



Kenai City Council - Regular Meeting

September 04, 2019 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

AGENDA

A. CALL TO ORDER

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

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

B. SCHEDULED PUBLIC COMMENTS

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

C. UNSCHEDULED PUBLIC COMMENTS

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

D. PUBLIC HEARINGS

- 1. Ordinance No. 3072-2019** - Renaming, Repealing and Re-Enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Residential, Recreational and Cultural Community through Responsible Land Policies and Practices. (Administration) **[Clerk’s Note: At the 08/21/19 Meeting, this Item was Postponed to the Meeting After a Work Session was Held Regarding the Matter for a Second Public Hearing. A Work Session was Held On 09/03/19. A Motion to Enact is On the Floor.]**
- 2. Ordinance No. 3079-2019** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds and

Accepting a Grant from the Federal Aviation Administration for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles, Rehabilitation of the Fire Training Props, and Rehabilitation of the Training Facility for the Alaska Regional Fire Training Facility. (Administration)

- 3. Ordinance No. 3080-2019** - Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Blazy Construction, Inc. (Administration)
- 4. Ordinance No. 3081-2019** - Increasing Estimated Revenues and Appropriations in the Airport Improvements Capital Project Fund, and Authorizing an Increase to the Construction Purchase Order to Polar North Construction, Inc. (Administration)
- 5. Ordinance No. 3082-2019** - Amending Kenai Municipal Code Chapter 5.35, Oil and Gas Wells, to Provide that Applications and Supplemental Applications be Filed with the City Manager. (City Clerk)
- 6. Ordinance No. 3083-2019** - Amending Kenai Municipal Code 14.20.175 - Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1000 Feet And Define Sensitive Uses. (Council Member Pettey)
 - **Substitute Ordinance No. 3083-2019** - Amending Kenai Municipal Code 14.20.175 - Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1000 Feet And Define Sensitive Uses and Amend Kenai Municipal Code 14.22.010 – Land Use Table, to Add Adult Businesses. (Council Members Pettey and Knackstedt)
- 7. Resolution No. 2019-61** - Awarding a Construction Contract for Rehabilitation of Training Props at the Alaska Regional Fire Training Facility. (Administration)
- 8. Resolution No. 2019-62** - Awarding a Construction Contract for Rehabilitation of the Alaska Regional Fire Training Facility. (Administration)
- 9. Resolution No. 2019-63** - Authorizing the Use of the State of Alaska Department of Transportation and Public Facilities Fleet Procurement Program for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles for the Alaska Regional Fire Training Facility. (Administration)

E. MINUTES

- 1. *Action/Approval** - Regular Meeting of August 21, 2019

F. UNFINISHED BUSINESS

- 1. Resolution No. 2019-58** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes to Application Fees for Lands Outside the Airport Reserve. (Administration) **[Clerk's Note: At the 08/21/19 Meeting, this Item was Postponed to the Meeting which Ordinance No. 3072-2019 was Scheduled for its Second Public Hearing; a Motion to Enact is On the Floor.]**

G. NEW BUSINESS

- 1. *Action/Approval** - Bills to be Ratified. (Administration)
- 2. *Action/Approval** - Purchase Orders Exceeding \$15,000. (Administration)
- 3. *Ordinance No. 3084-2019** - Increasing Estimated Revenues and Appropriations in the General Fund for Reimbursement Received for Support of the Swan Lake Fire Suppression Efforts. (Administration)
- 4. Discussion** – Amending Kenai Municipal Code 14.20.330 - Standards for Commercial Marijuana Establishments, to Incorporate Hours of Operation for Retail Marijuana Establishments into the City of Kenai’s Code of Ordinances as Recommended by the Planning and Zoning Commission. (Council Member Molloy)
- 5. Discussion** - Set a Board of Adjustment Hearing Date. (City Clerk)

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

M. PENDING ITEMS**N. ADJOURNMENT****O. INFORMATION ITEMS**

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

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



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3072-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, RENAMING, REPEALING AND RE-ENACTING KENAI MUNICIPAL CODE TITLE 22-GENERAL FUND LANDS, RENAMING TITLE 21-CITY AIRPORT AND AIRPORT LANDS, AND REPEALING KENAI MUNICIPAL CODE CHAPTER 21.15-LEASE AND SALE OF AIRPORT LANDS OUTSIDE OF THE AIRPORT RESERVE TO ENCOURAGE RESPONSIBLE GROWTH AND DEVELOPMENT TO SUPPORT A THRIVING BUSINESS, RESIDENTIAL, RECREATIONAL AND CULTURAL COMMUNITY THROUGH RESPONSIBLE LAND POLICIES AND PRACTICES.

WHEREAS, amendments to Title 22-General Fund Lands, coupled with the repeal of Chapter 21.15- Lease and Sale of Airport Lands Outside the Airport Reserve, are intended to encourage responsible growth and development to support a thriving business, residential, recreational and cultural community through responsible land policies and practices; and,

WHEREAS, combining code provisions for general fund lands, lands outside the airport reserve restricted by the Federal Aviation Administration, and certain tidelands recognizes these are all City-owned lands and should be similarly treated consistent with granting restrictions, if any; and,

WHEREAS, the changes provide for development incentives to encourage new development in the City and changes to the term table and ownership of improvements to encourage investment; and,

WHEREAS, other changes are focused on providing a City-wide approach to land management and lease and sales policy along with rental rate adjustments based on consumer price indexes protect lessees from unexpected increases and to reduce conflict between the City and current and future lessees; and,

WHEREAS, the amendments discourage land speculation on commercial City-owned lands by requiring development for lease or sale; and,

WHEREAS, the Planning and Zoning Commission, at its meeting of August 14, 2019, recommended the City Council _____ Ordinance No. 3072-2019; and,

WHEREAS, the Airport Commission, at its meeting of August 8, 2019, recommended the City Council _____ Ordinance No. 3072-2019, and,

WHEREAS, the Harbor Commission at its meeting of August 19, 2019, recommended the City Council _____ Ordinance No. 3072-2019.

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

Section 1. Renaming Title 21 of the Kenai Municipal Code: That Kenai Municipal Code, Title 21 – City Airport And Airport Lands is hereby renamed as follows:

CITY AIRPORT RESERVE [AND AIRPORT] LANDS

Section 2. Repealing Chapter 21.15 of the Kenai Municipal Code: That Kenai Municipal Code, Chapter 21.15 – Lease and Sale of Airport Land Outside of the Airport Reserve is hereby repealed as follows:

[CHAPTER 21.15

LEASE AND SALE OF AIRPORT LAND OUTSIDE OF THE AIRPORT RESERVE

21.15.010 AIRPORT LAND OUTSIDE OF THE AIRPORT RESERVE.

(A) THIS CHAPTER APPLIES TO AIRPORT LAND OUTSIDE OF THE AIRPORT RESERVE.

(B) THE CITY MAY SELL, CONVEY, EXCHANGE, TRANSFER, DONATE, DEDICATE, DIRECT, OR ASSIGN TO USE, OR OTHERWISE DISPOSE OF AIRPORT LAND OUTSIDE OF THE AIRPORT RESERVE, INCLUDING PROPERTY ACQUIRED, HELD FOR, OR DEVOTED TO A PUBLIC USE, IN ACCORDANCE WITH THIS CHAPTER. DISPOSAL OR SALE OF LANDS SHALL BE MADE ONLY WHEN, IN THE JUDGMENT OF THE CITY COUNCIL, SUCH LANDS ARE NOT REQUIRED BY THE CITY FOR A PUBLIC PURPOSE,

(C) THE CITY MAY LEASE, SELL OR DISPOSE OF REAL PROPERTY BY WARRANTY OR QUIT-CLAIM DEED, EASEMENT, GRANT, PERMIT, LICENSE, DEED OF TRUST, MORTGAGE, CONTRACT FOR SALE OF REAL PROPERTY, PLAT DEDICATION, LEASE, OR ANY OTHER LAWFUL METHOD OR MODE OF CONVEYANCE OR GRANT. ANY INSTRUMENT REQUIRING EXECUTION BY THE CITY SHALL BE SIGNED BY THE CITY MANAGER AND ATTESTED BY THE CITY CLERK. THE FORM OF ANY INSTRUMENT SHALL BE APPROVED BY THE CITY ATTORNEY.

(D) THE PROVISIONS OF THIS CHAPTER SHALL NOT ALTER OR AMEND THE TERMS OR RIGHTS GRANTED UNDER LEASES EXISTING PRIOR TO THE EFFECTIVE DATE OF THE ORDINANCE CODIFIED IN THIS CHAPTER.

(E) PENDING LEASE APPLICATIONS FOR AIRPORT LAND FILED PRIOR TO THE EFFECTIVE DATE OF THE ORDINANCE CODIFIED IN THIS CHAPTER SHALL BE PROCESSED AND ISSUED UNDER THE PROVISIONS OF KMC TITLES 21 AND 22 IN EXISTENCE IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THE ORDINANCE CODIFIED IN THIS CHAPTER. OTHERWISE THE PROVISIONS OF THIS CHAPTER SHALL APPLY.

21.15.020 QUALIFICATIONS OF APPLICANTS OR BIDDERS.

AN APPLICANT OR BIDDER FOR A LEASE IS QUALIFIED IF THE APPLICANT OR BIDDER:

- (A) IS AN INDIVIDUAL AT LEAST EIGHTEEN (18) YEARS OF AGE OR OVER; OR
- (B) IS A GROUP, ASSOCIATION, OR CORPORATION WHICH IS AUTHORIZED TO CONDUCT BUSINESS UNDER THE LAWS OF ALASKA; OR
- (C) IS ACTING AS AN AGENT FOR ANOTHER AND HAS QUALIFIED BY FILING WITH THE CITY MANAGER A PROPER POWER OF ATTORNEY OR A LETTER OF AUTHORIZATION CREATING SUCH AGENCY. THE AGENT SHALL REPRESENT ONLY ONE (1) PRINCIPAL TO THE EXCLUSION OF HIM OR HERSELF. THE TERM "AGENT" INCLUDES REAL ESTATE BROKERS AND AGENTS.

21.15.030 APPLICATIONS.

(A) ALL APPLICATIONS FOR LEASE OF LANDS SHALL BE FILED WITH THE CITY MANAGER ON FORMS PROVIDED BY THE CITY AVAILABLE AT CITY HALL. APPLICATIONS SHALL BE DATED ON RECEIPT AND PAYMENT OF FILING FEE AND DEPOSIT. NO APPLICATION WILL BE ACCEPTED BY THE CITY MANAGER UNLESS IT APPEARS TO THE CITY MANAGER TO BE COMPLETE. 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) THE DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED (ORDINARILY A MAXIMUM OF TWO (2) YEARS); AND
- (5) *WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY.* APPLICATIONS SHALL BECOME A PART OF THE LEASE.

21.15.040 FILING FEE AND DEPOSIT.

(A) WHEN SUBMITTING AN APPLICATION FOR LEASE OF LAND, THE APPLICANT SHALL PAY THE CITY THE FOLLOWING AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL:

- (1) PAY A NON-REFUNDABLE FILING FEE; AND
- (2) A DEPOSIT TO SHOW GOOD FAITH AND SECURE THE CITY IN PAYMENT OF ANY COSTS, INCLUDING:
 - (A) AN APPRAISAL COST RECOVERY DEPOSIT; AND

(B) AN ENGINEERING, SURVEYING AND CONSULTING COST RECOVERY DEPOSIT.

(B) IF THE CITY DECIDES TO REJECT THE APPLICANT'S APPLICATION AND NOT ENTER INTO A LEASE WITH THE APPLICANT THROUGH NO FAULT OF THE APPLICANT OR FAILURE OF THE APPLICANT TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER, ANY DEPOSIT MADE UNDER SUBSECTION (A)(2) OF THIS SECTION WILL BE RETURNED TO THE APPLICANT.

(C) IF THE CITY ENTERS INTO A LEASE WITH THE APPLICANT ANY DEPOSIT MADE BY THE APPLICANT UNDER SUBSECTION (A)(2) OF THIS SECTION WILL BE APPLIED TO THE CITY'S ENGINEERING, APPRAISAL, AND CONSULTING COSTS RELATED TO THE PROCESSING OF THE APPLICANT'S APPLICATION AND ENTERING INTO THE LEASE. THE CITY WILL APPLY ANY UNUSED BALANCE OF A DEPOSIT TO THE RENT PAYABLE UNDER THE LEASE. IF THE CITY'S COSTS EXCEED THE AMOUNT OF ANY DEPOSIT, THE APPLICANT SHALL PAY THE SHORTAGE TO THE CITY AS A CONDITION OF THE LEASE.

(D) IF THE APPLICANT FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER, CAUSES INORDINATE DELAY, AS DETERMINED BY THE CITY MANAGER, OR REFUSES TO SIGN A LEASE OFFERED TO THE APPLICANT, THE CITY MANAGER WILL REJECT THE APPLICANT'S APPLICATION AND APPLY ANY DEPOSIT MADE BY THE APPLICANT UNDER SUBSECTION (A) OF THIS SECTION TO THE CITY'S APPRAISAL, ENGINEERING, AND CONSULTING COSTS INCURRED IN CONNECTION WITH THE APPLICANT'S APPLICATION. IF THE CITY'S COSTS FOR APPRAISAL, ENGINEERING AND CONSULTING COSTS EXCEED THE DEPOSITS, THE APPLICANT WILL BE RESPONSIBLE FOR THESE COSTS. THE CITY WILL RETURN ANY UNUSED DEPOSIT BALANCE TO THE APPLICANT.

21.15.050 RIGHTS PRIOR TO LEASING.

THE FILING OF AN APPLICATION FOR A LEASE SHALL GIVE THE APPLICANT NO RIGHT TO LEASE OR TO THE USE OF THE LAND FOR WHICH THE APPLICANT APPLIED. THE APPLICATION SHALL EXPIRE WITHIN TWELVE (12) MONTHS AFTER THE APPLICATION HAS BEEN MADE IF A LEASE HAS NOT BEEN ENTERED INTO BETWEEN THE CITY AND THE APPLICANT BY THAT TIME UNLESS THE CITY COUNCIL FOR GOOD CAUSE GRANTS AN EXTENSION. NO EXTENSION MAY BE GRANTED FOR A PERIOD LONGER THAN SIX (6) ADDITIONAL MONTHS. LEASE RATES ARE SUBJECT TO CHANGE ON THE BASIS OF AN APPRAISAL DONE EVERY TWELVE (12) MONTHS ON THE PROPERTY APPLIED FOR.

21.15.060 PROCESSING PROCEDURE.

(A) APPLICATIONS SHALL BE FORWARDED TO THE PLANNING AND ZONING COMMISSION UPON RECEIPT. THE PLANNING AND ZONING COMMISSION SHALL NORMALLY CONSIDER APPLICATIONS FOR SPECIFIC LANDS ON A FIRST-COME, FIRST-SERVED BASIS IF THE COMMISSION FINDS THAT THE APPLICATION IS COMPLETE AND CONFORMS TO THE COMPREHENSIVE PLAN AND THE KENAI ZONING CODE. WHERE THERE IS DIFFICULTY IN OBTAINING A PERFECTED APPLICATION, DETAILS AS TO DEVELOPMENT PLANS, ETC., OR WHERE THE APPLICANT FAILS TO COMPLY WITH DIRECTIONS OR REQUESTS OF THE PLANNING AND ZONING COMMISSION, ANY SUCH PRIORITY WILL BE LOST. IF AN APPLICATION FOR THE PURCHASE OF CITY-OWNED LANDS, PREVIOUSLY AUTHORIZED FOR SALE BY THE COUNCIL, IS RECEIVED BY THE CITY PRIOR TO THE KENAI PLANNING AND ZONING COMMISSION MAKING AN AFFIRMATIVE OR NEGATIVE RECOMMENDATION TO THE COUNCIL REGARDING THE LEASE APPLICATION FOR THE SAME PROPERTY, THE CITY MAY ELECT TO SELL SAID PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THE CODE.

(B) THE CITY COUNCIL SHALL NORMALLY CONSIDER A LEASE PROPOSAL ONLY AFTER APPROVAL OF THE PLANNING AND ZONING COMMISSION. HOWEVER, APPEALS OF PLANNING AND ZONING COMMISSION DISAPPROVAL MAY BE MADE TO THE CITY COUNCIL. COMPLETED LEASE APPLICATIONS MUST BE PRESENTED TO THE CITY COUNCIL WITHIN THIRTY (30) DAYS AFTER APPROVAL BY THE PLANNING AND ZONING COMMISSION.

(C) WHERE THERE ARE TWO (2) OR MORE APPLICATIONS FOR THE SAME AIRPORT LANDS FOR DIFFERENT USES, THEN IF THE PLANNING AND ZONING COMMISSION MAKES A FINDING THAT A SUBSEQUENT APPLICATION WOULD RESULT IN USE OF THE LANDS FOR A HIGHER AND BETTER PURPOSE WITH A GREATER BENEFIT TO THE CITY OF KENAI AND THE CITIZENS THEREOF, THEN THE LEASE WILL BE ISSUED TO SUCH APPLICANT NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) IN THIS SECTION WHICH PROVIDE FOR LEASING ON A FIRST-COME, FIRST-SERVED BASIS. ANY APPLICANT MAY APPEAL TO THE CITY COUNCIL FROM A FINDING OR A REFUSAL TO FIND BY THE PLANNING AND ZONING COMMISSION BY FILING AN APPEAL WITH THE CITY CLERK WITHIN SEVEN (7) DAYS AFTER THE FINDING IS MADE OR REFUSED BY THE PLANNING AND ZONING COMMISSION.

(D) THE DECISION WHETHER OR NOT TO LEASE LAND RESTS IN THE SOLE DISCRETION OF THE CITY COUNCIL.

21.15.070 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.

21.15.080 APPRAISAL.

NO LAND SHALL BE SOLD, LEASED, OR A RENEWAL OF LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A TWELVE (12) MONTH PERIOD PRIOR TO THE SALE OR 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. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION.

21.15.090 TERMS OF LEASE.

ALL LEASES SHALL BE APPROVED BY THE CITY COUNCIL BEFORE THE SAME SHALL BECOME EFFECTIVE. THE TERM OF ANY GIVEN LEASE SHALL DEPEND UPON THE DURABILITY OF THE PROPOSED USE, THE AMOUNT OF INVESTMENT IN IMPROVEMENT PROPOSED AND MADE, AND THE NATURE OF THE IMPROVEMENT PROPOSED WITH RESPECT TO DURABILITY AND TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT.

21.15.100 ANNUAL MINIMUM RENTAL.

(A) ANNUAL MINIMUM RENTALS SHALL BE COMPUTED FROM THE APPROVED APPRAISED MARKET VALUE UTILIZING THE METHOD AS DESCRIBED IN KMC 21.15.120 OF THIS CHAPTER.

(B) UPON EXECUTION OF THE LEASE, THE LANDS 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, AND SHALL PAY ANY SPECIAL ASSESSMENTS AND TAXES AS IF LESSEE WERE THE OWNER OF SAID LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. SAID PAYMENTS SHALL BE PRORATED TO CONFORM TO THE CITY OF PAYMENT EXCEEDS TWO HUNDRED DOLLARS (\$200.00), THEN THE LESSEE SHALL HAVE THE OPTION OF Kenai's fiscal year BEGINNING JULY 1 AND ENDING JUNE 30. IF THE EQUIVALENT MONTHLY MAKING PAYMENTS ON A MONTHLY BASIS.

(D) LESSEE SHALL BE RESPONSIBLE FOR ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.

21.15.110 BIDDING PROCEDURE.

AS AN EXCEPTION TO GENERAL POLICY LISTED ABOVE, THE CITY COUNCIL MAY DESIGNATE A SPECIFIC LOT OR LOTS TO BE MADE AVAILABLE ONLY FOR BID. THIS PROVISION SHALL APPLY ONLY WHEN THERE IS NO OUTSTANDING APPLICATION PENDING ON THE LOT OR LOTS. AS DESIGNATED, SEALED BIDS SHALL BE RECEIVED OFFERING A ONE-TIME PREMIUM IN ADDITION TO THE ESTABLISHED LEASE RATE. HIGHEST BID, HOWEVER, SHALL BE SUBJECT TO ALL PROVISIONS OF REVIEW AND APPROVAL ESTABLISHED FOR ALL OTHER LEASE APPLICATIONS.

21.15.120 PRINCIPLES AND POLICY OF LEASE RATES.

(A) A FAIR RETURN TO THE AIRPORT SYSTEM IS MANDATED BY THE TERMS AND CONDITIONS OF THE QUITCLAIM DEED AND APPROPRIATE DEEDS OF RELEASE, GRANTING THESE LANDS TO THE AIRPORT SYSTEM BY THE FEDERAL GOVERNMENT. TO ENSURE A FAIR RETURN, ALL LEASES FOR A PERIOD IN EXCESS OF FIVE (5) YEARS SHALL INCLUDE A REDETERMINATION CLAUSE AS OF THE FIFTH ANNIVERSARY, AND ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. LEASE RATES:

(1) SHALL BE BASED ON 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 SPECIFIED LAND; AND,

(2) SHALL BE EIGHT PERCENT (8%) OF FAIR MARKET VALUE.

(B) FOR LEASES IN EXISTENCE PRIOR TO THE EFFECTIVE DATE OF THIS CHAPTER, THE LEASE RATE REDETERMINATION SHALL BE AS PROVIDED IN THE LEASE.

(C) THE CITY MANAGER SHALL CHANGE THE RENT IN A LEASE BY GIVING THE LESSEE WRITTEN NOTICE AT LEAST THIRTY (30) DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE CHANGE.

(D) THE "FAIR MARKET VALUE" OF THE PREMISES SHALL BE EQUAL TO THE THEN-FAIR MARKET RATE FOR SIMILAR COMMERCIAL PROPERTY IN THE CITY OF KENAI, ALASKA (THE "RELEVANT AREA"). CITY SHALL GIVE NOTICE TO LESSEE OF CITY'S ESTIMATION OF THE FAIR MARKET VALUE NOT LATER THAN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN-APPLICABLE FIVE (5) YEAR PERIOD, AS EVIDENCED AND SUPPORTED BY THE WRITTEN OPINION OF AN INDEPENDENT REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87, SELECTED AND PAID FOR BY THE CITY, FAMILIAR WITH THE RELEVANT AREA (THE "FIRST APPRAISER"). IF LESSEE DISAGREES WITH SUCH ESTIMATE, IT SHALL ADVISE THE CITY IN WRITING THEREOF WITHIN THIRTY (30) DAYS OF LESSEE'S RECEIPT OF

SUCH ESTIMATE, AS EVIDENCED AND SUPPORTED BY THE WRITTEN OPINION OF A REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87 (SELECTED AND PAID FOR BY LESSEE) FAMILIAR WITH THE RELEVANT AREA (THE "SECOND APPRAISER"). THE PARTIES SHALL PROMPTLY MEET TO ATTEMPT TO RESOLVE THEIR DIFFERENCES BETWEEN THE FIRST APPRAISER AND THE SECOND APPRAISER CONCERNING THE FAIR MARKET VALUE OF THE PREMISES. IF CITY AND LESSEE CANNOT AGREE UPON SUCH VALUE THEN, WITH ALL DELIBERATE SPEED, THEY SHALL DIRECT THE FIRST APPRAISER AND THE SECOND APPRAISER TO EXPEDITIOUSLY AND MUTUALLY SELECT A THIRD REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87 (SELECTED AND PAID FOR JOINTLY BY THE PARTIES) FAMILIAR WITH THE RELEVANT AREA (THE "THIRD APPRAISER"). WITHIN THIRTY (30) DAYS AFTER THE THIRD APPRAISER HAS BEEN APPOINTED, THE THIRD APPRAISER SHALL DECIDE WHICH OF THE TWO (2) RESPECTIVE APPRAISALS FROM THE FIRST APPRAISER AND THE SECOND APPRAISER MOST CLOSELY REFLECTS THE FAIR MARKET VALUE OF THE PREMISES. THE FAIR MARKET VALUE OF THE PREMISES SHALL IRREBUTTABLY BE PRESUMED TO BE THE VALUE CONTAINED IN SUCH APPRAISAL SELECTED BY THE THIRD APPRAISER, AND THE RENTAL SHALL BE REDETERMINED BASED ON SUCH VALUE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, RENT SHALL CONTINUE TO BE PAID AT THE THEN-APPLICABLE RATE UNTIL ANY SUCH NEW RENTAL RATE IS ESTABLISHED, AND LESSEE AND CITY SHALL PROMPTLY PAY OR REFUND, AS THE CASE MAY BE, ANY VARIANCE IN THE RENT, WITHOUT INTEREST THEREON ACCRUING TO THE EXTENT TO BE PAID/REFUNDED IN A TIMELY FASHION.

21.15.130 REIMBURSEMENT FOR CITY-CONSTRUCTED IMPROVEMENTS.

(A) THE CITY MANAGER MAY INCLUDE IN A LEASE A REQUIREMENT FOR THE LESSEE TO REIMBURSE THE CITY FOR THE CITY'S COST OF:

(1) LAND CLEARING, GRAVEL FILL, UTILITY EXTENSIONS AND OTHER IMPROVEMENTS OR AMENITIES ON OR IN DIRECT CONNECTION WITH THE PREMISES, CONSTRUCTED BY THE CITY PRIOR TO THE EFFECTIVE DATE OF THE LEASE; OR

(2) LAND CLEARING, GRAVEL FILL, UTILITY EXTENSIONS AND OTHER IMPROVEMENTS OR AMENITIES ON OR IN DIRECT CONNECTION WITH THE PREMISES, WHICH THE CITY AGREES TO CONSTRUCT AS A CONDITION OF THE LEASE, SUBJECT TO CITY COUNCIL APPROVAL.

(B) THE LESSEE SHALL REIMBURSE THE CITY FOR THE CITY'S COST OF CONSTRUCTING THE IMPROVEMENTS IN TEN (10) EQUAL ANNUAL PAYMENTS,

PLUS INTEREST AT EIGHT PERCENT (8%) PER YEAR ON THE UNPAID BALANCE OR UNDER SUCH TERMS AND CONDITIONS AS THE COUNCIL MAY SET BY RESOLUTION. IF THE LEASE IS FOR LESS THAN TEN (10) YEARS, THE REPAYMENT SCHEDULE MAY NOT BE LONGER THAN THE TERM OF THE LEASE. THE LESSEE MAY PAY THE ENTIRE REMAINING BALANCE TO THE CITY AT ANY TIME DURING THE TERM OF THE LEASE.

21.15.140 LEASE EXECUTION.

THE LEASE APPLICANT SHALL EXECUTE AND RETURN THE APPROPRIATE LEASE AGREEMENT WITH THE CITY OF KENAI WITHIN THIRTY (30) DAYS OF MAILING THE AGREEMENT TO SAID APPLICANT. THE LEASE AGREEMENT SHALL BE PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS TITLE. FAILURE TO EXECUTE AND RETURN THE LEASE AGREEMENT WITHIN THE SPECIFIED PERIOD SHALL RESULT IN THE FORFEITURE OF ALL LEASING RIGHTS.

21.15.150 LEASE UTILIZATION.

LEASED LANDS SHALL BE UTILIZED FOR PURPOSES WITHIN THE TERMS OF THE LEASE AND IN CONFORMITY WITH THE ORDINANCES OF THE CITY, 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 FOR THE LAND, CONSISTENT WITH THE PROPOSED USE AND TERMS OF THE LEASE, SHALL CONSTITUTE GROUNDS FOR CANCELLATION.

21.15.160 FORM OF LEASE.

(A) WHEN LEASING LAND UNDER THIS CHAPTER, THE CITY MANAGER SHALL USE A STANDARD LEASE FORM THAT IS:

(1) DRAFTED TO:

(I) PROVIDE A REASONABLE BASIS FOR THE LESSEE'S USE OF THE PREMISES,

(II) FOSTER THE SAFE, EFFECTIVE, AND EFFICIENT OPERATION OF THE AIRPORT,

(III) CONFORM WITH THE APPLICABLE REQUIREMENTS OF THE KMC, INCLUDING THIS CHAPTER, ALASKA STATUTES, FEDERAL AVIATION ADMINISTRATION REGULATIONS, AND OTHER APPLICABLE FEDERAL LAW, AND

(IV) PROVIDE FOR THE BEST INTEREST OF THE CITY.

- (2) APPROVED AS TO FORM BY THE CITY ATTORNEY; AND
 - (3) ADOPTED BY RESOLUTION OF THE CITY COUNCIL.
- (B) THE CITY MANAGER MAY ENTER INTO A LAND LEASE THAT DEVIATES FROM THE STANDARD FORM ADOPTED UNDER SUBSECTION (A) OF THIS SECTION, IF:
- (1) THE MANAGER BELIEVES THE ACTION IS IN THE BEST INTEREST OF THE CITY; AND
 - (2) THE LEASE IS APPROVED AS TO FORM BY THE CITY ATTORNEY; AND
 - (3) THE LEASE IS APPROVED BY RESOLUTION OF THE CITY COUNCIL.

21.15.170 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.

(A) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, WHERE IT IS FOUND THAT ENCOURAGEMENT OF A NEW COMMERCIAL OR INDUSTRIAL ENTERPRISE WOULD BE BENEFICIAL TO THE CITY OF KENAI, THE CITY COUNCIL BY ORDINANCE SO FINDING MAY DIRECT CONVEYANCE OF ONE OR MORE PARCELS OF CITY LAND BY THE CITY MANAGER TO SUCH ENTERPRISE UPON SUCH TERMS AS TO PRICE, CONDITIONS OF CONVEYANCE, AND WITH SUCH CONTINGENCIES AS MAY BE SET FORTH IN SAID ORDINANCE.

(B) IN THE EVENT THE LAND DIRECTED TO BE CONVEYED UNDER SUBSECTION (A) OF THIS SECTION CONSISTS IN PART OR IN WHOLE OF AIRPORT LANDS, THEN THE ORDINANCE ORDERING ITS CONVEYANCE. WILL NOT BE EFFECTIVE UNTIL THE CITY COUNCIL BY ORDINANCE HAS APPROPRIATED FROM THE GENERAL FUND TO BE DEDICATED TO THE AIRPORT THE DIFFERENCE BETWEEN THE APPRAISED FAIR MARKET VALUE OF SAID AIRPORT LANDS AND THE PURCHASE PRICE, IF ANY, SET FORTH IN SAID ORDINANCE.

21.15.180 SALE.

(A) AIRPORT LAND OUTSIDE THE AIRPORT RESERVE TO WHICH THE CITY OF KENAI HOLDS TITLE WHICH ARE NOT RESTRICTED FROM SALE BY THE DEED OF CONVEYANCE TO THE CITY, OR WHICH HAVE BEEN RELEASED FROM SUCH RESTRICTIONS, WHICH THE CITY COUNCIL HAS DETERMINED ARE NOT REQUIRED FOR A PUBLIC PURPOSE, MAY BE LISTED FOR SALE BY THE CITY MANAGER, EXCEPT THAT LANDS WHICH HAVE BEEN LEASED SHALL NOT BE SOLD UNLESS THE LESSEE HAS MADE A WRITTEN REQUEST TO THE CITY TO PLACE THE LAND FOR SALE. THE DECISION WHETHER OR NOT TO SELL THE LAND RESTS IN THE SOLE DISCRETION OF THE CITY.

(B) SALES OF LAND PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL BE MADE AT NOT LESS THAN FAIR MARKET VALUE. THE PURCHASER SHALL EXECUTE

THE "AGREEMENT FOR SALE OF LAND" WITHIN ONE (1) YEAR OF THE DATE OF APPRAISAL. THE CITY MANAGER HAS THE OPTION TO DISPOSE OF SUCH PROPERTIES IN ACCORDANCE WITH THE SALE PROCEDURES SET OUT IN THIS TITLE:

- (1) BY NEGOTIATED SALE; OR
- (2) BY OUTCRY AUCTION TO THE HIGHEST RESPONSIBLE BIDDER; OR
- (3) BY COMPETITIVE SEALED BIDS TO THE HIGHEST RESPONSIBLE BIDDER.

IN THE EVENT THAT THE SALE IS NOT CLOSED WITHIN ONE (1) YEAR OF THE DATE OF APPRAISAL, THE BUYER WILL BE CHARGED, UPON CLOSING, INTEREST COMPUTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE KENAI MUNICIPAL CODE, BASED UPON THE TOTAL SALES PRICE FOR THE NUMBER OF DAYS PAST THE EXPIRATION OF THE SIX (6) MONTH PERIOD.

21.15.190 SALE PROCEDURE.

(A) THE CITY MANAGER WILL OBTAIN SUCH AN APPRAISAL FOR A DETERMINATION OF THE MINIMUM PRICE ON SAID LAND.

(B) WHERE ANY PARTY, HEREINAFTER CALLED "APPLICANT," REQUESTS THAT A TRACT OR TRACTS OF LAND BE SOLD FOR WHICH AN APPRAISAL WILL BE REQUIRED, WHICH WILL REQUIRE SUBDIVIDING, PLATTING, OR SURVEYING AND STAKING, OR WHICH WILL REQUIRE ADVERTISING OR INCURRING ANY OTHER EXPENDITURES BY THE CITY PRIOR TO SALE,

(1) NO ACTIONS IN PREPARATION FOR SALE WILL BE TAKEN BY THE CITY UNTIL AN AGREEMENT TO PURCHASE SHALL BE PROPERLY EXECUTED AND FILED WITH THE CITY MANAGER FOR THE PURCHASE OF SUCH LAND WITH PAYMENT OF SUFFICIENT GOOD FAITH DEPOSIT, WHICH SHALL CONSIST OF CASH OR ITS EQUIVALENT DEPOSITED WITH THE FINANCE OFFICER OF THE CITY OF KENAI, AS MAY BE DETERMINED BY THE CITY MANAGER, TO COVER ALL EXPENSES OF THE CITY AND SUCH AGREEMENT TO PURCHASE SHALL FURTHER CONTAIN THE AGREEMENT BY APPLICANT TO PAY ANY ADDITIONAL COSTS IF SUCH GOOD FAITH DEPOSIT IS INSUFFICIENT TO PAY ALL COSTS INCURRED BY THE CITY.

(2) IF AT ANY TIME DURING THE PROCESS OF PREPARING FOR SALE, THE APPLICANT GIVES NOTICE TO THE CITY MANAGER OF WITHDRAWAL OF THE REQUEST FOR SALE, THE CITY MANAGER SHALL STOP ALL PROCEDURES, SHALL PAY EXPENSES INCURRED PRIOR TO TERMINATION OF SALE PROCEDURES, AND SHALL REIMBURSE APPLICANT FOR ANY GOOD FAITH DEPOSIT ADVANCED IN EXCESS OF ALL EXPENSES INCURRED. (HOWEVER, IF ANOTHER PARTY DESIRES THE SALE TO PROCEED, FILES AN APPLICATION

FOR SALE, EXECUTES AND FILES AN AGREEMENT TO PURCHASE, AND ADVANCES SUFFICIENT FUNDS THEREFOR, THEN THE PRIOR APPLICANT WILL BE REIMBURSED FOR EXPENSES CHARGES WHICH CAN BE ATTRIBUTED TO THE SUBSEQUENT APPLICANT.)

