



## Kenai City Council - Regular Meeting

February 19, 2020 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

[www.kenai.city](http://www.kenai.city)

## AGENDA

### A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. **Women's Voting Rights Day Proclamation**
5. 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)*

1. **Tim Dillon, Kenai Peninsula Economic Development District - Kenai Peninsula Economic Development District (KPEDD) Update.**

### C. UNSCHEDULED PUBLIC COMMENTS

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

### D. PUBLIC HEARINGS

1. **Ordinance No. 3103-2020** - Accepting and Appropriating a Grant from the Alaska State Library for Employee Travel and Training. (Administration)
2. **Ordinance No. 3104-2020** - Accepting and Appropriating a Federal Grant from the Institute of Museum and Library Services Passed Through the Alaska State Library for Employee Travel and Training. (Administration)
3. **Ordinance No. 3105-2020** - Accepting and Appropriating Two Donations From the Totem Tracers and the Friends of the Kenai Community Library for the Upgrade of Library Equipment. (Administration)

- [4.](#) **Resolution No. 2020-08** - Requesting the State of Alaska Provide Necessary Funding to the Alaska Wing Civil Air Patrol at a Minimum of \$184,300 to Provide Support for Utility Costs, Insurance Premiums and Emergency Roof Repair. (Council Member Knackstedt)
- [5.](#) **Resolution No. 2020-09** - Supporting the Collection of Sales Tax from Remote Sellers by the Kenai Peninsula Borough and Other Municipalities within the Borough, Authorizing the Remote Seller Sales Tax Commission to Implement, Administer, and Enforce Provisions of the Uniform Remote Seller Sales Tax Code on the City's Behalf and Affirming the City's Adoption by Reference of the Kenai Peninsula Borough's Uniform Remote Seller Sales Tax Code. (Legal)
- [6.](#) **Resolution No. 2020-10** - Authorizing a Budget Transfer in the General Fund Buildings and Non-Departmental Departments for Building Repairs in Excess of Budgeted Amounts. (Administration)

**E. MINUTES**

- [1.](#) \*Regular Meeting of February 5, 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 Liquor Licenses for New Peking Restaurant and Fraternal Order of Eagles. (City Clerk)
- [4.](#) \***Ordinance No. 3107-2020** - Increasing Estimated Revenues and Appropriations in the Congregate Housing Funds for Costs in Excess of Budgeted Amounts. (Administration)
- [5.](#) \***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)
- [6.](#) \***Ordinance No. 3109-2020** - Authorizing the City Manager to Reimburse Annual Leave Used by Firefighter Scott Summers for Attending a Paramedic Internship Program. (Administration)
- [7.](#) **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)

- 8. Action/Approval** – Second Amendment to Agreement for Guardian Security Systems, Inc. (Administration)

**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. 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.

**M. PENDING ITEMS**

**N. ADJOURNMENT**

**O. INFORMATION ITEMS**

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

2. Kenai Historical Society - January 2020 Newsletter

*The agenda and supporting documents are posted on the City's website at [www.kenai.city](http://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.*



**Item Attachment Documents:**

1. **Ordinance No. 3103-2020** - Accepting and Appropriating a Grant from the Alaska State Library for Employee Travel and Training. (Administration)



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3103-2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING A GRANT FROM THE ALASKA STATE LIBRARY FOR EMPLOYEE TRAVEL AND TRAINING.

WHEREAS, the Kenai Community Library has received a grant for up to \$500 from the Alaska State Library for travel expenses of a staff member to attend a Library Summer Programming Workshop to be held in Anchorage; and,

WHEREAS, the total estimated cost of the training is \$350 and the grant funds are sufficient to cover all costs; and,

WHEREAS, it is in the best interest of the City of Kenai to accept and appropriate these grant funds for the purpose intended.

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 a grant in the amount of up to \$500 from the Alaska State Library for travel expenses of a staff member to attend a Library Summer Programming Workshop to be held in Anchorage, Alaska and to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of this ordinance.

**Section 2.** That estimated revenues and appropriations be increased as follows:

General Fund

Increase Estimated Revenues:

State Grants - Library \$500

Increase Appropriations:

Library – Travel & Transportation \$500

**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 upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of February, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR

ATTEST:

\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: February 5, 2020  
Enacted: February 19, 2020  
Effective: February 19, 2020



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Katja Wolfe, Library Director  
**DATE:** January 20, 2020  
**SUBJECT:** **Ordinance 3103-2020 –Travel Grant for Library**

The Alaska State Library awarded James Adcox State funds in the amount of up to \$500 to attend a Library Summer Programming Workshop to be held in Anchorage, Alaska on March 27, 2020. This ordinance will appropriate funds of up to \$500 to allow Mr. Adcox to attend the conference.

Grant funds are expected to be sufficient for all expenses related to this travel and training.

Your consideration is appreciated.



**Item Attachment Documents:**

2. **Ordinance No. 3104-2020** - Accepting and Appropriating a Federal Grant from the Institute of Museum and Library Services Passed Through the Alaska State Library for Employee Travel and Training. (Administration)



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3104-2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING A FEDERAL GRANT FROM THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES PASSED THROUGH THE ALASKA STATE LIBRARY FOR EMPLOYEE TRAVEL AND TRAINING.

WHEREAS, the Kenai Community Library has received a \$1,250 grant from the Institute of Museum and Library Services (IMLS), passed through the Alaska State Library, for travel expenses of a staff member to attend the 2020 Public Library Association Conference to be held in Nashville, Tennessee; and,

WHEREAS, the total estimated cost of the trip is \$3,522.00 and the Kenai Community Library has sufficient funds in its budget to cover the excess; and,

WHEREAS, it is in the best interest of the City of Kenai to accept and appropriate these grant funds for the purpose intended.

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 a grant in the amount of \$ 1,250 from IMLS passed through Alaska State Library for travel expenses of a staff member to attend the 2020 Public Library Association Conference and to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of this ordinance.

**Section 2.** That estimated revenues and appropriations be increased as follows:

General Fund

Increase Estimated Revenues:

Federal Grants - Library \$1,250

Increase Appropriations:

Library – Travel & Transportation \$1,250

**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 upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of February, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR

ATTEST:

\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: February 5, 2020  
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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Katja Wolfe, Library Director  
**DATE:** January 20, 2020  
**SUBJECT:** **Ordinance 3104-2020 – Continuing Education Grant for Library**

The Alaska State Library receives funds from the Institute of Museum and Library Services to pay for continuing education grants. These travel funds allow staff members to attend a continuing education workshop or conference. These funds can be spent on travel, lodging, per diem and registration expenses.

This year Katja Wolfe has been awarded funds (\$1,250) to attend the 2020 Public Library Association Conference to be held in Nashville, Tennessee from February 25, 2020 through March 2, 2020. This ordinance will appropriate the \$1,250 grant to allow Ms. Wolfe to attend the conference.

Estimated expense for the trip is \$3,522. The library has sufficient funds in the travel budget to cover the additional expense.

Your consideration is appreciated.





**Item Attachment Documents:**

3. **Ordinance No. 3105-2020** - Accepting and Appropriating Two Donations From the Totem Tracers and the Friends of the Kenai Community Library for the Upgrade of Library Equipment. (Administration)



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3105-2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING TWO DONATIONS FROM THE TOTEM TRACERS AND THE FRIENDS OF THE KENAI COMMUNITY LIBRARY FOR THE UPGRADE OF LIBRARY EQUIPMENT.

WHEREAS, the City has received a \$1,000 donation from the Totem Tracers for the purchase of a microfilm scanner upgrade; and,

WHEREAS, the City has received a second donation of \$1,795 from the Friends of the Kenai Community Library for the remaining cost to purchase the microfilm scanner upgrade less shipping costs of \$112; and,

WHEREAS, the total estimated cost of the upgrade is \$2,907.00 and the Kenai Community Library has sufficient funds in its budget for the shipping costs; and,

WHEREAS, it is in the best interest of the City of Kenai to appropriate these donations for the purpose intended.

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 the \$1,000 donation from the Totem Tracers and the \$1,795 donation from the Friends of the Kenai Community Library to assist with the purchase of a microfilm scanner upgrade for the Kenai Community Library and to expend the funds for that purpose.

**Section 2.** That the estimated revenues and appropriations be increased as follows:

General Fund:

Increase Estimated Revenues – Donations	<u>\$2,795</u>
Increase Appropriations – Library Small Tools	<u>\$2,795</u>

**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 immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of February, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR

ATTEST:

\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: February 5, 2020  
Enacted: February 19, 2020  
Effective: February 19, 2020



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Katja Wolfe, Library Director  
**DATE:** January 22, 2020  
**SUBJECT:** **Ordinance 3105-2020 –Donation for Library Equipment Upgrade**

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The library owns a ScanPro 3000 microfilm/microfiche scanner that is regularly used by our patrons. It is necessary to upgrade the scanner in order to remain compatible with our new computer equipment and to continue its use.

Estimated expense for the upgrade is \$2,907. The library received two donations, one from the Totem Tracers (\$1,000) and one from the Friends of the Kenai Community Library (\$1,795). The library has sufficient funds to cover the additional expense (approximately \$112 for shipping). The purpose of this ordinance is to accept and appropriate these two donations. We would like to thank the Totem Tracers and the Friends of the Kenai Community Library for their generosity.



**Item Attachment Documents:**

4. **Resolution No. 2020-08** - Requesting the State of Alaska Provide Necessary Funding to the Alaska Wing Civil Air Patrol at a Minimum of \$184,300 to Provide Support for Utility Costs, Insurance Premiums and Emergency Roof Repair. (Council Member Knackstedt)



Sponsored by: Council Member Knackstedt

## CITY OF KENAI

### RESOLUTION NO. 2020-08

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, REQUESTING THE STATE OF ALASKA PROVIDE NECESSARY FUNDING TO THE ALASKA WING CIVIL AIR PATROL AT A MINIMUM OF \$184,300 TO PROVIDE SUPPORT FOR UTILITY COSTS, INSURANCE PREMIUMS AND EMERGENCY ROOF REPAIR.

WHEREAS; the Civil Air Patrol is the official civilian volunteer auxiliary of the United States Airforce with over 750 members statewide, including approximately 140 aircrew personnel, 255 cadets, 464 emergency responders and 18 single engine aircraft; and,

WHEREAS, the Alaska Wing Civil Air Patrol performs over fifty percent of the search and rescue missions in the state from 20 locations and also provides aerospace education for Alaska's youth; and,

WHEREAS, the Alaska Wing of the Civil Air Patrol has performed search and rescue missions in Alaska and on the Kenai Peninsula for over 70 years, and has had a presence on the Kenai Airport since the 1950's; and,

WHEREAS, the Alaska Wing Civil Air Patrol provided approximately \$2.6 million value in volunteer hours in 2018; and,

WHEREAS, the Alaska Wing of the Civil Air Patrol funding was reduced to \$304,440 in 2018; and,

WHEREAS, for the first time in recent history the State provided no funding to the Alaska Wing Civil Air Patrol in 2019; and,

WHEREAS, the attached February 2020 Civil Air Patrol background paper of funding shortfall identifies the minimum needed funding to maintain current alert posture; and,

WHEREAS, the state is responsible for search and rescue within the state pursuant to state law and conducting and managing search and rescue operations are one of the eight core missions of the Alaska State Troopers; and,

WHEREAS, Alaska Statute 18.60.146 provides that the Department of Public Safety shall make the necessary administrative arrangements for maintaining liaison between the state and Civil Air Patrol and the expenditure of money appropriated to the department for state contribution toward support of authorized activities of the Alaska Wing Civil Air patrol, under its charter; and,

WHEREAS, without financial assistance the Alaska Wing of the Civil Air Patrol will likely place outlying facilities in "cold storage" and shift utility and maintenance costs to local Alaska Wing units, negatively impacting response time and mission effectiveness; and,

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WHEREAS, without the assistance of the Alaska Wing of the Civil Air Patrol and its trained volunteers, conducting search and rescue missions in Alaska will be seriously compromised; and,

WHEREAS, it is in the best interest of the City and State for the State to continue providing funding to the Alaska Wing of the Civil Air Patrol.

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

**Section 1.** That the City of Kenai requests that the Governor and Legislature provide funding of \$184,300 to the Alaska Wing of the Civil Air Patrol in 2020 to ensure the continued level of search and rescue provided to the state and its resident and visitors.

**Section 2.** That copies of this Resolution shall be forwarded to Governor Michael J. Dunleavy, Senator Peter Micciche, Senator Gary Stevens, Senate Finance Co-Chairs Bert Stedman and Natasha Von Imhof, Representative Gary Knopp, Representative Ben Carpenter, Representative Louise Stutes, Representative Sarah Vance, House Finance Co-Chairs Neal Foster and Jennifer Johnston, and the legislators of the 31<sup>st</sup> Legislative Session.

