARED FOR ALL PERSONS UPON REQUEST UPON THEIR PAYING TWO DOLLARS (\$2.00) PER PAGE FOR COPIES OF SAID APPLICATIONS AND ANY ATTACHMENTS FORMING A PART THEREOF.

(E) *PROCESSING OF DUPLICATE APPLICATIONS.* THE THIRD COPY OF THE APPLICATION WILL BE RETURNED TO THE APPLICANT AS HIS OR HER RECORD AND AS RECEIPT FOR DEPOSIT MADE, OR MAILED TO APPLICANT IF HE OR SHE HAS PROVIDED A RETURN ENVELOPE. THE SECOND COPY SHALL BE THE WORKING FILE COPY TO BE HANDLED AND PROCESSED AS FOLLOWS:

(1) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED AND WHICH APPLY FOR LANDS WHICH COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190. APPLICATIONS TO

EXERCISE CLASS I PREFERENCE RIGHTS WHICH DO NOT HAVE WAIVERS ATTACHED, IRRESPECTIVE OF WHETHER THE LANDS APPLIED FOR COMPLY WITH THE PLAT SHALL BE SEGREGATED FOR HANDLING IN THE SAME MANNER AS CLASS II PREFERENCE RIGHT APPLICATIONS.

(2) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED, AND WHICH CLAIM LANDS WHICH DO NOT COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190 AND FURTHER PROCESSING AS PROVIDED IN KMC 11.15.220.

(3) APPLICATIONS TO EXERCISE CLASS II PREFERENCE RIGHTS SHALL BE SEGREGATED AND KEPT WITH CLASS I PREFERENCE RIGHT APPLICATIONS NOT HAVING WAIVERS ATTACHED. ALL SUCH APPLICATIONS SHALL BE HELD IN ABEYANCE BY THE CITY UNTIL SUCH TIME AS THE PIERHEAD LINE IS ESTABLISHED BY THE CORPS OF ENGINEERS, WHEREUPON SUCH APPLICATIONS SHALL BE PROMPTLY HONORED AND PROCESSED IN THE MANNER HEREIN DESCRIBED FOR CLASS I PREFERENCE RIGHT APPLICATIONS, WHERE WAIVERS ARE ATTACHED.

(4) APPLICATIONS TO EXERCISE CLASS III PREFERENCE RIGHTS, AND ALL APPLICATIONS DETERMINED IN WHOLE OR IN PART TO BE CLASS III, SHALL BE TRANSMITTED TO THE ASSESSOR FOR APPRAISAL AS PROVIDED IN KMC 11.15.180.

(5) NO APPLICATIONS WHICH COMBINE CLASS I, CLASS II, AND CLASS III, OR ANY COMBINATION OF SUCH PREFERENCE RIGHTS, WILL BE ACCEPTED FOR FILING. ANY SUCH APPLICATION PRESENTED FOR FILING SHALL BE RETURNED TO THE APPLICANT FOR REVISION INTO TWO OR MORE APPLICATIONS, EACH OF WHICH WILL APPLY FOR LAND UNDER ONLY ONE TYPE OF PREFERENCE RIGHT.

(6) AN APPLICATION TO EXERCISE ONE CLASS OF PREFERENCE RIGHT WHICH IN PART COMPLIES WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, BUT DOES NOT WHOLLY COMPLY WITH THE PLAT IN SUCH RESPECTS, SHALL BE TREATED AS IF NO PART OF THE APPLICATION SO COMPLIES WITH THE PLAT AND SHALL BE PROCESSED FOR CONTEST HEARING.

11.15.180 APPRAISAL.

ALL APPLICATIONS FOR CLASS II PREFERENCE RIGHTS SHALL BE TRANSMITTED TO A PROFESSIONAL APPRAISER FOR APPRAISAL. HIS APPRAISAL SHALL BE MADE ON A FORM PREPARED IN DUPLICATE, THE ORIGINAL OF WHICH SHALL BE ATTACHED TO THE APPLICATION AND THE DUPLICATE OF WHICH SHALL BE RETAINED FOR HIS RECORDS. APPLICATIONS WHEN APPRAISED SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR FURTHER PROCESSING.

11.15.190 REVIEW BY CITY ENGINEER.

ALL APPLICATIONS BEING READY FOR PROCESSING SHALL BE REVIEWED BY THE CITY ENGINEER. UPON REVIEW AND COMPARISON WITH THE PLAT, HE SHALL MAKE HIS REQUEST TO THE HARBOR COMMISSION GIVING A COPY THEREOF TO THE APPLICANT AS TO WHETHER OR NOT THE APPLICATION SEEKS TO EXERCISE A PREFERENCE RIGHT TO LAND WHICH IS DESCRIBED ON THE PLAT, AND COMPLIES WITH IT IN RESPECT TO AREA AND BOUNDARY LOCATIONS.

11.15.200 RECOMMENDED APPROVAL BY COMMISSION.

THE CITY OF KENAI [ADVISORY HARBOR] PLANNING & ZONING COMMISSION SHALL REVIEW ALL APPLICATIONS FOR TIDELANDS UPON THE SUBMISSION OF THE CITY ENGINEER'S REPORT. THE PLANNING & ZONING COMMISSION MAY CONDUCT PUBLIC HEARINGS TO VERIFY THE VALIDITY OF THE APPLICANT'S CLAIM AND REQUEST ADDITIONAL EVIDENCE BY WAY OF AFFIDAVITS AND THE LIKE IN ORDER TO COME TO RECOMMEND SAID CLAIM FOR APPROVAL BY THE CITY COUNCIL NOTIFYING APPLICANT THEREOF BY MAIL SENT TO THE ADDRESS STATED ON HIS APPLICATION. THE PLANNING & ZONING COMMISSION MAY PROVIDE A CHECK-OFF LIST TO AID IT IN CONSIDERING APPLICATIONS. THE CITY COUNCIL SHALL CONSIDER FOR APPROVAL THE CLAIM OF THE APPLICANT WITHIN THE TIME LIMITATIONS AND WITH THE RIGHT OF APPEAL GIVEN PURSUANT TO KMC 11.15.240.

11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.

ALL APPLICATIONS RETURNED TO THE CLERK APPROVED BY THE CITY ENGINEER, AND APPRAISED BY THE ASSESSOR IF REQUIRED, SHALL BE PROCESSED BY THE CLERK IN THE FOLLOWING MANNER:

- (A) THE CLERK SHALL ASCERTAIN IF THE DEPOSIT MADE BY THE APPLICANT IS SUFFICIENT TO PAY ALL KNOWN AND ESTIMATED COSTS OF SURVEY, APPRAISAL, TRANSFER, AND PURCHASE, IF OF CLASS III AND IF NOT, TO ADVISE THE APPLICANT THAT THE REMINDER DUE SHALL BE DEPOSITED WITH THE CLERK BEFORE FURTHER PROCESSING.
- (B) IF OR WHEN THE DEPOSIT IS SUFFICIENT TO PAY ALL SUCH COSTS, THE CLERK SHALL CAUSE TO BE PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, THE FOLLOWING:
 - (1) NOTICE OF THE NAMES OF THE APPLICANT(S), THE BLOCK AND LOT NUMBERS OF THE PROPERTY CLAIMED ACCORDING TO PLAT DESIGNATIONS;
 - (2) THE PREFERENCE RIGHT CLAIMED;
 - (3) THE IMPROVEMENTS MADE;

(4) THE LENGTH OF TIME (INCLUDING THE DATES) THE APPLICANT OCCUPIED THE LAND; AND

(C) IF CLASS III ITS APPRAISED VALUE, AND THAT THE CITY WILL ISSUE TO THE APPLICANT(S) ITS DEED THEREFOR WITHIN THIRTY (30) DAYS AFTER THE LAST DATE OF PUBLICATION, PROVIDED THAT BEFORE DATE OF LAST PUBLICATION NO ADVERSE APPLICATION OR CLAIM HAS BEEN FILED WITH THE CITY.

(D) DURING SAID PERIOD OF PUBLICATION, THE APPLICATIONS THEREOF SHALL BE RETURNED TO THE CITY ENGINEER WHO, AT THE END OF SAID PERIOD OF PUBLICATION, SHALL NOTE ON THE APPLICATION WHETHER OR NOT ANY ADVERSE CLAIMS HAVE BEEN FILED FOR THE LAND IN QUESTION.

(E) IF ADVERSE CLAIMS HAVE BEEN FILED, THE APPLICATIONS SHALL BE FURTHER PROCESSED FOR HEARING. IF NO ADVERSE CLAIMS HAVE BEEN FILED, THE RESPECTIVE APPLICATIONS SHALL BE RETURNED TO THE CLERK.

11.15.220 DEEDS—PERMANENT REGISTER.

THE CLERK SHALL THEN CAUSE TO BE PREPARED A QUIT-CLAIM DEED CONVEYING SUCH LAND TO THE APPLICANT(S) THAT THE CITY HAS AND TRANSMIT THE QUIT-CLAIM DEED TO THE MANAGER FOR EXECUTION. NOTICE SHALL THEN BE SENT TO THE APPLICANT TO TAKE DELIVERY OF SAID DEED AT THE OFFICE OF THE CLERK, WHO SHALL DELIVER THE SAME TO THE APPLICANT IF ALL REQUIREMENTS HAVE BEEN MET AND ALL COSTS, INCLUDING PURCHASE PRICE, IF REQUIRED, HAVE BEEN PAID. DUPLICATE ORIGINALS OF ALL EXECUTED DEEDS SHALL BE KEPT IN THE OFFICE OF THE CLERK IN A PERMANENT REGISTER ENTITLED "KENAI TIDELANDS DEEDS" WITH PERMANENT ALPHABETICAL INDEX OF GRANTEEES.

11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.

THE PLANNING & ZONING COMMISSION SHALL SIT AS A QUASI ADJUDICATORY BODY TO SET DISPUTES FOR HEARING AND HEAR THE EVIDENCE UNDER OATH OF THE PARTIES TO THE DISPUTES. PROCEEDINGS SHALL BE INFORMALLY CONDUCTED BUT TESTIMONY TAKEN UNDER OATH, AND NOTICE OF THE PROCEEDINGS SHALL BE GIVEN TO THE DISPUTING PARTIES. THEIR OBJECT SHALL BE TO DETERMINE WITHOUT DELAY THE RESPECTIVE BASIS OF THE CONFLICTING CLAIMS. UPON THE SUBMISSION OF EACH DISPUTE, THE PLANNING & ZONING COMMISSION SHALL PREPARE A SHORT SUMMARY ON THE CONFLICTING CLAIMS AND THE EVIDENCE SUBMITTED IN SUPPORT THEREOF, TOGETHER WITH THEIR WRITTEN FINDINGS OF FACT, AND CONCLUSIONS OF LAW.

11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.

UPON RECEIPT OF THE WORKING FILES IN ALL CASES OF DISPUTES, AND THE SUMMARY OF THE HEARINGS OFFICER, TOGETHER WITH COPIES OF NOTICES OF HEARINGS SERVED UPON OR MAILED TO ALL PARTIES TO THE DISPUTE, THE COUNCIL SHALL SET THE DISPUTE OF HEARING AND DETERMINATION, AND CAUSE NOTICE TO BE SERVED ON ALL PARTIES. UPON THE COUNCIL HAVING HEARD THE DISPUTE IT SHALL ENTER ITS RULING THEREON AS QUICKLY AS POSSIBLE, BUT NOT LATER THAN TEN (10) DAYS AFTER THE MATTER IS SUBMITTED. AGGRIEVED PERSONS SHALL HAVE THE RIGHT OF APPEAL TO THE SUPERIOR COURT, WITHIN THIRTY (30) DAYS AFTER THE RULING OF THE COUNCIL IS RENDERED.

11.15.250 DETERMINATION UPON STIPULATION OF FACTS.

WHEREVER POSSIBLE, TO REACH AGREEMENT OF THE PARTIES AT HEARINGS BEFORE THE PLANNING & ZONING COMMISSION, A STIPULATION OF FACTS SHALL BE PREPARED AND AGREED UPON BY THE PARTIES. WHERE THIS IS DONE, THE PLANNING & ZONING COMMISSION SHALL PREPARE AND ATTACH ITS CONCLUSIONS OF LAW AND SUBMIT THE FILE TO THE CITY ENGINEER TO DETERMINE IF THE CITY'S INTERESTS ARE AFFECTED BY THE STIPULATION, OR IF A BOUNDARY CHANGE IS REQUIRED AND NO THIRD PARTY OR CITY INTERESTS ARE AFFECTED ADVERSELY BY THE PROPOSED CHANGE IN BOUNDARIES OF LOTS SHOWN ON THE PLAT, UPON APPROVAL OF THE COUNCIL THE PLAT SHALL BE DIRECTED TO BE CHANGED. SHOULD IT BE DETERMINED BY THE CITY ENGINEER THAT THE STIPULATION ADVERSELY AFFECTS THE INTEREST OF THE CITY OR THOSE OF THIRD PARTIES, THE DISPUTE SHALL BE RETURNED TO THE PLANNING & ZONING COMMISSION FOR FURTHER PROCEEDINGS UPON NOTICE GIVEN.

11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.

NO OBJECTIONS WILL BE RECEIVED TO PROPOSED ISSUANCE BY DEED BY THE CITY ON PUBLICATION OF NOTICE THEREOF, NOR WILL ANY PERSON BE PERMITTED TO APPEAR AND BE HEARD AT ANY HEARING OF A DISPUTE BEFORE THE PLANNING & ZONING COMMISSION OR THE COUNCIL, UNLESS SUCH OBJECTOR OR PERSON IS AN APPLICANT FOR PREFERENCE RIGHTS OF CLASS I OR II AND HAS FILED AN APPLICATION WITH THE CLERK. THE FOREGOING SHALL NOT PREVENT THE APPEARANCES BEFORE THE PLANNING & ZONING COMMISSION OR COUNCIL OF WITNESSES APPEARING ON BEHALF OF THE PARTIES IN DISPUTE OR PERSONS CALLED BY THE PLANNING & ZONING COMMISSION OR COUNCIL WHO MAY HAVE PERSONAL KNOWLEDGE CONCERNING THE VERIFICATION OF CLAIMS.

11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.

(A) ALL FUNDS RECEIVED AS DEPOSITS WITH APPLICATIONS FOR COSTS OR PURCHASE PRICE FOR TIDELANDS SHALL BE DEPOSITED BY THE FINANCE DIRECTOR IN THE GENERAL FUND. SUCH DEPOSITS WILL BE CREDITED BY THE FINANCE DIRECTOR AS FOLLOWS:

- (1) SURVEY COSTS - AS A CREDIT TO DISBURSEMENTS MADE BY THE CITY FOR COSTS OF PREPARING THE TIDELANDS SUBDIVISION PLAT.
- (2) TRANSFER COSTS - TO ADMINISTRATIVE COSTS AS DEEDS ARE ISSUED.
- (3) APPRAISAL COSTS - TO ADMINISTRATIVE COSTS AS EARNED, OR AS CREDIT TO APPRAISAL COSTS INCURRED.

(B) PURCHASE COSTS OF CLASS II LANDS—SHALL BE CREDITED TO A SEPARATE ACCOUNT IN THE GENERAL FUND TO PAY FOR IMPROVEMENTS IN TIDELANDS AREAS CONSISTING OF FILL, STREET, SIDEWALK, AND SEWER IMPROVEMENTS.

11.15.280 FORFEITURE OF PREFERENCE RIGHTS.

ANY OCCUPANT, OWNER, OR HOLDER OF PREFERENCE RIGHTS AS HEREIN DEFINED, WHO HAS NOT APPLIED TO THE CITY FOR TITLE THERETO AS HEREIN PROVIDED, ON OR BEFORE TWO (2) YEARS AFTER THE DATE APPLICATIONS TO EXERCISE PREFERENCE RIGHTS WILL BE ACCEPTED FOR FILING BY THE CITY UNDER THIS ORDINANCE, BY A PROPERLY COMPLETED APPLICATION DULY FILED WITH THE CLERK AND ACCOMPANIED BY THE REQUIRED DEPOSIT, SHALL HAVE FORFEITED HIS RIGHT TO ASSERT THIS PREFERENCE RIGHTS AND ACQUIRE TITLE TO TIDELANDS SUBJECT THERETO FROM THE CITY; AND SUCH TIDELANDS AND CONTIGUOUS SUBMERGED LANDS SUBJECT TO SUCH UNUSED PREFERENCE RIGHTS SHALL THEREAFTER BE FREE AND CLEAR OF ALL CLAIMS TO PREFERENCE RIGHTS AND THE CITY SHALL HAVE NO OBLIGATION TO CONVEY THE SAME TO ANY PERSON OR PERSONS WHOSOEVER, AND SAID LAND SHALL THEN BE AND REMAIN THE PROPERTY OF THE CITY AND BE SUBJECT TO SUCH DISPOSITION AS PROVIDED FOR BY LAW OR ORDINANCE.

11.15.290 FORMS.

THE CLERK SHALL CAUSE TO BE PRINTED APPLICATION FORMS AND OTHER FORMS FOR USE IN PROCESSING THE SAME IN SUBSTANTIALLY THE FOLLOWING FORM:

(A)

APPLICATION FOR TIDELAND
PREFERENCE RIGHTS

NAME _____ APPLICATION NO. _____

HOME ADDRESS

POST OFFICE ADDRESS

MARK X TO DESIGNATE NATURE OF PREFERENCE RIGHT CLAIMED:

CLASS I _____

CLASS II _____

CLASS III _____

DOES THE TIDELAND PLAT 272 CORRECTLY SHOW THE LAND APPLIED FOR:

YES ____ NO ____

IF TIDELAND PLAT DOES NOT CORRECTLY SHOW LAND APPLIED FOR, DESCRIBE IT BY METES AND BOUNDS AND ATTACHED PLAT OF LAND APPLIED FOR (USE ATTACHMENT IF MORE SPACE IS REQUIRED).

ALL CLAIMED IMPROVEMENTS WERE FIRST CONSTRUCTED AND USED (1) BEFORE SEPTEMBER 7, 1957? (2) BEFORE SEPTEMBER 7, 1957 AND JANUARY 3, 1969? (3) AFTER JANUARY 3, 1959?

IS ANY PART OF YOUR CLAIM BASED ON IMPROVEMENTS AND/OR FILL CONSTRUCTED OR PLACED AFTER JANUARY 3, 1959?

YES _____,

NO _____. IF ANSWER IS "YES," DESCRIBE AREA IMPROVED AFTER JANUARY 3, 1959 (USE ATTACHMENT IF MORE SPACE IS NEEDED), AND STATE NATURE OF IMPROVEMENTS.

HAVE ANY OF THESE IMPROVEMENTS BEEN EXTENDED OR IMPROVED AFTER (1) SEPTEMBER 7, 1957? (2) JANUARY 3, 1959? DESCRIBE.

WAS THIS BENEFICIAL USE CONTINUED THROUGH JANUARY 3, 1959? DESCRIBE.

THE PLAT IS BASED ON APPARENT USE AND IMPROVEMENTS EXISTING ON JANUARY 3, 1959, RECOGNIZED BY THE ALASKA LAND ACT; STATE ANY REASON KNOWN TO YOU WHY YOUR CLAIM DOES NOT CORRESPOND WITH THE PLAT. (USE ATTACHMENT IF MORE SPACE IS REQUIRED.)

I OFFER CASH _____, MONEY ORDER _____, CASHIER'S CHECK _____, IN THE AMOUNT OF \$ _____ AS DEPOSIT FOR THE FOLLOWING COSTS:

	USE BY CLERK	
FILING FEE	\$ _____	\$ _____
SURVEY COSTS (AT RATE OF _____/SQ. FT.)	\$ _____	\$ _____
APPRAISAL COSTS (CLASS II APPLICATIONS)	\$ _____	\$ _____

TRANSFER COSTS (\$ _____)	\$ _____	\$ _____
HEARING COSTS (IF CLAIM ADVERSE TO PRIOR APPLICATION A DEPOSIT OF \$ _____ FOR HEARING AND SERVICE NOTICE IS REQUIRED.)	\$ _____	\$ _____
TOTAL DEPOSIT (DOES NOT INCLUDE PURCHASE PRICE OF LAND IN CLASS II APPLICATIONS)	\$ _____	\$ _____
DEPOSIT RECEIVED BY CITY BY:	_____	
DATE OF APPLICATION:	_____	
DATE APPLICATION RECEIVED BY CITY:	_____	
TIME FILED:	_____	

CERTIFICATION

I, _____, THE ABOVE-NAMED APPLICANT, OR ITS AGENT, HEREBY CERTIFIES THAT ALL OF THE STATEMENTS MADE IN THE APPLICATION AND INCORPORATED ATTACHMENTS, IF ANY, ARE TRUE AND CORRECT.

PRINT NAME(S)

SIGNATURE(S)

(B)

ASSESSOR'S APPRAISAL

THE UNDERSIGNED APPRAISER(S) DO HEREBY CERTIFY THAT HE HAS DULY APPRAISED THE TIDE AND/OR SUBMERGED LAND DESCRIBED IN THE ATTACHED APPLICATION NO. _____ OF _____, WITHOUT INCLUDING IN THE HEREINAFTER STATED VALUE ANY VALUE FOR VALUABLE IMPROVEMENTS CONSTRUCTED OR PLACED HEREON PRIOR TO JANUARY 3, 1959, AT THE FAIR MARKET VALUE.

TIDELAND _____ SQ. FT. AT \$ _____ PER SQ. FT., \$ _____.

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19 ____.

SIGNED:

(C)

WAIVER OF CLASS II PREFERENCE RIGHTS
(ATTACH TO EACH CLASS I APPLICATION)

I, _____, THE APPLICANT, OR HIS AUTHORIZED AGENT, IN THE APPLICATION FOR TIDELAND PREFERENCE RIGHTS, APPLICATION NO. _____, TO WHICH THIS WAIVER IS ATTACHED, DO HEREBY WAIVE ANY AND ALL PREFERENCE RIGHTS, TO ACQUIRE TIDE OR SUBMERGED AND LYING SEAWARD OF THE CITY OF KENAI, TO WHICH I AM NOW OR MAY HEREAFTER BECOME ENTITLED BY REASON OF THE PROVISIONS OF PUBLIC LAW 85-303.

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19 ____.

(PRINT NAME)

(SIGNATURE)

(D)

CITY OF KENAI, ALASKA
TIDELAND QUIT-CLAIM DEED

THIS DEED, MADE IN DUPLICATE THIS _____ DAY OF _____, 19 ____, BY AND BETWEEN THE CITY OF KENAI, ALASKA, GRANTOR, AND _____, GRANTEE(S).

W I T N E S S E T H:

THAT THE SAID GRANTOR, FOR AND IN CONSIDERATION OF THE SUM OF ONE AND NO 100/THS (\$1.00) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, TO IT IN HAND PAID BY THE SAID GRANTEE(S), PURSUANT TO THE PROVISIONS OF THE ALASKA LAND ACT (CHAPTER 169, SLA 1959) AND ORDINANCE NO. 455-78, ENACTED ON JANUARY 3, 1979, PURSUANT THERETO, DOES HEREBY CONVEYS, QUIT CLAIMS, AND CONFIRMS UNTO SAID GRANTEE(S) AS TENANTS BY THE ENTIRETY, WITH THE RIGHT OF SURVIVORSHIP (STRIKE IF GRANTEES ARE NOT HUSBAND AND WIFE), AND TO HIS (THEIR) HEIRS AND ASSIGNS (STRIKE IF GRANTEE A CORPORATION) AND TO ITS SUCCESSORS AND ASSIGNS (STRIKE IF GRANTEE NOT A CORPORATION), ALL SUCH INTEREST AS THE GRANTOR HAS, IF ANY, IN THE FOLLOWING DESCRIBED LOT, PIECE, PARCEL AND TRACT OF TIDELAND AND CONTIGUOUS SUBMERGED LAND SITUATED WITHIN THE CORPORATE LIMITS OF THE CITY OF KENAI, ALASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

ALL OF LOT _____, BLOCK _____, ACCORDING TO THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE CITY OF KENAI, ALASKA.

TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

TO HAVE AND TO HOLD THE SAME UNTO THE SAID GRANTEE(S), HIS OR THEIR HEIRS AND ASSIGNS, (OR) TO ITS SUCCESSORS AND ASSIGNS, FOREVER.

IN WITNESS WHEREOF, THE GRANTOR HAS CAUSED THIS DEED TO BE EXECUTED THE DAY AND YEAR HEREINABOVE FIRST WRITTEN.

CORPORATE SEAL

CITY OF KENAI, ALASKA

BY: (ITS MANAGER)

ATTEST:

CLERK

]

Chapter 11.20 LEASING OF TIDELANDS

Sections:

- [11.20.010 POLICY.]
- 11.20.020 Lands [A]Available for [L]Leasing.
- [11.20.030 QUALIFICATIONS OF APPLICANTS.
- 11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.
- 11.20.050 APPLICATIONS.
- 11.20.060 RIGHTS PRIOR TO LEASING.
- 11.20.070 PROCEDURE.
- 11.20.080 PUBLIC NOTICE—PUBLIC HEARING.
- 11.20.090 SELECTION OF APPLICANT.
- 11.20.100 APPEAL.
- 11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.
- 11.20.120 THE LEASE DOCUMENT—TERMS.
- 11.20.130 APPRAISAL.
- 11.20.140 REVIEW.
- 11.20.150 ANNUAL MINIMUM RENTAL.
- 11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.
- 11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.
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[11.20.010 POLICY.

THE CITY, IN ORDER TO MAKE SITES AVAILABLE FOR BENEFICIAL INDUSTRIES, MAY LEASE CITY-OWNED TIDELANDS TO PERSONS WHO AGREE TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS THE COUNCIL CONSIDERS ADVANTAGEOUS TO THE CITY.]

11.20.020 Lands [A]Available for [L]Leasing.

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased [AS HEREINAFTER PROVIDED,] for surface use only, and under the condition that said lease is subject and inferior to preference right claims [THAT MAY BE MADE WITHIN A TWO (2) YEAR FILING PERIOD FOR PREFERENCE RIGHTS] and subject to the rights of existing set net site holders within the City limits.

[11.20.030 QUALIFICATIONS OF APPLICANTS.

AN APPLICANT FOR A LEASE IS QUALIFIED IF THE APPLICANT:

- (A) IS AN INDIVIDUAL AT LEAST NINETEEN (19) YEARS OF AGE OR OVER; OR

(B) IS A GROUP, ASSOCIATION, OR CORPORATION WHICH IS AUTHORIZED TO CONDUCT BUSINESS UNDER THE LAWS OF ALASKA.]

[11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.

BEFORE ACCEPTING APPLICATIONS TO LEASE TIDELANDS, THE AREA INVOLVED SHALL HAVE FIRST BEEN CLASSIFIED FOR LEASING BY THE CITY COUNCIL WITH THE APPROVAL OF THE PLANNING AND HARBOR COMMISSIONS, AND THEIR AVAILABILITY ADVERTISED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE TIME SET FOR THE CLOSING OF THE ACCEPTANCE OF APPLICATIONS, AND THAT ALL APPLICATIONS ARE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES.]

[11.20.050 APPLICATIONS.

(A) ALL APPLICATIONS FOR LEASE OF TIDELANDS SHALL BE FILED WITH THE CLERK ON FORMS PROVIDED BY HIM OR HER AND AVAILABLE AT CITY HALL WHICH SHALL UPON EXECUTION OF THE LEASE BECOME PART OF THE LEASE DOCUMENT. ONLY FORMS COMPLETED IN FULL AND ACCOMPANIED BY A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL WILL BE ACCEPTED FOR FILING. FILING FEES ARE NOT REFUNDABLE.

(B) WITH EVERY APPLICATION, THE APPLICANT SHALL SUBMIT A DEVELOPMENT PLAN SHOWING AND STATING:

- (1) THE PURPOSE OF THE PROPOSED LEASE;
- (2) THE USE, VALUE, AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED;
- (3) THE TYPE OF CONSTRUCTION;
- (4) DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED;
- (5) WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY;
- (6) DESCRIBE BY REFERENCE TO THE PLAT THE AREA TO BE LEASED;
- (7) A DETAILED FINANCIAL PLAN SHOWING ABILITY TO CARRY THROUGH WITH THE DEVELOPMENT PLAN;
- (8) A PERFORMANCE BOND OF FIVE PERCENT (5%) OF THE PROJECT'S ESTIMATED COST (WHICH BOND SHALL NOT EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00)), PAYABLE TO THE CITY.

11.20.060 RIGHTS PRIOR TO LEASING.

NEITHER THE FILING OF AN APPLICATION FOR A LEASE NOR THE HOLDING OF A PUBLIC HEARING THEREON AS PROVIDED BELOW, SHALL GIVE THE APPLICANT A RIGHT TO A LEASE OR TO THE USE OF THE LAND APPLIED FOR. ANY USE NOT AUTHORIZED BY A LEASE SHALL CONSTITUTE A TRESPASS AGAINST THE CITY.

11.20.070 PROCEDURE.

(A) *PLANNING AND ZONING COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED FIRST BY THE CITY OF KENAI PLANNING AND ZONING COMMISSION TO DETERMINE WHETHER THE CONTEMPLATED USE FALLS WITHIN THAT PERMITTED UNDER THE ZONING ORDINANCE.

(B) *HARBOR COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED BY THE HARBOR COMMISSION. IF THE COMMISSION AFTER CONSIDERING THE LEASE APPLICATIONS DETERMINES AT A PUBLIC HEARING AS SET FORTH IN THE SECTION BELOW THAT ANY ONE LEASE WILL BE IN THE BEST INTERESTS OF THE CITY OF KENAI, THE COMMISSION MAY MAKE A RECOMMENDATION TO THE CITY COUNCIL OF APPLICANT ALONG WITH ANY MODIFICATIONS OR CONDITIONS RECOMMENDED BY THE COMMISSION.

(C) *CITY COUNCIL.* THE CITY COUNCIL SHALL MAKE THE FINAL DETERMINATION OF THE SELECTION OF THE APPLICANT BASED UPON THE COMMISSION'S RECOMMENDATION AND APPROVE OR REJECT THE CHOICE OF APPLICATION MADE.

11.20.080 PUBLIC NOTICE—PUBLIC HEARING.

NOTICE OF THE LEASE APPLICATION SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY NOT LESS THAN TEN (10) OR MORE THAN THIRTY (30) DAYS PRIOR TO THE DATE OF PUBLIC HEARING. THE NOTICE MUST CONTAIN THE NAME OF THE APPLICANT, A BRIEF DESCRIPTION OF THE LAND, PROPOSED USE, TERM, AND A DECLARATION THAT THE COMMISSION WILL CONSIDER THE LEASE TO THE APPLICANT ON THE BASIS OF THE APPLICANT'S AGREEMENT TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS AS SET FORTH IN ITS APPLICATION WHICH IS AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES. THE NOTICE SHALL STATE THE DATE UPON WHICH PUBLIC HEARING WILL BE HELD BEFORE THE COMMISSION FOR CONSIDERATION OF THE APPLICATION.

11.20.090 SELECTION OF APPLICANT.

AFTER THE HEARING PROVIDED IN KMC 11.20.080 ABOVE, THE COMMISSION MAY MAKE ITS RECOMMENDATION OF THE APPLICANT TO THE CITY COUNCIL IF IN THE

COMMISSION'S OPINION, ON THE BASIS OF ALL THE TESTIMONY PRESENTED, THE AWARD OF THE PROSPECTIVE LEASE WILL BE ADVANTAGEOUS TO THE CITY AND IN THE BEST INTERESTS OF THE PUBLIC WELFARE, HEALTH, AND SAFETY. IN THE ALTERNATIVE, THE COMMISSION MAY ELECT TO MAKE NO RECOMMENDATION FOR ANY APPLICANT GIVING ITS REASONS THEREFOR. THE COMMISSION MAY IMPOSE ADDITIONAL CONDITIONS UPON THE APPLICANT BEFORE MAKING ITS AWARD. THE DECISION OF THE COUNCIL SHALL BE POSTED ON THE CITY BULLETIN BOARD THE DAY AFTER THE HEARING AND REMAIN POSTED FOR TEN (10) DAYS.

11.20.100 APPEAL.

ANY PERSON DISAGREEING WITH THE DECISION OF THE COUNCIL MAY APPEAL THE DECISION BY FILING SUIT IN THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT AT KENAI, WITHIN TEN (10) DAYS FROM THE DATE OF THE POSTING OF COUNCIL'S DECISION.

11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.

THE APPLICANT WILL FURNISH A SURVEY AND APPRAISAL OF THE LAND IN QUESTION PRIOR TO LEASING. ANY RESURVEYING OR RE-PLATTING REQUIRED WILL BE THE APPLICANT'S RESPONSIBILITY AND EXPENSE.

11.20.120 THE LEASE DOCUMENT—TERMS.

LEASES MAY BE ISSUED FOR A TERM OF NOT LESS THAN TWO (2) YEARS NOR MORE THAN [NINETY-NINE (99)] FORTY-FIVE (45) YEARS. THE APPLICANT SHALL STATE IN HIS OR HER APPLICATION THE TERM DESIRED. IN DETERMINING WHETHER TO GRANT A LEASE FOR THE REQUESTED TERM, THE COUNCIL SHALL CONSIDER THE NATURE, EXTENT, AND COST OF THE IMPROVEMENTS WHICH THE APPLICANT AGREES TO CONSTRUCT THEREON AS A CONDITION OF THE LEASE THE TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT, THE VALUE OF THE APPLICANT'S PROPOSED USE TO THE ECONOMY OF THE CITY AND OTHER RELEVANT FACTORS. THE TERM OF THE LEASE MAY BE EXTENDED FOR A NUMBER OF SUCCESSIVE PERIODS FOR A SET NUMBER OF YEARS EACH AS LONG AS THE APPROPRIATE EXTENSIONS AND ORIGINAL TERM DO NOT EXCEED 99 YEARS.

11.20.130 APPRAISAL.

NO LAND SHALL BE LEASED, OR A RENEWAL LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A [SIX] TWELVE MONTH PERIOD PRIOR TO THE DATE FIXED FOR BEGINNING OF THE TERM OF THE LEASE OR RENEWAL LEASE. NO LAND SHALL BE LEASED FOR LESS THAN THE APPROVED, APPRAISED ANNUAL RENTAL, ACCORDING

TO THE METHOD AS DESCRIBED IN SECTION 11.20.150 BELOW, EXCEPT TO STATE OR FEDERAL AGENCIES OR THEIR SUBDIVISIONS IF IT IS IN THE PUBLIC INTEREST TO DO SO. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION.

11.20.140 REVIEW.

NO LEASED LAND MAY BE CHANGED IN USE, NOR MAY ANY RENEWAL LEASE BE ISSUED UNTIL THE PROPOSED USE OR RENEWAL HAS BEEN REVIEWED BY THE PLANNING COMMISSION AND APPROVED BY THE COUNCIL.

11.20.150 ANNUAL MINIMUM RENTAL.

(A) ANNUAL MINIMUM RENTALS SHALL BE COMPUTED FROM THE APPROVED APPRAISED MARKET VALUE UTILIZING THE METHOD AS DESCRIBED IN KMC 11.20.160(A). ANNUAL MINIMUM RENTAL SHALL INCLUDE:

- (1) TAXES PERTAINING TO THE LEASEHOLD INTEREST OF THE LESSEE.
- (2) SALES TAX NOW ENFORCED OR LEVIED IN THE FUTURE COMPUTED UPON RENT PAYABLE IN MONTHLY INSTALLMENTS WHETHER RENT IS PAID ON A MONTHLY OR YEARLY BASIS.
- (3) ALL TAXES AND ASSESSMENTS LEVIED IN THE FUTURE BY THE CITY OF KENAI, AS IF LESSEE WAS CONSIDERED THE LEGAL OWNER OF RECORD OF THE LEASED PROPERTY.
- (4) INTEREST AT THE RATE OF EIGHT PERCENT (8%) PER ANNUM AND TEN PERCENT (10%) PENALTIES OF ANY AMOUNT OF MONEY OWED UNDER THIS LEASE WHICH IS NOT PAID ON OR BEFORE THE DATE IT BECOMES DUE.
- (5) ALL SALES TAXES DUE ON PAYMENTS UNDER THIS LEASE AND TO ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.
- (6) ALL SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS LEVIED BY THE CITY OF KENAI, AS IF LESSEE WERE CONSIDERED LEGAL OWNER OF LEASED PROPERTY.

(B) UPON EXECUTION OF THE LEASE THE LANDS DEMISED BECOME TAXABLE TO THE EXTENT OF ITS LEASEHOLD INTEREST AND LESSEE SHALL PAY ALL REAL PROPERTY TAXES LEVIED UPON SUCH LEASEHOLD INTEREST IN THESE LANDS, THAT THE CITY AS PART OF THE CONSIDERATION OF RENTAL PAYMENTS DEPENDS AND RELIES UPON THE PAYMENT BY THE LESSEE OF SAID ASSESSMENTS AND TAXES AS IF HE WERE THE OWNER OF SAID DEMISED LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. SAID PAYMENTS SHALL BE PRORATED TO CONFORM WITH THE CITY OF KENAI'S FISCAL YEAR BEGINNING JULY 1 AND ENDING JUNE 30. IF THE EQUIVALENT MONTHLY PAYMENT EXCEEDS

\$200, THEN THE LESSEE SHALL HAVE THE OPTION OF MAKING PAYMENTS ON A MONTHLY OR QUARTERLY BASIS.

11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.

(A) TO INSURE A FAIR RETURN, ALL LEASES FOR A PERIOD IN EXCESS OF FIVE (5) YEARS SHALL INCLUDE A REDETERMINATION CLAUSE AS OF THE FIFTH ANNIVERSARY OF EACH LEASE, NORMALLY SET FOR THE FIRST OF JULY OF THAT FIFTH YEAR. IN PURSUING A FAIR RETURN, ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. THEREFORE, LEASE RATES SHALL BE BASED ON:

(1) FAIR MARKET VALUE OF THE LAND, INCLUDING AN APPROPRIATE CONSIDERATION OF FACILITIES AND SERVICES AVAILABLE (PUBLIC WATER, PUBLIC SEWER, STORM SEWERS, AND OTHER PUBLIC UTILITIES) AS DETERMINED BY A QUALIFIED INDEPENDENT APPRAISER, CONSIDERING THE BEST USE OF THE SPECIFIC LAND.

(2) THE ACTUAL RATE OF RETURN DETERMINED TO BE A FAIR RETURN TO THE CITY SHALL BE SET AT SIX PERCENT (6%) OF FAIR MARKET VALUE. THE APPRAISAL SHALL NOT INCLUDE STRUCTURAL IMPROVEMENTS MADE TO THE LAND OR IMPROVEMENTS MADE BY WAY OF GRAVEL OR OTHER APPROVED FILL PLACED ON THE LAND. (ORD. 1631-95)

(B) REALIZING THAT INVESTORS, DEVELOPERS, AND OTHER POTENTIAL LESSEES NEED A REASONABLE ASSURANCE OF STABILITY IN FUTURE LEASE RATES, THE REDETERMINATION CLAUSE OF ALL FUTURE LEASES SHALL INCLUDE THE FOLLOWING LANGUAGE:

AT EACH FIVE-YEAR INTERVAL, THE FAIR MARKET VALUE SHALL BE DETERMINED BY QUALIFIED, INDEPENDENT APPRAISERS. THE REDETERMINED LEASE RATE (ANNUAL RENT) UNDER THIS PROVISION, SHALL BE LIMITED TO A FIFTY PERCENT (50%) INCREASE IN THE PRIOR LEASE RATE UNTIL THE THIRTIETH-YEAR ANNIVERSARY OF THE LEASE AFTER WHICH THE FIFTY PERCENT (50%) CAP PROVISION SHALL NO LONGER APPLY AND THE LEASE RATE SHALL BE REDETERMINED EVERY FIVE YEARS ON THE BASIS OF FAIR MARKET EVALUATION AS DETERMINED IN KMC 11.20.080.

(C) CITY LEASES OF TIDELANDS EXISTING AT THE TIME OF THE ENACTMENT OF THIS CHAPTER SHALL HAVE A THIRTY-YEAR PERIOD DETERMINED FROM THE DATE FROM WHICH THE LEASE WAS ORIGINALLY ENTERED INTO.

(D) FAILURE BY THE CITY TO INSIST UPON RENEGOTIATION AT THE END OF ANY GIVEN FIVE-YEAR PERIOD SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF THE CITY TO INSIST UPON RENEGOTIATION IN ANY SUBSEQUENT YEAR, PROVIDED

THAT NEITHER THE CITY NOR THE LESSEE SHALL HAVE THE RIGHT TO INSIST UPON RENEGOTIATION UNTIL FIVE YEARS SHALL HAVE ELAPSED FROM THE DATE THE RENTAL WAS LAST ADJUSTED.

11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.

IT SHALL BE THE RESPONSIBILITY OF THE LESSEE TO PROPERLY LOCATE HIMSELF AND HIS IMPROVEMENTS ON THE LEASED LAND. IT SHALL BE UNLAWFUL TO ENCROACH ON OTHER LANDS OF THE CITY, OR ON LANDS OWNED OR LEASED BY ANOTHER.

11.20.180 LEASE UTILIZATION.

LEASED LANDS SHALL BE UTILIZED FOR PURPOSES WITHIN THE SCOPE OF THE APPLICATION, THE TERMS OF THE LEASE AND IN CONFORMITY WITH THE ORDINANCES OF THE CITY AND BOROUGH, AND IN SUBSTANTIAL CONFORMITY WITH THE COMPREHENSIVE PLAN. UTILIZATION OR DEVELOPMENT FOR OTHER THAN THE ALLOWED USES SHALL CONSTITUTE A VIOLATION OF THE LEASE AND SUBJECT THE LEASE TO CANCELLATION AT ANY TIME. FAILURE TO SUBSTANTIALLY COMPLETE THE DEVELOPMENT PLAN OF THE LAND WITHIN THE SPECIFIED TIME FROM THE DATE OF EXECUTION OF THE LEASE, CONSISTENT WITH THE PROPOSED USE AND TERMS OF THE LEASE, SHALL CONSTITUTE GROUNDS FOR CANCELLATION. THE LEASE SHALL SET FORTH IN DETAIL WITH APPROPRIATE PLANS AND SPECIFICATIONS THE IMPROVEMENTS TO BE MADE WITHIN THE TIME PERIOD DESCRIBED ABOVE.

11.20.190 SUBLEASING.

LEASES MAY PROVIDE FOR SUBLEASING A PORTION OF THE LEASED LAND WITHOUT PRIOR COUNCIL APPROVAL. SUBLEASES SHALL BE IN WRITING AND BE SUBJECT TO THE TERMS AND CONDITIONS OF THE ORIGINAL LEASE. NO APPROVAL OF THE CITY SHALL BE GIVEN TO THE SUBLEASE OF PROPERTY UNTIL THE LESSEE HAS SUBSTANTIALLY COMPLIED WITH THE DEVELOPMENT PLAN.

11.20.200 ASSIGNMENTS.

EXCEPT FOR ASSIGNMENTS FOR COLLATERAL PURPOSES, NO LESSEE MAY ASSIGN THE LANDS LEASED TO HIM WITHOUT PRIOR COUNCIL APPROVAL. THE ASSIGNEE SHALL BE SUBJECT TO ALL OF THE PROVISIONS OF THE LEASE. ANY ATTEMPTED ASSIGNMENT MADE IN VIOLATION OF THIS SECTION SHALL BE VOID. ANY ASSIGNMENT REQUIRING COUNCIL APPROVAL WILL NOT BE UNREASONABLY DENIED.

11.20.210 MODIFICATION.

NO LEASE MAY BE MODIFIED ORALLY OR IN ANY MANNER OTHER THAN BY AN AGREEMENT IN WRITING, SIGNED BY ALL PARTIES IN INTEREST OR THEIR SUCCESSORS IN INTEREST. ANY SUCH MODIFICATION SHALL REQUIRE COUNCIL APPROVAL.

11.20.220 CANCELLATION—FORFEITURE.

(A) LEASES IN GOOD STANDING MAY BE CANCELED IN WHOLE, OR IN PART, AT ANY TIME UPON MUTUAL WRITTEN AGREEMENT BY LESSEE AND THE CITY COUNCIL.

(B) ANY LEASE USED FOR AN UNLAWFUL PURPOSE MAY BE CANCELED.

(C) IF THE LESSEE SHALL DEFAULT IN THE PERFORMANCE OR OBSERVANCE OF ANY OF THE LEASE TERMS, COVENANTS, OR STIPULATIONS THERETO, OR OF THE REGULATIONS NOW OR HEREAFTER IN FORCE, AND SHOULD SAID DEFAULT CONTINUE FOR THIRTY (30) CALENDAR DAYS AFTER SERVICE OF WRITTEN NOTICE BY THE CITY WITHOUT REMEDY BY LESSEE OF THE CONDITIONS WARRANTING DEFAULT, THE CITY SHALL SUBJECT LESSEE TO APPROPRIATE LEGAL ACTION, INCLUDING, BUT NOT LIMITED TO, FORFEITURE OF THE LEASE. NO IMPROVEMENTS MAY BE REMOVED BY LESSEE OR OTHER PERSON DURING ANY TIME THE LESSEE IS IN DEFAULT. THIS PROVISION SHALL NOT BE CONSTRUED TO PROHIBIT THE CITY FROM TAKING ANY APPROPRIATE LEGAL ACTION, INCLUDING, BUT LIMITED TO, FORFEITURE OF THE LEASE, IMMEDIATELY UPON THE OCCURRENCE OF A DEFAULT.

11.20.230 DEFAULT—RIGHT OF ENTRY.

SHOULD DEFAULT BE MADE IN THE PAYMENT OF ANY PORTION OF THE RENT OR FEES WHEN DUE OR IN ANY OF THE COVENANTS OR CONDITIONS CONTAINED IN THE LEASE OR IN ANY REGULATIONS NOW OR HERINAFTER IN FORCE, THEN IN SUCH EVENT THE CITY SHALL GIVE LESSEE THIRTY DAYS AFTER SUCH WRITTEN NOTICE TO CURE SUCH DEFAULT OR DEFAULTS, AFTER WHICH IF THE DEFAULT IS NOT CURED, THE CITY MAY TERMINATE THE LEASE, RE-ENTER AND TAKE POSSESSION OF THE PREMISES, REMOVE ALL PERSONS THEREFROM.