(3) IF ALL ACTIONS NECESSARY FOR PREPARATION FOR SALE HAVE BEEN ACCOMPLISHED, AND IF NEITHER THE APPLICANT NOR ANY OTHER PARTY PURCHASES SAID LAND WHEN FIRST OFFERED FOR SALE AFTER SUCH REQUEST, THEN ALL EXPENSES INCURRED IN PREPARATION FOR THE SALE WILL BE PAID FROM THE GOOD FAITH DEPOSIT, AND THE BALANCE, IF ANY, SHALL BE RETURNED TO THE APPLICANT. IF THE SUMS ADVANCED AS GOOD FAITH DEPOSIT ARE INSUFFICIENT TO PAY ALL OF THE COSTS, THE APPLICANT WILL BE BILLED FOR THE BALANCE DUE AND NORMAL COLLECTION PROCEDURES FOLLOWED.

(4) IF THE LAND APPLIED FOR IS SOLD ON PUBLIC SALE SET IN RESPONSE TO SUCH REQUEST TO ANYONE OTHER THAN APPLICANT, THEN ON CLOSING OF THE SALE, THE GOOD FAITH DEPOSIT WILL BE REFUNDED IN TOTAL TO THE APPLICANT. THE CITY'S EXPENSES WILL BE FIRST DEDUCTED FROM THE DEPOSIT OF THE SUCCESSFUL BIDDER.

(5) IF THE LAND IN QUESTION IS SOLD TO APPLICANT, THE GOOD FAITH DEPOSIT ADVANCED, AFTER DEDUCTING THE CITY'S EXPENSES, WILL BE APPLIED ON THE PAYMENT DUE AT CLOSING.

(6) IF THE LAND IN QUESTION IS TO BE SOLD BY SEALED BID AND THE APPLICANT HAS SUBMITTED A VALID BID, BUT THE APPLICANT IS NOT THE HIGH BIDDER, HE OR SHE MAY PURCHASE THE LAND BY TENDERING THE CITY A BID EQUAL TO THE HIGH BID WITHIN FIVE (5) DAYS OF THE BID OPENING. IF THE LAND SALE IS INITIATED IN ACCORDANCE WITH KMC 21.15.060(A), THE APPLICANT SHALL BE DEFINED AS THAT PARTY SUBMITTING THE INITIAL LEASE APPLICATION.

(C) IF THE TRACT OF LAND PROPOSED TO BE SOLD IS LEASED LAND, THE LESSEE MAY REQUEST THE SALE OF THE LAND AT NOT LESS THAN THE FAIR MARKET VALUE. THE CURRENT LESSEE MAY REQUEST TO NEGOTIATE A SALE ONLY AFTER, TO THE SATISFACTION OF THE CITY MANAGER, DEVELOPMENT HAS BEEN COMPLETED AS DETAILED IN THE DEVELOPMENT SCHEDULE WHICH HAS BEEN INCORPORATED INTO THE LEASE AGREEMENT. IF THERE IS NO DEVELOPMENT SCHEDULE, THE LESSEE MAY REQUEST TO PURCHASE THE PROPERTY IF THERE HAVE BEEN SUBSTANTIAL IMPROVEMENTS AS DETERMINED BY THE CITY MANAGER. THE DECISION WHETHER OR NOT TO SELL THE LAND TO THE LESSEE RESTS IN THE SOLE DISCRETION OF THE CITY.

(D) AN APPLICANT MAY REQUEST THE LEASE OF CITY LAND INCLUDE A RIGHT TO PURCHASE THE LEASED LAND WITHIN TWELVE (12) MONTHS OF THE COMPLETION OF THE DEVELOPMENT AS DETAILED IN THE DEVELOPMENT SCHEDULE. A SALE UNDER THIS SUBSECTION SHALL BE AT NOT LESS THAN FAIR MARKET VALUE AS DETERMINED BY AN APPRAISER QUALIFIED UNDER AS 8.87. THE CITY MAY CHARGE ADDITIONAL CONSIDERATION FOR GRANTING THE RIGHT TO PURCHASE THE PROPERTY. THE LAND MUST BE APPRAISED WITHIN TWELVE (12) MONTHS OF SALE AS REQUIRED UNDER KMC 21.15.070. AN APPLICANT'S REQUEST TO HAVE A CONTRACTUAL RIGHT TO PURCHASE THE LEASE PROPERTY MUST BE APPROVED BY AN ORDINANCE OF THE COUNCIL. THE COUNCIL MAY GRANT THE REQUEST IF IT DETERMINES IT IS IN THE BEST INTEREST OF THE CITY.

(E) IF THE TRACT OF LAND PROPOSED TO BE SOLD IS NOT LEASED LAND, OR IS LEASED LAND WITHOUT SUBSTANTIAL IMPROVEMENTS, THEN THE TRACT OF LAND MAY ONLY BE SOLD BY OUTCRY AUCTION OR BY COMPETITIVE SEALED BIDS. THE DECISION WHETHER OR NOT TO SELL THE LAND RESTS IN THE SOLE DISCRETION OF THE CITY. IF THE TRACT IS TO BE PUT UP FOR SUCH COMPETITIVE AUCTION OR SEALED BID SALE, NOTICE OF SALE AND THE MANNER IN WHICH THE LAND IS TO BE SOLD SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE DATE OF SALE; SUCH NOTICE SHALL ALSO BE POSTED IN AT LEAST THREE PUBLIC PLACES WITHIN THE CITY AT LEAST THIRTY (30) DAYS PRIOR TO THE DATE OF SALE, AND SUCH OTHER NOTICE MAY BE GIVEN BY SUCH OTHER MEANS AS MAY BE CONSIDERED ADVISABLE BY THE CITY MANAGER. SUCH NOTICE MUST CONTAIN:

- (1) THE LEGAL DESCRIPTION OF THE LAND;
- (2) A BRIEF PHYSICAL DESCRIPTION OF THE LAND;
- (3) THE AREA AND GENERAL LOCATION OF THE LAND;
- (4) THE MINIMUM ACCEPTABLE OFFER FOR THE LAND (WHICH SHALL BE ITS APPRAISED FAIR MARKET VALUE);
- (5) THE TERMS UNDER WHICH THE LAND WILL BE SOLD;
- (6) ANY LIMITATIONS ON THE SALE OF THE LAND;
- (7) THE TIME AND PLACE SET FOR THE AUCTION OR BID OPENING;
- (8) THE AMOUNT OF DEPOSIT TO BE SUBMITTED WITH EACH BID IN ORDER TO COVER THE CITY'S EXPENSES SUCH AS SURVEY, APPRAISAL, AND REVIEWS;
- (9) ANY OTHER MATTERS CONCERNING THE SALE OF WHICH THE CITY MANAGER BELIEVES THE PUBLIC SHOULD BE INFORMED.

(F) WHERE A REAL ESTATE AGENT FURNISHES A BUYER FOR CITY LAND, THE CLOSING AGENT SHALL BE AUTHORIZED TO PAY THE AGENT A REAL ESTATE

COMMISSION OF FIVE PERCENT (5%) OF THE PURCHASE PRICE FOR THE LAND OR FIVE PERCENT (5%) OF THE APPRAISED FAIR MARKET VALUE OF THE LAND, WHICHEVER IS LOWER, UNDER THE FOLLOWING TERMS AND CONDITIONS:

(1) THE CITY MANAGER SHALL PROVIDE A NON-EXCLUSIVE LISTING OF LANDS AVAILABLE FOR SALE.

(2) NO COMMISSION SHALL BE PAID TO AN AGENT WHERE SAID AGENT IS A PARTY, OR IN PRIVITY WITH A PARTY, TO THE SALE.

(G) CLOSING OF SALE OF CITY LANDS SHALL BE HANDLED BY A TITLE OR ESCROW COMPANY WITHIN THE CITY WHICH SPECIALIZES IN CLOSING OF REAL ESTATE SALES.

(H) CONVEYANCE OF CITY LANDS SHALL BE BY QUIT CLAIM OR WARRANTY DEED FURNISHED BY THE CITY, AND BUYERS ARE ADVISED THAT ALL SUCH CONVEYANCES ARE SUBJECT TO ALL LIENS, ENCUMBRANCES, RESTRICTIONS, AND COVENANTS OF RECORD AND ARE SPECIFICALLY, WITHOUT BEING LIMITED THERETO, SUBJECT TO ANY UNRELEASED RESTRICTIONS CONTAINED IN THE DEED OR DEEDS BY WHICH THE CITY RECEIVED TITLE TO THE LAND. THE DEED SHALL BE SIGNED BY THE CITY MANAGER AND ATTESTED BY THE CITY CLERK. THE FORM OF THE DEED SHALL BE APPROVED BY THE CITY ATTORNEY.

(I) IF A BUYER DESIRES TO OBTAIN A PRELIMINARY COMMITMENT FOR TITLE INSURANCE OR TITLE INSURANCE TO THE LAND, THEN IT SHALL BE THE RESPONSIBILITY OF THE BUYER TO OBTAIN SUCH COMMITMENT OR INSURANCE AND TO PAY FOR THE SAME.

(J) IF THE TRACT OR TRACTS OF LAND ARE SOLD UNDER TERMS BY WHICH THE CITY IS TO ACCEPT A NOTE AS A PORTION OF THE PURCHASE PRICE, THE NOTE AND ACCOMPANYING DEED OF TRUST MUST BE PREPARED BY AN ATTORNEY, BUT MUST BE APPROVED BY THE CITY ATTORNEY PRIOR TO CLOSING.

(K) THE NOTE SHALL BE PLACED FOR COLLECTION WITH A BANK SELECTED BY THE CITY MANAGER, WHICH MAY BE CHANGED FROM TIME TO TIME, AND WHICH SHALL BE THE BANK IN WHICH CITY FUNDS ARE DEPOSITED. THE SET-UP FEE TO INITIATE COLLECTION MAY BE NEGOTIATED, AND THE BUYER SHALL PAY THE ANNUAL COLLECTION FEES FOR SUCH BANK COLLECTION.

(L) TO ENABLE THE CITY TO COMPETE ON AN EQUAL BASIS WITH PRIVATE ENTERPRISE IN LANDS DISPOSAL, THE CITY MANAGER IS AUTHORIZED TO NEGOTIATE A DIVISION OF THE COSTS OF SALE LISTED IN KMC 21.15.190(F), (G), (H), (I) AND (J) TO A MAXIMUM OF FIFTY PERCENT (50%) OF THE REQUIRED COSTS BEING BORNE BY THE CITY.

21.15.200 TERMS FOR FINANCING SALE OF CITY LANDS.

(A) IN ORDER TO EXPEDITE AND FACILITATE THE SALE OF CITY LANDS, THE CITY MANAGER IS AUTHORIZED TO ACCEPT TERMS FOR SAID SALES AND MAY ACCEPT A NOTE SECURED BY A DEED OF TRUST FOR A PORTION OF THE PURCHASE PRICE THEREOF, SUBJECT TO THE FOLLOWING RESTRICTIONS:

(1) IF THE SALE IS TO A LESSEE WHO HAS PLACED A LIEN FOR FINANCING UPON THE LAND OR IMPROVEMENTS, THEN THE CITY MANAGER IS NOT AUTHORIZED TO SELL THE LAND EXCEPT FOR TOTAL CASH PAYMENT, PROVIDED; HOWEVER, THAT THE CITY MANAGER MAY ACCEPT A NOTE SECURED BY A DEED OF TRUST SUBORDINATE TO THE EXISTING SECURITY INTEREST IF THE AMOUNT OF THE NOTE THEREBY SECURED IS WITHIN THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE LAND WITH IMPROVEMENTS, AND THE SUM OF ALL PRIOR SECURITY INTERESTS. THE SALE DOCUMENTS SHALL BE SUBJECT TO THE SAME RESTRICTIONS CONTAINED IN THE LEASE AS THE LEASE PROVIDES AT THE TIME OF SALE.

(2) PRIOR TO MAKING A DETERMINATION TO ACCEPT A NOTE AND DEED OF TRUST FROM A PROSPECTIVE PURCHASER, THE CITY MANAGER SHALL SECURE A PRELIMINARY COMMITMENT FOR TITLE INSURANCE (AT PURCHASER'S EXPENSE) AND A REVIEW OF THE GRANTEE INDEX COVERING THE PARTY DESIRING TO PURCHASE THE LAND FROM THE TITLE COMPANY IN THE LOCAL RECORDING DISTRICT, AND NO CREDIT WILL BE ADVANCED ON SUCH SALE IF THERE ARE ANY DELINQUENT LIENS OR UNPAID JUDGMENTS FOUND IN THE TITLE COMPANY REPORT UNTIL ANY SUCH JUDGMENTS OR LIENS ARE PAID AND RELEASES THEREFORE HAVE BEEN FILED.

(3) IN THE EVENT OF A CREDIT SALE, THE DOWN PAYMENT REQUIRED SHALL BE DETERMINED BY THE CITY MANAGER, BUT SHALL NOT BE LESS THAN FIFTEEN PERCENT (15%) OF THE SALES PRICE.

(B) IF THE CITY MANAGER DETERMINES THAT IT IS IN THE CITY'S INTEREST TO SELL CITY LANDS, THE SALE SHALL BE EITHER A CASH TRANSACTION OR BY A NOTE SECURED BY A DEED OF TRUST, SUBJECT TO SUBSECTION (A) OF THIS SECTION, AND BY NO OTHER MEANS. THE NOTE AND DEED OF TRUST SHALL CARRY TERMS AS FOLLOWS:

(1) THE TERM OF SUCH NOTE MAY BE SET BY THE CITY MANAGER, BUT IT SHALL PROVIDE FOR MONTHLY PAYMENTS AND NOT EXCEED TWENTY (20) YEARS UNLESS A LONGER PERIOD FOR A SPECIFIC SALE OF LAND IS APPROVED BY RESOLUTION OF THE CITY COUNCIL.

(2) SUCH NOTE SHALL BEAR INTEREST AT A RATE TO BE DETERMINED BY THE CITY COUNCIL BY RESOLUTION.

21.15.210 DETERMINATION AS TO NEED FOR PUBLIC USE.

(A) WHETHER LAND SHALL BE ACQUIRED, RETAINED, DEVOTED, OR DEDICATED TO A PUBLIC USE SHALL BE DETERMINED BY ORDINANCE WHICH SHALL CONTAIN THE PUBLIC USE FOR WHICH SAID PROPERTY IS TO BE DEDICATED, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE ADDRESS OR A GENERAL DESCRIPTION OF THE PROPERTY SUFFICIENT TO PROVIDE THE PUBLIC WITH NOTICE OF ITS LOCATION.

(B) WHETHER LAND PREVIOUSLY DEDICATED TO A PUBLIC USE SHOULD BE DEDICATED TO A DIFFERENT PUBLIC USE OR SHOULD NO LONGER BE NEEDED BY THE CITY FOR PUBLIC USE SHALL BE DETERMINED BY THE CITY COUNCIL BY ORDINANCE WHICH SHALL CONTAIN THE NEW PUBLIC USE FOR WHICH SAID PROPERTY IS TO BE DEDICATED OR THE REASON THE LAND IS NO LONGER NEEDED FOR PUBLIC USE, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE ADDRESS OR A GENERAL DESCRIPTION OF THE PROPERTY SUFFICIENT TO PROVIDE THE PUBLIC WITH NOTICE OF ITS LOCATION.

21.15.220 PROPERTY EXCHANGES.

THE COUNCIL MAY APPROVE, BY RESOLUTION, AFTER PUBLIC NOTICE AND AN OPPORTUNITY FOR PUBLIC HEARING, THE CONVEYANCE AND EXCHANGE OF A PARCEL OF CITY PROPERTY FOR PROPERTY OWNED BY ANOTHER PERSON SUBJECT TO SUCH CONDITIONS AS COUNCIL MAY IMPOSE ON THE EXCHANGE, WHENEVER IN THE JUDGMENT OF THE CITY COUNCIL IT IS ADVANTAGEOUS TO THE CITY TO MAKE THE PROPERTY EXCHANGE AND THE CITY SHALL RECEIVE PROPERTY (INCLUDING A PORTION OF MONEY) AT LEAST EQUIVALENT TO THE VALUE OF THE PROPERTY EXCHANGED BY THE CITY.

21.15.230 PROPERTY SALE TO ADJACENT OWNERS.

THE COUNCIL MAY APPROVE, BY RESOLUTION, AFTER PUBLIC NOTICE AND AN OPPORTUNITY FOR PUBLIC HEARING, THE SALE AND CONVEYANCE OF A PARCEL OF CITY PROPERTY AT ITS APPRAISED VALUE TO THE OWNER OF ADJACENT LAND WHENEVER, IN THE JUDGMENT OF THE CITY COUNCIL, THE PARCEL OF LAND IS OF SUCH SMALL SIZE, SHAPE, OR LOCATION THAT IT COULD NOT BE PUT TO PRACTICAL USE BY ANY OTHER PARTY AND, IN ADDITION THERETO, WHERE THERE IS NO FORESEEABLE NEED OF THE LAND FOR ANY FUTURE USE BY THE CITY.

21.15.240 GRANT OR DEVOTION.

(A) THE COUNCIL, BY ORDINANCE, MAY LEASE, GRANT OR DEVOTE REAL PROPERTY NO LONGER NEEDED BY THE CITY FOR A PUBLIC PURPOSE TO THE UNITED STATES, THE STATE OF ALASKA, A LOCAL POLITICAL SUBDIVISION OF THE STATE OF ALASKA (INCLUDING THE CITY OF KENAI GENERAL FUND), OR ANY AGENCY OF ANY OF THESE GOVERNMENTS OR NON-PROFIT CORPORATION, FOR A CONSIDERATION AGREED UPON BETWEEN THE CITY AND GRANTEE WITHOUT A PUBLIC SALE IF THE GRANT OR DEVOTION IS ADVANTAGEOUS TO THE CITY.

(B) IN THE EVENT THE LAND DIRECTED TO BE CONVEYED UNDER SUBSECTION (A) OF THIS SECTION CONSISTS IN PART OR IN WHOLE OF AIRPORT LANDS, THEN THE ORDINANCE ORDERING ITS CONVEYANCE WILL NOT BE EFFECTIVE UNTIL THE CITY COUNCIL BY ORDINANCE HAS APPROPRIATED FROM THE GENERAL FUND TO BE DEDICATED TO THE AIRPORT THE DIFFERENCE BETWEEN THE APPRAISED FAIR MARKET VALUE OF SAID AIRPORT LANDS AND THE PURCHASE PRICE, IF ANY, SET FORTH IN SAID ORDINANCE.

21.15.250 USE PERMITS.

THE COUNCIL MAY AUTHORIZE THE CITY MANAGER TO GRANT PERMITS FOR THE TEMPORARY USE OF REAL PROPERTY OWNED BY THE CITY FOR A PERIOD NOT TO EXCEED ONE (1) YEAR, WITHOUT APPRAISAL OF THE VALUE OF THE PROPERTY OR PUBLIC AUCTION, FOR ANY PURPOSE COMPATIBLE WITH THE ZONING OF THE LAND, AND ON SUCH TERMS AND FOR SUCH RENTALS AS THE COUNCIL SHALL DETERMINE.

21.15.260 ACQUISITION OF REAL PROPERTY.

(A) THE CITY, BY AUTHORIZATION OF THE CITY COUNCIL, EXPRESSED IN A RESOLUTION FOR SUCH PURPOSE, MAY PURCHASE OR ACQUIRE AN INTEREST IN, OR LEASE REAL PROPERTY NEEDED FOR A PUBLIC USE WITHIN OR OUTSIDE THE AIRPORT RESERVE ON SUCH TERMS AND CONDITIONS AS THE COUNCIL SHALL DETERMINE, BUT NO PURCHASE SHALL BE MADE UNTIL A QUALIFIED APPRAISER HAS APPRAISED THE PROPERTY AND GIVEN THE COUNCIL AN INDEPENDENT OPINION AS TO THE FULL AND TRUE VALUE THEREOF;

(B) BECAUSE OF THE UNIQUE VALUE OF REAL PROPERTY, THE CITY NEED NOT ACQUIRE OR LEASE REAL PROPERTY BY COMPETITIVE BIDDING.

Section 3. Repealing, Renaming and Re-enacting Title 22 of the Kenai Municipal Code: That Kenai Municipal Code, Title 22 – General Fund Lands is hereby repealed, renamed, and re-enacted as follows:

**[TITLE 22
GENERAL FUND LANDS**

**CHAPTER 22.05
DISPOSITION OF CITY GENERAL FUND LANDS**

22.05.010 POWER TO DISPOSE OF REAL PROPERTY.

(A) THE PROVISIONS OF THIS CHAPTER APPLY TO GENERAL FUND REAL PROPERTY.

(B) THE CITY MAY SELL, CONVEY, EXCHANGE, TRANSFER, DONATE, DEDICATE, DIRECT, OR ASSIGN TO USE, OR OTHERWISE DISPOSE OF CITY-OWNED REAL PROPERTY, INCLUDING PROPERTY ACQUIRED, HELD FOR, OR DEVOTED TO A PUBLIC USE, ONLY IN ACCORDANCE WITH THIS CHAPTER, AND, WITH RESPECT TO PROPERTIES ACQUIRED THROUGH FORECLOSURE FOR TAXES, IN COMPLIANCE WITH THOSE TERMS AND PROVISIONS OF AS 29 Which Home-Rule Municipalities Are Required To Comply With. DISPOSAL OR SALE OF LANDS SHALL BE MADE ONLY WHEN, IN THE JUDGMENT OF THE CITY COUNCIL, SUCH LANDS ARE NOT REQUIRED FOR A PUBLIC PURPOSE.

22.05.015 SALE OR DISPOSAL.

THE CITY MAY SELL OR DISPOSE OF REAL PROPERTY BY WARRANTY OR QUIT-CLAIM DEED, EASEMENT, LEASE, GRANT, PERMIT, LICENSE, DEED OF TRUST, MORTGAGE CONTRACT OF SALE OF REAL PROPERTY, PLAT DEDICATION, TAX DEED, OR ANY OTHER LAWFUL METHOD OR MODE OF CONVEYANCE OR GRANT. ANY INSTRUMENT REQUIRING EXECUTION BY THE CITY SHALL BE SIGNED BY THE CITY MANAGER AND ATTESTED BY THE CITY CLERK. THE FORM OF ANY INSTRUMENT SHALL BE APPROVED BY THE CITY ATTORNEY.

22.05.020 QUALIFICATIONS OF APPLICANTS OR BIDDERS.

AN APPLICANT OR BIDDER FOR A LEASE IS QUALIFIED IF THE APPLICANT OR BIDDER:

- (A) IS AN INDIVIDUAL AT LEAST EIGHTEEN (18) YEARS OF AGE OR OVER; OR
- (B) IS A GROUP, ASSOCIATION, OR CORPORATION WHICH IS AUTHORIZED TO CONDUCT BUSINESS UNDER THE LAWS OF ALASKA; OR
- (C) IS ACTING AS AN AGENT FOR ANOTHER AND HAS QUALIFIED BY FILING WITH THE CITY MANAGER A PROPER POWER OF ATTORNEY OR A LETTER OF AUTHORIZATION CREATING SUCH AGENCY. THE AGENT SHALL REPRESENT ONLY ONE (1) PRINCIPAL TO THE EXCLUSION OF HIMSELF OR HERSELF. THE TERM "AGENT" INCLUDES REAL ESTATE BROKERS AND AGENTS.

22.05.025 APPLICATIONS.

(A) ALL APPLICATIONS FOR LEASE OF LANDS SHALL BE FILED WITH THE CITY MANAGER ON FORMS PROVIDED BY THE CITY AVAILABLE AT CITY HALL. APPLICATIONS SHALL BE DATED ON RECEIPT AND PAYMENT OF FILING FEE AND DEPOSIT. NO APPLICATION WILL BE ACCEPTED BY THE CITY MANAGER UNLESS IT APPEARS TO THE CITY MANAGER TO BE COMPLETE. 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) THE DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED (ORDINARILY A MAXIMUM OF TWO (2) YEARS); AND
- (5) WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY. APPLICATIONS SHALL BECOME A PART OF THE LEASE.

22.05.030 FILING FEE AND DEPOSIT.

(A) WHEN SUBMITTING AN APPLICATION FOR LEASE OF LAND, THE APPLICANT SHALL PAY THE CITY THE FOLLOWING AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL:

- (1) PAY A NON-REFUNDABLE FILING FEE IN THE AMOUNT; AND
- (2) A DEPOSIT TO SHOW GOOD FAITH AND SECURE THE CITY IN PAYMENT OF ANY COSTS, INCLUDING:
 - (A) AN APPRAISAL COST RECOVERY DEPOSIT; AND
 - (B) AN ENGINEERING, SURVEYING AND CONSULTING COST RECOVERY DEPOSIT.

(B) IF THE CITY DECIDES TO REJECT THE APPLICANT'S APPLICATION AND NOT ENTER INTO A LEASE WITH THE APPLICANT THROUGH NO FAULT OF THE APPLICANT OR FAILURE OF THE APPLICANT TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER, ANY DEPOSIT MADE UNDER SUBSECTION (A)(2) OF THIS SECTION WILL BE RETURNED TO THE APPLICANT.

(C) IF THE CITY ENTERS INTO A LEASE WITH THE APPLICANT ANY DEPOSIT MADE BY THE APPLICANT UNDER SUBSECTION (A)(2) OF THIS SECTION WILL BE APPLIED TO THE CITY'S ENGINEERING, APPRAISAL, AND CONSULTING COSTS RELATED TO THE PROCESSING OF THE APPLICANT'S APPLICATION AND ENTERING INTO THE

LEASE. THE CITY WILL APPLY ANY UNUSED BALANCE OF A DEPOSIT TO THE RENT PAYABLE UNDER THE LEASE. IF THE CITY'S COSTS EXCEED THE AMOUNT OF ANY DEPOSIT, THE APPLICANT SHALL PAY THE SHORTAGE TO THE CITY AS A CONDITION OF THE LEASE.

(D) IF THE APPLICANT FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER, CAUSES INORDINATE DELAY, AS DETERMINED BY THE CITY MANAGER, OR REFUSES TO SIGN A LEASE OFFERED TO THE APPLICANT, THE CITY MANAGER WILL REJECT THE APPLICANT'S APPLICATION AND APPLY ANY DEPOSIT MADE BY THE APPLICANT UNDER SUBSECTION (A) OF THIS SECTION TO THE CITY'S APPRAISAL, ENGINEERING, AND CONSULTING COSTS INCURRED IN CONNECTION WITH THE APPLICANT'S APPLICATION. IF THE CITY'S COSTS FOR APPRAISAL, ENGINEERING AND CONSULTING COSTS EXCEED THE DEPOSITS, THE APPLICANT WILL BE RESPONSIBLE FOR THESE COSTS. THE CITY WILL RETURN ANY UNUSED DEPOSIT BALANCE TO THE APPLICANT.

22.05.035 RIGHTS PRIOR TO LEASING.

THE FILING OF AN APPLICATION FOR A LEASE SHALL GIVE THE APPLICANT NO RIGHT TO LEASE OR TO THE USE OF THE LAND FOR WHICH THEY HAVE APPLIED. THE APPLICATION SHALL EXPIRE WITHIN TWELVE (12) MONTHS AFTER THE APPLICATION HAS BEEN MADE IF A LEASE HAS NOT BEEN ENTERED INTO BETWEEN THE CITY AND THE APPLICANT BY THAT TIME UNLESS THE CITY COUNCIL FOR GOOD CAUSE GRANTS AN EXTENSION. NO EXTENSION MAY BE GRANTED FOR A PERIOD LONGER THAN SIX (6) ADDITIONAL MONTHS. LEASE RATES ARE SUBJECT TO CHANGE ON THE BASIS OF AN APPRAISAL DONE EVERY TWELVE (12) MONTHS ON THE PROPERTY APPLIED FOR.

22.05.040 PROCESSING PROCEDURE.

(A) APPLICATIONS SHALL BE FORWARDED TO THE PLANNING AND ZONING COMMISSION UPON RECEIPT. THE PLANNING AND ZONING COMMISSION SHALL NORMALLY CONSIDER APPLICATIONS FOR SPECIFIC LANDS ON A FIRST-COME, FIRST-SERVED BASIS IF THE COMMISSION FINDS THAT THE APPLICATION IS COMPLETE AND CONFORMS TO THE COMPREHENSIVE PLAN AND THE KENAI ZONING CODE. WHERE THERE IS DIFFICULTY IN OBTAINING A PERFECTED APPLICATION, DETAILS AS TO DEVELOPMENT PLANS, ETC., OR WHERE THE APPLICANT FAILS TO COMPLY WITH DIRECTIONS OR REQUESTS OF THE PLANNING AND ZONING COMMISSION, ANY SUCH PRIORITY WILL BE LOST. IF AN APPLICATION FOR THE PURCHASE OF CITY-OWNED LANDS, PREVIOUSLY AUTHORIZED FOR SALE BY THE COUNCIL, IS RECEIVED BY THE CITY PRIOR TO THE KENAI PLANNING AND ZONING COMMISSION MAKING AN AFFIRMATIVE OR NEGATIVE RECOMMENDATION

TO THE COUNCIL REGARDING THE LEASE APPLICATION FOR THE SAME PROPERTY, THE CITY MAY ELECT TO SELL THE PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THE CODE.

(B) THE CITY COUNCIL SHALL NORMALLY CONSIDER A LEASE PROPOSAL ONLY AFTER APPROVAL OF THE PLANNING AND ZONING COMMISSION. HOWEVER, APPEALS OF PLANNING AND ZONING COMMISSION DISAPPROVAL MAY BE MADE TO THE CITY COUNCIL. COMPLETED LEASE APPLICATIONS MUST BE PRESENTED TO THE CITY COUNCIL WITHIN THIRTY (30) DAYS AFTER APPROVAL BY THE PLANNING AND ZONING COMMISSION.

(C) WHERE THERE ARE TWO (2) OR MORE APPLICATIONS FOR THE SAME LANDS FOR DIFFERENT USES, THEN IF THE PLANNING AND ZONING COMMISSION MAKES A FINDING THAT A SUBSEQUENT APPLICATION WOULD RESULT IN USE OF THE LANDS FOR A HIGHER AND BETTER PURPOSE WITH A GREATER BENEFIT TO THE CITY OF KENAI AND THE CITIZENS THEREOF, THEN THE LEASE MAY BE ISSUED TO SUCH APPLICANT NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) IN THIS SECTION WHICH PROVIDE FOR LEASING ON A FIRST-COME, FIRST-SERVED BASIS. ANY APPLICANT MAY APPEAL TO THE CITY COUNCIL FROM A FINDING OR A REFUSAL TO FIND BY THE PLANNING AND ZONING COMMISSION BY FILING AN APPEAL WITH THE CITY CLERK WITHIN SEVEN (7) DAYS AFTER THE FINDING IS MADE OR REFUSED BY THE PLANNING AND ZONING COMMISSION.

(D) THE DECISION WHETHER OR NOT TO LEASE LAND RESTS IN THE SOLE DISCRETION OF THE CITY COUNCIL.

22.05.045 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.

22.05.050 APPRAISAL.

NO LAND SHALL BE SOLD, LEASED, OR A RENEWAL OF LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A TWELVE (12) MONTH PERIOD PRIOR TO THE SALE OR 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. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION.

22.05.055 TERMS OF LEASE.

ALL LEASES SHALL BE APPROVED BY THE CITY COUNCIL BEFORE THE SAME SHALL BECOME EFFECTIVE. THE TERM OF ANY GIVEN LEASE SHALL DEPEND UPON THE DURABILITY OF THE PROPOSED USE, THE AMOUNT OF INVESTMENT IN IMPROVEMENT PROPOSED AND MADE, AND THE NATURE OF THE IMPROVEMENT PROPOSED WITH RESPECT TO DURABILITY AND TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT. (ORD. 2200-2006)

22.05.060 ANNUAL MINIMUM RENTAL.

(A) ANNUAL MINIMUM RENTALS SHALL BE COMPUTED FROM THE APPROVED APPRAISED MARKET VALUE UTILIZING THE METHOD AS DESCRIBED IN KMC 22.05.070 OF THIS CHAPTER.

(B) UPON EXECUTION OF THE LEASE, THE LANDS 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, AND SHALL PAY ANY SPECIAL ASSESSMENTS AND TAXES AS IF HE OR SHE WERE THE OWNER OF THE LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. PAYMENTS SHALL BE PRORATED TO CONFORM TO THE CITY OF KENAI'S FISCAL YEAR BEGINNING JULY 1ST AND ENDING JUNE 30TH. IF THE EQUIVALENT MONTHLY PAYMENT EXCEEDS TWO HUNDRED DOLLARS (\$200.00), THEN THE LESSEE SHALL HAVE THE OPTION OF MAKING PAYMENTS ON A MONTHLY BASIS.

(D) LESSEE SHALL BE RESPONSIBLE FOR ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.

22.05.065 BIDDING PROCEDURE.

AS AN EXCEPTION TO GENERAL POLICY LISTED ABOVE, THE CITY COUNCIL MAY DESIGNATE A SPECIFIC LOT OR LOTS TO BE MADE AVAILABLE ONLY FOR BID. THIS PROVISION SHALL APPLY ONLY WHEN THERE IS NO OUTSTANDING APPLICATION PENDING ON THE LOT OR LOTS. AS DESIGNATED, SEALED BIDS SHALL BE RECEIVED OFFERING A ONE (1) TIME PREMIUM IN ADDITION TO THE ESTABLISHED LEASE RATE. HIGHEST BID, HOWEVER, SHALL BE SUBJECT TO ALL PROVISIONS OF REVIEW AND APPROVAL ESTABLISHED FOR ALL OTHER LEASE APPLICATIONS.

22.05.070 PRINCIPLES AND POLICY OF LEASE RATES.

(A) A FAIR RETURN TO THE GENERAL FUND IS THE POLICY OF THE CITY, UNLESS DEVIATION FROM THAT POLICY IS IN THE BEST INTEREST OF THE CITY AS DETERMINED BY THE CITY COUNCIL. TO ENSURE 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 THE LEASE AND EVERY FIVE (5) YEARS THEREAFTER, AND ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. LEASE RATES:

(1) SHALL BE BASED ON 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 SPECIFIED LAND; AND

(2) SHALL BE EIGHT PERCENT (8%) OF FAIR MARKET VALUE.

(B) FOR LEASES IN EXISTENCE PRIOR TO THE EFFECTIVE DATE OF THE ORDINANCE CODIFIED IN THIS CHAPTER, THE LEASE RATE REDETERMINATION SHALL BE AS PROVIDED IN THE LEASE.

(C) THE CITY MANAGER SHALL CHANGE THE RENT IN A LEASE BY GIVING THE LESSEE WRITTEN NOTICE AT LEAST THIRTY (30) DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE CHANGE.