**Section 2.** That this resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of February, 2020.

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BRIAN GABRIEL, SR., MAYOR

ATTEST:

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Jamie Heinz, CMC, City Clerk

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BULLET BACKGROUND PAPER  
ON  
ALASKA WING (CIVIL AIR PATROL) FUNDING SHORTFALL

PURPOSE

Provide an overview of the funding the Alaska Wing (AKWG) of the Civil Air Patrol (CAP) receives from the USAF, corporate headquarters and its membership in understanding the impact of the loss of state funding on AKWG's assigned missions.

DISCUSSION

- The AKWG receives resources (aircraft, vehicles and communications equipment) and funding from the USAF via National Headquarters, Civil Air Patrol to conduct the three missions of CAP: emergency services (Search & Rescue), aerospace education and cadet programs
  - Based on historical data, we anticipate flying 130 hours supporting USAF-funded actual SAR missions valued at \$15.7K, and \$76.3K of SAR mission training in FY20. 140 volunteer aircrew and 464 first responders accomplish these missions in some of the most challenging conditions, at significant personal risk across volunteer hours valued at \$2.6 million (as recorded in FY18)
  - AKWG expects to fly approximately \$30K-worth of USAF-funded pilot proficiency flying, with an estimated \$20K remainder of flying training paid for "out of pocket" by our volunteers
- AKWG receives additional funding from partners, corporations and members
  - USCG-funded inspection transport missions estimated at \$22K expected in FY20
  - Annual advertising revenue from AKWG magazine "Wingtips" approximately \$10K
  - Membership dues, donations & interest collected annually-estimated \$22.5K for FY20
- The Alaska Wing of the Civil Air Patrol was removed by the Governor's office from the FY20 state budget. Consequently, all 16 AKWG units have been directed to pay for their own utilities and facility maintenance (where AKWG previously subsidized these expenses with grant funds).
  - Based on historical data, utilities to support units in the field are expected to be \$110K
  - Insurance premiums required to operate AKWG facilities in FY20 is estimated to be \$14.3K
  - AKWG's Seward & Homer facilities have been placed into "cold storage" for lack of funding
  - Required roof repair of Kodiak facility on hold due to lack of funding-estimated \$60K
- Without obtaining additional funding, the ability to execute timely airborne and ground SAR missions from outlying locations will be significantly degraded: 5 hours for western missions (with twice the crews required to conduct the missions, if even executable for weather) and 2 hours (assuming clear roads) in the interior area of operations

SUMMARY

The Alaska Wing of the Civil Air Patrol seeks additional funding in order to maintain its current alert posture and provide direct support to the USAF, federal agencies and the citizens of Alaska. In FY19, AKWG flew 131 hours of actual SAR resulting in 35 "finds" and 2 "saves." Without the additional \$184.3K in FY20, AKWG will likely place additional outlying facilities into "cold storage" status, directly and negatively impacting our response time and mission effectiveness.

Col McClure/AKWG/CC/105982@akwg.cap.gov/907.301.8122/bhp/3 FEB 20





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Henry Knackstedt, Council Member  
**DATE:** February 10, 2020  
**SUBJECT:** **Resolution No. 2020-08 Supporting the Alaska Wing of the Civil Air Patrol.**

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The Alaska Wing of the Civil Air Patrol (CAP) provides critical services to our state including over 50% of all search and rescue missions and education and training to youth. This volunteer organization with over 750 members statewide, including approximately 140 aircrew, 255 cadets and 464 emergency responders provided approximately \$2.6 million value in volunteer hours in 2018 (latest available figures). For the first time in recent history, the state did not provide funding to the CAP in FY 2020. The CAP has a long cooperative relationship with the state based in part on the state's obligation to provide search and rescue services. The minimum funding request from the CAP of \$184,300 would cover insurance premiums, utility costs and emergency roof repair for the organization, allowing it to continue operations without compromising its response time and mission effectiveness. With over seventy years of presence on the Kenai Peninsula, with a home on our airport since the 1950's, the CAP is an important partner in our City.

I respectfully request your support for this resolution.



**Item Attachment Documents:**

5. **Resolution No. 2020-09** - Supporting the Collection of Sales Tax from Remote Sellers by the Kenai Peninsula Borough and Other Municipalities within the Borough, Authorizing the Remote Seller Sales Tax Commission to Implement, Administer, and Enforce Provisions of the Uniform Remote Seller Sales Tax Code on the City's Behalf and Affirming the City's Adoption by Reference of the Kenai Peninsula Borough's Uniform Remote Seller Sales Tax Code. (Legal)



Sponsored by: Legal

**CITY OF KENAI****RESOLUTION NO. 2020-09**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING THE COLLECTION OF SALES TAX FROM REMOTE SELLERS BY THE KENAI PENINSULA BOROUGH AND OTHER MUNICIPALITIES WITHIN THE BOROUGH, AUTHORIZING THE REMOTE SELLER SALES TAX COMMISSION TO IMPLEMENT, ADMINISTER AND ENFORCE PROVISIONS OF THE UNIFORM REMOTE SELLER SALES TAX CODE ON THE CITY'S BEHALF AND AFFIRMING THE CITY'S ADOPTION BY REFERENCE OF THE KENAI PENINSULA BOROUGH'S UNIFORM REMOTE SELLER SALES TAX CODE.

WHEREAS, the City joined the Alaska Remote Seller Sales Tax Commission (Commission) for the purpose of developing, implementing and enforcing a remote seller sales tax code pursuant to Resolution 2019-72; and,

WHEREAS, the Commission, made up of municipalities in Alaska, has developed and implemented a single level statewide sales tax administration for the collection and remittance of sale tax on goods and services sold by remote sellers enabling municipalities in Alaska to collect sales tax from remote sellers in compliance with the decision by the United States Supreme Court in *South Dakota v. Wayfair*; and,

WHEREAS, the Commission has contracted with the Alaska Municipal League, which in turn has contracted with software providers to provide necessary services for the Commission to implement the remote seller sales tax code; and,

WHEREAS, the collection of sales tax from sellers making numerous and/or high value sales in Alaskan municipalities strengthens the sales tax base of municipalities aiding in the provision of government services and helps level the playing field between remote sellers and those with a physical presence in our communities; and,

WHEREAS, it is in the best interest of the City to support the Kenai Peninsula Borough and other municipalities in the Borough in their efforts to implement the uniform remote sellers sales tax code; and,

WHEREAS, except where specifically exempted, the City through KMC 7.10.050 has incorporated by reference the Borough's sales tax; and,

WHEREAS, the City supports the Borough's amendment of KPB 5.18- Sales Tax Code and enactment of KPB 5.19 Uniform Remote Seller Sales Tax Code for incorporation by reference into the City's Code.

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

**Section 1.** That the City of Kenai Supports the Kenai Peninsula Borough and other municipalities in the Borough implementing the remote seller sales tax code.

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**Section 2.** That the City supports the Kenai Peninsula Borough's Adoption of Ordinance 2020-03- An Ordinance Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 Uniform Remotes Seller Sales Tax Code and affirms the City's adoption by reference through KMC 7.10.050 of the amendments to existing borough sales tax code and enactment of new sales tax code provisions.

**Section 3.** That the Alaska Intergovernmental Remote Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of KPB 5.19 Uniform Remote Seller Sales Tax Code on behalf of the City as adopted by reference by the City.

**Section 4.** That this resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of February, 2020.

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BRIAN GABRIEL, SR., MAYOR

ATTEST:

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Jamie Heinz, CMC, City Clerk



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**FROM:** Scott Bloom, City Attorney

**DATE:** February 12, 2020

**SUBJECT:** **Resolution No. 2020-09 – Supporting the Delegation of Remote Sales Tax Registration, Exemption Certification, Collection, Remittance, and Audit authority to the Alaska Remote Seller Sales Tax Commission.**

Pursuant to the US Supreme Court's 2019 decision in *South Dakota v. Wayfair*, states and municipalities are able to enforce sales tax collection and remittance on out of state, or remote sellers, selling goods and services in the tax jurisdiction with a taxable connection other than a physical presence. To comply with the *Wayfair* decision, municipalities in Alaska recognized the need to join together to form a single-level statewide sales tax administration. This is because the *Wayfair* decision emphasized the importance of South Dakota's sales tax administration that allowed remote sellers to interface with one general sales tax code for the whole state and one administrative entity, as opposed to having to interface with numerous taxing jurisdictions within each state.

The City Council authorized the City to join the Alaska Remote Seller Sales Tax Commission pursuant to Resolution 2019-72. As a member of the Commission, with a seat on the Board, the City has worked with the Commission to adopt bylaws, agreements for commission members, various policies, approve contracts for third party services and adopt a uniform remote sellers sales tax code. The uniform remote sellers sales tax code streamlines remote seller sales tax code provisions from the many different municipal taxing authorities in the state that wish to participate and collect sales tax on remote sales. The Kenai Peninsula Borough is adopting these streamlined code provisions through Ordinance 2020-03. The City has previously adopted by reference the Borough's sales tax code, except where specifically exempted, and through this Resolution affirms its intent to adopt amendments and new code provisions adopted by the Borough related to remote sales, effectively bringing the uniform remote sellers sales tax code into the City. While this affirmation is perhaps not necessary based on existing code; KMC 7.10.050- Borough Sales Tax Adopted by Reference, I believe it is prudent for the City to



legislatively acknowledge and support the significant change to Borough code that will affect the City.

In addition to adopting a uniform tax code, the Commission has also developed a single-level statewide sales tax administration. This has been done through a contract with the Alaska Municipal League. The Alaska Municipal League is providing administrative support to the Commission and has in turn contracted with two software companies (contracts ratified by the Commission Board) to facilitate the collection, remittance and enforcement of municipal sales tax at a single level. TTR is providing geographic information system technology and other services while MUNIREvs is providing a single filing and remittance system. The Commission has agreed to pay these two software companies a percentage of sales collected at varying scales. The Commission has also authorized a one-time fixed fee to TTR and reimbursement of direct cost plus 8% overhead to the Alaska Municipal League. All these costs are capped. It is my understanding that the costs to the City for participating in this program are competitive and justified. As more municipalities join the commission and collected amounts increase, costs to the City are designed to go down. In order to facilitate this process whereby the Commission administers the single level statewide sales tax program this Resolution authorizes the Commission to implement, administer and enforce the uniform remote sellers sales tax code on behalf of the City.

In large part through the Alaska Municipal League's leadership, many municipalities in Alaska have come together to create this relatively complicated program from scratch in a very short period of time. If everything goes well, the City should see its first taxes collected and remitted in March. I do anticipate there will be more work to do, possible amendments to code and agreements, and there may be some administrative work at the local or Borough level. That said, your consideration of this Resolution is appreciated.

**Item Attachment Documents:**

- 6. Resolution No. 2020-10** - Authorizing a Budget Transfer in the General Fund Buildings and Non-Departmental Departments for Building Repairs in Excess of Budgeted Amounts. (Administration)



Sponsored by: Administration

**CITY OF KENAI**

**RESOLUTION NO. 2020 - 10**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING A BUDGET TRANSFER IN THE GENERAL FUND BUILDINGS AND NON-DEPARTMENTAL DEPARTMENTS FOR BUILDING REPAIRS IN EXCESS OF BUDGETED AMOUNTS.

WHEREAS, the Buildings Maintenance staff has been meeting the ongoing service request needs of Departments city wide; and,

WHEREAS, the current fiscal year started with \$35,000 within their Repair and Maintenance account to address service and maintenance needs; and,

WHEREAS, staff has received and completed 183 work orders from July 1<sup>st</sup> – December 31<sup>st</sup>, 2019 including some expensive items like the entry doors replacement at City Hall, commercial dishwasher replacement at the Senior Center, installation of a new door with electronic access control at the Senior Center / Vintage Point; and replacement springs for the Fire Department garage doors; and,

WHEREAS, the additional requested funds will allow for Building Maintenance staff to continue to respond and complete work order requests as they are received; and,

WHEREAS, Council will continue to be informed of work and expenditures through Purchase Order Reports.

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

**Section 1.** That the following budget amendment be approved:

General Fund

Decrease – Non-Departmental Contingency	<u>\$15,000</u>
---	-----------------

Increase – Buildings Repair & Maintenance	<u>\$15,000</u>
---	-----------------

**Section 2.** That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of February, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR


\_\_\_\_\_



ATTEST:

---

Jamie Heinz, CMC, City Clerk

Approved by Finance: 



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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 11, 2020

**SUBJECT:** **Resolution 2020-10 – Budget Transfer for General Fund Buildings**

---

The Buildings Maintenance Department Staff responds to Work Order Requests received from across all City Departments. When not completing a Work Order, staff is conducting preventive maintenance activities and coordinating routine contract service items. Items like elevator, fire extinguisher, sprinkler and boiler inspections are examples.

This fiscal year \$35,000 was budgeted for Repair and Maintenance items. We have obligated approximately \$33,000 of the available funds to date to address the City's requested service needs. This \$15,000 Budget Transfer will allow the Department to continue to make repairs when needed, as opposed to deferring to the next fiscal year, and potentially risking additional costs due to lingering problems.