11.20.240 NOTICE OR DEMAND.

ANY NOTICE OR DEMAND WHICH UNDER THE TERMS OF A LEASE OR UNDER ANY STATUTE MUST BE GIVEN OR MADE BY THE PARTIES THERETO, SHALL BE IN WRITING AND BE GIVEN OR MADE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO THE OTHER PARTY AT THE ADDRESS OF RECORD. HOWEVER, EITHER PARTY MAY

DESIGNATE IN WRITING SUCH NEW OR OTHER ADDRESS TO WHICH SUCH NOTICE OR DEMAND SHALL THEREAFTER BE SO GIVEN, MADE OR MAILED. A NOTICE GIVEN HEREUNDER SHALL BE DEEMED DELIVERED WHEN DEPOSITED IN A U.S. GENERAL OR BRANCH POST OFFICE, ENCLOSED IN A REGISTERED OR CERTIFIED MAIL ENVELOPE, ADDRESSED AS HEREINABOVE PROVIDED.

11.20.250 FINANCING—RIGHTS OF MORTGAGES OR LIENHOLDER.

(A) FOR THE PURPOSE OF INTERIM OR PERMANENT FINANCING OR REFINANCING FROM TIME TO TIME OF THE IMPROVEMENTS TO BE PLACED UPON THE LEASED PREMISES, AND FOR NO OTHER PURPOSE, A LESSEE, AFTER GIVING WRITTEN NOTICE THEREOF TO THE CITY, MAY ENCUMBER BY MORTGAGE, DEED OF TRUST, ASSIGNMENT, OR OTHER APPROPRIATE INSTRUMENT, THE LESSEE'S INTEREST IN THE LEASED PREMISES AND IN AND TO THE LEASE, PROVIDED SUCH ENCUMBRANCE PERTAINS ONLY TO SUCH LEASEHOLD INTEREST AND DOES NOT PERTAIN TO OR CREATE ANY INTEREST IN THE CITY'S TITLE TO THE LEASED PREMISES. IF SUCH MORTGAGE, DEED OF TRUST, OR ASSIGNMENT, SHALL BE HELD BY A BANK OR OTHER ESTABLISHED LENDING OR FINANCIAL INSTITUTION (WHICH TERMS SHALL INCLUDE AN ESTABLISHED INSURANCE COMPANY AND QUALIFIED PENSION OR PROFIT-SHARING TRUST), AND SUCH INSTITUTION SHALL ACQUIRE THE LESSEE'S INTEREST IN SUCH LEASE AS A RESULT OF A SALE UNDER SAID ENCUMBRANCE PURSUANT TO A FORECLOSURE OR OTHER REMEDY OF THE SECURED PARTY, OR THROUGH ANY TRANSFER IN LIEU OF FORECLOSURE, OR THROUGH SETTLEMENT OF OR ARISING OUT OF ANY PENDING OR CONTEMPLATED FORECLOSURE ACTION, SUCH LENDING INSTITUTION SHALL HAVE THE PRIVILEGE OF TRANSFERRING ITS INTEREST IN SUCH LEASE TO A NOMINEE OR A WHOLLY-OWNED SUBSIDIARY CORPORATION WITH THE PRIOR CONSENT OF THE CITY, PROVIDED, HOWEVER, SUCH TRANSFEREE SHALL ASSUME ALL OF THE COVENANTS AND CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE, WHEREUPON SUCH LENDING INSTITUTION SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH TRANSFER. SUCH LENDING INSTITUTE FOR THE NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION TO WHICH IT MAY HAVE TRANSFERRED SUCH LEASE, OR ANY OTHER LENDING INSTITUTION WHICH MAY AT ANY TIME ACQUIRE SUCH LEASE, SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER A TRANSFER OF SUCH LEASE.

(B) A LEASEHOLD MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, OR SECURITY ASSIGNEE, SHALL HAVE AND BE SUBROGATED TO ANY AND ALL RIGHTS OF THE LESSEE WITH RESPECT TO THE CURING OF ANY DEFAULT HEREUNDER BY LESSEE.

(C) IF THE HOLDER OF ANY SUCH MORTGAGE, BENEFICIARY OF ANY SUCH DEED OF TRUST, OR THE SECURITY ASSIGNEE SHALL GIVE THE CITY BEFORE ANY DEFAULT SHALL HAVE OCCURRED IN THE LEASE, A WRITTEN NOTICE CONTAINING THE NAME AND POST OFFICE ADDRESS OF SUCH HOLDER, THE CITY SHALL THEREAFTER GIVE TO SUCH HOLDER A COPY OF EACH NOTICE OF DEFAULT BY THE LESSEE AT THE SAME TIME AS ANY NOTICE OF DEFAULT SHALL BE GIVEN BY THE CITY TO THE LESSEE, AND THE CITY WILL NOT THEREAFTER ACCEPT ANY SURRENDER OR ENTER INTO ANY MODIFICATION OF THIS LEASE WITHOUT THE PRIOR WRITTEN CONSENT OF THE HOLDER OF ANY FIRST MORTGAGE, BENEFICIAL INTEREST UNDER A FIRST DEED OF TRUST, OR SECURITY ASSIGNEE, IN THIS LEASE.

(D) IF, BY REASON OF ANY DEFAULT OF THE LESSEE, EITHER THIS LEASE OR ANY EXTENSION THEREOF SHALL BE TERMINATED AT THE ELECTION OF THE CITY PRIOR TO THE STATED EXPIRATION THEREFOR, THE CITY WILL ENTER INTO A NEW LEASE WITH THE LEASEHOLD MORTGAGEE FOR THE REMAINDER OF THE TERM, EFFECTIVE AS OF THE DATE OF SUCH TERMINATION, AT THE RENT AND ADDITIONAL RENT, AND ON THE TERMS HEREIN CONTAINED, SUBJECT TO THE FOLLOWING CONDITIONS:

(1) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL MAKE WRITTEN REQUEST TO THE CITY FOR SUCH NEW LEASE WITHIN TWENTY DAYS AFTER THE DATE OF SUCH TERMINATION AND SUCH WRITTEN REQUEST SHALL BE ACCOMPANIED BY A PAYMENT TO THE CITY OF ALL SUMS THEN DUE TO THE CITY UNDER THE LEASE.

(2) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL PAY TO THE CITY, AT THE TIME OF THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, ANY AND ALL SUMS DUE THEREUNDER IN ADDITION TO THOSE WHICH WOULD AT THE TIME OF THE EXECUTION AND DELIVERY THEREOF BE DUE UNDER THIS LEASE; BUT FOR SUCH TERMINATION AND IN ADDITION THERETO, ANY REASONABLE EXPENSES, INCLUDING LEGAL AND ATTORNEY'S FEES, TO WHICH THE CITY SHALL HAVE BEEN SUBJECTED BY REASON OF SUCH DEFAULT.

(3) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE SHALL, ON OR BEFORE THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, PERFORM ALL THE OTHER CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE TO THE EXTENT THAT THE LESSEE SHALL HAVE FAILED TO PERFORM SUCH CONDITIONS.

(E) IF A LENDING INSTITUTION OR ITS NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION SHALL HOLD A MORTGAGE, DEED OF TRUST, OR SIMILAR SECURITY INTEREST IN AND TO THIS LEASE AND SHALL THEREAFTER ACQUIRE A LEASEHOLD

ESTATE, DERIVED EITHER FROM SUCH INSTRUMENTS OR FROM THE CITY, AND IF SUCH INSTITUTION, NOMINEE, OR CORPORATION SHALL DESIRE TO ASSIGN THIS LEASE OR ANY NEW LEASE OBTAINED FROM THE CITY (OTHER THAN TO A NOMINEE OR TO A WHOLLY-OWNED SUBSIDIARY CORPORATION AS PERMITTED BY THE ABOVE PROVISIONS) TO AN ASSIGNEE WHO WILL UNDERTAKE TO PERFORM AND OBSERVE THE CONDITIONS IN SUCH LEASE REQUIRED TO BE PERFORMED BY THE LESSEE, THE CITY SHALL NOT UNREASONABLY WITHHOLD ITS CONSENT TO SUCH ASSIGNMENT AND ASSUMPTION, AND ANY SUCH LENDING INSTITUTION, NOMINEE, OR SUBSIDIARY SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH ASSIGNMENT. IF THE PROPOSED ASSIGNOR SHALL ASSERT THAT THE CITY IN UNREASONABLY WITHHOLDING ITS CONSENT TO ANY SUCH PROPOSED ASSIGNMENT, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION.

11.20.260 ENTRY AND RE-ENTRY.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED AS HEREINBEFORE PROVIDED BY SUMMARY PROCEEDINGS OR OTHERWISE, OR IN THE EVENT THAT THE DEMISED LANDS OR ANY PART THEREOF SHOULD BE ABANDONED BY THE LESSEE DURING THE SAID TERM, THE LESSOR OR ITS AGENTS, SERVANTS, OR REPRESENTATIVES MAY, IMMEDIATELY OR ANY TIME THEREAFTER, RE-ENTER AND RESUME POSSESSION OF SAID LANDS OR SUCH PART THEREOF, AND REMOVE ALL PERSONS AND PROPERTY THEREFROM, EITHER SUMMARY PROCEEDINGS OR BY A SUITABLE ACTION OR PROCEEDING AT LAW WITHOUT BEING LIABLE FOR ANY DAMAGES THEREFOR. NO RE-ENTRY BY THE LESSOR SHALL BE DEEMED AN ACCEPTANCE OF A SURRENDER OF THE LEASE.

11.20.270 RE-LEASE.

IN THE EVEN THAT A LEASE SHOULD BE TERMINATED AS HEREIN PROVIDED, OR BY SUMMARY PROCEEDINGS, OR OTHERWISE, THE PLANNING & ZONING COMMISSION MAY OFFER SAID LANDS FOR LEASE OR OTHER APPROPRIATE DISPOSAL, PURSUANT TO THE PROVISIONS OF THIS ORDINANCE.

11.20.280 FORFEITURE OF RENTAL.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED BECAUSE OF ANY BREACH BY THE LESSEE AS HEREIN PROVIDED, THE ANNUAL RENTAL PAYMENT LAST MADE BY THE LESSEE SHALL BE FORFEITED AND RETAINED BY THE LESSOR AS PARTIAL OR TOTAL LIQUIDATED DAMAGES FOR SAID BREACH.

11.20.290 RIGHT OF INSPECTION.

CITY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO ENTER THE PREMISES, OR ANY PART THEREOF, FOR THE PURPOSES OF INSPECTION.

11.20.300 EASEMENT GRANTS RESERVED.

CITY RESERVES THE RIGHT TO GRANT AND CONTROL EASEMENTS IN, OR ABOVE THE LAND LEASED. NO SUCH GRANT OR EASEMENT WILL BE MADE THAT WILL UNREASONABLY INTERFERE WITH THE LESSEE'S USE OF THE LAND, AND LESSEE SHALL HAVE FREE ACCESS AND USE OF ANY AND ALL PARKING AND LOADING RIGHTS, RIGHTS OF INGRESS AND EGRESS NOW OR HEREAFTER APPERTAINING TO THE LEASED PREMISES.

11.20.310 LEASE SUBORDINATE TO FINANCING REQUIREMENTS.

LESSEE AGREES THAT CITY MAY MODIFY THE LEASE TO MEET REVISED REQUIREMENTS FOR FEDERAL OR STATE GRANTS, OR TO CONFORM TO THE REQUIREMENTS OF ANY REVENUE BOND COVENANT. HOWEVER, THE MODIFICATION SHALL NOT ACT TO REDUCE THE RIGHTS OR PRIVILEGES GRANTED THE LESSEE BY THIS LEASE, NOR ACT TO CAUSE THE LESSEE FINANCIAL LOSS.

11.20.320 WRITTEN WAIVER.

THE RECEIPT OF RENT BY THE LESSOR WITH KNOWLEDGE OF ANY BREACH OF THE LEASE BY THE LESSEE, OR ANY DEFAULT ON THE PART OF THE LESSEE IN OBSERVANCE OR PERFORMANCE OF ANY OF THE CONDITIONS OR COVENANTS OF THE LEASE, SHALL NOT BE DEEMED TO BE A WAIVER OF ANY PROVISIONS OF THE LEASE. NO FAILURE ON THE PART OF THE LESSOR TO ENFORCE ANY COVENANT OR PROVISION THEREIN CONTAINED, NOR ANY WAIVER OF ANY RIGHT THEREUNDER BY THE LESSOR, UNLESS IN WRITING, SHALL DISCHARGE OR INVALIDATE SUCH COVENANTS OR PROVISIONS, OR AFFECT THE RIGHT OF THE LESSOR TO ENFORCE THE SAME IN THE EVENT OF ANY SUBSEQUENT BREACH OR DEFAULT. THE RECEIPT, BY THE LESSOR, OF ANY RENT OR ANY OTHER SUM OF MONEY AFTER THE TERMINATION, IN ANY MANNER, OF THE TERM THEREIN DEMISED, OR AFTER THE GIVING BY THE LESSOR OF ANY NOTICE THEREUNDER TO EFFECT SUCH TERMINATION, SHALL NOT REINSTATE, CONTINUE, OR EXTEND THE RESULTANT TERM THEREIN DEMISED, DESTROY, OR IN ANY MANNER IMPAIR THE EFFICACY OF ANY SUCH NOTICE OR TERMINATION AS MAY HAVE BEEN GIVEN THEREUNDER BY THE LESSOR TO THE LESSEE PRIOR TO THE RECEIPT OF ANY SUCH SUM OF MONEY OR OTHER CONSIDERATION, UNLESS SO AGREED TO IN WRITING AND SIGNED BY THE LESSOR.

11.20.330 SURRENDER ON TERMINATION.

(A) LESSEE SHALL, ON THE LAST DAY OF THE TERM OF THIS LEASE OR UPON ANY EARLIER TERMINATION OF THIS LEASE, SURRENDER AND DELIVER UP THE PREMISES INTO THE POSSESSION AND USE OF CITY WITHOUT FRAUD OR DELAY IN GOOD ORDER, CONDITION, AND REPAIR, EXCEPT FOR REASONABLE WEAR AND TEAR SINCE THE LAST NECESSARY REPAIR, REPLACEMENT, RESTORATION, OR RENEWAL, FREE AND CLEAR OF ALL LETTINGS AND OCCUPANCIES UNLESS EXPRESSLY PERMITTED BY CITY IN WRITING, AND FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OTHER THAN THOSE CREATED BY CITY FOR LOANS TO THE CITY.

(B) UPON THE END OF THE TERM OF THIS LEASE OR ANY EARLIER TERMINATION THEREOF, TITLE TO THE BUILDINGS, IMPROVEMENTS, AND BUILDING EQUIPMENT SHALL AUTOMATICALLY VEST IN THE CITY WITHOUT REQUIREMENT OF ANY DEED, CONVEYANCE, OR BILL OF SALE DOCUMENT IN CONFIRMATION HEREOF, LESSEE SHALL EXECUTE, ACKNOWLEDGE, AND DELIVER THE SAME AND SHALL PAY ANY CHARGE, TAX, AND FEE ASSERTED OR IMPOSED BY ANY AND ALL GOVERNMENTAL UNITS IN CONNECTION THEREWITH.

11.20.340 SANITATION.

THE LESSEE SHALL COMPLY WITH ALL REGULATIONS OR ORDINANCES OF THE CITY WHICH ARE PROMULGATED FOR THE PROMOTION OF SANITATION. THE PREMISES OF THE LEASE SHALL BE KEPT IN A NEAT, CLEAN, AND SANITARY CONDITION, AND EVERY EFFORT SHALL BE MADE TO PREVENT THE POLLUTION OF WATER.

11.20.350 BUILDING AND ZONING CODES.

LEASED LANDS SHALL BE UTILIZED IN ACCORDANCE WITH THE BUILDING AND ZONING ORDINANCES AND RULES AND REGULATIONS OF SAID AUTHORITY. FAILURE TO DO SO SHALL CONSTITUTE A VIOLATION OF THE LEASE.

11.20.360 RULES.

(A) THE LESSEE SHALL OBSERVE, OBEY, AND COMPLY WITH ALL APPLICABLE RULES, ETC., OF THE STATE OR FEDERAL GOVERNMENTS.

(B) CITY RESERVES THE RIGHT TO ADOPT, AMEND, AND ENFORCE REASONABLE RULES AND REGULATIONS GOVERNING THE DEMISED PREMISES AND THE PUBLIC AREAS AND FACILITIES USED IN CONNECTION THEREWITH. EXCEPT IN CASES OF EMERGENCY, NO RULE OR REGULATION HEREAFTER ADOPTED OR AMENDED BY THE CITY SHALL BECOME APPLICABLE UNLESS IT HAS BEEN GIVEN THIRTY DAYS NOTICE OF ADOPTION OR AMENDMENT THEREOF.

(C) LESSEE, IN THE CONDUCT OF ITS OPERATIONS ON THE DEMISED PREMISES, SHALL OBSERVE, OBEY, AND COMPLY WITH ANY AND ALL APPLICABLE RULES, REGULATIONS, LAWS, ORDINANCES, OR ORDERS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, LAWFULLY EXERCISING AUTHORITY OVER LESSEE OR LESSEE'S CONDUCT OF ITS BUSINESS.

(D) CITY SHALL NOT BE LIABLE TO LESSEE FOR ANY DIMINUTION OR DEPRIVATION OF POSSESSION, OR OF ITS RIGHTS HEREUNDER, ON ACCOUNT OF THE EXERCISE OF ANY SUCH RIGHT OR AUTHORITY AS IN THIS SECTION PROVIDED, NOR SHALL LESSEE BE ENTITLED TO TERMINATE THE WHOLE OR ANY PORTION OF THE LEASEHOLD ESTATE HEREIN CREATED, BY REASON OF THE EXERCISE OF SUCH RIGHTS OR AUTHORITY, UNLESS THE EXERCISE THEREOF SHALL SO INTERFERE WITH LESSEE'S USE AND OCCUPANCY OF THE LEASEHOLD ESTATE AS TO CONSTITUTE A TERMINATION IN WHOLE OR IN PART OF THIS LEASE BY OPERATION OF LAW IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA AND OF THE UNITED STATES MADE APPLICABLE TO THE STATES.

11.20.370 AIRCRAFT OPERATIONS PROTECTED.

(A) THE CITY SHALL RESERVE TO ITSELF ITS SUCCESSORS AND ASSIGNS, FOR THE USE AND BENEFIT OF THE PUBLIC, A RIGHT OF FLIGHT FOR THE PASSAGE OF AIRCRAFT IN THE AIRSPACE ABOVE THE SURFACE AND ALL IMPROVEMENTS APPROVED BY THE CITY OF THE PREMISES CONVEYED, TOGETHER WITH THE RIGHT TO CAUSE IN SAID AIRSPACE SUCH NOISE AS MAY BE INHERENT IN THE OPERATION OF AIRCRAFT, NOW OR HEREAFTER USED FOR NAVIGATION OF OR FLIGHT IN THE AIR, USING SAID AIRSPACE OF LANDING AT, TAKING OFF FROM, OR OPERATING ON THE KENAI AIRPORT. (WHEN PLANS FOR IMPROVEMENTS ARE APPROVED BY THE CITY, THE CITY TO THE EXTENT OF THOSE IMPROVEMENTS RELEASES THE EASEMENTS HERE EXPRESSED.)

(B) THE LESSEE BY ACCEPTING CONVEYANCE EXPRESSLY AGREES FOR ITSELF, ITS REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, THAT IT WILL NOT ERECT NOR PERMIT THE ERECTION OF ANY STRUCTURE OR OBJECT, ON THE AND CONVEYED, WHICH WOULD BE AN AIRPORT OBSTRUCTION WITHIN THE STANDARDS ESTABLISHED UNDER THE FEDERAL AVIATION ADMINISTRATION REGULATIONS, PART 77, AS AMENDED. IN THE EVENT THE AFORESAID COVENANT IS BREACHED, THE CITY RESERVES THE RIGHT TO ENTER ON THE LAND CONVEYED HEREUNDER AND TO REMOVE THE OFFENDING STRUCTURE OR OBJECT, ALL OF WHICH SHALL BE AT THE EXPENSE OF THE LESSEE OR ITS HEIRS, SUCCESSORS, OR ASSIGNS.

11.20.380 RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION.

THE CITY SHALL AGREE AND COVENANT THAT THE LESSEE, UPON PAYING RENT AND PERFORMING OTHER COVENANTS, TERMS, AND CONDITIONS OF THIS LEASE, SHALL HAVE THE RIGHT TO QUIETLY AND PEACEFULLY HOLD, USE, OCCUPY, AND ENJOY THE SAID LEASED PREMISES, EXCEPT THAT ANY INCONVENIENCE CAUSED BY PUBLIC WORKS PROJECTS IN OR ABOUT THE LEASEHOLD PREMISES SHALL NOT BE CONSTRUED AS A DENIAL OF THE RIGHT OF QUIET OR PEACEABLE POSSESSION.

11.20.390 LESSEE TO PAY TAXES.

LESSEE SHALL PAY ALL LAWFUL TAXES AND ASSESSMENTS WHICH, DURING THE TERM THEREOF MAY BECOME A LIEN UPON OR WHICH MAY BE LEVIED BY THE STATE, BOROUGH, CITY, OR ANY OTHER TAX-LEVYING BODY, UPON ANY TAXABLE POSSESSORY RIGHT WHICH LESSEE MAY HAVE IN OR TO THE REASON OF ITS USE OR OCCUPANCY, PROVIDED, HOWEVER, THAT NOTHING HEREIN CONTAINED SHALL PREVENT LESSEE FROM CONTESTING AS ANY OTHER LAND OWNER ANY INCREASE IN SUCH TAX OR ASSESSMENT THROUGH PROCEDURES OUTLINED IN STATE STATUTES.

11.20.400 NO PARTNERSHIP OR JOINT VENTURE CREATED.

THE CITY SHALL NOT BE CONSTRUED OR HELD TO BE A PARTNER OR JOINT VENTURER OF LESSEE IN THE CONDUCT OF BUSINESS ON THE DEMISED PREMISES; AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE RELATIONSHIP BETWEEN THE PARTIES THERETO IS, AND SHALL AT ALL TIMES REMAIN THAT OF LANDLORD AND TENANT.

11.20.410 DEFAULT BANKRUPTCY.

IF THE LESSEE SHALL MAKE ANY ASSIGNMENT FOR THE BENEFIT OF CREDITORS OR SHALL BE ADJUDGED A BANKRUPT, OR IF A RECEIVER IS APPOINTED FOR THE LESSEE OR LESSEE'S ASSETS, OR ANY INTEREST UNDER THIS LEASE, AND IF THE APPOINTMENT OF THE RECEIVER IS NOT VACATED WITHIN THIRTY DAYS, OR IF A VOLUNTARY PETITION IS FILED UNDER SECTION 18(A) OF THE BANKRUPTCY ACT BY THE LESSEE, THEN AND IN ANY EVENT, THE CITY MAY, UPON GIVING THE LESSEE THIRTY DAYS' NOTICE, TERMINATE THIS LEASE.

11.20.420 NONDISCRIMINATION.

THE LESSEE, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST, AND ASSIGNS, AS A PART OF THE CONSIDERATION HEREOF, DOES HEREBY COVENANT AND AGREE AS A COVENANT RUNNING WITH THE LAND, THAT:

(A) NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION IN, DENIED THE BENEFITS OF, OR BE OTHERWISE SUBJECTED TO DISCRIMINATION IN THE USE OF SAID FACILITIES.

(B) IN THE CONSTRUCTION OF ANY IMPROVEMENTS ON, OVER, OR UNDER SUCH LAND AND THE FURNISHING OF SERVICES THEREON, NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION, DENIED THE BENEFITS OF, OR OTHERWISE BE SUBJECTED TO DISCRIMINATION.

(C) THE LESSEE SHALL USE THE PREMISES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED BY OR PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED.

(D) IN THE EVENT FACILITIES ARE CONSTRUCTED, MAINTAINED, OR OTHERWISE OPERATED ON THE SAID PROPERTY DESCRIBED IN THIS LEASE, FOR A PURPOSE INVOLVING THE PROVISION OF SIMILAR SERVICES OR BENEFITS, THE LESSEE SHALL MAINTAIN AND OPERATE SUCH FACILITIES AND SERVICES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED.

11.20.430 PARTIAL INVALIDITY.

IF ANY TERM, PROVISION, CONDITION, OR PART OF THE LEASE IS DECLARED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNCONSTITUTIONAL, THE REMAINING TERMS, PROVISIONS, CONDITIONS, OR PARTS SHALL CONTINUE IN FULL FORCE AND EFFECT AS THOUGH SUCH DECLARATION WAS NOT MADE.

11.20.440 PAROLE MODIFICATIONS.

IT SHALL BE MUTUALLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE AGREEMENT, AS WRITTEN, SHALL COVER ALL THE AGREEMENTS AND STIPULATIONS BETWEEN THE PARTIES; AND NO REPRESENTATIONS, ORAL OR WRITTEN, HAVE BEEN MODIFYING, ADDING TO, OR CHANGING THE TERMS THEREOF.

11.20.450 AMENDMENT OF LEASE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN ORDER TO AID THE LESSEE IN THE FINANCING OF THE IMPROVEMENTS TO BE SITUATED HEREIN, THE CITY SHALL AGREE THAT IN THE EVENT THE PROPOSED MORTGAGEE, BENEFICIARY OR SECURITY ASSIGNEE UNDER ANY INTERIM OR PERMANENT LOAN ON THE SECURITY OF THE LEASEHOLD INTEREST OF THE LESSEE AND THE IMPROVEMENTS TO BE SITUATED THEREON SO REQUIRES, THE CITY WILL MAKE A REASONABLE EFFORT TO AMEND THIS LEASE IN ORDER TO SATISFY SUCH REQUIREMENTS UPON THE EXPRESS CONDITION AND UNDERSTANDING, HOWEVER, THAT SUCH VARIANCE IN LANGUAGE WILL NOT MATERIALLY PREJUDICE THE CITY'S RIGHTS THEREUNDER NOR BE SUCH AS TO ALTER IN ANY WAY THE RENTAL OBLIGATIONS OF THE LESSEE HEREUNDER NOR ITS OBLIGATIONS TO COMPLY WITH ALL EXISTING LAWS AND REGULATIONS OF THE CITY RELATING TO THE LEASING OF AIRPORT LANDS, AND TO ALL APPLICABLE FEDERAL STATUTES, RULES, AND REGULATIONS, AND ALL COVENANTS AND CONDITIONS OF THE DEED BY WHICH THE CITY HOLDS TITLE TO THE LAND.

11.20.460 COMPLIANCE WITH LAWS.

(A) LESSEE SHALL COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, AND REGULATIONS OF PUBLIC AUTHORITIES NOW OR HEREAFTER IN ANY MANNER AFFECTING THE LEASED PREMISES OR THE SIDEWALKS, ALLEYS, STREETS, AND WAY ADJACENT THERETO OR ANY BUILDINGS, STRUCTURES, FIXTURES, AND IMPROVEMENTS OR THE USE THEREOF, WHETHER OR NOT ANY SUCH LAWS, ORDINANCES, AND REGULATIONS WHICH MAY BE HEREAFTER ENACTED INVOLVE A CHANGE OF POLICY ON THE PART OF THE GOVERNMENTAL BODY ENACTING THE SAME. LESSEE AGREES TO HOLD CITY FINANCIALLY HARMLESS FROM THE FOLLOWING:

- (1) FROM THE CONSEQUENCES OF ANY VIOLATION OF SUCH LAWS, ORDINANCES, AND/OR REGULATIONS.
- (2) FROM ALL CLAIMS FOR DAMAGES ON ACCOUNT OF INJURIES, DEATH, OR PROPERTY DAMAGE RESULTING FROM SUCH VIOLATION.

(B) LESSEE FURTHER AGREES IT WILL NOT PERMIT ANY UNLAWFUL OCCUPATION, BUSINESS, OR TRADE TO BE CONDUCTED ON SAID PREMISES OR ANY USE TO BE MADE THEREOF CONTRARY TO ANY LAW, ORDINANCE, OR REGULATION AS AFORESAID WITH RESPECT THERETO.

11.20.470 CARE OF PREMISES.

LESSEE, AT ITS OWN COST AND EXPENSE, SHALL KEEP THE LEASED PREMISES, ALL IMPROVEMENTS WHICH AT ANY TIME DURING THE TERM OF THIS LEASE MAY BE

SITUATED THEREON, AND ANY AND ALL APPURTENANCES THEREUNTO BELONGING, IN GOOD CONDITION AND REPAIR, DURING THE ENTIRE TERM OF THIS LEASE.

11.20.480 LESSEE'S OBLIGATION TO REMOVE LIENS.

LESSEE WILL NOT PERMIT ANY LIENS INCLUDING, BUT NOT LIMITED TO, MECHANICS', LABORERS', OR MATERIAL-MEN'S LIENS OBTAINABLE OR AVAILABLE UNDER THE THEN EXISTING LAWS, TO STAND AGAINST THE LEASED PREMISES OR IMPROVEMENTS FOR ANY LABOR OR MATERIAL FURNISHED TO LESSEE OR CLAIMED TO HAVE BEEN FURNISHED TO LESSEE OR TO LESSEE'S AGENTS, CONTRACTORS, OR SUBLESSEES, IN CONNECTION WITH WORK OF ANY CHARACTER PERFORMED OR CLAIMED TO HAVE BEEN PERFORMED ON SAID PREMISES OR IMPROVEMENTS BY OR AT THE DIRECTION OR SUFFERANCE OF LESSEE, PROVIDED, HOWEVER, LESSEE SHALL HAVE THE RIGHT TO PROVIDE A BOND AS CONTEMPLATED BY ALASKA LAW AND CONTEST THE VALIDITY OR AMOUNT OF ANY SUCH LIEN OR CLAIMED LIEN. ON FINAL DETERMINATION OF SUCH LIEN OR SUCH CLAIM FOR LIEN, LESSEE WILL IMMEDIATELY PAY ANY JUDGMENT RENDERED WITH ALL PROPER COSTS AND CHARGES AND SHALL HAVE SUCH LIEN RELEASED OR JUDGMENT SATISFIED AT LESSEE'S OWN EXPENSE.

11.20.490 CONDEMNATION.

IN THE EVENT THE LEASED PREMISES OR ANY PART THEREOF SHALL BE CONDEMNED AND TAKEN FOR A PUBLIC OR A QUASI-PUBLIC USE, THEN UPON PAYMENT OF ANY AWARD OR COMPENSATION ARISING FROM SUCH CONDEMNATION, THERE SHALL BE SUCH DIVISION OF THE PROCEEDS, SUCH ABATEMENT IN RENT PAYABLE DURING THE TERM OR ANY EXTENSION OF THE TERM HEREOF, AND SUCH OTHER ADJUSTMENTS AS THE PARTIES MAY AGREE UPON AS BEING JUST AND EQUITABLE UNDER ALL THE CIRCUMSTANCES. IF THE CITY AND LESSEE ARE UNABLE TO AGREE WITHIN THIRTY DAYS AFTER SUCH AN AWARD HAS BEEN PAID INTO COURT, UPON WHAT DIVISION, ANNUAL ABATEMENT IN RENT, AND OTHER ADJUSTMENTS ARE JUST AND EQUITABLE, THE DISPUTE SHALL BE DETERMINED BY ARBITRATION PROVIDED IN KMC 11.20.670 HEREOF.

11.20.500 PROTECTION OF SUBTENANTS.

TO PROTECT THE POSITION OF ANY SUBTENANT(S) HEREAFTER PROPERLY OBTAINING ANY INTERESTS IN THE LEASEHOLD ESTATE GRANTED LESSEE HEREUNDER, THE CITY AGREES THAT IN THE EVENT OF THE CANCELLATION, TERMINATION, EXPIRATION, OR SURRENDER OF THIS LEASE (THE GROUND LEASE), THE CITY WILL ACCEPT THE SUBTENANT, ITS SUCCESSORS AND ASSIGNS, AS ITS LESSEE FOR A PERIOD EQUAL TO THE FULL ELAPSED PORTION OF THE TERM OF THE

SUBLEASE, INCLUDING ANY EXTENSIONS OR RENEWALS THEREOF NOT EXCEEDING THE TERM OF THIS LEASE, UPON THE SAME COVENANTS AND CONDITIONS THEREIN CONTAINED, TO THE EXTENT THAT SAID COVENANTS AND CONDITIONS ARE NOT INCONSISTENT WITH ANY OF THE TERMS AND CONDITIONS OF THIS LEASE, PROVIDED SUCH SUBTENANT SHALL MAKE FULL AND COMPLETE ATTORNMENT TO THE CITY FOR THE BALANCE OF THE TERM OF SUCH SUBLEASE SO AS TO ESTABLISH DIRECT PRIVITY OF ESTATE AND CONTRACT BETWEEN THE CITY AND THE SUBTENANT WITH THE SAME FORCE AND EFFECT AS THOUGH SUCH SUBLEASE WAS ORIGINALLY MADE DIRECTLY BETWEEN THE CITY AND SUCH SUBTENANT; AND FURTHER PROVIDED SUCH SUBTENANT AGREES TO COMPLY WITH ALL THE PROVISIONS OF THE GROUND LEASE AND ALL THE TERMS OF ANY MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT TO WHICH SUCH LEASEHOLD ESTATE IS SUBJECT, EXCEPT THE PAYMENT OF RENT UNDER THE GROUND LEASE AND THE PAYMENT OF ANY DEBT SERVICE UNDER ANY SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT.

11.20.510 SUCCESSORS IN INTEREST.

THIS LEASE SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO, SUBJECT TO SUCH SPECIFIC LIMITATIONS OR ASSIGNMENT AS ARE PROVIDED FOR HEREIN.

11.20.520 GOVERNING LAW.

THE INDENTURE OF LEASE SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF ALASKA.

11.20.530 NOTICES.

(A) ANY NOTICES REQUIRED BY THE LEASE SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DULY GIVEN ONLY IF DELIVERED PERSONALLY OR MAILED BY CERTIFIED OR REGISTERED MAIL IN A PREPAID ENVELOPE ADDRESSED AS FOLLOWS:

TO CITY:CITY HALL—CITY OF KENAI
[P.O. BOX 580] 210 FIDALGO AVENUE
KENAI, ALASKA 99611

TO TENANT:

(B) THE CITY SHALL ALSO MAIL A COPY OF ANY NOTICE GIVEN TO THE LESSEE, BY REGISTERED OR CERTIFIED MAIL, TO ANY LEASEHOLD LENDER (MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, SECURITY ASSIGNEE) WHO SHALL HAVE GIVEN THE CITY NOTICE OF SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT.

(C) ANY SUCH ADDRESSES MAY BE CHANGED BY AN APPROPRIATE NOTICE IN WRITING TO ALL OTHER PARTIES AFFECTED PROVIDED SUCH CHANGE OF ADDRESS IS GIVEN TO THE OTHER PARTIES BY THE MEANS OUTLINED IN PARAGRAPH (A) ABOVE AT LEAST FIFTEEN DAYS PRIOR TO THE GIVING OF THE PARTICULAR NOTICE IN ISSUE.

11.20.540 FIRE PROTECTION.

THE LESSEE WILL TAKE ALL REASONABLE PRECAUTION TO PREVENT AND TAKE ALL NECESSARY ACTION TO SUPPRESS DESTRUCTIVE OR UNCONTROLLED GRASS, BRUSH, OR OTHER FIRES ON LEASED LANDS, AND COMPLY WITH ALL LAWS, REGULATIONS, AND RULES PROMULGATED AND ENFORCED BY THE CITY FOR FIRE PROTECTION WITHIN THE AREA WHEREIN THE LEASED PREMISES ARE LOCATED.

11.20.550 INSPECTION.

THE LESSEE SHALL ALLOW AUTHORIZED REPRESENTATIVES OF THE CITY TO ENTER THE LEASED LAND FOR INSPECTION AT ANY REASONABLE TIME.

11.20.560 PERSONAL USE OF MATERIALS.

ALL COAL, OIL, GAS, AND OTHER MINERALS AND ALL DEPOSITS OF STONE OR GRAVEL VALUABLE FOR EXTRACTION OR UTILIZATION AND ALL MATERIALS SUBJECT TO TITLE II, DIVISION I, CHAPTERS 4, 5, AND 6 OF THE ALASKA ADMINISTRATIVE CODE ARE EXCEPTED FROM THE OPERATION OF A SURFACE LEASE. SPECIFICALLY, THE LESSEE OF THE SURFACE RIGHTS SHALL NOT SELL OR REMOVE FOR USE ELSEWHERE ANY TIMBER, STONE, GRAVEL, PEAT MOSS, TOPSOIL, OR ANY OTHER MATERIAL VALUABLE FOR BUILDING OR COMMERCIAL PURPOSES; PROVIDED, HOWEVER, THAT MATERIAL REQUIRED FOR THE DEVELOPMENT OF THE LEASEHOLD MAY BE USED IF ITS USE IS FIRST APPROVED BY THE CITY.

11.20.570 RESTRICTIONS AND RESERVATIONS.

THE LEASE SHALL CONTAIN SUCH RESTRICTIONS AND RESERVATIONS AS ARE NECESSARY TO PROTECT THE PUBLIC INTEREST.

11.20.580 WASTE AND INJURY TO LAND.

IF ANY PERSON SHALL COMMIT WASTE, TRESPASS, OR OTHER INJURY UPON CITY LAND, THE PERSON SO OFFENDING, IN ADDITION TO BEING CIVILLY LIABLE FOR ANY DAMAGES CAUSED, SHALL BE DEEMED GUILTY OF A VIOLATION. (ORDS. 532, 1858-2000)

11.20.590 WARRANTY.

THE CITY DOES NOT WARRANT BY ITS CLASSIFICATION OR LEASING OF LAND THAT THE LAND IS IDEALLY SUITED FOR THE USE AUTHORIZED UNDER SAID CLASSIFICATION OR LEASE, AND NO GUARANTY IS GIVEN OR IMPLIED THAT IT SHALL BE PROFITABLE TO EMPLOY LAND TO SAID USE. CITY BEARS NO RESPONSIBILITY FOR ANY WATER EROSION OF LAND.

11.20.600 APPROVAL OF OTHER AUTHORITIES.

THE ISSUANCE BY THE CITY OF LEASES DOES NOT RELIEVE THE GRANTEE OR LESSEE OF RESPONSIBILITY OF OBTAINING LICENSES OR PERMITS AS MAY BE REQUIRED BY DULY AUTHORIZED BOROUGH, STATE, OR FEDERAL AGENCIES.

11.20.610 TITLE RESTRICTIONS.

ALL LEASES OR SALES OF PROPERTY SHALL BE MADE SUBJECT TO RESTRICTIONS AND RESERVATIONS IN THE PATENT, DEED, OR OTHER INSTRUMENT UNDER WHICH THE CITY HOLDS.

11.20.620 INSURANCE—HOLD HARMLESS.

LESSEE SHALL COVENANT TO SAVE THE CITY HARMLESS FROM ALL ACTIONS, SUITS, LIABILITIES, OR DAMAGES RESULTING FROM OR ARISING OUT OF ANY ACTS OF COMMISSION OR OMISSION BY THE LESSEE, HIS AGENTS, EMPLOYEES, CUSTOMERS, INVITEES, OR ARISING FROM OR OUT OF THE LESSEE'S OCCUPATION, OR USE OF THE PREMISES DEMISED, OR PRIVILEGES GRANTED, AND TO PAY ALL COSTS CONNECTED THEREWITH. IN THIS CONNECTION, THE LESSEE SHALL AGREE TO ARRANGE AND PAY FOR ALL THE FOLLOWING:

- (A) PUBLIC LIABILITY INSURANCE PROTECTING BOTH THE CITY AND/OR ITS AGENTS AND THE LESSEE, SUCH INSURANCE TO BE EVIDENCED BY A CERTIFICATE SHOWING THE INSURANCE IN FORCE. THE AMOUNT OF SUCH PUBLIC LIABILITY INSURANCE SHALL HAVE LIMITS NOT LESS THAN THOSE KNOWN AS \$250,000/\$500,000/\$100,000.
- (B) LIQUOR LIABILITY (WHERE APPLICABLE).
- (C) LESSEE AGREES TO CARRY EMPLOYER'S LIABILITY INSURANCE AND WORKMEN'S COMPENSATION INSURANCE, AND TO FURNISH A CERTIFICATE THEREOF TO THE CITY, IF APPLICABLE.
- (D) INSURANCE CONTRACTS PROVIDING LIABILITY INSURANCE AND WORKMEN'S COMPENSATION SHALL PROVIDE FOR NOT LESS THAN THIRTY DAYS WRITTEN NOTICE TO THE CITY OF CANCELLATION OR EXPIRATION OR SUBSTANTIAL CHANGE IN POLICY CONDITIONS AND COVERAGE.

(E) LESSEE AGREES THAT WAIVER OF SUBROGATION AGAINST THE CITY SHALL BE REQUESTED OF LESSEE'S INSURER, AND SHALL BE PROVIDED AT NO COST TO THE CITY.

(F) CROSS LIABILITY: IT IS UNDERSTOOD AND AGREED THAT THE INSURANCE AFFORDED BY THIS POLICY OR POLICIES FOR MORE THAN ONE NAMED INSURED, SHALL NOT OPERATE TO INCREASE THE LIMITS OF THE COMPANY'S LIABILITY, BUT OTHERWISE SHALL NOT OPERATE TO LIMIT OR VOID THE COVERAGE OF ANY ONE NAMED INSURED AS RESPECTS CLAIMS AGAINST THE SAME NAMED INSURED OR EMPLOYEES OF SUCH OTHER NAMED INSURED.

(G) THE INSURANCE PROCURED BY THE LESSEE AS HEREIN REQUIRED SHALL BE ISSUED IN THE NAME OF THE LESSEE AND THE CITY BY A COMPANY LICENSED TO DO BUSINESS IN THE STATE OF ALASKA, AND SHALL CONTAIN ENDORSEMENTS THAT:

(1) SUCH INSURANCE MAY NOT BE CANCELED OR AMENDED WITH RESPECT TO THE CITY WITHOUT THIRTY DAYS WRITTEN NOTICE BY REGISTERED OR CERTIFIED MAIL TO THE CITY BY THE INSURANCE COMPANY.

(2) LESSEE SHALL BE SOLELY RESPONSIBLE FOR PAYMENT OF PREMIUMS AND THAT CITY SHALL NOT BE REQUIRED TO PAY ANY PREMIUMS FOR SUCH INSURANCE.

(H) THE AMOUNT OF INSURANCE COVERAGE REQUIRED ABOVE MAY BE SUBJECT TO REVIEW FOR INCREASE AT EACH FIVE-YEAR RENEGOTIATION OF THE LEASE.

(I) UPON REVIEW BY THE COMMISSION, THE LESSEE MAY BE REQUIRED TO OBTAIN SUCH OTHER INSURANCE PROTECTING THE CITY AND LESSEE THAT MAY BE NECESSARILY REQUIRED OR ADVISABLE OWING TO THE PARTICULARITIES OF THE HARBOR-RELATED ACTIVITIES ON THE LEASE-HOLD INTEREST.

11.20.630 INSURANCE OF USERS—SUBTENANTS.

LESSEE, FOR ITS OWN PROTECTION, MAY REQUIRE BONA FIDE PUBLIC USERS AND SUBTENANTS TO EXECUTE AGREEMENTS HOLDING LESSEE HARMLESS FROM ACTIONS ARISING OUT OF USER'S OPERATIONS AND MAY REQUIRE SUCH BONA FIDE PUBLIC USERS AND SUBTENANTS TO SHOW PROOF OF PUBLIC LIABILITY INSURANCE COVERING THEIR OPERATIONS ON THE DEMISED PREMISES IN SUCH AMOUNTS AS WILL ADEQUATELY PROTECT THEM.

11.20.640 ANNUAL REPORT.

THE LESSEE MAY BE REQUIRED TO SUBMIT TO THE CITY EACH YEAR ON OR ABOUT MARCH 15, AN ANNUAL REPORT ON ITS OPERATIONS, PARTICULARLY THOSE SERVICES AND FACILITIES OFFERED TO THE PUBLIC, WHETHER ON A FEE OR NON-FEE BASIS].

11.20.650 Tidelands [C]Claims.

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.[3]820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any.

11.20.660 Subjection to [H]Harbor [O]Ordinance.

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part.

[11.20.670 ARBITRATION.

IN THE EVENT THE CITY AND LESSEE SHALL BE UNABLE TO AGREE AS TO ANY MATTER PROVIDED FOR IN THE LEASE EXCEPT AS TO THE AMOUNT OF THE FIVE-YEAR RENT REDETERMINATION AMOUNT WHICH IS HANDLED PURSUANT TO KMC 11.20.160, SUCH DISPUTE SHALL BE DETERMINED BY THREE DISINTERESTED ARBITRATORS (UNLESS THE PARTIES CAN AGREE ON ONE ARBITRATOR). SUCH ARBITRATION SHALL BE CONDUCTED UPON REQUEST OF EITHER THE CITY OR THE LESSEE, BEFORE THREE ARBITRATORS (UNLESS THE CITY OR THE LESSEE AGREE TO ONE ARBITRATOR) DESIGNATED BY THE AMERICAN ARBITRATION ASSOCIATION AND IN ACCORDANCE WITH THE RULES OF SUCH ASSOCIATION. THE ARBITRATORS DESIGNATED AND ACTING UNDER THIS LEASE SHALL HAVE NO POWER TO DEPART FROM OR CHANGE ANY OF THE PROVISIONS THEREOF. THE EXPENSE OF ARBITRATION PROCEEDINGS CONDUCTED HEREUNDER SHALL BE BORNE EQUALLY BY THE PARTIES. THE PROCEEDINGS SHALL TAKE PLACE IN KENAI, ALASKA UNLESS OTHERWISE AGREED UPON BY THE PARTIES.]

11.20.680 Provisions [R]Regulating [P]Public [U]Use [P]Purpose.

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates.