(D) THE "FAIR MARKET VALUE" OF THE PREMISES SHALL BE EQUAL TO THE THEN FAIR MARKET RATE FOR SIMILAR COMMERCIAL PROPERTY IN THE CITY OF KENAI, ALASKA (THE "RELEVANT AREA"). CITY SHALL GIVE NOTICE TO LESSEE OF CITY'S ESTIMATION OF THE FAIR MARKET VALUE NOT LATER THAN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN-APPLICABLE FIVE (5) YEAR PERIOD, AS EVIDENCED AND SUPPORTED BY THE WRITTEN OPINION OF AN INDEPENDENT REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87, SELECTED AND PAID FOR BY THE CITY, FAMILIAR WITH THE RELEVANT AREA (THE "FIRST APPRAISER"). IF LESSEE DISAGREES WITH SUCH ESTIMATE, IT SHALL ADVISE THE CITY IN WRITING THEREOF WITHIN THIRTY (30) DAYS OF LESSEE'S RECEIPT OF SUCH ESTIMATE, AS EVIDENCED AND SUPPORTED BY THE WRITTEN OPINION OF A REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87 (SELECTED AND PAID FOR BY LESSEE) FAMILIAR WITH THE RELEVANT AREA (THE "SECOND APPRAISER"). THE PARTIES SHALL PROMPTLY MEET TO ATTEMPT TO RESOLVE THEIR DIFFERENCES BETWEEN THE FIRST APPRAISER AND THE SECOND APPRAISER CONCERNING THE FAIR MARKET VALUE OF THE PREMISES. IF CITY AND LESSEE CANNOT AGREE UPON SUCH VALUE THEN, WITH ALL DELIBERATE SPEED, THEY SHALL DIRECT THE FIRST APPRAISER AND THE SECOND APPRAISER TO EXPEDITIOUSLY AND MUTUALLY SELECT A THIRD REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87 (SELECTED AND PAID FOR JOINTLY BY THE PARTIES) FAMILIAR WITH THE RELEVANT AREA (THE "THIRD APPRAISER"). WITHIN THIRTY (30) DAYS AFTER THE THIRD APPRAISER HAS BEEN APPOINTED,

THE THIRD APPRAISER SHALL DECIDE WHICH OF THE TWO (2) RESPECTIVE APPRAISALS FROM THE FIRST APPRAISER AND THE SECOND APPRAISER MOST CLOSELY REFLECTS THE FAIR MARKET VALUE OF THE PREMISES. THE FAIR MARKET VALUE OF THE PREMISES SHALL IRREBUTTABLY BE PRESUMED TO BE THE VALUE CONTAINED IN SUCH APPRAISAL SELECTED BY THE THIRD APPRAISER, AND THE RENTAL SHALL BE REDETERMINED BASED ON SUCH VALUE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, RENTAL SHALL CONTINUE TO BE PAID AT THE THEN-APPLICABLE RATE UNTIL ANY SUCH NEW RENTAL RATE IS ESTABLISHED, AND LESSEE AND CITY SHALL PROMPTLY PAY OR REFUND, AS THE CASE MAY BE, ANY VARIANCE IN THE RENTAL, WITHOUT INTEREST THEREON ACCRUING TO THE EXTENT TO PAID/REFUNDED IN A TIMELY FASHION.

22.05.075 REIMBURSEMENT FOR CITY-CONSTRUCTED IMPROVEMENTS.

(A) THE CITY MANAGER MAY INCLUDE IN A LEASE A REQUIREMENT FOR THE LESSEE TO REIMBURSE THE CITY FOR THE CITY'S COST OF:

(1) LAND CLEARING, GRAVEL FILL, UTILITY EXTENSIONS AND OTHER IMPROVEMENTS OR AMENITIES ON OR IN DIRECT CONNECTION WITH THE PREMISES, CONSTRUCTED BY THE CITY PRIOR TO THE EFFECTIVE DATE OF THE LEASE; OR

(2) LAND CLEARING, GRAVEL FILL, UTILITY EXTENSIONS AND OTHER IMPROVEMENTS OR AMENITIES ON OR IN DIRECT CONNECTION WITH THE PREMISES, WHICH THE CITY AGREES TO CONSTRUCT AS A CONDITION OF THE LEASE, SUBJECT TO CITY COUNCIL APPROVAL.

(B) THE LESSEE SHALL REIMBURSE THE CITY FOR THE CITY'S COST OF CONSTRUCTING THE IMPROVEMENTS IN TEN (10) EQUAL ANNUAL PAYMENTS, PLUS INTEREST AT EIGHT PERCENT (8%) PER YEAR ON THE UNPAID BALANCE. IF THE LEASE IS FOR LESS THAN TEN (10) YEARS, THE REPAYMENT SCHEDULE MAY NOT BE LONGER THAN THE TERM OF THE LEASE. THE LESSEE MAY PAY THE ENTIRE REMAINING BALANCE TO THE CITY AT ANY TIME DURING THE TERM OF THE LEASE.

22.05.080 LEASE EXECUTION.

THE LEASE APPLICANT SHALL EXECUTE AND RETURN THE APPROPRIATE LEASE AGREEMENT WITH THE CITY OF KENAI WITHIN THIRTY (30) DAYS OF MAILING THE AGREEMENT TO THE APPLICANT. THE LEASE AGREEMENT SHALL BE PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS TITLE. FAILURE TO EXECUTE AND

RETURN THE LEASE AGREEMENT WITHIN THE SPECIFIED PERIOD SHALL RESULT IN THE FORFEITURE OF ALL LEASING RIGHTS.

22.05.085 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 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 FOR THE LAND SHALL CONSTITUTE GROUNDS FOR CANCELLATION.

22.05.090 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, WHERE IT IS FOUND THAT ENCOURAGEMENT OF A NEW COMMERCIAL OR INDUSTRIAL ENTERPRISE WOULD BE BENEFICIAL TO THE CITY OF KENAI, THE CITY COUNCIL BY ORDINANCE SO FINDING MAY DIRECT CONVEYANCE OF ONE OR MORE PARCELS OF CITY LAND BY THE CITY MANAGER TO SUCH ENTERPRISE UPON SUCH TERMS AS TO PRICE, CONDITIONS OF CONVEYANCE, AND WITH SUCH CONTINGENCIES AS MAY BE SET FORTH IN THE ORDINANCE.

22.05.095 SALE.

(A) LANDS, TO WHICH THE CITY OF KENAI HOLDS TITLE WHICH ARE NOT RESTRICTED FROM SALE BY THE DEED OF CONVEYANCE TO THE CITY, OR WHICH HAVE BEEN RELEASED FROM SUCH RESTRICTIONS, WHICH THE CITY COUNCIL HAS DETERMINED ARE NOT REQUIRED FOR A PUBLIC PURPOSE, MAY BE LISTED FOR SALE BY THE CITY MANAGER, EXCEPT THAT LANDS WHICH HAVE BEEN LEASED SHALL NOT BE SOLD UNLESS THE LESSEE HAS MADE A WRITTEN REQUEST TO THE CITY TO PLACE THE LAND FOR SALE.

(B) SALES OF LAND PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL BE MADE AT NOT LESS THAN FAIR MARKET VALUE. THE PURCHASER SHALL EXECUTE THE "AGREEMENT FOR SALE OF LAND" WITHIN ONE (1) YEAR OF THE DATE OF APPRAISAL. THE CITY MANAGER HAS THE OPTION TO DISPOSE OF SUCH PROPERTIES IN ACCORDANCE WITH THE SALE PROCEDURES SET OUT IN THIS TITLE:

- (1) BY NEGOTIATED SALE; OR
- (2) BY OUTCRY AUCTION TO THE HIGHEST RESPONSIBLE BIDDER; OR
- (3) BY COMPETITIVE SEALED BIDS TO THE HIGHEST RESPONSIBLE BIDDER.

IN THE EVENT THAT THE SALE IS NOT CLOSED WITHIN SIX (6) MONTHS OF THE DATE OF APPRAISAL, THE BUYER WILL BE CHARGED, UPON CLOSING, INTEREST COMPUTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE KENAI MUNICIPAL CODE, BASED UPON THE TOTAL SALES PRICE FOR THE NUMBER OF DAYS PAST THE EXPIRATION OF THE SIX (6) MONTH PERIOD.

22.05.100 SALE PROCEDURE.

(A) THE CITY MANAGER WILL OBTAIN SUCH AN APPRAISAL FOR A DETERMINATION OF THE MINIMUM PRICE ON THE LAND.

(B) WHERE ANY PARTY, HEREINAFTER CALLED "APPLICANT," REQUESTS THAT A TRACT OR TRACTS OF LAND BE SOLD FOR WHICH AN APPRAISAL WILL BE REQUIRED, WHICH WILL REQUIRE SUBDIVIDING, PLATTING, OR SURVEYING AND STAKING, OR WHICH WILL REQUIRE ADVERTISING OR INCURRING ANY OTHER EXPENDITURES BY THE CITY PRIOR TO SALE.

(1) NO ACTIONS IN PREPARATION FOR SALE WILL BE TAKEN BY THE CITY UNTIL AN AGREEMENT TO PURCHASE SHALL BE PROPERLY EXECUTED AND FILED WITH THE CITY MANAGER FOR THE PURCHASE OF SUCH LAND WITH PAYMENT OF SUFFICIENT GOOD FAITH DEPOSIT, WHICH SHALL CONSIST OF CASH OR ITS EQUIVALENT DEPOSITED WITH THE FINANCE OFFICER OF THE CITY OF KENAI, AS MAY BE DETERMINED BY THE CITY MANAGER, TO COVER ALL EXPENSES OF THE CITY AND SUCH AGREEMENT TO PURCHASE SHALL FURTHER CONTAIN THE AGREEMENT BY APPLICANT TO PAY ANY ADDITIONAL COSTS IF SAID GOOD FAITH DEPOSIT IS INSUFFICIENT TO PAY ALL COSTS INCURRED BY THE CITY.

(2) IF AT ANY TIME DURING THE PROCESS OF PREPARING FOR SALE, THE APPLICANT GIVES NOTICE TO THE CITY MANAGER OF WITHDRAWAL OF THE REQUEST FOR SALE, THE CITY MANAGER SHALL STOP ALL PROCEDURES, SHALL PAY EXPENSES INCURRED PRIOR TO TERMINATION OF SALE PROCEDURES, AND SHALL REIMBURSE APPLICANT FOR ANY GOOD FAITH DEPOSIT ADVANCED IN EXCESS OF ALL EXPENSES INCURRED. (HOWEVER, IF ANOTHER PARTY DESIRES THE SALE TO PROCEED, FILES AN APPLICATION FOR SALE, EXECUTES AND FILES AN AGREEMENT TO PURCHASE, AND ADVANCES SUFFICIENT FUNDS THEREFOR, THEN THE PRIOR APPLICANT WILL BE REIMBURSED FOR EXPENSES CHARGES WHICH CAN BE ATTRIBUTED TO THE SUBSEQUENT APPLICANT.)

(3) IF ALL ACTIONS NECESSARY FOR PREPARATION FOR SALE HAVE BEEN ACCOMPLISHED, AND IF NEITHER THE APPLICANT NOR ANY OTHER PARTY PURCHASES SAID LAND WHEN FIRST OFFERED FOR SALE AFTER SUCH

REQUEST, THEN ALL EXPENSES INCURRED IN PREPARATION FOR THE SALE WILL BE PAID FROM THE GOOD FAITH DEPOSIT, AND THE BALANCE, IF ANY, SHALL BE RETURNED TO THE APPLICANT. IF THE SUMS ADVANCED AS GOOD FAITH DEPOSIT ARE INSUFFICIENT TO PAY ALL OF THE COSTS, THE APPLICANT WILL BE BILLED FOR THE BALANCE DUE AND NORMAL COLLECTION PROCEDURES FOLLOWED.

(4) IF THE LAND APPLIED FOR IS SOLD ON PUBLIC SALE SET IN RESPONSE TO SUCH REQUEST TO ANYONE OTHER THAN APPLICANT, THEN ON CLOSING OF THE SALE, THE GOOD FAITH DEPOSIT WILL BE REFUNDED IN TOTAL TO THE APPLICANT. THE CITY'S EXPENSES WILL BE FIRST DEDUCTED FROM THE DEPOSIT OF THE SUCCESSFUL BIDDER.

(5) IF THE LAND IN QUESTION IS SOLD TO APPLICANT, THE GOOD FAITH DEPOSIT ADVANCED, AFTER DEDUCTING THE CITY'S EXPENSES, WILL BE APPLIED ON THE PAYMENT DUE AT CLOSING.

(6) IF THE LAND IN QUESTION IS TO BE SOLD BY SEALED BID AND THE APPLICANT HAS SUBMITTED A VALID BID, BUT THE APPLICANT IS NOT THE HIGH BIDDER, HE OR SHE MAY PURCHASE THE LAND BY TENDERING THE CITY A BID EQUAL TO THE HIGH BID WITHIN FIVE (5) DAYS OF THE BID OPENING. IF THE LAND SALE IS INITIATED IN ACCORDANCE WITH KMC 22.05.040(A), THE APPLICANT SHALL BE DEFINED AS THAT PARTY SUBMITTING THE INITIAL LEASE APPLICATION.

(C) IF THE TRACT OF LAND PROPOSED TO BE SOLD IS LEASED LAND, THE LESSEE MAY REQUEST THE SALE OF THE LAND AT NOT LESS THAN THE FAIR MARKET VALUE. THE CURRENT LESSEE OBTAINS THIS RIGHT TO REQUEST A SALE ONLY AFTER, TO THE SATISFACTION OF THE CITY MANAGER, DEVELOPMENT HAS BEEN COMPLETED AS DETAILED IN THE DEVELOPMENT SCHEDULE WHICH HAS BEEN INCORPORATED INTO THE LEASE AGREEMENT. IF THERE IS NO DEVELOPMENT SCHEDULE, THE LESSEE MAY PURCHASE THE PROPERTY IF THERE HAVE BEEN SUBSTANTIAL IMPROVEMENTS AS DETERMINED BY THE CITY MANAGER. THE DECISION WHETHER OR NOT TO SELL THE LAND TO THE LESSEE RESTS WITH THE SOLD DISCRETION OF THE CITY.

(D) IF THE TRACT OF LAND PROPOSED TO BE SOLD IS NOT LEASED LAND, OR IS LEASED LAND WITHOUT SUBSTANTIAL IMPROVEMENTS, THEN THE TRACT OF LAND MAY ONLY BE SOLD BY OUTCRY AUCTION OR BY COMPETITIVE SEALED BIDS. IF THE TRACT IS TO BE PUT UP FOR SUCH COMPETITIVE AUCTION OR SEALED BID SALE, NOTICE OF SALE AND THE MANNER IN WHICH THE LAND IS TO BE SOLD SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY

(30) DAYS PRIOR TO THE DATE OF SALE; SUCH NOTICE SHALL ALSO BE POSTED IN AT LEAST THREE (3) PUBLIC PLACES WITHIN THE CITY AT LEAST THIRTY (30) DAYS PRIOR TO THE DATE OF SALE, AND SUCH OTHER NOTICE MAY BE GIVEN BY SUCH OTHER MEANS AS MAY BE CONSIDERED ADVISABLE BY THE CITY MANAGER. SUCH NOTICE MUST CONTAIN:

- (1) THE LEGAL DESCRIPTION OF THE LAND;
- (2) A BRIEF PHYSICAL DESCRIPTION OF THE LAND;
- (3) THE AREA AND GENERAL LOCATION OF THE LAND;
- (4) THE MINIMUM ACCEPTABLE OFFER FOR THE LAND (WHICH SHALL BE ITS APPRAISED FAIR MARKET VALUE);
- (5) THE TERMS UNDER WHICH THE LAND WILL BE SOLD;
- (6) ANY LIMITATIONS ON THE SALE OF THE LAND;
- (7) THE TIME AND PLACE SET FOR THE AUCTION OR BID OPENING;
- (8) THE AMOUNT OF DEPOSIT TO BE SUBMITTED WITH EACH BID IN ORDER TO COVER THE CITY'S EXPENSES SUCH AS SURVEY, APPRAISAL, AND REVIEWS;
- (9) ANY OTHER MATTERS CONCERNING THE SALE OF WHICH THE CITY MANAGER BELIEVES THE PUBLIC SHOULD BE INFORMED.

(E) IF NO OFFERS ARE SUBMITTED MEETING THE MINIMUM ACCEPTABLE OFFER (OR APPRAISED VALUATION), THE CITY MANAGER MAY NEGOTIATE FOR SALE OF THE TRACT OR TRACTS OF LAND WITH A MODIFICATION OF PROPOSED TERMS OR FOR LESS THAN THE APPRAISED VALUATION PROVIDED THAT NO SUCH NEGOTIATED SALE FOR LESS THAN APPRAISED VALUE SHALL BE BINDING UPON THE CITY UNLESS THE TERMS AND PRICE THEREIN ARE APPROVED BY RESOLUTION OF THE CITY COUNCIL.

(F) WHERE A REAL ESTATE AGENT FURNISHES A BUYER FOR CITY LAND, THE CLOSING AGENT SHALL BE AUTHORIZED TO PAY THE AGENT A REAL ESTATE COMMISSION OF FIVE PERCENT (5%) OF THE PURCHASE PRICE FOR THE LAND OR FIVE PERCENT (5%) OF THE APPRAISED FAIR MARKET VALUE OF THE LAND, WHICHEVER IS LOWER, UNDER THE FOLLOWING TERMS AND CONDITIONS:

- (1) THE CITY MANAGER SHALL PROVIDE A NON-EXCLUSIVE LISTING OF LANDS AVAILABLE FOR SALE.
- (2) NO COMMISSION SHALL BE PAID TO AN AGENT WHERE THE AGENT IS A PARTY, OR IN PRIVITY WITH A PARTY, TO THE SALE.

(G) CLOSING OF SALE OF CITY LANDS SHALL BE HANDLED BY A TITLE OR ESCROW COMPANY.

(H) CONVEYANCE OF CITY LANDS SHALL BE BY QUIT CLAIM OR WARRANTY DEED FURNISHED BY THE CITY, AND BUYERS ARE ADVISED THAT ALL SUCH CONVEYANCES ARE SUBJECT TO ALL LIENS, ENCUMBRANCES, RESTRICTIONS,

AND COVENANTS OF RECORD AND ARE SPECIFICALLY, WITHOUT BEING LIMITED THERETO, SUBJECT TO ANY UNRELEASED RESTRICTIONS CONTAINED IN THE DEED OR DEEDS BY WHICH THE CITY RECEIVED TITLE TO THE LAND.

(I) IF A BUYER DESIRES TO OBTAIN A PRELIMINARY COMMITMENT FOR TITLE INSURANCE OR TITLE INSURANCE TO THE LAND, THEN IT SHALL BE THE RESPONSIBILITY OF THE BUYER TO OBTAIN SUCH COMMITMENT OR INSURANCE AND TO PAY FOR THE SAME.

(J) IF THE TRACT OR TRACTS OF LAND ARE SOLD UNDER TERMS BY WHICH THE CITY IS TO ACCEPT A NOTE AS A PORTION OF THE PURCHASE PRICE, THE NOTE AND ACCOMPANYING DEED OF TRUST MUST BE PREPARED BY AN ATTORNEY, BUT MUST BE APPROVED BY THE CITY ATTORNEY PRIOR TO CLOSING.

(K) THE NOTE SHALL BE PLACED FOR COLLECTION WITH A BANK SELECTED BY THE CITY MANAGER, WHICH MAY BE CHANGED FROM TIME TO TIME, AND WHICH SHALL BE THE BANK IN WHICH CITY FUNDS ARE DEPOSITED. THE SET-UP FEE TO INITIATE COLLECTION MAY BE NEGOTIATED AS SPECIFIED IN KMC 22.05.100(L), AND THE BUYER SHALL PAY THE ANNUAL COLLECTION FEES FOR SUCH BANK COLLECTION.

(L) THE CITY MANAGER IS AUTHORIZED TO NEGOTIATE A DIVISION OF THE COSTS OF SALE LISTED IN KMC 22.05.100(G) (H), (I), (J) AND (K) TO A MAXIMUM OF FIFTY PERCENT (50%) OF THE REQUIRED COSTS BEING BORNE BY THE CITY, PROVIDED HOWEVER THAT NO COSTS OF SALE WILL BE PAID BY THE CITY WHERE A SALE IS NEGOTIATED AT A PRICE BELOW APPRAISED FAIR MARKET VALUE.

22.05.105 TERMS FOR FINANCING SALE OF CITY LANDS.

(A) IN ORDER TO EXPEDITE AND FACILITATE THE SALE OF CITY LANDS, THE CITY MANAGER IS AUTHORIZED TO ACCEPT TERMS FOR SALES AND MAY ACCEPT A NOTE SECURED BY A DEED OF TRUST FOR A PORTION OF THE PURCHASE PRICE THEREOF, SUBJECT TO THE FOLLOWING RESTRICTIONS:

(1) IF THE SALE IS TO A LESSEE WHO HAS PLACED A LIEN FOR FINANCING UPON THE LAND OR IMPROVEMENTS, THEN THE CITY MANAGER IS NOT AUTHORIZED TO SELL THE LAND EXCEPT FOR TOTAL CASH PAYMENT, PROVIDED, HOWEVER, THAT THE CITY MANAGER MAY ACCEPT A NOTE SECURED BY A DEED OF TRUST SUBORDINATE TO THE EXISTING SECURITY INTEREST IF THE AMOUNT OF THE NOTE THEREBY SECURED IS WITHIN THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE LAND WITH IMPROVEMENTS, AND THE SUM OF ALL PRIOR SECURITY INTERESTS. THE SALE DOCUMENTS SHALL BE SUBJECT TO THE SAME RESTRICTIONS CONTAINED IN THE LEASE AS THE LEASE PROVIDES AT THE TIME OF SALE.

(2) EXCEPT FOR PROPERTY SOLD BY THE CITY SUBSEQUENT TO FORECLOSURE FOR DELINQUENT TAXES OR ASSESSMENTS, PRIOR TO MAKING A DETERMINATION TO ACCEPT A NOTE AND DEED OF TRUST FROM A PROSPECTIVE PURCHASER, THE CITY MANAGER SHALL SECURE A PRELIMINARY COMMITMENT FOR TITLE INSURANCE AND A REVIEW OF THE GRANTEE INDEX COVERING THE PARTY DESIRING TO PURCHASE THE LAND FROM THE TITLE COMPANY IN THE LOCAL RECORDING DISTRICT, AND NO CREDIT WILL BE ADVANCED ON SUCH SALE IF THERE ARE ANY DELINQUENT LIENS OR UNPAID JUDGMENTS FOUND IN THE TITLE COMPANY REPORT UNTIL ANY SUCH JUDGMENTS OR LIENS ARE PAID AND RELEASES THEREFOR HAVE BEEN FILED.

(3) IN THE EVENT OF A CREDIT SALE, THE DOWN PAYMENT REQUIRED SHALL BE DETERMINED BY THE CITY MANAGER, BUT SHALL NOT BE LESS THAN FIFTEEN PERCENT (15%) OF THE SALES PRICE.

(4) THE CITY MANAGER IS NOT AUTHORIZED TO ACCEPT TERMS FOR THE SALE OF TAX-FORECLOSED LANDS UNLESS THE DOWN PAYMENT TO BE RECEIVED THEREUNDER, OR OTHER SUMS APPROPRIATED FOR THE PURPOSE, ARE SUFFICIENT TO MAKE IMMEDIATE PAYMENT TO THE KENAI PENINSULA BOROUGH AND THE FORMER RECORD OWNER OF THE SUMS WHICH ARE, OR MAY BECOME, DUE TO THEM PURSUANT TO THE PROVISIONS OF AS 29.

(B) IF THE CITY MANAGER DETERMINES THAT IT IS IN THE CITY'S INTEREST TO SELL CITY LANDS, THE SALE SHALL BE EITHER A CASH TRANSACTION OR BY A NOTE SECURED BY A DEED OF TRUST, SUBJECT TO SUBSECTION (A) OF THIS SECTION, AND BY NO OTHER MEANS. THE NOTE AND DEED OF TRUST SHALL CARRY TERMS AS FOLLOWS:

(1) THE TERM OF SUCH NOTE MAY BE SET BY THE CITY MANAGER, BUT IT SHALL PROVIDE FOR MONTHLY PAYMENTS AND NOT EXCEED TWENTY (20) YEARS UNLESS A LONGER PERIOD FOR A SPECIFIC SALE OF LAND IS APPROVED BY RESOLUTION OF THE CITY COUNCIL.

(2) SUCH NOTE SHALL BEAR INTEREST AT A RATE TO BE DETERMINED BY THE CITY COUNCIL BY RESOLUTION.

22.05.110 DETERMINATION AS TO NEED FOR PUBLIC USE.

(A) WHETHER LAND SHALL BE ACQUIRED, RETAINED, DEVOTED, OR DEDICATED TO A PUBLIC USE SHALL BE DETERMINED BY ORDINANCE WHICH SHALL CONTAIN THE PUBLIC USE FOR WHICH THE PROPERTY IS TO BE DEDICATED, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE ADDRESS OR A GENERAL

DESCRIPTION OF THE PROPERTY SUFFICIENT TO PROVIDE THE PUBLIC WITH NOTICE OF ITS LOCATION. THIS REQUIREMENT DOES NOT APPLY TO RIGHTS-OF-WAY OR EASEMENTS DEDICATED THROUGH THE CITY AND BOROUGH PLATTING PROCESS.

(B) WHETHER LAND PREVIOUSLY DEDICATED TO A PUBLIC USE SHOULD BE DEDICATED TO A DIFFERENT PUBLIC USE OR SHOULD NO LONGER BE NEEDED FOR PUBLIC USE SHALL BE DETERMINED BY THE CITY COUNCIL BY ORDINANCE, EXCEPT IN CASES OF VACATION OF RIGHTS-OF-WAY OR EASEMENTS WHICH MAY BE DETERMINED BY RESOLUTION, EITHER OF WHICH SHALL CONTAIN THE NEW PUBLIC USE FOR WHICH THE PROPERTY IS TO BE DEDICATED OR THE REASON THE LAND IS NO LONGER NEEDED FOR PUBLIC USE, THE LEGAL DESCRIPTION OF THE PROPERTY, AND THE ADDRESS OR A GENERAL DESCRIPTION OF THE PROPERTY SUFFICIENT TO PROVIDE THE PUBLIC WITH NOTICE OF ITS LOCATION.

22.05.115 PROPERTY EXCHANGES.

THE COUNCIL MAY APPROVE, BY ORDINANCE, AFTER PUBLIC NOTICE AND AN OPPORTUNITY FOR PUBLIC HEARING, THE CONVEYANCE AND EXCHANGE OF A PARCEL OF CITY PROPERTY FOR PROPERTY OWNED BY ANOTHER PERSON SUBJECT TO SUCH CONDITIONS AS COUNCIL MAY IMPOSE ON THE EXCHANGE, WHENEVER IN THE JUDGMENT OF THE CITY COUNCIL IT IS ADVANTAGEOUS TO THE CITY TO MAKE THE PROPERTY EXCHANGE.

22.05.120 PROPERTY SALE TO ADJACENT OWNERS.

THE COUNCIL MAY APPROVE, BY ORDINANCE, AFTER PUBLIC NOTICE AND AN OPPORTUNITY FOR PUBLIC HEARING, THE SALE AND CONVEYANCE OF A PARCEL OF CITY PROPERTY AT ITS APPRAISED VALUE TO THE OWNER OF ADJACENT LAND WHENEVER, IN THE JUDGMENT OF THE CITY COUNCIL, THE PARCEL OF LAND IS OF SUCH SMALL SIZE, SHAPE, OR LOCATION THAT IT COULD NOT BE PUT TO PRACTICAL USE BY ANY OTHER PARTY AND, IN ADDITION THERETO, WHERE THERE IS NO FORESEEABLE NEED OF THE LAND FOR ANY FUTURE USE BY THE CITY.

22.05.125 GRANT OR DEVOTION.

THE COUNCIL, BY ORDINANCE, MAY WAIVE THE PROVISIONS OF THIS CHAPTER AND LEASE, GRANT OR DEVOTE REAL PROPERTY NO LONGER NEEDED BY THE CITY FOR PUBLIC PURPOSE TO THE UNITED STATES, THE STATE OF ALASKA, A LOCAL POLITICAL SUBDIVISION OF THE STATE OF ALASKA, OR ANY AGENCY OF ANY OF THESE GOVERNMENTS OR A NON-PROFIT CORPORATION, FOR A CONSIDERATION AGREED

UPON BETWEEN THE CITY AND GRANTEE WITHOUT A PUBLIC SALE IF THE GRANT, DEVOTION OR LEASE IS ADVANTAGEOUS TO THE CITY.

22.05.130 USE PERMITS.

THE COUNCIL MAY AUTHORIZE THE CITY MANAGER TO GRANT PERMITS FOR THE TEMPORARY USE OF REAL PROPERTY OWNED BY THE CITY FOR A PERIOD NOT TO EXCEED FIVE (5) YEARS, WITHOUT APPRAISAL OF THE VALUE OF THE PROPERTY OR PUBLIC AUCTION, FOR ANY PURPOSE COMPATIBLE WITH THE ZONING OF THE LAND, AND ON SUCH TERMS AND FOR SUCH RENTALS AS THE COUNCIL SHALL DETERMINE.

22.05.135 ACQUISITION OF REAL PROPERTY.

(A) THE CITY, BY AUTHORIZATION OF THE CITY COUNCIL, EXPRESSED IN A RESOLUTION FOR SUCH PURPOSE, MAY LEASE, PURCHASE OR ACQUIRE AN INTEREST IN REAL PROPERTY NEEDED FOR A PUBLIC USE ON SUCH TERMS AND CONDITIONS AS THE COUNCIL SHALL DETERMINE. NO PURCHASE SHALL BE MADE UNTIL A QUALIFIED APPRAISER HAS APPRAISED THE PROPERTY AND GIVEN THE COUNCIL AN INDEPENDENT OPINION AS TO THE FULL AND TRUE VALUE THEREOF UNLESS THE COUNCIL, UPON RESOLUTION SO FINDING, DETERMINES THAT THE PUBLIC INTEREST WILL NOT BE SERVED BY AN APPRAISAL.

(B) BECAUSE OF THE UNIQUE VALUE OF REAL PROPERTY, THE CITY NEED NOT ACQUIRE OR LEASE REAL PROPERTY BY COMPETITIVE BIDDING.

(C) RIGHTS-OF-WAY AND EASEMENTS MAY BE ACCEPTED OR ISSUED BY THE CITY MANAGER AFTER APPROVAL BY THE CITY COUNCIL FOR UTILITY LINES AND SERVICES OF ALL TYPES AND FOR NECESSARY RIGHTS-OF-WAY EASEMENTS.]

Title 22
CITY-OWNED LANDS

Chapter 22.05
DISPOSITION OF CITY LANDS

22.05.05 Definitions.

When used in this chapter, the following terms shall have the meaning given below:

“Amendment” means a formal change to a lease of lands other than a lease extension or renewal.

“Annual rent” means an amount paid to the City annually according to the terms of the lease and Kenai Municipal Code.

“Assignment” means the transfer of all interest in a lease from one person or entity to another.

“City” means the City of Kenai, its elected officials, officers, employees or agents.

“Consumer Price Index (CPI)” means the annual CPI for all urban consumers (CPI-U) for Anchorage, Alaska.

“Existing lease” means a lease with at least one (1) year of term remaining.

“Expiring lease” means a lease with less than one (1) year of term remaining.

“Fair market value” means the most probable price which a property should bring in a competitive and open market as determined by a qualified independent appraiser, or the value as determined by the latest appraisal adjusted by the change in Consumer Price Index from the date of the latest appraisal.

“Lease extension” means extending the term of an existing lease.

“Lease rate percent” means a percentage that when applied to the fair market value of land establishes a rate of rent commensurate with rental rates prevalent in the local area as determined by a qualified real estate appraiser.

“Lease renewal” means a new lease of property currently under an existing or expiring lease to an existing lessee or a purchaser.

“Market analysis” means an analysis of data collected from other land leases to determine whether a market adjustment in either fair market value or lease rate percentage reflects the market.

“Permanent improvement” means a fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, and pavement, and remediation of contamination for which the applicant is not responsible and excluding items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching.

“Professional estimate of the remaining useful life of the principal improvement” means an estimate of the number of remaining years that the principal improvement will be able to function in accordance with its intended purpose prepared by a qualified real estate appraiser, engineer, or architect licensed in Alaska.

“Qualified independent appraiser” means a general real estate appraiser certified by the State of Alaska under AS 08.87.

“Site development materials” means materials used for preparing a lease site for building construction or to provide a firm surface on which to operate a vehicle or aircraft, including geotextile, fill, gravel, paving, utilities and pavement reinforcement materials.

“Site preparation work” means work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, a crushed aggregate base course and utility extensions.

22.05.010 Authority and Intent.

(a) The provisions of this chapter apply to City-owned real property other than lands within the Airport Reserve as described in KMC 21.10 and the leasing of tidelands for shore fisheries.

(b) The City may sell, convey, exchange, transfer, donate, dedicate, direct, assign to use, or otherwise dispose of City-owned real property, including property acquired, held for, or previously devoted to a public use, only in accordance with this chapter, and, with respect to properties acquired through foreclosure for taxes, in compliance with those terms and provisions of AS 29 which apply to home-rule municipalities. Disposal or sale of lands shall be made only when, in the judgment of the City Council, such lands are not or are no longer required for a public purpose.

(c) It is the intent of this chapter to provide land policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community.

(d) It is not the intent of this chapter to allow for speculation on City-owned lands. All leases, sales, and other disposals of City-owned land must meet the intent of this chapter.

(e) The provisions of this chapter shall not alter or amend the terms or rights granted under leases existing prior to the effective date of the ordinances codified in this chapter.

22.05.015 Lands Available for Lease, Sale or Disposal.

(a) The City may lease, sell or dispose of real property not restricted from lease or sale which the City Council has determined is not required for a public purpose by any lawful method or mode of conveyance or grant. Any instrument requiring execution by the City shall be signed by the City Manager and attested by the City Clerk. The form of any instrument shall be approved by the City Attorney.

22.05.020 Qualifications of Lease Applicants or Bidders.

An applicant or bidder for a lease is qualified if the applicant or bidder:

- (a) Is an individual at least eighteen (18) years of age; or
- (b) Is a legal entity which is authorized to conduct business under the laws of Alaska; or
- (c) Is acting as an agent for another meeting the requirements of subsection (a) or (b) of this section and has qualified by filing with the City a proper power of attorney or a letter of authorization creating such agency.

22.05.025 Initial Lease Application.

(a) All applications for lease of lands must be submitted to the City on an application form provided by the City. Applications will be dated on receipt and must include payment of the nonrefundable application fee as set forth in the City's schedule of fees approved by the City Council.