Council will continue to be informed of expenditures through the monthly purchase order reports. Council's support is respectfully requested.

Thank you for your consideration.



**Item Attachment Documents:**

1. \*Regular Meeting of February 5, 2020 (City Clerk)

**KENAI CITY COUNCIL – REGULAR MEETING  
FEBRUARY 5, 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 February 5, 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. 2020-05  |
|   | • Public Comments       |
| Add item D.7.                           | Resolution No. 2020-07  |
|   | • Resolution            |
|   | • Memo                  |
| Move item G.6.<br>To the Consent Agenda | Ordinance No. 3105-2020 |

**MOTION:**

Vice Mayor Molloy **MOVED** to approve the agenda with the requested revisions to the agenda and packet and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

**VOTE:** There being no objections, **SO ORDERED**.

**4. Consent Agenda**

**MOTION:**

Council Member Knackstedt **MOVED** to approve the consent agenda as amended 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**

- 1. **Bill Lierman and Brandi Niclai, Alaska Permanent Capital Management - City of Kenai Permanent Funds 2019 Performance Review and Establishment of 2020 Asset Allocation and Benchmarks.**

Brandi Niclai presented a review of the status of the Permanent Fund Investments reporting overall growth. She provided a market review, a portfolio review, and a strategic review; also suggested changes in the average calculations made available for appropriations.

**C. UNSCHEDULED PUBLIC COMMENTS**

None.

**D. PUBLIC HEARINGS**

- 1. **Ordinance No. 3101-2020 - Accepting and Appropriating a Grant from the Rasmuson Foundation for the Purchase and Installation of Security Cameras at the City's Historical Cabins in Old Town Kenai. (Administration)**

**MOTION:**

Council Member Knackstedt **MOVED** to enact Ordinance No. 3101-2020 and Council Member Peterkin **SECONDED** the motion.

Mayor Gabriel opened for public hearing; there being no one wishing to be heard, the public hearing was closed.

The City Planner and the Rasmuson Foundation were thanked.

**VOTE:**

YEA: Knackstedt, Glendening, Molloy, Gabriel, Peterkin, Pettey, Navarre  
 NAY:

**MOTION PASSED UNANIMOUSLY.**

2. **Ordinance No. 3102-2020** - Amending Kenai Municipal Code 14.20.280 Public Hearings and Notifications, to Reduce the Newspaper Posting Requirement. (Council Member Knackstedt)

**MOTION:**

Council Member Knackstedt **MOVED** to enact Ordinance No. 3102-2020 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.

It was noted the amendment brought the advertising down to match what was done for the Council which would save on costs.

**MOTION TO AMEND:**

Council Member Glendening **MOVED** to amend by filling in the blank in the last whereas clause with the word, "enactment," and Council Member Peterkin **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

**VOTE ON THE AMENDMENT:** There being no objections, **SO ORDERED.**

It was noted that the Planning & Zoning Commission was a quasi-judicial body, which sought testimony from property owners in the neighborhoods where decisions were being made and suggested that the extra day of notice may make a difference to someone gathering information for the hearing.

**MOTION TO AMEND:**

Vice Mayor Molloy **MOVED** to leave as "not less than seven (7) in KMC Section 14.20.280(b) and Council Member Glendening **SECONDED** the motion.

It was suggested the Planner recommended the shorter timeframe to allow more items to be added to the agenda.

Clarification was provided the notice would still be published on the same day; the amendment would change to align with City Council practice.

It was suggested allowing flexibility was desirable for some situations.

**VOTE ON THE AMENDMENT:**

YEA: Glendening, Molloy, Peterkin, Pettet  
NAY: Navarre, Knackstedt, Gabriel

**MOTION PASSED.**

It was noted the seventh whereas clause needed to be addressed due to the previous amendment.

**MOTION TO AMEND:**

Vice Mayor Molloy **MOVED** to delete the seventh whereas clause in its entirety. Council Member Knackstedt **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

**VOTE ON THE AMENDMENT:** There being no objections, **SO ORDERED.**

**VOTE ON THE MAIN MOTION AS AMENDED:**

YEA: Knackstedt, Glendening, Molloy, Gabriel, Peterkin, Pettet, Navarre  
NAY:

**MOTION PASSED UNANIMOUSLY.**

- 3. **Resolution No. 2020-03** - Authorizing the Purchase of Real Property Described as Lots 6B and 10B2, Block 19, and Lots 7D and 7C, Kenai Townsite 2018 Addition for the Public Purpose of Including the Property in the Bluff Erosion Restoration Project and Determining that Public Interest Will Not Be Served by an Appraisal. (Administration)

**MOTION:**

Council Member Glendening **MOVED** to adopt Resolution No. 2020-03 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 this was a part of an ongoing effort to acquire all of the property necessary to complete the Bluff Erosion Project.

**VOTE:**

YEA: Knackstedt, Glendening, Molloy, Gabriel, Peterkin, Pettet, Navarre  
NAY:

**MOTION PASSED UNANIMOUSLY.**

4. **Resolution No. 2020-04** – Adopting the City of Kenai Hazard Mitigation Plan. (Administration)

**MOTION:**

Vice Mayor Molloy **MOVED** to adopt Resolution No. 2020-04 and Council Member Knackstedt **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

Mayor Gabriel opened for public hearing.

Bill Dunn encouraged adoption noting it was important that the entire bluff was identified as an erosion issue.

There being no one else wishing to be heard, the public hearing was closed.

Clarification was provided the Hazard Mitigation Plan was updated every five years and the benefit was that it made the City eligible for certain grant funds before the hazards happened, instead of after.

**VOTE:** There being no objections, **SO ORDERED.**

5. **Resolution No. 2020-05** - Supporting Alaska House Bill 198, an Act Relating to Aggravating Factors Considered at Sentencing. (Vice Mayor Molloy and Council Member Navarre)

**MOTION:**

Council Member Navarre **MOVED** to adopt Resolution No. 2020-05 and requested **UNANIMOUS CONSENT**. Vice Mayor Molloy **SECONDED** the motion.

Mayor Gabriel opened for public hearing.

Tammy Willis spoke in favor of the resolution noting incidents that had happened to her. She also noted that, in her case, the FBI had become involved and were investigating the incidents as hate crimes after the news picked up her story but that local police and Troopers were not able to investigate as a hate crimes because sexual identity and sexual orientation were not listed as aggravators in state law. She added the resolution told the LGBTQ community the City wouldn't tolerate hate crimes and were showing leadership for treating others with dignity and respect.

Audrey Gifford thanked Vice Mayor Molloy and Council Member Navarre for attending the town hall meeting. She noted approximately 3.7% of Americans identified as LGBTQ and based on the population of the City of Kenai that equaled about 288. She also pointed out that orientation ranked as third highest in hate crimes with the first two being considered aggravators for hate crimes.

Leslie Byrd suggested the population of LGBTQ in the community was likely higher than previously suggested. Suggested there was nothing for anyone to lose except time to argue it. She also noted people act in reflection of their shared values and asked that the Council lead in a positive and inclusive manner. Leslie also noted that in some laws, premeditation was more egregious, even if it ended in the same result due to the state of mind of the offender. Leslie



added that some believed it wasn't necessary to add sexual orientation and sexual identity to the laws but noted the United States weren't there yet and so protected classes were needed.

April testified in favor of the resolution noting she moved from the East Coast to Kenai to be safe; adding that she would be fired as a pastor where she came from, that her child would be bullied, and that she still does not feel safe holding her wife's hand in public. She added that being called derogatory names was hard as was moving 7,000 miles from home to be a pastor because that was what she was called to do. She added that the gas line to her vehicle had been cut since she has been in this community.

Susan Smalley spoke in favor of the Resolution noting that she was mad that this action was needed speaking to message crimes and explaining that was sending a message to the recipient that they were not safe in the community and was done by cowards. She noted people in the community had their heads in the sand and noted she was an ally; a heterosexual living in in a climate which came from folks sitting back and allowing the message crimes to happen. Ms. Smalley noted that House Bill 198 was a way to get to a place where the LGBTQ community would be treated with dignity adding that hearts couldn't be changed but behavior could.

Rebecca Heinsberger empathized with what Ms. Willis endured but spoke against passage suggesting all people should be receiving the same protection. She suggested that there being special classes didn't seem fair and noting her situation as an abused wife didn't qualify for any of the aggravation categories.

Barbara Jedlicki noted she was grieved and saddened by how people were being treated in the community and adding that she, too, was a victim of an ex-husband, noting the piece of paper protection order sometimes didn't stop them. She spoke in favor of everyone being protected but spoke against dedicating classes suggesting it was a "Pandora's Box" and getting out of hand.

There being no one else wishing to be heard, the public hearing was closed.

The City Attorney provided clarification that the resolution supported House Bill 198 which proposed the addition of two aggravating factors to statute. He added that criminal charges have presumptive sentencing guidelines, which were not to be deviated from too much. He noted there were thirty-six aggravating factors altogether, which included domestic violence, and those listed in the statute this House Bill was amending. He also noted this statute amendment would bring the state statute in line with federal laws making them federal hate crimes because of the victim's gender identity or sexual orientation, race, creed, religion, etc.

The recent town hall meeting, not seeing the harm or hurt in the community, the hurt, the town meeting being an opportunity for those that were hurt to speak, the fear of speaking, being targeted, the aggravator addition being a first step providing tolerance and equity until another bill brought forth were topics discussed.

New information, the issue of public safety, testimony from the LGBTQ community and allies, wanting people to feel safe in places in Kenai, Kenai's cooperative relationship with other law enforcement agencies were additional topics discussed.

Clarification was provided that crimes against the LGBTQ community were not considered hate crimes in Alaska statute and many aggravators were in statutes based on the crime committed. Clarification was provided that if KPD were to be a part in a hate crime, they would pass on to the

state prosecutor if it was felt a class or aggravator was involved and it was up to the prosecutor to pass the aggravator information on to the FBI.

It was suggested the House Bill fell short in what the LGBTQ community needed but was a step in the right direction.

Given all the other considerations or aggravators elsewhere sexual identity or sexual orientation not being seen as adding special treatment, freedom from fear, the matter being a question of how to do it, speaking as community leaders, crimes often not being premeditated, crimes being generational, everyone's right to be treated equally, and prosecution to the fullest extent of the law were additional topics discussed.

**VOTE:**

YEA: Knackstedt, Glendening, Molloy, Pettey, Navarre  
NAY: Gabriel, Peterkin

**MOTION PASSED.**

- 6. **Resolution No. 2020-06** - Designating the Investment and Allocation Plan for the City's Permanent Funds and Establishing Appropriate Benchmarks to Measure Performance for Calendar Year 2020. (Administration)

**MOTION:**

Vice Mayor Molloy **MOVED** to adopt Resolution No. 2020-06 and Council Member Knackstedt **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.

The Finance Director was thanked.

Clarification was provided that legislation would be coming back on how to distribute earnings and when.

**VOTE:** There being no objections, **SO ORDERED.**

- 7. **Resolution No. 2020-07** – Supporting Sound Fisheries Management Practices and Diversified Harvest Opportunities in the Cook Inlet. (Mayor Gabriel)

**MOTION:**

Vice Mayor Molloy **MOVED** to adopt Resolution No. 2020-07 and Council Member Pettey **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.

It was noted the resolution was consistent with resolutions adopted in the past with expanded improvements and was time sensitive; it was consistent with ongoing dialogue with the Board of Fisheries each year.

**VOTE:** There being no objections, **SO ORDERED.**

**E. MINUTES**

- 1. \*Regular Meeting of January 15, 2020. (City Clerk)

Approved by the consent agenda.

- 2. \*Work Session of January 15, 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. \***Action/Approval** - Non-Objection to the Issuance of a New Standard Marijuana Cultivation Facility License for Majestic Gardens. (City Clerk)

Approved by the consent agenda.

- 3. \***Action/Approval** - Non-Objection to New Liquor License Renewals for the Main Street Tap & Grill. (City Clerk)

Approved by the consent agenda.

- 4. \***Ordinance No. 3103-2020** - Accepting and Appropriating a Grant from the Alaska State Library for Employee Travel and Training. (Administration)

Introduced by the consent agenda and public hearing set for February 19, 2020.

- 5. \***Ordinance No. 3104-2020** - Accepting and Appropriating a Federal Grant from the Institute of Museum and Library Services Passed Through the Alaska State Library for Employee Travel and Training. (Administration)

Introduced by the consent agenda and public hearing set for February 19, 2020.

- 6. **Ordinance No. 3105-2020** - Accepting and Appropriating Two Donations From the Totem Tracers and the Friends of the Kenai Community Library for the Upgrade of Library Equipment. (Administration)

*[Clerk's Note: This item was moved to the Consent Agenda during approval of the agenda.]*

Introduced by the consent agenda and public hearing set for February 19, 2020.