11.20.690 Provision to be [I]Included in [P]Public [U]Use [L]Lease.

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses.

11.20.700 Public [U]Use: [D]Defined.

(a) Public use shall mean a use limited in part or in whole to the following:

(1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:

- (i) Public dock facilities.
- (ii) Maritime commerce.
- (iii) Transportation.
- (iv) Fishing.
- (v) Boat harbor.
- (vi) Port and waterfront development purposes.

(b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City.

11.20.710 Controlled [A]Access.

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan.

11.20.720 Use [C]Charges.

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities. [IT IS EXPRESSLY RECOGNIZED THAT LESSEE IS ENTITLED TO A MARGIN OF PROFIT, WHICH SHOULD BE FAIR, REASONABLE, AND COMPETITIVE, AND THAT CITY WILL COOPERATE TO THIS END IN CONSIDERING RATES AND FEES. THE COMMISSION SHALL REVIEW ALL RATE STRUCTURES ANNUALLY. THE LEASE SHALL CONTAIN AN ARBITRATION PROVISION AS SET FORTH IN KMC 11.20.670 TO RESOLVE DISPUTES ARISING HEREUNDER.]

[11.20.730 MAINTENANCE OF DOCK.

LESSEE COVENANTS THAT IT WILL MAINTAIN THE DOCK FACILITY IN A SAFE CONDITION AND IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL STANDARDS.]

[11.20.740 MODIFICATIONS OF EXISTING LEASES.

LEASES SHALL ONLY BE MODIFIED TO THAT EXTENT DEEMED TO BE NECESSARY TO PROTECT THE PUBLIC'S INTEREST.

11.20.750 UNAUTHORIZED REMOVAL OF MATERIAL PROHIBITED.

ANY PERSON, FIRM, OR CORPORATION WHO WITHOUT WRITTEN AUTHORITY FROM THE CITY REMOVES ROCK, GRAVEL, OR OTHER MATERIAL FROM THE LANDS OWNED BY THE CITY WITHOUT THE EXPRESS CONSENT OF THE CITY SHALL BE DEEMED GUILTY OF A VIOLATION. ANY CRIMINAL ACTION TAKEN AGAINST SUCH PERSON SHALL NOT PRECLUDE THE INSTITUTION OF CIVIL PROCEEDINGS BY THE CITY.

11.20.760 REMOVAL NOT AUTHORIZED BY LEASE.

NO DEED OR LEASE GRANTED BY THE CITY TO ANY PERSON SHALL CONTAIN TERMS OR BE CONSTRUED AS GRANTING ANY RIGHT TO REMOVE MATERIAL FROM CITY LANDS.]

[11.20.770 DISPOSITION OF RIGHTS BY COUNCIL.

IN RECOGNITION THAT CONDITIONS MAY EXIST FROM TIME TO TIME WHEREBY USE OF SUCH LANDS AND THE MATERIAL COMPRISING THE SAME MAY BE BENEFICIAL TO THE PUBLIC INTEREST AND PROMOTE THE PROGRESS AND DEVELOPMENT OF THE CITY, APPLICATIONS FOR THE USE THEREOF MAY BE RECEIVED AND CONSIDERED BY THE COMMISSION, PROVIDING SUCH APPLICATIONS FULLY DISCLOSE TO THE CITY ALL MATERIAL FACTS AND PLANS FOR THE PROPOSED USE. SUCH APPLICATIONS SHALL BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY AND REFERRED TO THE CITY PLANNING COMMISSION FOR ITS RECOMMENDATIONS. DISPOSITION OF SUCH APPLICATIONS SHALL BE MADE BY THE COUNCIL AFTER RECOMMENDATION FROM THE COMMISSION.]

11.20.780 Penalties.

(a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC 13.05.010. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC 13.05.010 per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.

(c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC 11.20.220 and KMC 11.20.240 hereof.

11.20.790 Tideland [L]Leases for [S]Shore [F]Fisheries.

(a) Notwithstanding other provisions of the City's Code of Ordinances [T]the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should the State of Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska. [ANY MONEY OWED PURSUANT TO KMC 11.20.150] SHALL BE IN ADDITION TO THE ANNUAL MINIMUM SET FORTH ABOVE.

(B) NEITHER KMC 11.20.160 NOR KMC 11.20.620(A) SHALL APPLY TO TIDELAND LEASES FOR SHORE FISHERIES.

(C) THE PROVISIONS OF KMC 11.20.110 AND KMC 11.20.130 REQUIRING APPRAISALS OF TIDELAND PROPERTY SHALL NOT APPLY TO LEASES OF TIDELANDS FOR SHORE FISHERIES. HOWEVER, THE SURVEY PROVISIONS OF KMC 11.20.110 ARE APPLICABLE TO SHORE FISHERY LEASES.]

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this * day of *, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: February 19, 2020
Enacted: *, 2020
Effective: *, 2020



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Council Members Jim Glendening and Robert Peterkin

DATE: February 10, 2020

SUBJECT: **Ordinance No. 3106-2020 – Amending Title 11 – Harbor and Harbor Facilities**

The Harbor Commission, and a subcommittee, has been reviewing Title 11 of the Kenai Municipal Code to recommend changes that more appropriately reflect the Harbor Commissions current functions, relationship with other commissions, and desires moving forward. This process is especially relevant now, with the enactment of Ordinance No. 3072-2019 (Substitute) which repealed and re-enacted the City’s approach to the managing City lands. Part of this approach was to bring certain harbor lands, along with airport lands outside the airport reserve into the City’s general fund land sales and leasing process to establish a consistent Citywide approach. Additionally relevant to revisions of Title 11, many procedures and processes described in the Title are no longer applicable because they address the transfer of certain tidelands from the State of Alaska to the City on January 6, 1977 and the adjudication of preference rights or commercial fishermen, much of which had to be accomplished by October 6, 1981.

It appears that when the Harbor Code was originally enacted, the City had a vision for a harbor that did not come to fruition. Further, many current code provisions address specific conveyance restrictions on specific parcels of land that do not broadly apply to all harbor lands. These specific restrictions are carried forward in the City’s land management plan and do not need to remain codified. Rather than retain old code provisions that are no longer applicable or applied, we recommend removing the old language and addressing changes or new plans for the harbor on a go forward basis. The proposed changes will not limit the City’s ability to move forward with any new plans or projects, however new code provisions may be appropriate to address any significant changes in harbor usage.

The Harbor Commission and a subcommittee formed especially to review Title 11 have put considerable time and effort into revising the code and strategizing a path forward so the Commission can be of greatest service to the City. The code revisions in this Ordinance incorporate the recommended revisions from the Harbor Commission and its subcommittee,



along with other proposed changes based on the enactment of Ordinance No. 3072-2019 (Substitute) and continued relevance of other sections of code recommended by the City Attorney.

We ask that this Ordinance be referred to the Harbor Commission upon introduction. Your consideration is appreciated.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Scott Bloom, City Attorney

DATE: February 10, 2020

SUBJECT: **Ordinance No. 3106-2020 – Amending Title 11 – Harbor and Harbor Facilities**

Below is a sectional analysis of the code changes recommended in Ordinance 3106-2020. Comments are provided in red. In general, many of the provisions are recommended to be deleted for three main reasons: 1) because they address specific tasks that were temporal in nature and were completed over three decades ago; 2) they provide a process for leasing lands that are already described in Chapter 22.05-Disposition of City Lands; or 3) they contain lease provisions that are now contained in the City’s standard lease form approved by Council. With regard to the first reason, I don’t think the City’s municipal code should contain provisions that are only relevant for a relatively short periods of time. Removing these items will reduce clutter within the code, improve readability and clarity. A record will be kept and is available should any of these removed issues become relevant again. As to the second reason, the City Council recently approved significant amendments to the City’s Lands Code, including its leasing provisions which now apply to harbor lands. The lease provisions in Title 11 should be removed as they are inconsistent with Chapter 22 and recent practices of the City. Finally, as to the third reason, maintaining fairly specific contract language in code, in this case specific lease provisions, makes the City inflexible as a business partner and makes it difficult to address unique situations in a timely and efficient manner. I support the removal of these provisions from Title 11.



Title 11

HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master
- 11.10 Harbor Commission
- 11.15 Tidelands
- 11.20 Leasing of Tidelands

Chapter

11.05

HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.
- 11.05.020 Harbor [D]Defined.
- 11.05.030 Harbor [R]Regulations.
- [11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.
- 11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.
- 11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.
- 11.05.070 FACILITY RATES AND CHARGES.]
- 11.05.080 Leasing [N]Not [P]Prohibited.
- 11.05.090 Use of [L]Launch [R]Ramp and [F]Float.
- 11.05.100 No [W]Wake [Z]Zones.

11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law. **No Changes**

11.05.020 Harbor [D]Defined. (House Keeping)

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor [R]Regulations. (House Keeping)

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

[11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.

(A) ALL LESSEES, OWNERS, OR OCCUPANTS OF PROPERTY WITHIN THE HARBOR OR CONTIGUOUS TO IT WHO WISH TO CONSTRUCT OR OPERATE TERMINAL OR TRANSPORTATION FACILITIES OF ANY KIND THEREIN, INCLUDING, BUT NOT LIMITED TO, DOCKS AND WAREHOUSES, SHALL _APPLY TO THE LANDSCAPING/SITE PLAN REVIEW BOARD FOR A PERMIT]. APPLICATION THEREFOR SHALL BE MADE IN ACCORDANCE WITH REGULATIONS DESCRIBED IN KMC 14.25, ENTITLED "LANDSCAPING/SITE PLAN REGULATIONS," AND SHALL BE ACCOMPANIED BY A PLAN OF THE PROPOSED CONSTRUCTION, WHICH SHALL MEET ALL STANDARDS AND REQUIREMENTS WHICH MAY BE SET FORTH BY THE COUNCIL.

(B) THE APPLICANT SHALL REFER ALL PLANS OF THE TYPE OR LOCATION OF ANY PROPOSED CONSTRUCTION WHICH ARE OR MAY BE IN CONFLICT WITH THE GENERAL CITY PLAN TO THE HARBOR COMMISSION AND THE LANDSCAPING/SITE PLAN REVIEW BOARD TO DETERMINE WHETHER SUCH PROPOSED CONSTRUCTION IS IN KEEPING WITH THE OBJECTIVES OF THE GENERAL PLAN. THE DECISION OF THE LANDSCAPING/SITE PLAN REVIEW BOARD SHALL BE BINDING UNLESS APPEALED BY COUNCIL. THE BUILDING OFFICIAL MAY ISSUE PERMITS UPON SUCH TERMS AND CONDITIONS AND FOR SUCH DURATION AS IT MAY DEEM PROPER, AND NO CONSTRUCTION MAY BEGIN OR OPERATION CARRIED ON WITHOUT A PERMIT FROM THE BUILDING OFFICIAL.] This section last amended in 1990 is no longer current with the applicable procedures for landscape site plan review. There is no landscape site plan review board, nor is there a general plan for the City. We do however have a comprehensive plan. All qualifying improvements within the City are required to go through an applicable administrative site plan review process and building permit process pursuant to provision in the Planning and Zoning code. Removing this section in Title will not affect those requirements.

[11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.

IT SHALL BE A CONDITION OF ALL PERMITS GRANTED BY THE CITY COUNCIL THAT THE FACILITIES TO BE CON-STRUCTED AND THE SERVICES TO BE SUPPLIED IN CONNECTION WITH THEM SHALL BE MADE AVAILABLE TO ALL CARRIERS UPON EQUAL TERMS, AT EQUAL RATES, AND WITHOUT DISCRIMINATION OF ANY KIND.] The City Council no longer grants permits of this nature, I am unable to confirm if they ever have. The City

can restrict property use and services provided through any deed or grant restrictions if applicable through lease requirements, grant requirements, or permits, such as 'special use' permits. I am uncertain of other regulatory authority imposed by the City in this regard. Through the City's administrative process and the land management plan, any conditions necessary to be imposed on a property or activities on such property based on third party regulatory authority or title restrictions should be carried forward.

[11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.

THE CITY COUNCIL MAY INQUIRE INTO THE MANNER IN WHICH OBLIGATIONS UNDER THE PERMITS ISSUED BY IT ARE CARRIED OUT, AND INTO THE RATE SCHEDULES AND PRACTICES OF THE PERMIT HOLDERS FOR PURPOSES OF DETERMINING WHETHER THE PROVISIONS OF THE PERMITS ARE BEING COMPLIED WITH. IT SHALL HAVE ACCESS TO BOOKS AND RECORDS AND TO TERMINAL AND TRANSPORTATION FACILITIES AS MAY BE REASONABLY NECESSARY TO ENABLE IT TO MAKE SUCH A DETERMINATION. SHOULD THE COUNCIL AT ANY TIME FIND THE PERMIT HOLDER IS NOT COMPLYING WITH THE TERMS OF HIS OR HER PERMIT, IT MAY CANCEL THE PERMIT UPON SUCH NOTICE AND IN ACCORDANCE WITH SUCH PROCEDURE AS IT MAY, BY REGULATION, PRESCRIBE.] Similar to the proceeding section, the City Council does not issue permits in this regard, nor have regulations been enacted to provide for these activities.

[11.05.070 FACILITY RATES AND CHARGES.

THE CITY SHALL FIX THE RATES AND CHARGES FOR THE USE OF ANY AND ALL TERMINAL OR TRANSPORTATION FACILITIES CONSTRUCTED ON PROPERTY UNDER ITS JURISDICTION, INCLUDING CHARGES ASSESSED AGAINST VESSELS, THEIR OWNERS, AGENTS OR OPERATORS WHICH LOAD OR DISCHARGE CARGO AT ANY OF THE TERMINALS WITHIN THE HARBOR AREA; CHARGES FOR BERTHAGE WHILE LOADING OR DISCHARGING CARGO; CHARGES FOR ADMINISTRATIVE EXPENSES IN SERVING THE CARRIER'S CHARGES FOR FREIGHT HANDLING, LOADING, UNLOADING AND WHARF DEMURRAGE RATES. SUCH RATES AND CHARGES SHALL BE JUST AND REASONABLE. THE RATES AND CHARGES SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL.] The City does not fix these rates and has not regulated the contemplated industries in such a manner. The City only regulates the rates for use of its own dock facility.

11.05.080 Leasing [N]Not [P]Prohibited. (House Keeping)

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations. While this language is arguably not necessary, it is not harmful and I recommend it be kept.

11.05.090 Use of [L]Launch [R]Ramp and [F]Float. (House Keeping)

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC 11.05 within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).
- (c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.
- (d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC 13.05.010(b).
- (e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties. **I recommend this section be left in for now, however the Harbor Commission may want to address these provisions moving forward. For example, I would recommend imposing a fine for blocking the ramp that can be imposed as a minor offense as opposed to a civil penalty, which is much more difficult and costly to enforce administratively.**

11.05.100 No [W]Wake [Z]Zones. (House Keeping)

- (a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.
- (b) No wake zones may be established on a temporary or permanent basis.
- (c) A "no wake zone" is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.
- (d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.
- (e) A violation of this section shall be punishable as provided in KMC 13.05.010.
I recommend this section be left in as is. This may be an area the Harbor Commission wants to revisit moving forward to ensure it is adequately addressing concerns.

Chapter

11.10

HARBOR COMMISSION

Sections:

11.10.010 Duties and [P]owers.

11.10.010 Duties and [P]Powers. (House Keeping)

(a) The Harbor Commission shall be required to do the following:

(1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission's recommendations for the development of the City Harbor facilities may include, among other things:

(i) development of the type, location, and sequence of all public harbor facilities;

(ii) the relocation, removal, extension, or change of use of existing harbor facilities;

(2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

(3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.

[4] ACT IN THE CAPACITY AS DIRECTED AND AUTHORIZED BY A TIDELANDS ORDINANCE ADOPTED BY THE CITY.]

[5]4 Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.

[6]5 Make and prepare reports and plans for approval by the City Council.

[7]6 Coordinate public efforts, individual and group, to the effectuation of approved plans.

[8]7 Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council. **These are primarily housekeeping changes. The reference to the Tidelands Ordinance is removed as provisions in the Tidelands Ordinance related to duties of the commission are proposed to be removed as provided below, New duties may added moving forward.**

Chapter

11.15

TIDELANDS

Sections:

11.15.010 Short [T]Title.

[11.15.020 DEFINITIONS.]

11.15.030 Approval and [A]Acceptance of State [C]Conveyance.

- 11.15.040 Approval and [A]Adoption of [S]Subdivision [P]Plat.**
[11.15.050 TIME AND PLACES OF POSTING PLAT.
11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.
11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.
11.15.080 PROCEDURE FOR FILING APPLICATIONS.
11.15.090 INITIAL REVIEW BY COMMISSION.
11.15.100 PRELIMINARY PLAT.
11.15.110 PRELIMINARY PLAT REQUIREMENTS.
11.15.120 SURVEY PROCEDURE.
11.15.130 PROCEDURE ON FINAL PLAT.
11.15.140 FINAL PLAT REQUIREMENTS.
11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.
11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.
11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.
11.15.180 APPRAISAL.
11.15.190 REVIEW BY CITY ENGINEER.
11.15.200 RECOMMENDED APPROVAL BY COMMISSION.
11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.
11.15.220 DEEDS—PERMANENT REGISTER.
11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.
11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.
11.15.250 DETERMINATION UPON STIPULATION OF FACTS.
11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.
11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.
11.15.280 FORFEITURE OF PREFERENCE RIGHTS.
11.15.290 FORMS.]

11.15.010 Short [T]Title.

This ordinance shall be known as the “Kenai Tidelands Ordinance.” **No change recommended.**

[11.15.020 DEFINITIONS.

FOR THE PURPOSE OF THIS ORDINANCE, THE TERMS DEFINED HEREIN SHALL HAVE THE MEANING PROVIDED UNLESS THE CONTEXT REQUIRES OTHERWISE:

- (A) “ALASKA” MEANS THE STATE OF ALASKA.
- (B) “AGRICULTURAL LANDS” MEANS TIDELANDS CHIEFLY VALUABLE FOR AGRICULTURAL PURPOSES.

(C) "ASSESSOR" MEANS THE ASSESSOR OF THE CITY OF KENAI, ALASKA, OR OTHER INDIVIDUAL DESIGNATED BY THE CITY MANAGER TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE ASSESSOR.

(D) "CITY" MEANS THE CITY OF KENAI, ALASKA.

(E) "CITY ENGINEER" MEANS THE CITY ENGINEER OF THE CITY, OR OTHER CITY OFFICIAL DESIGNATED TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE CITY ENGINEER.

(F) "CLASS I PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS SEAWARD OF A SURVEYED TOWNSITE ON AND PRIOR TO SEPTEMBER 7, 1957, AND WHO HAVE EXECUTED A WAIVER TO THE CITY AND STATE OF ALL RIGHTS SUCH OCCUPANT MAY HAVE HAD PURSUANT TO PUBLIC LAW 85-303. UPON EXECUTION OF THE WAIVER, SUCH PERSONS OR THEIR SUCCESSORS IN INTEREST, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FROM THE CITY FOR CONSIDERATION OF THE COSTS OF SURVEY, AND TRANSFERRING AND CONVEYING THE TITLE.

(G) "CLASS II PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO CLASS I PREFERENCE RIGHT CLAIMANTS WHO REFUSE TO EXECUTE A WAIVER TO THE CITY OF ANY RIGHTS SUCH OCCUPANTS MAY HAVE ACQUIRED PURSUANT TO PUBLIC LAW 85-303. IT SHALL BE MANDATORY FOR THE CITY TO EXPEDITIOUSLY HONOR THE APPLICATION FROM THE OCCUPANT AFTER THE SECRETARY OF THE ARMY HAS SUBMITTED TO THE SECRETARY OF THE INTERIOR AND GOVERNOR OF THE STATE MAPS SHOWING THE PIERHEAD LINE ESTABLISHED BY THE CORPS OF ENGINEERS WITH RESPECT TO THE TRACT SO GRANTED. THE MOST EXPEDITIOUS METHOD OF SECURING TITLE TO SUCH LANDS IS TO EXECUTE THE WAIVER OF CLASS II RIGHTS AND PROCEED TO APPLY FOR TITLE UNDER A CLASS I PREFERENCE RIGHT.

(I) "CLASS III PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS AFTER SEPTEMBER 7, 1957, AND WHO CONTINUED TO OCCUPY THE SAME ON JANUARY 3, 1959. SUCH PERSONS, OR THEIR SUCCESSORS, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FOR A CONSIDERATION NOT TO EXCEED THE COSTS OF APPRAISAL, AND THE ADMINISTERING AND TRANSFERRING, INCLUDING SURVEY, TOGETHER WITH THE APPRAISED FAIR MARKET VALUE THEREOF, EXCLUSIVE OF ANY VALUE OCCURRING FROM IMPROVEMENTS OR DEVELOPMENT, SUCH AS FILL MATERIAL, BUILDING, OR STRUCTURES THEREON.

(J) "CLERK" MEANS THE CLERK OF THE CITY.

(K) "COMMISSION" MEANS THE CITY OF KENAI ADVISORY HARBOR COMMISSION UNLESS NOTED OTHERWISE.

(L) "DIRECTOR" MEANS THE DIRECTOR OF LANDS, STATE OF ALASKA.

(M) "DIRECTOR'S LINE" MEANS A LINE SEAWARD OF THE CITY, APPROVED BY THE DIRECTOR, WITH THE CONCURRENCE OF THE COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA, SEAWARD OF ALL TIDE AND SUBMERGED LANDS OCCUPIED OR SUITABLE FOR OCCUPATION AND DEVELOPMENT WITHOUT UNREASONABLE INTERFERENCE WITH NAVIGATION.

(N) "FAIR MARKET VALUE" MEANS THE HIGHEST PRICE, DESCRIBED IN TERMS OF MONEY, WHICH THE PROPERTY WOULD BRING IF EXPOSED FOR SALE FOR A REASONABLE TIME IN THE OPEN MARKET, WITH A SELLER, WILLING BUT NOT FORCED TO SELL, AND A BUYER, WILLING BUT NOT FORCED TO BUY, BOTH BEING FULLY INFORMED OF ALL THE PURPOSES FOR WHICH THE PROPERTY IS BEST ADAPTED OR COULD BE USED.

(O) "FILL" SHALL MEAN EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS PLACED UPON TIDE OR CONTIGUOUS SUBMERGED LANDS TO A HEIGHT ABOVE THE HIGH WATER LINE FOR THE PURPOSE OF ELEVATING THE LANDS FOR A SPECIAL USEFUL PURPOSE. EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS, PLACED ON TIDE OR CONTIGUOUS SUBMERGED LAND SOLELY FOR THE PURPOSE OF SPOILS DISPOSAL SHALL NOT BE CONSIDERED FILL UNLESS SUCH FILL WAS USED FOR USEFUL AND BENEFICIAL PURPOSE ON AND PRIOR TO JANUARY 3, 1959.

(P) "HEARINGS OFFICER" MEANS THAT CITY OFFICIAL EMPLOYED TO HEAR DISPUTES BETWEEN CLAIMANTS, SUMMARIZE THE TESTIMONY, ATTEMPT TO REACH STIPULATIONS OF FACT BETWEEN THE PARTIES, ASSEMBLE THE RECORD OF THE DISPUTE, AND SUBMIT THE SAME TO THE COUNCIL FOR DETERMINATION.

(Q) "IMPROVEMENTS" MEANS BUILDINGS, WHARVES, PIERS, DRY DOCKS, AND OTHER SIMILAR TYPES OF STRUCTURES PERMANENTLY FIXED TO THE TIDE OR CONTIGUOUS SUBMERGED LANDS THAT WERE CONSTRUCTED AND/OR MAINTAINED BY THE APPLICANT FOR BUSINESS, COMMERCIAL, RECREATION, RESIDENTIAL, OR OTHER BENEFICIAL USES OR PURPOSES. FLOATS SECURED BY GUIDE PILES USED AS FLOATING WHARVES, WHERE ACCESS IS PROVIDED TO THE SHORE, SHALL BE IMPROVEMENTS WITHIN THE MEANING OF THIS SECTION, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE OF MEAN HIGH TIDE OF JANUARY 3, 1959 AND ACTUALLY UTILIZED FOR BENEFICIAL PURPOSES ON JANUARY 3, 1959 BY THE APPLICANT SHALL BE CONSIDERED A PERMANENT IMPROVEMENT, BUT IN NO EVENT SHALL FILL BE CONSIDERED A PERMANENT IMPROVEMENT WHEN PLACED ON THE TIDELANDS SOLELY FOR THE PURPOSE OF DISPOSING OF WASTE OR SPOILS. FILL MATERIAL NOT UTILIZED FOR A BENEFICIAL

PURPOSE ON AND PRIOR TO JANUARY 3, 1959, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE MEAN HIGH TIDE ON JANUARY 3, 1959 SHALL NOT BE THE BASIS FOR AN APPLICATION, NOR SHALL IT BE INCLUDED IN ANY APPLICATION, FOR THE EXERCISE OF PREFERENCE RIGHTS HEREUNDER.

(R) "INDUSTRIAL AND COMMERCIAL LANDS" MEANS TIDE LANDS CHIEFLY VALUABLE FOR INDUSTRIAL, MANUFACTURING, OR COMMERCIAL PURPOSES.

(S) "KENAI" MEANS THE CITY OF KENAI, ALASKA.

(T) "MANAGER" MEANS THE MANAGER OF THE CITY OF KENAI, ALASKA.

(U) "MEAN HIGH TIDE" AT ANY PLACE SUBJECT TO TIDAL INFLUENCE SHALL BE INTERPRETED AS THE TIDAL DATUM PLANE DERIVED FROM AVERAGING ALL THE HIGH WATERS OBSERVED AT THAT PLACE OVER A PERIOD OF NINETEEN (19) YEARS. MEAN HIGH WATER SHALL BE INTERPRETED TO BE AS THE INTERSECTION OF THE DATUM PLACE OF MEAN HIGH WATER WITH THE SHORE.

(V) "MEAN LOW TIDE" SHALL BE INTERPRETED TO BE MEAN LOWER LOW WATER WHICH IS THE MEAN OF THE LOWER OF THE TWO LOW WATERS OF EACH DAY FOR A TIDAL CYCLE OF NINETEEN (19) YEARS.

(W) "OCCUPANT" MEANS ANY PERSON AS DEFINED HEREIN, OR HIS SUCCESSOR IN INTEREST, WHO ACTUALLY OCCUPIED FOR ANY BUSINESS, RESIDENTIAL, OR OTHER BENEFICIAL PURPOSE, TIDE OR SUBMERGED LAND, WITHIN THE CONVEYANCE OF SUCH BY THE STATE TO THE CITY, ON OR PRIOR TO JANUARY 3, 1959, WITH SUBSTANTIAL PERMANENT IMPROVEMENTS. NO PERSON SHALL BE CONSIDERED AN OCCUPANT BY REASON OF HAVING:

- (1) PLACED A FISH TRAP IN POSITION FOR OPERATION OR STORAGE UPON THE TIDE, SHORE, OR SUBMERGED LAND;
- (2) PLACED A SET NET OR PILING THEREFOR OR ANY OTHER DEVICE OR FACILITY FOR TAKING OF FISH;
- (3) PLACED PILINGS OR DOLPHINS FOR LONG STORAGE OR OTHER MOORAGE;
- (4) PLACED TELEPHONE, POWER, OR OTHER TRANSMISSION FACILITIES, ROADS, TRAILS, OR OTHER CONTIGUOUS SUBMERGED LANDS; OR
- (5) CLAIMED THE LAND BY VIRTUE OF SOME FORM OF CONSTRUCTIVE OCCUPANCY. WHERE LAND IS OCCUPIED BY A PERSON OTHER THAN THE OWNER OF THE IMPROVEMENTS THEREON, THE OWNER OF THE IMPROVEMENTS SHALL, FOR THE PURPOSE OF THIS ORDINANCE, BE CONSIDERED THE OCCUPANT OF SUCH LANDS.

(X) "OCCUPIED OR DEVELOPED" MEANS THE ACTUAL USE, CONTROL, AND OCCUPANCY, BUT NOT NECESSARILY RESIDENCE, OF THE TIDE OR SUBMERGED LAND BY THE ESTABLISHMENT THEREON OF SUBSTANTIAL PERMANENT IMPROVEMENTS.

(Y) "ORDINANCE" MEANS THE KENAI TIDELANDS ORDINANCE.

(Z) "PARK AND RECREATION LANDS" MEANS TIDELANDS CHIEFLY VALUABLE FOR PUBLIC PARK AND RECREATION USE, INCLUDING SCENIC OVERLOOKS.

(AA) "PERSON" MEANS ANY PERSON, FIRM, CORPORATION, COOPERATIVE ASSOCIATION, PARTNERSHIP OR OTHER ENTITY LEGALLY CAPABLE OF OWNING LAND OR ANY INTEREST THEREIN.

(BB) "PIERHEAD LINE" IS A LINE FIXED BY THE CORPS OF ENGINEERS ROUGHLY PARALLEL TO THE EXISTING LINE OF MEAN LOW TIDE AT SUCH DISTANCE OFFSHORE THEREFROM THAT SAID PIERHEAD LINE SHALL ENCOMPASS LANDWARD ALL STATIONARY, MANMADE STRUCTURES UNDER THE AUTHORITY OF PUBLIC LAW 85-303.

(CC) "PREFERENCE RIGHT" SUBJECT TO THE CLASSIFICATIONS THEREOF HEREIN ESTABLISHED MEANS THE RIGHT OF AN OCCUPANT TO ACQUIRE BY GRANT, PURCHASE, OR OTHERWISE, AT THE ELECTION OF THE OCCUPANT, EXCEPT AS OTHERWISE LIMITED OR PRESCRIBED IN THIS ORDINANCE, ANY LOT, PIECE, PARCEL, OR TRACT OF TIDELAND OR SUBMERGED LAND OCCUPIED OR DEVELOPED BY SUCH OCCUPANT ON AND PRIOR TO JANUARY 3, 1959.

(DD) "STATE" MEANS THE STATE OF ALASKA.

(EE) "SUBMERGED LANDS" MEANS LAND COVERED BY TIDAL WATERS BETWEEN THE LINE OF MEAN LOW WATER AND SEAWARD TO A DISTANCE OF THREE (3) GEOGRAPHICAL MILES, IN THEIR NATURAL STATE, WITHOUT BEING AFFECTED BY MANMADE STRUCTURES, FILL, AND SO FORTH.

(FF) "SUBSTANTIAL PERMANENT IMPROVEMENTS" SHALL FOR THE PURPOSES OF THE ORDINANCE HAVE THE SAME MEANING AS IMPROVEMENTS, AS HEREIN DEFINED.

(GG) "TIDELANDS" MEANS LANDS PERIODICALLY COVERED BY TIDAL WATERS BETWEEN THE ELEVATIONS OF MEAN HIGH TIDE AND MEAN LOW TIDES, WITHOUT REGARD TO ARTIFICIAL INTERFERENCE WITH TIDAL FLOWS CAUSED BY MANMADE STRUCTURES, BREAKWATERS, FILL, AND THE LIKE. WHEN USED IN THIS ORDINANCE, IT SHALL ALSO INCLUDE SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY.

(HH) "TIDELANDS SUBDIVISION PLAT" IS THAT CERTAIN PLAT OF SUBDIVISION OF TIDELANDS AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY MADE BY H.H. GALLIETT, JR., REGISTERED ENGINEER, DATED DECEMBER, 1968, KNOWN AS ALASKA TIDELANDS SURVEY NO. 272 AND FILED AS 76-179 IN THE KENAI RECORDING DISTRICT SHOWING ALL STRUCTURES AND IMPROVEMENTS THEREON AND THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED, TOGETHER WITH THE NAME OF THE OWNER OR CLAIMANT THEREOF, INCLUDING WITHIN THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED SUCH

SURROUNDING TIDE AND SUBMERGED LANDS AS SHALL BE REASONABLY NECESSARY IN THE OPINION OF THE COUNCIL FOR THE USE AND ENJOYMENT OF THE STRUCTURES AND IMPROVEMENTS THEREON BY THE OWNER OR CLAIMANT, BUT SHALL NOT INCLUDE ANY TIDE OR SUBMERGED LANDS WHICH IF GRANTED TO SUCH OCCUPANT, WOULD UNJUSTLY DEPRIVE ANY OCCUPANT OF ADJOINING LANDS FROM HIS REASONABLE USE AND ENJOYMENT THEREOF.] **These definitions are not relevant nor needed based on removal of code sections below. For example, section 11.15.040 contains sufficient information to identify the plat in question without need of the definition immediately preceding (HH).**

11.15.030 Approval and [A]Acceptance of State [C]Conveyance. (House Keeping)

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City. **This has historical significance that should be maintained.**

11.15.040 Approval and [A]Adoption of [S]Subdivision [P]Plat. (House Keeping)

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District. **This has historical significance that should be maintained.**

Sections 11.15.050 through 11.15.290 below are all proposed to be deleted because they describe a process that expired over 30 years ago.

[11.15.050 TIME AND PLACES OF POSTING PLAT.

SAID PLAT SHALL BE POSTED FOR A PERIOD OF NOT LESS THAN SIXTY (60) DAYS, COMMENCING WITH THE DATE FOLLOWING THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, IN THE OFFICE OF THE CLERK, CITY HALL BUILDING. **This posting has already been completed.**

11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.

THE CLERK SHALL CAUSE TO BE ISSUED AND PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, COMMENCING THE

DAY AFTER THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, A NOTICE OF THE POSTING OF SAID PLAT CONTAINING THE FOLLOWING STATEMENTS:

- (A) TIME AND PLACE OF POSTING.
- (B) THE DAY OF FINAL PASSAGE AND THE EFFECTIVE DATE OF THIS ORDINANCE WHICH ADOPTS THE PLAT AS THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE TIDE AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY ON JANUARY 6, 1977.
- (C) THAT ANY AND ALL PERSONS HAVING OR CLAIMING PREFERENCE RIGHTS PROVIDED BY LAW AND AS HEREIN DEFINED TO ANY PART OR PARTS OF THE SUBDIVIDED LAND EMBRACED WITHIN THE BOUNDARIES OF SAID PLAT, WHO FAIL TO APPLY TO EXERCISE SUCH RIGHTS UNDER THE PROVISIONS OF THIS ORDINANCE WITHIN TWO (2) YEARS FROM AND AFTER OCTOBER 6, 1979, WHICH IS HEREBY DECLARED TO BE THE DATE UPON WHICH APPLICATIONS THEREFOR WILL BE FIRST ACCEPTED BY THE CITY, SHALL HAVE FORFEITED THEIR PREFERENCE RIGHTS PROVIDED BY LAW AND THIS ORDINANCE.
- (D) THAT THIS ORDINANCE WAS ENACTED TO PROTECT OCCUPANTS HAVING PREFERENCE RIGHTS, TO AFFORD DUE PROCESS OF LAW, TO PROVIDE PROCEDURES FOR APPLYING FOR EXERCISE OF PREFERENCE RIGHTS, FOR HEARING AND ADJUDICATING ADVERSE CLAIMS, AND FOR CONVEYING TITLE TO OCCUPANTS HOLDING PREFERENCE RIGHTS DEFINED BY LAW AND THIS ORDINANCE.
- (E) THAT COPIES OF THIS ORDINANCE AND APPLICATION FORMS ARE AVAILABLE AT THE OFFICE OF THE CLERK OF THE CITY. **This publication has already been completed.**

11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.

APPLICATION FORMS, IN SUBSTANTIALLY THE FORM SET FORTH IN KMC 11.15.290(A) WILL BE ACCEPTED FOR FILING ONE BUSINESS DAY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, AND ENDING TWO CALENDAR YEARS THEREAFTER AND AT THE CLOSE OF BUSINESS AT 5:00 P.M., AFTER WHICH NO APPLICATION FORMS WILL BE FURNISHED AND AFTER WHICH NO APPLICATIONS WILL BE ACCEPTED FOR FILING. **This timeline has long expired.**

11.15.080 PROCEDURE FOR FILING APPLICATIONS.

APPLICATIONS SHALL BE SUBMITTED, AND WILL BE RECEIVED FOR FILING, ONLY FOR THE PURPOSE OF CLAIMING PREFERENCE RIGHTS HEREIN DEFINED TO THE TIDELANDS CONVEYED TO THE CITY BY THE STATE.

- (A) APPLICATION FORMS WILL BE PROVIDED BY THE CLERK WITHOUT CHARGE AT THE CITY CLERK'S OFFICE IN THE CITY HALL BUILDING.
- (B) APPLICATIONS MUST BE SUBMITTED IN TRIPPLICATE.
- (C) APPLICATIONS NOT CLEARLY LEGIBLE NOR PROPERLY COMPLETED AND CERTIFIED BY THE APPLICANT WILL NOT BE ACCEPTED FOR FILING. SINCE THE FACT ALLEGED MAY BE USED IN HEARINGS OF DISPUTES THEIR TRUTH MUST BE CERTIFIED. THE FACTS ALLEGED WILL ALSO BE THE BASIS FOR THE CONVEYANCES OF VALUABLE PROPERTY. WILLFUL AND DELIBERATE MISSTATEMENTS OF FACT WILL BE EQUIVALENT TO ATTEMPTING TO OBTAIN VALUABLE PUBLIC PROPERTY BY MISREPRESENTATION AND MAY BE PROSECUTED AS OBTAINING PROPERTY UNDER FALSE PRETENSES.
- (D) APPLICATIONS MAY BE MAILED TO THE CITY CLERK, [P.O. BOX 580] 210 FIDALGO AVENUE, KENAI, ALASKA, 99611, WITH THE PROPER DEPOSIT COMPUTED ACCORDING TO THE NATURE OF THE APPLICATION MADE. APPLICATIONS PROPERLY COMPLETED ACCOMPANIED WITH THE PROPER DEPOSIT WILL BE STAMPED WITH THE TIME AND DATE OF FILING AND SIGNED BY THE PERSON ACCEPTING THE DEPOSIT. THE TRIPPLICATE COPY WILL THEN BE DELIVERED TO THE APPLICANT, OR MAILED TO HIM IF A RETURN ENVELOPE WITH POSTAGE AFFIXED IS FURNISHED OR DELIVERED TO THE CITY CLERK, CITY ADMINISTRATION OFFICES, AIRPORT TERMINAL BUILDING, KENAI, ALASKA.
- (E) ANY APPLICATION FOR A DEED BASED ON AN ASSERTED RIGHT OTHER THAN A PREFERENCE RIGHT SHALL BE REJECTED.
- (F) ANY APPLICATIONS NOT WAIVING THE CLASS II PREFERENCE RIGHT SHALL BE FILED BY THE CLERK, TOGETHER WITH ALL OTHERS OF LIKE NATURE, TO AWAIT THE OFFICIAL PROMULGATION OF THE PIERHEAD LINE. THEREAFTER SUCH APPLICATIONS SHALL BE PROCESSED AS APPLICATIONS UNDER THE CLASS I RIGHTS.
- (G) APPLICATIONS NOT ACCOMPANIED BY THE PROPER DEPOSIT FOR COSTS SHALL BE REJECTED. **These application are no longer accepted.**

11.15.090 INITIAL REVIEW BY PLANNING & ZONING COMMISSION.

AFTER INITIAL REVIEW OF THE APPLICATION BY THE COMMISSION, THE APPLICANT SHALL HAVE PREPARED AT HIS OWN COST A PRELIMINARY AND FINAL PLAT AS DESCRIBED IN THE FOLLOWING SECTION. **There are no new applications to review.**

11.15.100 PRELIMINARY PLAT.

- (A) THE APPLICANT SHALL PREPARE, OR HAVE PREPARED, A PRELIMINARY PLAT OF THE TIDE, SHORE, OR SUBMERGED LANDS WHICH HE CLAIMS. THIS PLAT SHALL COMPLY WITH THE REQUIREMENTS HEREINAFTER SET FORTH.

(B) THE PURPOSE OF A PRELIMINARY PLAT IS TO AFFORD THE OCCUPANT AN OPPORTUNITY OF RECEIVING PRELIMINARY REVIEW AND PREVENT THE UNNECESSARY EXPENDITURE OF MONEY AND TIME THAT WOULD BE NECESSITATED IF MAJOR CHANGES WERE REQUIRED.

(C) THE APPLICANT MUST FILE HIS APPLICATION ACCOMPANIED BY FOUR BLACK OR BLUE-LINED PLATS OF THE LAYOUT.

(D) THE PLANNING & ZONING COMMISSION SHALL FORWARD THE PRELIMINARY PLAT TO AN ENGINEER TO BE DESIGNATED BY THE PLANNING & ZONING COMMISSION, WHO SHALL REPORT TO THE PLANNING & ZONING COMMISSION HIS APPROVAL OR DISAPPROVAL OF THE PLAT FOR TECHNICAL OR ENGINEERING REASONS AND THE PLANNING & ZONING COMMISSION SHALL, WITHIN NINETY (90) DAYS AFTER SUBMISSION OF THE PRELIMINARY PLAT, NOTIFY THE APPLICANT OF THE TENTATIVE APPROVAL OR DISAPPROVAL OF THE PLAT AND HIS REASONS THEREFOR.

(E) CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT SHALL NOT CONSTITUTE APPROVAL OF THE FINAL PLAT. RATHER, IT SHALL BE DEEMED AN EXPRESSION OF APPROVAL AS A GUIDE TO PREPARATION OF THE FINAL PLAT. **There are no new plats of this nature to review.**

11.15.110 PRELIMINARY PLAT REQUIREMENTS.

THE PRELIMINARY PLAT SHALL SHOW THE FOLLOWING INFORMATION:

(A) LEGAL DESCRIPTION OF LOCATION TO INCLUDE LATITUDE AND LONGITUDE TO THE NEAREST MINUTE AT ONE CORNER OF THE SURVEY AND THE TOTAL ACRES OF THE AREA OCCUPIED OR CLAIMED.

(B) NAME AND ADDRESS OF APPLICANT AND NAME OF LAND SURVEYOR, IF ANY, WHO PREPARED THE PRELIMINARY LAYOUT.

(C) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.

(D) DATE OF PREPARATION AND NORTH POINT.

(E) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.

(F) THE LOCATION OF ALL ROADS WITHIN 200' OF THE TRACT, FILL MATERIAL, EXISTING PERMANENT BUILDINGS, OR OTHER STRUCTURES WITHIN THE PARCEL, EXISTING UTILITY LINES, MEAN HIGH AND LOW TIDE LINES WITH REFERENCE TO PERMANENT STRUCTURES AND OTHER PERMANENT FEATURES SUCH AS SECTION LINES, AND SUCH OTHER INFORMATION AS MAY BE REQUESTED BY THE CITY.

(G) SPACE FOR APPROVAL AND/OR COMMENT BY THE PLANNING & ZONING AND HARBOR COMMISSIONS.

- (H) THE NAMES OF ADJACENT OWNERS OR CLAIMANTS, IF ANY, OTHER THAN THE CITY.
- (I) ADJACENT U.S. SURVEYS, IF ANY, GIVING THE NUMBER OF THE SURVEY.
- (J) A VICINITY SKETCH OR KEY MAP SHOULD BE SHOWN ON THE PRELIMINARY LAYOUT. THE SCALE SHALL NOT BE LESS THAN ONE-HALF INCH TO THE MILE. THE RELATIVE LOCATION OF THE PARCEL BEING APPLIED FOR, THE PRINCIPAL ROAD SYSTEMS AND SECTION OR SPECIAL SURVEY LINES SHALL ALSO BE SHOWN. **There are no new related plats to review and the city and borough have requirements for other plats.**

11.15.120 SURVEY PROCEDURE.

WHEREVER FEASIBLE, DATA AS SET FORTH IN ATS 272, RECORDED IN THE KENAI RECORDING DISTRICT AS 76-179 SHALL BE USED. WHERE ADDITIONAL DATA IS REQUIRED THE FOLLOWING PROCEDURES SHALL GOVERN:

(A) *DETERMINING THE LINE OF MEAN HIGH TIDE.*

(1) IN THE CASE OF U.S. SURVEY WHICH ABUTS THE TIDELANDS, SUCH U.S. SURVEY BEING MADE PRIOR TO THE DATE OF STATEHOOD, THE LINE OF MEAN HIGH TIDE SHALL BE CONSTRUED TO BE EITHER THE MEANDER LINES ESTABLISHED ON THE SEAWARD SIDE OF THE U.S. SURVEY OR THE LINE AS DEFINED UNDER SECTION 2(S) OF THESE REGULATIONS, WHICHEVER IS THE LOWER.

(2) FOR TIDELANDS SURVEYS ABUTTING ANY U.S. SURVEY MADE AFTER THE DATE OF STATEHOOD OR IN ANY LOCATION WHERE NO UPLANDS SURVEY EXISTS, THE LINE OF MEAN HIGH TIDE SHALL BE DETERMINED BY USING U.S.C. & G.S. BENCH MARKS (OR ANY OTHER BENCH MARKS WHICH HAVE BEEN ESTABLISHED FROM THAT SOURCE), AND TIDE TABLE DATUM. THE UPLAND BOUNDARY NEED NOT FOLLOW THIS LINE IN ITS ENTIRE EXACTNESS, BUT MAY FOLLOW IN A "MEANDER" OR "AVERAGE" LINE OF MEAN HIGH TIDE. EACH END OF THE BOUNDARY SHOULD BE ESTABLISHED ON THE ELEVATION OF MEAN HIGH TIDE. PROVIDED, HOWEVER, THAT WHERE THE TRUE LINE OF MEAN HIGH TIDE HAS BEEN ALTERED BY FILL OR ARTIFICIAL ACCRETION, THE LINE OF HIGH TIDE AS IT EXISTED PRIOR TO SUCH ALTERATION SHALL GOVERN.

(3) IN THE CASE THAT NO U.S.C. & G.S. BENCH MARK EXISTS WITHIN ONE MILE OF THE PROPERTY BEING SURVEYED, THE SURVEYOR MAY, BY USING THE TIDE TABLES FOR THE IMMEDIATE BODY OF WATER, AND APPLYING TIDAL READINGS HE HAS TAKEN, DETERMINE THE LINE OF MEAN HIGH TIDE AND USE IT IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SECTION. IN SOME CASES, SUCH AS SALT OR MUD FLAT AREAS WHERE THE AVERAGE GRADE OF THE BENCH IS TEN PERCENT (10%) OR LESS AND DETERMINING THE ELEVATION OF THE LINE OF MEAN HIGH TIDE COULD CREATE A LENGTHY HORIZONTAL

DISTANCE, THE CITY COUNCIL MAY REQUIRE THAT THE TRUE LINE OF MEAN HIGH TIDE BE ESTABLISHED, REGARDLESS OF THE DISTANCE FROM A KNOWN BENCH MARK.