(b) The application form must include the following information:

- (1) The purpose of the proposed lease;
- (2) The use, nature, type, and estimated cost of improvements to be constructed;
- (3) The dates construction is estimated to commence and be completed. Construction must be completed within two (2) years except in special circumstances, that require a longer period of time and which must be approved by the City Council; and
- (4) A comprehensive description of the proposed business or activity intended;
- (5) Whether the applicant requests a lease with an option to purchase; and
- (6) How the proposed lease meets the intent of this chapter.

(c) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to any new appraisal, engineering services, surveying and consulting costs, unless in the sole discretion of the City Council, it is determined that the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a lease with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will apply to the rent payable under the lease.

(4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the lease.

(5) If the application is rejected or if the applicant withdraws the application or fails to sign a lease offered to the applicant, the City will return any unused deposit balance to the applicant.

(d) Applications for lands which have not been appraised within one (1) year of the requested starting date of the lease require the applicant to be responsible for all costs associated with appraisal. The cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease, extension or renewal.

(e) Applications which result in a lease agreement with the City require the lessee to be responsible for all recording costs and any other fees associated with execution of the lease including a preliminary commitment for title insurance and fifty percent (50%) of the required costs associated with a sale of leased land in which the lease contains an option to purchase once the minimum development requirements have been met.

(f) Anytime during the processing of a lease application, the City may request, and the applicant must supply, any clarification or additional information that the City reasonably determines is necessary for the City to make a final decision on the application.

22.05.035 No Right of Occupancy – Lease Application Expiration.

(a) Submitting an application for a lease does not give the applicant a right to lease or use City-owned land.

(b) The application shall expire upon execution of a lease or rejection of a lease application by the City Council or within twelve (12) months after the date the application has been submitted.

22.05.040 Lease Application Review.

(a) Applications shall be reviewed by City staff for application completeness and conformance with City ordinances.

(b) Based on the initial review, if the City Manager determines the application is complete, the application shall be referred to the Planning and Zoning Commission and any other applicable commissions for review and comment, together with the City Manager's recommendation for approval or rejection.

(c) Notice of complete applications for new leases, renewals or extensions shall be published in a newspaper of general circulation within the City and posted on the property. The notice must contain the name of the applicant, a brief description of the land, whether the applicant requests a lease with an option to purchase, and the date upon which any competing applications must be submitted (thirty (30) days from the date of publication).

(d) The recommendations of the City Manager, Planning and Zoning Commission, and any other applicable commissions shall be provided to the City Council. The City Council shall determine whether the lease is consistent with the intent of this chapter. The decision whether or not to lease land or authorize a lease extension, renewal, amendment or assignment rests in the sole discretion of the City Council.

(e) If the applicant is in default of any charges, fees, rents, taxes, or other sums due and payable to the City or the applicant is in default of a requirement of any lease or contract with the City a lease shall not be entered into until the deficiencies are remedied .

22.05.045 Application for Lease Amendment, Assignment, Extension or Renewal.

(a) A request from an existing lessee for a lease amendment, assignment, extension or renewal of the lease must be submitted to the City on an application form provided by the City.

Applications must be complete and dated on receipt and include payment of the nonrefundable application fee and applicable deposit as set forth in the City's schedule of fees adopted by the City Council.

(b) An application for an amendment must include the following information:

- (1) The purpose of the proposed amendment;
- (2) The proposed change in use or activity, if any;
- (3) A comprehensive description of the proposed business or activity, if applicable; and
- (4) How the proposed amendment meets the intent of this chapter.

(c) An application for a lease assignment must include the following:

- (1) The name of the individual or legal entity to which the lessee requests to assign the lease.

(d) An application for a lease extension must include the following information:

- (1) The use, nature, type and estimated cost of additional improvements to be constructed;
- (2) The dates new construction is estimated to commence and be completed; and
- (3) How the proposed lease extension meets the intent of this chapter.

(e) An application for a lease renewal must include the following information:

- (1) For a lease renewal of an existing lease:
 - (i) The use, nature, type and estimated cost of additional investment in the construction of new permanent improvements;
 - (ii) The dates new construction is estimated to commence and be completed;
 - (iii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of real property improvements on the premises as certified by the current lessee and proposed purchaser in a bill of sale; and
 - (iv) How the proposed lease renewal meets the intent of this chapter.

(2) For a lease renewal of an expiring lease:

- (i) A fair market value appraisal of the existing principal improvement on the property, paid for by the applicant, and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;
- (ii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of existing real property improvements, as certified by the current lessee and the proposed purchaser in a bill of sale and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;
- (iii) If the renewal is based on a professional estimate of the remaining useful life of the real property improvements on the premises, the estimated value and how it was determined;
- (iv) The use, nature, type and estimated cost of any additional improvements to be constructed, if applicable;
- (v) The dates any new construction is estimated to commence and be completed; and
- (vi) How the proposed lease meets the intent of this chapter.

(f) Applications for amendment, assignment, extension or renewal shall be processed in accordance with the lease application review provisions of this chapter, except that applications for assignment shall not be referred to the Planning and Zoning Commission. The City has no obligation to amend, assign, renew or extend a lease and may decline to do so upon making specific findings as to why a lease amendment, assignment, renewal, or extension is not in the best interest of the City.

22.05.050 Competing Lease Applications.

If another application for a new lease, extension or a renewal is received for the same property within thirty (30) days from the notice of application publication date by a different applicant, City staff shall process the application and forward the application, the City Manager's recommendation and applicable commission recommendations to the City Council for approval of the application anticipated to best serve the interests of the City. The City Council may approve one (1) of the applications, reject all the applications or direct the City Manager to award a lease of the property by sealed bid. An applicant for a renewal or extension may withdraw an application for a renewal or extension at any time prior to a decision by the City Council whether or not to approve such a renewal or extension.

22.05.055 Length of Lease Term.

(a) The length of term for an initial lease shall be based on the amount of investment the applicant proposes to make in the construction of new permanent improvements on the premises as provided in the application. The City Council may offer a shorter lease term, if the City Council makes specific findings that a shorter lease term is in the best interest of the City.

(b) The maximum term of a lease shall be determined according to the following term table and cannot exceed forty-five (45) years:

Term Table

<u>APPLICANT'S INVESTMENT/VALUE</u>	<u>MAXIMUM TERM OF YEARS</u>
<u>\$7,500</u>	<u>5</u>
<u>15,000</u>	<u>6</u>
<u>22,500</u>	<u>7</u>
<u>30,000</u>	<u>8</u>
<u>37,500</u>	<u>9</u>
<u>45,000</u>	<u>10</u>
<u>52,500</u>	<u>11</u>
<u>60,000</u>	<u>12</u>
<u>67,500</u>	<u>13</u>
<u>75,000</u>	<u>14</u>
<u>82,500</u>	<u>15</u>
<u>90,000</u>	<u>16</u>
<u>97,500</u>	<u>17</u>
<u>105,000</u>	<u>18</u>
<u>112,500</u>	<u>19</u>
<u>120,000</u>	<u>20</u>
<u>127,500</u>	<u>21</u>
<u>135,000</u>	<u>22</u>
<u>142,500</u>	<u>23</u>
<u>150,000</u>	<u>24</u>
<u>157,500</u>	<u>25</u>
<u>165,000</u>	<u>26</u>
<u>172,500</u>	<u>27</u>
<u>180,000</u>	<u>28</u>
<u>187,500</u>	<u>29</u>
<u>195,000</u>	<u>30</u>
<u>202,500</u>	<u>31</u>
<u>210,000</u>	<u>32</u>

<u>217,500</u>	<u>33</u>
<u>225,000</u>	<u>34</u>
<u>232,500</u>	<u>35</u>
<u>240,000</u>	<u>36</u>
<u>247,500</u>	<u>37</u>
<u>255,000</u>	<u>38</u>
<u>262,500</u>	<u>39</u>
<u>270,000</u>	<u>40</u>
<u>277,500</u>	<u>41</u>
<u>285,000</u>	<u>42</u>
<u>292,500</u>	<u>43</u>
<u>300,000</u>	<u>44</u>
<u>307,500</u>	<u>45</u>

(c) Lease extension. The length of term for a lease extension shall be determined based on the remaining term of the initial lease and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table and provided no extension shall extend a lease term past forty-five (45) years.

(d) Lease renewal for an existing lease. A renewal for an existing lease requires the construction of new permanent improvements, and the length of term for a lease renewal for an existing lease shall be determined as follows:

(1) Based on the remaining term of the initial lease according to the term table and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table; or

(2) Pursuant to a transaction between the current lessee and a new buyer and prospective lessee and based on the purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale, to be executed at closing of the transaction and the estimated cost of new investment in the construction of new permanent improvements on the premises according to the term table.

(3) The term for renewal of an existing lease cannot exceed forty-five (45) years.

(e) Lease renewal for an expiring lease. The length of term for a lease renewal of an expiring lease shall be determined as follows:

(1) The purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale, to be executed at closing of the transaction and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table;

or

(2) A professional estimate of the remaining useful life of the real property improvements on the premises, paid for by the applicant and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table; or

(3) A fair market value appraisal of the existing real property improvements on the premises, paid for by the applicant and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table.

(4) The term for renewal of an existing lease cannot exceed forty-five (45) years.

(f) If the initial lease, term extension, or lease renewal granted to the applicant requires construction of new permanent improvements, the lease or term extension shall be subject to the following conditions:

(1) The lessee to complete the proposed permanent improvements within two (2) years except in special circumstances, that require a longer period of time and which must be approved by the City Council.

(2) The lessee to provide a performance bond, deposit, personal guarantee, or other security if the City Council determines security is necessary or prudent to ensure the applicant's completion of the permanent improvements required in the lease, renewal, or extension. The City Council shall determine the form and amount of the security according to the best interest of the City, after a recommendation by the City Manager considering the nature and scope of the proposed improvements and the financial responsibility of the applicant.

(3) At no expense to the City, the lessee must obtain and keep in force during the term of the lease, insurance of the type and limits required by the City for the activities on the premises.

(4) Within thirty (30) days after completion of the permanent improvements, the lessee shall submit to the City written documentation that the improvements have been completed as required. The City Manager shall make a report to the City Council of completion as soon as reasonably practical.

(5) If the applicant shows good cause and the City Council determines the action is in the best interest of the City, the City Council may grant an extension of the time allowed to complete permanent improvements by resolution that is sufficient to allow for the completion of the permanent improvements or for submission of documentation that the permanent improvements have been completed.

(6) If, within the time required, the applicant fails to complete the required permanent improvements, the City shall:

(i) If the application is for a new lease or lease renewal, execute the forfeiture of the performance bond, deposit, personal guarantee, or other security posted by the applicant under subsection (f)(2) of this section to the extent necessary to reimburse the City for all costs and damages, including administrative and legal costs, arising from the applicant's failure to complete the required improvements, and/or initiate cancellation of the lease or reduce the term of the lease to a period consistent with the portion of the improvements substantially completed in a timely manner according to the best interests of the City.

(ii) If the application is for a lease extension, the City shall terminate the amendment extending the term of the lease or reduce the term of the extension at the City's sole discretion.

22.05.060 Principles and Policy of Lease Rates.

(a) Annual rent shall be computed by multiplying the fair market value of the land by a lease rate percentage of eight percent (8%) for each parcel; and

(b) The City will determine the fair market value of the land requested to be leased based on an appraisal conducted for the City by an independent real estate appraiser certified under Alaska State statutes and ordered by the City for the purpose of determining annual rent. The appraisal shall be paid for by the applicant, and the cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease. The fair market value of the land will be adjusted annually based on the rate of inflation determined by the consumer price index (CPI) to determine annual rent; and

(c) The City will conduct a land market analysis of City-owned land under lease once every ten (10) years to determine whether a market adjustment in either fair market value of land or lease rate percentage is justified; and

(d) If the City determines from the market analysis that a market adjustment to the lease rate percentage is in the best interests of the City, the new lease percentage must be approved by an ordinance and utilized to compute annual rents for the next fiscal year; and

(e) If the market analysis or extraordinary circumstances determine a fair market value adjustment is in the best interests of the City, the City shall retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value of all leased land and shall use these values to compute annual rents for the next fiscal year; and

(f) The City shall adjust the annual rent of a lease by giving the lessee written notice at least thirty (30) days prior to application of a new annual rent determination; and

(g) If a lessee disagrees with the proposed change in the fair market value of land or lease rate percent (excluding CPI determinations, which cannot be appealed) and cannot informally resolve the issue with the City, the lessee must:

(1) Provide notice of appeal in writing within ninety (90) days of notification supported by the written appraisal of a qualified real estate appraiser, selected and paid for by lessee (the "second appraiser"); and

(2) The City and the lessee will meet to attempt to resolve the differences between the first appraiser and the second appraiser concerning the fair market value of the land or lease rate percent; and

(3) If the City and lessee cannot agree upon the fair market value or lease rate percent then they shall direct the first appraiser and the second appraiser to mutually select a third qualified real estate appraiser, paid for jointly by the parties (the "third appraiser"); and

(4) Within thirty (30) days after the third appraiser has been appointed, the third appraiser shall decide which of the two (2) respective appraisals from the first appraiser and the second appraiser most closely reflects the fair market value of the land or lease rate percent; and

(5) The fair market value of the land or lease rate percent shall irrefutably be presumed to be the value(s) contained in such appraisal selected by the third appraiser, and the rent shall be redetermined based on such value(s); and

(6) Rent shall continue to be paid at the then-applicable rate until any such new rental rate is established, and lessee and the City shall promptly pay or refund, as the case may be, any variance in the rent, without interest accruing to the extent to be paid/refunded.

22.05.065 Lease Bidding Procedure.

With the approval of the City Council, the City Manager may designate a specific lot or lots to be leased through competitive sealed bid. The City Manager shall award the lease to the qualified bidder utilizing a procurement procedure which may consider qualitative factors in addition to the amount of any one (1) time premium payment to be paid by the successful bidder; provided, however, that the high bidder and the bidder's lease proposal shall be subject to all provisions of lease application review and approval under this chapter.

22.05.070 Development Incentives.

(a) The City Council may include a lease rent incentive to encourage commercial investment as follows:

(1) A credit may be applied toward rent for a maximum of five (5) years. The credit may only include the value of site preparation work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, crushed aggregate base course, and utility extensions.

(2) An estimate of the value of the work, including a scope of work, prepared by a qualified engineer licensed to work in Alaska must be provided to the City and accepted prior to work being performed.

(3) Any changes to the estimate of the value of the work or scope of work must be provided to the City and accepted prior to work being performed to be eligible for the credit.

(4) For the credit to be applied, the approved scope of work must be completed.

(5) A certification from a qualified engineer that the accepted scope of work has been completed must be provided to the City and accepted at the completion of the site preparation work.

(6) Credit will be limited to original qualified engineer's estimate unless another amount is accepted by the City in advance of work being completed.

(7) Once the work is completed as proposed and the qualified engineer's certification of completion has been received, a credit shall be applied to the lease payments, prorated as necessary for a maximum of five (5) years.

(8) Rent shall be paid at the then-applicable rate until any such credit toward rent has been approved by the City Manager or designee, and the City shall apply a credit to lease payments prorated as necessary or promptly pay or refund, as the case may be, any variance between the credit applied and the rent paid, without interest accruing to the extent to be paid/refunded.

22.05.075 Ownership of Improvements.

(a) Permanent improvements on the premises, excluding site development materials, constructed, placed, or purchased by the lessee remain the lessee's property as long as a lease for the premises remains in effect with the lessee, including renewals, any period of extension approved by the City pursuant to the provisions of this chapter, or any period of holdover.

(b) Unless otherwise provided in a land lease, at the expiration, cancellation, or termination of a lease that is extended or followed by a successive lease, the departing lessee may do one (1) or more of the following:

(1) Remove lessee-owned permanent improvements from the premises, remediate any contamination for which the lessee is responsible, and restore the premises to a clean and neat physical condition acceptable to the City within ninety (90) days after the expiration, cancellation, or termination date of the lease; or

(2) Sell lessee-owned permanent improvements to the succeeding lessee, remove all personal property, remediate any contamination for which the lessee is responsible, and leave the premises in a clean and neat physical condition acceptable to the City within sixty (60) days after notice from the City that the City has approved an application for a lease of the premises by another person or such longer period specified in the notice, but in no event more than one hundred eighty (180) days after the expiration, termination, or cancellation date of the lease; or

(3) Purchase the property in which the lease contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee.

(c) If the lessee does not timely remove or sell the lessee-owned permanent improvements on a premises in accordance with the requirements of this section, any remaining permanent improvements and any remaining personal property of the departing lessee will be considered permanently abandoned. The City may sell, lease, demolish, dispose of, remove, or retain the abandoned property for use as the City determines is in the best interest of the City. The lessee shall, within thirty (30) days after being billed by the City, reimburse the City for any

costs reasonably incurred by the City, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate any contamination and restore the premises.

(d) Site development materials that a lessee places on a premises become part of the City-owned real property and property of the City upon placement. The lessee:

- (1) Must maintain the site development work and site development materials throughout the term of the lease or successive lease, including any extensions and periods of holdover; and
- (2) May not remove the site development materials unless the City approves in writing.

22.05.080 Lease Execution.

The lease applicant shall execute and return the appropriate lease agreement with the City of Kenai within thirty (30) days of mailing the agreement to the applicant. The lease agreement shall be prepared in accordance with the requirements of this title. Failure to execute and return the lease agreement within the specified period shall result in the forfeiture of all leasing rights.

22.05.085 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 in substantial conformity with the Comprehensive Plan. Utilization or development for other than the allowed uses shall constitute a material breach of the lease and subject the lease to cancellation at any time. Failure to substantially complete the development plan for the land shall constitute grounds for cancellation.

22.05.086 Form of Lease.

(a) When leasing land under this chapter, the City Manager shall use a standard lease form that:

- (1) Provides a reasonable basis for the lessee's use of the premises,
- (2) Complies with the intent of this chapter, and
- (3) Provides for the best interest of the City,
- (4) Approved as to form by the City Attorney; and
- (5) Adopted by resolution of the City Council.

(b) The City Manager may enter into a land lease that deviates from the standard form adopted under subsection (a) of this section, if:

- (1) The City Manager believes the action is in the best interest of the City;
- (2) The lease is approved as to form by the City Attorney; and
- (3) The lease is approved by resolution of the City Council.

22.05.087 Lease Payments.

(a) Upon execution of the lease, the land becomes taxable to the extent of the lessee's leasehold interest and lessee shall pay all real property taxes levied upon such leasehold interest in these lands, and shall pay any special assessments and taxes.

(b) Rent shall be paid annually in advance unless the lessee submits a written request to the City to pay on a quarterly or monthly basis. The payments shall be prorated to conform to the City of Kenai's fiscal year beginning July 1st and ending June 30th.

(c) Lessee shall be responsible for all sales taxes due on payments under the lease.

22.05.095 Methods of Sale or Disposal.

(a) Lands to which the City of Kenai holds title which are not restricted from sale by the deed of conveyance to the City or which have been released from such restrictions and that the City Council has determined are not required for a public purpose, may be listed for sale by the City Manager. The decision whether or not to sell the land rests in the sole discretion of the City Council.

(b) The City Council may by ordinance authorize the City Manager to dispose of such properties in accordance with the intent of this chapter as follows:

(1) Non-competitive process:

(i) Conveyance to encourage new enterprises where it is found that encouragement of a new commercial or industrial enterprise would be beneficial to the City of Kenai, one or more parcels of City land may be sold upon such terms as to price, conditions of conveyance, and with such contingencies as may be set forth in the ordinance.

(ii) Property sale to adjacent owners for the conveyance of a parcel of City property at fair market value to the owner of adjacent land whenever, in the judgment of the City Council, the parcel of land is of such small size, shape, or location that it could not be put to practical use by any other party.

(iii) Grant or devotion of real property to the United States, the State of Alaska, a local political subdivision of the State of Alaska, or any agency of any of these governments or a non-profit corporation, for a consideration agreed upon between the City and grantee without a public sale if the grant, devotion or lease is advantageous to the City.

(iv) Conveyance of land to resolve a land use conflict.

(2) Competitive process:

(i) Public outcry auction to the highest responsible bidder.

(ii) Sealed bid to the highest responsible bidder.

(iii) Over-the-Counter sale after a public outcry auction or sealed bid process on a first-come basis, provided minimum development requirements are met within two (2) years of sale and the land is sold for fair market value. An appraisal to determine fair market value must be completed within a one (1) year period prior to the date of sale.

(iv) Leased land in which the lease was subject to competition through the lease application review process and which contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee. An appraisal to determine fair market value must be completed within a one (1) year period prior to the sale.

(3) Property exchange: Property exchanges for the conveyance and exchange of a parcel of City-owned property for property owned by another individual or legal entity subject to such conditions as Council may impose on the exchange, whenever the City Council makes findings it is advantageous to the City to make the property exchange.

(c) Any sale of land owned by the City of Kenai and held by it for the use or benefit of the Kenai Municipal Airport must include in any instrument conveying title to the property restrictions accepted by the City under the terms of the 1963 Quitclaim Deed from the United States of America recorded at Book 27, Page 303 at the Kenai Recording District, Kenai Alaska or any other land owned by the City and acquired with Airport funds which may include similar restrictions. Additionally, any sale or disposal of the aforementioned lands for less than fair market value shall require a deposit in the amount of the difference between fair market value and the sale price to the Airport Land Sale Permanent Fund for the benefit of the Kenai Municipal Airport.

22.05.100 Sale Procedure.

(a) All requests to purchase City land must be submitted to the City on approved forms provided by the City. Applications will be dated on receipt and payment of the nonrefundable application fee and must include applicable deposit as set forth in the City's schedule of fees adopted by the City Council.

(b) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to engineering services, surveying and consulting costs, unless in the sole discretion of the City Council it is determined the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a sale with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will be credited toward the purchaser at closing.

(4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the sale.

(5) If the application is rejected or if the applicant withdraws the application or fails to enter into a sale offered to the applicant, the City will return any unused deposit balance to the applicant.

(c) The City will retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value for a determination of the minimum price on the land to be paid for from the deposit made by the applicant unless such an appraisal has been obtained within one (1) year prior to the date of sale. The cost of the appraisal will be credited toward the purchaser at closing.

(d) If at any time during the process of preparing for sale, the applicant withdraws the application for sale, the City shall stop all procedures, pay expenses incurred prior to withdrawal of the application for sale, and reimburse applicant for any deposit advanced in excess of expenses incurred. However, if another party desires the sale to proceed, files an application for sale, executes and files an agreement to purchase, and deposits sufficient funds, then the prior applicant will be reimbursed for expenses which can be attributed to the subsequent applicant.

(e) If all actions necessary for preparation for sale have been accomplished, and if neither the applicant nor any other party purchases said land when first offered for sale after such request, then all expenses incurred in preparation for the sale will be paid from the applicant's deposit, and the balance, if any, shall be returned to the applicant. If the amount of the deposit is insufficient to pay all of the costs, the applicant will be billed for the balance due.

(f) If the land is sold in a competitive public sale set in response to such request to anyone other than the applicant, the applicant's deposit will be refunded in total to the applicant. The City's expenses will be first deducted from the deposit of the successful bidder.

(g) If the land is sold to the applicant, any deposit advanced, after deducting the City's expenses, will be credited to the purchaser at closing.

(h) If the land is leased land in which the lease contains an option to purchase once the minimum development requirements have been met, the lessee may request the sale of the land at not less than the fair market value.

(i) If the land is to be sold through a competitive process, notice of sale and the manner in which the land is to be sold must be posted to the extent possible to be visible from each improved street adjacent to the property and published in a newspaper of general circulation within the City. The published notice must contain:

(1) The legal description of the land;

(2) A brief physical description of the land;

(3) The area and general location of the land;

(4) The minimum acceptable offer for the land (which shall be the fair market value);

(5) The terms under which the land will be sold;

(6) Any limitations on the sale of the land;

(7) The time and place set for the auction or bid opening;

(8) The amount of deposit to be submitted with each bid in order to cover the City's expenses such as survey, appraisal, and reviews;

(9) Any other matters concerning the sale of which the City Manager believes the public should be informed.

(j) If a buyer desires to obtain a preliminary commitment for title insurance or title insurance to the land, it shall be the responsibility of the buyer to obtain and pay for such commitment or insurance.

(k) The City Manager is authorized to negotiate a division of the costs of sale to a maximum of fifty percent (50%) of the required costs being borne by the City, provided however that no costs of sale will be paid by the City where a sale is negotiated at a price below the fair market value of the land.

22.05.101 No Right of Occupancy – Land Purchase Application Expiration.

(a) Submitting an application to purchase land does not give the applicant a right to purchase or use City-owned land.

(b) The application shall expire upon closing of the sale or rejection of a land purchase application by the City Council or within twelve (12) months after the date the application has been submitted.

22.05.105 Terms for Financing Sale of City-Owned Lands.

(a) In order to expedite and facilitate the sale of City lands, the City Manager is authorized to accept terms for sales and may accept a note secured by a deed of trust for a portion of the purchase price thereof, subject to the following restrictions:

(1) Except for property sold by the City subsequent to foreclosure for delinquent taxes or assessments, prior to making a determination to accept a note and deed of trust from a prospective purchaser, the City shall order a preliminary commitment for title insurance and a review of the grantee index covering the party desiring to purchase the land at the cost of the party requesting to purchase the land, and no credit will be advanced on such sale if there are any delinquent liens or unpaid judgments found in the title company report until any such judgments or liens are paid and releases therefor have been filed.

(2) In the event of a credit sale, terms shall be approved by the City Council in the Ordinance approving the sale, as follows:

(i) The down payment required, which shall not be less than fifteen percent (15%) of the sales price; and

- (ii) The length of the note; and
- (iii) A fixed or variable interest rate.

22.05.110 Determination as to Need for Public Use.

(a) Whether land shall be acquired, retained, devoted, or dedicated to a public use shall be determined by ordinance which shall contain the public use for which the property is to be dedicated, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.

(b) Whether land previously dedicated to a public use should be dedicated to a different public use or should no longer be needed for public use shall be determined by the City Council by ordinance, except in cases of vacation of rights-of-way or easements which may be determined by resolution, either of which shall contain the new public use for which the property is to be dedicated or the reason the land is no longer needed for public use, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location.

22.05.130 Special Use Permits.

The City Council may authorize the City Manager to grant special use permits for the temporary use of real property owned by the City for a period not to exceed one (1) year, without appraisal of the value of the property or public auction, for any purpose compatible with the zoning of the land, and on such terms and for such rentals as the Council shall determine.

22.05.135 Acquisition of Real Property.

(a) The City, by authorization of the City Council, expressed in a resolution for such purpose, may lease, purchase or acquire an interest in real property needed for a public purpose on such terms and conditions as the Council shall determine. No purchase shall be made until a qualified independent appraiser has appraised the property and given the Council an opinion as to the fair market value of the land unless the Council, upon resolution so finding, determines that the public interest will not be served by an appraisal.

(b) Rights-of-way and easements may be accepted or issued by the City Manager after approval by the City Council for utility lines and services of all types and for necessary rights-of-way easements. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.

Section 4. Leaseholders of existing leases may convert their current lease to a new lease form approved by the City Council and governed by the Kenai Municipal Code Enacted by this Ordinance, except that the existing lease terms will not be entered only by virtue of the lease conversion.

Section 5. 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 6. 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 21st day of August, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: August 7, 2019
Enacted: August 21, 2019
Effective: September 21, 2019



"Village with a Past, City with a Future"

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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Scott Bloom City Attorney

DATE: July 31, 2019

SUBJECT: **Ordinance No. 3072-2019 – City Owned Lands**

Introduction:

Building off recent code changes to airport reserve lands, Ordinance No. 3072-2019 amends the City's lands code with the intent of providing land policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational, and cultural community. These changes will affect City general fund lands, lands outside the airport reserve restricted by FAA, and certain harbor lands. The changes provide consistent guidance for the competitive lease and sale of lands, require development of commercial properties and discourage land speculation. Amendments to ownership of improvements on leases, the term table, and the provision of development incentives are designed to encourage interest in development in the City.

The Ordinance repeals and re-enacts Chapter 22.05, changes the title of Title 22, repeals Chapter 21.15 (airport lands outside the airport reserve), and renames Title 21.

This memo contains procedural guidance and a sectional analysis of the changes below. Additionally, a copy of the amendments in legislative format (not repeal and replace as in the Ordinance) and a clean copy is provided.

Procedure:

Administration has presented the material in this Ordinance to Council, the Planning and Zoning Commission, and Airport Commission, and will present to the Harbor Commission the third week in August. Administration recommends this Ordinance be referred to the three commissions for recommendations prior to a public hearing. The Airport Commission meets August 8, the Harbor Commission, August 19, and the Planning and Zoning Commission, August 14.



Trailing this Ordinance is the City Administration's Land Management Plan, which will identify parcels for sale and lease, among other information, and revisions to the Harbor Code addressing land leases and sales.

Sectional Analysis:

1. **Renaming Title 21:** Title 21 is renamed to reflect that it only applies to lands within the airport reserve as lands restricted by the FAA outside the airport reserve are incorporated within Title 22 in the Ordinance and will be treated the same as other City lands outside the airport reserve, in compliance with any FAA restrictions per new KMC 22.05.095 which also provides for proceeds from sales to go to the airport.
2. **Repealing 21.15:** Chapter 21.15, which addresses FAA restricted lands outside the airport reserve, is repealed consistent with the new title for Title 21 addressed above, as all FAA restricted lands outside the airport reserve lands are incorporated into Chapter 22.05. This is reflected on pages 2 through 17 of the Ordinance.
3. **Repealing and Re-enacting Title 22:** Due to the number and significance of the proposed amendments to Title 22, which only contains one chapter, Chapter 22.05, the entire title is replaced as opposed to making changes one section at a time. This repeal is reflected on pages 17 through 32 of the Ordinance.
4. **Renaming Title 22:** On page 32, the title of Title 22 is changed from General Funds Lands to City-Owned Lands to reflect the inclusion of FAA restricted lands and certain harbor lands.
5. **Renaming Chapter 22.05:** Similarly on page 32, the title of Chapter 22.05 within Title 22 is amended to read "disposition of City Lands," instead of "Disposition of City General Fund Lands."
6. **KMC 22.05.005:** This is a new definitions section which did not previously exist, providing key terms for the Chapter.
7. **KMC 22.05.010:** This section, "Authority and Intent", was formerly titled "Power to Dispose of Real Property." This section now clarifies that it applies to all City owned lands except lands within the airport reserve and the leasing of tidelands for shore fisheries. It also makes an affirmative statement of the intent of the chapter: "to provide land policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community" and requires that all land sales and leases meet this intent.
8. **KMC 22.05.015:** "Lands Available for Lease, Sale or Disposal," formerly titled, "Sale or Disposal," clarifies that the City can lease, sell, or dispose of real property, not restricted from the same, after Council has determined it is not needed for a public purpose by any lawful method.
9. **KMC 22.05.020:** "Qualifications of Lease Applicants or Bidders" makes only housekeeping changes to the former section, describing who can lease or purchase property from the City.
10. **KMC 22.05.025:** "Initial Lease Application," formerly titled "Applications," describes the information required and process for submitting lease applications. Changes include provisions for applications requiring a subdivision, whether the applicant wants an option to purchase, and whether the lease meets the intent of the Chapter. For properties without a recent appraisal, this section now requires the applicant to pay for an appraisal, and the appraisal cost to be credited or refunded once development is complete. The changes are generally intended to more clearly define what information the City needs to evaluate a lease and communicate the process going forward and potential costs for lessees.

- 11. Former KMC 22.05.030:** This section formerly titled "Filing Fee and Deposit" is repealed in its entirety, as fees and deposits are now addressed in KMC 22.05.025 and other sections of code.
- 12. KMC 22.05.035:** "No Right of Occupancy-Lease Application Expiration," formerly titled "Rights Prior to Leasing," clarifies that submission of a lease application does not give an applicant the right to lease or occupy the land. It also provides that a lease application expires within 12 months of the date of submission, upon execution of a lease, or rejection of the application by the Council.
- 13. KMC 22.05.040:** "Lease Application Review" formerly titled "Processing Procedure" provides the following review process:
 - (i) Administration reviews for completeness and conformance with City ordinances,
 - (ii) If complete, Manager forwards to appropriate commissions for review and comment together with a Manager's recommendation for approval or rejection,
 - (iii) Notice of complete applications are published and posted on the property, with a date in which any competing applications must be received,
 - (iv) The recommendations of the City Manager and any applicable commissions are provided to Council, which decides whether the application meets the intent of the code and whether the application should be approved.
- 14. KMC 22.05.045:** "Application for Lease Amendment, Assignment, Extension or Renewal," formally "Review," provides the process for lease amendments, assignments, extensions, or renewals. Similar to the airport reserve properties, the term of a lease can be based on other factors than new development, such as the purchase price or estimated remaining useful life of improvements. These transactions are generally reviewed by the City in the same way as a new lease application, although lease assignments are not required to be reviewed by planning and zoning.
- 15. KMC 22.05.050:** "Competing Lease Applications," replaces former "Appraisal," to provide a process for evaluating competing lease applications. Information regarding appraisal requirements has been incorporated into other code sections. When more than one application is submitted for a property, the Council can choose which applicant to lease to based on which application is found to be in the best interest of the City, after review and recommendation by the City Manager and applicable commissions. A safe harbor is provided for existing lessees seeking an extension or renewal, by allowing them to withdraw their application and stop the competitive process at any time prior to Council making a decision.
- 16. KMC 22.05.055:** "Length of Lease Term" describes how the term of a new lease, extension, or renewal is determined. The term table matches that of the term table for properties within the airport reserve. Development of \$307,500 or greater receives the maximum term of 45 years. The term of a lease can also be determined by the purchase price of improvements, an appraisal value of improvements, or the remaining useful life of improvements depending on the transaction.
- 17. KMC 22.05.060:** "Principals and Policy of Lease Rates" was formerly 22.05.070. This provides that annual rent is based on 8% of the fair market value of the land. Annual rental adjustments are based on the Consumer Price Index (CPI). Every ten years, or pursuant to extraordinary circumstances, the City will conduct a market analysis to determine whether its rates and adjustments are in line with the market or whether changes need to be made. A process for a lessee to appeal is provided in this section as well, however, CPI adjustments are not appealable.
- 18. KMC 22.05.65:** "Lease Bidding Procedure" provides a process for the City to designate lots to be leased through a competitive bid process to the highest bidder.