7. **Action/Approval** - Mayoral Nomination for Appointment to the Airport Commission. (Mayor Gabriel)

**MOTION:**

Council Member Knackstedt **MOVED** to confirm the appointment of Derek Leichliter to the Airport Commission. Vice Mayor Molloy **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

**VOTE:** There being no objections; **SO ORDERED**.

**H. COMMISSION/COMMITTEE REPORTS**

1. Council on Aging – A reminder for March for Meals was provided and it was noted the February meeting cancelled; Next meeting March 12.
2. Airport Commission – It was noted the commission was excited for the roof to be on the terminal after the Terminal Rehabilitation Project; next meeting February 13.
3. Harbor Commission – It was noted the US Coast Guard coming to the next meeting on February 10.
4. Parks and Recreation Commission – No report; next meeting February 6.
5. Planning and Zoning Commission – It was reported the Commission made recommendations on the publication ordinance and discussed the upcoming planning conference; next meeting February 12.
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:

- Attended Joanna Hollier's memorial service;
- Attended the recent KPBSD School Board informal dinner meeting;
- Planned to attend the upcoming Board of Fisheries meetings;
- Expressed appreciation for the debate at this meeting; noted he hoped the criminal was apprehended.

**J. ADMINISTRATION REPORTS**

1. City Manager – City Manager P. Ostrander reported on the following:
  - Attending the upcoming Board of Fisheries meeting noting two proposals, based on past direction, that he planned to speak to;

**MOTION:**

Council Member Navarre **MOVED** to direct the City Manager and Mayor, if possible, to testify on Proposals 85 and 145, as well as others that might impact the City of Kenai and requested **UNANIMOUS CONSENT**. Council Member Peterkin **SECONDED** the motion.

**VOTE:** There being no objection; **SO ORDERED**.

Additionally, the manager reported on the following:

- Met with two residents regarding a Return of the Reds Festival on June 6<sup>th</sup>;
  - Noted continued work on a fleet replacement plan;
  - Noted continued work on negotiating airline operating agreements;
  - Noted the operation agreement for the Fire Training Center would need to be renegotiated after renovations;
  - Noted work on the Capital Improvement Project list and an upcoming work session for introduction of the list;
  - Noted more clarity expected on February 19 regarding the Bluff Erosion Project after decisions from the Office of Management and Budget and meetings with the Alaska District and federal delegation.
2. City Attorney – No report.
  3. City Clerk – City Clerk J. Heinz noted an upcoming conference. Also noted ongoing meetings with the Kenai Peninsula Borough Clerk and City Clerks around the Peninsula regarding elections; a consultant was performing a feasibility study for the borough.

**K. ADDITIONAL PUBLIC COMMENT**

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

Duane Bannock led the room in singing Happy Birthday to Council Member Knackstedt.

Leslie Byrd thanked the Council for their vote and invited them to ally trainings.

Carol Freas noted the upcoming pie auction for Kenai Senior Connection.

2. Council Comments

Council Member Pettey – noted she was thankful to have raised her family in the community and noted two memorial services attended.

Council Member Knackstedt expressed appreciation for Joanna Hollier's Celebration of Life service.

Council Member Navarre noted he attended Joanna Hollier's Celebration of Life service and expressed gratitude for the first generation of Kenai.

Council Member Glendening noted he also attended Joanna Hollier's Celebration of Life service.

Council Member Peterkin expressed it was an honor to live in this community.

Vice Mayor Molloy agreed with being grateful to live in the community.

L. **EXECUTIVE SESSION** – None.

M. **PENDING ITEMS** – None.

N. **ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 9:48 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of February 5, 2020.

---

Jamie Heinz, CMC  
City Clerk

**Item Attachment Documents:**

1. **\*Action/Approval** - Bills to be Ratified. (Administration)

**PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION  
COUNCIL MEETING OF: FEBRARY 19, 2020**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPARTMENT</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
PERS	PERS	VARIOUS	LIABILITY	98,326.99
INTEGRITY JANITORIAL	JAN. SERVICE AT CITY HALL	NON-DEPARTMENTAL	REPAIR & MAINTENANCE	1,389.00
PRECIOUS JANITORIAL	JAN. SERVICE AT LIBRARY	LIBRARY	REPAIR & MAINTENANCE	2,795.00
PRECIOUS JANITORIAL	JAN. SERVICE AT TERMINAL	AIRPORT	REPAIR & MAINTENANCE	4,495.00
PRECIOUS JANITORIAL	JAN. SERVICE AT POLICE	POLICE	REPAIR & MAINTENANCE	978.00

**INVESTMENTS**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>MATURITY DATE</b>	<b>AMOUNT</b>	<b>Effect. Int.</b>
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**Item Attachment Documents:**

- 2. **\*Action/Approval** - Purchase Orders Over \$15,000. (Administration)

PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL  
COUNCIL MEETING OF: FEBRUARY 19, 2020

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
DIVINING POINT LLC	MARKETING SCOPE OF WORK	VISITOR CENTER	PROFESSIONAL SERVICES	22,124.00

INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
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www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Paul Ostrander, City Manager  
**DATE:** February 12, 2020  
**SUBJECT:** **Purchase Orders over \$15,000**

---

The purpose of this memo is to request approval for a purchase order over \$15,000 for the purchase of tourism and marketing services for the City.

Through a competitive proposal process, the City selected Divining Point, LLC, for Tourism and Marketing Services. Resolution No. 2019-46 authorized the City Manager to execute a term agreement with Divining Point, LLS for three years beginning July 1, 2019 with the option to extend for two successive one-year terms. The agreement between the City and Divining Point, LLC is managed through the City Manager's office and each project is negotiated separately with Divining Point, LLC, within budgeted amounts and no minimum quantity of work is guaranteed.

Additional work to promote Kenai as the Best Place to Alaska requires additional funds in the amount of \$4,999 beyond the \$35,000 dollars budgeted, the City Manager has worked with Divining Point, LLC to establish a marketing plan which includes video, mini videos, photos, public relations, social media, and event promotion in Kenai.

Funding for this purchase is provided for within the current budget, in the Visitor Center Professional Services account in the amount of \$22,124.00 for the purchase of tourism and marketing services for the City.

Approval of this purchase is respectfully requested, thank you for your consideration.



**Item Attachment Documents:**

3. **\*Action/Approval** - Non-Objection to the Renewal of Liquor Licenses for New Peking Restaurant and Fraternal Order of Eagles. (City Clerk)



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Telephone: (907) 283-7535 | Fax: (907) 283-3014  
[www.kenai.city](http://www.kenai.city)

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Jamie Heinz, City Clerk  
**DATE:** February 11, 2020  
**SUBJECT:** **Liquor License Renewals**

---

The following establishments submitted an application to the Alcohol and Marijuana Control Office for renewal of their liquor licenses:

- Jennifer Lee D/B/A New Peking Restaurant
- Fraternal Order of Eagles #3525 D/B/A Fraternal Order of Eagles #3525

Pursuant to KMC 2.40, a review of City accounts has been completed on the applicants and they have satisfied all obligations to the City. With the approval of Council, a letter of non-objection to the liquor license renewals will be forwarded to the ABC Board and the applicants.

Your consideration is appreciated.





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: December 31, 2019

RE: **Liquor License Renewal**

---

The Alcoholic Beverage Control Board has sent notification that the following applicant has applied for renewal of their Liquor License #3239:

Applicant: Jennifer Lee  
D/B/A: New Peking Restaurant

*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** DR **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** rw **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** wla **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** MM **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** JS **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: 2/10/2020 gjs



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Community,  
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE  
550 West 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
Main: 907.269.0350

December 27, 2019

City of Kenai

Kenai Peninsula Borough

Via Email: [jblankenship@kpb.us](mailto:jblankenship@kpb.us) ; [Dhenry@kpb.us](mailto:Dhenry@kpb.us) ; [JRodgers@kpb.us](mailto:JRodgers@kpb.us) ; [SNess@kpb.us](mailto:SNess@kpb.us) ;  
[joanne@borough.kenai.ak.us](mailto:joanne@borough.kenai.ak.us) ; [tshassetz@kpb.us](mailto:tshassetz@kpb.us) ; [jheinz@kenai.city](mailto:jheinz@kenai.city)

**Re: Notice of 2020/2021 Liquor License Renewal Application**

License #	DBA	License Type
3239	New Peking Restaurant	Restaurant/Eating Place

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,

Glen Klinkhart, Director

[amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov)





Alaska Alcoholic Beverage Control Board

Restaurant or Eating Place License

Form AB-17a: 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 restaurant or eating place liquor license that 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:	Jennifer Lee	License #:	3239
License Type:	Restaurant/Eating Place		
Doing Business As:	New Peking Restaurant		
Premises Address:	145 S Willow Street		
Local Governing Body:	City of Kenai (Kenai Peninsula Borough)		
Community Council:	None		

Mailing Address:	145 S Willow St.		
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:	Jennifer Lee	Contact Phone:	907-283-462
Contact Email:	jnjyoolee@yahoo.com		

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:		Contact Phone:	
Contact Email:			

AMCO  
DEC 16 2019





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: [X] applicant [ ] affiliate

Form with fields: Name (Jennifer Lee), Contact Phone (907)283-4662, Mailing Address (145 S. Willow St), City (Kenai), State (AK), ZIP (99611), Email (jnjyoolee@yahoo.com)

This individual is an: [ ] applicant [ ] affiliate

Empty form with fields: Name, Contact Phone, Mailing Address, City, State, ZIP, Email

Section 4 - Alcohol Server Education

Read the line below, and then sign your initials in the box to the right of the statement:

Initials

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.

[Handwritten initials: Lee]

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.

[X] [X]

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.

[ ] [ ]

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.

[ ] [ ]





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.

Jee

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 (ABC) Board.

Jee

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.

Jee

I am submitting as part of this application a completed copy of Form AB-33: Restaurant Receipts Affidavit, to provide evidence to the ABC Board that this establishment met the food sales requirement set forth in AS 04.11.100(e).

Jee

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.

Signature of licensee

Jennifer Lee

Printed name of licensee

Signature of Notary Public

Notary Public in and for the State of Alaska

My commission expires: 05/08/2021

Subscribed and sworn to before me this 13 day of December, 2019.

Seasonal License?  Yes  No

If "Yes", write your six-month operating period: \_\_\_\_\_

License Fee:	\$ 600.00	Application Fee:	\$ 300.00	TOTAL:	\$ 900.00
Miscellaneous Fees:					
GRAND TOTAL (if different than TOTAL):					





# Office of the Borough Clerk

144 North Binkley Street, Soldotna, Alaska 99669 • (907) 714-2160 • (907) 714-2388 Fax

Johni Blankenship, MMC  
Borough Clerk

12/30/2019

**Sent via email:** [jheinz@kenai.city](mailto:jheinz@kenai.city)

Kenai City Hall  
City of Kenai

RE: Non-Objection of Application

Licensee/Applicant	:	L&K Enterprises LLC
Business Name	:	New Peking and Sushi
License Type	:	Restaurant/Eating Places
License Location	:	145 S Willow Street, City of Kenai
License No.	:	3239
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

cc: [jnyoolee@yahoo.com](mailto:jnyoolee@yahoo.com); [jheinz@kenai.city](mailto:jheinz@kenai.city); [DCooper@kpb.us](mailto:DCooper@kpb.us); [SNess@kpb.us](mailto:SNess@kpb.us)





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: January 16, 2020

RE: **Liquor License Renewal**

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The Alcoholic Beverage Control Board has sent notification that the following applicant has applied for renewal of their Liquor License #337:

Applicant: Frat. Order of Eagles #3525  
D/B/A: Frat Order of Eagles #3525

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** DR 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** JK 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** SJ 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** WLA 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** MM 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** JS 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: 2/10/2020 gjs



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Community,  
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE  
550 West 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
Main: 907.269.0350

January 15, 2020

City of Kenai

Kenai Peninsula Borough

Via Email: [jblankenship@kpb.us](mailto:jblankenship@kpb.us) ; [Dhenry@kpb.us](mailto:Dhenry@kpb.us) ; [JRodgers@kpb.us](mailto:JRodgers@kpb.us) ; [SNess@kpb.us](mailto:SNess@kpb.us) ;  
[joanne@borough.kenai.ak.us](mailto:joanne@borough.kenai.ak.us) ; [tshassetz@kpb.us](mailto:tshassetz@kpb.us) ; [jheinz@kenai.city](mailto:jheinz@kenai.city)

**Re: Notice of 2020/2021 Liquor License Renewal Application**

337	Frat Order of Eagles #3525	Club
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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](mailto: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:	Frat. Order of Eagles #3525	License #:	337
License Type:	Club		
Doing Business As:	Frat Order of Eagles #3525		
Premises Address:	5765 Spur Hwy		
Local Governing Body:	City of Kenai (Kenai Peninsula Borough)		
Community Council:	None		
Mailing Address:	5765 Kenai Spur Hwy		
City:	Kenai	State:	Alaska 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:	Brett J. Holt	Contact Phone:	907-283-4938
Contact Email:	foe3525@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:		Contact Phone:	
Contact Email:			





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 licenses 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 visting the following site: https://www.commerce.alaska.gov/cbp/main/search/entities

Alaska CBPL Entity #: 12431 D

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.