(B) *METHOD OF ESTABLISHING SIDE BOUNDARY LINES.*

(1) IN FIXING THE SIDE BOUNDARY LINES, THE GENERAL RULES OF EXTENDING RIPARIAN BOUNDARY LINES, AS OUTLINED BY SUCH AUTHORS AS RAYNER, CLARK OR BROWN, SHALL BE FOLLOWED. IN THE EVENT THAT ACTUAL OCCUPANCY DOES NOT MATCH THE RIPARIAN BOUNDARIES, THE SURVEY SHALL BE MADE TO INCLUDE THE OCCUPANT'S HOLDINGS AND NOT TO ENCROACH ON THE ADJOINING OCCUPANT. **This section applies to specific plats which are no longer reviewed.**

11.15.130 PROCEDURE ON FINAL PLAT.

(A) THE FINAL PLAT SHALL CONFORM SUBSTANTIALLY TO THE PRELIMINARY LAYOUT AS APPROVED BY THE COMMISSION.

(B) THE FINAL PLAT SHALL BE SUBMITTED TO THE CITY CLERK ON GOOD QUALITY TRACING CLOTH, IN INK, OR MYLARS TOGETHER WITH FIVE PRINTS.

(C) THE FINAL PLAT SHALL BE DRAWN TO SCALE OF 1" EQUALS 100', WITH AN OPTION OF USING 1" EQUALS 20' OR 40', ON SHEETS OF ONE OF THREE SIZES: 18" X 24", 31 1/2" X 34", OR 22" X 36", UNLESS OTHERWISE APPROVED BY THE COMMISSION. WHEN MORE THAN ONE SHEET IS REQUIRED, AN INDEX SHALL BE FILED SHOWING THE ENTIRE PARCEL WITH THE SHEETS IN NUMERICAL ORDER, AND EACH SHEET SHOWING THE TOTAL NUMBER, I.E., SHEET 1 OF 3. WHEN MORE THAN ONE SHEET IS SUBMITTED, ONLY THE LAST MUST HAVE THE APPROVAL BLOCKS, BUT ALL SHEETS MUST BE THE SAME SIZE.

(D) WHEN THE FINAL PLAT HAS BEEN APPROVED BY THE PLANNING & ZONING COMMISSION, ONE COPY SHALL BE SENT, ALONG WITH THE DEED TO THE PROPERTY, TO THE MAGISTRATE OF THE RECORDING DISTRICT IN WHICH THE TRACT LIES FOR OFFICIAL RECORDING. SPECIAL INSTRUCTIONS SHALL BE SENT TO THE MAGISTRATE INSTRUCTING HIM TO SEND THE DEED TO THE OCCUPANT AFTER RECORDING. ONE COPY OF THE PLAT WILL BE RETURNED TO THE OCCUPANT. THE ORIGINAL TRACING CONTAINING THE CERTIFICATION BY THE PLANNING & ZONING COMMISSION WILL BE RETAINED BY THE CITY. PRINTS OR DUPLICATE TRANSPARENCIES WILL BE FURNISHED AT COST OF REPRODUCTION.

This provision applies to plats that are no longer processed.

11.15.140 FINAL PLAT REQUIREMENTS.

(A) THE FINAL PLAT SHALL INCLUDE ALL INFORMATION REQUIRED ON THE PRELIMINARY PLAT.

(B) THE FINAL PLAT MUST REPRESENT AN ACTUAL SURVEY MADE BY A PERSON WHO HAS BEEN QUALIFIED BY THE STATE OF ALASKA, BOARD OF ENGINEERS & ARCHITECTS EXAMINERS TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA.

(C) IN ADDITION THERETO, THE FOLLOWING INFORMATION SHALL BE SHOWN ON THE FINAL PLAT:

(1) BOUNDARY LINES OF THE PARCEL WITH LENGTH AND BEARINGS WHICH MUST CLOSE WITHIN THE LIMITS OF ONE TO 5,000. IF THE SEAWARD LIMITS OF THE SURVEY FALLS WITHIN THE LINE OF MEAN LOW TIDE, THE SEAWARD BOUNDARY MUST REPRESENT LINES ACTUALLY ESTABLISHED BY THE SURVEYOR.

(2) ALL EASEMENTS AS REQUIRED BY THE CITY.

(3) BASIS OF BEARINGS USED.

(4) A PROPERLY LABELED LEGEND SHOWING MONUMENTS AS FOUND OR ESTABLISHED.

(5) THE COURSE OF THE SHORELINE FOR AN ADDITIONAL 400' FROM EACH SIDE OF THE SURVEY.

(D) *MONUMENTS.*

(1) MINIMUM REQUIREMENTS: MONUMENTS SHALL CONSIST OF A 1 1/2" GALVANIZED IRON PIPE, 30 OR MORE INCHES LONG. THIS PIPE SHALL HAVE A FOUR-INCH FLANGE ACROSS THE BOTTOM AND SHALL BE FILLED WITH CONCRETE. FIRMLY EMPLACED IN THE CONCRETE AT THE TOP SHALL BE A BRASS OR BRONZE CAP. THE PIPE SHALL BE THOROUGHLY TAMPED WHEN SET.

(2) THE BRASS OR BRONZE CAP SHALL HAVE A MINIMUM OF TWO-INCH DIAMETER ACROSS THE TOP AND 3/4" BY 2 1/2" SHANK. EACH CAP SHALL BE MARKED IN ACCORDANCE WITH THE MANUAL OF SURVEYING INSTRUCTIONS AS COMPILED BY THE BUREAU OF LAND MANAGEMENT AND SHALL ALSO SHOW THE REGISTRATION NUMBER OF THE SURVEYOR.

(3) WHERE IMPRACTICABLE TO SET AN IRON PIPE MONUMENT, A TABLET CONTAINING A MINIMUM OF ONE THOUSAND (1,000) CUBIC INCHES OF CONCRETE AND A BRASS OR BRONZE CAP MARKING THE ACTUAL CORNER POINT MAY BE USED. SHOULD THE POINT FOR A CORNER BE IN A PLACE WHICH WOULD BE IMPRACTICABLE TO MONUMENT, WITNESS CORNERS SHALL BE SET IN A SAFE PLACE ON THE SURVEY BOUNDARY LINE OR HAVE TWO (2) REFERENCE MONUMENTS SET. THE MONUMENTS ON THE UPLANDS SIDE OF THE SURVEY SHALL BE REFERENCED TO BEARING OBJECTS, SUCH AS TREES, ROCKS, PILING, BUILDINGS, ETC., OR HAVE TWO (2) REFERENCE MONUMENTS SET MARKING THE CORNER.

(E) THESE REFERENCES MAY BE SHOWN ON THE PLAT OF SURVEY OR MAY BE LISTED SEPARATELY ON A PLAT AS DESCRIBED UNDER KMC 11.15.130(C).

(1) UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL, EACH SURVEY SHALL HAVE AT LEAST FOUR (4) MONUMENTS, EACH FULLY DESCRIBED IN THE PLAT OF SURVEY. IT IS DESIRABLE BUT NOT MANDATORY THAT MONUMENTS BE SET AT ALL EXTERIOR ANGLE POINTS OF THE PARCEL. THE LINE OF SIGHT BETWEEN ADJACENT MONUMENTS SHALL BE UNOBSTRUCTED. THE DISTANCE BETWEEN ADJACENT MONUMENTS SHALL NOT EXCEED ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320'). NO PART OF THE PARCEL SHALL BE FARTHER THAN ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320') FROM A MONUMENT UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL.

(2) IF THE POINT FOR THE SEAWARD CORNER FALLS IN AN UNSAFE PLACE, A WITNESS CORNER SHALL BE ESTABLISHED ON THE SIDE BOUNDARY LINE.

(F) *RELATIONSHIP TO KNOWN MONUMENT.*

(1) BEARINGS OF ALL LINES SHALL BE REFERRED TO THE TRUE MERIDIAN. THE MAGNETIC NEEDLE MAY NOT BE USED FOR THIS PURPOSE. BEARINGS SHALL BE OBTAINED BY DEFLECTION FROM EXISTING OFFICIAL SURVEYS AT THE G.L.O., B.L.M., U.S.C., AND G.S., U.S.G.S., THE ALASKA DIVISION OF LANDS, OR MONUMENTS WITH PROPER IDENTIFICATION WHICH ARE DELINEATED ON RECORDED PLATS, UNLESS OTHERWISE PROVIDED FOR IN THESE REGULATIONS.

(2) TRUE BEARINGS AND DISTANCES TO THE NEAREST ESTABLISHED SURVEY LINES, SUCH AS THOSE LISTED PREVIOUSLY, WHICH SHALL BE ACCURATELY DESCRIBED ON THE PLAT, SHALL BE SHOWN. **This provision applies to plats that are no longer processed.**

11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.

THE APPLICATION FORM WILL ASSIST THE APPLICANT IN DETERMINING THE PROPER COSTS TO ADVANCE, WHICH WILL DEPEND UPON THE NATURE OF THE RIGHT CLAIMED. IN ALL CASES A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL SHALL BE REQUIRED. SURVEY COSTS DEPEND UPON THE AREA CLAIMED AT A PER FOOT RATE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES. IF THE AREA CLAIMED IS DIFFERENT FROM THE LOT AS IT APPEARS ON THE PLAT, THE APPLICANT SHALL SHOW THE MEASUREMENTS OF THE ADDITIONAL OR LESSER AREA CLAIMED AND COMPUTE AND PAY THE DIFFERENT SURVEY COST ACCORDINGLY. TRANSFER COSTS WILL BE THE SAME IN ALL CASES. THEY COVER THE COST OF TIME ESTIMATED TO BE REQUIRED TO EXAMINE, PROCESS, AND APPROVE THE APPLICATION, AS WELL AS TO PREPARE AND EXECUTE THE DEED, PUBLISH NOTICE, GIVE NOTICE OF

ADDITIONAL COSTS, IF ANY, AND GIVE NOTICE TO APPLICANT. IN ALL CASES, TRANSFER COSTS WILL BE IN AN AMOUNT AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL. DEPOSIT FOR APPRAISAL COSTS WILL BE REQUIRED IN ALL CASES OF CLASS III PREFERENCE RIGHTS, OR WHERE ANOTHER ASSERTED RIGHT IS DETERMINED BY THE COUNCIL TO BE A CLASS III RIGHT. APPRAISAL COSTS SHALL DEPEND UPON THE AREA INVOLVED AND THE COMPLEXITY OF THE APPRAISAL SOUGHT. WHERE REQUIRED AS A DEPOSIT, THE MINIMUM AND MAXIMUM DEPOSIT FOR THE APPRAISAL FEE SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES. **This provision applies to plats that are no longer processed.**

11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.

ASIDE FROM DEPOSITS REQUIRED AT THE TIME OF FILING APPLICATIONS, ADDITIONAL COSTS WILL BE REQUIRED TO BE PAID PRIOR TO HEARINGS WHERE DISPUTES REQUIRE HEARINGS, AND FOR COST OF LAND UNDER A CLASS III RIGHT AS WELL AS APPRAISAL THEREOF WHEN A PREFERENCE RIGHT SOUGHT TO BE EXERCISED IS DETERMINED TO BE A CLASS III RIGHT, AS FOLLOWS:

- (A) WHEN THE AREA CLAIMED DOES NOT COMPLY WITH THE BOUNDARIES OF THE LOT SHOWN ON THE PLAT, IT IS NECESSARY TO HAVE A HEARING TO ESTABLISH THE VALIDITY OF THE RIGHT CLAIMED AND WHETHER IT IS NECESSARY FOR THE PLAT TO BE CHANGED TO COMPLY WITH THE APPLICATION. THIS MAY REQUIRE NOTICE TO BE GIVEN TO ADJACENT OCCUPANTS INTERESTED IN THE DIFFERENCE BETWEEN THE LANDS CLAIMED AND LAND AS SHOWN ON THE PLAT SO THAT ALL PARTIES IN INTEREST MAY BE HEARD AT THE HEARING.
- (B) WHEN APPLICATIONS CONFLICT WITH THE SAME AREA OR PORTIONS THEREOF, IT SHALL BE NECESSARY TO CONDUCT A HEARING TO DETERMINE THE FACT AND THE ISSUE IN QUESTION. CONFLICTING CLAIMS WILL BE CAREFULLY SCRUTINIZED AND EACH DISPUTING PARTY WILL BEAR THE BURDEN OF PROVING FACTS SUFFICIENT TO ESTABLISH THE VALIDITY OF HIS OR HER CLAIM.
- (C) THE PARTY FILING AN APPLICATION CONFLICTING WITH A CLAIM PREVIOUSLY FILED SHALL BE REQUIRED TO DEPOSIT HEARINGS COSTS IN THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00). IF THE CONFLICT IS NOT KNOWN AT THE TIME OF FILING, THE APPLICANT SHALL BE ADVISED OF THE CONFLICT AS SOON AS IT IS KNOWN AND OF THE NEED TO DEPOSIT THE HEARING COST DEPOSIT.
- (D) THE APPLICANT WHO AFTER HEARING AND DETERMINATION BY THE COUNCIL IS DETERMINED TO HAVE CLAIMED THE LAND OF ANOTHER SHALL BE THE PARTY TO BEAR THE COST OF THE HEARING. IF SUCH PARTY DID NOT DEPOSIT SUCH COSTS, NO DEED SHALL BE DELIVERED TO HIM OR HER UNTIL THE COST IS PAID.

WHERE THE DEPOSITOR IS THE PREVAILING PARTY, THE HEARING COST DEPOSITED SHALL BE REFUNDED TO HIM OR HER BY THE CITY.

(E) WHEN TITLE BY CLASS III PREFERENCE RIGHT IS CLAIMED, THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE APPRAISED PURCHASE PRICE AFTER APPRAISAL HAS BEEN MADE AND THE PURCHASE PRICE HAS BEEN SO DETERMINED. THE SAME PROCEDURE WILL BE APPLIED WHEN NO APPLICATION UNDER ANOTHER CLASS OF RIGHT IS SOUGHT BUT IS DETERMINED THAT THE ONLY AVAILABLE RIGHT TO THE APPLICANT IS A CLASS III RIGHT.

(F) WHEN A PREFERENCE RIGHT IS SOUGHT TO BE EXERCISED OTHER THAN A CLASS III RIGHT AND SUCH RIGHT IS DETERMINED TO BE A CLASS RIGHT, THEN THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE ESTIMATED COST OF APPRAISING THE PROPERTY CLAIMED.

(G) THE APPLICANT WHO RECEIVES THE DEED FROM THE CITY SHALL AT HIS OR HER OWN COST BEAR THE COST OF RECORDING THE DEED. **This provision applies to plats that are no longer processed.**

11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.

THE CLERK SHALL CAUSE THE FOLLOWING PROCEDURES TO BE CARRIED OUT:

(A) ALL COPIES OF APPLICATIONS ACCEPTED FOR FILING SHALL BE STAMPED WITH TIME AND DATE OF FILING AND AN APPLICATION NUMBER IN CHRONOLOGICAL ORDER OF FILING.

(B) ALL ORIGINAL APPLICATIONS SHALL BE FILED IN A PERMANENT REGISTER AND THE NAMES OF THE APPLICANTS ENTERED IN AN ALPHABETICAL INDEX WHICH SHALL BE A PERMANENT PART OF SUCH REGISTER.

(C) THE APPLICATION REGISTER SHALL BE AVAILABLE FOR PUBLIC INSPECTION DURING OFFICE HOURS OF THE CLERK EXCEPT WHEN IN ACTUAL USE FOR FILING AND INDEXING.

(D) CERTIFIED COPIES OF ALL APPLICATIONS SHALL BE PREPARED FOR ALL PERSONS UPON REQUEST UPON THEIR PAYING TWO DOLLARS (\$2.00) PER PAGE FOR COPIES OF SAID APPLICATIONS AND ANY ATTACHMENTS FORMING A PART THEREOF.

(E) *PROCESSING OF DUPLICATE APPLICATIONS.* THE THIRD COPY OF THE APPLICATION WILL BE RETURNED TO THE APPLICANT AS HIS OR HER RECORD AND AS RECEIPT FOR DEPOSIT MADE, OR MAILED TO APPLICANT IF HE OR SHE HAS PROVIDED A RETURN ENVELOPE. THE SECOND COPY SHALL BE THE WORKING FILE COPY TO BE HANDLED AND PROCESSED AS FOLLOWS:

(1) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED AND WHICH APPLY FOR LANDS WHICH COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS SHALL BE

TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190. APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS WHICH DO NOT HAVE WAIVERS ATTACHED, IRRESPECTIVE OF WHETHER THE LANDS APPLIED FOR COMPLY WITH THE PLAT SHALL BE SEGREGATED FOR HANDLING IN THE SAME MANNER AS CLASS II PREFERENCE RIGHT APPLICATIONS.

(2) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED, AND WHICH CLAIM LANDS WHICH DO NOT COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190 AND FURTHER PROCESSING AS PROVIDED IN KMC 11.15.220.

(3) APPLICATIONS TO EXERCISE CLASS II PREFERENCE RIGHTS SHALL BE SEGREGATED AND KEPT WITH CLASS I PREFERENCE RIGHT APPLICATIONS NOT HAVING WAIVERS ATTACHED. ALL SUCH APPLICATIONS SHALL BE HELD IN ABEYANCE BY THE CITY UNTIL SUCH TIME AS THE PIERHEAD LINE IS ESTABLISHED BY THE CORPS OF ENGINEERS, WHEREUPON SUCH APPLICATIONS SHALL BE PROMPTLY HONORED AND PROCESSED IN THE MANNER HEREIN DESCRIBED FOR CLASS I PREFERENCE RIGHT APPLICATIONS, WHERE WAIVERS ARE ATTACHED.

(4) APPLICATIONS TO EXERCISE CLASS III PREFERENCE RIGHTS, AND ALL APPLICATIONS DETERMINED IN WHOLE OR IN PART TO BE CLASS III, SHALL BE TRANSMITTED TO THE ASSESSOR FOR APPRAISAL AS PROVIDED IN KMC 11.15.180.

(5) NO APPLICATIONS WHICH COMBINE CLASS I, CLASS II, AND CLASS III, OR ANY COMBINATION OF SUCH PREFERENCE RIGHTS, WILL BE ACCEPTED FOR FILING. ANY SUCH APPLICATION PRESENTED FOR FILING SHALL BE RETURNED TO THE APPLICANT FOR REVISION INTO TWO OR MORE APPLICATIONS, EACH OF WHICH WILL APPLY FOR LAND UNDER ONLY ONE TYPE OF PREFERENCE RIGHT.

(6) AN APPLICATION TO EXERCISE ONE CLASS OF PREFERENCE RIGHT WHICH IN PART COMPLIES WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, BUT DOES NOT WHOLLY COMPLY WITH THE PLAT IN SUCH RESPECTS, SHALL BE TREATED AS IF NO PART OF THE APPLICATION SO COMPLIES WITH THE PLAT AND SHALL BE PROCESSED FOR CONTEST HEARING. **These application are no longer accepted.**

11.15.180 APPRAISAL.

ALL APPLICATIONS FOR CLASS II PREFERENCE RIGHTS SHALL BE TRANSMITTED TO A PROFESSIONAL APPRAISER FOR APPRAISAL. HIS APPRAISAL SHALL BE MADE ON A FORM PREPARED IN DUPLICATE, THE ORIGINAL OF WHICH SHALL BE ATTACHED TO

THE APPLICATION AND THE DUPLICATE OF WHICH SHALL BE RETAINED FOR HIS RECORDS. APPLICATIONS WHEN APPRAISED SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR FURTHER PROCESSING. **These application are no longer accepted.**

11.15.190 REVIEW BY CITY ENGINEER.

ALL APPLICATIONS BEING READY FOR PROCESSING SHALL BE REVIEWED BY THE CITY ENGINEER. UPON REVIEW AND COMPARISON WITH THE PLAT, HE SHALL MAKE HIS REQUEST TO THE HARBOR COMMISSION GIVING A COPY THEREOF TO THE APPLICANT AS TO WHETHER OR NOT THE APPLICATION SEEKS TO EXERCISE A PREFERENCE RIGHT TO LAND WHICH IS DESCRIBED ON THE PLAT, AND COMPLIES WITH IT IN RESPECT TO AREA AND BOUNDARY LOCATIONS. **These application are no longer accepted.**

11.15.200 RECOMMENDED APPROVAL BY COMMISSION.

THE CITY OF KENAI [ADVISORY HARBOR] PLANNING & ZONING COMMISSION SHALL REVIEW ALL APPLICATIONS FOR TIDELANDS UPON THE SUBMISSION OF THE CITY ENGINEER'S REPORT. THE PLANNING & ZONING COMMISSION MAY CONDUCT PUBLIC HEARINGS TO VERIFY THE VALIDITY OF THE APPLICANT'S CLAIM AND REQUEST ADDITIONAL EVIDENCE BY WAY OF AFFIDAVITS AND THE LIKE IN ORDER TO COME TO RECOMMEND SAID CLAIM FOR APPROVAL BY THE CITY COUNCIL NOTIFYING APPLICANT THEREOF BY MAIL SENT TO THE ADDRESS STATED ON HIS APPLICATION. THE PLANNING & ZONING COMMISSION MAY PROVIDE A CHECK-OFF LIST TO AID IT IN CONSIDERING APPLICATIONS. THE CITY COUNCIL SHALL CONSIDER FOR APPROVAL THE CLAIM OF THE APPLICANT WITHIN THE TIME LIMITATIONS AND WITH THE RIGHT OF APPEAL GIVEN PURSUANT TO KMC 11.15.240. **These application are no longer accepted.**

11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.

ALL APPLICATIONS RETURNED TO THE CLERK APPROVED BY THE CITY ENGINEER, AND APPRAISED BY THE ASSESSOR IF REQUIRED, SHALL BE PROCESSED BY THE CLERK IN THE FOLLOWING MANNER:

- (A) THE CLERK SHALL ASCERTAIN IF THE DEPOSIT MADE BY THE APPLICANT IS SUFFICIENT TO PAY ALL KNOWN AND ESTIMATED COSTS OF SURVEY, APPRAISAL, TRANSFER, AND PURCHASE, IF OF CLASS III AND IF NOT, TO ADVISE THE APPLICANT THAT THE REMINDER DUE SHALL BE DEPOSITED WITH THE CLERK BEFORE FURTHER PROCESSING.
- (B) IF OR WHEN THE DEPOSIT IS SUFFICIENT TO PAY ALL SUCH COSTS, THE CLERK SHALL CAUSE TO BE PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, THE FOLLOWING:

- (1) NOTICE OF THE NAMES OF THE APPLICANT(S), THE BLOCK AND LOT NUMBERS OF THE PROPERTY CLAIMED ACCORDING TO PLAT DESIGNATIONS;
- (2) THE PREFERENCE RIGHT CLAIMED;
- (3) THE IMPROVEMENTS MADE;
- (4) THE LENGTH OF TIME (INCLUDING THE DATES) THE APPLICANT OCCUPIED THE LAND; AND

(C) IF CLASS III ITS APPRAISED VALUE, AND THAT THE CITY WILL ISSUE TO THE APPLICANT(S) ITS DEED THEREFOR WITHIN THIRTY (30) DAYS AFTER THE LAST DATE OF PUBLICATION, PROVIDED THAT BEFORE DATE OF LAST PUBLICATION NO ADVERSE APPLICATION OR CLAIM HAS BEEN FILED WITH THE CITY.

(D) DURING SAID PERIOD OF PUBLICATION, THE APPLICATIONS THEREOF SHALL BE RETURNED TO THE CITY ENGINEER WHO, AT THE END OF SAID PERIOD OF PUBLICATION, SHALL NOTE ON THE APPLICATION WHETHER OR NOT ANY ADVERSE CLAIMS HAVE BEEN FILED FOR THE LAND IN QUESTION.

(E) IF ADVERSE CLAIMS HAVE BEEN FILED, THE APPLICATIONS SHALL BE FURTHER PROCESSED FOR HEARING. IF NO ADVERSE CLAIMS HAVE BEEN FILED, THE RESPECTIVE APPLICATIONS SHALL BE RETURNED TO THE CLERK. **These application are no longer accepted.**

11.15.220 DEEDS—PERMANENT REGISTER.

THE CLERK SHALL THEN CAUSE TO BE PREPARED A QUIT-CLAIM DEED CONVEYING SUCH LAND TO THE APPLICANT(S) THAT THE CITY HAS AND TRANSMIT THE QUIT-CLAIM DEED TO THE MANAGER FOR EXECUTION. NOTICE SHALL THEN BE SENT TO THE APPLICANT TO TAKE DELIVERY OF SAID DEED AT THE OFFICE OF THE CLERK, WHO SHALL DELIVER THE SAME TO THE APPLICANT IF ALL REQUIREMENTS HAVE BEEN MET AND ALL COSTS, INCLUDING PURCHASE PRICE, IF REQUIRED, HAVE BEEN PAID. DUPLICATE ORIGINALS OF ALL EXECUTED DEEDS SHALL BE KEPT IN THE OFFICE OF THE CLERK IN A PERMANENT REGISTER ENTITLED "KENAI TIDELANDS DEEDS" WITH PERMANENT ALPHABETICAL INDEX OF GRANTEES. **This process is no longer applicable.**

11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.

THE PLANNING & ZONING COMMISSION SHALL SIT AS A QUASI ADJUDICATORY BODY TO SET DISPUTES FOR HEARING AND HEAR THE EVIDENCE UNDER OATH OF THE PARTIES TO THE DISPUTES. PROCEEDINGS SHALL BE INFORMALLY CONDUCTED BUT TESTIMONY TAKEN UNDER OATH, AND NOTICE OF THE PROCEEDINGS SHALL BE GIVEN TO THE DISPUTING PARTIES. THEIR OBJECT SHALL BE TO DETERMINE WITHOUT DELAY THE RESPECTIVE BASIS OF THE CONFLICTING CLAIMS. UPON THE SUBMISSION OF EACH DISPUTE, THE PLANNING & ZONING COMMISSION SHALL PREPARE A SHORT SUMMARY ON THE CONFLICTING CLAIMS AND THE EVIDENCE SUBMITTED IN SUPPORT

THEREOF, TOGETHER WITH THEIR WRITTEN FINDINGS OF FACT, AND CONCLUSIONS OF LAW. **This process is no longer applicable.**

11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.

UPON RECEIPT OF THE WORKING FILES IN ALL CASES OF DISPUTES, AND THE SUMMARY OF THE HEARINGS OFFICER, TOGETHER WITH COPIES OF NOTICES OF HEARINGS SERVED UPON OR MAILED TO ALL PARTIES TO THE DISPUTE, THE COUNCIL SHALL SET THE DISPUTE OF HEARING AND DETERMINATION, AND CAUSE NOTICE TO BE SERVED ON ALL PARTIES. UPON THE COUNCIL HAVING HEARD THE DISPUTE IT SHALL ENTER ITS RULING THEREON AS QUICKLY AS POSSIBLE, BUT NOT LATER THAN TEN (10) DAYS AFTER THE MATTER IS SUBMITTED. AGGRIEVED PERSONS SHALL HAVE THE RIGHT OF APPEAL TO THE SUPERIOR COURT, WITHIN THIRTY (30) DAYS AFTER THE RULING OF THE COUNCIL IS RENDERED. **This process is no longer applicable.**

11.15.250 DETERMINATION UPON STIPULATION OF FACTS.

WHEREVER POSSIBLE, TO REACH AGREEMENT OF THE PARTIES AT HEARINGS BEFORE THE PLANNING & ZONING COMMISSION, A STIPULATION OF FACTS SHALL BE PREPARED AND AGREED UPON BY THE PARTIES. WHERE THIS IS DONE, THE PLANNING & ZONING COMMISSION SHALL PREPARE AND ATTACH ITS CONCLUSIONS OF LAW AND SUBMIT THE FILE TO THE CITY ENGINEER TO DETERMINE IF THE CITY'S INTERESTS ARE AFFECTED BY THE STIPULATION, OR IF A BOUNDARY CHANGE IS REQUIRED AND NO THIRD PARTY OR CITY INTERESTS ARE AFFECTED ADVERSELY BY THE PROPOSED CHANGE IN BOUNDARIES OF LOTS SHOWN ON THE PLAT, UPON APPROVAL OF THE COUNCIL THE PLAT SHALL BE DIRECTED TO BE CHANGED. SHOULD IT BE DETERMINED BY THE CITY ENGINEER THAT THE STIPULATION ADVERSELY AFFECTS THE INTEREST OF THE CITY OR THOSE OF THIRD PARTIES, THE DISPUTE SHALL BE RETURNED TO THE PLANNING & ZONING COMMISSION FOR FURTHER PROCEEDINGS UPON NOTICE GIVEN.

This process is no longer applicable.

11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.

NO OBJECTIONS WILL BE RECEIVED TO PROPOSED ISSUANCE BY DEED BY THE CITY ON PUBLICATION OF NOTICE THEREOF, NOR WILL ANY PERSON BE PERMITTED TO APPEAR AND BE HEARD AT ANY HEARING OF A DISPUTE BEFORE THE PLANNING & ZONING COMMISSION OR THE COUNCIL, UNLESS SUCH OBJECTOR OR PERSON IS AN APPLICANT FOR PREFERENCE RIGHTS OF CLASS I OR II AND HAS FILED AN APPLICATION WITH THE CLERK. THE FOREGOING SHALL NOT PREVENT THE APPEARANCES BEFORE THE PLANNING & ZONING COMMISSION OR COUNCIL OF

WITNESSES APPEARING ON BEHALF OF THE PARTIES IN DISPUTE OR PERSONS CALLED BY THE PLANNING & ZONING COMMISSION OR COUNCIL WHO MAY HAVE PERSONAL KNOWLEDGE CONCERNING THE VERIFICATION OF CLAIMS. (ORD. 455-78)
this process is no longer applicable.

11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.

(A) ALL FUNDS RECEIVED AS DEPOSITS WITH APPLICATIONS FOR COSTS OR PURCHASE PRICE FOR TIDELANDS SHALL BE DEPOSITED BY THE FINANCE DIRECTOR IN THE GENERAL FUND. SUCH DEPOSITS WILL BE CREDITED BY THE FINANCE DIRECTOR AS FOLLOWS:

- (1) SURVEY COSTS - AS A CREDIT TO DISBURSEMENTS MADE BY THE CITY FOR COSTS OF PREPARING THE TIDELANDS SUBDIVISION PLAT.
- (2) TRANSFER COSTS - TO ADMINISTRATIVE COSTS AS DEEDS ARE ISSUED.
- (3) APPRAISAL COSTS - TO ADMINISTRATIVE COSTS AS EARNED, OR AS CREDIT TO APPRAISAL COSTS INCURRED.

(B) PURCHASE COSTS OF CLASS II LANDS—SHALL BE CREDITED TO A SEPARATE ACCOUNT IN THE GENERAL FUND TO PAY FOR IMPROVEMENTS IN TIDELANDS AREAS CONSISTING OF FILL, STREET, SIDEWALK, AND SEWER IMPROVEMENTS.

This process is no longer applicable.

11.15.280 FORFEITURE OF PREFERENCE RIGHTS.

ANY OCCUPANT, OWNER, OR HOLDER OF PREFERENCE RIGHTS AS HEREIN DEFINED, WHO HAS NOT APPLIED TO THE CITY FOR TITLE THERETO AS HEREIN PROVIDED, ON OR BEFORE TWO (2) YEARS AFTER THE DATE APPLICATIONS TO EXERCISE PREFERENCE RIGHTS WILL BE ACCEPTED FOR FILING BY THE CITY UNDER THIS ORDINANCE, BY A PROPERLY COMPLETED APPLICATION DULY FILED WITH THE CLERK AND ACCOMPANIED BY THE REQUIRED DEPOSIT, SHALL HAVE FORFEITED HIS RIGHT TO ASSERT THIS PREFERENCE RIGHTS AND ACQUIRE TITLE TO TIDELANDS SUBJECT THERETO FROM THE CITY; AND SUCH TIDELANDS AND CONTIGUOUS SUBMERGED LANDS SUBJECT TO SUCH UNUSED PREFERENCE RIGHTS SHALL THEREAFTER BE FREE AND CLEAR OF ALL CLAIMS TO PREFERENCE RIGHTS AND THE CITY SHALL HAVE NO OBLIGATION TO CONVEY THE SAME TO ANY PERSON OR PERSONS WHOSOEVER, AND SAID LAND SHALL THEN BE AND REMAIN THE PROPERTY OF THE CITY AND BE SUBJECT TO SUCH DISPOSITION AS PROVIDED FOR BY LAW OR ORDINANCE. *This process is no longer applicable.*

11.15.290 FORMS.

THE CLERK SHALL CAUSE TO BE PRINTED APPLICATION FORMS AND OTHER FORMS FOR USE IN PROCESSING THE SAME IN SUBSTANTIALLY THE FOLLOWING FORM:

(A)

APPLICATION FOR TIDELAND
PREFERENCE RIGHTS

NAME _____ APPLICATION NO. _____

HOME ADDRESS

POST OFFICE ADDRESS

MARK X TO DESIGNATE NATURE OF PREFERENCE RIGHT CLAIMED:

CLASS I _____

CLASS II _____

CLASS III _____

DOES THE TIDELAND PLAT 272 CORRECTLY SHOW THE LAND APPLIED FOR:

YES ____ NO ____

IF TIDELAND PLAT DOES NOT CORRECTLY SHOW LAND APPLIED FOR, DESCRIBE IT BY METES AND BOUNDS AND ATTACHED PLAT OF LAND APPLIED FOR (USE ATTACHMENT IF MORE SPACE IS REQUIRED).

ALL CLAIMED IMPROVEMENTS WERE FIRST CONSTRUCTED AND USED (1) BEFORE SEPTEMBER 7, 1957? (2) BEFORE SEPTEMBER 7, 1957 AND JANUARY 3, 1969? (3) AFTER JANUARY 3, 1959?

IS ANY PART OF YOUR CLAIM BASED ON IMPROVEMENTS AND/OR FILL CONSTRUCTED OR PLACED AFTER JANUARY 3, 1959?

YES _____,

NO _____. IF ANSWER IS "YES," DESCRIBE AREA IMPROVED AFTER JANUARY 3, 1959 (USE ATTACHMENT IF MORE SPACE IS NEEDED), AND STATE NATURE OF IMPROVEMENTS.

HAVE ANY OF THESE IMPROVEMENTS BEEN EXTENDED OR IMPROVED AFTER (1) SEPTEMBER 7, 1957? (2) JANUARY 3, 1959? DESCRIBE.

WAS THIS BENEFICIAL USE CONTINUED THROUGH JANUARY 3, 1959? DESCRIBE.

THE PLAT IS BASED ON APPARENT USE AND IMPROVEMENTS EXISTING ON JANUARY 3, 1959, RECOGNIZED BY THE ALASKA LAND ACT; STATE ANY REASON KNOWN TO YOU WHY YOUR CLAIM DOES NOT CORRESPOND WITH THE PLAT. (USE ATTACHMENT IF MORE SPACE IS REQUIRED.)

I OFFER CASH _____, MONEY ORDER _____, CASHIER'S CHECK _____, IN THE AMOUNT OF \$ _____ AS DEPOSIT FOR THE FOLLOWING COSTS:

USE BY CLERK		
FILING FEE	\$ _____	\$ _____
SURVEY COSTS (AT RATE OF _____/SQ. FT.)	\$ _____	\$ _____
APPRAISAL COSTS (CLASS II APPLICATIONS)	\$ _____	\$ _____
TRANSFER COSTS (\$ _____)	\$ _____	\$ _____
HEARING COSTS (IF CLAIM ADVERSE TO PRIOR APPLICATION A DEPOSIT OF \$ _____ FOR HEARING AND SERVICE NOTICE IS REQUIRED.)	\$ _____	\$ _____
TOTAL DEPOSIT (DOES NOT INCLUDE PURCHASE PRICE OF LAND IN CLASS II APPLICATIONS)	\$ _____	\$ _____
DEPOSIT RECEIVED BY CITY BY:	_____	
DATE OF APPLICATION:	_____	
DATE APPLICATION RECEIVED BY CITY:	_____	
TIME FILED:	_____	

CERTIFICATION

I, _____, THE ABOVE-NAMED APPLICANT, OR ITS AGENT,
HEREBY CERTIFIES THAT ALL OF THE STATEMENTS MADE IN THE
APPLICATION AND INCORPORATED ATTACHMENTS, IF ANY, ARE TRUE
AND CORRECT.

PRINT NAME(S)

SIGNATURE(S)

(B)

ASSESSOR'S APPRAISAL

THE UNDERSIGNED APPRAISER(S) DO HEREBY CERTIFY THAT HE HAS
DULY APPRAISED THE TIDE AND/OR SUBMERGED LAND DESCRIBED IN
THE ATTACHED APPLICATION NO. _____ OF _____,
WITHOUT INCLUDING IN THE HEREINAFTER STATED VALUE ANY VALUE

FOR VALUABLE IMPROVEMENTS CONSTRUCTED OR PLACED HEREON
PRIOR TO JANUARY 3, 1959, AT THE FAIR MARKET VALUE.

TIDELAND _____ SQ. FT. AT \$ _____ PER SQ. FT., \$

_____.
DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19 ____.

SIGNED:

(C)

WAIVER OF CLASS II PREFERENCE RIGHTS
(ATTACH TO EACH CLASS I APPLICATION)

I, _____, THE APPLICANT, OR HIS AUTHORIZED AGENT, IN THE
APPLICATION FOR TIDELAND PREFERENCE RIGHTS, APPLICATION NO.
_____, TO WHICH THIS WAIVER IS ATTACHED, DO HEREBY
WAIVE ANY AND ALL PREFERENCE RIGHTS, TO ACQUIRE TIDE OR
SUBMERGED AND LYING SEAWARD OF THE CITY OF KENAI, TO WHICH I
AM NOW OR MAY HEREAFTER BECOME ENTITLED BY REASON OF THE
PROVISIONS OF PUBLIC LAW 85-303.

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19
_____.

(PRINT NAME)

(SIGNATURE)

(D)

CITY OF KENAI, ALASKA
TIDELAND QUIT-CLAIM DEED

THIS DEED, MADE IN DUPLICATE THIS _____ DAY OF _____,
19 ____, BY AND BETWEEN THE CITY OF KENAI, ALASKA, GRANTOR, AND
_____, GRANTEE(S).

W I T N E S S E T H:

THAT THE SAID GRANTOR, FOR AND IN CONSIDERATION OF THE SUM OF
ONE AND NO 100/THS (\$1.00) DOLLARS AND OTHER GOOD AND VALUABLE
CONSIDERATION, TO IT IN HAND PAID BY THE SAID GRANTEE(S),
PURSUANT TO THE PROVISIONS OF THE ALASKA LAND ACT (CHAPTER
169, SLA 1959) AND ORDINANCE NO. 455-78, ENACTED ON JANUARY 3,
1979, PURSUANT THERETO, DOES HEREBY CONVEYS, QUIT CLAIMS, AND
CONFIRMS UNTO SAID GRANTEE(S) AS TENANTS BY THE ENTIRETY, WITH
THE RIGHT OF SURVIVORSHIP (STRIKE IF GRANTEES ARE NOT HUSBAND
AND WIFE), AND TO HIS (THEIR) HEIRS AND ASSIGNS (STRIKE IF GRANTEE
A CORPORATION) AND TO ITS SUCCESSORS AND ASSIGNS (STRIKE IF
GRANTEE NOT A CORPORATION), ALL SUCH INTEREST AS THE GRANTOR
HAS, IF ANY, IN THE FOLLOWING DESCRIBED LOT, PIECE, PARCEL AND

TRACT OF TIDELAND AND CONTIGUOUS SUBMERGED LAND SITUATED WITHIN THE CORPORATE LIMITS OF THE CITY OF KENAI, ALASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:
ALL OF LOT _____, BLOCK _____, ACCORDING TO THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE CITY OF KENAI, ALASKA.
TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.
TO HAVE AND TO HOLD THE SAME UNTO THE SAID GRANTEE(S), HIS OR THEIR HEIRS AND ASSIGNS, (OR) TO ITS SUCCESSORS AND ASSIGNS, FOREVER.
IN WITNESS WHEREOF, THE GRANTOR HAS CAUSED THIS DEED TO BE EXECUTED THE DAY AND YEAR HEREINABOVE FIRST WRITTEN.

CORPORATE SEAL

CITY OF KENAI, ALASKA

BY: (ITS MANAGER)

ATTEST:

CLERK

] **This process is no longer applicable.**

Chapter 11.20

LEASING OF TIDELANDS

Sections:

[11.20.010 POLICY.]

11.20.020 Lands [A]Available for [L]Leasing.

[11.20.030 QUALIFICATIONS OF APPLICANTS.

11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.

11.20.050 APPLICATIONS.

11.20.060 RIGHTS PRIOR TO LEASING.

11.20.070 PROCEDURE.

11.20.080 PUBLIC NOTICE—PUBLIC HEARING.

11.20.090 SELECTION OF APPLICANT.

11.20.100 APPEAL.

11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.

- 11.20.120 THE LEASE DOCUMENT—TERMS.**
- 11.20.130 APPRAISAL.**
- 11.20.140 REVIEW.**
- 11.20.150 ANNUAL MINIMUM RENTAL.**
- 11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.**
- 11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.**
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- 11.20.190 SUBLEASING.**
- 11.20.200 ASSIGNMENTS.**
- 11.20.210 MODIFICATION.**
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- 11.20.230 DEFAULT—RIGHT OF ENTRY.**
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- 11.20.250 FINANCING—RIGHTS OF MORTGAGES OR LIENHOLDER.**
- 11.20.260 ENTRY AND RE-ENTRY.**
- 11.20.270 RE-LEASE.**
- 11.20.280 FORFEITURE OF RENTAL.**
- 11.20.290 RIGHT OF INSPECTION.**
- 11.20.300 EASEMENT GRANTS RESERVED.**
- 11.20.310 LEASE SUBORDINATE TO FINANCING REQUIREMENTS.**
- 11.20.320 WRITTEN WAIVER.**
- 11.20.330 SURRENDER ON TERMINATION.**
- 11.20.340 SANITATION.**
- 11.20.350 BUILDING AND ZONING CODES.**
- 11.20.360 RULES.**
- 11.20.370 AIRCRAFT OPERATIONS PROTECTED.**
- 11.20.380 RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION.**
- 11.20.390 LESSEE TO PAY TAXES.**
- 11.20.400 NO PARTNERSHIP OR JOINT VENTURE CREATED.**
- 11.20.410 DEFAULT BANKRUPTCY.**
- 11.20.420 NONDISCRIMINATION.**
- 11.20.430 PARTIAL INVALIDITY.**
- 11.20.440 PAROLE MODIFICATIONS.**
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- 11.20.470 CARE OF PREMISES.**
- 11.20.480 LESSEE’S OBLIGATION TO REMOVE LIENS.**
- 11.20.490 CONDEMNATION.**
- 11.20.500 PROTECTION OF SUBTENANTS.**

11.20.510 SUCCESSORS IN INTEREST.

11.20.520 GOVERNING LAW.

11.20.530 NOTICES.

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11.20.550 INSPECTION.

11.20.560 PERSONAL USE OF MATERIALS.

11.20.570 RESTRICTIONS AND RESERVATIONS.

11.20.580 WASTE AND INJURY TO LAND.

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11.20.610 TITLE RESTRICTIONS.

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11.20.630 INSURANCE OF USERS—SUBTENANTS.

11.20.640 ANNUAL REPORT.]

11.20.650 Tidelands [C]Claims.

11.20.660 Subjection to [H]Harbor [O]Ordinance.

[11.20.670 ARBITRATION.]

11.20.680 Provisions [R]Regulating [P]Public [U]se [P]Purpose.

11.20.690 Provision to be [I]Included in [P]Public [U]Use [L]Lease.

11.20.700 Public [U]Use: [D]Defined.

11.20.710 Controlled [A]Access.

11.20.720 Use [C]Charges.

[11.20.730 MAINTENANCE OF DOCK.

11.20.740 MODIFICATIONS OF EXISTING LEASES.

11.20.750 UNAUTHORIZED REMOVAL OF MATERIAL PROHIBITED.

11.20.760 REMOVAL NOT AUTHORIZED BY LEASE.

11.20.770 DISPOSITION OF RIGHTS BY COUNCIL.]

11.20.780 Penalties.

11.20.790 Tideland [L]Leases for [S]Shore [F]Fisheries.

[11.20.010 POLICY.

THE CITY, IN ORDER TO MAKE SITES AVAILABLE FOR BENEFICIAL INDUSTRIES, MAY LEASE CITY-OWNED TIDELANDS TO PERSONS WHO AGREE TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS THE COUNCIL CONSIDERS ADVANTAGEOUS TO THE CITY.] The new general fund land code provides that lands can be leased to encourage responsible growth and development to support a thriving business, residential, recreational and cultural community. The Policy statement above does not add anything different and should be removed. Additionally, specific parcels require specific industries

per the conveyance documents to the City (i.e. public docking, maritime commerce, etc.) and these limitations are carried forward in the City's land management plan.

11.20.020 Lands ~~[A]~~Available for ~~[L]~~Leasing. (House Keeping)

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased ~~[AS HEREINAFTER PROVIDED,]~~ for surface use only, and under the condition that said lease is subject and inferior to preference right claims ~~[THAT MAY BE MADE WITHIN A TWO (2) YEAR FILING PERIOD FOR PREFERENCE RIGHTS]~~ and subject to the rights of existing set net site holders within the City limits. ~~This should stay in as amended for the benefit of preference right holders and set net site holders, as it is not retained elsewhere in code.~~

[11.20.030 QUALIFICATIONS OF APPLICANTS.