19. **KMC 22.05.070:** "Development Incentives" is a new section similar to what is offered within the airport reserve. Certain improvements to the property paid for by the lessee can be used to offset up to five years of rental payments.
20. **KMC 22.05.075:** "Ownership of Improvements" is a new section that provides that the lessee owns the improvements on the leased property. These improvements can be sold by the lessee. A process for sale and/ or removal is also provided.
21. **KMC 22.05.080 and 22.05.085:** "Lease Execution" and "Lease Utilization" remain largely unchanged and describe the process for executing a lease and how the leased property can be used by the lessee.
22. **KMC 22.05.086:** "Form of Lease." This section provides some of the basic terms for the lease form that is developed by the City Attorney and approved by the Council. A resolution to approve the standard lease form will be brought to Council at the same meeting as the public hearing on this ordinance.
23. **KMC 22.05.087:** "Lease Payments." this section provides that the lessee is responsible for all taxes and special assessments on the property. Rent is paid annually or quarterly to the City.
24. **KMC 22.05.095:** "Methods of Sale" incorporates former KMC 22.05.090 "Conveyance to Encourage New Enterprise," KMC 22.05.115, 22.05.120 and 22.05.125: "Property Exchanges", "Property Sale to Adjacent Owners," and "Grant or Devotion," and provides the methods of sale or disposal for City owned lands. Non-competitive sales are allowed only to encourage new enterprise, for sale to adjacent property owners when the land is not practicably usable by others, to other government agencies, or to resolve a land use conflict. All other sales require a competitive process.
25. **KMC 22.05.100:** "Sale Procedure" provides the process for selling City property, public notice of sales, and describes which party is responsible for various costs associated with a sale.
26. **KMC 22.05.101:** "No Right of Occupancy-Land Purchase Application Expiration." This section explains that an application to purchase land does not convey any rights to the property and that an application expires after 12 months, a decision by Council not to sell the property, or upon closing of the sale.
27. **KMC 22.05.105:** "Terms for Financing Sale of City Owned Lands" this section provides the process for the City to finance a sale. It provides that the length of the note and rate, whether fixed or variable, is determined by the Council in the ordinance approving a sale.
28. **KMC 22.05.110:** "Determination as to Need for Public Use." This section is unchanged and requires that before any property can be sold, Council must first determine that it is not needed for a public use.
29. **KMC 22.05.115, 22.05.120 and 22.05.125:** "Property Exchanges," "Property Sale to Adjacent Owners," and "Grant or Devotion," are all repealed as their terms and provisions are incorporated into 22.05.095.
30. **KMC 22.05.130:** "Special Use Permits" allows for a more informal use of City lands for a period of up to one year.
31. **KMC 22.05.135:** "Acquisition of Real Property" describes the process for the City to purchase or otherwise acquire new property and remains largely unchanged from the existing code.

Title 22

[GENERAL FUND]CITY-OWNED LANDS

Chapter 22.05

DISPOSITION OF CITY [GENERAL FUND]LANDS

22.05.05 Definitions.

When used in this chapter, the following terms shall have the meaning given below:

“Amendment” means a formal change to a lease of lands other than a lease extension or renewal.

“Annual rent” means an amount paid to the City annually according to the terms of the lease and Kenai Municipal Code.

“Assignment” means the transfer of all interest in a lease from one person or entity to another.

“City” means the City of Kenai, its elected officials, officers, employees or agents.

“Consumer Price Index (CPI)” means the annual CPI for all urban consumers (CPI-U) for Anchorage, Alaska.

“Existing lease” means a lease with at least one (1) year of term remaining.

“Expiring lease” means a lease with less than one (1) year of term remaining.

“Fair market value” means the most probable price which a property should bring in a competitive and open market as determined by a qualified independent appraiser, or the value as determined by the latest appraisal adjusted by the change in Consumer Price Index from the date of the latest appraisal.

“Lease extension” means extending the term of an existing lease.

“Lease rate percent” means a percentage that when applied to the fair market value of land establishes a rate of rent commensurate with rental rates prevalent in the local area as determined by a qualified real estate appraiser.

“Lease renewal” means a new lease of property currently under an existing or expiring lease to an existing lessee or a purchaser.

“Market analysis” means an analysis of data collected from other land leases to determine whether a market adjustment in either fair market value or lease rate percentage reflects the market.

“Permanent improvement” means a fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, and pavement, and remediation of contamination for which the applicant is not responsible and excluding items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching.

“Professional estimate of the remaining useful life of the principal improvement” means an estimate of the number of remaining years that the principal improvement will be able to function in accordance with its intended purpose prepared by a qualified real estate appraiser, engineer, or architect licensed in Alaska.

“Qualified independent appraiser” means a general real estate appraiser certified by the State of Alaska under AS [08.87](#).

“Site development materials” means materials used for preparing a lease site for building construction or to provide a firm surface on which to operate a vehicle or aircraft, including geotextile, fill, gravel, paving, utilities and pavement reinforcement materials.

“Site preparation work” means work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, a crushed aggregate base course and utility extensions.

22.05.010 [POWER] Authority and Intent [TO DISPOSE OF REAL PROPERTY].

(a) The provisions of this chapter apply to [GENERAL FUND] City-owned real property other than lands within the Airport Reserve as described in KMC 21.10 and the leasing of tidelands for shore fisheries.

(b) The City may sell, convey, exchange, transfer, donate, dedicate, direct, [OR]assign to use, or otherwise dispose of City-owned real property, including property acquired, held for, or previously devoted to a public use, only in accordance with this chapter, and, with respect to properties acquired through foreclosure for taxes, in compliance with those terms and provisions of AS [29](#) which apply to home-rule municipalities [ARE REQUIRED TO COMPLY WITH]. Disposal or sale of lands shall be made only when, in the judgment of the City Council, such lands are not or are no longer required for a public purpose.

(c) It is the intent of this chapter to provide land policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community.

(d) It is not the intent of this chapter to allow for speculation on City-owned lands. All leases, sales, and other disposals of City-owned land must meet the intent of this chapter.

(e) The provisions of this chapter shall not alter or amend the terms or rights granted under leases existing prior to the effective date of the ordinances codified in this chapter.

22.05.015 Lands Available for Lease, Sale or [D]Disposal.

(a) The City may lease, sell or dispose of real property not restricted from lease or sale which the City Council has determined is not required for a public purpose [BY WARRANTY OR QUIT-CLAIM DEED, EASEMENT, LEASE, GRANT, PERMIT, LICENSE, DEED OF TRUST, MORTGAGE CONTRACT OF SALE OF REAL PROPERTY, PLAT DEDICATION, TAX DEED, OR] by any [OTHER]lawful method or mode of conveyance or grant. Any instrument requiring execution by the City shall be signed by the City Manager and attested by the City Clerk. The form of any instrument shall be approved by the City Attorney.

22.05.020 Qualifications of Lease [A]Applicants or [B]Bidders.

An applicant or bidder for a lease is qualified if the applicant or bidder:

- (a) Is an individual at least eighteen (18) years of age [OR OVER]; or
- (b) Is a [GROUP, ASSOCIATION, OR CORPORATION WHICH IS] legal entity which is authorized to conduct business under the laws of Alaska; or
- (c) Is acting as an agent for another meeting the requirements of subsection (a) or (b) of this section and has qualified by filing with the City [MANAGER] a proper power of attorney or a letter of authorization creating such agency. [THE AGENT SHALL REPRESENT ONLY ONE (1) PRINCIPAL TO THE EXCLUSION OF HIMSELF OR HERSELF. THE TERM “AGENT” INCLUDES REAL ESTATE BROKERS AND AGENTS.]

22.05.025 Initial Lease Application[S].

(a) All applications for lease of lands [SHALL] must be [FILED WITH] submitted to the City [MANAGER] on an application form[S] provided by the City[AVAILABLE AT CITY HALL]. Applications [SHALL] will be dated on receipt and must include payment of [FILING] the nonrefundable application fee [AND DEPOSIT. NO APPLICATION WILL BE ACCEPTED BY THE CITY MANAGER UNLESS IT APPEARS TO THE CITY MANAGER TO BE COMPLETE. FILING FEES ARE NOT REFUNDABLE] as set forth in the City’s schedule of fees approved by the City Council.

(b) [WITH EVERY]The application[, THE APPLICANT SHALL SUBMIT A DEVELOPMENT PLAN, SHOWING AND STATING] form must include the following information:

- (1) The purpose of the proposed lease;
- (2) The use, [VALUE AND]nature, type, and estimated cost of improvements to be constructed;
- (3) [THE TYPE OF CONSTRUCTION;

(4) The dates construction is estimated to commence and be completed. [(ORDINARILY A MAXIMUM OF TWO (2) YEARS)] Construction must be completed within two (2) years except in special circumstances, that require a longer period of time and which must be approved by the City Council; and

([5]4) [WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY. APPLICATIONS SHALL BECOME A PART OF THE LEASE]A comprehensive description of the proposed business or activity intended;

(5) Whether the applicant requests a lease with an option to purchase; and

(6) How the proposed lease meets the intent of this chapter.

(c) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to any new appraisal, engineering services, surveying and consulting costs, unless in the sole discretion of the City Council, it is determined that the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a lease with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will apply to the rent payable under the lease.

(4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the lease.

(5) If the application is rejected or if the applicant withdraws the application or fails to sign a lease offered to the applicant, the City will return any unused deposit balance to the applicant.

(d) Applications for lands which have not been appraised within one (1) year of the requested starting date of the lease require the applicant to be responsible for all costs associated with appraisal. The cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease, extension or renewal.

(e) Applications which result in a lease agreement with the City require the lessee to be responsible for all recording costs and any other fees associated with execution of the lease including a preliminary commitment for title insurance and fifty percent (50%) of the required costs associated with a sale of leased land in which the lease contains an option to purchase once the minimum development requirements have been met.

(f) Anytime during the processing of a lease application, the City may request, and the applicant must supply, any clarification or additional information that the City reasonably determines is necessary for the City to make a final decision on the application.

[22.05.030 FILING FEE AND DEPOSIT.

(A) WHEN SUBMITTING AN APPLICATION FOR LEASE OF LAND, THE APPLICANT SHALL PAY THE CITY THE FOLLOWING AS SET FORTH IN THE CITY’S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL:

(1) PAY A NON-REFUNDABLE FILING FEE IN THE AMOUNT; AND

(2) A DEPOSIT TO SHOW GOOD FAITH AND SECURE THE CITY IN PAYMENT OF ANY COSTS, INCLUDING:

(A) AN APPRAISAL COST RECOVERY DEPOSIT; AND

(B) AN ENGINEERING, SURVEYING AND CONSULTING COST RECOVERY DEPOSIT.

(B) IF THE CITY DECIDES TO REJECT THE APPLICANT’S APPLICATION AND NOT ENTER INTO A LEASE WITH THE APPLICANT THROUGH NO FAULT OF THE APPLICANT OR FAILURE OF THE APPLICANT TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER, ANY DEPOSIT MADE UNDER SUBSECTION (A)(2) OF THIS SECTION WILL BE RETURNED TO THE APPLICANT.

(C) IF THE CITY ENTERS INTO A LEASE WITH THE APPLICANT ANY DEPOSIT MADE BY THE APPLICANT UNDER SUBSECTION (A)(2) OF THIS SECTION WILL BE APPLIED TO THE CITY’S ENGINEERING, APPRAISAL, AND CONSULTING COSTS RELATED TO THE PROCESSING OF THE APPLICANT’S APPLICATION AND ENTERING INTO THE LEASE. THE CITY WILL APPLY ANY UNUSED BALANCE OF A DEPOSIT TO THE RENT PAYABLE UNDER THE LEASE. IF THE CITY’S COSTS EXCEED THE AMOUNT OF ANY DEPOSIT, THE APPLICANT SHALL PAY THE SHORTAGE TO THE CITY AS A CONDITION OF THE LEASE.

(D) IF THE APPLICANT FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER, CAUSES INORDINATE DELAY, AS DETERMINED BY THE CITY MANAGER, OR REFUSES TO SIGN A LEASE OFFERED TO THE APPLICANT, THE CITY MANAGER WILL REJECT THE APPLICANT’S APPLICATION AND APPLY ANY DEPOSIT MADE BY THE APPLICANT UNDER SUBSECTION (A) OF THIS SECTION TO THE CITY’S APPRAISAL, ENGINEERING, AND CONSULTING COSTS INCURRED IN CONNECTION WITH THE APPLICANT’S APPLICATION. IF THE CITY’S COSTS FOR APPRAISAL, ENGINEERING AND CONSULTING COSTS EXCEED THE DEPOSITS, THE APPLICANT WILL BE RESPONSIBLE FOR THESE COSTS. THE CITY WILL RETURN ANY UNUSED DEPOSIT BALANCE TO THE APPLICANT.]

22.05.035 [RIGHTS PRIOR TO LEASING.]No Right of Occupancy – Lease Application Expiration.

(a) Submitting [THE FILING OF] an application for a lease [SHALL] does not give the applicant [NO] a right to lease or [TO THE] use [OF THE] City-owned land [FOR WHICH THEY HAVE APPLIED].

(b) The application shall expire upon execution of a lease or rejection of a lease application by the City Council or within twelve (12) months after the date the application has been [MADE] submitted [IF A LEASE HAS NOT BEEN ENTERED INTO BETWEEN THE CITY AND THE APPLICANT BY THAT TIME UNLESS THE CITY COUNCIL FOR GOOD CAUSE GRANTS AN EXTENSION. NO EXTENSION MAY BE GRANTED FOR A PERIOD LONGER THAN SIX (6) MONTHS. LEASE RATES ARE SUBJECT TO CHANGE ON THE BASIS OF AN APPRAISAL DONE EVERY TWELVE (12) MONTHS ON THE PROPERTY APPLIED FOR].

22.05.040 [PROCESSING PROCEDURE] Lease Application Review.

(a) Applications shall be [FORWARDED] reviewed by City staff for application completeness and conformance with City ordinances.

(b) Based on the initial review, if the City Manager determines the application is complete, the application shall be referred to the Planning and Zoning Commission and any other applicable commissions [UPON RECEIPT] for review and comment, together with the City Manager's recommendation for approval or rejection. [THE PLANNING AND ZONING COMMISSION SHALL NORMALLY CONSIDER APPLICATIONS FOR SPECIFIC LANDS ON A FIRST-COME, FIRST-SERVED BASIS IF THE COMMISSION FINDS THAT THE APPLICATION IS COMPLETE AND CONFORMS TO THE COMPREHENSIVE PLAN AND THE KENAI ZONING CODE. WHERE THERE IS DIFFICULTY IN OBTAINING A PERFECTED APPLICATION, DETAILS AS TO DEVELOPMENT PLANS, ETC., OR WHERE THE APPLICANT FAILS TO COMPLY WITH DIRECTIONS OR REQUESTS OF THE PLANNING AND ZONING COMMISSION, ANY SUCH PRIORITY WILL BE LOST. IF AN APPLICATION FOR THE PURCHASE OF CITY-OWNED LANDS, PREVIOUSLY AUTHORIZED FOR SALE BY THE COUNCIL, IS RECEIVED BY THE CITY PRIOR TO THE KENAI PLANNING AND ZONING COMMISSION MAKING AN AFFIRMATIVE OR NEGATIVE RECOMMENDATION TO THE COUNCIL REGARDING THE LEASE APPLICATION FOR THE SAME PROPERTY, THE CITY MAY ELECT TO SELL THE PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THE CODE.

(B) THE CITY COUNCIL SHALL NORMALLY CONSIDER A LEASE PROPOSAL ONLY AFTER APPROVAL OF THE PLANNING AND ZONING COMMISSION. HOWEVER, APPEALS OF PLANNING AND ZONING COMMISSION DISAPPROVAL MAY BE MADE TO THE CITY COUNCIL. COMPLETED LEASE APPLICATIONS MUST BE PRESENTED TO THE CITY COUNCIL WITHIN THIRTY (30) DAYS AFTER APPROVAL BY THE PLANNING AND ZONING COMMISSION.]

(c) Notice of complete applications for new leases, renewals or extensions shall be published in a newspaper of general circulation within the City and posted on the property. The notice must contain the name of the applicant, a brief description of the land, whether the applicant requests a

lease with an option to purchase, and the date upon which any competing applications must be submitted (thirty (30) days from the date of publication).

[(C) WHERE THERE ARE TWO (2) OR MORE APPLICATIONS FOR THE SAME LANDS FOR DIFFERENT USES, THEN IF THE PLANNING AND ZONING COMMISSION MAKES A FINDING THAT A SUBSEQUENT APPLICATION WOULD RESULT IN USE OF THE LANDS FOR A HIGHER AND BETTER PURPOSE WITH A GREATER BENEFIT TO THE CITY OF KENAI AND THE CITIZENS THEREOF, THEN THE LEASE MAY BE ISSUED TO SUCH APPLICANT NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) IN THIS SECTION WHICH PROVIDE FOR LEASING ON A FIRST-COME, FIRST-SERVED BASIS. ANY APPLICANT MAY APPEAL TO THE CITY COUNCIL FROM A FINDING OR A REFUSAL TO FIND BY THE PLANNING AND ZONING COMMISSION BY FILING AN APPEAL WITH THE CITY CLERK WITHIN SEVEN (7) DAYS AFTER THE FINDING IS MADE OR REFUSED BY THE PLANNING AND ZONING COMMISSION.

(d) The recommendations of the City Manager, Planning and Zoning Commission, and any other applicable commissions shall be provided to the City Council. The City Council shall determine whether the lease is consistent with the intent of this chapter. The decision whether or not to lease land or authorize a lease extension, renewal, amendment or assignment rests in the sole discretion of the City Council.

(e) If the applicant is in default of any charges, fees, rents, taxes, or other sums due and payable to the City or the applicant is in default of a requirement of any lease or contract with the City a lease shall not be entered into until the deficiencies are remedied .

22.05.045 [REVIEW]Application for Lease Amendment, Assignment, Extension or Renewal.

[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.]

(a) A request from an existing lessee for a lease amendment, assignment, extension or renewal of the lease must be submitted to the City on an application form provided by the City. Applications must be complete and dated on receipt and include payment of the nonrefundable application fee and applicable deposit as set forth in the City’s schedule of fees adopted by the City Council.

(b) An application for an amendment must include the following information:

- (1) The purpose of the proposed amendment;
- (2) The proposed change in use or activity, if any;
- (3) A comprehensive description of the proposed business or activity, if applicable; and
- (4) How the proposed amendment meets the intent of this chapter.

(c) An application for a lease assignment must include the following:

(1) The name of the individual or legal entity to which the lessee requests to assign the lease.

(d) An application for a lease extension must include the following information:

(1) The use, nature, type and estimated cost of additional improvements to be constructed;

(2) The dates new construction is estimated to commence and be completed; and

(3) How the proposed lease extension meets the intent of this chapter.

(e) An application for a lease renewal must include the following information:

(1) For a lease renewal of an existing lease:

(i) The use, nature, type and estimated cost of additional investment in the construction of new permanent improvements;

(ii) The dates new construction is estimated to commence and be completed;

(iii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of real property improvements on the premises as certified by the current lessee and proposed purchaser in a bill of sale; and

(iv) How the proposed lease renewal meets the intent of this chapter.

(2) For a lease renewal of an expiring lease:

(i) A fair market value appraisal of the existing principal improvement on the property, paid for by the applicant, and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;

(ii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of existing real property improvements, as certified by the current lessee and the proposed purchaser in a bill of sale and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;

(iii) If the renewal is based on a professional estimate of the remaining useful life of the real property improvements on the premises, the estimated value and how it was determined;

(iv) The use, nature, type and estimated cost of any additional improvements to be constructed, if applicable;

(v) The dates any new construction is estimated to commence and be completed; and

(vi) How the proposed lease meets the intent of this chapter.

(f) Applications for amendment, assignment, extension or renewal shall be processed in accordance with the lease application review provisions of this chapter, except that applications for assignment shall not be referred to the Planning and Zoning Commission. The City has no obligation to amend, assign, renew or extend a lease and may decline to do so upon making specific findings as to why a lease amendment, assignment, renewal, or extension is not in the best interest of the City.

[22.05.050 APPRAISAL.

NO LAND SHALL BE SOLD, LEASED, OR A RENEWAL OF LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A TWELVE (12) MONTH PERIOD PRIOR TO THE SALE OR 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. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION.]

22.05.050 Competing Lease Applications.

If another application for a new lease, extension or a renewal is received for the same property within thirty (30) days from the notice of application publication date by a different applicant, City staff shall process the application and forward the application, the City Manager’s recommendation and applicable commission recommendations to the City Council for approval of the application anticipated to best serve the interests of the City. The City Council may approve one (1) of the applications, reject all the applications or direct the City Manager to award a lease of the property by sealed bid. An applicant for a renewal or extension may withdraw an application for a renewal or extension at any time prior to a decision by the City Council whether or not to approve such a renewal or extension.

22.05.055 [TERMS]Length of [L]Lease [T]Term.

[ALL LEASES SHALL BE APPROVED BY THE CITY COUNCIL BEFORE THE SAME SHALL BECOME EFFECTIVE. THE TERM OF ANY GIVEN LEASE SHALL DEPEND UPON THE DURABILITY OF THE PROPOSED USE, THE AMOUNT OF INVESTMENT IN IMPROVEMENT PROPOSED AND MADE, AND THE NATURE OF THE IMPROVEMENT PROPOSED WITH RESPECT TO DURABILITY AND TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT].

(a) The length of term for an initial lease shall be based on the amount of investment the applicant proposes to make in the construction of new permanent improvements on the premises as provided in the application. The City Council may offer a shorter lease term, if the City Council makes specific findings that a shorter lease term is in the best interest of the City.

(b) The maximum term of a lease shall be determined according to the following term table and cannot exceed forty-five (45) years:

Term Table

<u>Applicant's Investment/Value</u>	<u>Maximum Term Of Years</u>
<u>\$7,500</u>	<u>5</u>
<u>15,000</u>	<u>6</u>
<u>22,500</u>	<u>7</u>
<u>30,000</u>	<u>8</u>
<u>37,500</u>	<u>9</u>
<u>45,000</u>	<u>10</u>
<u>52,500</u>	<u>11</u>
<u>60,000</u>	<u>12</u>
<u>67,500</u>	<u>13</u>
<u>75,000</u>	<u>14</u>
<u>82,500</u>	<u>15</u>
<u>90,000</u>	<u>16</u>
<u>97,500</u>	<u>17</u>
<u>105,000</u>	<u>18</u>
<u>112,500</u>	<u>19</u>
<u>120,000</u>	<u>20</u>
<u>127,500</u>	<u>21</u>
<u>135,000</u>	<u>22</u>
<u>142,500</u>	<u>23</u>
<u>150,000</u>	<u>24</u>
<u>157,500</u>	<u>25</u>
<u>165,000</u>	<u>26</u>
<u>172,500</u>	<u>27</u>
<u>180,000</u>	<u>28</u>
<u>187,500</u>	<u>29</u>
<u>195,000</u>	<u>30</u>
<u>202,500</u>	<u>31</u>
<u>210,000</u>	<u>32</u>
<u>217,500</u>	<u>33</u>
<u>225,000</u>	<u>34</u>
<u>232,500</u>	<u>35</u>
<u>240,000</u>	<u>36</u>
<u>247,500</u>	<u>37</u>
<u>255,000</u>	<u>38</u>
<u>262,500</u>	<u>39</u>
<u>270,000</u>	<u>40</u>
<u>277,500</u>	<u>41</u>
<u>285,000</u>	<u>42</u>
<u>292,500</u>	<u>43</u>
<u>300,000</u>	<u>44</u>
<u>307,500</u>	<u>45</u>

(c) Lease extension. The length of term for a lease extension shall be determined based on the remaining term of the initial lease and the estimated cost of new investment the applicant

proposes to make in the construction of new permanent improvements on the premises according to the term table and provided no extension shall extend a lease term past forty-five (45) years.

(d) Lease renewal for an existing lease. A renewal for an existing lease requires the construction of new permanent improvements, and the length of term for a lease renewal for an existing lease shall determined as follows:

(1) Based on the remaining term of the initial lease according to the term table and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table; or

(2) Pursuant to a transaction between the current lessee and a new buyer and prospective lessee and based on the purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale, to be executed at closing of the transaction and the estimated cost of new investment in the construction of new permanent improvements on the premises according to the term table.

(3) The term for renewal of an existing lease cannot exceed forty-five (45) years.

(e) Lease renewal for an expiring lease. The length of term for a lease renewal of an expiring lease shall be determined as follows:

(1) The purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale, to be executed at closing of the transaction and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table; or

(2) A professional estimate of the remaining useful life of the real property improvements on the premises, paid for by the applicant and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table; or

(3) A fair market value appraisal of the existing real property improvements on the premises, paid for by the applicant and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table.

(4) The term for renewal of an existing lease cannot exceed forty-five (45) years.

(f) If the initial lease, term extension, or lease renewal granted to the applicant requires construction of new permanent improvements, the lease or term extension shall be subject to the following conditions:

(1) The lessee to complete the proposed permanent improvements within two (2) years except in special circumstances, that require a longer period of time and which must be approved by the City Council.

(2) The lessee to provide a performance bond, deposit, personal guarantee, or other security if the City Council determines security is necessary or prudent to ensure the applicant's completion of the permanent improvements required in the lease, renewal, or extension. The City Council

shall determine the form and amount of the security according to the best interest of the City, after a recommendation by the City Manager considering the nature and scope of the proposed improvements and the financial responsibility of the applicant.

(3) At no expense to the City, the lessee must obtain and keep in force during the term of the lease, insurance of the type and limits required by the City for the activities on the premises.

(4) Within thirty (30) days after completion of the permanent improvements, the lessee shall submit to the City written documentation that the improvements have been completed as required. The City Manager shall make a report to the City Council of completion as soon as reasonably practical.

(5) If the applicant shows good cause and the City Council determines the action is in the best interest of the City, the City Council may grant an extension of the time allowed to complete permanent improvements by resolution that is sufficient to allow for the completion of the permanent improvements or for submission of documentation that the permanent improvements have been completed.

(6) If, within the time required, the applicant fails to complete the required permanent improvements, the City shall:

(i) If the application is for a new lease or lease renewal, execute the forfeiture of the performance bond, deposit, personal guarantee, or other security posted by the applicant under subsection (f)(2) of this section to the extent necessary to reimburse the City for all costs and damages, including administrative and legal costs, arising from the applicant's failure to complete the required improvements, and/or initiate cancellation of the lease or reduce the term of the lease to a period consistent with the portion of the improvements substantially completed in a timely manner according to the best interests of the City.

(ii) If the application is for a lease extension, the City shall terminate the amendment extending the term of the lease or reduce the term of the extension at the City's sole discretion.

22.05.060 [ANNUAL MINIMUM RENTAL]Principles and Policy of Lease Rates.

(a) Annual [MINIMUM] rent[ALS] shall be computed [FROM THE APPROVED APPRAISED]by multiplying the fair market value of the land by a lease rate percentage of eight percent (8%) for each parcel [UTILIZING THE METHOD AS DESCRIBED IN KMC 22.05.070 OF THIS CHAPTER.]; and

(b) The City will determine the fair market value of the land requested to be leased based on an appraisal conducted for the City by an independent real estate appraiser certified under Alaska State statutes and ordered by the City for the purpose of determining annual rent. The appraisal shall be paid for by the applicant, and the cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease. The fair market value of the land will be adjusted annually based on the rate of inflation determined by the consumer price index (CPI) to determine annual rent[.]; and

[(B) UPON EXECUTION OF THE LEASE, THE LANDS 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, AND SHALL PAY ANY SPECIAL ASSESSMENTS AND TAXES AS IF HE OR SHE WERE THE OWNER OF THE LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. PAYMENTS SHALL BE PRORATED TO CONFORM TO THE CITY OF KENAI'S FISCAL YEAR BEGINNING JULY 1ST AND ENDING JUNE 30TH. IF THE EQUIVALENT MONTHLY PAYMENT EXCEEDS TWO HUNDRED DOLLARS (\$200.00), THEN THE LESSEE SHALL HAVE THE OPTION OF MAKING PAYMENTS ON A MONTHLY BASIS.

(D) LESSEE SHALL BE RESPONSIBLE FOR ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.]

(c) The City will conduct a land market analysis of City-owned land under lease once every ten (10) years to determine whether a market adjustment in either fair market value of land or lease rate percentage is justified; and

(d) If the City determines from the market analysis that a market adjustment to the lease rate percentage is in the best interests of the City, the new lease percentage must be approved by an ordinance and utilized to compute annual rents for the next fiscal year; and

(e) If the market analysis or extraordinary circumstances determine a fair market value adjustment is in the best interests of the City, the City shall retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value of all leased land and shall use these values to compute annual rents for the next fiscal year; and

(f) The City shall adjust the annual rent of a lease by giving the lessee written notice at least thirty (30) days prior to application of a new annual rent determination; and

(g) If a lessee disagrees with the proposed change in the fair market value of land or lease rate percent (excluding CPI determinations, which cannot be appealed) and cannot informally resolve the issue with the City, the lessee must:

(1) Provide notice of appeal in writing within ninety (90) days of notification supported by the written appraisal of a qualified real estate appraiser, selected and paid for by lessee (the "second appraiser"); and

(2) The City and the lessee will meet to attempt to resolve the differences between the first appraiser and the second appraiser concerning the fair market value of the land or lease rate percent; and

(3) If the City and lessee cannot agree upon the fair market value or lease rate percent then they shall direct the first appraiser and the second appraiser to mutually select a third qualified real estate appraiser, paid for jointly by the parties (the "third appraiser"); and

(4) Within thirty (30) days after the third appraiser has been appointed, the third appraiser shall decide which of the two (2) respective appraisals from the first appraiser and the second appraiser most closely reflects the fair market value of the land or lease rate percent; and

(5) The fair market value of the land or lease rate percent shall irrefutably be presumed to be the value(s) contained in such appraisal selected by the third appraiser, and the rent shall be redetermined based on such value(s); and

(6) Rent shall continue to be paid at the then-applicable rate until any such new rental rate is established, and lessee and the City shall promptly pay or refund, as the case may be, any variance in the rent, without interest accruing to the extent to be paid/refunded.

22.05.065 [B]Lease Bidding [P]Procedure.

[AS AN EXCEPTION TO GENERAL POLICY LISTED ABOVE]With the approval of the City Council, the [CITY COUNCIL]City Manager may designate a specific lot or lots to be [MADE AVAILABLE ONLY FOR]leased through competitive sealed bid. The City Manager shall award the lease to the qualified bidder utilizing a procurement procedure which may consider qualitative factors in addition to the amount of any [AS DESIGNATED, SEALED BIDS SHALL BE RECEIVED OFFERING A]one (1) time premium payment to be paid by the successful bidder; provided, however, that the high bidder and the bidder’s lease proposal [IN ADDITION TO THE ESTABLISHED LEASE RATE. HIGHEST BID, HOWEVER,]shall be subject to all provisions of lease application review and approval [ESTABLISHED FOR ALL OTHER LEASE APPLICATIONS]under this chapter.

[22.05.070 PRINCIPLES AND POLICY OF LEASE RATES.

(A) A FAIR RETURN TO THE GENERAL FUND IS THE POLICY OF THE CITY, UNLESS DEVIATION FROM THAT POLICY IS IN THE BEST INTEREST OF THE CITY AS DETERMINED BY THE CITY COUNCIL. TO ENSURE 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 THE LEASE AND EVERY FIVE (5) YEARS THEREAFTER, AND ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. LEASE RATES:

(1) SHALL BE BASED ON 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 SPECIFIED LAND; AND

(2) SHALL BE EIGHT PERCENT (8%) OF FAIR MARKET VALUE.

(B) FOR LEASES IN EXISTENCE PRIOR TO THE EFFECTIVE DATE OF THE ORDINANCE CODIFIED IN THIS CHAPTER, THE LEASE RATE REDETERMINATION SHALL BE AS PROVIDED IN THE LEASE.

(C) THE CITY MANAGER SHALL CHANGE THE RENT IN A LEASE BY GIVING THE LESSEE WRITTEN NOTICE AT LEAST THIRTY (30) DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE CHANGE.

(D) THE “FAIR MARKET VALUE” OF THE PREMISES SHALL BE EQUAL TO THE THEN FAIR MARKET RATE FOR SIMILAR COMMERCIAL PROPERTY IN THE CITY OF KENAI, ALASKA (THE “RELEVANT AREA”). CITY SHALL GIVE NOTICE TO LESSEE OF CITY’S ESTIMATION OF THE FAIR MARKET VALUE NOT LATER THAN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN-APPLICABLE FIVE (5) YEAR PERIOD, AS EVIDENCED AND SUPPORTED BY THE WRITTEN OPINION OF AN INDEPENDENT REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87, SELECTED AND PAID FOR BY THE CITY, FAMILIAR WITH THE RELEVANT AREA (THE “FIRST APPRAISER”). IF LESSEE DISAGREES WITH SUCH ESTIMATE, IT SHALL ADVISE THE CITY IN WRITING THEREOF WITHIN THIRTY (30) DAYS OF LESSEE’S RECEIPT OF SUCH ESTIMATE, AS EVIDENCED AND SUPPORTED BY THE WRITTEN OPINION OF A REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87 (SELECTED AND PAID FOR BY LESSEE) FAMILIAR WITH THE RELEVANT AREA (THE “SECOND APPRAISER”). THE PARTIES SHALL PROMPTLY MEET TO ATTEMPT TO RESOLVE THEIR DIFFERENCES BETWEEN THE FIRST APPRAISER AND THE SECOND APPRAISER CONCERNING THE FAIR MARKET VALUE OF THE PREMISES. IF CITY AND LESSEE CANNOT AGREE UPON SUCH VALUE THEN, WITH ALL DELIBERATE SPEED, THEY SHALL DIRECT THE FIRST APPRAISER AND THE SECOND APPRAISER TO EXPEDITIOUSLY AND MUTUALLY SELECT A THIRD REAL ESTATE APPRAISER CERTIFIED UNDER ALASKA STATUTE 8.87 (SELECTED AND PAID FOR JOINTLY BY THE PARTIES) FAMILIAR WITH THE RELEVANT AREA (THE “THIRD APPRAISER”). WITHIN THIRTY (30) DAYS AFTER THE THIRD APPRAISER HAS BEEN APPOINTED, THE THIRD APPRAISER SHALL DECIDE WHICH OF THE TWO (2) RESPECTIVE APPRAISALS FROM THE FIRST APPRAISER AND THE SECOND APPRAISER MOST CLOSELY REFLECTS THE FAIR MARKET VALUE OF THE PREMISES. THE FAIR MARKET VALUE OF THE PREMISES SHALL IRREBUTTABLY BE PRESUMED TO BE THE VALUE CONTAINED IN SUCH APPRAISAL SELECTED BY THE THIRD APPRAISER, AND THE RENTAL SHALL BE REDETERMINED BASED ON SUCH VALUE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, RENTAL SHALL CONTINUE TO BE PAID AT THE THEN-APPLICABLE RATE UNTIL ANY SUCH NEW RENTAL RATE IS ESTABLISHED, AND LESSEE AND CITY SHALL PROMPTLY PAY OR REFUND, AS THE CASE MAY BE, ANY VARIANCE IN THE RENTAL, WITHOUT INTEREST THEREON ACCRUING TO THE EXTENT TO PAID/REFUNDED IN A TIMELY FASHION.