Boag

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: Norman Holt
Title(s): President
Phone: 907-283-4938
% Owned: 0
Mailing Address: 5765 Kenai Spur Hwy
City: Kenai
State: Alaska
ZIP: 99611

Name of Official: Michael Winter
Title(s): Vice President
Phone: 907-283-4938
% Owned: 0
Mailing Address: 5765 Kenai Spur Hwy
City: Kenai
State: Alaska
ZIP: 99611

Name of Official:
Title(s):
Phone:
% Owned:
Mailing Address:
City:
State:
ZIP:





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 visiting the following site: https://www.commerce.alaska.gov/cbp/main/search/entities

Alaska CBPL Entity #: 124310

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.

BMG

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: Brett Holt
Title(s): Trustee + Secretary
Phone: 907-283-4938
% Owned: 0
Mailing Address: 5765 Kenai Spur Hwy
City: Kenai State: Alaska ZIP: 99611

Name of Official: Pat Malone
Title(s): Trustee Affiliate
Phone: 907-283-4938
% Owned: 0
Mailing Address: 5765 Kenai Spur Hwy
City: Kenai State: Alaska ZIP: 99611

Name of Official: Kelly Bookey
Title(s): Trustee Affiliate
Phone: 907-283-4938
% Owned: 0
Mailing Address: 5765 Kenai Spur Hwy
City: Kenai State: Alaska ZIP: 99611



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

Form with fields: Name, Contact Phone, Mailing Address, City, State, ZIP, Email

This individual is an: [ ] applicant [ ] affiliate

Form with fields: 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: Initials

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.

[Handwritten 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. [X] [X]

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. [ ] [ ]

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. [ ] [ ]





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: [X]

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: [X]

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.

[Signature]

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.

[Signature]

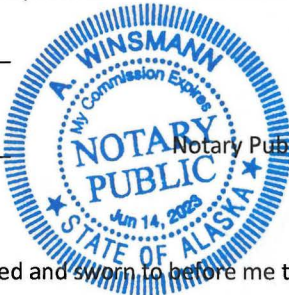
I certify on behalf of myself or of the organized entity that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.

[Signature]

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.

[Signature] Signature of licensee

Brett J. Holt Printed name of licensee



[Signature] Signature of Notary Public

Notary Public in and for the State of Alaska

My commission expires: June 14 2023

Subscribed and sworn to before me this 15th day of November, 2023.

Seasonal License? Yes [ ] No [X]

If "Yes", write your six-month operating period: \_\_\_\_\_

Table with 6 columns: License Fee (\$1200.00), Application Fee (\$300.00), TOTAL (\$1500.00), Miscellaneous Fees, GRAND TOTAL (if different than TOTAL)





# Office of the Borough Clerk

144 North Binkley Street, Soldotna, Alaska 99669 • (907) 714-2160 • (907) 714-2388 Fax

Johni Blankenship, MMC  
Borough Clerk

January 27, 2020

**Sent via email:** jheinz@kenai.city

Kenai City Hall  
City of Kenai

RE: Non-Objection of Application

Licensee/Applicant	:	Frat Order of Eagles #3525
Business Name	:	FRATERNAL ORDER OF EAGLES
License Type	:	Club
License Location	:	5765 Kenai Spur Highway, Kenai, AK 99611, City of Kenai
License No.	:	337
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: foe3525@alaska.net; jheinz@kenai.city; DCooper@kpb.us; SNess@kpb.us

**Item Attachment Documents:**

4. **\*Ordinance No. 3107-2020** - Increasing Estimated Revenues and Appropriations in the Congregate Housing Funds for Costs in Excess of Budgeted Amounts. (Administration)



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3107-2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE CONGREGATE HOUSING FUND FOR COSTS IN EXCESS OF BUDGETED AMOUNTS.

WHEREAS, Vintage Pointe Manor was constructed in 1992; and,

WHEREAS, emergency and non-budgeted repairs have been in excess of the FY20 Budget for Repair and Maintenance; and,

WHEREAS, the amount of \$15,000 is needed to ensure funds are available through the remainder of FY20; and,

WHEREAS, funds are available in the retained earnings of the Congregate Housing Enterprise Fund; and,

WHEREAS, proper maintenance and repairs are essential to the Facility's long-term life and is in the best interest of the residents of Vintage Pointe Manor and the City of Kenai.

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

**Section 1.** That estimated revenues and appropriations be increased as follows:

Congregate Housing Fund

Increase estimated revenues –	
Appropriation of Retained Earnings	<u>\$15,000</u>
Increase appropriations –	
Small Tools	\$ 2,000
Professional Services	3,000
Repair & Maintenance	<u>10,000</u>
	<u>\$15,000</u>

**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 upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4<sup>th</sup> day of March, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR

ATTEST:

\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

Approved by Finance: \_\_\_\_\_



Introduced: February 19, 2020  
Enacted: March 4, 2020  
Effective: March 4, 2020





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[www.kenai.city](http://www.kenai.city)

**MEMORANDUM**

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Kathy Romain, Senior Center Director  
**DATE:** February 9, 2020  
**SUBJECT:** **Ordinance No. 3107-2020 – Vintage Pointe Repair & Maintenance**

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This memo is to request approval of the Ordinance No. 3107-2020 – Vintage Pointe Repair & Maintenance Supplemental Funding.

Throughout FY20, there has been an increase in emergency repairs for Vintage Pointe with respect to the boiler and the dry sprinkler system. In addition to these, we have also had a significant amount of apartment turnarounds due to major life occurrences. Each of these issues have weighed heavily on our FY20 Budget and will require supplemental funding from the Congregate Housing Enterprise Fund to cover the current fiscal year.

I respectfully request your approval on Ordinance No. 3107-2020.



**Item Attachment Documents:**

5. **\*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)



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3108-2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, 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.

WHEREAS, Article 5, Section 5-11 of the City's Charter, requires the proceeds from the Sale of all City owned, non-trust lands be deposited in a separate fund, the General Land Sale Permanent Fund, and allows for the investment earnings to be used for any lawful purpose but prohibits the expending of the proceeds from land sales; and,

WHEREAS, the General Land Sale Permanent Fund's 2019-year ending balance of \$3,430,972 was an increase of \$500,494 from the December 31, 2018 balance. The allowable transfer to the General Fund for operations is limited to 4% annually and excess earnings are reserved to supplement spending when portfolio earnings are less than the 4% limit in any given year; and,

WHEREAS, 2019 portfolio earnings exceeded the 4% spending limit after accounting for inflation, thus the 2019 annual transfer is limited to \$137,239 (4% of the Fund's value) and all other earnings will be credited to the earnings reserve; and,

WHEREAS, after deducting the allowable transfer, the earnings reserve at calendar year end was \$379,000; and,

WHEREAS, the FY2020 budgeted amount for the General Land Sale Permanent Fund was \$124,252 meaning the actual will be \$12,987 more than budgeted and increasing the transfer amount to the maximum amount is in the City's best interest.

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

**Section 1.** That the estimated revenues and appropriations in the General Land Sale Permanent Fund be increased as follows:

General Land Sale Permanent Fund:	
Increase Estimated Revenues –	
Investment Earnings	<u>\$12,987</u>
Increase Appropriations –	
Transfer to General Fund	<u>\$12,987</u>

**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 upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4<sup>th</sup> day of March, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR

ATTEST:

\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

Approved by Finance: \_\_\_\_\_

Introduced: February 19, 2020  
Enacted: March 4, 2020  
Effective: March 4, 2020



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Terry Eubank, Finance Director

**DATE:** February 11, 2020

**SUBJECT:** **Ordinance No. 3108-2020 – GLSPF Appropriation Increase**

The purpose of this memo is to recommend passage of Ordinance 3108-2020. This Ordinance will increase the authorized transfer amount from the General Land Sale (GLSPF) to the City's General Fund for FY20. This increased amount is possible because earnings were higher than projected for calendar year 2019.

### GLSPF

Pursuant to KMC 7.30.020 (a) (5) the annual transfer from the GLSPF shall be limited to the lesser of the cumulative earnings at calendar year end for the fund or four percent (4%) of the fund's fair market value as of December 31st of each year. "Cumulative earnings" is defined as the market value at calendar year end minus the fund's inflation adjusted principal balance.

The December 31, 2019 market value of the GLSPF was \$3,430,972 with cumulative earnings of \$516,239.

#### December 31, 2019

Portfolio Value	\$3,430,972
4% of Portfolio Value	\$137,239
Cumulative Earnings	\$516,239

FY20 Allowable Transfer	\$137,239
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The FY20 budgeted transfer amount was \$124,252. This Ordinance will increase the budgeted transfer amount to the maximum value of \$137,239, an increase of \$12,987.

Your support for Ordinance 3108-2020 is respectfully requested.



**Item Attachment Documents:**

6. **\*Ordinance No. 3109-2020** - Authorizing the City Manager to Reimburse Annual Leave Used by Firefighter Scott Summers for Attending a Paramedic Internship Program. (Administration)



Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3109-2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING THE CITY MANAGER TO REIMBURSE ANNUAL LEAVE USED BY FIREFIGHTER SCOTT SUMMERS FOR ATTENDING A PARAMEDIC INTERNSHIP PROGRAM.

WHEREAS, Firefighter Scott Summers recently completed his paramedic certification program; and,

WHEREAS, as part of the certification process, Firefighter Scott Summers expended approximately \$20,000 of his own funds and used approximately 336 hours of annual leave to attend a paramedic internship at Cypress Creek EMS in Houston, Texas from October 2, 2019 through November 14, 2019; and,

WHEREAS, the City benefits from having certified paramedics in the Fire Department providing a higher level of service; and,

WHEREAS, as a certified paramedic, Firefighter Summers receives additional compensation; and,

WHEREAS, it is in the best interests of the City to reimburse Firefighter Scott Summers leave account, which he used to attend the paramedic internship; a period of time in which 336 hours of annual leave were used; and,

WHEREAS, an ordinance is necessary to accomplish this as the City Code does not contain a specific method to accomplish such reimbursement of leave time.

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

**Section 1.** Form: That this is a non-code ordinance.

**Section 2.** Authorizing the Reimbursement of Leave: That the City Manager is authorized to enter into an agreement to reimburse 336 hours of annual leave utilized by Firefighter Scott Summers for attending a paramedic internship program over a period of three years.

**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 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4<sup>th</sup> day of March, 2020.

\_\_\_\_\_  
BRIAN GABRIEL SR., MAYOR

ATTEST:

\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

Introduced: February 19, 2020  
Enacted: March 4, 2020  
Effective: \*, 2020





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Jeff Tucker, Fire Chief

**DATE:** February 11, 2020

**SUBJECT:** Ordinance No. 3109-2020 – Reimburse Annual Leave

The purpose of this memo is to provide additional information in support of the referenced ordinance. Firefighter Scott Summers participated in a pilot offering of the Paramedic program through the Kenai Peninsula College. What was unique about this program is that it allowed fulltime EMT III's to enroll without the perquisites typically required for the program and allowed the student to complete a quarter of their internship at their home department. This reduced the leave that a full-time employed EMT III would be required to take to complete the program.

The program consisted of classroom sessions, ride-a-longs, labs, hospital clinical rotations and culminated with a 6 week field internship. The field internship took place at Cypress Creek EMS in Houston, Texas. Firefighter Summers spent nearly \$20,000 out of pocket for the 1,600 hour course and utilized 336 hours of personal leave time.

Firefighter Summers has completed the program and as of January 14th, 2020 is a Nationally Registered Paramedic.

Kenai Fire Department firefighters are not required to become paramedics and are not eligible for a leave of absence with pay under KMC 23.40.060 to attend paramedic school since it is not a requirement of their position. However, in recognition of professional development, personal time, and effort of the individual to achieve the same, a recognition entitlement is paid to Fire Department employees who obtain a paramedic certification at the rate of \$1,500 per year, which is only \$500 more per year than the employee would receive as qualification pay as an EMT III.

Reimbursing leave taken to attend paramedic is typical of what other similarly-situated departments are doing nation-wide. Based upon the recommendation of Fire Chief Jeff Tucker, the attached Ordinance provides for the City Manager to enter into an agreement with Scott Summers to be reimbursed for the leave he utilized to attend paramedic training in equal



reimbursements over a period of three years. Should Firefighter Summers employment with the City end prior to the reimbursement being complete, the reimbursement would not continue.

If City Council enacts Ordinance 3109-2020, the City would reimburse Firefighter Summers for the 336 hours of personal leave time over a 3 year period.

Thank you for your consideration.

**Item Attachment Documents:**

7. **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)



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

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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



*"Village with a Past, City with a Future"*

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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**

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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.**

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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.] **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.*



*"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:** 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.