AN APPLICANT FOR A LEASE IS QUALIFIED IF THE APPLICANT:

- (A) IS AN INDIVIDUAL AT LEAST NINETEEN (19) YEARS OF AGE OR OVER; OR
- (B) IS A GROUP, ASSOCIATION, OR CORPORATION WHICH IS AUTHORIZED TO CONDUCT BUSINESS UNDER THE LAWS OF ALASKA.] ~~Qualifications for applicants for leases is provided in KMC 22.05.020.~~

[11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.

BEFORE ACCEPTING APPLICATIONS TO LEASE TIDELANDS, THE AREA INVOLVED SHALL HAVE FIRST BEEN CLASSIFIED FOR LEASING BY THE CITY COUNCIL WITH THE APPROVAL OF THE PLANNING AND HARBOR COMMISSIONS, AND THEIR AVAILABILITY ADVERTISED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE TIME SET FOR THE CLOSING OF THE ACCEPTANCE OF APPLICATIONS, AND THAT ALL APPLICATIONS ARE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES.] ~~This is now covered in KMC 22.05.015 and 22.05.040 regarding classification and advertising.~~

[11.20.050 APPLICATIONS.

- (A) ALL APPLICATIONS FOR LEASE OF TIDELANDS SHALL BE FILED WITH THE CLERK ON FORMS PROVIDED BY HIM OR HER AND AVAILABLE AT CITY HALL WHICH SHALL UPON EXECUTION OF THE LEASE BECOME PART OF THE LEASE DOCUMENT. ONLY FORMS COMPLETED IN FULL AND ACCOMPANIED BY A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL WILL BE ACCEPTED FOR FILING. FILING FEES ARE NOT REFUNDABLE.
- (B) WITH EVERY APPLICATION, THE APPLICANT SHALL SUBMIT A DEVELOPMENT PLAN SHOWING AND STATING:

- (1) THE PURPOSE OF THE PROPOSED LEASE;
- (2) THE USE, VALUE, AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED;
- (3) THE TYPE OF CONSTRUCTION;
- (4) DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED;
- (5) WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY;
- (6) DESCRIBE BY REFERENCE TO THE PLAT THE AREA TO BE LEASED;
- (7) A DETAILED FINANCIAL PLAN SHOWING ABILITY TO CARRY THROUGH WITH THE DEVELOPMENT PLAN;
- (8) A PERFORMANCE BOND OF FIVE PERCENT (5%) OF THE PROJECT'S ESTIMATED COST (WHICH BOND SHALL NOT EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00)), PAYABLE TO THE CITY. *Lease applications are now covered in 22.05.025.*

11.20.060 RIGHTS PRIOR TO LEASING.

NEITHER THE FILING OF AN APPLICATION FOR A LEASE NOR THE HOLDING OF A PUBLIC HEARING THEREON AS PROVIDED BELOW, SHALL GIVE THE APPLICANT A RIGHT TO A LEASE OR TO THE USE OF THE LAND APPLIED FOR. ANY USE NOT AUTHORIZED BY A LEASE SHALL CONSTITUTE A TRESPASS AGAINST THE CITY. *This is now provided for in 22.05.035.*

11.20.070 PROCEDURE.

(A) *PLANNING AND ZONING COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED FIRST BY THE CITY OF KENAI PLANNING AND ZONING COMMISSION TO DETERMINE WHETHER THE CONTEMPLATED USE FALLS WITHIN THAT PERMITTED UNDER THE ZONING ORDINANCE.

(B) *HARBOR COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED BY THE HARBOR COMMISSION. IF THE COMMISSION AFTER CONSIDERING THE LEASE APPLICATIONS DETERMINES AT A PUBLIC HEARING AS SET FORTH IN THE SECTION BELOW THAT ANY ONE LEASE WILL BE IN THE BEST INTERESTS OF THE CITY OF KENAI, THE COMMISSION MAY MAKE A RECOMMENDATION TO THE CITY COUNCIL OF APPLICANT ALONG WITH ANY MODIFICATIONS OR CONDITIONS RECOMMENDED BY THE COMMISSION.

(C) *CITY COUNCIL.* THE CITY COUNCIL SHALL MAKE THE FINAL DETERMINATION OF THE SELECTION OF THE APPLICANT BASED UPON THE COMMISSION'S RECOMMENDATION AND APPROVE OR REJECT THE CHOICE OF APPLICATION MADE. *This is now covered in 22.05.040.*

11.20.080 PUBLIC NOTICE—PUBLIC HEARING.

NOTICE OF THE LEASE APPLICATION SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY NOT LESS THAN TEN (10) OR MORE THAN THIRTY (30) DAYS PRIOR TO THE DATE OF PUBLIC HEARING. THE NOTICE MUST CONTAIN THE NAME OF THE APPLICANT, A BRIEF DESCRIPTION OF THE LAND, PROPOSED USE, TERM, AND A DECLARATION THAT THE COMMISSION WILL CONSIDER THE LEASE TO THE APPLICANT ON THE BASIS OF THE APPLICANT'S AGREEMENT TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS AS SET FORTH IN ITS APPLICATION WHICH IS AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES. THE NOTICE SHALL STATE THE DATE UPON WHICH PUBLIC HEARING WILL BE HELD BEFORE THE COMMISSION FOR CONSIDERATION OF THE APPLICATION. **The current process provides for review by relevant commissions and a public hearing before council which is publicly noticed. See 22.05.040.**

11.20.090 SELECTION OF APPLICANT.

AFTER THE HEARING PROVIDED IN KMC 11.20.080 ABOVE, THE COMMISSION MAY MAKE ITS RECOMMENDATION OF THE APPLICANT TO THE CITY COUNCIL IF IN THE COMMISSION'S OPINION, ON THE BASIS OF ALL THE TESTIMONY PRESENTED, THE AWARD OF THE PROSPECTIVE LEASE WILL BE ADVANTAGEOUS TO THE CITY AND IN THE BEST INTERESTS OF THE PUBLIC WELFARE, HEALTH, AND SAFETY. IN THE ALTERNATIVE, THE COMMISSION MAY ELECT TO MAKE NO RECOMMENDATION FOR ANY APPLICANT GIVING ITS REASONS THEREFOR. THE COMMISSION MAY IMPOSE ADDITIONAL CONDITIONS UPON THE APPLICANT BEFORE MAKING ITS AWARD. THE DECISION OF THE COUNCIL SHALL BE POSTED ON THE CITY BULLETIN BOARD THE DAY AFTER THE HEARING AND REMAIN POSTED FOR TEN (10) DAYS. **KMC 22.05.050 now addresses competing lease applications.**

11.20.100 APPEAL.

ANY PERSON DISAGREEING WITH THE DECISION OF THE COUNCIL MAY APPEAL THE DECISION BY FILING SUIT IN THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT AT KENAI, WITHIN TEN (10) DAYS FROM THE DATE OF THE POSTING OF COUNCIL'S DECISION. **This is not set up as an appealable decision in the new code provisions.**

11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.

THE APPLICANT WILL FURNISH A SURVEY AND APPRAISAL OF THE LAND IN QUESTION PRIOR TO LEASING. ANY RESURVEYING OR RE-PLATTING REQUIRED WILL BE THE APPLICANT'S RESPONSIBILITY AND EXPENSE. **Appraisals and surveys are provided for throughout title 22.**

11.20.120 THE LEASE DOCUMENT—TERMS.

LEASES MAY BE ISSUED FOR A TERM OF NOT LESS THAN TWO (2) YEARS NOR MORE THAN [NINETY-NINE (99)] FORTY-FIVE (45) YEARS. THE APPLICANT SHALL STATE IN HIS OR HER APPLICATION THE TERM DESIRED. IN DETERMINING WHETHER TO GRANT A LEASE FOR THE REQUESTED TERM, THE COUNCIL SHALL CONSIDER THE NATURE, EXTENT, AND COST OF THE IMPROVEMENTS WHICH THE APPLICANT AGREES TO CONSTRUCT THEREON AS A CONDITION OF THE LEASE THE TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT, THE VALUE OF THE APPLICANT'S PROPOSED USE TO THE ECONOMY OF THE CITY AND OTHER RELEVANT FACTORS. THE TERM OF THE LEASE MAY BE EXTENDED FOR A NUMBER OF SUCCESSIVE PERIODS FOR A SET NUMBER OF YEARS EACH AS LONG AS THE APPROPRIATE EXTENSIONS AND ORIGINAL TERM DO NOT EXCEED 99 YEARS. [Lease terms are now addressed in 22.05.055](#)

11.20.130 APPRAISAL.

NO LAND SHALL BE LEASED, OR A RENEWAL LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A [SIX] TWELVE MONTH PERIOD PRIOR TO THE DATE FIXED FOR BEGINNING OF THE TERM OF THE LEASE OR RENEWAL LEASE. NO LAND SHALL BE LEASED FOR LESS THAN THE APPROVED, APPRAISED ANNUAL RENTAL, ACCORDING TO THE METHOD AS DESCRIBED IN SECTION [11.20.150](#) BELOW, EXCEPT TO STATE OR FEDERAL AGENCIES OR THEIR SUBDIVISIONS IF IT IS IN THE PUBLIC INTEREST TO DO SO. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION. [Appraisals are now addressed in 22.05.050.](#)

11.20.140 REVIEW.

NO LEASED LAND MAY BE CHANGED IN USE, NOR MAY ANY RENEWAL LEASE BE ISSUED UNTIL THE PROPOSED USE OR RENEWAL HAS BEEN REVIEWED BY THE PLANNING COMMISSION AND APPROVED BY THE COUNCIL. [This is now provided for in 22.05.040 and 22.05.045.](#)

11.20.150 ANNUAL MINIMUM RENTAL.

(A) ANNUAL MINIMUM RENTALS SHALL BE COMPUTED FROM THE APPROVED APPRAISED MARKET VALUE UTILIZING THE METHOD AS DESCRIBED IN KMC [11.20.160\(A\)](#). ANNUAL MINIMUM RENTAL SHALL INCLUDE:

- (1) TAXES PERTAINING TO THE LEASEHOLD INTEREST OF THE LESSEE.
- (2) SALES TAX NOW ENFORCED OR LEVIED IN THE FUTURE COMPUTED UPON RENT PAYABLE IN MONTHLY INSTALLMENTS WHETHER RENT IS PAID ON A MONTHLY OR YEARLY BASIS.

(3) ALL TAXES AND ASSESSMENTS LEVIED IN THE FUTURE BY THE CITY OF KENAI, AS IF LESSEE WAS CONSIDERED THE LEGAL OWNER OF RECORD OF THE LEASED PROPERTY.

(4) INTEREST AT THE RATE OF EIGHT PERCENT (8%) PER ANNUM AND TEN PERCENT (10%) PENALTIES OF ANY AMOUNT OF MONEY OWED UNDER THIS LEASE WHICH IS NOT PAID ON OR BEFORE THE DATE IT BECOMES DUE.

(5) ALL SALES TAXES DUE ON PAYMENTS UNDER THIS LEASE AND TO ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.

(6) ALL SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS LEVIED BY THE CITY OF KENAI, AS IF LESSEE WERE CONSIDERED LEGAL OWNER OF LEASED PROPERTY.

(B) UPON EXECUTION OF THE LEASE THE LANDS DEMISED BECOME TAXABLE TO THE EXTENT OF ITS LEASEHOLD INTEREST AND LESSEE SHALL PAY ALL REAL PROPERTY TAXES LEVIED UPON SUCH LEASEHOLD INTEREST IN THESE LANDS, THAT THE CITY AS PART OF THE CONSIDERATION OF RENTAL PAYMENTS DEPENDS AND RELIES UPON THE PAYMENT BY THE LESSEE OF SAID ASSESSMENTS AND TAXES AS IF HE WERE THE OWNER OF SAID DEMISED LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. SAID PAYMENTS SHALL BE PRORATED TO CONFORM WITH THE CITY OF KENAI'S FISCAL YEAR BEGINNING JULY 1 AND ENDING JUNE 30. IF THE EQUIVALENT MONTHLY PAYMENT EXCEEDS \$200, THEN THE LESSEE SHALL HAVE THE OPTION OF MAKING PAYMENTS ON A MONTHLY OR QUARTERLY BASIS. **This is now covered in 22.05.060.**

11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.

(A) TO INSURE A FAIR RETURN, ALL LEASES FOR A PERIOD IN EXCESS OF FIVE (5) YEARS SHALL INCLUDE A REDETERMINATION CLAUSE AS OF THE FIFTH ANNIVERSARY OF EACH LEASE, NORMALLY SET FOR THE FIRST OF JULY OF THAT FIFTH YEAR. IN PURSUING A FAIR RETURN, ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. THEREFORE, LEASE RATES SHALL BE BASED ON:

(1) FAIR MARKET VALUE OF THE LAND, INCLUDING AN APPROPRIATE CONSIDERATION OF FACILITIES AND SERVICES AVAILABLE (PUBLIC WATER, PUBLIC SEWER, STORM SEWERS, AND OTHER PUBLIC UTILITIES) AS DETERMINED BY A QUALIFIED INDEPENDENT APPRAISER, CONSIDERING THE BEST USE OF THE SPECIFIC LAND.

(2) THE ACTUAL RATE OF RETURN DETERMINED TO BE A FAIR RETURN TO THE CITY SHALL BE SET AT SIX PERCENT (6%) OF FAIR MARKET VALUE. THE APPRAISAL SHALL NOT INCLUDE STRUCTURAL IMPROVEMENTS MADE TO THE

LAND OR IMPROVEMENTS MADE BY WAY OF GRAVEL OR OTHER APPROVED FILL PLACED ON THE LAND. (ORD. 1631-95)

(B) REALIZING THAT INVESTORS, DEVELOPERS, AND OTHER POTENTIAL LESSEES NEED A REASONABLE ASSURANCE OF STABILITY IN FUTURE LEASE RATES, THE REDETERMINATION CLAUSE OF ALL FUTURE LEASES SHALL INCLUDE THE FOLLOWING LANGUAGE:

AT EACH FIVE-YEAR INTERVAL, THE FAIR MARKET VALUE SHALL BE DETERMINED BY QUALIFIED, INDEPENDENT APPRAISERS. THE REDETERMINED LEASE RATE (ANNUAL RENT) UNDER THIS PROVISION, SHALL BE LIMITED TO A FIFTY PERCENT (50%) INCREASE IN THE PRIOR LEASE RATE UNTIL THE THIRTIETH-YEAR ANNIVERSARY OF THE LEASE AFTER WHICH THE FIFTY PERCENT (50%) CAP PROVISION SHALL NO LONGER APPLY AND THE LEASE RATE SHALL BE REDETERMINED EVERY FIVE YEARS ON THE BASIS OF FAIR MARKET EVALUATION AS DETERMINED IN KMC 11.20.080.

(C) CITY LEASES OF TIDELANDS EXISTING AT THE TIME OF THE ENACTMENT OF THIS CHAPTER SHALL HAVE A THIRTY-YEAR PERIOD DETERMINED FROM THE DATE FROM WHICH THE LEASE WAS ORIGINALLY ENTERED INTO.

(D) FAILURE BY THE CITY TO INSIST UPON RENEGOTIATION AT THE END OF ANY GIVEN FIVE-YEAR PERIOD SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF THE CITY TO INSIST UPON RENEGOTIATION IN ANY SUBSEQUENT YEAR, PROVIDED THAT NEITHER THE CITY NOR THE LESSEE SHALL HAVE THE RIGHT TO INSIST UPON RENEGOTIATION UNTIL FIVE YEARS SHALL HAVE ELAPSED FROM THE DATE THE RENTAL WAS LAST ADJUSTED. **This is now covered in 22.05.060.**

11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.

IT SHALL BE THE RESPONSIBILITY OF THE LESSEE TO PROPERLY LOCATE HIMSELF AND HIS IMPROVEMENTS ON THE LEASED LAND. IT SHALL BE UNLAWFUL TO ENCROACH ON OTHER LANDS OF THE CITY, OR ON LANDS OWNED OR LEASED BY ANOTHER. **This provision is not something that needs to be stated in code.**

11.20.180 LEASE UTILIZATION.

LEASED LANDS SHALL BE UTILIZED FOR PURPOSES WITHIN THE SCOPE OF THE APPLICATION, THE TERMS OF THE LEASE AND IN CONFORMITY WITH THE ORDINANCES OF THE CITY AND BOROUGH, AND IN SUBSTANTIAL CONFORMITY WITH THE COMPREHENSIVE PLAN. UTILIZATION OR DEVELOPMENT FOR OTHER THAN THE ALLOWED USES SHALL CONSTITUTE A VIOLATION OF THE LEASE AND SUBJECT THE LEASE TO CANCELLATION AT ANY TIME. FAILURE TO SUBSTANTIALLY COMPLETE THE DEVELOPMENT PLAN OF THE LAND WITHIN THE SPECIFIED TIME FROM THE DATE OF

EXECUTION OF THE LEASE, CONSISTENT WITH THE PROPOSED USE AND TERMS OF THE LEASE, SHALL CONSTITUTE GROUNDS FOR CANCELLATION. THE LEASE SHALL SET FORTH IN DETAIL WITH APPROPRIATE PLANS AND SPECIFICATIONS THE IMPROVEMENTS TO BE MADE WITHIN THE TIME PERIOD DESCRIBED ABOVE. **This is now provided for in 22.05.085**

11.20.190 SUBLEASING.

LEASES MAY PROVIDE FOR SUBLEASING A PORTION OF THE LEASED LAND WITHOUT PRIOR COUNCIL APPROVAL. SUBLEASES SHALL BE IN WRITING AND BE SUBJECT TO THE TERMS AND CONDITIONS OF THE ORIGINAL LEASE. NO APPROVAL OF THE CITY SHALL BE GIVEN TO THE SUBLEASE OF PROPERTY UNTIL THE LESSEE HAS SUBSTANTIALLY COMPLIED WITH THE DEVELOPMENT PLAN. **Subleasing is now covered in the lease form approved by council and requires council consent.**

11.20.200 ASSIGNMENTS.

EXCEPT FOR ASSIGNMENTS FOR COLLATERAL PURPOSES, NO LESSEE MAY ASSIGN THE LANDS LEASED TO HIM WITHOUT PRIOR COUNCIL APPROVAL. THE ASSIGNEE SHALL BE SUBJECT TO ALL OF THE PROVISIONS OF THE LEASE. ANY ATTEMPTED ASSIGNMENT MADE IN VIOLATION OF THIS SECTION SHALL BE VOID. ANY ASSIGNMENT REQUIRING COUNCIL APPROVAL WILL NOT BE UNREASONABLY DENIED. **This is also covered in the standard lease form approved by council.**

11.20.210 MODIFICATION.

NO LEASE MAY BE MODIFIED ORALLY OR IN ANY MANNER OTHER THAN BY AN AGREEMENT IN WRITING, SIGNED BY ALL PARTIES IN INTEREST OR THEIR SUCCESSORS IN INTEREST. ANY SUCH MODIFICATION SHALL REQUIRE COUNCIL APPROVAL. **This is also covered in the standard lease form approved by council.**

11.20.220 CANCELLATION—FORFEITURE.

- (A) LEASES IN GOOD STANDING MAY BE CANCELED IN WHOLE, OR IN PART, AT ANY TIME UPON MUTUAL WRITTEN AGREEMENT BY LESSEE AND THE CITY COUNCIL.
- (B) ANY LEASE USED FOR AN UNLAWFUL PURPOSE MAY BE CANCELED.
- (C) IF THE LESSEE SHALL DEFAULT IN THE PERFORMANCE OR OBSERVANCE OF ANY OF THE LEASE TERMS, COVENANTS, OR STIPULATIONS THERETO, OR OF THE REGULATIONS NOW OR HEREAFTER IN FORCE, AND SHOULD SAID DEFAULT CONTINUE FOR THIRTY (30) CALENDAR DAYS AFTER SERVICE OF WRITTEN NOTICE BY THE CITY WITHOUT REMEDY BY LESSEE OF THE CONDITIONS WARRANTING DEFAULT, THE CITY

SHALL SUBJECT LESSEE TO APPROPRIATE LEGAL ACTION, INCLUDING, BUT NOT LIMITED TO, FORFEITURE OF THE LEASE. NO IMPROVEMENTS MAY BE REMOVED BY LESSEE OR OTHER PERSON DURING ANY TIME THE LESSEE IS IN DEFAULT. THIS PROVISION SHALL NOT BE CONSTRUED TO PROHIBIT THE CITY FROM TAKING ANY APPROPRIATE LEGAL ACTION, INCLUDING, BUT LIMITED TO, FORFEITURE OF THE LEASE, IMMEDIATELY UPON THE OCCURRENCE OF A DEFAULT. **This is also covered in the standard lease form approved by council and disposition of improvements is in 22.05.075.**

11.20.230 DEFAULT—RIGHT OF ENTRY.

SHOULD DEFAULT BE MADE IN THE PAYMENT OF ANY PORTION OF THE RENT OR FEES WHEN DUE OR IN ANY OF THE COVENANTS OR CONDITIONS CONTAINED IN THE LEASE OR IN ANY REGULATIONS NOW OR HEREINAFTER IN FORCE, THEN IN SUCH EVENT THE CITY SHALL GIVE LESSEE THIRTY DAYS AFTER SUCH WRITTEN NOTICE TO CURE SUCH DEFAULT OR DEFAULTS, AFTER WHICH IF THE DEFAULT IS NOT CURED, THE CITY MAY TERMINATE THE LEASE, RE-ENTER AND TAKE POSSESSION OF THE PREMISES, REMOVE ALL PERSONS THEREFROM. **This is now covered in the standard lease form.**

11.20.240 NOTICE OR DEMAND.

ANY NOTICE OR DEMAND WHICH UNDER THE TERMS OF A LEASE OR UNDER ANY STATUTE MUST BE GIVEN OR MADE BY THE PARTIES THERETO, SHALL BE IN WRITING AND BE GIVEN OR MADE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO THE OTHER PARTY AT THE ADDRESS OF RECORD. HOWEVER, EITHER PARTY MAY DESIGNATE IN WRITING SUCH NEW OR OTHER ADDRESS TO WHICH SUCH NOTICE OR DEMAND SHALL THEREAFTER BE SO GIVEN, MADE OR MAILED. A NOTICE GIVEN HEREUNDER SHALL BE DEEMED DELIVERED WHEN DEPOSITED IN A U.S. GENERAL OR BRANCH POST OFFICE, ENCLOSED IN A REGISTERED OR CERTIFIED MAIL ENVELOPE, ADDRESSED AS HEREINABOVE PROVIDED. **This is now covered in the standard lease form.**

11.20.250 FINANCING—RIGHTS OF MORTGAGES OR LIENHOLDER.

(A) FOR THE PURPOSE OF INTERIM OR PERMANENT FINANCING OR REFINANCING FROM TIME TO TIME OF THE IMPROVEMENTS TO BE PLACED UPON THE LEASED PREMISES, AND FOR NO OTHER PURPOSE, A LESSEE, AFTER GIVING WRITTEN NOTICE THEREOF TO THE CITY, MAY ENCUMBER BY MORTGAGE, DEED OF TRUST, ASSIGNMENT, OR OTHER APPROPRIATE INSTRUMENT, THE LESSEE'S INTEREST IN THE LEASED PREMISES AND IN AND TO THE LEASE, PROVIDED SUCH ENCUMBRANCE PERTAINS ONLY TO SUCH LEASEHOLD INTEREST AND DOES NOT PERTAIN TO OR CREATE ANY INTEREST IN THE CITY'S TITLE TO THE LEASED PREMISES. IF SUCH MORTGAGE, DEED OF TRUST, OR ASSIGNMENT, SHALL BE HELD BY A BANK OR OTHER

ESTABLISHED LENDING OR FINANCIAL INSTITUTION (WHICH TERMS SHALL INCLUDE AN ESTABLISHED INSURANCE COMPANY AND QUALIFIED PENSION OR PROFIT-SHARING TRUST), AND SUCH INSTITUTION SHALL ACQUIRE THE LESSEE'S INTEREST IN SUCH LEASE AS A RESULT OF A SALE UNDER SAID ENCUMBRANCE PURSUANT TO A FORECLOSURE OR OTHER REMEDY OF THE SECURED PARTY, OR THROUGH ANY TRANSFER IN LIEU OF FORECLOSURE, OR THROUGH SETTLEMENT OF OR ARISING OUT OF ANY PENDING OR CONTEMPLATED FORECLOSURE ACTION, SUCH LENDING INSTITUTION SHALL HAVE THE PRIVILEGE OF TRANSFERRING ITS INTEREST IN SUCH LEASE TO A NOMINEE OR A WHOLLY-OWNED SUBSIDIARY CORPORATION WITH THE PRIOR CONSENT OF THE CITY, PROVIDED, HOWEVER, SUCH TRANSFEREE SHALL ASSUME ALL OF THE COVENANTS AND CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE, WHEREUPON SUCH LENDING INSTITUTION SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH TRANSFER. SUCH LENDING INSTITUTE FOR THE NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION TO WHICH IT MAY HAVE TRANSFERRED SUCH LEASE, OR ANY OTHER LENDING INSTITUTION WHICH MAY AT ANY TIME ACQUIRE SUCH LEASE, SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER A TRANSFER OF SUCH LEASE.

(B) A LEASEHOLD MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, OR SECURITY ASSIGNEE, SHALL HAVE AND BE SUBROGATED TO ANY AND ALL RIGHTS OF THE LESSEE WITH RESPECT TO THE CURING OF ANY DEFAULT HEREUNDER BY LESSEE.

(C) IF THE HOLDER OF ANY SUCH MORTGAGE, BENEFICIARY OF ANY SUCH DEED OF TRUST, OR THE SECURITY ASSIGNEE SHALL GIVE THE CITY BEFORE ANY DEFAULT SHALL HAVE OCCURRED IN THE LEASE, A WRITTEN NOTICE CONTAINING THE NAME AND POST OFFICE ADDRESS OF SUCH HOLDER, THE CITY SHALL THEREAFTER GIVE TO SUCH HOLDER A COPY OF EACH NOTICE OF DEFAULT BY THE LESSEE AT THE SAME TIME AS ANY NOTICE OF DEFAULT SHALL BE GIVEN BY THE CITY TO THE LESSEE, AND THE CITY WILL NOT THEREAFTER ACCEPT ANY SURRENDER OR ENTER INTO ANY MODIFICATION OF THIS LEASE WITHOUT THE PRIOR WRITTEN CONSENT OF THE HOLDER OF ANY FIRST MORTGAGE, BENEFICIAL INTEREST UNDER A FIRST DEED OF TRUST, OR SECURITY ASSIGNEE, IN THIS LEASE.

(D) IF, BY REASON OF ANY DEFAULT OF THE LESSEE, EITHER THIS LEASE OR ANY EXTENSION THEREOF SHALL BE TERMINATED AT THE ELECTION OF THE CITY PRIOR TO THE STATED EXPIRATION THEREFOR, THE CITY WILL ENTER INTO A NEW LEASE WITH THE LEASEHOLD MORTGAGEE FOR THE REMAINDER OF THE TERM, EFFECTIVE AS OF THE DATE OF SUCH TERMINATION, AT THE RENT AND

ADDITIONAL RENT, AND ON THE TERMS HEREIN CONTAINED, SUBJECT TO THE FOLLOWING CONDITIONS:

(1) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL MAKE WRITTEN REQUEST TO THE CITY FOR SUCH NEW LEASE WITHIN TWENTY DAYS AFTER THE DATE OF SUCH TERMINATION AND SUCH WRITTEN REQUEST SHALL BE ACCOMPANIED BY A PAYMENT TO THE CITY OF ALL SUMS THEN DUE TO THE CITY UNDER THE LEASE.

(2) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL PAY TO THE CITY, AT THE TIME OF THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, ANY AND ALL SUMS DUE THEREUNDER IN ADDITION TO THOSE WHICH WOULD AT THE TIME OF THE EXECUTION AND DELIVERY THEREOF BE DUE UNDER THIS LEASE; BUT FOR SUCH TERMINATION AND IN ADDITION THERETO, ANY REASONABLE EXPENSES, INCLUDING LEGAL AND ATTORNEY'S FEES, TO WHICH THE CITY SHALL HAVE BEEN SUBJECTED BY REASON OF SUCH DEFAULT.

(3) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE SHALL, ON OR BEFORE THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, PERFORM ALL THE OTHER CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE TO THE EXTENT THAT THE LESSEE SHALL HAVE FAILED TO PERFORM SUCH CONDITIONS.

(E) IF A LENDING INSTITUTION OR ITS NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION SHALL HOLD A MORTGAGE, DEED OF TRUST, OR SIMILAR SECURITY INTEREST IN AND TO THIS LEASE AND SHALL THEREAFTER ACQUIRE A LEASEHOLD ESTATE, DERIVED EITHER FROM SUCH INSTRUMENTS OR FROM THE CITY, AND IF SUCH INSTITUTION, NOMINEE, OR CORPORATION SHALL DESIRE TO ASSIGN THIS LEASE OR ANY NEW LEASE OBTAINED FROM THE CITY (OTHER THAN TO A NOMINEE OR TO A WHOLLY-OWNED SUBSIDIARY CORPORATION AS PERMITTED BY THE ABOVE PROVISIONS) TO AN ASSIGNEE WHO WILL UNDERTAKE TO PERFORM AND OBSERVE THE CONDITIONS IN SUCH LEASE REQUIRED TO BE PERFORMED BY THE LESSEE, THE CITY SHALL NOT UNREASONABLY WITHHOLD ITS CONSENT TO SUCH ASSIGNMENT AND ASSUMPTION, AND ANY SUCH LENDING INSTITUTION, NOMINEE, OR SUBSIDIARY SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH ASSIGNMENT. IF THE PROPOSED ASSIGNOR SHALL ASSERT THAT THE CITY IS UNREASONABLY WITHHOLDING ITS CONSENT TO ANY SUCH PROPOSED ASSIGNMENT, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION. **This is now covered in the standard lease form.**

11.20.260 ENTRY AND RE-ENTRY.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED AS HEREINBEFORE PROVIDED BY SUMMARY PROCEEDINGS OR OTHERWISE, OR IN THE EVENT THAT THE DEMISED LANDS OR ANY PART THEREOF SHOULD BE ABANDONED BY THE LESSEE DURING THE SAID TERM, THE LESSOR OR ITS AGENTS, SERVANTS, OR REPRESENTATIVES MAY, IMMEDIATELY OR ANY TIME THEREAFTER, RE-ENTER AND RESUME POSSESSION OF SAID LANDS OR SUCH PART THEREOF, AND REMOVE ALL PERSONS AND PROPERTY THEREFROM, EITHER SUMMARY PROCEEDINGS OR BY A SUITABLE ACTION OR PROCEEDING AT LAW WITHOUT BEING LIABLE FOR ANY DAMAGES THEREFOR. NO RE-ENTRY BY THE LESSOR SHALL BE DEEMED AN ACCEPTANCE OF A SURRENDER OF THE LEASE. **This is now covered in the standard lease form.**

11.20.270 RE-LEASE.

IN THE EVEN THAT A LEASE SHOULD BE TERMINATED AS HEREIN PROVIDED, OR BY SUMMARY PROCEEDINGS, OR OTHERWISE, THE PLANNING & ZONING COMMISSION MAY OFFER SAID LANDS FOR LEASE OR OTHER APPROPRIATE DISPOSAL, PURSUANT TO THE PROVISIONS OF THIS ORDINANCE. **This provision does not need to be stated in code.**

11.20.280 FORFEITURE OF RENTAL.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED BECAUSE OF ANY BREACH BY THE LESSEE AS HEREIN PROVIDED, THE ANNUAL RENTAL PAYMENT LAST MADE BY THE LESSEE SHALL BE FORFEITED AND RETAINED BY THE LESSOR AS PARTIAL OR TOTAL LIQUIDATED DAMAGES FOR SAID BREACH. **Termination provisions are now contained in the standard lease form.**

11.20.290 RIGHT OF INSPECTION.

CITY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO ENTER THE PREMISES, OR ANY PART THEREOF, FOR THE PURPOSES OF INSPECTION. **This is now covered in the standard lease form.**

11.20.300 EASEMENT GRANTS RESERVED.

CITY RESERVES THE RIGHT TO GRANT AND CONTROL EASEMENTS IN, OR ABOVE THE LAND LEASED. NO SUCH GRANT OR EASEMENT WILL BE MADE THAT WILL UNREASONABLY INTERFERE WITH THE LESSEE'S USE OF THE LAND, AND LESSEE SHALL HAVE FREE ACCESS AND USE OF ANY AND ALL PARKING AND LOADING RIGHTS, RIGHTS OF INGRESS AND EGRESS NOW OR HEREAFTER APPERTAINING TO THE LEASED PREMISES. **This provision does not need to be stated in code.**

11.20.310 LEASE SUBORDINATE TO FINANCING REQUIREMENTS.

LESSEE AGREES THAT CITY MAY MODIFY THE LEASE TO MEET REVISED REQUIREMENTS FOR FEDERAL OR STATE GRANTS, OR TO CONFORM TO THE REQUIREMENTS OF ANY REVENUE BOND COVENANT. HOWEVER, THE MODIFICATION SHALL NOT ACT TO REDUCE THE RIGHTS OR PRIVILEGES GRANTED THE LESSEE BY THIS LEASE, NOR ACT TO CAUSE THE LESSEE FINANCIAL LOSS. **This is now covered in the standard lease form.**

11.20.320 WRITTEN WAIVER.

THE RECEIPT OF RENT BY THE LESSOR WITH KNOWLEDGE OF ANY BREACH OF THE LEASE BY THE LESSEE, OR ANY DEFAULT ON THE PART OF THE LESSEE IN OBSERVANCE OR PERFORMANCE OF ANY OF THE CONDITIONS OR COVENANTS OF THE LEASE, SHALL NOT BE DEEMED TO BE A WAIVER OF ANY PROVISIONS OF THE LEASE. NO FAILURE ON THE PART OF THE LESSOR TO ENFORCE ANY COVENANT OR PROVISION THEREIN CONTAINED, NOR ANY WAIVER OF ANY RIGHT THEREUNDER BY THE LESSOR, UNLESS IN WRITING, SHALL DISCHARGE OR INVALIDATE SUCH COVENANTS OR PROVISIONS, OR AFFECT THE RIGHT OF THE LESSOR TO ENFORCE THE SAME IN THE EVENT OF ANY SUBSEQUENT BREACH OR DEFAULT. THE RECEIPT, BY THE LESSOR, OF ANY RENT OR ANY OTHER SUM OF MONEY AFTER THE TERMINATION, IN ANY MANNER, OF THE TERM THEREIN DEMISED, OR AFTER THE GIVING BY THE LESSOR OF ANY NOTICE THEREUNDER TO EFFECT SUCH TERMINATION, SHALL NOT REINSTATE, CONTINUE, OR EXTEND THE RESULTANT TERM THEREIN DEMISED, DESTROY, OR IN ANY MANNER IMPAIR THE EFFICACY OF ANY SUCH NOTICE OR TERMINATION AS MAY HAVE BEEN GIVEN THEREUNDER BY THE LESSOR TO THE LESSEE PRIOR TO THE RECEIPT OF ANY SUCH SUM OF MONEY OR OTHER CONSIDERATION, UNLESS SO AGREED TO IN WRITING AND SIGNED BY THE LESSOR. **This is now covered in the standard lease form.**

11.20.330 SURRENDER ON TERMINATION.

(A) LESSEE SHALL, ON THE LAST DAY OF THE TERM OF THIS LEASE OR UPON ANY EARLIER TERMINATION OF THIS LEASE, SURRENDER AND DELIVER UP THE PREMISES INTO THE POSSESSION AND USE OF CITY WITHOUT FRAUD OR DELAY IN GOOD ORDER, CONDITION, AND REPAIR, EXCEPT FOR REASONABLE WEAR AND TEAR SINCE THE LAST NECESSARY REPAIR, REPLACEMENT, RESTORATION, OR RENEWAL, FREE AND CLEAR OF ALL LETTINGS AND OCCUPANCIES UNLESS EXPRESSLY PERMITTED BY CITY IN WRITING, AND FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OTHER THAN THOSE CREATED BY CITY FOR LOANS TO THE CITY.

(B) UPON THE END OF THE TERM OF THIS LEASE OR ANY EARLIER TERMINATION THEREOF, TITLE TO THE BUILDINGS, IMPROVEMENTS, AND BUILDING EQUIPMENT SHALL AUTOMATICALLY VEST IN THE CITY WITHOUT REQUIREMENT OF ANY DEED, CONVEYANCE, OR BILL OF SALE DOCUMENT IN CONFIRMATION HEREOF, LESSEE SHALL EXECUTE, ACKNOWLEDGE, AND DELIVER THE SAME AND SHALL PAY ANY CHARGE, TAX, AND FEE ASSERTED OR IMPOSED BY ANY AND ALL GOVERNMENTAL UNITS IN CONNECTION THEREWITH. **This is now covered in the standard lease form.**

11.20.340 SANITATION.

THE LESSEE SHALL COMPLY WITH ALL REGULATIONS OR ORDINANCES OF THE CITY WHICH ARE PROMULGATED FOR THE PROMOTION OF SANITATION. THE PREMISES OF THE LEASE SHALL BE KEPT IN A NEAT, CLEAN, AND SANITARY CONDITION, AND EVERY EFFORT SHALL BE MADE TO PREVENT THE POLLUTION OF WATER. **This is now covered in the standard lease form.**

11.20.350 BUILDING AND ZONING CODES.

LEASED LANDS SHALL BE UTILIZED IN ACCORDANCE WITH THE BUILDING AND ZONING ORDINANCES AND RULES AND REGULATIONS OF SAID AUTHORITY. FAILURE TO DO SO SHALL CONSTITUTE A VIOLATION OF THE LEASE. **This does not need to be in this section of code as it is covered in the zoning code and standard lease form.**

11.20.360 RULES.

- (A) THE LESSEE SHALL OBSERVE, OBEY, AND COMPLY WITH ALL APPLICABLE RULES, ETC., OF THE STATE OR FEDERAL GOVERNMENTS.
- (B) CITY RESERVES THE RIGHT TO ADOPT, AMEND, AND ENFORCE REASONABLE RULES AND REGULATIONS GOVERNING THE DEMISED PREMISES AND THE PUBLIC AREAS AND FACILITIES USED IN CONNECTION THEREWITH. EXCEPT IN CASES OF EMERGENCY, NO RULE OR REGULATION HEREAFTER ADOPTED OR AMENDED BY THE CITY SHALL BECOME APPLICABLE UNLESS IT HAS BEEN GIVEN THIRTY DAYS NOTICE OF ADOPTION OR AMENDMENT THEREOF.
- (C) LESSEE, IN THE CONDUCT OF ITS OPERATIONS ON THE DEMISED PREMISES, SHALL OBSERVE, OBEY, AND COMPLY WITH ANY AND ALL APPLICABLE RULES, REGULATIONS, LAWS, ORDINANCES, OR ORDERS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, LAWFULLY EXERCISING AUTHORITY OVER LESSEE OR LESSEE'S CONDUCT OF ITS BUSINESS.
- (D) CITY SHALL NOT BE LIABLE TO LESSEE FOR ANY DIMINUTION OR DEPRIVATION OF POSSESSION, OR OF ITS RIGHTS HEREUNDER, ON ACCOUNT OF THE EXERCISE OF ANY SUCH RIGHT OR AUTHORITY AS IN THIS SECTION PROVIDED, NOR SHALL

LESSEE BE ENTITLED TO TERMINATE THE WHOLE OR ANY PORTION OF THE LEASEHOLD ESTATE HEREIN CREATED, BY REASON OF THE EXERCISE OF SUCH RIGHTS OR AUTHORITY, UNLESS THE EXERCISE THEREOF SHALL SO INTERFERE WITH LESSEE'S USE AND OCCUPANCY OF THE LEASEHOLD ESTATE AS TO CONSTITUTE A TERMINATION IN WHOLE OR IN PART OF THIS LEASE BY OPERATION OF LAW IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA AND OF THE UNITED STATES MADE APPLICABLE TO THE STATES. **This is now covered in the standard lease form.**

11.20.370 AIRCRAFT OPERATIONS PROTECTED.

(A) THE CITY SHALL RESERVE TO ITSELF ITS SUCCESSORS AND ASSIGNS, FOR THE USE AND BENEFIT OF THE PUBLIC, A RIGHT OF FLIGHT FOR THE PASSAGE OF AIRCRAFT IN THE AIRSPACE ABOVE THE SURFACE AND ALL IMPROVEMENTS APPROVED BY THE CITY OF THE PREMISES CONVEYED, TOGETHER WITH THE RIGHT TO CAUSE IN SAID AIRSPACE SUCH NOISE AS MAY BE INHERENT IN THE OPERATION OF AIRCRAFT, NOW OR HEREAFTER USED FOR NAVIGATION OF OR FLIGHT IN THE AIR, USING SAID AIRSPACE OF LANDING AT, TAKING OFF FROM, OR OPERATING ON THE KENAI AIRPORT. (WHEN PLANS FOR IMPROVEMENTS ARE APPROVED BY THE CITY, THE CITY TO THE EXTENT OF THOSE IMPROVEMENTS RELEASES THE EASEMENTS HERE EXPRESSED.)

(B) THE LESSEE BY ACCEPTING CONVEYANCE EXPRESSLY AGREES FOR ITSELF, ITS REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, THAT IT WILL NOT ERECT NOR PERMIT THE ERECTION OF ANY STRUCTURE OR OBJECT, ON THE AND CONVEYED, WHICH WOULD BE AN AIRPORT OBSTRUCTION WITHIN THE STANDARDS ESTABLISHED UNDER THE FEDERAL AVIATION ADMINISTRATION REGULATIONS, PART 77, AS AMENDED. IN THE EVENT THE AFORESAID COVENANT IS BREACHED, THE CITY RESERVES THE RIGHT TO ENTER ON THE LAND CONVEYED HEREUNDER AND TO REMOVE THE OFFENDING STRUCTURE OR OBJECT, ALL OF WHICH SHALL BE AT THE EXPENSE OF THE LESSEE OR ITS HEIRS, SUCCESSORS, OR ASSIGNS. **This is covered in the standard lease form when necessary pursuant to deed restrictions or airport requirements.**

11.20.380 RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION.

THE CITY SHALL AGREE AND COVENANT THAT THE LESSEE, UPON PAYING RENT AND PERFORMING OTHER COVENANTS, TERMS, AND CONDITIONS OF THIS LEASE, SHALL HAVE THE RIGHT TO QUIETLY AND PEACEFULLY HOLD, USE, OCCUPY, AND ENJOY THE SAID LEASED PREMISES, EXCEPT THAT ANY INCONVENIENCE CAUSED BY PUBLIC WORKS PROJECTS IN OR ABOUT THE LEASEHOLD PREMISES SHALL NOT BE

CONSTRUED AS A DENIAL OF THE RIGHT OF QUIET OR PEACEABLE POSSESSION. **This is now covered in the standard lease form.**

11.20.390 LESSEE TO PAY TAXES.

LESSEE SHALL PAY ALL LAWFUL TAXES AND ASSESSMENTS WHICH, DURING THE TERM THEREOF MAY BECOME A LIEN UPON OR WHICH MAY BE LEVIED BY THE STATE, BOROUGH, CITY, OR ANY OTHER TAX-LEVYING BODY, UPON ANY TAXABLE POSSESSORY RIGHT WHICH LESSEE MAY HAVE IN OR TO THE REASON OF ITS USE OR OCCUPANCY, PROVIDED, HOWEVER, THAT NOTHING HEREIN CONTAINED SHALL PREVENT LESSEE FROM CONTESTING AS ANY OTHER LAND OWNER ANY INCREASE IN SUCH TAX OR ASSESSMENT THROUGH PROCEDURES OUTLINED IN STATE STATUTES. **This is now covered in the standard lease form.**

11.20.400 NO PARTNERSHIP OR JOINT VENTURE CREATED.

THE CITY SHALL NOT BE CONSTRUED OR HELD TO BE A PARTNER OR JOINT VENTURER OF LESSEE IN THE CONDUCT OF BUSINESS ON THE DEMISED PREMISES; AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE RELATIONSHIP BETWEEN THE PARTIES THERETO IS, AND SHALL AT ALL TIMES REMAIN THAT OF LANDLORD AND TENANT. **This is now covered in the standard lease form.**

11.20.410 DEFAULT BANKRUPTCY.

IF THE LESSEE SHALL MAKE ANY ASSIGNMENT FOR THE BENEFIT OF CREDITORS OR SHALL BE ADJUDGED A BANKRUPT, OR IF A RECEIVER IS APPOINTED FOR THE LESSEE OR LESSEE'S ASSETS, OR ANY INTEREST UNDER THIS LEASE, AND IF THE APPOINTMENT OF THE RECEIVER IS NOT VACATED WITHIN THIRTY DAYS, OR IF A VOLUNTARY PETITION IS FILED UNDER SECTION 18(A) OF THE BANKRUPTCY ACT BY THE LESSEE, THEN AND IN ANY EVENT, THE CITY MAY, UPON GIVING THE LESSEE THIRTY DAYS' NOTICE, TERMINATE THIS LEASE. **This is now covered in the standard lease form.**

11.20.420 NONDISCRIMINATION.

THE LESSEE, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST, AND ASSIGNS, AS A PART OF THE CONSIDERATION HEREOF, DOES HEREBY COVENANT AND AGREE AS A COVENANT RUNNING WITH THE LAND, THAT:

- (A) NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION IN, DENIED THE BENEFITS OF, OR BE OTHERWISE SUBJECTED TO DISCRIMINATION IN THE USE OF SAID FACILITIES.

(B) IN THE CONSTRUCTION OF ANY IMPROVEMENTS ON, OVER, OR UNDER SUCH LAND AND THE FURNISHING OF SERVICES THEREON, NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION, DENIED THE BENEFITS OF, OR OTHERWISE BE SUBJECTED TO DISCRIMINATION.

(C) THE LESSEE SHALL USE THE PREMISES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED BY OR PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED.