22.05.075 REIMBURSEMENT FOR CITY-CONSTRUCTED IMPROVEMENTS.

(A) THE CITY MANAGER MAY INCLUDE IN A LEASE A REQUIREMENT FOR THE LESSEE TO REIMBURSE THE CITY FOR THE CITY’S COST OF:

(1) LAND CLEARING, GRAVEL FILL, UTILITY EXTENSIONS AND OTHER IMPROVEMENTS OR AMENITIES ON OR IN DIRECT CONNECTION WITH THE

PREMISES, CONSTRUCTED BY THE CITY PRIOR TO THE EFFECTIVE DATE OF THE LEASE; OR

(2) LAND CLEARING, GRAVEL FILL, UTILITY EXTENSIONS AND OTHER IMPROVEMENTS OR AMENITIES ON OR IN DIRECT CONNECTION WITH THE PREMISES, WHICH THE CITY AGREES TO CONSTRUCT AS A CONDITION OF THE LEASE, SUBJECT TO CITY COUNCIL APPROVAL.

(B) THE LESSEE SHALL REIMBURSE THE CITY FOR THE CITY’S COST OF CONSTRUCTING THE IMPROVEMENTS IN TEN (10) EQUAL ANNUAL PAYMENTS, PLUS INTEREST AT EIGHT PERCENT (8%) PER YEAR ON THE UNPAID BALANCE. IF THE LEASE IS FOR LESS THAN TEN (10) YEARS, THE REPAYMENT SCHEDULE MAY NOT BE LONGER THAN THE TERM OF THE LEASE. THE LESSEE MAY PAY THE ENTIRE REMAINING BALANCE TO THE CITY AT ANY TIME DURING THE TERM OF THE LEASE.]

22.05.070 Development Incentives.

(a) The City Council may include a lease rent incentive to encourage commercial investment as follows:

(1) A credit may be applied toward rent for a maximum of five (5) years. The credit may only include the value of site preparation work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, crushed aggregate base course, and utility extensions.

(2) An estimate of the value of the work, including a scope of work, prepared by a qualified engineer licensed to work in Alaska must be provided to the City and accepted prior to work being performed.

(3) Any changes to the estimate of the value of the work or scope of work must be provided to the City and accepted prior to work being performed to be eligible for the credit.

(4) For the credit to be applied, the approved scope of work must be completed.

(5) A certification from a qualified engineer that the accepted scope of work has been completed must be provided to the City and accepted at the completion of the site preparation work.

(6) Credit will be limited to original qualified engineer’s estimate unless another amount is accepted by the City in advance of work being completed.

(7) Once the work is completed as proposed and the qualified engineer’s certification of completion has been received, a credit shall be applied to the lease payments, prorated as necessary for a maximum of five (5) years.

(8) Rent shall be paid at the then-applicable rate until any such credit toward rent has been approved by the City Manager or designee, and the City shall apply a credit to lease payments

prorated as necessary or promptly pay or refund, as the case may be, any variance between the credit applied and the rent paid, without interest accruing to the extent to be paid/refunded.

22.05.075 Ownership of Improvements.

(a) Permanent improvements on the premises, excluding site development materials, constructed, placed, or purchased by the lessee remain the lessee's property as long as a lease for the premises remains in effect with the lessee, including renewals, any period of extension approved by the City pursuant to the provisions of this chapter, or any period of holdover.

(b) Unless otherwise provided in a land lease, at the expiration, cancellation, or termination of a lease that is extended or followed by a successive lease, the departing lessee may do one (1) or more of the following:

(1) Remove lessee-owned permanent improvements from the premises, remediate any contamination for which the lessee is responsible, and restore the premises to a clean and neat physical condition acceptable to the City within ninety (90) days after the expiration, cancellation, or termination date of the lease; or

(2) Sell lessee-owned permanent improvements to the succeeding lessee, remove all personal property, remediate any contamination for which the lessee is responsible, and leave the premises in a clean and neat physical condition acceptable to the City within sixty (60) days after notice from the City that the City has approved an application for a lease of the premises by another person or such longer period specified in the notice, but in no event more than one hundred eighty (180) days after the expiration, termination, or cancellation date of the lease; or

(3) Purchase the property in which the lease contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee.

(c) If the lessee does not timely remove or sell the lessee-owned permanent improvements on a premises in accordance with the requirements of this section, any remaining permanent improvements and any remaining personal property of the departing lessee will be considered permanently abandoned. The City may sell, lease, demolish, dispose of, remove, or retain the abandoned property for use as the City determines is in the best interest of the City. The lessee shall, within thirty (30) days after being billed by the City, reimburse the City for any costs reasonably incurred by the City, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate any contamination and restore the premises.

(d) Site development materials that a lessee places on a premises become part of the City-owned real property and property of the City upon placement. The lessee:

(1) Must maintain the site development work and site development materials throughout the term of the lease or successive lease, including any extensions and periods of holdover; and

(2) May not remove the site development materials unless the City approves in writing.

22.05.080 Lease [E]Execution.

The lease applicant shall execute and return the appropriate lease agreement with the City of Kenai within thirty (30) days of mailing the agreement to the applicant. The lease agreement shall be prepared in accordance with the requirements of this title. Failure to execute and return the lease agreement within the specified period shall result in the forfeiture of all leasing rights.

22.05.085 Lease [U]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 in substantial conformity with the Comprehensive Plan. Utilization or development for other than the allowed uses shall constitute a [VIOLATION]material breach of the lease and subject the lease to cancellation at any time. Failure to substantially complete the development plan for the land shall constitute grounds for cancellation.

22.05.086 Form of Lease.

(a) When leasing land under this chapter, the City Manager shall use a standard lease form that:

- (1) Provides a reasonable basis for the lessee’s use of the premises,
- (2) Complies with the intent of this chapter, and
- (3) Provides for the best interest of the City.
- (4) Approved as to form by the City Attorney; and
- (5) Adopted by resolution of the City Council.

(b) The City Manager may enter into a land lease that deviates from the standard form adopted under subsection (a) of this section, if:

- (1) The City Manager believes the action is in the best interest of the City;
- (2) The lease is approved as to form by the City Attorney; and
- (3) The lease is approved by resolution of the City Council.

22.05.087 Lease Payments.

(a) Upon execution of the lease, the land becomes taxable to the extent of the lessee’s leasehold interest and lessee shall pay all real property taxes levied upon such leasehold interest in these lands, and shall pay any special assessments and taxes.

(b) Rent shall be paid annually in advance unless the lessee submits a written request to the City to pay on a quarterly or monthly basis. The payments shall be prorated to conform to the City of Kenai’s fiscal year beginning July 1st and ending June 30th.

(c) Lessee shall be responsible for all sales taxes due on payments under the lease.

[22.05.090 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, WHERE IT IS FOUND THAT ENCOURAGEMENT OF A NEW COMMERCIAL OR INDUSTRIAL ENTERPRISE WOULD BE BENEFICIAL TO THE CITY OF KENAI, THE CITY COUNCIL BY ORDINANCE SO FINDING MAY DIRECT CONVEYANCE OF ONE OR MORE PARCELS OF CITY LAND BY THE CITY MANAGER TO SUCH ENTERPRISE UPON SUCH TERMS AS TO PRICE, CONDITIONS OF CONVEYANCE, AND WITH SUCH CONTINGENCIES AS MAY BE SET FORTH IN THE ORDINANCE.]

22.05.095 [S]Methods of Sale or Disposal.

(a) Lands[,] to which the City of Kenai holds title which are not restricted from sale by the deed of conveyance to the City[,] or which have been released from such restrictions[, WHICH] and that the City Council has determined are not required for a public purpose, may be listed for sale by the City Manager[, EXCEPT THAT LANDS WHICH HAVE BEEN LEASED SHALL NOT BE SOLD UNLESS THE LESSEE HAS MADE A WRITTEN REQUEST TO THE CITY TO PLACE THE LAND FOR SALE]. The decision whether or not to sell the land rests in the sole discretion of the City Council.

(b) [SALES OF LAND PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL BE MADE AT NOT LESS THAN FAIR MARKET VALUE. THE PURCHASER SHALL EXECUTE THE “AGREEMENT FOR SALE OF LAND” WITHIN ONE (1) YEAR OF THE DATE OF APPRAISAL.]The City Council may by ordinance authorize the City Manager [HAS THE OPTION]to dispose of such properties in accordance with [THE SALE PROCEDURES SET OUT IN THIS TITLE]the intent of this chapter as follows:

(1) [BY NEGOTIATED SALE; OR]Non-competitive process:

(i) Conveyance to encourage new enterprises where it is found that encouragement of a new commercial or industrial enterprise would be beneficial to the City of Kenai, one or more parcels of City land may be sold upon such terms as to price, conditions of conveyance, and with such contingencies as may be set forth in the ordinance.

(ii) Property sale to adjacent owners for the conveyance of a parcel of City property at fair market value to the owner of adjacent land whenever, in the judgment of the City Council, the parcel of land is of such small size, shape, or location that it could not be put to practical use by any other party.

(iii) Grant or devotion of real property to the United States, the State of Alaska, a local political subdivision of the State of Alaska, or any agency of any of these governments or a non-profit

corporation, for a consideration agreed upon between the City and grantee without a public sale if the grant, devotion or lease is advantageous to the City.

(iv) Conveyance of land to resolve a land use conflict.

(2) [BY]Competitive process:

(i) Public outcry auction to the highest responsible bidder[; OR].

[(3) BY COMPETITIVE S](ii) Sealed bid[s] to the highest responsible bidder.

(iii) Over-the-Counter sale after a public outcry auction or sealed bid process on a first-come basis, provided minimum development requirements are met within two (2) years of sale and the land is sold for fair market value. An appraisal to determine fair market value must be completed within a one (1) year period prior to the date of sale.

(iv) Leased land in which the lease was subject to competition through the lease application review process and which contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee. An appraisal to determine fair market value must be completed within a one (1) year period prior to the sale.

(3) Property exchange: Property exchanges for the conveyance and exchange of a parcel of City-owned property for property owned by another individual or legal entity subject to such conditions as Council may impose on the exchange, whenever the City Council makes findings it is advantageous to the City to make the property exchange.

[IN THE EVENT THAT THE SALE IS NOT CLOSED WITHIN SIX (6) MONTHS OF THE DATE OF APPRAISAL, THE BUYER WILL BE CHARGED, UPON CLOSING, INTEREST COMPUTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE KENAI MUNICIPAL CODE, BASED UPON THE TOTAL SALES PRICE FOR THE NUMBER OF DAYS PAST THE EXPIRATION OF THE SIX (6) MONTH PERIOD.]

(c) Any sale of land owned by the City of Kenai and held by it for the use or benefit of the Kenai Municipal Airport must include in any instrument conveying title to the property restrictions accepted by the City under the terms of the 1963 Quitclaim Deed from the United States of America recorded at Book 27, Page 303 at the Kenai Recording District, Kenai Alaska or any other land owned by the City and acquired with Airport funds which may include similar restrictions. Additionally, any sale or disposal of the aforementioned lands for less than fair market value shall require a deposit in the amount of the difference between fair market value and the sale price to the Airport Land Sale Permanent Fund for the benefit of the Kenai Municipal Airport.

22.05.100 Sale [P]Procedure.

(a) All requests to purchase City land must be submitted to the City on approved forms provided by the City. Applications will be dated on receipt and payment of the nonrefundable application

fee and must include applicable deposit as set forth in the City’s schedule of fees adopted by the City Council.

(b) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to engineering services, surveying and consulting costs, unless in the sole discretion of the City Council it is determined the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a sale with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will be credited toward the purchaser at closing.

(4) If the City’s costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the sale.

(5) If the application is rejected or if the applicant withdraws the application or fails to enter into a sale offered to the applicant, the City will return any unused deposit balance to the applicant.

(c) The City [MANAGER WILL OBTAIN SUCH AN APPRAISAL]will retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value for a determination of the minimum price on the land to be paid for from the deposit made by the applicant unless such an appraisal has been obtained within one (1) year prior to the date of sale. The cost of the appraisal will be credited toward the purchaser at closing.

[B) WHERE ANY PARTY, HEREINAFTER CALLED “APPLICANT,” REQUESTS THAT A TRACT OR TRACTS OF LAND BE SOLD FOR WHICH AN APPRAISAL WILL BE REQUIRED, WHICH WILL REQUIRE SUBDIVIDING, PLATTING, OR SURVEYING AND STAKING, OR WHICH WILL REQUIRE ADVERTISING OR INCURRING ANY OTHER EXPENDITURES BY THE CITY PRIOR TO SALE.

(1) NO ACTIONS IN PREPARATION FOR SALE WILL BE TAKEN BY THE CITY UNTIL AN AGREEMENT TO PURCHASE SHALL BE PROPERLY EXECUTED AND FILED WITH THE CITY MANAGER FOR THE PURCHASE OF SUCH LAND WITH PAYMENT OF SUFFICIENT GOOD FAITH DEPOSIT, WHICH SHALL CONSIST OF CASH OR ITS EQUIVALENT DEPOSITED WITH THE FINANCE OFFICER OF THE CITY OF KENAI, AS MAY BE DETERMINED BY THE CITY MANAGER, TO COVER ALL EXPENSES OF THE CITY AND SUCH AGREEMENT TO PURCHASE SHALL FURTHER CONTAIN THE AGREEMENT BY APPLICANT TO PAY ANY ADDITIONAL COSTS IF SAID GOOD FAITH DEPOSIT IS INSUFFICIENT TO PAY ALL COSTS INCURRED BY THE CITY.]

(2)(d) If at any time during the process of preparing for sale, the applicant [GIVES NOTICE TO THE CITY MANAGER OF WITHDRAWAL OF]withdraws the [REQUEST]application for sale, the City [MANAGER]shall stop all procedures, [SHALL]pay expenses incurred prior to [TERMINATION OF SALE PROCEDURES]withdrawal of the application for sale, and [SHALL]reimburse applicant for any [GOOD FAITH]deposit advanced in excess of [ALL]expenses incurred. [(]However, if another party desires the sale to proceed, files an application [FOR SALE]for sale, executes and files an agreement to purchase, and [ADVANCES]deposits sufficient funds[THEREFOR], then the prior applicant will be reimbursed for expenses [CHARGES]which can be attributed to the subsequent applicant.()

(3)(e) If all actions necessary for preparation for sale have been accomplished, and if neither the applicant nor any other party purchases said land when first offered for sale after such request, then all expenses incurred in preparation for the sale will be paid from the [GOOD FAITH]applicant's deposit, and the balance, if any, shall be returned to the applicant. If the [SUMS]amount of the deposit is [ADVANCED AS GOOD FAITH DEPOSIT ARE]insufficient to pay all of the costs, the applicant will be billed for the balance due[AND NORMAL COLLECTION PROCEDURES FOLLOWED].

[(4)(f) If the land [APPLIED FOR]is sold [ON]in a competitive public sale set in response to such request to anyone other than the applicant, [THEN ON CLOSING OF THE SALE,]the [GOOD FAITH] applicant's deposit will be refunded in total to the applicant. The City's expenses will be first deducted from the deposit of the successful bidder.

[(5)(g) If the land [IN QUESTION]is sold to the applicant, [THE]any [GOOD FAITH]deposit advanced, after deducting the City's expenses, will be [APPLIED ON THE PAYMENT DUE] credited to the purchaser at closing.

[(6) IF THE LAND IN QUESTION IS TO BE SOLD BY SEALED BID AND THE APPLICANT HAS SUBMITTED A VALID BID, BUT THE APPLICANT IS NOT THE HIGH BIDDER, HE OR SHE MAY PURCHASE THE LAND BY TENDERING THE CITY A BID EQUAL TO THE HIGH BID WITHIN FIVE (5) DAYS OF THE BID OPENING. IF THE LAND SALE IS INITIATED IN ACCORDANCE WITH KMC 22.05.040[(A)], THE APPLICANT SHALL BE DEFINED AS THAT PARTY SUBMITTING THE INITIAL LEASE APPLICATION.]

[(C)h) If the [TRACT OF]land [PROPOSED TO BE SOLD]is leased land in which the lease contains an option to purchase once the minimum development requirements have been met, the lessee may request the sale of the land at not less than the fair market value. [THE CURRENT LESSEE OBTAINS THIS RIGHT TO REQUEST A SALE ONLY AFTER, TO THE SATISFACTION OF THE CITY MANAGER, DEVELOPMENT HAS BEEN COMPLETED AS DETAILED IN THE DEVELOPMENT SCHEDULE WHICH HAS BEEN INCORPORATED INTO THE LEASE AGREEMENT. IF THERE IS NO DEVELOPMENT SCHEDULE, THE LESSEE MAY PURCHASE THE PROPERTY IF THERE HAVE BEEN SUBSTANTIAL IMPROVEMENTS AS DETERMINED BY THE CITY MANAGER. THE DECISION WHETHER OR NOT TO SELL THE LAND TO THE LESSEE RESTS WITH THE SOLD DISCRETION OF THE CITY.]

(D)i) [IF THE TRACT OF LAND PROPOSED TO BE SOLD IS NOT LEASED LAND, OR IS LEASED LAND WITHOUT SUBSTANTIAL IMPROVEMENTS, THEN THE TRACT OF LAND MAY ONLY BE SOLD BY OUTCRY AUCTION OR BY COMPETITIVE SEALED BIDS.] If the [TRACT] land is to be [PUT UP FOR SUCH]sold through a competitive [AUCTION OR SEALED BID SALE]process, notice of sale and the manner in which the land is to be sold [SHALL BE]must be posted to the extent possible to be visible from each improved street adjacent to the property and published in a newspaper of general circulation within the City [ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE DATE OF SALE; SUCH NOTICE SHALL ALSO BE POSTED IN AT LEAST THREE (3) PUBLIC PLACES WITHIN THE CITY AT LEAST THIRTY (30) DAYS PRIOR TO THE DATE OF SALE, AND SUCH OTHER NOTICE MAY BE GIVEN BY SUCH OTHER MEANS AS MAY BE CONSIDERED ADVISABLE BY THE CITY MANAGER. SUCH]. The published notice must contain:

- (1) The legal description of the land;
- (2) A brief physical description of the land;
- (3) The area and general location of the land;
- (4) The minimum acceptable offer for the land (which shall be [ITS APPRAISED]the fair market value);
- (5) The terms under which the land will be sold;
- (6) Any limitations on the sale of the land;
- (7) The time and place set for the auction or bid opening;
- (8) The amount of deposit to be submitted with each bid in order to cover the City’s expenses such as survey, appraisal, and reviews;
- (9) Any other matters concerning the sale of which the City Manager believes the public should be informed.

[(E) IF NO OFFERS ARE SUBMITTED MEETING THE MINIMUM ACCEPTABLE OFFER (OR APPRAISED VALUATION), THE CITY MANAGER MAY NEGOTIATE FOR SALE OF THE TRACT OR TRACTS OF LAND WITH A MODIFICATION OF PROPOSED TERMS OR FOR LESS THAN THE APPRAISED VALUATION PROVIDED THAT NO SUCH NEGOTIATED SALE FOR LESS THAN APPRAISED VALUE SHALL BE BINDING UPON THE CITY UNLESS THE TERMS AND PRICE THEREIN ARE APPROVED BY RESOLUTION OF THE CITY COUNCIL.

(F) WHERE A REAL ESTATE AGENT FURNISHES A BUYER FOR CITY LAND, THE CLOSING AGENT SHALL BE AUTHORIZED TO PAY THE AGENT A REAL ESTATE COMMISSION OF FIVE PERCENT (5%) OF THE PURCHASE PRICE FOR THE LAND OR FIVE PERCENT (5%) OF THE APPRAISED FAIR MARKET VALUE OF THE LAND, WHICHEVER IS LOWER, UNDER THE FOLLOWING TERMS AND CONDITIONS:

(1) THE CITY MANAGER SHALL PROVIDE A NON-EXCLUSIVE LISTING OF LANDS AVAILABLE FOR SALE.

(2) NO COMMISSION SHALL BE PAID TO AN AGENT WHERE THE AGENT IS A PARTY, OR IN PRIVITY WITH A PARTY, TO THE SALE.

(G) CLOSING OF SALE OF CITY LANDS SHALL BE HANDLED BY A TITLE OR ESCROW COMPANY.

(H) CONVEYANCE OF CITY LANDS SHALL BE BY QUIT CLAIM OR WARRANTY DEED FURNISHED BY THE CITY, AND BUYERS ARE ADVISED THAT ALL SUCH CONVEYANCES ARE SUBJECT TO ALL LIENS, ENCUMBRANCES, RESTRICTIONS, AND COVENANTS OF RECORD AND ARE SPECIFICALLY, WITHOUT BEING LIMITED THERETO, SUBJECT TO ANY UNRELEASED RESTRICTIONS CONTAINED IN THE DEED OR DEEDS BY WHICH THE CITY RECEIVED TITLE TO THE LAND.]

(I) If a buyer desires to obtain a preliminary commitment for title insurance or title insurance to the land, [THEN]it shall be the responsibility of the buyer to obtain and pay for such commitment or insurance[AND TO PAY FOR THE SAME].

(J) IF THE TRACT OR TRACTS OF LAND ARE SOLD UNDER TERMS BY WHICH THE CITY IS TO ACCEPT A NOTE AS A PORTION OF THE PURCHASE PRICE, THE NOTE AND ACCOMPANYING DEED OF TRUST MUST BE PREPARED BY AN ATTORNEY, BUT MUST BE APPROVED BY THE CITY ATTORNEY PRIOR TO CLOSING.

(K) THE NOTE SHALL BE PLACED FOR COLLECTION WITH A BANK SELECTED BY THE CITY MANAGER, WHICH MAY BE CHANGED FROM TIME TO TIME, AND WHICH SHALL BE THE BANK IN WHICH CITY FUNDS ARE DEPOSITED. THE SET-UP FEE TO INITIATE COLLECTION MAY BE NEGOTIATED AS SPECIFIED IN KMC 22.05.100(L), AND THE BUYER SHALL PAY THE ANNUAL COLLECTION FEES FOR SUCH BANK COLLECTION.]

(L) The City Manager is authorized to negotiate a division of the costs of sale [LISTED IN KMC 22.05.100(G), (H), (I), (J) AND (K)] to a maximum of fifty percent (50%) of the required costs being borne by the City, provided however that no costs of sale will be paid by the City where a sale is negotiated at a price below [APPRAISED]the fair market value of the land.

22.05.101 No Right of Occupancy – Land Purchase Application Expiration.

(a) Submitting an application to purchase land does not give the applicant a right to purchase or use City-owned land.

(b) The application shall expire upon closing of the sale or rejection of a land purchase application by the City Council or within twelve (12) months after the date the application has been submitted.

22.05.105 Terms for [F]Financing [S]Sale of City-Owned [L]Lands.

(a) In order to expedite and facilitate the sale of City lands, the City Manager is authorized to accept terms for sales and may accept a note secured by a deed of trust for a portion of the purchase price thereof, subject to the following restrictions:

(1) [IF THE SALE IS TO A LESSEE WHO HAS PLACED A LIEN FOR FINANCING UPON THE LAND OR IMPROVEMENTS, THEN THE CITY MANAGER IS NOT AUTHORIZED TO SELL THE LAND EXCEPT FOR TOTAL CASH PAYMENT, PROVIDED, HOWEVER, THAT THE CITY MANAGER MAY ACCEPT A NOTE SECURED BY A DEED OF TRUST SUBORDINATE TO THE EXISTING SECURITY INTEREST IF THE AMOUNT OF THE NOTE THEREBY SECURED IS WITHIN THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE LAND WITH IMPROVEMENTS, AND THE SUM OF ALL PRIOR SECURITY INTERESTS. THE SALE DOCUMENTS SHALL BE SUBJECT TO THE SAME RESTRICTIONS CONTAINED IN THE LEASE AS THE LEASE PROVIDES AT THE TIME OF SALE.

(2)] Except for property sold by the City subsequent to foreclosure for delinquent taxes or assessments, prior to making a determination to accept a note and deed of trust from a prospective purchaser, the City [MANAGER] shall [SECURE] order a preliminary commitment for title insurance and a review of the grantee index covering the party desiring to purchase the land [FROM THE TITLE COMPANY IN THE LOCAL RECORDING DISTRICT]at the cost of the party requesting to purchase the land, and no credit will be advanced on such sale if there are any delinquent liens or unpaid judgments found in the title company report until any such judgments or liens are paid and releases therefor have been filed.

[(3)2] In the event of a credit sale, terms shall be approved by the City Council in the Ordinance approving the sale, as follows:

(i) [T]The down payment required, which shall [BE DETERMINED BY THE CITY MANAGER, BUT SHALL]not be less than fifteen percent (15%) of the sales price[.]; and

(ii) The length of the note; and

(iii) A fixed or variable interest rate.

[(4) THE CITY MANAGER IS NOT AUTHORIZED TO ACCEPT TERMS FOR THE SALE OF TAX-FORECLOSED LANDS UNLESS THE DOWN PAYMENT TO BE RECEIVED THEREUNDER, OR OTHER SUMS APPROPRIATED FOR THE PURPOSE, ARE SUFFICIENT TO MAKE IMMEDIATE PAYMENT TO THE KENAI PENINSULA BOROUGH AND THE FORMER RECORD OWNER OF THE SUMS WHICH ARE, OR MAY BECOME, DUE TO THEM PURSUANT TO THE PROVISIONS OF AS 29.]

[(B) IF THE CITY MANAGER DETERMINES THAT IT IS IN THE CITY’S INTEREST TO SELL CITY LANDS, THE SALE SHALL BE EITHER A CASH TRANSACTION OR BY A NOTE SECURED BY A DEED OF TRUST, SUBJECT TO SUBSECTION (A) OF THIS SECTION, AND BY NO OTHER MEANS. THE NOTE AND DEED OF TRUST SHALL CARRY TERMS AS FOLLOWS:

(1) THE TERM OF SUCH NOTE MAY BE SET BY THE CITY MANAGER, BUT IT SHALL PROVIDE FOR MONTHLY PAYMENTS AND NOT EXCEED TWENTY (20) YEARS UNLESS A LONGER PERIOD FOR A SPECIFIC SALE OF LAND IS APPROVED BY RESOLUTION OF THE CITY COUNCIL.

(2) SUCH NOTE SHALL BEAR INTEREST AT A RATE TO BE DETERMINED BY THE CITY COUNCIL BY RESOLUTION.]

22.05.110 Determination as to [N]Need for [P]Public [U]Use.

(a) Whether land shall be acquired, retained, devoted, or dedicated to a public use shall be determined by ordinance which shall contain the public use for which the property is to be dedicated, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.

(b) Whether land previously dedicated to a public use should be dedicated to a different public use or should no longer be needed for public use shall be determined by the City Council by ordinance, except in cases of vacation of rights-of-way or easements which may be determined by resolution, either of which shall contain the new public use for which the property is to be dedicated or the reason the land is no longer needed for public use, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location.

[22.05.115 PROPERTY EXCHANGES.

THE COUNCIL MAY APPROVE, BY ORDINANCE, AFTER PUBLIC NOTICE AND AN OPPORTUNITY FOR PUBLIC HEARING, THE CONVEYANCE AND EXCHANGE OF A PARCEL OF CITY PROPERTY FOR PROPERTY OWNED BY ANOTHER PERSON SUBJECT TO SUCH CONDITIONS AS COUNCIL MAY IMPOSE ON THE EXCHANGE, WHENEVER IN THE JUDGMENT OF THE CITY COUNCIL IT IS ADVANTAGEOUS TO THE CITY TO MAKE THE PROPERTY EXCHANGE.

22.05.120 PROPERTY SALE TO ADJACENT OWNERS.

THE COUNCIL MAY APPROVE, BY ORDINANCE, AFTER PUBLIC NOTICE AND AN OPPORTUNITY FOR PUBLIC HEARING, THE SALE AND CONVEYANCE OF A PARCEL OF CITY PROPERTY AT ITS APPRAISED VALUE TO THE OWNER OF ADJACENT LAND WHENEVER, IN THE JUDGMENT OF THE CITY COUNCIL, THE PARCEL OF LAND IS OF SUCH SMALL SIZE, SHAPE, OR LOCATION THAT IT COULD NOT BE PUT TO PRACTICAL USE BY ANY OTHER PARTY AND, IN ADDITION THERETO, WHERE THERE IS NO FORESEEABLE NEED OF THE LAND FOR ANY FUTURE USE BY THE CITY.

22.05.125 GRANT OR DEVOTION.

THE COUNCIL, BY ORDINANCE, MAY WAIVE THE PROVISIONS OF THIS CHAPTER AND LEASE, GRANT OR DEVOTE REAL PROPERTY NO LONGER NEEDED BY THE

CITY FOR PUBLIC PURPOSE TO THE UNITED STATES, THE STATE OF ALASKA, A LOCAL POLITICAL SUBDIVISION OF THE STATE OF ALASKA, OR ANY AGENCY OF ANY OF THESE GOVERNMENTS OR A NON-PROFIT CORPORATION, FOR A CONSIDERATION AGREED UPON BETWEEN THE CITY AND GRANTEE WITHOUT A PUBLIC SALE IF THE GRANT, DEVOTION OR LEASE IS ADVANTAGEOUS TO THE CITY.]

22.05.130 Special Use [P]Permits.

The City Council may authorize the City Manager to grant special use permits for the temporary use of real property owned by the City for a period not to exceed [FIVE (5)] one (1) year[S], without appraisal of the value of the property or public auction, for any purpose compatible with the zoning of the land, and on such terms and for such rentals as the [C]Council shall determine.

22.05.135 Acquisition of [R]Real [P]Property.

(a) The City, by authorization of the City Council, expressed in a resolution for such purpose, may lease, purchase or acquire an interest in real property needed for a public [USE] purpose on such terms and conditions as the Council shall determine. No purchase shall be made until a qualified independent appraiser has appraised the property and given the Council an [INDEPENDENT]opinion as to the [FULL AND TRUE]fair market value [THEREOF]of the land unless the Council, upon resolution so finding, determines that the public interest will not be served by an appraisal.

[(B) BECAUSE OF THE UNIQUE VALUE OF REAL PROPERTY, THE CITY NEED NOT ACQUIRE OR LEASE REAL PROPERTY BY COMPETITIVE BIDDING.]

(c) Rights-of-way and easements may be accepted or issued by the City Manager after approval by the City Council for utility lines and services of all types and for necessary rights-of-way easements. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.

Title 22
CITY-OWNED LANDS

Chapter 22.05
DISPOSITION OF CITY LANDS

22.05.05 Definitions.

When used in this chapter, the following terms shall have the meaning given below:

“Amendment” means a formal change to a lease of lands other than a lease extension or renewal.

“Annual rent” means an amount paid to the City annually according to the terms of the lease and Kenai Municipal Code.

“Assignment” means the transfer of all interest in a lease from one person or entity to another.

“City” means the City of Kenai, its elected officials, officers, employees or agents.

“Consumer Price Index (CPI)” means the annual CPI for all urban consumers (CPI-U) for Anchorage, Alaska.

“Existing lease” means a lease with at least one (1) year of term remaining.

“Expiring lease” means a lease with less than one (1) year of term remaining.

“Fair market value” means the most probable price which a property should bring in a competitive and open market as determined by a qualified independent appraiser, or the value as determined by the latest appraisal adjusted by the change in Consumer Price Index from the date of the latest appraisal.

“Lease extension” means extending the term of an existing lease.

“Lease rate percent” means a percentage that when applied to the fair market value of land establishes a rate of rent commensurate with rental rates prevalent in the local area as determined by a qualified real estate appraiser.

“Lease renewal” means a new lease of property currently under an existing or expiring lease to an existing lessee or a purchaser.

“Market analysis” means an analysis of data collected from other land leases to determine whether a market adjustment in either fair market value or lease rate percentage reflects the market.

“Permanent improvement” means a fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, and pavement, and remediation of contamination for which the applicant is not responsible and excluding items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching.

“Professional estimate of the remaining useful life of the principal improvement” means an estimate of the number of remaining years that the principal improvement will be able to function in accordance with its intended purpose prepared by a qualified real estate appraiser, engineer, or architect licensed in Alaska.

“Qualified independent appraiser” means a general real estate appraiser certified by the State of Alaska under AS 08.87.

“Site development materials” means materials used for preparing a lease site for building construction or to provide a firm surface on which to operate a vehicle or aircraft, including geotextile, fill, gravel, paving, utilities and pavement reinforcement materials.

“Site preparation work” means work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, a crushed aggregate base course and utility extensions.

22.05.010 Authority and Intent.

- (a) The provisions of this chapter apply to City-owned real property other than lands within the Airport Reserve as described in KMC 21.10 and the leasing of tidelands for shore fisheries.
- (b) The City may sell, convey, exchange, transfer, donate, dedicate, direct, assign to use, or otherwise dispose of City-owned real property, including property acquired, held for, or previously devoted to a public use, only in accordance with this chapter, and, with respect to properties acquired through foreclosure for taxes, in compliance with those terms and provisions of AS 29 which apply to home-rule municipalities. Disposal or sale of lands shall be made only when, in the judgment of the City Council, such lands are not or are no longer required for a public purpose.
- (c) It is the intent of this chapter to provide land policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community.
- (d) It is not the intent of this chapter to allow for speculation on City-owned lands. All leases, sales, and other disposals of City-owned land must meet the intent of this chapter.
- (e) The provisions of this chapter shall not alter or amend the terms or rights granted under leases existing prior to the effective date of the ordinances codified in this chapter.

22.05.015 Lands Available for Lease, Sale or Disposal.

- (a) The City may lease, sell or dispose of real property not restricted from lease or sale which the City Council has determined is not required for a public purpose by any lawful method or mode of conveyance or grant. Any instrument requiring execution by the City shall be signed by the City Manager and attested by the City Clerk. The form of any instrument shall be approved by the City Attorney.

22.05.020 Qualifications of Lease Applicants or Bidders.

An applicant or bidder for a lease is qualified if the applicant or bidder:

- (a) Is an individual at least eighteen (18) years of age; or
- (b) Is a legal entity which is authorized to conduct business under the laws of Alaska; or
- (c) Is acting as an agent for another meeting the requirements of subsection (a) or (b) of this section and has qualified by filing with the City a proper power of attorney or a letter of authorization creating such agency.

22.05.025 Initial Lease Application.

- (a) All applications for lease of lands must be submitted to the City on an application form provided by the City. Applications will be dated on receipt and must include payment of the nonrefundable application fee as set forth in the City's schedule of fees approved by the City Council.
- (b) The application form must include the following information:
 - (1) The purpose of the proposed lease;
 - (2) The use, nature, type, and estimated cost of improvements to be constructed;
 - (3) The dates construction is estimated to commence and be completed. Construction must be completed within two (2) years except in special circumstances, that require a longer period of time and which must be approved by the City Council; and
 - (4) A comprehensive description of the proposed business or activity intended;
 - (5) Whether the applicant requests a lease with an option to purchase; and
 - (6) How the proposed lease meets the intent of this chapter.