**Item Attachment Documents:**

8. **Action/Approval** – Second Amendment to Agreement for Guardian Security Systems, Inc. (Administration)



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THRU:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** February 11, 2020  
**SUBJECT:** **Second Amendment to Agreement for Security Guard Services**

---

On March 1, 2016, Guardian Security Systems, Inc., entered into an Agreement with the City for Security Guard Services at the Airport for a period of three (3) years with the option to extend for two (2) successive one-year terms by mutual written consent of the City and Contractor.

The Contractor has requested to renew for the second and final one-year term under the same terms and conditions. The City has a current Certificate of Insurance on file and the Airport is satisfied with Guardian's performance.

Airport Commission reviewed the request at the January 9, 2020 meeting and unanimously recommended that Council approve the request to renew.

Thank you for your consideration.

Please contact me if you have any questions.



## **SECOND EXTENSION TO KENAI MUNICIPAL AIRPORT AGREEMENT FOR AIRPORT SECURITY GUARD SERVICES**

This Second Extension to the Kenai Municipal Airport Agreement for Airport Security Guard Services is made as of March 1, 2020, by and between the City of Kenai (Owner), a municipal corporation whose address is 210 Fidalgo Avenue, Kenai, Alaska 99611, and Guardian Security Systems, Inc. (Contractor), an Alaska corporation whose address is 2600 Seward Highway, Anchorage, Alaska, 99503.

### **RECITALS**

Effective March 1, 2016, the City entered into an Agreement for Airport Security Guard Services with Guardian Security Systems, Inc., of Anchorage for Airport Security Guard Services for the facilities at the Kenai Municipal Airport terminal building, vehicle parking lots, aircraft tie down areas, float plane basin, ski strip areas, the airport perimeter fence, the Airport Operations Facility, and the Air Traffic Control Tower.

The City and Guardian Security Systems, Inc. wish to extend the Agreement to extend under the same terms and conditions.

#### **The City and Guardian Security Systems, Inc. agree as follows:**

1. Pursuant to Section II, of the Agreement, Term, providing the option of the parties to extend the Agreement by mutual written consent, the Agreement term is extended so that the Agreement will end on February 28, 2021.
2. The parties agree that this Second Extension to the Agreement and all obligations under this extension shall be effective as of March 1, 2020, regardless of the date of signatures indicated below.
3. Except as expressly modified or stated herein, all other terms and conditions of the Agreement remain in full force and effect.

**CITY OF KENAI**

**GUARDIAN SECURITY  
SYSTEMS, INC.**

By: \_\_\_\_\_  
Paul Ostrander  
Its: City Manager

By: \_\_\_\_\_  
Michael Heath  
Its: Vice President

**ATTEST:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

STATE OF ALASKA )  
 )ss  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Paul Ostrander, City Manager of the City of Kenai, an Alaska municipal corporation, on behalf of the City.


\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: \_\_\_\_\_

STATE OF ALASKA )  
 )ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY the foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Michael Heath, Vice President of Guardian Security Systems, Inc., an Alaska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Scott M. Bloom  
City Attorney

**Item Attachment Documents:**

1. City Manager



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Mary Bondurant, Airport Manager

**DATE:** February 10, 2020

**SUBJECT:** **February Mid-month Report**

---

2018 Terminal Rehabilitation Project – Construction: Things are rapidly changing in the terminal with the install of the lights, ceiling, carpet and flooring. Tenants are also seeing the install of ceiling tiles in their offices.

2019 Alaska Fire Training Facility Rehabilitation & Acquire Aircraft Rescue and Firefighting Trucks (ARFF) – The Building work still continues with the replacement of the interior lighting and boilers will be installed as time allows. The Training equipment concrete work continues under a tent with plans to hook up the SAFT equipment. Project is scheduled for completion in April 2020.

### In-house Activities –

Airport Operations – Operations staff continues to work diligently removing the snow and ice received this winter. The Airport has received many compliments and much appreciation from the pilots for their efforts.

Airport Administration – Airport is working with City Administration on the FY21 budget, development of the new City-wide Land Management Plan, Airport's Capital Improvement Program, Efficiencies Report, Airline Operating Agreement, and Management Agreement for the Alaska Regional Fire Training Facility.

March 4 & 5, 2020 – Airport Manager and Assistant will be attending the SOA/DOT & PF 17<sup>th</sup> Annual DBE & Contractors Conference in Anchorage.

March 16 & 17, 2020 – The TSA-mandated annual inspection at the Kenai Airport is scheduled for March. The Airport Security Plan, Emergency Control Plan, and Vetting Process will be reviewed in addition to inspections at the airlines, Kenai Police Department, and airfield perimeter tour.







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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:** February 3, 2020  
**SUBJECT:** **January 2020 Monthly Report**

This month the Kenai Animal Shelter took in **87** animals. Animal intake and disposition:

DOGS:				
	INTAKE	<b>29</b>	DISPOSITION	<b>25</b>
	Waiver	9	Adopted	5
	Stray	17	Euthanized	1
	Impound	0	Claimed	7
	Protective Custody	0	Field Release	0
	Quarantine	1	Transferred	12
	Other Intakes	2	Other Dispositions	0
CATS:				
	INTAKE	<b>53</b>	DISPOSITION	<b>39</b>
	Waiver	32	Adopted	13
	Stray	19	Euthanized	4
	Impound	0	Claimed	1
	Protective Custody	0	Field Release	0
	Quarantine	0	Transferred	21
	Other Intakes	2	Other Dispositions	0
OTHER ANIMALS:				
	INTAKE	<b>5</b>	DISPOSITION	<b>2</b>
	Rabbit	4	Hamster	1
	Hamster	1	Rabbit	1



DOA:	<b>11</b>	OTHER STATISTICS:	
Dog	6	Licenses (City of Kenai Dog Licenses)	75
Cat	5	Microchips (Dog and Cat)	6

- 1** Animal dropped with After Hours (days we are closed but cleaning and with KPD)
- 40** Animals are *known* borough animals
- 22** Animals are *known* City of Kenai
- 4** Animals are *known* City of Soldotna
- 0** Animals from unknown location
- 16** Field Investigations & patrols
- 39** Volunteer Hours Logged
- 1** Citations
- 0** Educational Outreach

Statistical Data:

- 55** 2018 YTD Intakes
- 73** 2019 YTD Intakes
- 87** 2020 YTD Intakes





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Jeff Tucker, Fire Chief

**DATE:** February 11, 2020

**SUBJECT:** **Fire Department Mid-Month Report – January**

In January the department responded to 142 calls for service as compared to 168 calls in January 2019. This is a -15.5% change compared to January of 2019. This is a more historically typical call volume for January.

However this time of year is extremely busy with training activities and events.

- Paramedic Refresher Training - 30 hours – 9 attendees
- EMT III Refresher Training - 24 hours – 9 attendees
- EMT III initial training course - 48 hours – Firefighter Mitch Miller
- Company Officer I Training Course - 40 hours. This is the first week of a two week program – Firefighters Luecker, Voss, and Oden
- NFPA 25 and 72 Inspection Testing and Maintenance Requirements related to ICC - 8 hours – Fire Marshal Hamilton
- Alaska Fire Chiefs Association Leadership Summit - 32 hours – Fire Chief Tucker and Deputy Chief Prior
- Annual ENSTAR training - 8 hours – All Staff
- Car Seat Safety Inspection Event

Fire Chief Jeff Tucker has announced his retirement after 38 years in the Fire and EMS profession. A retirement party will be held at KFD Station 1 on March 20<sup>th</sup>, 2020 from 11am – 1pm.





## FINANCE DEPARTMENT MID-MONTH REPORT

February 2020

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Terry Eubank, Finance Director  
**DATE:** February 11, 2020  
**SUBJECT:** **Finance Department Activity**

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During the past month much of the department's focus has been on the preparation of the FY2020 Budget. Attached is the FY2020 budget preparation calendar. The Council is tentatively scheduled to receive its first draft of the FY2020 budget on April 1<sup>st</sup>. There is much work to be done by all City departments in preparing the FY2021 budget over the next couple of months.

The department has also been working on the amendments to code for changes to the Permanent Fund sections of the Kenai Municipal Code discussed at the February 5<sup>th</sup> Council meeting. Upon completion of the analysis, introduction of an ordinance for these changes may be made at the March 4<sup>th</sup> Council meeting.

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attachment



## FY 2021 BUDGET PREPARATION CALENDAR

Date	Facilitator	Action
January 17	Finance Director	Revenue & COLA estimates to City Manager
February 1	Department Heads	Overtime, new positions, and reclassification requests to City Manager.
February 6	City Manager	Personnel requests forwarded for analysis to Human Resource Director.
February 6	City Manager & Finance Director	Budget guidance and submission requirements provided to department heads with preparation packets.
February 15	Human Resource Director	Personnel requests forwarded for analysis to Finance Director.
February 21	Department Heads	Department operational budget submission due to Finance.
February 21	Department Heads	Department Special Project requests due to Finance.
February 21	Finance Director	Personnel budget submitted to City Manager
February 28	City Manager	City Manager approval of personnel budget requests.
March 6	Finance Director	Consolidated operational budget submitted to City Manager.
March 6	Finance Director	Consolidated Special Project requests submitted to City Manager.
March 9-11 March 23-25	City Manager, Finance Director & Department Heads	Departmental budget meetings with City Manager.
March 10	Finance Director & City Manager	Budget goals public meeting
April 1	Finance Director	Draft budget distributed to Council.
April 13 – May 6	City Manager, Finance Director & Department Heads	Budget work sessions. Meeting dates to be determined by Council.
April 27	Finance Director	Budget Ordinance to City Clerk for May 6 Council packet.
May 6	Finance Director	Introduction of Budget Ordinance.
May 12	Finance Director	Publish notice of public hearing to adopt FY21 Budget.
May 12	Finance Director	Mill Rate Resolution to City Clerk for May 20 Council packet.
<b>May 20</b>	<b>Finance Director</b>	<b>Public hearing and adoption of Budget Ordinance</b>
May 20	Finance Director	Public hearing and approval of Mill Rate Resolution (Must be provided to KPB by 6/15).
June 26	Finance Director	Publication & distribution of Budget document.



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## MEMORANDUM

**TO:** Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Ryanna Thurman  
**DATE:** February 4, 2020  
**SUBJECT:** Library Mid-Month Report

<b>January Circulation Figures</b>
------------------------------------

Adult Fiction	<b>1,147</b>	Internet Access	<b>689</b>
Adult Non-Fiction	<b>1,260</b>	iPad use	<b>139</b>
Young Adult Fiction	<b>197</b>	Games	<b>15</b>
Periodicals	<b>34</b>	Room Booking	<b>161</b>
Juvenile Fiction	<b>425</b>	Music	<b>41</b>
Juvenile Non-Fiction	<b>475</b>	DVDs	<b>2,497</b>
Easy Fiction	<b>1,014</b>	Audio books	<b>53</b>
Easy Non-Fiction	<b>229</b>	Miscellaneous	<b>95</b>
Interlibrary Loan	<b>4</b>	Computer Programs	
Books – Consortium	<b>238</b>	Media – Consortium	<b>189</b>
<b>Total Print</b>	<b>5,023</b>	<b>Total Non-Print</b>	<b>3,879</b>

	<b>Total Circulation 1/20</b>	<b>8,902</b>	<b>Downloadable Audio</b>	<b>622</b>
	<b>Total Circulation 1/19</b>	<b>7,242</b>	<b>Downloadable EBooks</b>	<b>528</b>
	<b>% change</b>	<b>+22.9%</b>	<b>% change in downloadable from 2019</b>	<b>-17.4%</b>
	<b>In-House circulation</b>	<b>327</b>		





**Library Door Count..... 7,247**

**Income**

Fines	\$ 336.09
Xerox	128.55
Lost/Damaged	61.94
Test Proctoring Fee	0.00
Printing	278.50
<u>Other</u>	
<b>Total income</b>	<b>\$ 805.08</b>



**Library Cards Issued                      JANUARY**

Homer	0
Kasilof	2
Kenai	20
Nikiski	14
Non-Resident	1
Other Peninsula	3
Soldotna	6
<u>Sterling</u>	<u>0</u>
<b>Total</b>	<b>46</b>

**Programs**

In January, 7 volunteers worked about 43 hours. There were 21 children's programs with 311 total that participated, and 10 adult and family programs with 78 participants.



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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:** February 11, 2020

**SUBJECT:** **Mid-month Activity Report**

A total of 105.25 hours were reserved at the multi-purpose facility compared to 140.25 last year during this time. The decline in hours is attributable to the sub-zero temperatures that we experienced this past January. The primary user groups to date for the season include the Kenai Peninsula Hockey Association (271.25), Kenai Central High School (109), Queens (46.50), Hockey Club Alaska-Northern Knights (31) and Nikiski Hockey (9) and Palmer High School (1).

Below is a list of recent activities and work accomplishments for the month of January.