(D) IN THE EVENT FACILITIES ARE CONSTRUCTED, MAINTAINED, OR OTHERWISE OPERATED ON THE SAID PROPERTY DESCRIBED IN THIS LEASE, FOR A PURPOSE INVOLVING THE PROVISION OF SIMILAR SERVICES OR BENEFITS, THE LESSEE SHALL MAINTAIN AND OPERATE SUCH FACILITIES AND SERVICES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED. **This is covered in the standard lease form when necessary pursuant to deed restrictions or other applicable law.**

11.20.430 PARTIAL INVALIDITY.

IF ANY TERM, PROVISION, CONDITION, OR PART OF THE LEASE IS DECLARED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNCONSTITUTIONAL, THE REMAINING TERMS, PROVISIONS, CONDITIONS, OR PARTS SHALL CONTINUE IN FULL FORCE AND EFFECT AS THOUGH SUCH DECLARATION WAS NOT MADE. **This is now covered in the standard lease form.**

11.20.440 PAROLE MODIFICATIONS.

IT SHALL BE MUTUALLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE AGREEMENT, AS WRITTEN, SHALL COVER ALL THE AGREEMENTS AND STIPULATIONS BETWEEN THE PARTIES; AND NO REPRESENTATIONS, ORAL OR WRITTEN, HAVE BEEN MODIFYING, ADDING TO, OR CHANGING THE TERMS THEREOF. **This is now covered in the standard lease form.**

11.20.450 AMENDMENT OF LEASE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN ORDER TO AID THE LESSEE IN THE FINANCING OF THE IMPROVEMENTS TO BE SITUATED HEREIN, THE CITY SHALL AGREE THAT IN THE EVENT THE PROPOSED MORTGAGEE, BENEFICIARY OR SECURITY ASSIGNEE UNDER ANY INTERIM OR PERMANENT LOAN ON THE SECURITY OF THE LEASEHOLD INTEREST OF THE LESSEE AND THE IMPROVEMENTS TO BE SITUATED THEREON SO REQUIRES, THE CITY WILL MAKE A REASONABLE EFFORT TO AMEND THIS LEASE IN ORDER TO SATISFY SUCH REQUIREMENTS UPON THE EXPRESS CONDITION AND UNDERSTANDING, HOWEVER, THAT SUCH VARIANCE IN LANGUAGE WILL NOT MATERIALLY PREJUDICE THE CITY'S RIGHTS THEREUNDER NOR BE SUCH AS TO ALTER IN ANY WAY THE RENTAL OBLIGATIONS OF THE LESSEE HEREUNDER NOR ITS OBLIGATIONS TO COMPLY WITH ALL EXISTING LAWS AND REGULATIONS OF THE CITY RELATING TO THE LEASING OF AIRPORT LANDS, AND TO ALL APPLICABLE FEDERAL STATUTES, RULES, AND REGULATIONS, AND ALL COVENANTS AND CONDITIONS OF THE DEED BY WHICH THE CITY HOLDS TITLE TO THE LAND. **This is now covered in the standard lease form.**

11.20.460 COMPLIANCE WITH LAWS.

(A) LESSEE SHALL COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, AND REGULATIONS OF PUBLIC AUTHORITIES NOW OR HEREAFTER IN ANY MANNER AFFECTING THE LEASED PREMISES OR THE SIDEWALKS, ALLEYS, STREETS, AND WAY ADJACENT THERETO OR ANY BUILDINGS, STRUCTURES, FIXTURES, AND IMPROVEMENTS OR THE USE THEREOF, WHETHER OR NOT ANY SUCH LAWS, ORDINANCES, AND REGULATIONS WHICH MAY BE HEREAFTER ENACTED INVOLVE A CHANGE OF POLICY ON THE PART OF THE GOVERNMENTAL BODY ENACTING THE SAME. LESSEE AGREES TO HOLD CITY FINANCIALLY HARMLESS FROM THE FOLLOWING:

- (1) FROM THE CONSEQUENCES OF ANY VIOLATION OF SUCH LAWS, ORDINANCES, AND/OR REGULATIONS.
- (2) FROM ALL CLAIMS FOR DAMAGES ON ACCOUNT OF INJURIES, DEATH, OR PROPERTY DAMAGE RESULTING FROM SUCH VIOLATION.

(B) LESSEE FURTHER AGREES IT WILL NOT PERMIT ANY UNLAWFUL OCCUPATION, BUSINESS, OR TRADE TO BE CONDUCTED ON SAID PREMISES OR ANY USE TO BE MADE THEREOF CONTRARY TO ANY LAW, ORDINANCE, OR REGULATION AS AFORESAID WITH RESPECT THERETO. **This is now covered in the standard lease form.**

11.20.470 CARE OF PREMISES.

LESSEE, AT ITS OWN COST AND EXPENSE, SHALL KEEP THE LEASED PREMISES, ALL IMPROVEMENTS WHICH AT ANY TIME DURING THE TERM OF THIS LEASE MAY BE SITUATED THEREON, AND ANY AND ALL APPURTENANCES THEREUNTO BELONGING, IN GOOD CONDITION AND REPAIR, DURING THE ENTIRE TERM OF THIS LEASE. **This is now covered in the standard lease form.**

11.20.480 LESSEE'S OBLIGATION TO REMOVE LIENS.

LESSEE WILL NOT PERMIT ANY LIENS INCLUDING, BUT NOT LIMITED TO, MECHANICS', LABORERS', OR MATERIAL-MEN'S LIENS OBTAINABLE OR AVAILABLE UNDER THE THEN EXISTING LAWS, TO STAND AGAINST THE LEASED PREMISES OR IMPROVEMENTS FOR ANY LABOR OR MATERIAL FURNISHED TO LESSEE OR CLAIMED TO HAVE BEEN FURNISHED TO LESSEE OR TO LESSEE'S AGENTS, CONTRACTORS, OR SUBLESSEES, IN CONNECTION WITH WORK OF ANY CHARACTER PERFORMED OR CLAIMED TO HAVE BEEN PERFORMED ON SAID PREMISES OR IMPROVEMENTS BY OR AT THE DIRECTION OR SUFFERANCE OF LESSEE, PROVIDED, HOWEVER, LESSEE SHALL HAVE THE RIGHT TO PROVIDE A BOND AS CONTEMPLATED BY ALASKA LAW AND CONTEST THE VALIDITY OR AMOUNT OF ANY SUCH LIEN OR CLAIMED LIEN. ON FINAL DETERMINATION OF SUCH LIEN OR SUCH CLAIM FOR LIEN, LESSEE WILL IMMEDIATELY PAY ANY JUDGMENT RENDERED WITH ALL PROPER COSTS AND CHARGES AND SHALL HAVE SUCH LIEN RELEASED OR JUDGMENT SATISFIED AT LESSEE'S OWN EXPENSE. **This is now covered in the standard lease form.**

11.20.490 CONDEMNATION.

IN THE EVENT THE LEASED PREMISES OR ANY PART THEREOF SHALL BE CONDEMNED AND TAKEN FOR A PUBLIC OR A QUASI-PUBLIC USE, THEN UPON PAYMENT OF ANY AWARD OR COMPENSATION ARISING FROM SUCH CONDEMNATION, THERE SHALL BE SUCH DIVISION OF THE PROCEEDS, SUCH ABATEMENT IN RENT PAYABLE DURING THE TERM OR ANY EXTENSION OF THE TERM HEREOF, AND SUCH OTHER ADJUSTMENTS AS THE PARTIES MAY AGREE UPON AS BEING JUST AND EQUITABLE UNDER ALL THE CIRCUMSTANCES. IF THE CITY AND LESSEE ARE UNABLE TO AGREE WITHIN THIRTY DAYS AFTER SUCH AN AWARD HAS BEEN PAID INTO COURT, UPON WHAT DIVISION, ANNUAL ABATEMENT IN RENT, AND OTHER ADJUSTMENTS ARE JUST AND EQUITABLE, THE DISPUTE SHALL BE DETERMINED BY ARBITRATION PROVIDED IN KMC 11.20.670 HEREOF. **This is now covered in the standard lease form.**

11.20.500 PROTECTION OF SUBTENANTS.

TO PROTECT THE POSITION OF ANY SUBTENANT(S) HEREAFTER PROPERLY OBTAINING ANY INTERESTS IN THE LEASEHOLD ESTATE GRANTED LESSEE HEREUNDER, THE CITY AGREES THAT IN THE EVENT OF THE CANCELLATION, TERMINATION, EXPIRATION, OR SURRENDER OF THIS LEASE (THE GROUND LEASE), THE CITY WILL ACCEPT THE SUBTENANT, ITS SUCCESSORS AND ASSIGNS, AS ITS LESSEE FOR A PERIOD EQUAL TO THE FULL ELAPSED PORTION OF THE TERM OF THE SUBLEASE, INCLUDING ANY EXTENSIONS OR RENEWALS THEREOF NOT EXCEEDING THE TERM OF THIS LEASE, UPON THE SAME COVENANTS AND CONDITIONS THEREIN CONTAINED, TO THE EXTENT THAT SAID COVENANTS AND CONDITIONS ARE NOT INCONSISTENT WITH ANY OF THE TERMS AND CONDITIONS OF THIS LEASE, PROVIDED SUCH SUBTENANT SHALL MAKE FULL AND COMPLETE ATTORNMENT TO THE CITY FOR THE BALANCE OF THE TERM OF SUCH SUBLEASE SO AS TO ESTABLISH DIRECT PRIVITY OF ESTATE AND CONTRACT BETWEEN THE CITY AND THE SUBTENANT WITH THE SAME FORCE AND EFFECT AS THOUGH SUCH SUBLEASE WAS ORIGINALLY MADE DIRECTLY BETWEEN THE CITY AND SUCH SUBTENANT; AND FURTHER PROVIDED SUCH SUBTENANT AGREES TO COMPLY WITH ALL THE PROVISIONS OF THE GROUND LEASE AND ALL THE TERMS OF ANY MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT TO WHICH SUCH LEASEHOLD ESTATE IS SUBJECT, EXCEPT THE PAYMENT OF RENT UNDER THE GROUND LEASE AND THE PAYMENT OF ANY DEBT SERVICE UNDER ANY SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT. **This is now covered in the standard lease form.**

11.20.510 SUCCESSORS IN INTEREST.

THIS LEASE SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO, SUBJECT TO SUCH SPECIFIC LIMITATIONS OR ASSIGNMENT AS ARE PROVIDED FOR HEREIN. **This is now covered in the standard lease form.**

11.20.520 GOVERNING LAW.

THE INDENTURE OF LEASE SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF ALASKA. **This is now covered in the standard lease form.**

11.20.530 NOTICES.

(A) ANY NOTICES REQUIRED BY THE LEASE SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DULY GIVEN ONLY IF DELIVERED PERSONALLY OR MAILED BY CERTIFIED OR REGISTERED MAIL IN A PREPAID ENVELOPE ADDRESSED AS FOLLOWS:

TO CITY:CITY HALL—CITY OF KENAI
[P.O. BOX 580] 210 FIDALGO AVENUE
KENAI, ALASKA 99611

TO TENANT:

(B) THE CITY SHALL ALSO MAIL A COPY OF ANY NOTICE GIVEN TO THE LESSEE, BY REGISTERED OR CERTIFIED MAIL, TO ANY LEASEHOLD LENDER (MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, SECURITY ASSIGNEE) WHO SHALL HAVE GIVEN THE CITY NOTICE OF SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT.

(C) ANY SUCH ADDRESSES MAY BE CHANGED BY AN APPROPRIATE NOTICE IN WRITING TO ALL OTHER PARTIES AFFECTED PROVIDED SUCH CHANGE OF ADDRESS IS GIVEN TO THE OTHER PARTIES BY THE MEANS OUTLINED IN PARAGRAPH (A) ABOVE AT LEAST FIFTEEN DAYS PRIOR TO THE GIVING OF THE PARTICULAR NOTICE IN ISSUE. **This is now covered in the standard lease form.**

11.20.540 FIRE PROTECTION.

THE LESSEE WILL TAKE ALL REASONABLE PRECAUTION TO PREVENT AND TAKE ALL NECESSARY ACTION TO SUPPRESS DESTRUCTIVE OR UNCONTROLLED GRASS, BRUSH, OR OTHER FIRES ON LEASED LANDS, AND COMPLY WITH ALL LAWS, REGULATIONS, AND RULES PROMULGATED AND ENFORCED BY THE CITY FOR FIRE PROTECTION WITHIN THE AREA WHEREIN THE LEASED PREMISES ARE LOCATED. **This does not need to be in this code section.**

11.20.550 INSPECTION.

THE LESSEE SHALL ALLOW AUTHORIZED REPRESENTATIVES OF THE CITY TO ENTER THE LEASED LAND FOR INSPECTION AT ANY REASONABLE TIME. **This is now covered in the standard lease form.**

11.20.560 PERSONAL USE OF MATERIALS.

ALL COAL, OIL, GAS, AND OTHER MINERALS AND ALL DEPOSITS OF STONE OR GRAVEL VALUABLE FOR EXTRACTION OR UTILIZATION AND ALL MATERIALS SUBJECT TO TITLE II, DIVISION I, CHAPTERS 4, 5, AND 6 OF THE ALASKA ADMINISTRATIVE CODE ARE EXCEPTED FROM THE OPERATION OF A SURFACE LEASE. SPECIFICALLY, THE LESSEE OF THE SURFACE RIGHTS SHALL NOT SELL OR REMOVE FOR USE ELSEWHERE ANY TIMBER, STONE, GRAVEL, PEAT MOSS, TOPSOIL, OR ANY OTHER MATERIAL VALUABLE FOR BUILDING OR COMMERCIAL PURPOSES; PROVIDED, HOWEVER, THAT MATERIAL REQUIRED FOR THE DEVELOPMENT OF THE LEASEHOLD MAY BE USED IF ITS USE IS FIRST APPROVED BY THE CITY. **This is now covered in the standard lease form.**

11.20.570 RESTRICTIONS AND RESERVATIONS.

THE LEASE SHALL CONTAIN SUCH RESTRICTIONS AND RESERVATIONS AS ARE NECESSARY TO PROTECT THE PUBLIC INTEREST. *This is not necessary to have in this code section and is covered elsewhere in code to an extent and in the lease form.*

11.20.580 WASTE AND INJURY TO LAND.

IF ANY PERSON SHALL COMMIT WASTE, TRESPASS, OR OTHER INJURY UPON CITY LAND, THE PERSON SO OFFENDING, IN ADDITION TO BEING CIVILLY LIABLE FOR ANY DAMAGES CAUSED, SHALL BE DEEMED GUILTY OF A VIOLATION. *This is provided for in the lease form.*

11.20.590 WARRANTY.

THE CITY DOES NOT WARRANT BY ITS CLASSIFICATION OR LEASING OF LAND THAT THE LAND IS IDEALLY SUITED FOR THE USE AUTHORIZED UNDER SAID CLASSIFICATION OR LEASE, AND NO GUARANTY IS GIVEN OR IMPLIED THAT IT SHALL BE PROFITABLE TO EMPLOY LAND TO SAID USE. CITY BEARS NO RESPONSIBILITY FOR ANY WATER EROSION OF LAND. *This is provided for in the lease form.*

11.20.600 APPROVAL OF OTHER AUTHORITIES.

THE ISSUANCE BY THE CITY OF LEASES DOES NOT RELIEVE THE GRANTEE OR LESSEE OF RESPONSIBILITY OF OBTAINING LICENSES OR PERMITS AS MAY BE REQUIRED BY DULY AUTHORIZED BOROUGH, STATE, OR FEDERAL AGENCIES. *This does not need to be in this code section and is provided for in the lease form.*

11.20.610 TITLE RESTRICTIONS.

ALL LEASES OR SALES OF PROPERTY SHALL BE MADE SUBJECT TO RESTRICTIONS AND RESERVATIONS IN THE PATENT, DEED, OR OTHER INSTRUMENT UNDER WHICH THE CITY HOLDS. *This does not need to be in this code section as it is a legal requirement.*

11.20.620 INSURANCE—HOLD HARMLESS.

LESSEE SHALL COVENANT TO SAVE THE CITY HARMLESS FROM ALL ACTIONS, SUITS, LIABILITIES, OR DAMAGES RESULTING FROM OR ARISING OUT OF ANY ACTS OF COMMISSION OR OMISSION BY THE LESSEE, HIS AGENTS, EMPLOYEES, CUSTOMERS, INVITEES, OR ARISING FROM OR OUT OF THE LESSEE'S OCCUPATION, OR USE OF THE PREMISES DEMISED, OR PRIVILEGES GRANTED, AND TO PAY ALL COSTS CONNECTED THEREWITH. IN THIS CONNECTION, THE LESSEE SHALL AGREE TO ARRANGE AND PAY FOR ALL THE FOLLOWING:

(A) PUBLIC LIABILITY INSURANCE PROTECTING BOTH THE CITY AND/OR ITS AGENTS AND THE LESSEE, SUCH INSURANCE TO BE EVIDENCED BY A CERTIFICATE SHOWING THE INSURANCE IN FORCE. THE AMOUNT OF SUCH PUBLIC LIABILITY INSURANCE SHALL HAVE LIMITS NOT LESS THAN THOSE KNOWN AS \$250,000/\$500,000/\$100,000.

(B) LIQUOR LIABILITY (WHERE APPLICABLE).

(C) LESSEE AGREES TO CARRY EMPLOYER'S LIABILITY INSURANCE AND WORKMEN'S COMPENSATION INSURANCE, AND TO FURNISH A CERTIFICATE THEREOF TO THE CITY, IF APPLICABLE.

(D) INSURANCE CONTRACTS PROVIDING LIABILITY INSURANCE AND WORKMEN'S COMPENSATION SHALL PROVIDE FOR NOT LESS THAN THIRTY DAYS WRITTEN NOTICE TO THE CITY OF CANCELLATION OR EXPIRATION OR SUBSTANTIAL CHANGE IN POLICY CONDITIONS AND COVERAGE.

(E) LESSEE AGREES THAT WAIVER OF SUBROGATION AGAINST THE CITY SHALL BE REQUESTED OF LESSEE'S INSURER, AND SHALL BE PROVIDED AT NO COST TO THE CITY.

(F) CROSS LIABILITY: IT IS UNDERSTOOD AND AGREED THAT THE INSURANCE AFFORDED BY THIS POLICY OR POLICIES FOR MORE THAN ONE NAMED INSURED, SHALL NOT OPERATE TO INCREASE THE LIMITS OF THE COMPANY'S LIABILITY, BUT OTHERWISE SHALL NOT OPERATE TO LIMIT OR VOID THE COVERAGE OF ANY ONE NAMED INSURED AS RESPECTS CLAIMS AGAINST THE SAME NAMED INSURED OR EMPLOYEES OF SUCH OTHER NAMED INSURED.

(G) THE INSURANCE PROCURED BY THE LESSEE AS HEREIN REQUIRED SHALL BE ISSUED IN THE NAME OF THE LESSEE AND THE CITY BY A COMPANY LICENSED TO DO BUSINESS IN THE STATE OF ALASKA, AND SHALL CONTAIN ENDORSEMENTS THAT:

(1) SUCH INSURANCE MAY NOT BE CANCELED OR AMENDED WITH RESPECT TO THE CITY WITHOUT THIRTY DAYS WRITTEN NOTICE BY REGISTERED OR CERTIFIED MAIL TO THE CITY BY THE INSURANCE COMPANY.

(2) LESSEE SHALL BE SOLELY RESPONSIBLE FOR PAYMENT OF PREMIUMS AND THAT CITY SHALL NOT BE REQUIRED TO PAY ANY PREMIUMS FOR SUCH INSURANCE.

(H) THE AMOUNT OF INSURANCE COVERAGE REQUIRED ABOVE MAY BE SUBJECT TO REVIEW FOR INCREASE AT EACH FIVE-YEAR RENEGOTIATION OF THE LEASE.

(I) UPON REVIEW BY THE COMMISSION, THE LESSEE MAY BE REQUIRED TO OBTAIN SUCH OTHER INSURANCE PROTECTING THE CITY AND LESSEE THAT MAY BE NECESSARILY REQUIRED OR ADVISABLE OWING TO THE PARTICULARITIES OF THE HARBOR-RELATED ACTIVITIES ON THE LEASE-HOLD INTEREST. **This is provided for in the lease form.**

11.20.630 INSURANCE OF USERS—SUBTENANTS.

LESSEE, FOR ITS OWN PROTECTION, MAY REQUIRE BONA FIDE PUBLIC USERS AND SUBTENANTS TO EXECUTE AGREEMENTS HOLDING LESSEE HARMLESS FROM ACTIONS ARISING OUT OF USER'S OPERATIONS AND MAY REQUIRE SUCH BONA FIDE PUBLIC USERS AND SUBTENANTS TO SHOW PROOF OF PUBLIC LIABILITY INSURANCE COVERING THEIR OPERATIONS ON THE DEMISED PREMISES IN SUCH AMOUNTS AS WILL ADEQUATELY PROTECT THEM. *This does not need to be in this code section as it is provided in the lease form.*

11.20.640 ANNUAL REPORT.

THE LESSEE MAY BE REQUIRED TO SUBMIT TO THE CITY EACH YEAR ON OR ABOUT MARCH 15, AN ANNUAL REPORT ON ITS OPERATIONS, PARTICULARLY THOSE SERVICES AND FACILITIES OFFERED TO THE PUBLIC, WHETHER ON A FEE OR NON-FEE BASIS]. *This does not need to be in this code section as it is covered in the planning and zoning code related to conditional use permits and can be included in a specific lease if necessary.*

11.20.650 Tidelands [C]Claims. (House Keeping)

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.[3]820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any. *This is a unique provision that should remain. The proposed changes reflect a statutory change to state law renumbering the state statute number.*

11.20.660 Subjection to [H]Harbor [O]Ordinance. (House Keeping)

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part. *This is relevant and should be reiterated in the lease document itself.*

[11.20.670 ARBITRATION.

IN THE EVENT THE CITY AND LESSEE SHALL BE UNABLE TO AGREE AS TO ANY MATTER PROVIDED FOR IN THE LEASE EXCEPT AS TO THE AMOUNT OF THE FIVE-YEAR RENT REDETERMINATION AMOUNT WHICH IS HANDLED PURSUANT TO KMC 11.20.160, SUCH DISPUTE SHALL BE DETERMINED BY THREE DISINTERESTED ARBITRATORS (UNLESS THE PARTIES CAN AGREE ON ONE ARBITRATOR). SUCH ARBITRATION SHALL BE CONDUCTED UPON REQUEST OF EITHER THE CITY OR THE LESSEE, BEFORE THREE ARBITRATORS (UNLESS THE CITY OR THE LESSEE AGREE TO ONE ARBITRATOR) DESIGNATED BY THE AMERICAN ARBITRATION ASSOCIATION AND IN ACCORDANCE

WITH THE RULES OF SUCH ASSOCIATION. THE ARBITRATORS DESIGNATED AND ACTING UNDER THIS LEASE SHALL HAVE NO POWER TO DEPART FROM OR CHANGE ANY OF THE PROVISIONS THEREOF. THE EXPENSE OF ARBITRATION PROCEEDINGS CONDUCTED HEREUNDER SHALL BE BORNE EQUALLY BY THE PARTIES. THE PROCEEDINGS SHALL TAKE PLACE IN KENAI, ALASKA UNLESS OTHERWISE AGREED UPON BY THE PARTIES.] **Appeal rights for lease rates are provided in Title 22 addressing city lands. In the general the City has moved away from arbitration clauses.**

11.20.680 Provisions ~~[R]~~Regulating ~~[P]~~Public ~~[U]~~Use ~~[P]~~Purpose. (House Keeping)

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates. **This is a provision unique to Title 11 that should be maintained.**

11.20.690 Provision to be ~~[I]~~Included in ~~[P]~~Public ~~[U]~~Use ~~[L]~~Lease. (House Keeping)

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses. **This is a provision unique to Title 11 that should be maintained.**

11.20.700 Public ~~[U]~~Use: ~~[D]~~Defined. (House Keeping)

- (a) Public use shall mean a use limited in part or in whole to the following:
 - (1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:
 - (i) Public dock facilities.
 - (ii) Maritime commerce.
 - (iii) Transportation.
 - (iv) Fishing.
 - (v) Boat harbor.
 - (vi) Port and waterfront development purposes.
- (b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City. **This is a provision unique to Title 11 that should be maintained, however I would recommend the**

Harbor Commission revisit this to ensure it allows for sufficient flexibility in development, for example, it should not be interpreted to prohibit retail, restaurant, or boat storage, even perhaps some limited residential as part of a broader harbor development plan.

11.20.710 Controlled [A]Access. (House Keeping)

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan. This is a provision unique to Title 11 that should be maintained.

11.20.720 Use [C]Charges. (House Keeping)

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities. [IT IS EXPRESSLY RECOGNIZED THAT LESSEE IS ENTITLED TO A MARGIN OF PROFIT, WHICH SHOULD BE FAIR, REASONABLE, AND COMPETITIVE, AND THAT CITY WILL COOPERATE TO THIS END IN CONSIDERING RATES AND FEES. THE COMMISSION SHALL REVIEW ALL RATE STRUCTURES ANNUALLY. THE LEASE SHALL CONTAIN AN ARBITRATION PROVISION AS SET FORTH IN KMC 11.20.670 TO RESOLVE DISPUTES ARISING HEREUNDER.] As a general policy this is ok, but the City currently does not monitor rates charged by businesses.

[11.20.730 MAINTENANCE OF DOCK.

LESSEE COVENANTS THAT IT WILL MAINTAIN THE DOCK FACILITY IN A SAFE CONDITION AND IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL STANDARDS.] I recommend removal of this because it is unclear what dock is being referred to and is covered in other provisions and lease terms.

[11.20.740 MODIFICATIONS OF EXISTING LEASES.

LEASES SHALL ONLY BE MODIFIED TO THAT EXTENT DEEMED TO BE NECESSARY TO PROTECT THE PUBLIC'S INTEREST. This is provided for in the lease form.

11.20.750 UNAUTHORIZED REMOVAL OF MATERIAL PROHIBITED.

ANY PERSON, FIRM, OR CORPORATION WHO WITHOUT WRITTEN AUTHORITY FROM THE CITY REMOVES ROCK, GRAVEL, OR OTHER MATERIAL FROM THE LANDS OWNED BY THE CITY WITHOUT THE EXPRESS CONSENT OF THE CITY SHALL BE DEEMED GUILTY OF A VIOLATION. ANY CRIMINAL ACTION TAKEN AGAINST SUCH PERSON SHALL

NOT PRECLUDE THE INSTITUTION OF CIVIL PROCEEDINGS BY THE CITY. **This is provided for in the lease form.**

11.20.760 REMOVAL NOT AUTHORIZED BY LEASE.

NO DEED OR LEASE GRANTED BY THE CITY TO ANY PERSON SHALL CONTAIN TERMS OR BE CONSTRUED AS GRANTING ANY RIGHT TO REMOVE MATERIAL FROM CITY LANDS.] **This is provided for in the lease form.**

[11.20.770 DISPOSITION OF RIGHTS BY COUNCIL.

IN RECOGNITION THAT CONDITIONS MAY EXIST FROM TIME TO TIME WHEREBY USE OF SUCH LANDS AND THE MATERIAL COMPRISING THE SAME MAY BE BENEFICIAL TO THE PUBLIC INTEREST AND PROMOTE THE PROGRESS AND DEVELOPMENT OF THE CITY, APPLICATIONS FOR THE USE THEREOF MAY BE RECEIVED AND CONSIDERED BY THE COMMISSION, PROVIDING SUCH APPLICATIONS FULLY DISCLOSE TO THE CITY ALL MATERIAL FACTS AND PLANS FOR THE PROPOSED USE. SUCH APPLICATIONS SHALL BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY AND REFERRED TO THE CITY PLANNING COMMISSION FOR ITS RECOMMENDATIONS. DISPOSITION OF SUCH APPLICATIONS SHALL BE MADE BY THE COUNCIL AFTER RECOMMENDATION FROM THE COMMISSION.] **This is covered in the City's material site ordinances.**

11.20.780 Penalties.

- (a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC 13.05.010. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
- (b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC 13.05.010 per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.
- (c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC 11.20.220 and KMC 11.20.240 hereof. **This penalty section is appropriate to remain in code.**

11.20.790 Tideland [L]Leases for [S]Shore [F]Fisheries. (House Keeping)

- (a) Notwithstanding other provisions of the City's Code of Ordinances [T]the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should

the State of Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska. [ANY MONEY OWED PURSUANT TO KMC 11.20.150] SHALL BE IN ADDITION TO THE ANNUAL MINIMUM SET FORTH ABOVE.

(B) NEITHER KMC 11.20.160 NOR KMC 11.20.620(A) SHALL APPLY TO TIDELAND LEASES FOR SHORE FISHERIES.

(C) THE PROVISIONS OF KMC 11.20.110 AND KMC 11.20.130 REQUIRING APPRAISALS OF TIDELAND PROPERTY SHALL NOT APPLY TO LEASES OF TIDELANDS FOR SHORE FISHERIES. HOWEVER, THE SURVEY PROVISIONS OF KMC 11.20.110 ARE APPLICABLE TO SHORE FISHERY LEASES.] *Shore fisheries lease are unique and this section should be maintained. The amendments address the proposed removal of prior code sections.*



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MEMORANDUM

TO: Harbor Commission
FROM: Scott Bloom, City Attorney
DATE: February 11, 2020
SUBJECT: Ordinance 3106-2020 - Amending Title 11 – Harbor and Harbor Facilities

Below is a clean copy of what Title 11 would look like if all the changes proposed in Ordinance 3106 - 2020 were enacted.

Title 11
HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master**
- 11.10 Harbor Commission**
- 11.15 Tidelands**
- 11.20 Leasing of Tidelands**

Chapter 11.05
HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.**
- 11.05.020 Harbor defined.**
- 11.05.030 Harbor regulations.**

- 11.05.080 Leasing not prohibited.**
- 11.05.090 Use of launch ramp and float.**
- 11.05.100 No wake zones.**



11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law.

11.05.020 Harbor Defined.

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor Regulations.

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

11.05.080 Leasing Not Prohibited.

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations.

11.05.090 Use of Launch Ramp and Float.

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC 11.05 within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).
- (c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.
- (d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC 13.05.010(b).
- (e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties.

11.05.100 No Wake Zones.

- (a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.
- (b) No wake zones may be established on a temporary or permanent basis.
- (c) A “no wake zone” is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.
- (d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.
- (e) A violation of this section shall be punishable as provided in KMC 13.05.010.

**Chapter 11.10
HARBOR COMMISSION**

Sections:

11.10.010 Duties and powers.

11.10.010 Duties and Powers.

- (a) The Harbor Commission shall be required to do the following:
 - (1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission’s recommendations for the development of the City Harbor facilities may include, among other things:
 - (i) development of the type, location, and sequence of all public harbor facilities;
 - (ii) the relocation, removal, extension, or change of use of existing harbor facilities;
 - (2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.
 - (3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.
 - (4) Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.
 - (5) Make and prepare reports and plans for approval by the City Council.

- (6) Coordinate public efforts, individual and group, to the effectuation of approved plans.
- (7) Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council.

Chapter 11.15

TIDELANDS

Sections:

- 11.15.010 Short title.**
- 11.15.030 Approval and acceptance of State conveyance.**
- 11.15.040 Approval and adoption of subdivision plat.**

11.15.010 Short Title.

This ordinance shall be known as the "Kenai Tidelands Ordinance."

11.15.030 Approval and Acceptance of State Conveyance.

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City.

11.15.040 Approval and Adoption of Subdivision Plat.

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District.

Chapter 11.20

LEASING OF TIDELANDS

Sections:

- 11.20.020 Lands available for leasing.**
- 11.20.650 Tidelands claims.**
- 11.20.660 Subjection to harbor ordinance.**
- 11.20.680 Provisions regulating public use purpose.**
- 11.20.690 Provision to be included in public use lease.**
- 11.20.700 Public use: defined.**
- 11.20.710 Controlled access.**
- 11.20.720 Use charges.**
- 11.20.730 Maintenance of dock.**

11.20.780 Penalties.

11.20.790 Tideland leases for shore fisheries.

11.20.020 Lands Available for Leasing.

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased for surface use only, and under the condition that said lease is subject and inferior to preference right claims and subject to the rights of existing set net site holders within the City limits.

11.20.650 Tidelands Claims.

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any.

11.20.660 Subjection to Harbor Ordinance

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part.

11.20.680 Provisions Regulating Public Use Purpose.

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates.

11.20.690 Provision to be Included in Public Use Lease.

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses.

11.20.700 Public Use: Defined.

- (a) Public use shall mean a use limited in part or in whole to the following:
 - (1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:
 - (i) Public dock facilities.

- (ii) Maritime commerce.
- (iii) Transportation.
- (iv) Fishing.
- (v) Boat harbor.
- (vi) Port and waterfront development purposes.

(b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City.

11.20.710 Controlled Access.

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan.

11.20.720 Use Charges.

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities.

11.20.780 Penalties.

- (a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC 13.05.010. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
- (b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC 13.05.010 per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.
- (c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC 11.20.220 and KMC 11.20.240 hereof.

11.20.790 Tideland Leases for Shore Fisheries.

- (a) Notwithstanding other provisions of the City's Code of Ordinances the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should the State of

Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom, City Attorney
DATE: March 10, 2020
SUBJECT: **Ordinance No. 3106-2020 – Title 11**

On March 9, 2020, the Harbor Commission met and approved Resolution No. HC20-01 recommending the Council enact Ordinance 3106-2020.

The last WHEREAS clause in Ordinance No. 3106-2020 should be filled in to read: the Harbor Commission at its meeting on March 9, 2020 recommended enactment of this Ordinance.

Thank you for your consideration.





Sponsored by: Harbor Commission

CITY OF KENAI

RESOLUTION NO. HC20-01

A RESOLUTION OF THE HARBOR COMMISSION OF THE CITY OF KENAI, ALASKA, RECOMMENDING THE KENAI CITY COUNCIL ENACT ORDINANCE NO. 3106-2020 AMENDING TITLE 11 – HARBOR AND HARBOR FACILITIES, TO REMOVE PROVISIONS THAT ARE NO LONGER HISTORICALLY RELEVANT, RECOGNIZE CHANGES TO OTHER CHAPTERS OF CITY CODE THAT NOW PROVIDE FOR LEASE AND SALE OF HARBOR LANDS AND PROVIDE THE HARBOR COMMISSION A PLATFORM TO MOVE FORWARD.

WHEREAS, the City's Harbor Commission has long recognized a need for clarification and focus in its duties and has undertaken several efforts to review and recommend revisions to Title 11; and,

WHEREAS, the most recent review of Title 11 by the Harbor Commission and its subcommittee formed for purposes of review, resulted in recommended revisions to Title 11 recognizing the expertise of other City bodies in land use and planning and a desire of the Harbor Commission to focus on regulation of the harbor and its associated activities; and,

WHEREAS, the Harbor Commission's also recommends removing provisions from Title 11 that are no longer necessary because of the temporal nature of the procedures addressed which have long since expired; and,

WHEREAS, the Harbor Commission recognizes that the City recently updated Title 22-City Owned Lands, which now encompasses the sale, lease and acquisition of harbor lands, negating the need for separate provisions for the same in Title-11; and,

WHEREAS, the elimination of many sections of Title 11 is intended to be the first step in allowing the Harbor Commission to focus on harbor related projects and activities and move forward with future potential recommended code changes relevant to such projects and activity; and,

WHEREAS, the Harbor Commission supports the revisions proposed to Title 11 by Ordinance No.3106-2020 which are based on its recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE HARBOR COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the Harbor Commission of Kenai Recommends the City Council Enact Ordinance No. 3106-2020 Amending Title 11 of the Kenai Municipal Code.

Section 2. That a copy of this Resolution be provided to the members of the Kenai City Council.

Section 3. That this Resolution takes effect immediately upon passage.

PASSED BY THE HARBOR COMMISSION OF THE CITY OF KENAI, ALASKA, this 9th day of March, 2020.



MIKE DUNN, CHAIR

ATTEST:


for

Jamie Heinz, CMC, City Clerk





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3110-2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE SECTION 23.55.030 – QUALIFICATION PAY, TO ADD ADDITIONAL QUALIFICATION PAY ITEMS TO THE LIST OF THOSE FOR WHICH EMPLOYEES CONTINUE TO RECEIVE WHILE ON ANNUAL LEAVE OR WHEN RECEIVING HOLIDAY PAY.

WHEREAS, the City Council recently passed ordinance 3098-2019 modifying KMC 23.55.030 Qualification Pay; and,

WHEREAS, further review indicates additional modifications will allow more consistent application of Qualification Pay; and,

WHEREAS, currently KMC 23.55.030 allows senior officers and driver/operators to be compensated at a rate that includes qualification pay during periods of annual leave and holidays, however, the same does not apply for the certified municipal clerks and police investigators; and,

WHEREAS, the City benefits from consistency and equity in application of code to not only meet employee expectations but also for administration of personnel rules; and,

WHEREAS, the proposed amendments do not require an increase to the adopted FY2020 budget; and,

WHEREAS, the City Manager recommends amendments to the Kenai Municipal Code that would allow police investigators and certified municipal clerks to receive qualification pay during periods of annual leave and holidays.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. Form: That this is code ordinance.

Section 2. Amendment of Section 23.55.030 (b) of the Kenai Municipal Code: That Kenai Municipal Code, Section 23.55.030 (b) – Qualification Pay, is hereby amended as follows:

23.55.030 Qualification pay.

(a) In recognition of professional development, personal time, and effort of the individual to achieve same, the following annual recognition entitlement is authorized, payable on a pro rata monthly basis.

(b) This recognition entitlement, except senior officer pay, investigator pay, certified municipal clerk pay, and driver/operator pay, is not considered when calculating hourly rates for annual leave or holiday pay.

(1) Police Department.

(i) Certification in accordance with State of Alaska Certification Standards as follows:

Police Officer	
Intermediate Certification	\$1,800/year
Advanced Certification	\$3,000/year
Police Sergeant	
Intermediate Certification	\$1,800/year
Advanced Certification	\$3,000/year
Police Lieutenant	
Advanced Certification	\$3,000/year
Police Chief	
Advanced Certification	\$3,000/year

(ii) Recognition pay for qualified Senior Officers. Senior Officer pay is for Police Officers who have completed step 16E subject to an overall evaluation rating of “Meets Expectations” or better, as follows:

Advance one (1) pay grade from 16E to 17E

(iii) Recognition pay for qualified Field Training Officer personnel for officers temporarily assigned Field Training Officer duties for eligible shifts only as follows:

5% increase of the employee’s current range and step

(iv) Recognition pay for qualified “Investigator” personnel for temporary assignment as an Investigator when the assignment is the employee’s primary assignment and the assignment has been approved by the City Manager or designee as follows:

5% increase of the employee’s current range and step

(2) Fire Department.

(i) Recognition entitlement for an associate degree in fire science is four hundred eighty dollars (\$480.00) per year. Eligible grades are fire fighter, engineer, and captain.

(ii) Recognition entitlements for EMT certification for eligible grades of fire fighter, engineer, and captain are as follows:

EMT I Instructor	\$250/year
EMT II	\$500/year
EMT III	\$1,000/year (includes EMT II pay)
EMT-Paramedic	\$1,500/year (includes EMT II & III pay)

(iii) Recognition entitlements for driver/operator qualified personnel for eligible grades of fire fighter are as follows:

Driver/Operator Qualified One (1) pay range increase (pay range 13 to pay range 14)

(3) Water and Sewer Utility. Certification in accordance with the State of Alaska Certification Standards.

W & S II \$300/year
W & S III \$480/year

(4) City Clerk's Office. Certification in accordance with International Institute of Municipal Clerks.

Certified Municipal Clerk 2.5% of the employee's base pay

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect thirty (30) days after adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 18th day of March, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: March 4, 2020
Enacted: March 18, 2020
Effective: April 17, 2020



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: David Ross, Police Chief
 Stormy Brown, Human Resource Director

DATE: February 20, 2020

SUBJECT: **Ordinance No. 3110-2020 – Amending KMC section 23.55.030 – Qualification Pay**

The City Council recently passed ordinance 3098-2019, which modified a number of areas of police compensation in order to address recruitment and retention of experienced officers.

After implementation of that ordinance, it was determined that qualification pays could be applied more consistently with revised language. The way KMC is currently written, senior officer pay and driver/operator pay are considered when calculating hourly rates for annual leave and holiday pay, while Investigator pay and Certified Municipal Clerk pay are not. These differences are not intentional nor necessarily equitable.

This Ordinance would modify KMC to include the Investigator qualification pay and Certified Municipal Clerk qualification pay to apply during periods of annual leave and holidays.

We are respectfully requesting your consideration of this ordinance modifying Kenai Municipal Code.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3111-2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE TERMINAL IMPROVEMENTS CAPITAL FUND, AND AUTHORIZING AN INCREASE TO THE CONSTRUCTION PURCHASE ORDER TO BLAZY CONSTRUCTION, INC.

WHEREAS, the City of Kenai executed a Construction Agreement with Blazy Construction, Inc. on October 1, 2018 for the Terminal Rehabilitation Project in the amount of \$10,985,994; and,

WHEREAS, Council, through enactment of Ordinance 3037-2018 authorized the City Manager to issue a Purchase Order in the amount of \$11,485,994 for the Contract amount of \$10,985,994 including \$500,000 of contingency funding; and,

WHEREAS, Council, through enactment of Ordinances 3060-2019, 3080-2019 and 3097-2019 increased estimated revenues and appropriations by \$868,181.49 to provide for continued project contingency funds and increased the purchase order amount to \$12,354,175.49; and,

WHEREAS, to date the City has executed eight change orders totaling \$1,143,503.59; and,

WHEREAS, the Federal Aviation Administration grant eligible portion of those Change Orders 1-8 has been determined to be \$1,012,858.30 with the City of Kenai's share as \$130,645.29; and,

WHEREAS, Administration is requesting appropriation of the additional eligible federal share and an increase to the authorized Purchase Order Amount to Blazy Construction, Inc. of the same amount, \$144,676.81 to replenish project contingency and to allow for the continued processing of future change orders; and,

WHEREAS, once complete, the authorized purchase order amount to Blazy Construction, Inc. will be \$12,498,852.30, the authorized contract to Blazy Construction, Inc. will be \$12,129,497.59, with available contingency to complete the project of \$369,354.71; and,

WHEREAS, Council will continue to be informed of Change Orders through Public Works Mid-Month Report.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. The City Manager is authorized to accept grant funding from the Federal Aviation Administration in the amount of \$144,676.81 for the grant eligible portions of Change Orders 7 & 8 to Blazy Construction, Inc.

Section 2. The City Manager is authorized to increase Purchase Order No. 116510 to Blazy Construction, Inc. by \$144,676.81.

Section 3. That the estimated revenues and appropriations be increased as follows:

Terminal Improvement Capital Project Fund:

Increase Estimated Revenues –
FAA Grant

\$144,676.81

Increase Appropriations:
Construction

\$144,676.81

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 18th day of March, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: March 4, 2020
Enacted: March 18, 2020
Effective: March 18, 2020



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Public Works Director
DATE: February 25, 2020
SUBJECT: Ordinance No. 3111-2020

The purpose of this memo is to recommend passage of Ordinance No. 3111-2020 requesting an increase to the estimated revenue and appropriations in the Terminal Improvements Capital Project Fund and authorizing an increase to the Construction Purchase Order to Blazy Construction, Inc.

The Kenai Municipal Airport Terminal Rehabilitation Project has been underway since October 1, 2018. The project is nearing completion. The Project began with \$500,000 in contingency funds for the administration to process change orders as they arise. To date \$1,143,503.59 of changes have been processed. Of that amount it has been determined that \$1,012,858.30 are eligible for reimbursement from the FAA through our grant. With approval of this Ordinance \$369,354.71 of contingency shall remain.

Appropriation of these funds will allow the Administration to continue to process change orders in the same manner, continuing to keep Council informed through Departmental Mid-Month reports. Staff and the Administration are in support of this appropriation, Council's support and approval is respectfully requested.

Thank you for your consideration.





Sponsored by: Administration

CITY OF KENAI**ORDINANCE NO. 3112-2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE AIRPORT IMPROVEMENTS CAPITAL FUND, AND AUTHORIZING AN INCREASE TO THE CONSTRUCTION PURCHASE ORDER TO KIRILA FIRE, INC.

WHEREAS, the City of Kenai executed a Construction Agreement with Kirila Fire Training Facilities, Inc. on October 4, 2019 for the Alaska Regional Fire Training Center Equipment Rehabilitation Project in the amount of \$1,993,000; and,

WHEREAS, Council, through enactment of Ordinance 3079-2019 and Resolution 2019-61 authorized the City Manager to issue a Purchase Order in the amount of \$2,143,000 for the Contract amount of \$1,993,000 including \$150,000 of contingency funding; and,

WHEREAS, to date the City has executed one change order totaling \$120,000.00; and,

WHEREAS, the Federal Aviation Administration grant eligible portion of Change Order 1 has been determined to be \$112,500.00 with the City of Kenai's share as \$7,500.00; and,

WHEREAS, Administration is requesting appropriation of the additional eligible federal share and an increase to the authorized Purchase Order Amount to Kirila Fire Training Facilities, Inc. of the same amount, \$112,500.00 to replenish project contingency and to allow for the continued processing of future change orders; and,

WHEREAS, once complete, the authorized purchase order amount to Kirila Fire Training Facilities, Inc. will be \$2,255,500.00, the authorized contract to Kirila Fire will be \$2,113,000.00, with available contingency to complete the project of \$142,500.00; and,

WHEREAS, Council will continue to be informed of Change Orders through Public Works Mid-Month Report.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. The City Manager is authorized to accept grant funding from the Federal Aviation Administration in the amount of \$112,500.00 for the grant eligible portions of Change Order 1 to Kirila Fire Training Facilities, Inc.

Section 2. The City Manager is authorized to increase Purchase Order No. 119055 to Kirila Fire Training Facilities, Inc. by \$112,500.00.

Section 3. That the estimated revenues and appropriations be increased as follows:

Airport Improvement Capital Project Fund
Increase Estimated Revenues –
FAA Grant

\$112,500.00

Increase Appropriations:
Fire Training Center Training Prop Rehabilitation –
Construction

\$112,500.00

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 18th day of March, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: March 4, 2020
Enacted: March 18, 2020
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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Public Works Director
DATE: February 25, 2020
SUBJECT: Ordinance No. 3112-2020

The purpose of this memo is to recommend passage of Ordinance No. 3112-2020 requesting an increase to the estimated revenue and appropriations in the Airport Improvements Capital Project Fund and authorizing an increase to the Construction Purchase Order to Kirila Fire Training Facilities, Inc.