(c) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to any new appraisal, engineering services, surveying and consulting costs, unless in the sole discretion of the City Council, it is determined that the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a lease with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will apply to the rent payable under the lease.

(4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the lease.

(5) If the application is rejected or if the applicant withdraws the application or fails to sign a lease offered to the applicant, the City will return any unused deposit balance to the applicant.

(d) Applications for lands which have not been appraised within one (1) year of the requested starting date of the lease require the applicant to be responsible for all costs associated with appraisal. The cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease, extension or renewal.

(e) Applications which result in a lease agreement with the City require the lessee to be responsible for all recording costs and any other fees associated with execution of the lease including a preliminary commitment for title insurance and fifty percent (50%) of the required costs associated with a sale of leased land in which the lease contains an option to purchase once the minimum development requirements have been met.

(f) Anytime during the processing of a lease application, the City may request, and the applicant must supply, any clarification or additional information that the City reasonably determines is necessary for the City to make a final decision on the application.

22.05.035 No Right of Occupancy – Lease Application Expiration.

(a) Submitting an application for a lease does not give the applicant a right to lease or use City-owned land.

(b) The application shall expire upon execution of a lease or rejection of a lease application by the City Council or within twelve (12) months after the date the application has been submitted

22.05.040 Lease Application Review.

(a) Applications shall be reviewed by City staff for application completeness and conformance with City ordinances.

(b) Based on the initial review, if the City Manager determines the application is complete, the application shall be referred to the Planning and Zoning Commission and any other applicable commissions for review and comment, together with the City Manager's recommendation for approval or rejection.

(c) Notice of complete applications for new leases, renewals or extensions shall be published in a newspaper of general circulation within the City and posted on the property. The notice

must contain the name of the applicant, a brief description of the land, whether the applicant requests a lease with an option to purchase, and the date upon which any competing applications must be submitted (thirty (30) days from the date of publication).

(d) The recommendations of the City Manager, Planning and Zoning Commission, and any other applicable commissions shall be provided to the City Council. The City Council shall determine whether the lease is consistent with the intent of this chapter. The decision whether or not to lease land or authorize a lease extension, renewal, amendment or assignment rests in the sole discretion of the City Council.

(e) If the applicant is in default of any charges, fees, rents, taxes, or other sums due and payable to the City or the applicant is in default of a requirement of any lease or contract with the City a lease shall not be entered into until the deficiencies are remedied .

22.05.045 Application for Lease Amendment, Assignment, Extension or Renewal.

(a) A request from an existing lessee for a lease amendment, assignment, extension or renewal of the lease must be submitted to the City on an application form provided by the City. Applications must be complete and dated on receipt and include payment of the nonrefundable application fee and applicable deposit as set forth in the City's schedule of fees adopted by the City Council.

(b) An application for an amendment must include the following information:

- (1) The purpose of the proposed amendment;
- (2) The proposed change in use or activity, if any;
- (3) A comprehensive description of the proposed business or activity, if applicable; and
- (4) How the proposed amendment meets the intent of this chapter.

(c) An application for a lease assignment must include the following:

- (1) The name of the individual or legal entity to which the lessee requests to assign the lease.

(d) An application for a lease extension must include the following information:

- (1) The use, nature, type and estimated cost of additional improvements to be constructed;
- (2) The dates new construction is estimated to commence and be completed; and
- (3) How the proposed lease extension meets the intent of this chapter.

(e) An application for a lease renewal must include the following information:

- (1) For a lease renewal of an existing lease:
 - (i) The use, nature, type and estimated cost of additional investment in the construction of new permanent improvements;
 - (ii) The dates new construction is estimated to commence and be completed;
 - (iii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of real property improvements on the premises as certified by the current lessee and proposed purchaser in a bill of sale; and
 - (iv) How the proposed lease renewal meets the intent of this chapter.
- (2) For a lease renewal of an expiring lease:
 - (i) A fair market value appraisal of the existing principal improvement on the property, paid for by the applicant, and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;
 - (ii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of existing real property improvements, as certified by the current lessee and the proposed purchaser in a bill of sale and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;

- (iii) If the renewal is based on a professional estimate of the remaining useful life of the real property improvements on the premises, the estimated value and how it was determined;
 - (iv) The use, nature, type and estimated cost of any additional improvements to be constructed, if applicable;
 - (v) The dates any new construction is estimated to commence and be completed; and
 - (vi) How the proposed lease meets the intent of this chapter.
- (f) Applications for amendment, assignment, extension or renewal shall be processed in accordance with the lease application review provisions of this chapter, except that applications for assignment shall not be referred to the Planning and Zoning Commission. The City has no obligation to amend, assign, renew or extend a lease and may decline to do so upon making specific findings as to why a lease amendment, assignment, renewal, or extension is not in the best interest of the City.

22.05.050 Competing Lease Applications.

If another application for a new lease, extension or a renewal is received for the same property within thirty (30) days from the notice of application publication date by a different applicant, City staff shall process the application and forward the application, the City Manager's recommendation and applicable commission recommendations to the City Council for approval of the application anticipated to best serve the interests of the City. The City Council may approve one (1) of the applications, reject all the applications or direct the City Manager to award a lease of the property by sealed bid. An applicant for a renewal or extension may withdraw an application for a renewal or extension at any time prior to a decision by the City Council whether or not to approve such a renewal or extension.

22.05.055 Length of Lease Term.

- (a) The length of term for an initial lease shall be based on the amount of investment the applicant proposes to make in the construction of new permanent improvements on the premises as provided in the application. The City Council may offer a shorter lease term, if the City Council makes specific findings that a shorter lease term is in the best interest of the City.
- (b) The maximum term of a lease shall be determined according to the following term table and cannot exceed forty-five (45) years:

Term Table

APPLICANT'S INVESTMENT/VALUE	MAXIMUM TERM OF YEARS
\$7,500	5
15,000	6
22,500	7
30,000	8
37,500	9
45,000	10
52,500	11
60,000	12
67,500	13
75,000	14
82,500	15
90,000	16
97,500	17

105,000	18
112,500	19
120,000	20
127,500	21
135,000	22
142,500	23
150,000	24
157,500	25
165,000	26
172,500	27
180,000	28
187,500	29
195,000	30
202,500	31
210,000	32
217,500	33
225,000	34
232,500	35
240,000	36
247,500	37
255,000	38
262,500	39
270,000	40
277,500	41
285,000	42
292,500	43
300,000	44
307,500	45

(c) Lease extension. The length of term for a lease extension shall be determined based on the remaining term of the initial lease and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table and provided no extension shall extend a lease term past forty-five (45) years.

(d) Lease renewal for an existing lease. A renewal for an existing lease requires the construction of new permanent improvements, and the length of term for a lease renewal for an existing lease shall be determined as follows:

(1) Based on the remaining term of the initial lease according to the term table and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table; or

(2) Pursuant to a transaction between the current lessee and a new buyer and prospective lessee and based on the purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale, to be executed at closing of the transaction and the estimated cost of new investment in the construction of new permanent improvements on the premises according to the term table.

(3) The term for renewal of an existing lease cannot exceed forty-five (45) years.

(e) Lease renewal for an expiring lease. The length of term for a lease renewal of an expiring lease shall be determined as follows:

(1) The purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale, to be executed at closing of the transaction and the estimated cost of any new investment in the

construction of new permanent improvements on the premises according to the term table;
or

(2) A professional estimate of the remaining useful life of the real property improvements on the premises, paid for by the applicant and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table; or

(3) A fair market value appraisal of the existing real property improvements on the premises, paid for by the applicant and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table.

(4) The term for renewal of an existing lease cannot exceed forty-five (45) years.

(f) If the initial lease, term extension, or lease renewal granted to the applicant requires construction of new permanent improvements, the lease or term extension shall be subject to the following conditions:

(1) The lessee to complete the proposed permanent improvements within two (2) years except in special circumstances, that require a longer period of time and which must be approved by the City Council.

(2) The lessee to provide a performance bond, deposit, personal guarantee, or other security if the City Council determines security is necessary or prudent to ensure the applicant's completion of the permanent improvements required in the lease, renewal, or extension. The City Council shall determine the form and amount of the security according to the best interest of the City, after a recommendation by the City Manager considering the nature and scope of the proposed improvements and the financial responsibility of the applicant.

(3) At no expense to the City, the lessee must obtain and keep in force during the term of the lease, insurance of the type and limits required by the City for the activities on the premises.

(4) Within thirty (30) days after completion of the permanent improvements, the lessee shall submit to the City written documentation that the improvements have been completed as required. The City Manager shall make a report to the City Council of completion as soon as reasonably practical.

(5) If the applicant shows good cause and the City Council determines the action is in the best interest of the City, the City Council may grant an extension of the time allowed to complete permanent improvements by resolution that is sufficient to allow for the completion of the permanent improvements or for submission of documentation that the permanent improvements have been completed.

(6) If, within the time required, the applicant fails to complete the required permanent improvements, the City shall:

(i) If the application is for a new lease or lease renewal, execute the forfeiture of the performance bond, deposit, personal guarantee, or other security posted by the applicant under subsection (f)(2) of this section to the extent necessary to reimburse the City for all costs and damages, including administrative and legal costs, arising from the applicant's failure to complete the required improvements, and/or initiate cancellation of the lease or reduce the term of the lease to a period consistent with the portion of the improvements substantially completed in a timely manner according to the best interests of the City.

(ii) If the application is for a lease extension, the City shall terminate the amendment extending the term of the lease or reduce the term of the extension at the City's sole discretion.

22.05.060 Principles and Policy of Lease Rates.

- (a) Annual rent shall be computed by multiplying the fair market value of the land by a lease rate percentage of eight percent (8%) for each parcel; and
- (b) The City will determine the fair market value of the land requested to be leased based on an appraisal conducted for the City by an independent real estate appraiser certified under Alaska State statutes and ordered by the City for the purpose of determining annual rent. The appraisal shall be paid for by the applicant, and the cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease. The fair market value of the land will be adjusted annually based on the rate of inflation determined by the consumer price index (CPI) to determine annual rent; and
- (c) The City will conduct a land market analysis of City-owned land under lease once every ten (10) years to determine whether a market adjustment in either fair market value of land or lease rate percentage is justified; and
- (d) If the City determines from the market analysis that a market adjustment to the lease rate percentage is in the best interests of the City, the new lease percentage must be approved by an ordinance and utilized to compute annual rents for the next fiscal year; and
- (e) If the market analysis or extraordinary circumstances determine a fair market value adjustment is in the best interests of the City, the City shall retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value of all leased land and shall use these values to compute annual rents for the next fiscal year; and
- (f) The City shall adjust the annual rent of a lease by giving the lessee written notice at least thirty (30) days prior to application of a new annual rent determination; and
- (g) If a lessee disagrees with the proposed change in the fair market value of land or lease rate percent (excluding CPI determinations, which cannot be appealed) and cannot informally resolve the issue with the City, the lessee must:
 - (1) Provide notice of appeal in writing within ninety (90) days of notification supported by the written appraisal of a qualified real estate appraiser, selected and paid for by lessee (the "second appraiser"); and
 - (2) The City and the lessee will meet to attempt to resolve the differences between the first appraiser and the second appraiser concerning the fair market value of the land or lease rate percent; and
 - (3) If the City and lessee cannot agree upon the fair market value or lease rate percent then they shall direct the first appraiser and the second appraiser to mutually select a third qualified real estate appraiser, paid for jointly by the parties (the "third appraiser"); and
 - (4) Within thirty (30) days after the third appraiser has been appointed, the third appraiser shall decide which of the two (2) respective appraisals from the first appraiser and the second appraiser most closely reflects the fair market value of the land or lease rate percent; and
 - (5) The fair market value of the land or lease rate percent shall irrefutably be presumed to be the value(s) contained in such appraisal selected by the third appraiser, and the rent shall be redetermined based on such value(s); and
 - (6) Rent shall continue to be paid at the then-applicable rate until any such new rental rate is established, and lessee and the City shall promptly pay or refund, as the case may be, any variance in the rent, without interest accruing to the extent to be paid/refunded.

22.05.065 Lease Bidding Procedure.

With the approval of the City Council, the City Manager may designate a specific lot or lots to be leased through competitive sealed bid. The City Manager shall award the lease to the qualified

bidder utilizing a procurement procedure which may consider qualitative factors in addition to the amount of any one (1) time premium payment to be paid by the successful bidder; provided, however, that the high bidder and the bidder's lease proposal shall be subject to all provisions of lease application review and approval under this chapter.

22.05.070 Development Incentives.

(a) The City Council may include a lease rent incentive to encourage commercial investment as follows:

(1) A credit may be applied toward rent for a maximum of five (5) years. The credit may only include the value of site preparation work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, crushed aggregate base course, and utility extensions.

(2) An estimate of the value of the work, including a scope of work, prepared by a qualified engineer licensed to work in Alaska must be provided to the City and accepted prior to work being performed.

(3) Any changes to the estimate of the value of the work or scope of work must be provided to the City and accepted prior to work being performed to be eligible for the credit.

(4) For the credit to be applied, the approved scope of work must be completed.

(5) A certification from a qualified engineer that the accepted scope of work has been completed must be provided to the City and accepted at the completion of the site preparation work.

(6) Credit will be limited to original qualified engineer's estimate unless another amount is accepted by the City in advance of work being completed.

(7) Once the work is completed as proposed and the qualified engineer's certification of completion has been received, a credit shall be applied to the lease payments, prorated as necessary for a maximum of five (5) years.

(8) Rent shall be paid at the then-applicable rate until any such credit toward rent has been approved by the City Manager or designee, and the City shall apply a credit to lease payments prorated as necessary or promptly pay or refund, as the case may be, any variance between the credit applied and the rent paid, without interest accruing to the extent to be paid/refunded.

22.05.075 Ownership of Improvements.

(a) Permanent improvements on the premises, excluding site development materials, constructed, placed, or purchased by the lessee remain the lessee's property as long as a lease for the premises remains in effect with the lessee, including renewals, any period of extension approved by the City pursuant to the provisions of this chapter, or any period of holdover.

(b) Unless otherwise provided in a land lease, at the expiration, cancellation, or termination of a lease that is extended or followed by a successive lease, the departing lessee may do one (1) or more of the following:

(1) Remove lessee-owned permanent improvements from the premises, remediate any contamination for which the lessee is responsible, and restore the premises to a clean and neat physical condition acceptable to the City within ninety (90) days after the expiration, cancellation, or termination date of the lease; or

(2) Sell lessee-owned permanent improvements to the succeeding lessee, remove all personal property, remediate any contamination for which the lessee is responsible, and leave the premises in a clean and neat physical condition acceptable to the City within sixty (60) days after notice from the City that the City has approved an application for a

lease of the premises by another person or such longer period specified in the notice, but in no event more than one hundred eighty (180) days after the expiration, termination, or cancellation date of the lease; or

(3) Purchase the property in which the lease contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee.

(c) If the lessee does not timely remove or sell the lessee-owned permanent improvements on a premises in accordance with the requirements of this section, any remaining permanent improvements and any remaining personal property of the departing lessee will be considered permanently abandoned. The City may sell, lease, demolish, dispose of, remove, or retain the abandoned property for use as the City determines is in the best interest of the City. The lessee shall, within thirty (30) days after being billed by the City, reimburse the City for any costs reasonably incurred by the City, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate any contamination and restore the premises.

(d) Site development materials that a lessee places on a premises become part of the City-owned real property and property of the City upon placement. The lessee:

(1) Must maintain the site development work and site development materials throughout the term of the lease or successive lease, including any extensions and periods of holdover; and

(2) May not remove the site development materials unless the City approves in writing.

22.05.080 Lease Execution.

The lease applicant shall execute and return the appropriate lease agreement with the City of Kenai within thirty (30) days of mailing the agreement to the applicant. The lease agreement shall be prepared in accordance with the requirements of this title. Failure to execute and return the lease agreement within the specified period shall result in the forfeiture of all leasing rights.

22.05.085 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 in substantial conformity with the Comprehensive Plan. Utilization or development for other than the allowed uses shall constitute a material breach of the lease and subject the lease to cancellation at any time. Failure to substantially complete the development plan for the land shall constitute grounds for cancellation.

22.05.086 Form of Lease.

(a) When leasing land under this chapter, the City Manager shall use a standard lease form that:

(1) Provides a reasonable basis for the lessee's use of the premises,

(2) Complies with the intent of this chapter, and

(3) Provides for the best interest of the City.

(4) Approved as to form by the City Attorney; and

(5) Adopted by resolution of the City Council.

(b) The City Manager may enter into a land lease that deviates from the standard form adopted under subsection (a) of this section, if:

(1) The City Manager believes the action is in the best interest of the City;

(2) The lease is approved as to form by the City Attorney; and

(3) The lease is approved by resolution of the City Council.

22.05.087 Lease Payments.

- (a) Upon execution of the lease, the land becomes taxable to the extent of the lessee's leasehold interest and lessee shall pay all real property taxes levied upon such leasehold interest in these lands, and shall pay any special assessments and taxes.
- (b) Rent shall be paid annually in advance unless the lessee submits a written request to the City to pay on a quarterly or monthly basis. The payments shall be prorated to conform to the City of Kenai's fiscal year beginning July 1st and ending June 30th.
- (c) Lessee shall be responsible for all sales taxes due on payments under the lease.

22.05.095 Methods of Sale or Disposal.

- (a) Lands to which the City of Kenai holds title which are not restricted from sale by the deed of conveyance to the City or which have been released from such restrictions and that the City Council has determined are not required for a public purpose, may be listed for sale by the City Manager. The decision whether or not to sell the land rests in the sole discretion of the City Council.
- (b) The City Council may by ordinance authorize the City Manager to dispose of such properties in accordance with the intent of this chapter as follows:
 - (1) Non-competitive process:
 - (i) Conveyance to encourage new enterprises where it is found that encouragement of a new commercial or industrial enterprise would be beneficial to the City of Kenai, one or more parcels of City land may be sold upon such terms as to price, conditions of conveyance, and with such contingencies as may be set forth in the ordinance.
 - (ii) Property sale to adjacent owners for the conveyance of a parcel of City property at fair market value to the owner of adjacent land whenever, in the judgment of the City Council, the parcel of land is of such small size, shape, or location that it could not be put to practical use by any other party.
 - (iii) Grant or devotion of real property to the United States, the State of Alaska, a local political subdivision of the State of Alaska, or any agency of any of these governments or a non-profit corporation, for a consideration agreed upon between the City and grantee without a public sale if the grant, devotion or lease is advantageous to the City.
 - (iv) Conveyance of land to resolve a land use conflict.
 - (2) Competitive process:
 - (i) Public outcry auction to the highest responsible bidder.
 - (ii) Sealed bid to the highest responsible bidder.
 - (iii) Over-the-Counter sale after a public outcry auction or sealed bid process on a first-come basis, provided minimum development requirements are met within two (2) years of sale and the land is sold for fair market value. An appraisal to determine fair market value must be completed within a one (1) year period prior to the date of sale.
 - (iv) Leased land in which the lease was subject to competition through the lease application review process and which contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee. An appraisal to determine fair market value must be completed within a one (1) year period prior to the sale.
 - (3) Property exchange: Property exchanges for the conveyance and exchange of a parcel of City-owned property for property owned by another individual or legal entity subject to

such conditions as Council may impose on the exchange, whenever the City Council makes findings it is advantageous to the City to make the property exchange.

(c) Any sale of land owned by the City of Kenai and held by it for the use or benefit of the Kenai Municipal Airport must include in any instrument conveying title to the property restrictions accepted by the City under the terms of the 1963 Quitclaim Deed from the United States of America recorded at Book 27, Page 303 at the Kenai Recording District, Kenai Alaska or any other land owned by the City and acquired with Airport funds which may include similar restrictions. Additionally, any sale or disposal of the aforementioned lands for less than fair market value shall require a deposit in the amount of the difference between fair market value and the sale price to the Airport Land Sale Permanent Fund for the benefit of the Kenai Municipal Airport.

22.05.100 Sale Procedure.

(a) All requests to purchase City land must be submitted to the City on approved forms provided by the City. Applications will be dated on receipt and payment of the nonrefundable application fee and must include applicable deposit as set forth in the City's schedule of fees adopted by the City Council.

(b) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to engineering services, surveying and consulting costs, unless in the sole discretion of the City Council it is determined the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a sale with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will be credited toward the purchaser at closing.

(4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the sale.

(5) If the application is rejected or if the applicant withdraws the application or fails to enter into a sale offered to the applicant, the City will return any unused deposit balance to the applicant.

(c) The City will retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value for a determination of the minimum price on the land to be paid for from the deposit made by the applicant unless such an appraisal has been obtained within one (1) year prior to the date of sale. The cost of the appraisal will be credited toward the purchaser at closing.

(d) If at any time during the process of preparing for sale, the applicant withdraws the application for sale, the City shall stop all procedures, pay expenses incurred prior to withdrawal of the application for sale, and reimburse applicant for any deposit advanced in excess of expenses incurred. However, if another party desires the sale to proceed, files an application for sale, executes and files an agreement to purchase, and deposits sufficient funds, then the prior applicant will be reimbursed for expenses which can be attributed to the subsequent applicant.

(e) If all actions necessary for preparation for sale have been accomplished, and if neither the applicant nor any other party purchases said land when first offered for sale after such

request, then all expenses incurred in preparation for the sale will be paid from the applicant's deposit, and the balance, if any, shall be returned to the applicant. If the amount of the deposit is insufficient to pay all of the costs, the applicant will be billed for the balance due.

(f) If the land is sold in a competitive public sale set in response to such request to anyone other than the applicant, the applicant's deposit will be refunded in total to the applicant. The City's expenses will be first deducted from the deposit of the successful bidder.

(g) If the land is sold to the applicant, any deposit advanced, after deducting the City's expenses, will be credited to the purchaser at closing.

(h) If the land is leased land in which the lease contains an option to purchase once the minimum development requirements have been met, the lessee may request the sale of the land at not less than the fair market value.

(i) If the land is to be sold through a competitive process, notice of sale and the manner in which the land is to be sold must be posted to the extent possible to be visible from each improved street adjacent to the property and published in a newspaper of general circulation within the City. The published notice must contain:

- (1) The legal description of the land;
- (2) A brief physical description of the land;
- (3) The area and general location of the land;
- (4) The minimum acceptable offer for the land (which shall be the fair market value);
- (5) The terms under which the land will be sold;
- (6) Any limitations on the sale of the land;
- (7) The time and place set for the auction or bid opening;
- (8) The amount of deposit to be submitted with each bid in order to cover the City's expenses such as survey, appraisal, and reviews;
- (9) Any other matters concerning the sale of which the City Manager believes the public should be informed.

(j) If a buyer desires to obtain a preliminary commitment for title insurance or title insurance to the land, it shall be the responsibility of the buyer to obtain and pay for such commitment or insurance.

(k) The City Manager is authorized to negotiate a division of the costs of sale to a maximum of fifty percent (50%) of the required costs being borne by the City, provided however that no costs of sale will be paid by the City where a sale is negotiated at a price below the fair market value of the land.

22.05.101 No Right of Occupancy – Land Purchase Application Expiration.

(a) Submitting an application to purchase land does not give the applicant a right to purchase or use City-owned land.

(b) The application shall expire upon closing of the sale or rejection of a land purchase application by the City Council or within twelve (12) months after the date the application has been submitted.

22.05.105 Terms for Financing Sale of City-Owned Lands.

(a) In order to expedite and facilitate the sale of City lands, the City Manager is authorized to accept terms for sales and may accept a note secured by a deed of trust for a portion of the purchase price thereof, subject to the following restrictions:

- (1) Except for property sold by the City subsequent to foreclosure for delinquent taxes or assessments, prior to making a determination to accept a note and deed of trust from a prospective purchaser, the City shall order a preliminary commitment for title insurance and a review of the grantee index covering the party desiring to purchase the land at the

cost of the party requesting to purchase the land, and no credit will be advanced on such sale if there are any delinquent liens or unpaid judgments found in the title company report until any such judgments or liens are paid and releases therefor have been filed.

(2) In the event of a credit sale, terms shall be approved by the City Council in the Ordinance approving the sale, as follows:

- (i) The down payment required, which shall not be less than fifteen percent (15%) of the sales price; and
- (ii) The length of the note; and
- (iii) A fixed or variable interest rate.

22.05.110 Determination as to Need for Public Use.

(a) Whether land shall be acquired, retained, devoted, or dedicated to a public use shall be determined by ordinance which shall contain the public use for which the property is to be dedicated, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.

(b) Whether land previously dedicated to a public use should be dedicated to a different public use or should no longer be needed for public use shall be determined by the City Council by ordinance, except in cases of vacation of rights-of-way or easements which may be determined by resolution, either of which shall contain the new public use for which the property is to be dedicated or the reason the land is no longer needed for public use, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location.

22.05.130 Special Use Permits.

The City Council may authorize the City Manager to grant special use permits for the temporary use of real property owned by the City for a period not to exceed one (1) year, without appraisal of the value of the property or public auction, for any purpose compatible with the zoning of the land, and on such terms and for such rentals as the Council shall determine.

22.05.135 Acquisition of Real Property.

(a) The City, by authorization of the City Council, expressed in a resolution for such purpose, may lease, purchase or acquire an interest in real property needed for a public purpose on such terms and conditions as the Council shall determine. No purchase shall be made until a qualified independent appraiser has appraised the property and given the Council an opinion as to the fair market value of the land unless the Council, upon resolution so finding, determines that the public interest will not be served by an appraisal.

(b) Rights-of-way and easements may be accepted or issued by the City Manager after approval by the City Council for utility lines and services of all types and for necessary rights-of-way easements. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom, City Attorney
DATE: March 12, 2019
SUBJECT: Ordinance No. 3072 – 2019

The following amendments are intended to clarify that the City should not sell large parcels of land when only a portion is needed for the intended use or development. For example if a parcel is five acres and only one acre is needed for the development, the City should require a subdivision and only sell an acre parcel to be consistent with the intent of the Chapter and discourage land speculation. The amendments also attempt to clarify that land should only be sold when it is in the best interest of the City, and even if someone requests a sale, it may be more appropriate in certain cases for the City to pursue a lease with the interested party. Your consideration is appreciated, and the following motion would be appropriate to move the amendments:

I move to amend Section 3 or Ordinance No. 3072-2019 by amending the new section 22.05.015- Lands Available for Lease, Sale or Disposal to read:

22.05.015 Lands Available for Lease, Sale or Disposal.

(a) The City may lease, sell or dispose of real property not restricted from lease or sale which the City Council has determined is not required for a public purpose by any lawful method or mode of conveyance or grant. Any instrument requiring execution by the City shall be signed by the City Manager and attested by the City Clerk. The form of any instrument shall be approved by the City Attorney. Lands leased, sold or disposed of must be of appropriate size for the intended development or use to meet the intent of this Chapter. Council may require a subdivision prior to lease, sale or disposal of lands.

I move to amend Section 3 or Ordinance No. 3072-2019 by amending the new section 22.05.040- Lease Application Review, subsection (b) to read:



22.05.040 Lease Application Review.

(b) Based on the initial review, if the City Manager determines the application is complete, the application shall be referred to the Planning and Zoning Commission and any other applicable commissions for review and comment, together with the City Manager's recommendation for approval or rejection. **The recommendation may include a recommendation for a subdivision to reduce or enlarge a parcel to meet the intended development or use.**

I move to amend Section 3 or Ordinance No. 3072-2019 by amending the new section 22.05.100- Sale Procedure, subsections (a) and (b) to read:

22.05.100 Sale Procedure.

(a) All requests to purchase City land must be submitted to the City on approved forms provided by the City. Applications will be dated on receipt and payment of the nonrefundable application fee and must include applicable deposit as set forth in the City's schedule of fees adopted by the City Council. **The City Council may decide to sell lands consistent with the intent of this Chapter after a recommendation from the City Manager and any appropriate City commission. The City Council may always recommend a lease as opposed to a sale when in the best interest of the City and consistent with the intent of this Chapter.**

(b) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to engineering services, surveying and consulting costs, unless in the sole discretion of the City Council it is determined the subdivision serves other City purposes. **Sales of parcels must be of appropriate size to meet the needs of the proposed development or use to meet the intent of this Chapter. The sale of excess acreage not needed for the intended development or use does not meet the intent of this Chapter.**



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Paul Ostrander, City Manager

DATE: August 21, 2019

SUBJECT: **Ordinance No. 3072-2019 Amendment**

The Administration provided presentations to the Planning and Zoning Commission, Airport Commission, and Harbor Commission on Ordinance 3072-2019. Additionally, each of the commissions considered the ordinance at a regularly scheduled meeting. Ordinance 3072-2019 should be amended to reflect their considerations.

The sixth whereas should be amended as follows:

WHEREAS, the Planning and Zoning Commission, at its meeting of August 14, 2019, recommended the City Council enact Ordinance No. 3072-2019; and,

The seventh whereas should be amended as follows:

WHEREAS, the Airport Commission, at its meeting of August 8, 2019, recommended the City Council enact Ordinance No. 3072-2019, and,

The final whereas should be amended as follows:

WHEREAS, the Harbor Commission at its meeting of August 19, 2019, [RECOMMENDED THE CITY COUNCIL] favorably discussed Ordinance No. 3072-2019 and had no recommended amendments.

Your consideration is appreciated.



**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ2019 – 32**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI ENACT ORDINANCE 3072-2019 RENAMING, REPEALING, AND REENACTING KENAI MUNICIPAL CODE TITLE 22 – GENERAL FUND LANDS, RENAMING KENAI MUNICIPAL CODE TITLE 21- CITY AIRPORT AND AIRPORT LANDS, AND REPEALING KENAI MUNICIPAL CODE CHAPTER 21.15 – LEASE AND SALE OF AIRPORT LANDS OUT OF THE AIRPORT RESERVE, IN ORDER TO ENCOURAGE RESPONSIBLE GROWTH AND DEVELOPMENT TO SUPPORT A THRIVING BUSINESS, RECREATION, AND CULTURAL COMMUNITY THROUGH RESPONSIBLE LAND POLICIES AND PRACTICES.

WHEREAS, Kenai Municipal Code 14.05.010 states the City of Kenai Planning and Zoning Commission will act in an advisory capacity to the Kenai City Council regarding the Kenai Zoning Code; and,

WHEREAS, the changes support the goals and objectives identified in the 2016 Imagine Kenai 2030 Comprehensive Plan, including Goal 2-Economic Development and Goal 3-Land Use; and,

WHEREAS, the changes support the purposes of the Land Use Plan contained in Chapter 5 of the 2016 Imagine Kenai 2030 Comprehensive Plan, which include efficiently using public roads, utilities, and services, maintaining the quality of existing development, and creating a stable and predictable setting for future investment; and,

WHEREAS, the changes will provide development incentives to guide new development in commercial and industrial areas of the City; and,

WHEREAS, the changes will discourage speculation or the use of City-owned commercial and industrial properties as undeveloped lands; and,

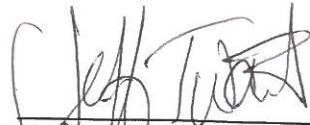
WHEREAS, the changes will not adversely impact residential areas of the City and will maintain or improve the quality of life in the City; and,

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the Kenai City Council enact Ordinance 3072-2019.

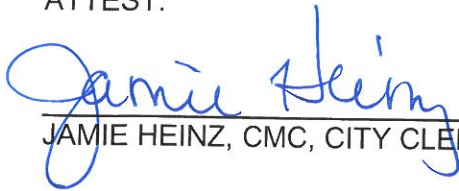
Section 2. That a copy of Resolution PZ2019-32 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA,
this 14th day of August, 2019.

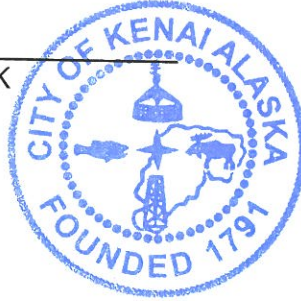


JEFF TWAIT, CHAIRPERSON

ATTEST:



JAMIE HEINZ, CMC, CITY CLERK





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3079-2019

INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE AIRPORT SPECIAL REVENUE AND AIRPORT IMPROVEMENTS CAPITAL PROJECT FUNDS AND ACCEPTING A GRANT FROM THE FEDERAL AVIATION ADMINISTRATION FOR THE PURCHASE OF TWO AIRCRAFT RESCUE AND FIREFIGHTING (ARFF) VEHICLES, REHABILITATION OF THE FIRE TRAINING PROPS, AND REHABILITATION OF THE TRAINING FACILITY FOR THE ALASKA REGIONAL FIRE TRAINING FACILITY.

WHEREAS, the Federal Aviation Administration (FAA) is providing one combined grant for the Alaska Regional Fire Training Facility for the purchase of two new Aircraft Rescue and Fire Fighting (ARFF) Vehicles, Rehabilitation of the Training Equipment Props, and Rehabilitation of the Training Facility Building; and,

WHEREAS, the two 1998 Aircraft Rescue & Firefighting (ARFF) Vehicles used for training at the Alaska Regional Fire Training Facility have far exceeded what the Federal Aviation Administration considers their useful life and do not satisfy requirements for airport rescue vehicles; and,

WHEREAS, new ARFF vehicles designed and manufactured in accordance with FAA Advisory Circular 150/5220-10 will allow airport firefighters to train and meet the 49 CFR 139 certification requirements for all levels of FAA indexed airports from A-E at the Alaska Regional Fire Training Facility; and,

WHEREAS, KMC 17.15.070 (b) allows the City to purchase equipment under a contract of another governmental agency in which contract the City is authorized to participate and the FAA has approved the procurement process; and,

WHEREAS, the cost to replace the aging ARFF vehicles is \$X,XXX,XXX and funding to be provided by FAA grant funding of \$X,XXX,XXX, 93.75% and required local match of \$XXX,XXX, 6.25%; and,

WHEREAS, the Alaska Regional Fire Training Facility was originally constructed twenty years ago and is in need of rehabilitation to the Facility's operations equipment and controls; and,

WHEREAS, the Federal Aviation Administration has expressed their interest in seeing the facility's operations brought back to current standards; and,

WHEREAS, the Design and Construction Costs for this work will be eligible under the grant from the Federal Aviation Administration; and,

WHEREAS, on March 14, 2019 the City of Kenai released a Request for Proposals (RFP) where Morrison-Maierle was determined to be the successful proposer; and,

WHEREAS, on August 1, 2019 a formal Invitation to Bid was released for rehabilitation of the training equipment and training facility, with bids due on August 29, 2019; and,

WHEREAS, the cost to rehabilitate the training facility's props is estimated to be \$X,XXX,XXX and funding to be provided by FAA grant funding of \$X,XXX,XXX, 93.75% and required local match of \$XXX,XXX, 6.25% and an additional \$XXX,XXX in project contingency to be initially funded by the airport; and,

WHEREAS, the cost to rehabilitate the Training Facility is \$X,XXX,XXX and funding to be provided by FAA grant funding of \$X,XXX,XXX, 93.75% and required local match of \$XXX,XXX, 6.25% and an additional \$XXX,XXX in project contingency to be initially funded by the airport; and; and,

WHEREAS, with future concurrence from the FAA, contingency amounts will become eligible for 93.75% reimbursement; and,

WHEREAS, sufficient funds are available in the Airport Special Revenue Fund to provide the required \$XXX,XXX local match.