- The multi-purpose facility was the co-host facility for the Peninsula Winter Games Invitational Hockey Tournament.
- Kenai Central High School Hockey completed their season with a 4<sup>th</sup> place finish at the ASAA DII State Hockey Tournament.
- 46.0 hours were spent grooming the Kenai Nordic Trails for a total of 182 miles groomed. XC Ski Boroughs will be held at Tsalteshi Trails February 15 and the season will conclude with the State Tournament beginning February 20. The Kenai Middle School program comes to a close February 29 with the Borough Tournament held in Homer.
- 28.45 hours were spent on sidewalk maintenance (snow removal, ice control, inspections).
- A total of 80.50 hours were spent removing snow from hydrants.
- 5.50 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). Approximately 950 lbs. of trash was removed from the park system in January.
- Department assisted with coordinating photo shoots with Divining Point. Shots included snowshoeing, skiing and kids playing on playground.
- The Recreation Center served a total of 5,289 patrons and 460 youth. The breakdown for the Recreation Center was as follows: Gym (3,593), Weight Room (811), Sauna/Shower (361) and Racquetball Courts (524).







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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Elizabeth Appleby, City Planner  
**DATE:** February 7, 2020  
**SUBJECT:** **Planning and Zoning January 2020 Report**

### Planning and Zoning Commission Agenda Items and Resolutions

- Resolution PZ2020-01 - Recommending the Kenai City Council Adopt Ordinance 3102-2020 to Amend Kenai Municipal Code 14.20.280 Public Hearings and Notifications, to Reduce the Newspaper Posting Requirement
- Resolution PZ2020-02 - Recommending the Kenai City Council Adopt the City of Kenai Hazard Mitigation Plan
- Discussion - 2020 Alaska Planning Conference - Collaborating for Resilient Communities, February 9-11, 2020

### Code Enforcement

1 case was opened in January 2020 for an Abandoned Vehicle and 1 case was opened in January 2020 for a person residing in a recreational vehicle.

### Plans

The Hazard Mitigation Plan adopted by the Kenai City Council by resolution was submitted to FEMA for final review.

### Lands

- The sale of parcels formerly leased to MITAK, LLC (Main Street Tap & Grill) was finalized.
- Three lessees within the Airport Reserve have chosen to convert their lease to the new standard lease form and three additional lessees within the Airport Reserve have inquired about converting to the new standard lease form as of February 12, 2020. The deadline



to request conversion to the new standard lease form for City-owned lands within the Airport Reserve is February 16, 2020 by Ordinance No. 2998-2018.



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**THROUGH:** Paul Ostrander, City Manager

**FROM:** David Ross, Police Chief

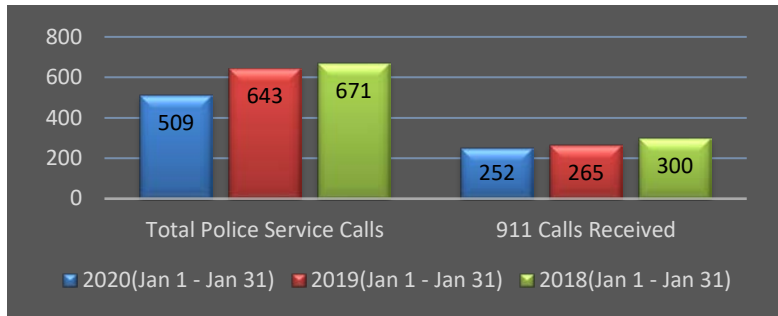
**DATE:** February 7, 2020

**SUBJECT:** **Police & Communications Department Activity – January 2020**

Police handled 509 calls for service in January. Dispatch received 252 9-1-1 calls. Officers made 41 arrests. Traffic enforcement resulted in 151 traffic contacts and 34 traffic citations. There were 8 DUI arrests. Officers investigated 13 motor vehicle crashes. There were four collisions involving moose. There were no collisions involving drugs or alcohol.

January training included: The KPD officer on the SERT team completed two days of training. One officer attended a week of post-traumatic stress training in Anchorage. One officer attended a two day Alaska Highway Safety Office conference in Anchorage. One officer attended a week of Field Training Officer School in Wisconsin. Two officers attended a two day response to active shooter training (ALICE) with the School District. One new officer started the Recertification Academy in Sitka for lateral officers. One dispatcher attended a week long Incident Response to Terrorism class in New Mexico.

A recruitment remains open for one police officer position, and all other positions in the Department have been filled.





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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 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 90% complete to date. *This period final finishes are well under way including installation of the ceilings, light fixtures, stair railings, etc. The flooring is 100% installed. Mechanical systems are nearing completion with balancing and commissioning of equipment underway. Exterior composite panels at the entries are now 100% complete, exterior metal panels are in route by barge from Seattle with installation anticipated to begin 2/24/20. The Project Completion per the contract currently remains at February 20, 2020, metal panel installation will extend into late March, landscaping into May. A pending Change Order will add some time to the contract, we are also considering addressing some of the ongoing existing boiler issues within the project. Boilers were not originally included in the scope of work, however we have struggled with them remaining operational throughout the winter. They are approximately 19 years old. The A/E Team and Contractor have processed roughly 98% of the required submittals, as well as responding to 237 RFIs; 159 Change Requests have been processed with Seven Change Orders executed to date; Original Contract amount of \$10,985,994.00, Change Orders 1-7 total \$1,049,051.18, approximately 9.5% Original Contract. The project is nearing completion and the team continues to work together well. See progress photos below of the wood ceilings at Arrival and the Airline Tenant spaces.*







- 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, 93.75% of which is funded by an FAA Grant. The contract is 48% complete to date. The Design Team and contractor have processed about 80% of required submittals, and have responded to 10 RFIs. The Project is Proceeding Well. *The roofing is 100% complete, light fixtures are 80% complete, mechanical system components are now arriving on site. 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. 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. *The Contractor has started pouring concrete for the new wet deck system and has staged a large tent to provide a heated space for this work. Gas generation equipment has arrived on site. The contract is approximately 30% complete to date, however as equipment is now arriving work completion should pick up speed. The -20+ weather did impact the Contractors schedule however they still appear on schedule for a late March completion.*



- Dock repair – The City Dock received some new damages as a result of the November 30, 2018 Earthquake. *Update: Contract Amendment to Nelson Engineering is pending to complete the revisions to bid documents under the direction of our insurer. Anticipating this project going out for Bid in February 2020 with work taking place May/June 2020.*
- Senior Center Carpet Replacement – This project is now complete, final closeout of paperwork is taking place. Floor-Ever did a nice job and Senior Center staff is pleased with results.



- 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 February 2020.



- Kenai Municipal Airport Crack Seal and Pavement Marking – *This project has now been successfully closed out.*
- 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 10<sup>th</sup>, 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 15<sup>th</sup> 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
  - 3) Health & Life Insurance Benefits Consultant released on 2/3/20 with proposal due on 2/21/20.
  - 4) Contract to use Cranes, Offices & Operating Area at the Boating Facility released on 2/12/20 with bids due on 3/4/20.
  - 5) WWTP RAS/WAS Pump documents are now 100% complete and will be sent out for quotes 2/17/20.
  - 6) Vintage Pointe Boiler Replacement AE Services releasing on 2/17/20.
  - 7) Water, Sewer, Waste Water Professional Engineering Services Term Contract 5 years anticipated release week of 2/17/20.







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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:** February 8, 2020  
**SUBJECT:** **January 2020 Monthly Report**

Congregate Meals Served (Dining Room)	1220
Home Delivered Meals	1498
Volunteer Hours	(24 individuals) = 305
Unassisted Transportation Rides	424
Assisted Transportation Rides	110
Social Security Video Service	16 individuals
Senior Center Rentals	0
Total Event Sign-Ins (through MySeniorCenter)	2021
Total Unduplicated Participants (through MySeniorCenter)	246

The Senior Center Dining Room Flooring Project began this month and with it came much excitement! While daily activities were limited, home and congregare meals were able to be served throughout the project. The Card/Library Room was set up to serve as a makeshift dining room and the kitchen staff created and transported meals buffet style. We were expecting smaller crowds during this time, but instead had full tables almost every day. The seniors loved it and said it felt like they were "picnicking" inside the Senior Center.

The new flooring is beautiful and meets the daily needs of our program. The Dining Room is a multi-purpose room and utilized throughout each day. The Growing Strong Exercise Class meets three mornings a week and has 30-40 individuals participating. Previously, the amount of space available for this activity was confined. This class now has space to move on a level floor without disturbing those around them. They are delighted with the new space!

Thank you to the City of Kenai, the Rasmuson Foundation and a few private sponsors for helping this project come to fruition. Thank you to the City of Kenai Public Works/Building Department and Kenai Parks & Recreation Department for your help in moving furniture all around the Center as we created room for the flooring work.

With the 2018 Atrium Rebuild and the 2020 Flooring Project, the Senior Center Dining Room is a beautiful space for our senior population as they enjoy their retirement days in our beloved State and City.



**Item Attachment Documents:**

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

**PURCHASE ORDERS BETWEEN \$2,500.00 AND \$15,000.00 FOR COUNCIL REVIEW**

**COUNCIL MEETING OF: FEBRUARY 19, 2020**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPT.</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
MY SENIOR CENTER	ANNUAL MAINT. FEE	TITLE III	SOFTWARE	22,000.00
CONNIE'S FLOWERS	FLOWERS FOR CITY PLANTERS	RECREATION	SUPPLIES	10,177.00

**Item Attachment Documents:**

2. Kenai Historical Society - January 2020 Newsletter



January 2020 Newsletter

**Kenai Historical Society**

P.O. Box 1348  
Kenai, Alaska 99611

**Officers:**

President—June Harris  
Vice President—Virginia Walters  
Secretary—Sharon Fisher  
Treasurer—Ron Fullinck

**Board of Directors:**

Jim Glendenning	Joe Harris
Henry Knackstedt	Bill Nelson
Marion Nickelson	Frosty Walters

**PRESERVING HISTORY**

It happens to me from time to time as I meander through my normal daily routines, that something unexpected will come to my attention and consume time and thought that I had not been expecting to spend. As I have become increasingly interested in the history of Kenai over the last four decades, I occasionally run across a little gem of information that puts another piece of the puzzle into place.

Recently there have been two such occasions that answered some questions that I'd been puzzling over for quite a few years. The subject of this month's newsletter is one of them. Agriculture in and around Kenai has generally been a sketchy enterprise due to the weather influenced by proximity to Cook Inlet. Homesteading here was accomplished by some dancing around the requirements and meeting the bare minimums. Few of the attempted crops provided any meaningful revenue for the individuals or the community, unlike the Sterling area, which had greater success due to their warmer summers. Our experience was more like "been there", "done that", and putting the acquired land to other uses, such as subdividing and selling. If you drive off the main roads north of Kenai, however, you can still see some remnants of the attempts that were made. It continues to interest me how early information about the impracticability of agriculture in this area didn't stop people from trying anyway.

**INSIDE THIS ISSUE:**

- PRESERVING HISTORY
- EXPLORING THE HISTORY OF AGRICULTURE IN THE KENAI AREA IN THE LATE 1800s
- JANUARY 2020 MEETING MINUTES
- ANNOUNCEMENTS

KENAI HISTORICAL SOCIETY NEWSLETTER

Written by Sharon Fisher

If you would like to contribute ideas and information to the newsletter, please contact me at 776-8254. I welcome and would entertain any ideas you may have for articles, and would appreciate being contacted if you see errors in the information contained in the newsletter.



As a result of the publication of the following article in the Peninsula Clarion by Matt Browser in the Refuge Notebook section, dated January 10, 2020, I responded by sending the author an article from the Kenai Historical Society that was published in February 2014. I posed the thought to him that as a result of that early exploration of Kenai in 1897-98, the establishment of an agricultural experiment station was perhaps implemented. The two events may not have been related, but the proximity of the dates would certainly suggest otherwise.

## Exploring agriculture of the Kenai, 1897-1898

On June 8, 1897, Dr. Walter H. Evans of the U.S. Department of Agriculture and Benton Killin, a retired lawyer and regent of the Oregon State Agricultural College, set out from Tacoma, Washington, on a steamer bound for Alaska.

Over the next three months they would explore the southern coast of Alaska under orders from U.S. Secretary of Agriculture James Wilson to assess the prospects for agriculture in the territory.

They were to answer 20 questions, beginning with, "What are the most characteristic plants? What edible fruits and roots abound, and how are they utilized? What grasses and forage plants are found in any abundance?"

Evans and Killin steamed along southeast and southern Alaska, stopping at communities along the way. After Prince William Sound they visited Kodiak and Cook Inlet, touching shore on the Kenai Peninsula at Homer, Anchor Point and the mining community of Sunrise City.

In the Cook Inlet region they found only small gardens and livestock endeavors. These were cultivated mainly to provide fresh vegetables and farm products to local villages and mining camps.