The Alaska Regional Fire Training Facility (ARFT) Equipment Rehabilitation Project has been underway since October 4, 2019. The Project began with \$150,000 in contingency funds for the administration to process change orders as they arise. To date one change order in the amount of \$120,000.00 has been processed. Of that amount it has been determined that \$112,500.00 are eligible for reimbursement from the FAA through our grant. With approval of this Ordinance \$142,500.00 of contingency shall remain.

The work associated with Change Order 1 is the result of an inaccurate count on the number of fire generators in one of the trainers. The count was off by three and the contract had unit pricing in place of \$40,000/fire generator. It should be noted the Design Team is offering a credit back for services to assist with paying for a portion of this additional work. Council should expect to see that legislation at the next Council Meeting.

Appropriation of these funds will allow the Administration to continue to process change orders in the same manner, continuing to keep Council informed through Departmental Mid-Month reports. Staff and the Administration are in support of this appropriation, Council's support and approval is respectfully requested.





Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2020 - 14

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA APPROVING THE EXECUTION OF A LEASE OF AIRPORT RESERVE LANDS USING THE STANDARD LEASE FORM BETWEEN THE CITY OF KENAI AND SCHILLING RENTALS, LLC, FOR LOT 5A, BLOCK 1, FBO SUBDIVISION 2018 REPLAT.

WHEREAS, Schilling Rentals, LLC, submitted a complete lease application to the City on February 13, 2020 and paid the required application fee; and,

WHEREAS, Schilling Rentals, LLC, is eligible for a lease for a term of 45 years based upon an investment amount of \$1,200,000 and pursuant to KMC 21.10.080 –Length of Lease Term; and,

WHEREAS, Schilling Rentals, LLC, is current on obligations to the City of Kenai for its existing leases; and,

WHEREAS, the lease use will be a hangar for rotor and fixed wing aircraft with crew quarters; and,

WHEREAS, the lease use is compatible with Kenai Municipal Zoning Code for allowed uses within the Airport Light Industrial (ALI) Zone; and

WHEREAS, the lease use conforms to the 2016 Comprehensive Plan and supports Goal 5 – Transportation: provide transportation systems that are efficient and adequate to serve the regional needs of the community; and,

WHEREAS, the use proposed is compatible and conforms with the Airport Land Use Plan, Airport Layout Plan, Federal Aviation Administration regulations, Airport Master Plan, Airport Improvement Program grant assurances, and Airport operations; and,

WHEREAS, the City of Kenai did not receive a competing lease application within 30 days of publishing a public notice of the lease application, pursuant to KMC 21.10.075 – Competing Applications; and,

WHEREAS, at its regular meeting on March 11, 2020, the Airport Commission reviewed the lease renewal application submitted by Schilling Rentals, LLC and recommended approval by the City Council; and,

WHEREAS, at its regular meeting on March 12, 2020, the Planning and Zoning Commission reviewed the lease renewal application submitted by Schilling Rentals, LLC and recommended approval by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1: That a Lease of Airport Reserve Lands is approved and the City Manager is authorized to execute a lease using the standard lease form between the City of Kenai, Lessor, and Schilling Rentals, LLC, Lessee, for a term of 45 years for Lot 5A, Block 1, FBO Subdivision 2018 Replat; and,

Section 2: That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 18th day of March, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Elizabeth Appleby, City Planner

DATE: March 2, 2020

SUBJECT: **Resolution No. 2020-14 – Execution of a Lease of Airport Reserve Lands Between the City of Kenai and Schilling Rentals, LLC**

On February 13, 2020, Schilling Rentals, LLC (Schilling Rentals), submitted an application to the City for a Lease of Airport Reserve Lands for the property described as Lot 5A, Block 1, FBO Subdivision 2018 Replat. The property is located at 413 N. Willow Street, Kenai, AK 99611, and the Kenai Peninsula Borough parcel number is 04336049. The application requests a term of 45 years, with an investment amount of approximately 1.2 million dollars. Pursuant to the term table in Kenai Municipal Code (KMC) 21.10.080 (b), the City and the applicant are in agreement to a term of 45 years. Pursuant to Kenai Municipal Code 21.10.075 – Leasing and Acquisition of Airport Reserve Lands, Competing Applications, the City posted notice of the lease application and has not received a competing lease application for the parcel.

The applicant states that the use of the premises will be a hangar for rotor and fixed wing aircraft with crew quarters. After the construction of the hangar is completed, it is expected that Guardian Flight, LLC will operate on the premises. Guardian Flight provides emergency medical flights. Schilling Rentals, LLC is current on rent payments and obligations to the City.

The parcel is within the Airport Light Industrial (ALI) Zone per Kenai Municipal Code (KMC) 14.20.065. The intent of the ALI Zone is to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. The proposed use by Schilling Rentals is a permitted use in the ALI Zone and is a compatible land use. The availability of emergency medical flights will be an asset to public health and safety.



The proposed use by Schilling Rentals complies with the 2016 Imagine Kenai 2030 Comprehensive Plan. It supports Goal 5-Transportation, which has a vision for Kenai Municipal Airport as a gateway to the Kenai Peninsula and West Cook Inlet.

The Airport Land Use Plan was developed to identify the highest and best uses of Kenai Municipal Airport land. The Airport Land Use Plan discusses leasing land and enhancing opportunities for local economic development. The proposed use by Schilling Rentals complies with the Airport Land Use Plan.

The Planning and Zoning Commission recommended approval of the lease application during their March 11, 2020 meeting. The Airport Commission recommended approval of the lease application during their March 12, 2020 meeting.

Resolution No. 2020-14 would grant the approval of the Kenai City Council for the City Manager to enter into a Lease of Airport Reserve Lands between the City of Kenai and Schilling Rentals for Lot 5A, Block 1, FBO Subdivision 2018 Replat.

Thank you for your consideration.



City of Kenai Land Lease Application

Application for:	<input checked="" type="checkbox"/> New Lease
<input type="checkbox"/> Amendment	<input type="checkbox"/> Extension
<input type="checkbox"/> Assignment	<input type="checkbox"/> Renewal

Application Date:	2/13/2020
-------------------	-----------

Applicant Information

Name of Applicant:	Schilling Rentals LLC						
Mailing Address:	PO Box 3426	City:	Kenai	State:	AK	Zip Code:	99611
Phone Number(s):	Home Phone:		Work/ Message Phone: 907 283 7556				
E-mail: (Optional)	admin@schillingrentalsllc.com duane@uptownmotel.com						
Name to Appear on Lease:	Schilling Rentals LLC						
Mailing Address:	PO Box 3426	City:	Kenai	State:	AK	Zip Code:	99611
Phone Number(s):	Home Phone:		Work/ Message Phone: 907 283 7556				
E-mail: (Optional)							
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____						

Property Information and Term Requested

Legal description of property (or, if subdivision is required, a brief description of property): FBO SUB 2018 REPLAT LOT 5A BLK 1	
Does the property require subdivision? (if Yes, answer next two questions) Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
1. Do you believe the proposed subdivision would serve other City purposes?	L YES <input type="checkbox"/> NO
2. Are you prepared to be responsible for all costs associated with subdivision?	<input type="checkbox"/> YES <input type="checkbox"/> NO
If an appraisal is required to determine the minimum price on the land, are you prepared to be responsible for the deposit to cover costs associated with appraisal? (The cost of the appraisal will be either refunded or credited toward the purchaser at closing)	<input checked="" type="checkbox"/> YES
Are you prepared to be responsible for recording costs associated with lease execution?	<input checked="" type="checkbox"/> YES
Do you have or have you ever had a Lease with the City? (if Yes, answer next question)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
1. Legal or brief description of property leased:	
FBO SUB NO 9 LOT 11A; GAA SUB NO 1 AMENDED LOT 3 BLK 2/Amended Lot 2 Block 2/Lot 1a Block 2	
Request a Lease with an Option to Purchase once development requirements are met? <small>*Does not apply to Airport Reserve properties</small>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Requested term for Initial Lease or Renewal (based on Term Table, not to exceed 45 years):	45
Requested term for Lease Extension (based on Term Table, not to exceed a total of 45 Years):	
Requested Starting Date:	May1, 2020

Proposed Use and Improvements

Proposed Use (check one): Aeronautical | Non-Aeronautical

Do you plan to construct new or additional improvements? (if Yes, answer next five questions) YES NO

1. Will the improvement change or alter the use under an existing lease? YES NO

2. What is the proposed use of the improvement? Hanger for rotor & fixed wing aircraft with crew quarters

3. What is the estimated value of the improvement? \$1,200,000 estimate

4. What is the nature and type of improvement?
Prep site for construction (unknown and foreign material likely) construction of steel hanger w/ crew quarters

5. What are the dates construction is estimated to commence and be completed?
(generally, construction must be completed within two years)
Estimated Start Date: May 1, 2020 Estimated Completion Date: November 30, 2020

Describe the proposed business or activity intended:
Medical Flight FBO

How does the proposed lease support a thriving business, residential, recreational, or cultural community?
Ummm.....having a local life-flight provider may save your life?!?!?

Lease Assignment Only: What is the name of the individual or legal entity the lease is to be assigned?
Future (after construction): Guardian Flight LLC

Lease Renewal Only


Renewal of an Existing Lease (at least one year of term remaining): Requires new development.
Lease Term based on: Estimated cost of new improvements and Purchase Price (optional)

Renewal of an Expiring Lease (less than one year of term remaining): Does not require new development.
Lease Term based on: Purchase Price | Professional Estimate of Remaining Useful Life

Fair Market Value appraisal and/or Estimated cost of new improvements (optional)

Requested Term for Renewal Based on Term Table, not to exceed 45 Years:

Submitting an application for a lease does not give the applicant a right to lease or use the land requested in the application. The application shall expire twelve (12) months after the date the application has been made if the City and the applicant have not, by that time, entered into a lease, unless the City Council for good cause grants an extension for a period not to exceed six (6) months. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City

Signature:		Date:	2/13/2020
Print Name:	Michael Schilling	Title:	Member

For City Use Only:	Date Application Fee Received:	_____
<input type="checkbox"/> General Fund	Date Application Determined Complete:	_____
<input type="checkbox"/> Airport Fund	30-Day Notice Publication Date:	_____
Account Number:	City Council Action/Resolution:	_____
<input type="checkbox"/> Airport Reserve Land		
<input type="checkbox"/> Outside Airport Reserve		



Lease Application

413 North Willow Street
Kenai Peninsula Borough Parcel #: 04336049
Lot 5A, FBO Subdivision 2018 Replat
February 2020



0 20 40 Feet



Data Source: Kenai Peninsula Borough. Data is for graphic representation only. Imagery may not match true parcel boundaries.



“Serving the Greater Kenai Peninsula”

305 N. WILLOW ST. SUITE 200 KENAI, ALASKA 99611
 TELEPHONE 907-283-7951
 FAX 907-283-3737

MEMO

To: Airport Commission

From: Mary Bondurant – Airport Manager

Date: March 10, 2020

Subject: ***Lease Application–Lot 5A, Block 1, FBO Subdivision***

This lease application was reviewed in conjunction with the FAA approved February 28, 2018 Airport Layout Plan based on the August 2017 Master Plan.

I have reviewed the above lease application in accordance with KMC 21.10.060:

✓ Airport Layout Plan:

Sheet 13 of 19, Existing Land Use - designates land as *undeveloped subdivided lots*;

Sheet 14 of 16, Future Land Use - designates land as *commercial and non-commercial aviation; areas used for aviation activities requiring taxiway access such as air cargo facilities, aircraft parking aprons, corporate jet support facilities, fueling facilities, airline and air taxi hangar/office facilities, government and military aviation facilities and primarily for large aircraft (more than 12,500 pounds)*. .

The proposed use is Aeronautical – Hangar for rotor & fixed wing aircraft with crew quarters

This use complies with the land use definition above.

Sheet 15 of 19, Existing Zoning – *Airport Light Industrial*;

The ALI Zone is established by Ordinance No. 2884-2016 to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses, densities and reducing hazards that may endanger the lives and property of the public and aviation users. Industrial and Commercial uses which are usually compatible with aviation users are permitted which have no nuisance effects upon surrounding property, or which may be controlled to prevent nuisance effects upon surrounding property. New residential uses are not permitted in this zone because it is intended that lots classified in the ALI Zone are reserved for aviation-related commercial and industrial uses.

Meets the requirements for KMC 14.20.065 Airport Light Industrial Zone.

Sheet 16 of 19, Future Zoning – Airport Light Industrial;

ALI defined above.

Meets the requirements for KMC 14.20.065 Airport Light Industrial Zone.

✓ Airport Master Plan:

Defines the land as commercial and non-commercial aviation; areas used for aviation activities requiring taxiway access such as air cargo facilities, aircraft parking aprons, corporate jet support facilities, fueling facilities, airline and air taxi hangar/office facilities, government and military aviation facilities and primarily for large aircraft (more than 12,500 pounds).

✓ FAA Regulations:

- Airport perimeter fence - 8' security fence that meets FAA and TSA Security requirements. All perimeter gates must remain closed at all times. 49 CFR 139.335
- Vehicle parking lot to be contained to prevent unauthorized access to airfield. All public is restricted from all air operations areas and all other areas except the terminal or loading area or such other areas as may be designated by the Airport Manager or designated representative. 49 CFR 139.335

✓ AIP Grant Assurances: No conflict appears.

✓ Airport Operations:

- Any use by the Lessee of the commercial apron in front of the lease lot (west side) will be deemed "exclusive use" and subject to the rates and fees established by the City.

- The Building Restriction Line (BRL) line is 100 feet back to the east of the commercial apron.
- Lessee must comply with sector-specific requirements of the Kenai Airport's Multi Sector General Permit #AKR06AD35 if conducting an industrial activity with a SIC code in the range 4512-4581 (Air Transportation Facility).

This project will create new land lease revenue, employment opportunities, and provide a valuable service to the Kenai Airport and the City of Kenai.

Please contact me if you have any questions.

Cc: Elizabeth Appleby, Planner
Wilma Anderson, Planning Assistant

**KENAI CITY COUNCIL – REGULAR MEETING
MARCH 4, 2020 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
MAYOR BRIAN GABRIEL, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai City Council was held on March 4, 2020, in City Hall Council Chambers, Kenai, AK. Mayor Gabriel called the meeting to order at approximately 6:00 p.m.

1. Pledge of Allegiance

Mayor Gabriel led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Brian Gabriel, Mayor	Robert Molloy
Henry Knackstedt	Tim Navarre
Jim Glendening	Robert Peterkin
Glenese Pettey	

A quorum was present.

Also in attendance were:

Paul Ostrander, City Manager
Scott Bloom, City Attorney
Jamie Heinz, City Clerk

3. Agenda Approval

Mayor Gabriel noted the following revisions to the packet:

Add to item D.5.	Resolution No. 2020-12 <ul style="list-style-type: none"> • Substitute Resolution • Substitute Memo
Add to item J.1.	City Manager's Report <ul style="list-style-type: none"> • Kenai Visitor And Cultural Center Report

MOTION:

Vice Mayor Molloy **MOVED** to approve the agenda with the requested additions to the packet. Council Member Peterkin **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

VOTE: There being no objections, **SO ORDERED.**

4. Consent Agenda

MOTION:

Council Member Knackstedt **MOVED** to approve the consent agenda and requested **UNANIMOUS CONSENT**. Council Member Navarre **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Mayor Gabriel opened the floor for public comment; there being no one wishing to be heard, the public comment period was closed.

VOTE: There being no objections, **SO ORDERED.**

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a councilmember so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS – None.

C. UNSCHEDULED PUBLIC COMMENTS – None.

D. PUBLIC HEARINGS

1. **Ordinance No. 3107-2020** - Increasing Estimated Revenues and Appropriations in the Congregate Housing Funds for Costs in Excess of Budgeted Amounts. (Administration)

MOTION:

Vice Mayor Molloy **MOVED** to enact Ordinance No. 3107-2020 and Council Member Knackstedt **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

VOTE:

YEA: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy

NAY:

MOTION PASSED UNANIMOUSLY.

2. **Ordinance No. 3108-2020** - Increasing Estimated Revenues and Appropriations in the General Land Sale Permanent Fund to Transfer Earnings in Excess of Budgeted Amounts to the City's General Fund. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3108-2020 and Vice Mayor Molloy **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

Clarification was provided the amount of the allowable transfer was dictated by code and FY20 revenue exceeded budgeted projections which required the additional appropriation.

VOTE:

YEA: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy

NAY:

MOTION PASSED UNANIMOUSLY.

3. **Ordinance No. 3109-2020** - Authorizing the City Manager to Reimburse Annual Leave Used by Firefighter Scott Summers for Attending a Paramedic Internship Program. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3109-2020 and Vice Mayor Molloy **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

Clarification was provided that a firefighter went through the same process a few years ago and a code change would be required to change the policy for the future.

VOTE:

YEA: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy

NAY:

MOTION PASSED UNANIMOUSLY.

4. **Resolution No. 2020-11** - Awarding a Contract to Provide Health & Life Insurance Consulting Services. (Administration)

MOTION:

Council Member Navarre **MOVED** to adopt Resolution No. 2020-11 and Council Member Glendening **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

An overview of the review criteria and scoring process was provided; the rationale for issuing the request for proposals was also provided.

VOTE: There being no objections, **SO ORDERED.**

5. **Resolution No. 2020-12** - Selecting the Firm for the Kenai Municipal Airport Engineering Services. (Administration)

MOTION:

Council Member Navarre **MOVED** to adopt Resolution No. 2020-12 and Vice Mayor Molloy **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

MOTION TO AMEND:

Council Member Navarre **MOVED** to amend Resolution No. 2020-12 by substitution and Vice Mayor Molloy **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

VOTE ON THE AMENDMENT: There being no objections, **SO ORDERED.**

Clarification was provided the contract was expired and the City was required by its purchasing policy to issue the request for proposal.

It was noted Wince, Corthell, Bryson worked in conjunction with the airport and the City for many years.

Clarification was also provided the City had maximum flexibility under the contract to negotiate with the contract firm or use another firm on any project.

VOTE ON THE MAIN MOTION AS AMENDED:

YEA: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy

NAY:

MOTION PASSED UNANIMOUSLY.

6. **Resolution No. 2020-13** - Supporting Senate Bill No. 232 - An Act Relating to Personal Use Fishing Permits, That Would Establish a Fee for Personal Use Dipnetting to be Used by the State and City of Kenai to Support Personal Use Dipnet Fisheries. (Council Member Peterkin)

MOTION:

Council Member Peterkin **MOVED** to adopt Resolution No. 2020-13 and Council Member Glendening **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

It was suggested the residents of the City should not have to subsidize the fishery. It was noted the fee, which was proposed to be passed down by the state, would help the City cover the expenses of the state's personal use fishery. There was discussion regarding the difficulty in guessing what level of services would be needed, the volatility of the salmon runs, the fees being specifically appropriated to benefit the fishery, Kenai resident participation in the fishery, and Kenai residents subsidizing the fishery. It was also noted that for many years, Council had been prudent in considering fees to support the fishery. The point was made that an increase in police and fire activity was difficult to tie to the fishery.

VOTE:

YEA: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy
 NAY:

MOTION PASSED UNANIMOUSLY.

E. MINUTES

1. *Regular Meeting of February 19, 2020. (City Clerk)

Approved by the consent agenda.

2. *Work Session Summary of February 19, 2020. (City Clerk)

Approved by the consent agenda.

F. UNFINISHED BUSINESS – None.

G. NEW BUSINESS

1. ***Action/Approval** – Bills to be Ratified. (Administration)

Approved by the consent agenda.

2. ***Ordinance No. 3110-2020** - Amending Kenai Municipal Code Section 23.55.030 - Qualification Pay, to Add Additional Qualification Pay Items to the List of Those for Which Employees Continue to Receive While on Annual Leave or When Receiving Holiday Pay. (Administration)

Introduced by the consent agenda and public hearing set for March 18, 2020.

3. ***Ordinance No. 3111-2020** - Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Blazy Construction, Inc. (Administration)

Introduced by the consent agenda and public hearing set for March 18, 2020.

4. ***Ordinance No. 3112-2020** - Increasing Estimated Revenues and Appropriations in the Airport Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Kirila Fire, Inc. (Administration)

Introduced by the consent agenda and public hearing set for March 18, 2020.

5. **Action/Approval** - Proposed Amendment to Kenai Peninsula Borough Ordinance No. 2019-24 - An Ordinance Adopting KPB 20.80, Subdivision Gated Streets and Gated Subdivisions. (Legal)

MOTION:

Vice Mayor Molloy **MOVED** to approve the proposed amendment to Kenai Peninsula Borough Ordinance No. 2019-24 – an ordinance adopting KPB 20.80, Subdivision Gated Streets and Gated Subdivisions and Council Member Peterkin **SECONDED** the motion.

Clarification was provided that the City had opposed the ordinance through Resolution 2020-01 and since then an amendment had been proposed and the Council was being asked if they still opposed the ordinance as recently amended; it was noted administration didn't feel the amendment was a significant enough improvement.

Clarification was also provided that enactment of the ordinance would not affect existing gated subdivisions as those subdivisions were already platted; it was noted there were already provisions for the gated subdivisions through an exception process and, if the ordinance were to be enacted, the City would need to enact an appeal process.

There was discussion regarding proving the developer was compliant with all laws, the relationship between the Planning and Zoning Commissions in reviewing plats, and appeal processes.

VOTE:

YEA:

NAY: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy

MOTION FAILED UNANIMOUSLY.

There was reluctance to support the ordinance being enacted area wide, outside of cities, without knowing the rationale as borough residents outside of the cities could be negatively impacted.

MOTION:

Council Member Navarre **MOVED** to direct the City Manager to send a letter to the borough clarifying the City's position after tonight's action, opposing KPB Ordinance No. 2019-24 substitute, even with the recently proposed amendment and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

VOTE: There being no objections, **SO ORDERED.**

H. COMMISSION/COMMITTEE REPORTS

1. Council on Aging – A reminder for the March for Meals was provided; Next meeting April 9.
2. Airport Commission – No report; next meeting March 12.
3. Harbor Commission – No report; next meeting March 9.
4. Parks and Recreation Commission – It was noted the Commission met on February 5 and selected a chair and vice chair; also discussed the kite festival and amending the policy for student representatives; next meeting March 5.
5. Planning and Zoning Commission – It was reported the Commission discussed and approved a time extension for Windhaven Estates; next meeting March 11.
6. Beautification Committee – No report; next meeting April 14.
7. Mini-Grant Steering Committee – No report.

I. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Participated in the Love of Reading program at Mountain View Elementary;
- Swore in two new police officers;
- Presented the State of the City with the City Manager at today's Chamber of Commerce Luncheon;
- Noted Human Resources would be sending out evaluations for Council's staff.

J. ADMINISTRATION REPORTS

1. City Manager – City Manager P. Ostrander reported on the following:
 - Beginning preparation discussions for the dipnet fishery;
 - Library bonds being refinanced at a lower interest rate;
 - Reiterated the State of Alaska Department of Transportation had made the administrative decision to manage Alaska Transportation Alternatives Program projects which would significantly increase the costs to the City for the bike path extension;
 - Completed interviews for Fire Chief;
 - Met with Kenai Watershed Forum regarding the pass through grant; have determined bacteria is due to natural cause and now plan to do a beach model;
 - Taking preliminary planning measures regarding Coronavirus;
 - Participated in a teleconference with the federal Office of Management and Budget and was promised that a letter would be sent by March 16 and, once the letter was circulated appropriately, the preconstruction, engineering, and design phase could begin.
2. City Attorney – No report.

3. City Clerk – City Clerk J. Heinz noted she was keeping informed on bills moving through the legislature affecting elections and also that the Public Official Financial Disclosure forms would be sent out soon.

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comment limited to five (5) minutes per speaker*)

None.

2. Council Comments

Council Member Pettey expressed appreciation for the State of the City presentation, noted the upcoming show at the Kenai Fine Arts, and provided a reminder for March for Meals on March 20.

Council Member Navarre noted the Mayor and City Manager did a great job presenting the State of the City; also participated in the Love of Reading program at Mountain View Elementary.

Council Member Glendening noted he was looking forward to March for Meals, attended a Soldotna Historical Society meeting, heard an update from the Kenai Parks and Recreation department regarding summer plans, and attended the Chamber Luncheon and heard the State of the City presentation.

Council Member Peterkin expressed gratitude to the streets department for snow removal and noted the Kenai Brown Bears Hockey Team would be playing in town in a few days.

Vice Mayor Molloy expressed gratitude for the State of the City presentation at the Chamber and for representation at the Board of Fisheries meeting.

Council Member Knackstedt noted he was looking forward to March for Meals, expressed gratitude for the support of his resolution encouraging funding for the Civil Air Patrol, and noted the Parks and Recreation Director presented to the Kenai Historical Society.

L. EXECUTIVE SESSION

1. To Discuss a Request to Purchase Properties Located at 11823 Kenai Spur Highway, Kenai, Alaska, Also Known as “Anchor Camp Ground,” Pursuant to AS 44.62.310(c)(1)(3) is a Matter of which the Immediate Knowledge may have an Adverse Effect Upon the Finances of the City, and a Matter by which Law, Municipal Charter, or Ordinance are required to be Confidential.

MOTION:

Vice Mayor Molloy **MOVED** to enter into executive session to discuss a request to purchase properties located at 11823 Kenai Spur Highway, Kenai, Alaska, also known as “Anchor Camp Ground,” which pursuant to AS 44.62.310(c)(1)(3) is a matter of which the immediate knowledge may have an adverse effect upon the finances of the City, and a matter by which law, municipal charter, or ordinance are required to be confidential and requested the presence of the City Manager and the City Attorney. Council Member Glendening **SECONDED** the motion.

VOTE:

YEA: Glendening, Gabriel, Peterkin, Pettey, Navarre, Knackstedt, Molloy

NAY:

MOTION PASSED UNANIMOUSLY.

Council reconvened in open session and it was noted for the record that Council met in executive session and reviewed and discussed a request to purchase properties located at 11823 Kenai Spur Highway, Kenai, Alaska, also known as "Anchor Camp Ground," and provided the City Manager direction.

M. PENDING ITEMS – None.

N. ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 9:18 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of March 4, 2020.

Jamie Heinz, CMC
City Clerk

PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION
 COUNCIL MEETING OF: MARCH 18, 2020

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
PERS	PERS	VARIOUS	LIABILITY	96,921.89
INTEGRITY JANITORIAL	FEB. SERVICE AT CITY HALL	NON-DEPARTMENTAL	REPAIR & MAINTENANCE	1,389.00
PRECIOUS JANITORIAL	FEB. SERVICE AT LIBRARY	LIBRARY	REPAIR & MAINTENANCE	2,795.00
PRECIOUS JANITORIAL	FEB. SERVICE AT TERMINAL	AIRPORT	REPAIR & MAINTENANCE	4,495.00
PRECIOUS JANITORIAL	FEB. SERVICE AT POLICE	POLICE	REPAIR & MAINTENANCE	978.00
ENSTAR NATURAL GAS	GAS USAGE	VARIOUS	UTILITIES	55,893.60

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
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**PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL
COUNCIL MEETING OF: MARCH 18, 2020**

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
NELSON ENGINEERING	EARTHQUAKE DAMAGE AT CITY DOCK	DOCK REPAIR	CONSTRUCTION	34,798.00
OSHKOSH CORPORATION	PURCHASE TWO ARFF VEHICLES	A/P IMPROVEMENTS	MACHINERY & EQUIPMENT	1,519,749.00

INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
WINCE, CORTHELL, BRYSON	AMENDMENTS 3 & 4	116863 - TERMINAL IMPS	DESIGN SERVICES	130,895.00	587,404.65



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
 Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Public Works Director
DATE: March 12, 2020
SUBJECT: **Purchase Orders over \$15K**

The City executed a Professional Services Agreement with Nelson Engineering on November 17, 2016 to provide Engineering Services to address damage to the City dock caused by the January 24, 2016 earthquake. In May 2018 the City received a single construction bid to make necessary repairs to the dock in excess of budgeted amounts and a construction contract was never awarded. A November 30, 2018 earthquake expanded the existing damage. This purchase order will increase the existing agreement amount and scope of work to provide for the updating of the existing Construction Bid Documents to address the new damage.

Once the documents have been revised, the Public Works Department intends to release an Invitation to Bid in April 2020 for construction to make the repairs to take place May/June 2020.

The Original Agreement to Nelson Engineering was for \$28,323. Because of the dollar amount it was not formally solicited in 2016. With the addition of these additional requested services now, totaling \$34,798, the new agreement will be for a total cost of \$63,121. Utilizing the existing Agreement is in the best interest of the City. As this work is supplementing previous work, it is not appropriate to seek third party quotes without completely starting over the design process, which would only amount to increasing costs and extending the projects timeline.

The additional \$34,798 is comprised of \$6,300 in Design Alterations from the 2nd earthquake, \$7,500 in Construction Administrative Services from Nelson Engineering, and \$20,998 in Cathodic Protection Engineering Services from Norton Corrosion Limited as a sub-consultant to Nelson Engineering.

Council's approval is respectfully requested.





"Village with a Past, City with a Future"

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Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Mary L. Bondurant – Airport Manager
DATE: March 12, 2020
SUBJECT: **Purchase Order over \$15,000 - Aircraft Rescue & Firefighting Trucks**

October 2, 2019, City Council approved Substitute Ordinance No. 3079-2019 accepting a grant from the Federal Aviation Administration for the purchase of two Aircraft Rescue and Firefighting (ARFF) vehicles for the Alaska Training Facility.

These ARFF trucks will replace the two 1998 ARFF vehicles and allow airport firefighters to train and meet the 49 CFR 139 certification requirements for all levels of FAA indexed airports from A-E at the Alaska Fire Training Facility.

Thank you for your consideration.





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Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Jamie Heinz, City Clerk
DATE: March 10, 2020
SUBJECT: **Liquor License Renewal**

The following establishment submitted an application to the Alcohol and Marijuana Control Office for renewal of their liquor license:

- American Legion Post D/B/A American Legion Post #20

Pursuant to KMC 2.40, a review of City accounts has been completed on the applicant and they have satisfied all obligations to the City. With the approval of Council, a letter of non-objection to the liquor license renewal will be forwarded to the ABC Board and the applicant.

Your consideration is appreciated.





"Village with a Past, City with a Future"

Page 166

210 Fidalgo Avenue, Kenai, Alaska 99611-7794
Telephone: 907-283-7535 / FAX: 907-283-3014



MEMORANDUM

TO: David Ross, Chief of Police
Willie Anderson, Lands
Terry Eubank, Finance Department
Scott Bloom, Legal Department
Elizabeth Appleby, City Planner
Mike Wesson, Building Official
Jeremy Hamilton, Fire Marshal

FROM: Jacquelyn LaPlante, Deputy City Clerk

DATE: February 21, 2020

RE: **Liquor License Renewal**

The Alcoholic Beverage Control Board has sent notification that the following applicant has applied for renewal of their Liquor License #1380:

Applicant: American Legion Post #20
D/B/A: American Legion Post #20

Pursuant to KMC 2.40.010, it is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.

Please review account(s) maintained by your department (i.e. water and sewer billings, lease/property payment history, citations, etc.) by the above reference applicant. Initial whether account(s) and/or payment plan(s) are current or delinquent. If accounts are delinquent, attach information to this memorandum indicating amounts owed and for which accounts.

Please let me know if you have any questions. Once you have completed your section, please route to the next department. Thanks!

1. **Police Department** DP initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.
2. **Finance** FW initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.
3. **Legal** SB initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.
4. **Lands Management** MLL initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.
5. **Planning and Zoning** EA initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.
6. **Building Official** MMW initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.
7. **Fire Marshal** JF initials
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.
 The applicant has outstanding obligations and an additional page has been attached.

Returned to Clerk's office: 3/5/2020 gR



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Community,
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

February 17, 2020

City of Kenai

Kenai Peninsula Borough

Via Email: jblankenship@kpb.us ; Dhenry@kpb.us ; JRodgers@kpb.us ; SNess@kpb.us ;
joanne@borough.kenai.ak.us ; tshassetz@kpb.us ; jheinz@kenai.city

Re: Notice of 2020/2021 Liquor License Renewal Application

204	George's Nightclub	Beverage Dispensary
1380	American Legion Post #20	Club

We have received a completed renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

To protest the application referenced above, please submit your written protest within 60 days, and show proof of service upon the applicant and proof that the applicant has had a reasonable opportunity to defend the application before a meeting of the local governing body.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Klinkhart".

Glen Klinkhart, Director

amco.localgovernmentonly@alaska.gov



Alaska Alcoholic Beverage Control Board
Form AB-17: 2020/2021 Renewal License Application

What is this form?

This renewal license application form is required for all individuals or entities seeking to apply for renewal of an existing liquor license that are is due to renew by December 31, 2019. All fields of this form must be complete and correct, or the application will be returned to you in the manner in which it was received, per AS 04.11.270 and 3 AAC 304.105. The Community Council field only should be verified/completed by licensees whose establishments are located within the Municipality of Anchorage or outside of city limits within the Matanuska-Susitna Borough.

This form must be completed and submitted to AMCO's main office before any license renewal application will be reviewed. Receipt and/or processing of renewal payments by AMCO staff neither indicates nor guarantees that an application will be considered complete, or that a license will be renewed.

Section 1 – Establishment and Contact Information

Enter information for the business seeking to have its license renewed. If any populated information is incorrect, please contact AMCO.

Licensee:	American Legion Post #20	License #:	1380
License Type:	Club		
Doing Business As:	American Legion Post #20		
Premises Address:	902 Cook Avenue		
Local Governing Body:	City of Kenai (Kenai Peninsula Borough)		
Community Council:	None		
Mailing Address:	902 Cook Ave		
City:	Kenai	State:	AK
		ZIP:	99611

Enter information for the individual who will be designated as the primary point of contact regarding this application. This individual **must be a licensee** who is required to be listed in and authorized to sign this application.

Contact Licensee:	Greg Fite (Gregory)	Contact Phone:	907-283-3222
Contact Email:	post20@alaska.net		

Optional: If you wish for AMCO staff to communicate with an individual who is not a licensee named on this form (eg: legal counsel) about this application and other matters pertaining to the license, please provide that person's contact information in the fields below.

Name of Contact:	Greg Fite (Gregory)	Contact Phone:	907-283-3222
Contact Email:	post20@alaska.net		



Form AB-17: 2020/2021 Renewal License Application

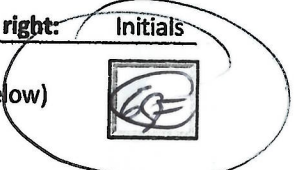
Section 2 - Entity or Community Ownership Information

Licensees who directly hold a license as an individual or individuals should skip to Section 3. General partnerships and local governments should skip to the second half of this page. All licensees that are **corporations** or **LLCs** must complete this section. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations, Business & Professional Licensing (CBPL). The CBPL Entity # below is **neither** your EIN/tax ID number, **nor** your business license number. You may view your entity's status or find your CBPL entity number by visiting the following site: <https://www.commerce.alaska.gov/cbp/main/search/entities>

Alaska CBPL Entity #:	433661D
-----------------------	---------

You must ensure that you are able to certify the following statement before signing your initials in the box to the right: Initials

I certify that this entity is in good standing with CBPL and that all current entity officials and stakeholders (listed below) are also currently and accurately listed with CBPL.



This subsection must be completed by any **community** or **entity**, including a corporation, limited liability company, partnership, or limited partnership, that is applying for renewal. If more space is needed, please attach additional completed copies of this page.

- If the applicant is a **corporation**, the following information must be completed for each **shareholder who owns 10% or more** of the stock in the corporation, and for each **president, vice-president, secretary, and managing officer**.
- If the applicant is a **limited liability organization**, the following information must be completed for each **member with an ownership interest of 10% or more**, and for each **manager**.
- If the applicant is a **partnership**, including a limited partnership, the following information must be completed for each **partner with an interest of 10% or more**, and for each **general partner**.

Important Note: The information provided in the below fields (including spelling of names, specific titles, and percentages held) must match that which is listed with CBPL. If one individual holds multiple titles mentioned in the bullets above, all titles must be listed for that individual on this application and with CBPL. Failure to list all required titles constitutes an incomplete application. You must list **ALL** of your qualifying officials, additional copies of this page or a separate sheet of paper may be submitted if necessary.

Name of Official:	Greg Fice (Gregory)			
Title(s):	President	Phone:	907-283-3754	% Owned:
Mailing Address:	1307 KAKH Way			
City:	Kenai	State:	AK	ZIP: 99611

Name of Official:	Richard Homan			
Title(s):	1st Vice	Phone:	907-283-1967	% Owned:
Mailing Address:	51310 EQUESTRIAN AVE			
City:	Kenai	State:	AK	ZIP: 99611

Name of Official:	Danny Kanzee			
Title(s):	Treasurer	Phone:	907-262-1580	% Owned:
Mailing Address:	37035 NICHOLAS VIEW LN			
City:	Soldotna	State:	AK	ZIP: 99607

LIC# 1380



Alaska Alcoholic Beverage Control Board

Form AB-17: 2020/2021 Renewal License Application

Section 2 - Entity or Community Ownership Information

Licenses who directly hold a license as an individual or individuals should skip to Section 3. General partnerships and local governments should skip to the second half of this page. All licensees that are corporations or LLCs must complete this section. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations, Business & Professional Licensing (CBPL). The CBPL Entity # below is neither your EIN/tax ID number, nor your business license number. You may view your entity's status or find your CBPL entity number by using the following site: https://www.commerce.alaska.gov/cbp/main/search/entities

Alaska CBPL Entity #: 43366D

You must ensure that you are able to certify the following statement before signing your initials in the box to the right: Initials

I certify that this entity is in good standing with CBPL and that all current entity officials and stakeholders (listed below) are also currently and accurately listed with CBPL.

Initials box containing initials 'EF' circled in blue ink.

This subsection must be completed by any community or entity, including a corporation, limited liability company, partnership, or limited partnership, that is applying for renewal. If more space is needed, please attach additional completed copies of this page.

- If the applicant is a corporation, the following information must be completed for each shareholder who owns 10% or more of the stock in the corporation, and for each president, vice-president, secretary, and managing officer.
• If the applicant is a limited liability organization, the following information must be completed for each member with an ownership interest of 10% or more, and for each manager.
• If the applicant is a partnership, including a limited partnership, the following information must be completed for each partner with an interest of 10% or more, and for each general partner.

Important Note: The information provided in the below fields (including spelling of names, specific titles, and percentages held) must match that which is listed with CBPL. If one individual holds multiple titles mentioned in the bullets above, all titles must be listed for that individual on this application and with CBPL. Failure to list all required titles constitutes an incomplete application. You must list ALL of your qualifying officials, additional copies of this page or a separate sheet of paper may be submitted if necessary.

Form for Alvin R. Diaz: Name of Official: Alvin R. Diaz, Title(s): Secretary, Phone: 907-252-9217, % Owned: , Mailing Address: 1112 Walnut Ave, City: Etowah, State: AK, ZIP: 99611

Form for James D. Merrick: Name of Official: James D. Merrick, Title(s): Exec - Board, Phone: 774-8047, % Owned: , Mailing Address: PO Box 7611, City: Nikiski, State: AK, ZIP: 99635

Empty form fields for Name of Official, Title(s), Phone, % Owned, Mailing Address, City, State, ZIP.



Form AB-17: 2020/2021 Renewal License Application

Section 3 – Sole Proprietor Ownership Information

Entities, such as corporations or LLCs, should skip this section. This section must be completed by any licensee who directly holds the license as an **individual or multiple individuals** and is applying for license renewal. If more space is needed, please attach a separate sheet that includes all of the required information.

The following information must be completed for each licensee and each affiliate.

This individual is an: applicant affiliate

Name:				Contact Phone:		
Mailing Address:						
City:		State:		ZIP:		
Email:						

This individual is an: applicant affiliate

Name:				Contact Phone:		
Mailing Address:						
City:		State:		ZIP:		
Email:						

Section 4 – Alcohol Server Education

This section must be completed only by the holder of a **beverage dispensary, club, or pub** license or **conditional contractor's permit**. The holders of all other license types should skip to Section 5.

Read the line below, and then sign your initials in the box to the right of the statement:

I certify that all licensees, agents, and employees who sell or serve alcoholic beverages or check identification of a patron have completed an alcohol server education course approved by the ABC Board and keep current, valid copies of their course completion cards on the licensed premises during all working hours, as set forth in AS 04.21.025 and 3 AAC 304.465.

Initials

Section 5 – License Operation

Check a **single box** for each calendar year that best describes how this liquor license was operated:

2018 2019

The license was regularly operated continuously throughout each year.

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
-------------------------------------	-------------------------------------

The license was regularly operated during a specific season each year.

The license was only operated to meet the minimum requirement of 240 total hours each calendar year. If this box is checked, a complete copy of Form AB-30: Proof of Minimum Operation Checklist, and all necessary documentation must be provided with this application.

<input checked="" type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------

The license was not operated at all or was not operated for at least the minimum requirement of 240 total hours each year, during one or both of the calendar years. If this box is checked, a complete copy of Form AB-29: Waiver of Operation Application and corresponding fees must be submitted with this application for each calendar year during which the license was not operated for at least the minimum requirement, unless a complete copy of the form (including fees) has already been submitted for that year.

<input checked="" type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------



Form AB-17: 2020/2021 Renewal License Application

Section 6 – Violations and Convictions

Applicant violations and convictions in calendar years 2018 and 2019:

Yes No

Have any notices of violation (NOVs) been issued for this license in the calendar years 2018 or 2019?

Yes No

Has any person or entity named in this application been convicted of a violation of Title 04, of 3 AAC 304, or a local ordinance adopted under AS 04.21.010 in the calendar years 2018 or 2019?

Yes No

If "Yes" to either of the previous two questions, attach a separate page to this application listing all NOVs and/or convictions.

Section 7 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that all current licensees (as defined in AS 04.11.260) and affiliates have been listed on this application, and that in accordance with AS 04.11.450, no one other than the licensee(s) has a direct or indirect financial interest in the licensed business.

I certify that I have not altered the functional floor plan or reduced or expanded the area of the licensed premises, and I have not changed the business name or the ownership (including officers, managers, general partners, or stakeholders) from what is currently approved and on file with the Alcoholic Beverage Control Board.

I certify on behalf of myself or of the organized entity that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.

As an applicant for a liquor license renewal, I declare under penalty of perjury that I have read and am familiar with AS 04 and 3 AAC 304, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Alcoholic Beverage Control Board or AMCO staff in support of this application and understand that failure to do so by any deadline given to me by AMCO staff will result in this application being returned to me as incomplete.

B Greg Fite
Signature of licensee

BREG FITE
Printed name of licensee

[Signature]
Signature of Notary Public



Notary Public in and for the State of ALASKA

My commission expires: 07-09-2021

Subscribed and sworn to before me this 11 day of December, 2019.

Seasonal License? Yes No

If "Yes", write your six-month operating period: _____

License Fee:	\$ 1200.00	Application Fee:	\$ 300.00	TOTAL:	\$ 1500.00
Miscellaneous Fees:					
GRAND TOTAL (if different than TOTAL):					1500.00



Office of the Borough Clerk

144 North Binkley Street, Soldotna, Alaska 99669 • (907) 714-2160 • (907) 714-2388 Fax

Johni Blankenship, MMC
Borough Clerk

February 25, 2020

Sent via email: jheinz@kenai.city

Kenai City Hall
City of Kenai

RE: Non-Objection of Application

Licensee/Applicant	:	AMERICAN LEGION #20 - Kenai
Business Name	:	AMERICAN LEGION POST #20
License Type	:	Club
License Location	:	902 Cook Avenue, Kenai, AK 99611, City of Kenai
License No.	:	1380
Application Type	:	License Renewal

Dear Ms. Heinz,

This serves to advise that the Kenai Peninsula Borough has reviewed the above referenced application and has no objection.

Should you have any questions, or need additional information, please do not hesitate to let us know.

Sincerely,

Johni Blankenship, MMC
Borough Clerk

JB/ts

Encl.

cc: post20@alaska.net; jheinz@kenai.city; DCooper@kpb.us; SNess@kpb.us



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3113-2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE TERMINAL IMPROVEMENTS CAPITAL FUND, AND AUTHORIZING AN INCREASE TO THE DESIGN AGREEMENT WITH WINCE CORTHELL BRYSON.

WHEREAS, the City executed a Professional Services Design Agreement with Wince Corthell Bryson on September 22, 2017 in the amount of \$159,557 for the Kenai Municipal Airport Terminal Rehabilitation Project; and,

WHEREAS, two contract amendments have been executed to date including Amendment 1 in the amount of \$566,943 for the completion of Design Phase services and Amendment 2 in the amount of \$466,122 which added Construction Administrative Services through the projects original completion date of December 1, 2019; and,

WHEREAS, proposed contract Amendment 3 in the amount of \$117,982 extends contract duration and Construction Administrative Services through March 31, 2020 as well as adds additional furniture design; and,

WHEREAS, proposed contract Amendment 4 in the amount of \$12,913 is adding boiler replacement design services; and,

WHEREAS, the total contract with Wince Corthell Bryson will be \$1,323,517; and,

WHEREAS, Council has previously approved through passage of Ordinances No. 2975-2017 an original contract amount to Wince Corthell Bryson of \$440,212 followed by passage of Ordinance 3013-2018 which authorized an additional \$286,288 and lastly Ordinance 3037-2018 Substitute which added \$466,122, for a total contract amount authorized by Council to date of \$1,192,622; and,

WHEREAS, with approval of this Ordinance Council is authorizing the increase to Wince Corthell Bryson's Purchase Order in the amount of \$130,895 for a total Purchase Order of \$1,323,517; and,

WHEREAS, it has been determined that the grant eligible portions of the original design agreement as well as amendment 1 are eligible for FAA reimbursement at 93.75%; and,

WHEREAS, Amendments 2, 3, and 4 have been determined to be FAA eligible for reimbursement at 88.575%; and,

WHEREAS, it has been determined the FAA share is \$1,209,901, the City of Kenai's match is \$113,616 for the total Professional Design Services to date; and,

WHEREAS, City Administration has reviewed the proposals and finds the Scope of Work to be accurate and the costs to be fair and reasonable; and,

WHEREAS, approval of this amendment and appropriation is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. That the City Manager is authorized to accept additional grant funding from the Federal Aviation Administration (FAA) in the amount of \$115,940 for Engineering Contract Amendments 3 & 4.

Section 2. That the City Manager is authorized to execute Amendments to the Professional Services Agreement with Wince Corthell Bryson in the total amount of \$130,895 for a total Purchase Order of \$1,323,517.

Section 3. That the estimated revenues and appropriations be increased as follows:

Terminal Improvement Capital Project Fund:

Increase Estimated Revenues –
FAA Grant

\$115,940

Increase Appropriations:
Engineering

\$115,940

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 18th day of March, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, City Clerk

Approved by Finance: 

Introduced: March 18, 2020
Enacted:
Effective:



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
 Telephone: (907) 283-7535 | Fax: (907) 283-3014
 www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Public Works Director
DATE: March 12, 2020
SUBJECT: Ordinance No. 3113-2020

The purpose of this memo recommends passage of Ordinance No. 3113-2020 requesting an increase to the estimated revenue and appropriations in the Terminal Improvements Capital Project Fund and authorizing an increase to the Professional Services Design Agreement to Wince Corthell Bryson.

This project has been a long time in the making with the original design agreement signed in September 2017. The project is now nearing completion and this amendment provides for the extended services as well as some additional scope of work not previously included within the agreement, items like furniture design and now replacement boiler design services.

Blazy Construction's existing contract to date totals \$12,129,497.59. Wince Corthell Bryson's Agreement would be for \$1,323,517.05 with approval of this Ordinance which equates to 10.9% of current Construction Costs. This is on the higher side as a percentage of overall costs, however in consideration of the extensive number of phases required to move individual tenants around to keep those businesses operational which directly impacted the number of days the project has taken to complete, these costs are reasonable.

It is anticipated that the Federal Aviation Administration will be providing for approximately \$1,172,305.23 with the City's amount totaling \$151,211.82 for all of the associated Engineering Services. Council's support is respectfully requested.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Mary L. Bondurant

DATE: March 13, 2020

SUBJECT: **Action/Approval – Special Use Permit State of Alaska DNR/Forestry**

The State of Alaska, Department of Natural Resources/Division of Forestry is requesting renewal of a Special Use Permit for a six month term from April 1, 2020 through September 30, 2020.

The Permit is for aircraft loading and parking on approximately 30,000 square of the apron adjacent to their lease lot for firefighting related activity.

The rate is based on the table below passed by City Council at the May 18, 2016 Council meeting.

Apron Rate Increases to Arrive at Market in 6 years	
Apron Lease Rate FY15 \$1.80s.f. x .08	\$ 0.144
FY2016	\$ 0.357
FY2017	\$ 0.528
FY2018	\$ 0.699
FY2019	\$ 0.870
FY2020	\$ 1.041
FY2021	\$ 1.210

The State of Alaska is current on all fees owed and we have a current Certificate of Insurance.

Airport Commission reviewed the request at the March 12, 2020 Commission meeting and recommends Council approval.

Your consideration is appreciated.

attachments



SPECIAL USE PERMIT 2020

The CITY OF KENAI (City) grants to STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES/DIVISION OF FORESTRY (Permittee), whose address is 550 W. Seventh Avenue, Suite 1450, Anchorage, AK 99501-3566, a Special Use Permit to conduct aeronautical and/or aviation-related activities at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. Premises. Permittee shall have the non-exclusive right to use 30,000 square feet as described in the attached diagram shown in the attached Exhibit A for the uses identified in this Permit.

2. Term. The term of this Permit shall be for six months commencing on April 1, 2020, and ending on September 30, 2020. Regardless of the date of signature, this Permit shall be effective as of April 1, 2020.

3. Permit Fees. Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:

A. Permit: Permittee shall pay a monthly fee plus applicable sales tax as follows:

April	\$ 2,602.50
May	\$ 2,602.50
June	\$ 2,602.50
July	\$ 3,025.00
August	\$ 3,025.00
September	\$ 3,025.00

B. Proximity Card for Gate Access: In addition to the general permit fee, Permittee shall pay a deposit of One Hundred Dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.

C. Other Fees: City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees

are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of 10% per annum, and penalty of 10% shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination).

4. Use. City authorizes Permittee's non-exclusive use of the Premises for the following purpose(s):

Aircraft loading and parking. NOTE: This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee's use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

5. Airport Operations. Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety

of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.

6. Inspection. The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

7. Coordination with Airport Management. Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

8. Radio Transmitting Equipment. Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

9. Insurance. Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

A. Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

B. Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.

- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
- iii. Permittee shall request a waiver of subrogation against City from Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
- iv. Provide the City with notification at least 30 days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by April 1, 2020. The effective date of the insurance shall be no later than April 1, 2020.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

10. Assumption of Risk. Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

11. Indemnity, Defend, and Hold Harmless Agreement. Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee's activities on or use of the Premises, Permittee's access to the Kenai Municipal Airport, and/or Permittee's exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

12. Fuel Spill Prevention and Response Plan. Areas of the apron have been seal coated to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for any damage caused by and costs associated with any spill, the cleanup of any spill, or the discharge of petroleum products or hazardous materials due to Permittee's use of the apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within 50' of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

13. Hazardous Substances and Materials. Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

14. No Discrimination. Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

15. Licenses and Permits. Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

16. Compliance with Law/Grant Assurances. This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

17. No Exclusivity. The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

18. Assignment. The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

19. No Joint Venture. City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

20. No Waiver. Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

21. Personalty. Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25.00 per day. The City of

Kenai is not responsible for any damage to or theft of any personalty of Permittee or of its customers.

22. Termination; Default. This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety or due to a failure of Permittee to comply with condition or term of this Permit which failure remains uncured after notice by City to Permittee providing Permittee with a reasonable time period under the circumstances to correct the violation or breach.

23. Landing Fees; Fee Schedule. Timely payment of landing fees and other required Airport fees is a condition of this Permit and, as such, failure to timely pay landing and other airport fees is grounds for termination. Without limiting the foregoing, Permittee shall pay landing fees for aircraft landings as set out in the City's comprehensive schedule of rates, charges and fees. Permittee shall make payment within 30 days following the end of each month and without demand or invoicing from City. Permittee shall also provide Airport Administration with monthly certified gross take-off weight reports within ten days following the end of each month for landings for the preceding month. Airport landing fees shall be paid at the Airport Administration Building, 305 North Willow Street, Suite 200, Kenai, AK 99611.

24. Impoundment. At the discretion of the Airport Manager, City may impound any aircraft parked on the Premises after termination of this Permit. Impoundment may be accomplished by affixing a seal to the door of the aircraft or the moving of the aircraft for impoundment purposes. Inconvenience or damage that may result from such movement will be at the risk of Permittee. An impoundment fee plus a towage fee shall be charged on each aircraft impounded. In addition, a daily storage fee shall be charged for each day the aircraft remains impounded. Any impounded aircraft that is not redeemed within 90 days after impoundment shall be considered abandoned and shall be subject to sale at public auction. Notice of any auction shall be published. Publication shall be in a newspaper of general circulation in that area for at least once during each of three consecutive weeks not more than 30 days nor less than seven days before the time of the auction.

25. Definitions. As used in this Permit, "Permittee" means State, Department of Natural Resources, Division of Forestry, and where the context reasonably indicates, its officers, agents, and employees. "Airport" means the Kenai Municipal Airport.

ATTEST:

Jamie Heinz, City Clerk

SEAL:

APPROVED AS TO FORM:



Scott M. Bloom, City Attorney

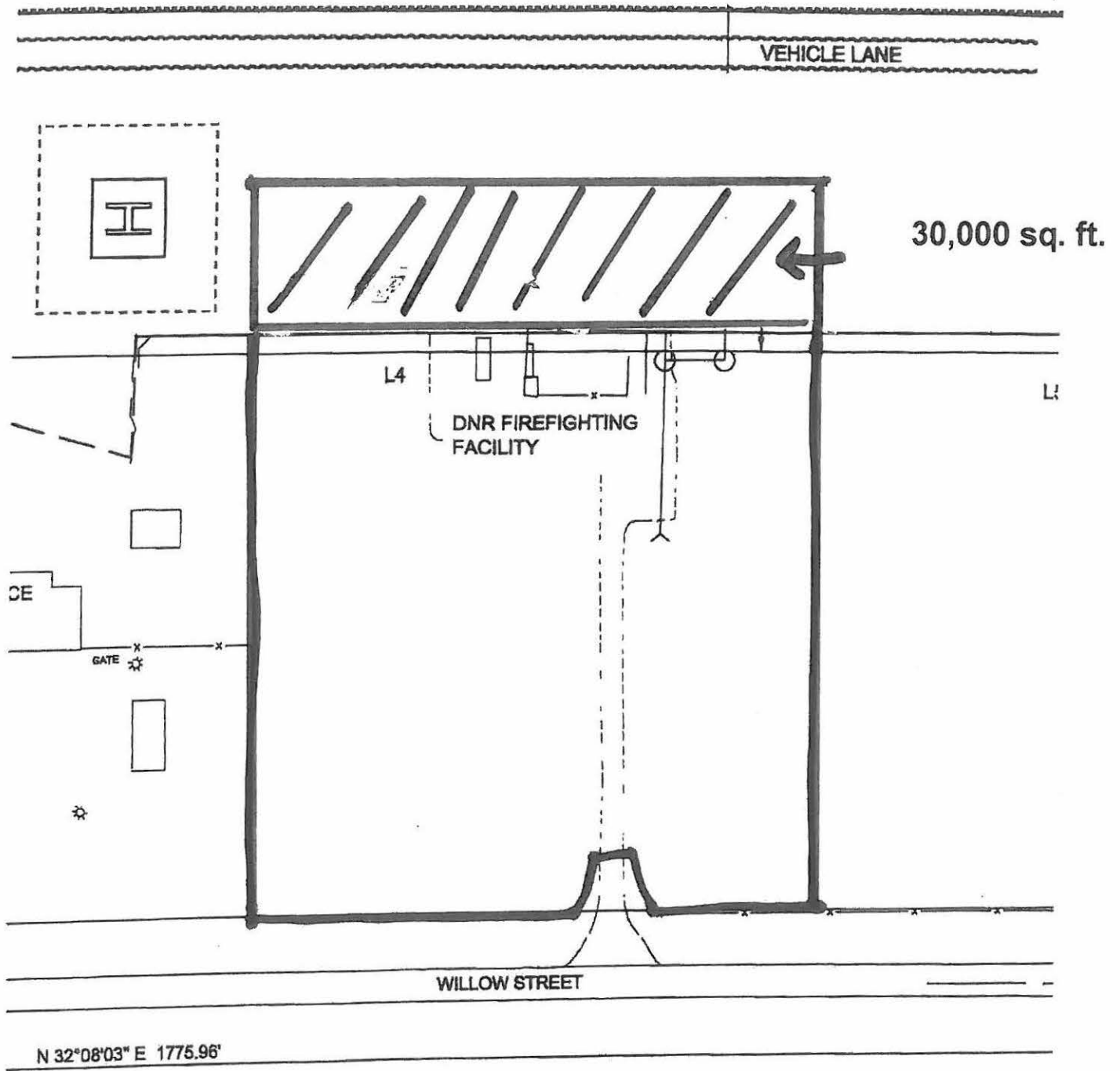


Exhibit A



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
 Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Paul Ostrander, City Manager
DATE: March 13, 2020
SUBJECT: Action/Approval – New City Logo

The Administration has been working with a marketing firm since July 2019 on a destination identity and marketing engagement as part of the City's tourism and marketing efforts. Divining Point, LLC representatives presented the results of these efforts to the Kenai City Council at a Work Session on January 15, 2020.

The presentation included a discussion on branding and Kenai's brand promise of abundant opportunity. The presenters discussed the identified goals of supporting a thriving community, fostering economic development, and promoting sustainable growth. They provided information on the research they conducted, responses received from the community, and campaigns that demonstrate the unique features of Kenai, including wide open spaces and Kenai as the best place to raise a family, launch an adventure, and start or run a business. The team also presented the salmon as the identity for the marketing effort, explaining the City's similarities to the characteristics of a salmon and noting the need for abstraction in a logo, and presented the new promotional logo and font:



The City Council expressed appreciation for the logo and Administration recommends adoption of this logo as the City's new logo. If the Kenai City Council approves the new logo, Administration will begin work on a plan to incorporate its use on stationary and begin integration of the logo on other materials, including on the City website and new signage.

Your consideration is appreciated.





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MEMORANDUM

TO: Mayor Gabriel, Council Members,
 Administration

FROM: Vice Mayor Molloy *RM*

DATE: March 11, 2020

SUBJECT: Discussion Item: Proposed Amended Policy on Student Representative For Parks & Recreation Commission

For several meetings, the Parks & Recreation Commission has discussed issues relating to Student Representative to the Commission. At their meeting of March 5, 2020, the Commission unanimously approved its Resolution No, PR20-01. This resolution recommends that the Council adopt Policy No. 2018-01 (Amended), amending the Council's Parks and Recreation Commission Student Representative Policy.

The Commission recommends three amendments to the current policy:

1. **"The student shall be a Kenai resident and a junior or senior in good standing with school administration."** This amendment deletes the restriction to KCHS and broadens the pool of potential applicants to Kenai residents enrolled in other public and private high schools, as well as home school students and other programs enrolled through the Borough School District Administration.
2. **"The student shall be approved by school administration; if multiple applications are received, the Mayor may select an applicant for appointment."** This amendment addresses the scenario where multiple applications are received.
3. **"The student will communicate with other students to provide information and seek feedback from other students on Parks and Recreation issues affecting young people."** This amendment is consistent with previous job duties.

Council's consideration is appreciated. A resolution by the City Council is required to adopt the proposed amendments or other amendments to Policy No. 2018-01. The Council also may wish to consider amending its policy on Student Representative to the Council.



Sponsored by: Parks and Recreation Commission

CITY OF KENAI

RESOLUTION NO. PR20-01

A RESOLUTION OF THE PARKS AND RECREATION COMMISSION OF THE CITY OF KENAI, ALASKA, RECOMMENDING THE AMENDMENT OF COUNCIL POLICY NO. 2018-03 - PROVIDING FOR A STUDENT REPRESENTATIVE FOR THE PARKS & RECREATION COMMISSION, TO BROADEN THE REQUIREMENTS AND MAKE IT MORE INCLUSIONARY.

WHEREAS, Council Policy No. 2018-01 recognizes the benefits received from a Student Representative, outlines the role, and defines limitations of the non-voting member of the Commission; and,

WHEREAS, the Parks & Recreation Commission reviewed the current policy and recommends amendments to the policy that will help attract and target representation from a broader spectrum of high school students in the area,

NOW, THEREFORE, BE IT RESOLVED BY THE PARKS AND RECREATION COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the Parks and Recreation Commission of Kenai recommends the City Council amend City Council Policy No. 2018-01 - Parks and Recreation Commission Student Representative Policy, as attached.

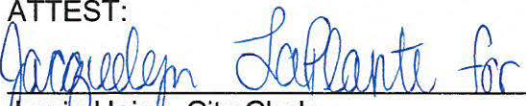
Section 2. That a copy of this Resolution be provided to the members of the Kenai City Council.

Section 3. That this resolution takes effect immediately upon passage.

PASSED BY THE PARKS AND RECREATION COMMISSION OF THE CITY OF KENAI, ALASKA, this 5th day of March, 2020.



CHARLIE STEPHENS, CHAIR

ATTEST:


Jamie Heinz, City Clerk



POLICY NO. 2018-01 (Amended): Parks and Recreation Commission Student Representative Policy

Purpose

The purpose of this policy is to provide for a Student Representative for the Parks and Recreation Commission.

Scope

This policy applies to the Parks & Recreation Commission and all Student Representatives appointed to the Parks & Recreation Commission.

Policy

It is important to seek out and consider students' ideas, viewpoints and reactions to Parks and Recreation decisions. In order to provide student input and involvement, the Mayor of the City of Kenai, may appoint a Student Representative to the Parks and Recreation Commission and the Student Representative may participate in the Parks and Recreation Commission meetings pursuant to the following:

1. Limitations, Qualification, and Requirements:
 - a. The Student may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast in rotation with the official Commission vote and shall not affect the outcome of a vote. Advisory votes shall be recorded in the meeting summaries. Student Representatives may not move or second items during a commission meeting.
 - b. ~~The student shall be a junior or senior in good standing at the Kenai Central High School.~~
The student shall be a Kenai resident and a junior or senior in good standing with school administration.
 - c. ~~The student shall be elected by the Student Council of Kenai Central High School, subject to approval of the KCHS administration.~~
The student shall be approved by school administration; if multiple applications are received, the Mayor may select an applicant for appointment.
 - d. The student shall attend all Parks and Recreation Commission meetings and work sessions, unless excused by the Parks and Recreation Director.
 - e. The student should have an interest in public service.
 - f. The student should use this opportunity as a way to develop leadership skills.
 - g. ~~The student will communicate with Student Council Members at Kenai Central High School to provide information and seek feedback from other students on Parks and Recreation issues affecting young people.~~
The student will communicate with other students to provide information and seek feedback from other students on Parks and Recreation issues affecting young people.

Effective Date: _____

Approved by Resolution 2018-03
Amended by Resolution 2020-XX

DRAFT

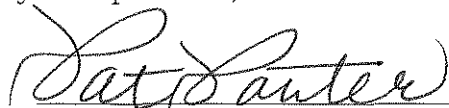
KENAI CITY COUNCIL STUDENT REPRESENTATIVE POLICY

It is important to seek out and consider students' ideas, viewpoints and reactions to city decisions and policies affecting students. In order to provide student input and involvement, the Kenai City Council may appoint a Student Representative and an Alternate Student Representative as it deems necessary.

Limitations, Qualifications And Requirements:

1. The student may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast in rotation with the official council vote and shall not affect the outcome of a vote. Advisory votes shall be recorded in the minutes. Student representatives may not move or second items during a council meeting.
2. The student(s) shall be residents of the City of Kenai.
3. The student(s) shall be a junior or senior in good standing at the Kenai Central High School.
4. The student(s) shall be elected by the Student Council of Kenai Central High School and subject of approval of the KCHS administration.
5. The student(s) shall attend all city council meetings and work sessions, unless excused by the Mayor. The alternate shall attend meetings in the absence of the Student Representative.
6. The student(s) should have a long-term interest in public service.
7. The student(s) should give feedback to council members about policies impacting young people.
8. The student(s) should use this opportunity as a way to develop leadership skills.
9. The student(s) will communicate with student council members at Kenai Central High School to provide information and seek feedback from other students on city issues affecting young people and copies of all written reports regarding their service be provided to the Kenai City Council through the City Clerk's Office.

APPROVED AND DATED: This first day of September, 2010.



 PAT PORTER, MAYOR

ATTEST:



 Carol L. Freas, City Clerk

KENAI CITY COUNCIL STUDENT REPRESENTATIVE POLICY

It is important to seek out and consider students' ideas, viewpoints and reactions to city decisions and policies affecting students. In order to provide student input and involvement, the Kenai City Council may appoint a Student Representative and an Alternate Student Representative as it deems necessary.

Limitations, Qualifications And Requirements:

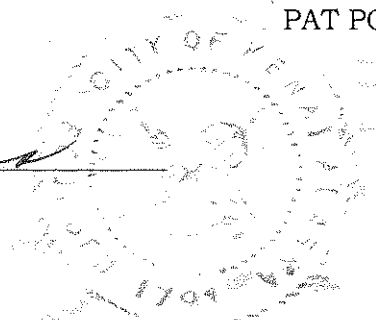
1. The student may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast prior to the official council vote and shall not affect the outcome of a vote. Advisory votes shall be recorded in the minutes. Student representatives may not move or second items during a council meeting.
2. The student(s) shall be residents of the City of Kenai.
3. The student(s) shall be a junior or senior in good standing at the Kenai Central High School.
4. The student(s) shall be elected by the Student Council of Kenai Central High School and subject of approval of the KCHS administration.
5. The student(s) shall attend all city council meetings and work sessions, unless excused by the Mayor. The alternate shall attend meetings in the absence of the Student Representative.
6. The student(s) should have a long-term interest in public service.
7. The student(s) should give feedback to council members about policies impacting young people.
8. The student(s) should use this opportunity as a way to develop leadership skills.
9. The student(s) will communicate with student council members at Kenai Central High School to provide information and seek feedback from other students on city issues affecting young people and copies of all written reports regarding their service be provided to the Kenai City Council through the City Clerk's Office.

APPROVED AND DATED: This 16th day of March, 2005.


 PAT PORTER, MAYOR

ATTEST:


 Carol L. Freas, City Clerk






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MEMORANDUM

TO: Mayor Gabriel, Council Members,
 Administration
FROM: Vice Mayor Molloy 
DATE: March 10, 2020

SUBJECT: Discussion Item: An Additional Form to Reduce Paperwork Burden for Filers of the City's Financial Disclosure Statement

Kenai Municipal Code Chapter 1.85 FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST requires that each Municipal Officer shall file with the City Clerk an annual Financial Disclosure Statement containing specific information, to be filed on a form prescribed by the City Clerk and approved by a resolution of the City Council. "Municipal Officer" means "the Mayor, City Manager, members of the Council, members of the Planning and Zoning Commission, City Attorney and City Clerk." Each filer's completed, signed statement is due to the City Clerk by April 15th of each year.

Most of the specific information required by Code is set out in Schedules A through H of the approved form for disclosure statement. For some filers, much if not all of that information may be the same and not change from year-to-year.

To reduce paperwork burden of each filer and the City Clerk, Council should consider whether to direct the City Clerk to develop an additional form -- perhaps a Schedule A1 -- that allows the filer to incorporate by reference the previous year's Schedules A through H if there are no changes, or to incorporate everything except for the one schedule or schedules where something's changed from the prior year's statement, which is already on file.

The City Clerk may have some recommendations. If there is a Council direction, the Clerk could develop such form for use by this year's filers, and a resolution approving the form could be on the agenda of Council's 4/01/20 meeting, so that filers could choose to use this form to reduce their paperwork burden, if such resolution is approved by Council.

Council's consideration is appreciated.

**KENAI PARKS & RECREATION COMMISSION
MARCH 5, 2020 – 6:00 PM
KENAI CITY COUNCIL CHAMBERS
CHAIR CHARLIE STEPHENS, PRESIDING**

MEETING SUMMARY

1. CALL TO ORDER

Chair Stephens called the meeting to order at 6:03 p.m.

a. Pledge of Allegiance

Chair Stephens led those assembled in the Pledge of Allegiance.

b. Roll was confirmed as follows:

Commissioners present: C. Stephens, S. Kisen, T. Wisniewski, J. Dennis, M. Bernard, R. Tomrdle

Commissioners absent: J. Joanis, T. Winger

Staff/Council Liaison present: Parks & Rec Director B. Frates, Council Liaison B. Molloy

A quorum was present.

c. Agenda Approval

MOTION:

Commissioner Dennis **MOVED** to approve the agenda as presented and Commissioner Kisen **SECONDED** the motion. There were no objections; **SO ORDERED**.

2. SCHEDULED PUBLIC COMMENTS – None.

3. UNSCHEDULED PUBLIC COMMENT – None.

4. APPROVAL OF MEETING SUMMARY

a. February 6, 2020

MOTION:

Commissioner Wisniewski **MOVED** to approve the meeting summary of February 6, 2020 and Commissioner Bernard **SECONDED** the motion. There were no objections; **SO ORDERED**.

5. UNFINISHED BUSINESS – None.

6. NEW BUSINESS

a. **Discussion** – Amending the Parks & Recreation Commission Student Representative Policy

The Commission Chair thanked administration for the draft Resolution and policy as provided in the packet. He noted that all of the Commission's suggestions were addressed.

One correction was noted, the word "effecting" in Item 1(g) needed changed to "affecting."

MOTION:

Commissioner Kisenia **MOVED** to approve Resolution No. PR20-01 with the correction as noted to Item 1(g) in the Policy No. 2018-01; and Commissioner Dennis **SECONDED** the motion. There were no objections.

7. REPORTS

- a. **Parks and Recreation Director** – Frates referenced the Administration Report in the packet highlighting recent activities within the Department. He further reported that he spoke at a recent Kenai Historical Society meeting, that Kite Festival planning meetings were being planned, and the Department was gearing up for the opening of the summer maintenance summer positions.
- b. **Commission Chair** – No report.
- c. **City Council Liaison** – Molloy reported on the recent actions and business items of the March 4 City Council meeting, including the City's marketing plan, Capital Improvement Project update, and Council's support for a Personal Use Fishery fee.

8. NEXT MEETING ATTENDANCE NOTIFICATION – April 2, 2020

Commission Chair Stephens noted he would be absent at the next meeting.

9. COMMISSION QUESTIONS & COMMENTS

Commissioner Wisniewski inquired about the status of the campground off S. Spruce Street. It was noted that other properties would need to be looked at.

10. ADDITIONAL PUBLIC COMMENT – None.

11. INFORMATION

- a. Multi-Purpose Facility Ice Schedule – February/March 2020
- b. March Monthly Report
- c. Arbor Day Grant 2020
- d. Soldotna Chamber of Commerce & Visitors Center Announcement

12. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 6:50 p.m.

Meeting summary prepared and submitted by:

Jacquelyn LaPlante, Deputy City Clerk



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Jeff Tucker, Fire Chief

DATE: March 10, 2020

SUBJECT: **Fire Department Mid-Month Report – February**

In February, the department responded to 100 calls for service as compared to 130 calls in February 2019. This is a 23.1% decrease compared to February of 2019. For calendar year 2020 the department has responded to 242 calls for service as opposed to the 2019 which saw 298 responses. This is an 18.8% decrease in calls for service year to date.

Engineer Sam Satathite retired for the Kenai Fire Department after 20 years of service to the community. A retirement luncheon held to recognize Sam was well attended.

With Engineer Satathite's retirement a testing process was held for the engineer's position. The department conducted promotional testing and Firefighter/Paramedic Scott Summers finished number one in the testing and will be promoted to Engineer effective March 18th, 2020. To fill the vacant Firefighters position the department used the list established from the last testing process and has offered the position to Steve Turkington. Steve's first day with the department will be March 30th, 2020.

Fire Marshal Jeremy Hamilton attended the Fire and Building Officials Forum in Anchorage. Firefighters Dustin Voss and Colin Morse completed the second week of their Fire Officer I course.

The Department assisted Kenai Peninsula Colleges Firefighter II testing process at the Beacon training facility. The department had four of our members complete this training program.

Chief Tucker will be retiring after 38 years in the EMS and Fire profession. Retirement luncheon will be on March 20th, 2020 from 11am to 1pm at Station 1.





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MEMORANDUM

TO: Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Katja Wolfe
DATE: March 6, 2020
SUBJECT: Library Mid-Month Report February

February Circulation Figures

Adult	2900	Internet Access	595
Children	2038	iPad use	64
Young Adult	212	Games	8
Periodicals	78	Room Booking	168
Interlibrary Loan	4	Music	50
		Miscellaneous	183
		DVDs	2,430
		Audiobooks	81

Total Print: 5232	Total Non-Print: 3579
--------------------------	------------------------------

Items borrowed from other libraries: 650 Items loaned to other libraries: 431

	Total Circulation 2/20	7,903	Downloadable Audio	601
	Total Circulation 2/19	7,756	Downloadable EBooks	520
	% change	+1.9%	% change in downloadable from 2019	-3.4%
	In-House circulation	248		





Library Door Count..... 6,261

Income

Fines	\$285.05
Xerox	\$41.25
Lost/Damaged	\$17.98
Test Proctoring Fee	\$60.00
Printing	\$286.00
<u>Other</u>	
Total income	\$690.28



Library Cards Issued FEBRUARY

Anchorage	1
Kasilof	1
Kenai	16
Nikiski	3
Ninilchik	1
Sterling	1
Other	1
Total	24

Programs

- 373 children and their parents/caregivers attended 26 children’s programs.
 - Harry Potter Book Night, 22 participants
 - Rate-a-Book, 25 participants
 - DIY Valentine’s Day Cards, 14 participants
- 15 teens attended 2 teen programs
 - Art Night, 4 participants
 - Marvel Movie, 11 participants
- 26 adults attended 5 adult programs
 - Totem Tracers, 22 participants
 - Adult Draw, 9 participants
- 6 volunteers donated about 50 hours of their time



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Mary Bondurant, Airport Manager
DATE: March 6, 2020
SUBJECT: **March Mid-month Report**

2018 Terminal Rehabilitation Project – Construction: The siding panels, ceiling panels, and new advertising displays are currently being installed. This project is rapidly moving toward completion.

2019 Alaska Fire Training Facility Rehabilitation & Acquire Aircraft Rescue and Firefighting Trucks (ARFF) – Both the building and equipment projects are on schedule for completion in April 2020.

In-house Activities –

Airport Operations – Operations staff continues to work diligently removing the snow and ice received this winter.

Airport Administration – Airport submitted the FY21 budget on February 19th, and the FY20 Efficiencies' Report on March 2nd. City Administration and the Airport are also working to develop an agreement for the Alaska Regional Fire Training Facility and a five-year extension to the current Airline Operating Agreement.

Flight Information Display Boards – The Airport has installed four Flight Information Display Boards in the terminal building, including upstairs in the lounge. There is also a link on the Airport's Facebook page that gets you directly to the flight information. It is the responsibility of the airlines to keep the board information up to date with schedules, delays, cancellations, etc.

March 4 & 5, 2020 – Airport Manager and Assistant attended the 17th Annual Civil Rights Conference in Anchorage. As a member of the Alaska UCP this provides an outreach opportunity in presenting how to do business with the Kenai Airport.



March 16 & 17, 2020 – The dates of the TSA-mandated annual inspection at the Kenai Airport. The Airport Security Plan, Emergency Control Plan, and the Vetting process will be reviewed. In addition, there will be inspections at the airlines, Kenai Police Department, and an airfield perimeter tour.

April 7, 2020 – The USDA will be providing the initial or recurrent Wildlife Hazing training to all Airport and Kenai Police Department personnel to meet the 139 requirements necessary to haze wildlife on the airport.

May 13 & 14, 2020 – Airport and City Administration will be attending the 2020 FAA Alaskan Region Airports Division Workshop. The workshop provides valuable information on project planning and impacts, land compliance, 139 certification regulations, master planning, AIP grant processes, environmental processes, and others. This is a bi-annual conference.

June 13, 2020 – 20th Annual Kenai Peninsula Air Fair, Saturday!



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
THROUGH: Dave Ross, Police Chief
FROM: Jessica "JJ" Hendrickson, Animal Control Chief
DATE: March 9, 2020
SUBJECT: February 2020 Monthly Report

This month the Kenai Animal Shelter took in **116** animals. Animal intake and disposition:

DOGS:				
INTAKE	22	DISPOSITION	18	
Waiver	8	Adopted	13	
Stray	7	Euthanized	0	
Impound	4	Claimed	5	
Protective Custody	0	Field Release	0	
Quarantine	1	Transferred	0	
Other Intakes	2	Other Dispositions	0	
CATS:				
INTAKE	32	DISPOSITION	41	
Waiver	12	Adopted	22	
Stray	20	Euthanized	5	
Impound	0	Claimed	3	
Protective Custody	0	Field Release	0	
Quarantine	0	Transferred	11	
Other Intakes	0	Other Dispositions	0	
OTHER ANIMALS:				
INTAKE	62	DISPOSITION	32	
Bird	19	Bird	7	
Rabbit	13	Rabbit	10	
Chicken	30	Chicken	15	



DOA:		8	OTHER STATISTICS:	
	Dog	3	Licenses (City of Kenai Dog Licenses)	38
	Cat	5	Microchips (Dog and Cat)	18

- 3** Animal dropped with After Hours (days we are closed but cleaning and with KPD)
- 18** Animals are *known* borough animals
- 95** Animals are *known* City of Kenai
- 2** Animals are *known* City of Soldotna
- 1** Animals from unknown location
- 27** Field Investigations & patrols
- 36.40** Volunteer Hours Logged
- 7** Citations
- 2** Educational Outreach

Statistical Data:

- 112** 2018 YTD Intakes
- 128** 2019 YTD Intakes
- 205** 2020 YTD Intakes





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Terry Eubank, Finance Director
DATE: March 12, 2020
SUBJECT: **Finance March 2020 Monthly Report**

For the past month, much of the department's focus has been on the preparation of the FY2021 Budget. The Council is tentatively scheduled to receive its first draft of the FY2020 budget on April 1. There is much work to be done by all City departments in preparing the FY2021 budget.

The department has also been working with Alaska Permanent Capital Management, the investment manager for the City's permanent Funds to determine if changes to the distribution model of the Airport Permanent Fund are going to be recommended. That work will likely be completed in April with legislation, if needed, to be introduced in April.

Preparation is also being made for renewal of the City's insurances (general liability, property, workers' compensation, airport, and marine). In discussion with our Alaska Public Entity Insurance rate increase are likely but to what extent has yet to be determined.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Elizabeth Appleby, City Planner
DATE: March 10, 2020
SUBJECT: **Planning and Zoning February 2020 Report**

Below are a summary of activity in February 2020 for the Planning and Zoning Department.

Planning and Zoning Commission Agenda Items and Resolutions

- Resolution PZ2020-03 – Application for a Conditional Use Permit to operate a Recreational Vehicle Park, located at 2301 Bowpicker Lane, Kenai, Alaska 99611 and further described as Tract 1, Kenai River Shores Subdivision. The application was submitted by Ronald Hyde, Jr. on behalf of PRL Logistics, Inc., P.O. Box 222029, Anchorage, AK 99522
- Discussion/Recommendation - Authorizing the City Planner to draft and send a letter to the Kenai Peninsula Borough supporting a request by the developers of Windhaven Estates Phase 3 for a two-year time extension
- Post-Conference Discussion - 2020 Alaska Planning Conference - Collaborating for Resilient Communities, February 9-11, 2020

Code Enforcement

3 cases were opened in February 2020 for an Abandoned Vehicle, Trash, and Debris and Junk.

Plans

The Hazard Mitigation Plan adopted by the Kenai City Council by resolution has been approved by FEMA and the State of Alaska. It will be before the Kenai Peninsula Borough Planning Commission on March 23, 2020. The plan will be considered for adoption as an annex to the Kenai Peninsula Borough Plan (to replace the 2010 document that is currently the annexed document for the City in the Kenai Peninsula Borough Hazard Mitigation Plan).



Lands

- The purchase of four parcels for the bluff erosion project approved by City Council was finalized.
- Six lessees within the Airport Reserve chose to convert their lease to the new standard lease form.
- The appraisal to determine new lease rates for lessees on a five-year schedule was received from the contractor.

Planning Forms

- Updates to all Planning and Zoning forms have started. Content will not be changed. The forms are being made fillable with typed text and organized for better communication. There are a total of 14 forms to update.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Robert J. Frates, Parks & Recreation Director

DATE: March 9, 2020

SUBJECT: **Mid-Month Activity Report**

A total of 81 hours were reserved at the multi-purpose facility compared to 80.50 last year during this time. The primary user groups to date for the season include the Kenai Peninsula Hockey Association (329.25), Kenai Central High School (114), Queens (56.50) and the Hockey Club Alaska-Northern Knights (39).

Below is a list of recent activities and work accomplishments for the month of February:

- A total of 55.50 hours were spent grooming the Kenai Nordic Trails.
- 69.75 hours were spent on sidewalk maintenance (snow removal, ice control, inspections).
- A total of 51 hours were spent removing snow from hydrants.
- 4.0 hours were spent maintaining ice at the Daubenspeck Family Park.
- A total of 14.25 hours were spent on waste management (trash removal & restroom cleaning).
- The Recreation Center staff reported a total of 6,611 patrons and youth staff reported 507 served during the month of February. The breakdown for the Recreation Center was as follows: Gym (4,577), Weight Room (1,195), Sauna/Shower (313) and Racquetball Courts (526).
- Staff worked on putting the department's budget together. LARPing (Live Action Role Playing) continues to be a big draw on Sundays.
- Staff worked with Connections home school student Anna Duvold on signage to promote pollinators in our local gardens. Anna finished third in last year's Caring for the Kenai Project.
- Local schools have completed their ski season. The Kenai Nordic Trails continue to receive moderate use which will only continue to increase as we get into spring-like temperatures.



- The department has gone through nearly 3 tons of ice melt this season and recently ordered another ton.



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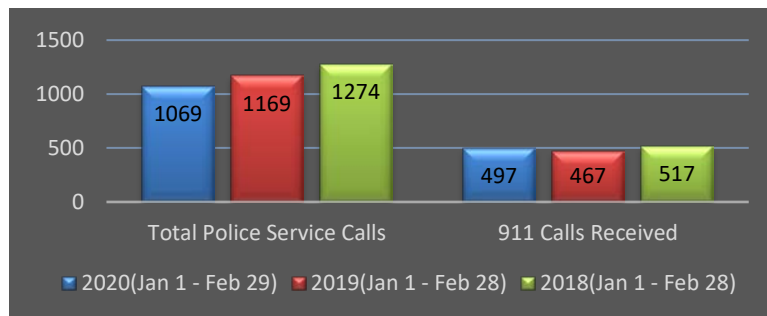
MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: David Ross, Police Chief
DATE: March 9, 2020
SUBJECT: **Police & Communications Department Activity – February 2020**

Police handled 560 calls for service in February. Dispatch received 245 9-1-1 calls. Officers made 65 arrests. Traffic enforcement resulted in 159 traffic contacts and 38 traffic citations. There were 7 DUI arrests. Officers investigated 12 motor vehicle crashes. There were 2 collisions involving moose. There was one collision involving drugs or alcohol.

February training included: The KPD officer on the SERT team completed four days of training. One officer attended Taser instructor training in Anchorage. One new officer completed the Recertification Academy in Sitka for lateral officers. One dispatcher attended a week long Incident Response to Terrorism class in New Mexico. One dispatcher attended APSIN training in Anchorage.

The Dispatch Center is currently full staff, with one dispatcher in training. The police department is still in the hiring process for one officer and all others have completed initial training.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Public Works Director
DATE: March 2020
SUBJECT: **Mid-Month Report; Public Works / Capital Projects**

- Terminal Building Rehabilitation Project – Blazy Construction was issued a Notice to Proceed on October 1, 2018. The project is approximately 93% complete to date. *The exterior metal panels have arrived!! Installation of the panels is finally proceeding quickly, see included photos of installation. Commissioning and balancing of mechanical systems has been proceeding well. Contractor is working on making repairs to issues with pre-existing equipment. The interior is very near completion with ceiling installation being the last large interior component to finish and they are at about 90% complete currently. Public Works, Airport and AE Team Staff are anticipating conducting a Substantial Completion inspection likely on March 31, 2020. The current Substantial Completion date with our contract with Blazy Construction is currently March 12, 2020, however we have a few change requests in consideration that will likely add some time to the contract, items like replacement of the existing boilers which have been failing on/off this winter. We are not anticipating assessing liquidated damages. The A/E Team and Contractor have processed roughly 98% of the required submittals, as well as responding to 238 RFIs; 166 Change Requests have been processed with Eight Change Orders executed to date; Original Contract amount of \$10,985,994.00, Change Orders 1-8 total \$1,143,503.59, approximately 10.4% of Original Contract. The project is nearing completion and the team continues to work together well. Photos below are of the second story tarmac side corridor to the lounge and the airport arrival entrance on the east side of building.*





- Alaska Regional Fire Training Facility Building Rehabilitation Project – A Notice to Proceed was issued to Orion Construction on October 4, 2019. The Original Contract is for \$1,938,755, which is 69% complete to date. The Design Team and contractor have processed about 90% of required submittals, and have responded to 21 RFIs. The Project is Proceeding Well. *The light fixtures are now 99% complete, mechanical system components are now on site and are 75% complete. One change order has been processed for a small unit heater replacement in the effluent building which was not operational, cost is \$8,242.73. Three change requests are in consideration and may result in a Change Order 2 coming late March 2020. Final Completion is anticipated for late March and the Contractor is on schedule to achieve this.*
- Alaska Regional Fire Training Facility Equipment Rehabilitation Project - A Notice to Proceed was issued to Kirila Fire on October 4, 2019. The Original Contract is for \$1,993,000, 93.75% of which is funded by an FAA Grant. *On March 5th-7th the Contractor successfully completed startup of the main trainer as indicated in the photos below. On March 9th the SAFT Trainer successfully conducted training with assistance from the Kenai Fire Department, big thank you to Chief Tucker and his staff for their help. The contract is approximately 85% complete to date. One change order has been executed to date for \$120,000 which added additional fire places to the SAFT Trainer.*



- Dock repair – The City Dock received some new damages as a result of the November 30, 2018 Earthquake. *Update: Council is approving an amendment to Nelson Engineering within this packet to finalize revised Construction Documents in anticipation of releasing an Invitation to Bid for repair work in April 2020.*
- Recreation Center Improvements – Grant extension was requested to allow additional time to coordinate with other projects, grant now expires June 30, 2020. Hansen Roofing completed hot mop and cap sheet repairs to specific areas of the building for a contracted cost of \$9,315. Work was successful as areas that had been leaking are no longer. Other repair work will be contracted over the winter months with work taking place next spring.
- Kenai Cemetery Expansion 2018 – Project Documents were recently finalized. The Public Works Department is completing a majority of this work in house. Storm Water Protection Plan has been developed and submitted with the state. Clearing of the site is now complete, installation of parking lot base is now complete. Project will continue to be on hold until spring when fencing, HEA Power, and asphalt work will be completed.
- Peninsula Avenue Bluff Erosion 2018 – Design Documents are now 100% complete. Invitation to Bid is anticipated for late March 2020.
- USACE Bluff Erosion – See City Manager’s report. Director’s Report from the Army Corp of Engineers was signed April 10, 2019.
- DOT KSH Rehabilitation (Widening to 5 lanes) Phase 1 Swires Rd. to Eagle Rock Dr. was bid on March 30, 2018. City of Kenai water main replacement crossing KSH at Shotgun/Beaver Loop designed, funded, and will be bid with DOT project. The 16” new water main associated with this project has now been installed under the Highway. Wolverine continues with the project, the roadway has now been paved, ditch work final grading and bike path work are taking place as well. *Update: Project is shut down for winter, side street approaches were not paved with the Spur and will require maintenance throughout the winter as potholes in the gravel areas are already starting to appear.*
- DOT KSH Rehabilitation (Widening to 5 lanes) Phase 2 Eagle Rock Dr. to Sports Lake – *ADOT advises this project will may have some right of way clearing taking place before winter with the majority of the work taking place next year.*
- DOT Beaver Loop Road and Pedestrian Pathway Project – QAP was awarded the project. Signage was posted the week of June 10th, clearing of the right of ways and directional boring of utilities is actively underway. DOT advises final asphalt for both the new road and bike path will not be until May/June 2020. *Update: Subgrade and driveway approaches continued to be worked on for this period, establishing ditch lines, installation of utilities. QAP is pretty much shutting down for winter now.*



- Staff has also been working on Procurement documents for the following projects:
 - 1) Kenai Fire Department SCBA Equipment released on 11/15/19, contract award approved at the January 15th council meeting. Contract has now been executed with MES and we are awaiting delivery of Equipment.
 - 2) Kenai Municipal Airport Professional Engineering Services Term Contract 5 years released 1/23/20 with Proposals due on 2/18/20; a new Service Agreement is pending with HDL Engineering as the successful proposer
 - 3) Contract to use Cranes, Offices & Operating Area at the Boating Facility released on 2/12/20 with bids originally due on 3/4/20, and is being extended to 3/23/20.
 - 4) Water, Sewer, Waste Water Professional Engineering Services Term Contract 5 years released on March 9, 2020 with proposals due on March 31, 2020.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Kathy Romain, Senior Center Director
DATE: March 10, 2020
SUBJECT: February 2020 Monthly Report

Congregate Meals Served (Dining Room)	1231
Home Delivered Meals	1338
Volunteer Hours	(29 individuals) = 328
Unassisted Transportation Rides	333
Assisted Transportation Rides	91
Social Security Video Service	28 individuals
Senior Center Rentals	2 Memorial Services
Total Event Sign-Ins (through MySeniorCenter)	2355
Total Unduplicated Participants (through MySeniorCenter)	248

The Living Well with Diabetes Classes finished in February. This six-week class met each week throughout January and February. It was taught by certified instructors for Diabetes Self-management and to encourage those with this chronic condition. This class was so popular, it will be offered again soon.

We regularly have seniors stop by requesting help with various benefits such as the Permanent Fund; Senior Benefits; Heating Assistance; Medicare/Medicaid; Food Boxes; and Alaska REAL ID. The Center is known as a "One Stop Shop" and we work to stay current on all of these programs.

February is also the month staff and the Kenai Senior Connection, Inc. Board start to prepare for March for Meals. We were able to send out almost 4,000 mailers to local individuals and businesses. 2020 promises to be another successful fundraiser for our meal programs.



PURCHASE ORDERS BETWEEN \$2,500.00 AND \$15,000.00 FOR COUNCIL REVIEW

COUNCIL MEETING OF: MARCH 18, 2020

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VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
PROFESSIONAL ESCROW	LOT 7C, KENAI TOWNSITE	KENAI BLUFF EROSION	LAND	5,460.00
PROFESSIONAL ESCROW	LOT 6B & 10B2, BLK 19 KENAI TOWNSITE	KENAI BLUFF EROSION	LAND	7,960.00
PROFESSIONAL ESCROW	LOT 7D, KENAI TOWNSITE	KENAI BLUFF EROSION	LAND	4,960.00
EDOCSALASKA	LASERFICHE UPGRADE	CLERK	SOFTWARE	4,820.70
E-IMAGE DATA	MICROFILM SCANNER UPGRADE	LIBRARY	SMALL TOOLS	2,907.00
JUSTIN WARIX	FY20 PHYSICIAN SPONSOR	FIRE	PROFESSIONAL SERVICES	3,000.00