At Sunrise City the two parted ways, Killin taking

### MATT BOWSER Refuge Notebook

the Portage to Prince William Sound while Evans steamed on as far as Unalaska before returning to the Lower 48.

In the summer of 1898, in the middle of the Spanish-American War, Evans again traveled to Alaska. This time he focused on the native plants.

He spent weeks in the vicinity of the cannery on the north shore of the Kaslof River in July and August, where he collected many plant specimens. Evans described the topography and plant communities of the dunes, bluffs and lowlands around Kaslof.

Of all the plants that Walter Evans collected while in Alaska, he took a special interest in a birch that was "very common" around

#### Cook Inlet.

"This birch has apparently not been reported before," he wrote. "Whether it proves an undescribed species or an Asiatic form remains to be determined."

To this day, the origin and identity of the birch that Evans later described as the Kenai birch, *Betula kenaica*, remains enigmatic.

In their 1898 and 1899 reports to Congress, Evans,

Killin and others remarked that many vegetables, including peas, beans, cabbage, carrots, turnips, rutabagas, radishes, lettuce, celery, beets and potatoes, grew well in the Cook Inlet region.

They also reported that many wild berries could be harvested and even cultivated. Other than berries and potherbs, they found the only native plants harvested for human consumption were chocolate lilies and beach peas.

At that time haymaking was already taking place annually in Cook Inlet. Canada bluejoint grass was found to be abundant at Homer and Sunrise City, where it was apparently used as hay.

Timothy, alfalfa and oats were grown in Kenai. White clover, red clover and alfalfa had been established as livestock forage in Kaslof.

We tend to think of weeds as having been introduced recently, but Evans noted that non-native plants were already spreading from settlements in Alaska as early as 1897.

Killin wrote, "White clover and Kentucky blue grass do well all over the region visited and have become thoroughly established. Whenever the native growths are killed out, these come in."





Haymaking in Kenai, 1901.

Chickweeds, sheep's sorrel, pineapple weed and corn spurry were listed as problems in gardens. Non-native dandelions and annual bluegrass were also documented.

The key finding of these agricultural investigations was that southern Alaska did have potential for food production from both wild plants and agriculture. The authors of the 1898 and 1899 reports reiterated a desire to establish agricultural experiment stations in Alaska, leading to the construction of a research dairy farm in Kenai in the following years.

The Kenai Peninsula has changed much since the 1890s, becoming far, far less of a wild frontier. This is why I find it fascinating that some of the same concerns addressed by Evans and Killin in the late 1800s remain relevant.

They discussed what today

we would call food security, sustainability, locally grown food, non-native plants and conservation of game animals. Even down to the types of vegetables grown and problems with hay storage, I am amazed at the similarities between farming in 1897 and my own family's experiences with gardening and haymaking in Kaslof.

Looking back over 100 years into the landscape and communities of the Kenai Peninsula in 1897-1898 makes me wonder how much will remain the same and what may change in the future.

What will be harvested from the wild and what will be grown here? What will be the ramifications of actions that we take now? How much of the Kenai Peninsula and Kenai National Wildlife Refuge that are wild now will become less so?

*Matt Bowser serves as Entomologist at Kenai National Wildlife Refuge. Find more Refuge Notebook articles (1999-present) at [https://www.fws.gov/refuge/Kenai/community/refuge\\_notebook.html](https://www.fws.gov/refuge/Kenai/community/refuge_notebook.html).*

***The following is a reprint of an article in the Kenai Historical Society Newsletter for February 2014 that discusses an Agricultural Station that existed in Kenai at the turn of the century beginning in 1899. The article begins by talking about how the Society had been unpacking items stored for a number of years, and coming across the Alaska (in Kenai) Agricultural Experiment Station.***

\*\*\*\*\*

The following information comes from a “treasure” I unearthed from one of the boxes, plus a little additional research I did via computer. I was unaware that Kenai was home to an Alaska Agricultural Experiment Station from 1899 to 1908 until I came across a binder that was put together about 35 years ago by a former Kenai Historical member named Frost Jones. I was aware of Frost as a painter, but apparently she was involved in the Kenai Historical Society and had somehow learned of the existence of this station. She wanted to obtain a copy of a 1902 government bulletin that she had seen years ago, but no longer had access to. She wrote to the Cooperative Extension Service and they forwarded her letter to the University, and eventually she obtained a Xerox copy of part of a U.S. Department of Agriculture Annual Report of the Office of Experiment Station.

From some internet research I did, I learned that in 1897 Congress instructed the Department of Agriculture to investigate the agricultural potential of Alaska. It was decided to establish an agricultural experiment station in Alaska and a Dr. Georgeson headed the effort by opening a station in Sitka in 1898, with a 2<sup>nd</sup> station established in Kodiak. By 1899 a 3<sup>rd</sup> station was established in Kenai. Additional stations were later added in Rampart and Copper Center in Alaska’s interior.

The Kenai station was under the direction of a Mr. H.P. Nielsen. In October of 1902, he submitted the following report for the work accomplished during the year:

**CLEARING**

***In addition to work with the experimental crops on the 7 acres previously broken, 8 acres have been cleared of trees, stumps, and brush, broken, and put in condition for seeding next spring, and the whole clearing has been fenced.***

**GENERAL IMPROVEMENTS**

***Several improvements have been made, mostly in the line of additions to equipment. A 20-shoe press drill was added last spring, and used in seeding all the field grains. Drilling is a great improvement over broadcasting, owing to the loose character of the soil. A seed cleaner has been added this fall, and will be used in cleaning this season’s crops. The log house on the station has been completed and is now quite comfortable. A milch cow and a calf were added to the station herd in July. The cattle now belonging to the station consist of 2 work oxen, 1 yearling steer, 1 cow, and one 4 1/2 – months old heifer calf. The stable has been rebuilt to accommodate all of the stock. A corral has been built adjoining the stable.***

***About 5 tons of native grass was cut and cured and stacked in July about half of it has been brought home.***



*A small orchard was set out last spring, consisting of several varieties of apple, cherry, and raspberry, blackberry, gooseberry, and currant bushes, and 100 strawberry plants. (Mr. Nielsen goes on to relay the results of the orchard plantings, noting:) That so many of the trees planted failed to grow I think was due to the length of their transportation, many of them being quite dry when they arrived*

#### NOTES ON VEGETABLES

*A cold frame was prepared and seeded April 26 to the following vegetables, viz, cabbage, cauliflower, Brussels sprouts, celery, lettuce, parsley, onions, and radishes. (Mr. Nielson follows with each variety of each vegetable, how it was planted, and the results that were achieved.)*

Next, he did the same descriptions of the field crops that were planted and the results. Winter grains and forage plants included rye, wheat, clover, and flat pea, many of which winterkilled. Spring crops included varieties of wheat, barley, oats, buckwheat, and flax. Additionally there were numerous varieties of grasses, rape, and hemp.

Finally, he detailed the milk record of the cow named "Bourka" for June, July, and August, 1902 which was fed in a native pasture:

*Dropped heifer calf June 2; calf suckled until evening of June 5, from which date the milk was weighed. There was a table of the amount of milk (in pounds) that was obtained, and then the following summary:*

*Total yield for eighty-seven days was 2,530 pounds, or something over 29 pounds a day, on native grass only. Many a dairy cow in the States fed on clover and grain does not do better than this. This would indicate that successful dairying can be practiced on Kenai Peninsula.*

H. P. Nielsen,  
Superintendent, Kenai Experiment Station.

Mr. Nielsen was subsequently replaced by Mr. P. H. Ross, and the station operated until 1908. Additional cows were brought in, as well as several oxen, used to plow the ground. The animals ranged loose during the summer and were fed with dried grains and grasses during the winter. Eventually the station obtained equipment to make butter and cheese. This binder contains pages that extensively detail the equipment and processes used to make the butter and cheese.

Ultimately, in May of 1908, the station was closed and the equipment and animals were transferred to the station in Kodiak. The following sums up the reason for the closure:

*The station was located at Kenai, on the Kenai Peninsula, Cook Inlet, for the reason that it appeared to be a promising location for successful agricultural development, and at that time there was a prospect that this region would be rapidly settled. However, this early promise was not fulfilled. The coal beds at Homer were not developed and the projected plan for establishing a colony of Finns in that region was abandoned after the death of the leading promoter.*

*The work of the station was continued long enough to prove: First, that grain can not be successfully matured in that region---at least not until varieties are developed which can prosper in the comparatively cool summers. Second that the hardy vegetables---kale, cabbage, turnips, potatoes, etc.---can be grown there very successfully; also that the berry fruits, raspberries, currants, and gooseberries, can be grown there. Third, it was proved that cattle can be reared in that location, and that butter and cheese of good quality can be made from the milk of cattle kept there. Fourth, it was proved that hay can be made not only from the native grass, which is abundant wherever the spruce forest does not usurp the surface of the land, but that grain hay can be made in abundance with certainty and success every year.*

Below is a picture I located of Frost Jones reading some of the histories she collected.



The relevance of both the article in the Clarion, and the reprint of the 2014 article, has to do with our speaker for the February meeting. Pastor Benjamin Phelps has worked on compiling the history of the Grace Lutheran Church located on Ciechanski Road. He has an interest in seeing local histories collected and saved for the future. He will be presenting his project and his knowledge on how this can be done by other organizations so that their participation in the community is not “lost in archives “. The collection and preservation of such histories should be the focus of groups such as ours, and the members should be making that their primary goal. I would like to give credit and everlasting thanks to past KHS members such as Frost Jones, Jettie Peterson, Mary Ford, and others who took the time to research and organize information in order to keep it available for the future. We can learn from and about our past, but only if it continues to be kept available.



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MINUTES \*\*\* JANUARY 5, 2020 Abbreviated

Kenai Historical Society met 1/5/2020 at the Kenai Visitor and Cultural Center in Kenai as President June Harris opened the meeting at 1:35 p.m. The minutes of the November 2019 meeting were reviewed and approved with a revision as to the total amount of money donated by Mike Navarre; the double-match by Rasmussen foundation totaled the gift at \$4500 (\$1500 + \$3000). The treasurers report shows the Alaska USA checking balance stands at \$16,795.15 and our Credit Union Money Market account balance is \$10,338.12. The Edward Jones Account is \$27,460.36, as of December 31, 2019. Motion unanimously approved Treasurer's Report.

June Harris gave a report on the Historic Cabins Park project. The Cabin Fund as of 1/1/20 is \$12,192.65, with \$4,677.00 set aside for the docent position for 2020. The City of Kenai is holding \$17,800 in funds received from the grant by Rasmussen Foundation for the security system for the cabins. The City of Kenai has drafted a Special Use Permit that shows city ownership the cabins park for the Kenai Historic Cabins Park to manage; this to be signed by the parties at a meeting next week to finalize.

New Business:

Membership dues for the Kenai Chamber membership are \$100 to renew. Unanimous approval.

Sublease for the Civic League building is ready to be signed for the upcoming year. No changes made.

James Williamson estate letter was received offering 4 lots (1.61 acres) in Kenai to non-profit groups. Discussion decided we were not interested.

Scholarships Committee: Kathy Heindl, Virginia Walters, Howard Hill will meet with President June Harris to implement the scholarship awards for 2020. Two \$2000.00 scholarship was awarded in 2019 and discussion decided that would be the same plan for 2020; the motion was unanimous.

Henry Knackstedt noted some issues in the Cabin Park permit; it was decided that Henry and Jim Glendenning will be present at the January 13 meeting, to address wording in the permit before signed.

Next meeting is February 9, 2020 (variation due to Super Bowl); the meeting adjourned so that we could enjoy a talk by Kaknu Cruisers, with Freddie Pollard, Manny Linderman, and other visitors participating.

Respectfully submitted by Sharon Fisher, Secretary.

Respectfully submitted by Sharon Fisher, Secretary.

## KENAI HISTORIC SOCIETY

## Our Organization

There has been a Historic Society since the days before Kenai becoming a city. The Society was formed a few years before Statehood in 1959, and then went inactive in the early 60's. It restarted in the latter part of the 60's and has met regularly since. The Society had a museum in Fort Kenay for some years, and then continued to meet after that closed. The non-profit Society implemented and operates the Kenai Historic Cabins Park, open for tours in the summer months. We have office space at the Moosemeat John cabin, but are not open to the public in that building. Our member meetings are Sept., Nov., Dec., Jan., Feb., Mar., and April at the Kenai Visitor Center. For Oct. and May, we meet with the Kenai Peninsula Historical Association. Please check the Meetings and Announcements section on this page for date information.

## MEETINGS AND ANNOUNCEMENTS

**Kenai Historical Society Monthly Meeting****February 9, 2020 —1:30 p.m.****Kenai Visitor Center****Speaker—Pastor Ben Phelps**

**Speaking on the topic of  
Collecting Organizational Histories  
for your Community**

Kenai Historic Society  
P.O. Box 1348  
Kenai, AK 99611

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[www.facebook.com/Kenai-Historical-Society](http://www.facebook.com/Kenai-Historical-Society)

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