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 grant funding in the amount of \$X,XXX,XXX from the Federal Aviation Administration and to execute a grant agreement and to expend grant funds to fulfill the purpose and intent of this ordinance.

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

Airport Special Revenue Fund	
Increase Estimated Revenues –	
Appropriation of Fund Balance	<u>\$XXX,XXX</u>
Increase Appropriations -	
Airport Training Facility -	
Transfer to Other Funds	<u>\$XXX,XXX</u>

Section 3. That the estimated revenues and appropriations be increased as follows:

Airport Improvement Capital Project Fund	
Increase Estimated Revenues:	
FAA Grants	\$X,XXX,XXX
Transfer from Other Funds	<u>XXX,XXX</u>
	<u>\$X,XXX,XXX</u>
Increase Appropriations -	
Fire Training Center ARFF Vehicle Purchase -	
Machinery & Equipment	\$X,XXX,XXX
Fire Training Center Training Prop Rehabilitation –	
Construction	X,XXX,XXX

Fire Training Center Training Facility Rehabilitation –
Construction

X.XXX.XXX
\$ X.XXX.XXX

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 4th day of September 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: _____

Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: September 4, 2019



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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: August 14, 2019

SUBJECT: **Ordinance No. 3079 - 2019**

The Alaska Regional Fire Training Facility located at 450 Daubenspeck Circle was originally constructed approximately 20 years ago. Throughout the last fiscal year, Public Works and Airport Staff have been coordinating with the Federal Aviation Administration (FAA) to develop a project to rehabilitate the facility. These types of facilities are becoming fewer and far between nationwide, and the FAA has expressed good interest and intentions in seeing the Facility fully operational.

Morrison-Maierle Engineering Consultants are the firm that designed the facility originally. This spring they were the successful proposer on providing professional services for the rehabilitation. In June 2019 a Facility Assessment Report was provided, identifying all of the areas within the facility in need of improvement.

The grant is anticipated to cover three areas of improvement including: the purchase of two new ARFF Vehicles, Rehabilitation of Training Equipment & Props, Rehabilitation of Training Building.

On July 31, 2019 the City was provided Construction Bid Documents, and a formal Invitation to Bid was released on August 1, 2019 with bids due on August 29, 2019. The Public Works Department anticipates accepting a grant from the FAA in September 2019, with a Notice to Proceed projected for October 1, 2019 with Project completions before June 30, 2020. The ARFF Vehicles may take as long as a year to arrive from the time they are ordered.

Completion of this project is a great opportunity for the community, it will restore a City asset, and allow for continued and improved operations at the facility.

Council's approval is respectfully requested.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3080-2019

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

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

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

WHEREAS, Council, through enactment of Ordinance 3060-2019 increased estimated revenues and appropriations by \$408,849.41 to provide for continued project contingency funds and increased the purchase order amount to \$11,894,843.41; and,

WHEREAS, to date the City has executed four change orders totaling \$732,812.73 and Change Order five is within this packet for approval and totals \$96,126.03 for a combined total Change Orders to date cost of \$828,938.76; and,

WHEREAS, the Federal Aviation Administration grant eligible portion of those Change Orders 1-5 has been determined to be \$734,232.51 with the City of Kenai's share as \$94,706.25; and,

WHEREAS, Administration is requesting appropriation of the additional eligible federal share and an increase to the authorized Purchase Order Amount to Blazy Construction, Inc. of the same amount, \$325,383.10 to replenish project contingency and to allow for the continued processing of future change orders; and,

WHEREAS, once complete, the authorized purchase order amount to Blazy Construction, Inc. will be \$12,220,226.51, the authorized contract to Blazy Construction, Inc. will be \$11,814,932.76, with available contingency to complete the project of \$405,293.75; and,

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

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

Section 1. The City Manager is authorized to accept grant funding from the Federal Aviation Administration in the amount of \$325,383.10 for the grant eligible portions of Change Orders 3-5 to Blazy Construction, Inc.

Section 2. The City Manager is authorized to increase Purchase Order No. 116510 to Blazy Construction, Inc. by \$325,383.10.

Section 3. That the estimated revenues and appropriations be increased as follows:

Terminal Improvement Capital Project Fund:

Increase Estimated Revenues –
FAA Grant

\$325,383.10

Increase Appropriations:
Construction

\$325,383.10

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: *J. Heinz*

Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: September 4, 2019



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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: August 14, 2019
SUBJECT: **Ordinance No. 3080-2019**

The Kenai Municipal Airport Terminal Rehabilitation Project has been underway since October 1, 2018. The current completion date remains at February 2020.

The Project was awarded with \$500,000.00 in contingency funds to allow for the prompt processing of change orders during construction to minimize potential cost impacts related to time delays. The Public Works Director in coordination with the City Manager have been reviewing and processing change requests as they are received, and notifying council through Departmental Mid-month reports throughout the project.

To summarize:

Change Order #1 - \$188,955.55 executed on January 31, 2019
 Change Order #2 - \$272,630.01 executed on March 4, 2019

Ordinance 3060-2019 appropriating the Federal share of CO#1-2 April 3, 2019- \$408,849.41

Change Order #3 - \$203,602.75 executed on April 26, 2019
 Change Order #4 - \$67,624.42 executed on May 29, 2019
 Change Order #5 - \$96,126.03 *pending execution*

Ordinance 3080-2019 appropriating the Federal share of CO#3-5 August 21, 2019 - \$325,383.10

The Original Contract to Blazy Construction, Inc. was \$10,985,994.00
 Total Change Orders to date CO#1-5 - \$828,938.76
 Total Contract to date shall be \$11,814,932.76



Passage of this Ordinance will replenish the contingency and allow for the continued processing of future change orders. Council will continue to be informed of change orders through Public Works Mid-Month reports.

As a reminder to Council, the extent of the Asbestos Abatement is the largest contributing factor to the additional costs, accounting for \$546,896.40 of all change orders to date. Additionally, neither Ordinance 3060-2019, nor this Ordinance, increase the total amount of City funds appropriated for this project. Administration is anticipating that after closeout of this project some of the funds appropriated by Ordinance 3037-2018 will lapse back to the City's Airport Special Revenue Fund.

Council's approval is respectfully requested.



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3081-2019

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

WHEREAS, the Automated Flight Service Station is owned by the City of Kenai and leased to the Federal Aviation Administration (Lessee); and,

WHEREAS, the City has an ongoing maintenance / rehabilitation project that the Lessee has requested additional work / improvements be included at the FAA's expense; and,

WHEREAS, the City of Kenai executed a Construction Agreement with Polar North Construction, Inc. on March 15, 2019 for the Automated Flight Service Station Renovations Phase 3 Project in the amount \$182,315.00; and,

WHEREAS, the City of Kenai previously appropriated \$43,972.26 from the Lessee through Ordinance 3049-2019 at the February 6, 2019 Council Meeting in order to have sufficient funds to Award an Agreement to Polar North Construction; and,

WHEREAS, the Lessee has requested an additional \$28,651.99 of services from Polar North Construction, Inc. during the completion of the Project; and,

WHEREAS, the Lessee has provided concurrence that they will provide 100% of the funding to cover the requested services; and,

WHEREAS, this will be the first and final Change Order to Polar North Construction, in the amount of \$28,651.99, for a total contract cost of \$210,966.99; and,

WHEREAS, the Lessee's share of the total project cost is \$72,624.25, and the City of Kenai's share is \$138,342.74; and,

WHEREAS, Administration is requesting appropriation of the additional eligible FAA share and an increase to the authorized Purchase Order Amount to Polar North Construction, Inc. of the same amount, \$28,651.99.

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

Section 1. The City Manager is authorized to accept tenant improvement funding from the Lessee in the amount of \$28,651.99 for Change Order 1 to Polar North Construction, Inc.

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

Airport Improvement Capital Project Fund:	
Increase Estimated Revenues –	
Miscellaneous Income	<u>\$28,651.99</u>
Increase Appropriations:	
Construction	<u>\$28,651.99</u>

Section 3. The City Manager is authorized to increase Purchase Order No. 117573 to Polar North Construction, Inc. by \$28,651.99.

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: _____

Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: September 4, 2019



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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: August 14, 2019
SUBJECT: Ordinance No. 3081 - 2019

The Automated Flight Services Station Renovations Phase 3 Project is nearing final completion. The Federal Aviation Administration (FAA), as Lessee (tenant), has requested some additional work be completed within the project and they have provided their concurrence to pay for the additional work in full.

Polar North Construction, Inc. has been providing excellent service to both the FAA and the City in regards to this project. Services provided to date have been satisfactory to all parties.

The first and final Change Order on the project to Polar North shall be for \$28,651.99, for a total construction contract cost of \$210,966.99. The FAA total portion of the project is \$72,624.25; the City's total share is \$138,342.74.

Administration is requesting appropriation of the additional eligible FAA share and an increase to the authorized Purchase Order Amount to Polar North Construction, Inc. of the same amount, \$28,651.99.

Final project completion is anticipated for September 2019.

Approval of this Ordinance is in the best interest of the City. It shall allow a long term tenant to make more effective use of the space in support of their operations.

Council's approval is respectfully requested.





Sponsored by: City Clerk

CITY OF KENAI**ORDINANCE NO. 3082-2019**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE CHAPTER 5.35, OIL AND GAS WELLS, TO PROVIDE THAT APPLICATIONS AND SUPPLEMENTAL APPLICATIONS BE FILED WITH THE CITY MANAGER.

WHEREAS, the City of Kenai enacted regulations for permitting the drilling of oil and gas in 1967; and,

WHEREAS, at that time, the ordinances provided for the City Council to determine compliance and issue permits; and,

WHEREAS, because the City Council was the permitting authority, applications were required to be submitted to the City Clerk; and,

WHEREAS, in 1982, it was determined that permitting oil and gas drilling was more appropriately a managerial function, exercised by the City Manager, in accordance with policies set by the City Council; and,

WHEREAS, it remains today that the applications and supplemental applications be filed with the City Clerk; and,

WHEREAS, because the City Clerk is not involved in the processing of the drilling permits, it is in the best interest of the City to require that drilling permit applications and supplemental applications be filed with the City Manager.

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

Section 1. Amendment of Section of the Kenai Municipal Code: That Kenai Municipal Code, Section 5.35.050 – Application and filing fees, is hereby amended as follows:

(a) Every application for a permit to drill and operate a well shall be in writing, signed by the applicant or by some person duly authorized to sign same on his or her behalf, and it shall be filed with the City [CLERK] Manager and be accompanied with a filing fee as set forth in the City's schedule of fees adopted by the City Council. No application shall request a permit to drill and operate more than one (1) well. The said application shall include full information, including the following:

- (1) The date of said application;
- (2) Name of the applicant;

- (3) Address of the applicant;
- (4) Proposed site of the well, including name of the mineral owner and surface owner name of the lease owner, and brief description of the land;
- (5) Type of derrick to be used;
- (6) The proposed depth of the well.

Section 2. Amendment of Section of the Kenai Municipal Code: That Kenai Municipal Code, Section 5.35.110 – Deeper drilling, is hereby amended as follows:

(a) Once any well has either been completed as a producer or abandoned as a dry hole, it shall be unlawful and an offense for any person to drill such well to a deeper depth than that reached in the prior drilling operations without the permittee as to such well obtaining a supplemental permit after filing a supplemental application with the City [CLERK] Manager specifying:

- (1) The then condition of the well and the casing therein;
- (2) The depth to which it is proposed such well be deepened;
- (3) The proposed casing program to be used in connection with proposed deepening operations;
- (4) An evidence of adequate current tests showing that the casing strings in said well currently passed the same tests as are in this ordinance provided for in case of the drilling of the original well.

(b) In the event the City Manager is satisfied that said well may be deepened with the same degree of safety as existed in the original well, a supplemental permit may be issued without an additional filing fee to the permittee authorizing the deepening and operation of the well to such specified depth as applied for.

(c) In any deeper drilling or any deeper completion of any deeper production operations, the permittee shall comply with all other provisions contained in this ordinance and applicable to the drilling, completion, and operation of a well or wells.

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 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: October 4, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Jamie Heinz, CMC, City Clerk
DATE: August 12, 2019
SUBJECT: **Ordinance No. 3082-2019**

The purpose of this memo is to recommend adoption of Ordinance No. 3082-2019. It was brought to my attention this year that Kenai Municipal Code requires applications and supplemental applications for oil and gas well permits be submitted to the City Clerk. The remainder of the permitting process is conducted by the City Manager.

When reviewing the history, I found that the City began permitting oil and gas drilling in 1967 at which time the City Council acted on whether or not the permits should be issued and, as such, the applications and supplemental applications were submitted to the City Clerk. In 1982, it was determined that permitting oil and gas drilling was more appropriately a managerial function and the code was amended to replace "City Council" with "City Manager." At that time, submission of the applications and supplemental applications to the City Clerk remained.

Because the Oil and Gas Permitting records are kept by the City Manager and the City Clerk is not involved in processing the permits, it makes sense that the code be amended to require the applications and supplemental applications be submitted to the City Manager.

Thank you for your consideration.





Sponsored by: Councilmember Pettey

CITY OF KENAI

ORDINANCE NO. 3083-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.175 - ADULT BUSINESSES, TO INCREASE THE BUFFER DISTANCES BETWEEN ADULT BUSINESSES AND SENSITIVE USES FROM 500 FEET TO 1000 FEET AND DEFINE SENSITIVE USES.

WHEREAS, the City currently permits adult businesses in the Central Commercial, General Commercial, Light Industrial and Heavy Industrial Zones as long as they are located more than 500 feet from other adult businesses, churches or public or private schools; and,

WHEREAS, a review of the zoning restrictions on adult businesses in the City show that they are currently inadequate to sufficiently protect the City's residents, youth, business community and visitors from the convincingly demonstrated secondary effects of adult businesses, which is a compelling government interest; and,

WHEREAS, the Alaska Supreme Court recently concluded in *Club Sinrock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, Supreme Court No. S-17068 (Alaska, 2019) that while Alaska's free speech clause is more protective of individual rights than the federal constitution, the government need not wait for harm to arise before enacting legislation aimed at combating harmful secondary effects of adult businesses, but must approach the issue with an evidence based analysis demonstrating how restrictions are narrowly tailored to meet a compelling government interest; and,

WHEREAS, in *Club Sinrock*, the Court held that restrictions on adult businesses may satisfy the constitutional protections of free speech by relying on solid evidence of other communities experiences or specific studies presented to the legislative body, and,

WHEREAS, the U.S. Supreme Court in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) and *Renton v. Playtime Theatres*, 475 U.S. 41 (1986) identified harmful secondary effects of increased crime, decreased property values and urban blight; and,

WHEREAS, in *Sex, But Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, Mathew L. McGinnis, 46 B.C.L. Rev. 625 (2005), the Law Review Article cited that rural and predominately residential municipalities are especially susceptible to the negative secondary effects of adult businesses and that adult businesses arguably pose a greater risk to the quality of life in these communities than in larger cities; and,

WHEREAS, a 2005 committee report, *Adult Entertainment Zoning and Licensing Committee Report* to the City of Mount Vernon, identified schools, businesses where or areas where youth are likely to be present and churches, among other uses, as sensitive to the secondary effects of adult businesses; and,

WHEREAS, this same report identified secondary negative impacts to include increased crime, creation of an atmosphere for crime, declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism, human trafficking associations, and harm to the public's health safety and welfare; and,

WHEREAS, within the American Planning Association's Report *Everything You Always Wanted to Know about Regulating Sex Businesses*, xxx Report No. 495/496, by Eric Damian Kelly and Connie Cooper, a survey from Rochester/ Monroe County New York showed the impact from adult entrainment businesses on neighboring properties stopped between 1000 feet and 1500 feet away; and,

WHEREAS, the sponsor and City staff have reviewed studies and articles on adult businesses, and made these available to the Council and public, including *Sex, But Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, Mathew L. McGinnis, 46 B.C.L. Rev. 625 (2005), a 2005 committee report, *Adult Entertainment Zoning and Licensing Committee Report* to the City of Mount Vernon; the American Planning Association's Report *Everything You Always Wanted to Know about Regulating Sex Businesses*, xxx Report No. 495/496, by Eric Damian Kelly and Connie Cooper, all of which contain and discuss numerous other studies and reports; and,

WHEREAS, the zoning restrictions proposed reduces the available property for adult businesses in the City by less than one percent and leaves sufficient property available within the City, for locating adult businesses, at least five percent, especially given the rural and residential nature of the small community and amount of lands within the City that are unavailable for commercial development; and,

WHEREAS, it is in the best interest of the City, and a compelling government interest, to restrict the location of adult businesses due to their demonstrated negative secondary effects to the proposed zones and outside 1000 feet of sensitive uses to protect residents, youth, businesses and visitors from the negative secondary effects of adult businesses; and,

WHEREAS, this buffer distance is consistent with other buffer distances from other property uses contained in the City's code; and,

WHEREAS, further limitations may be recommended in the future, but it is difficult to provide reasonable alternative avenues of communication, locations within the City, given the unique rural makeup of the City's lands, with very limited available commercial space; and,

WHEREAS, the restriction imposed are narrowly tailored to meet the City's compelling government interest as even an increase in law enforcement presence and action at potential adult business sites would not be sufficient to combat many of the negative secondary effects such as declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, protecting youth and declining tourism; and,

WHEREAS, many other municipalities in Alaska and across the nation have successfully utilized a 1000 foot buffer from sensitive uses; and,

WHEREAS, it is not the intent of this ordinance to suppress any free speech activities protected by the state and federal constitution, but only to enact regulations addressing the secondary effects of adult businesses; and,

WHEREAS, at the (date)_____ Planning and Zoning Commission Meeting, the Commission recommended _____.

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

Section 1. Amendment of Section 14.20.175 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.175 – Adult Businesses, is hereby amended as follows:

14.20.175 Adult businesses.

(a) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) “Adult bookstore” means a commercial establishment where at least fifty-one percent (51%) of its interior floor area or retail merchandise is devoted to the sale, rent, lease, inspection, or viewing of books, films, video cassettes, DVDs, magazines, other periodicals or digital presentations whose dominant theme is the actual or simulated specified sexual activities, display or exhibition of specified anatomical areas, removal of articles of clothing, or total nudity.

(2) “Adult cabaret” means a restaurant, coffee house, bar or cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers who provide live adult entertainment for commercial purposes.

(3) “Adult entertainment” means any motion picture, live performance, display, or dance of any type whose dominant theme is actual or simulated specified sexual activities, display or exhibition of specified anatomical areas, removal of articles of clothing, or total nudity, offered for commercial purposes.

(4) “Adult mini-theater” means an enclosed building with a capacity of less than fifty (50) persons used for displaying adult entertainment through films, video, or other motion pictures for commercial purposes.

(5) “Adult motion picture theatre” means an enclosed building with a capacity of fifty (50) or more persons used for displaying adult entertainment through films, video, or other motion pictures for commercial purposes.

(6) “Adult business” means any adult bookstore, adult cabaret, adult mini-theater, or adult motion picture theater.

(7) “Commission” means the City of Kenai Planning and Zoning Commission.

(8) “Operator or manager” means any natural person responsible for the actual operation and management of an adult business.

- (9) "Sexual conduct" means acts of:
- (i) Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
 - (ii) Any penetration of the vagina or anus, however slight, by an object; or
 - (iii) Any contact between persons involving the sex organs of one person and the mouth or anus of another; or
 - (iv) Masturbation, manual or instrumental, of oneself or of one person by another; or
 - (v) Touching of the sex organs or anus, whether clothed or unclothed, of oneself or of one person by another.

(10) "Specified anatomical areas" means:

- (i) Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breast below a point immediately above the top of the areola; and
- (ii) Human male genitals in a discernible erect state, even if opaquely covered.

(11) "Specified sexual activities" means simulated or actual:

- (i) Display of human genitals in a state of sexual stimulation or arousal;
- (ii) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus; and
- (iii) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

(12) "Sensitive Use" means a church or other place of worship, a public or private school (licensed pre-K through 12th grade) or businesses where or areas where youth are likely to be present (limited to public parks, youth recreational centers, public playgrounds, public libraries).

(b) *Location Requirements.*

(1) Adult businesses may be located only in the CC, CG, IL and HI zones. Additionally, no adult business may be located within one thousand [FIVE HUNDRED FEET] ([5]1000') of another adult business, [A CHURCH OR OTHER PLACE OF WORSHIP OR PUBLIC OR PRIVATE SCHOOL] or sensitive use.

(2) The distances specified in this section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the premises in which the proposed adult business is to be established to the nearest property line of a use listed above.

(c) *Development and Operation Standards.* The following development and operation standards shall apply to adult businesses:

- (1) No adult business shall be located in any temporary or portable structure.
- (2) Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public.
- (3) No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.
- (4) Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance or exit to the business.
- (5) The entire exterior grounds, including the parking lot, shall be lighted in such a manner that all areas are clearly visible at all times.
- (6) Signage shall be governed by KMC [14.20.220](#) (Signs).
- (7) All entrances to an adult business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) are prohibited from entering the premises.
- (8) No adult business shall be operated in any manner that permits the observation of any persons or material depicting, describing or related to specified sexual activities or specified anatomical areas, inside the premises, from any public way or from any location outside the building or area of such establishment. This provision shall apply to any merchandise, display, decoration, sign, show window or other opening.
- (9) Each adult business shall conform to all applicable laws and regulations.
- (10) The adult business shall not operate or be open between the hours of 2:00 a.m. and 9:00 a.m.
- (11) Amplified sound may not be broadcast outside the building and structures used for the adult business.
- (12) No tip or gratuity offered or accepted by an adult entertainer may be offered or accepted prior to any live performance, dance or exhibition provided by the adult entertainer. No adult entertainer performing live upon any stage shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any adult entertainer performing live upon any stage must be placed into a receptacle provided for receipt of gratuities by the business or through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any live performance, dance or exhibition in or about the nonstage area of the adult business shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

- (13) No live entertainer shall engage in acts of sexual conduct.
- (14) An adult cabaret shall provide separate dressing room facilities for performers, which are exclusively dedicated to the performers' use.
- (15) An adult cabaret shall provide an entrance/exit for performers, which is separate from the entrance/exit used by patrons.
- (16) An adult cabaret shall provide access for performers between the stage and the dressing rooms, which are completely separated from the patrons. If such separate access is not physically feasible, the cabaret shall provide a minimum three (3) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers that is capable of preventing any physical contact between patrons and performers.
- (17) All indoor areas of the adult cabaret where patrons or members of the public are permitted, excluding restrooms, shall be open to view by management at all times.

(d) If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of this chapter as a whole, or any portion thereof, and its application to other persons or circumstances, shall not be affected.

(e) *Nonconforming Use.* Any adult business operating at the time of the effective date of the ordinance codified in this section shall be considered a nonconforming use under KMC [14.20.050](#). However, a business that only periodically engages in adult business activity may continue to operate as a nonconforming use at the same level of activity it operated for the one (1) year period prior to the adoption of this ordinance. For example, a bar or restaurant that operated as an adult cabaret five (5) times in the previous one (1) year period would be allowed to operate as a nonconforming use five (5) times per year.

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 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: October 4, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Glenese Pettey, Council Member

DATE: August 26, 2019

SUBJECT: **Ordinance No. 3083-2019 – Adult Businesses**

I decided to sponsor Ordinance No. 3083-2019 after it became evident that our City Code, as currently written, does not adequately protect our residents from the secondary effects of adult businesses. I have attached an exhibit that provides an example of one area within our City that, as our Code is currently crafted, would allow adult business establishments. While municipalities are mandated to provide sufficient area inside their boundaries where adult business could be located, allowing those businesses close to sensitive uses where the secondary effects would harm other property uses does not support the vision we have for our City.

Our Comprehensive Plan – Imagine Kenai 2030 – contains eight primary goals. To successfully implement three of these goals, the Code must be changed as proposed by this Ordinance.

Goal 1 – Quality of Life: Promote and encourage quality of life in Kenai, Objective Q-4 states that the City should promote the siting and design of land uses that are in harmony and scale with surrounding uses. Based on the attached exhibit, it is clear that the siting of adult businesses allowed under our current Code is not in harmony with many of our existing land uses.

Goal 2 – Economic Development: Provide economic development to support the fiscal health of Kenai, Objective ED-3 states that the City should use regional economic and workforce statistics to match the most suitable type of industry for particular areas and then market those areas. The retail sector of the City of Kenai is the primary driver of sales in the City and is a strong indicator of the economic health of our community. The City should continue to market and incentivize that sector in our core commercial area. Adult entertainment businesses located in this area would limit its attractiveness for many businesses and make incentives and marketing much less effective.

Goal 3 – Land Use: Develop land use strategies to implement a forward-looking approach to community growth and development, Objective LU-1 states the City should establish siting and



design standards so that development is in harmony and scale with surrounding uses. In addition to quality of life, it is clear the City must consider future growth and development when siting businesses which may share future access by frontage roads or trails with existing uses such as schools, neighborhoods, and other land uses which serve sensitive populations and which may require separation from adult businesses.

The proposed Ordinance provides a solution in accordance with the goals of the City's Comprehensive Plan – Imagine Kenai 2030, while providing sufficient area inside City boundaries where adult business could be located.

Your consideration is appreciated.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom, City Attorney
DATE: March 12, 2019
SUBJECT: **Ordinance No. 3083 - 2019**

The Alaska Supreme Court recently issued a decision in *Club SinRock*, providing that Article I, Section 5 of the Alaska Constitution, protecting free speech, includes the protection of nude dancing, and affords more protection in this regard than the federal constitution. The Court held that it will apply strict scrutiny to regulations restricting nude dancing, and that any such regulations must be narrowly tailored to achieve the desired goals. However, the Court recognized that municipalities have a compelling interest in "combating" the secondary effects of adult businesses. The Court requires an evidence based analysis that shows how restrictions are "narrowly tailored to meet specific, compelling government interests." The Court held that this can be satisfied by relying on "solid" evidence from other communities or studies presented to the Council. Further, in regulating adult businesses, the Council must show evidence of potential harm and how "non-infringing" law enforcement techniques are unavailable or unlikely to be effective. Federal case law also provides guidance, suggesting that under federal law, allowing adult businesses on at least 5% of property within a municipality meets aspects of federal zoning requirements in this regard. The two cases expressing these holdings are presented in your material for your review. Also presented in your material is a Boston College law review article suggesting that the 5% rule is difficult to apply in small rural communities such as Kenai, and should not be applied.

A Map created by the Planning Department is attached, showing the zones in which adult businesses are permitted and the current 500 foot buffer and proposed 1000 foot buffer. The increased buffer distance, and proposed new sensitive uses which must be buffered from, reduce the available land for adult businesses by less than 1% in the City, and maintains available land opportunities greater than 5%, in compliance with federal case law. This is true even though large portions of the City are undevelopable, non-commercial or government owned.



Many studies and surveys have shown secondary negative impacts of adult businesses including increased crime, creation of an atmosphere for crime, declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism, human trafficking associations, and harm to the public's health safety and welfare. The Boston Law Review Article in the material provided suggests that rural communities are more susceptible to these negative impacts than larger communities. The case law presented in your material acknowledges many of these secondary effects discussed in the studies and surveys in your material. The intent of this Ordinance is to regulate these effects.

In your material for review is a study from other communities showing that the negative secondary effects of adult business often extend from 1000 feet to 1500 feet beyond the business. Buffering adult businesses from 1000 feet of sensitive uses appears reasonable given the rural nature of our community, the walkability and bike friendly nature of our commercial core and surrounding areas, the desire of our community to encourage tourism and effort put into our youth facilities in Kenai.

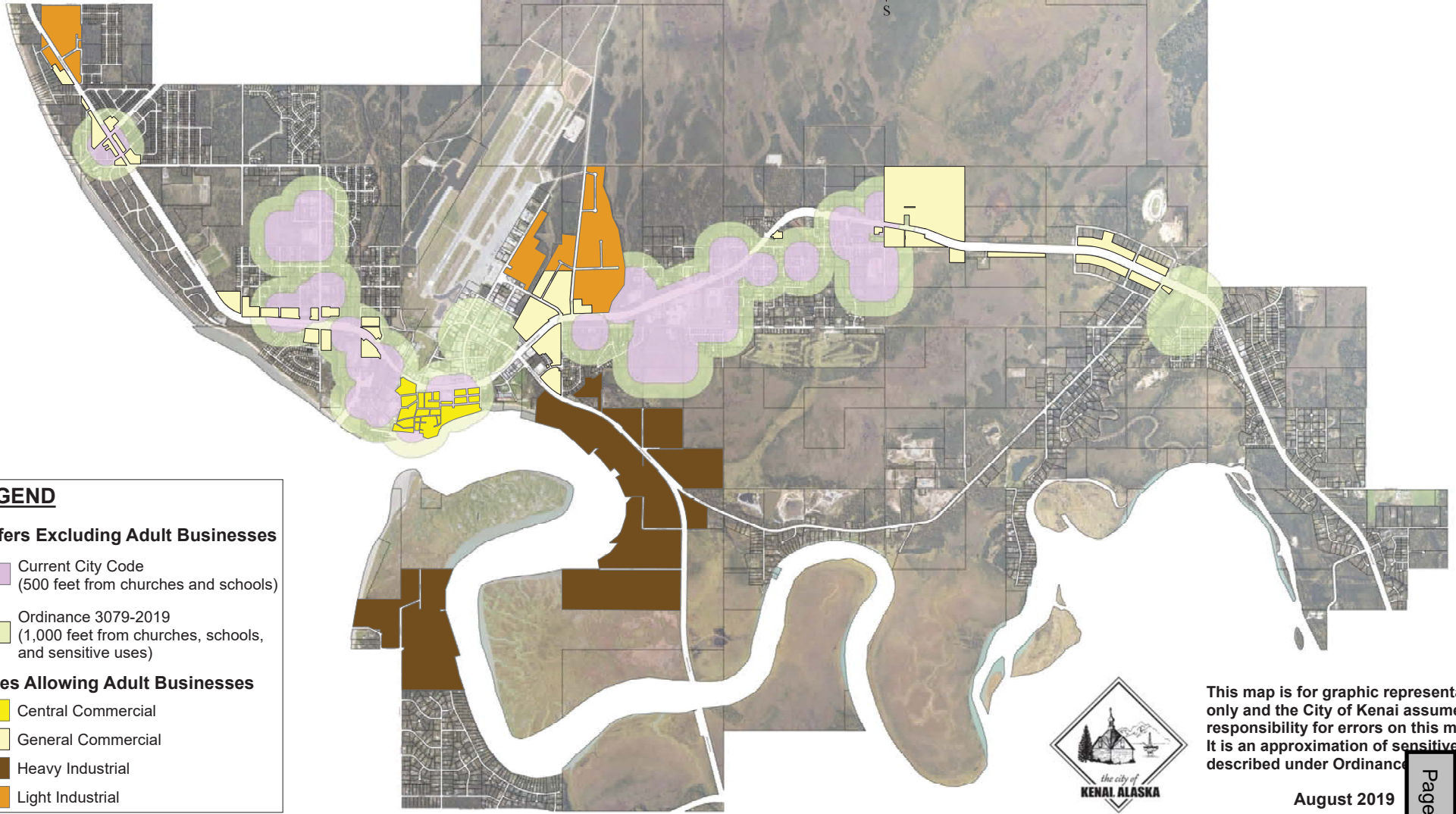
The Ordinance is intended to be narrowly tailored, that is only protecting the City from the negative secondary effects of adult businesses. These negative secondary effects, such as declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism and protecting youth cannot reasonably otherwise be prevented by acceptable law enforcement techniques. For example the police can not influence tourist impressions of our community, convince a potential property buyer that their business or property value will not be impacted by negative secondary effects of an adult business. Likewise, the police can not prevent youth in our area, utilizing, schools, libraries, parks and recreational facilities, and walking and riding their bikes back and forth, from many of the secondary effects.

I have provided the Council numerous articles and studies discussing adult oriented businesses, other communities experiences with this issue, secondary effects from these businesses, and approaches to zoning for adult oriented businesses. I request Council review this material prior to making a decision on this Ordinance or providing input.

Your consideration is appreciated.



Required Zone Locations for Adult Businesses

0 2,000 4,000 8,000
Feet



LEGEND

Buffers Excluding Adult Businesses

-  Current City Code
(500 feet from churches and schools)
-  Ordinance 3079-2019
(1,000 feet from churches, schools,
and sensitive uses)

Zones Allowing Adult Businesses

-  Central Commercial
-  General Commercial
-  Heavy Industrial
-  Light Industrial



This map is for graphic representation only and the City of Kenai assumes no responsibility for errors on this map. It is an approximation of sensitive uses described under Ordinance 2019.

August 2019



Sponsored by: Councilmembers Pettey
and Knackstedt

CITY OF KENAI

ORDINANCE NO. 3083-2019 (Substitute)

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.175 - ADULT BUSINESSES, TO INCREASE THE BUFFER DISTANCES BETWEEN ADULT BUSINESSES AND SENSITIVE USES FROM 500 FEET TO 1,000 FEET AND DEFINE SENSITIVE USES AND AMEND KENAI MUNICIPAL CODE 14.22.010-LAND USE TABLE, TO ADD ADULT BUSINESSES.

WHEREAS, the City currently permits adult businesses in the Central Commercial, General Commercial, Light Industrial and Heavy Industrial Zones as long as they are located more than 500 feet from other adult businesses, churches or public or private schools; and,

WHEREAS, a review of the zoning restrictions on adult businesses in the City show that they are currently inadequate to sufficiently protect the City's residents, youth, business community and visitors from the convincingly demonstrated secondary effects of adult businesses, which is a compelling government interest; and,

WHEREAS, the Alaska Supreme Court recently concluded in *Club Sinrock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, Supreme Court No. S-17068 (Alaska, 2019) that while Alaska's free speech clause is more protective of individual rights than the federal constitution, the government need not wait for harm to arise before enacting legislation aimed at combating harmful secondary effects of adult businesses, but must approach the issue with an evidence based analysis demonstrating how restrictions are narrowly tailored to meet a compelling government interest; and,

WHEREAS, in *Club Sinrock*, the Court held that restrictions on adult businesses may satisfy the constitutional protections of free speech by relying on solid evidence of other communities experiences or specific studies presented to the legislative body, and,

WHEREAS, the U.S. Supreme Court in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) and *Renton v. Playtime Theatres*, 475 U.S. 41 (1986) identified harmful secondary effects of increased crime, decreased property values and urban blight; and,

WHEREAS, in *Sex, But Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, Mathew L. McGinnis, 46 B.C.L. Rev. 625 (2005), the Law Review Article cited that rural and predominately residential municipalities are especially susceptible to the negative secondary effects of adult businesses and that adult businesses arguably pose a greater risk to the quality of life in these communities than in larger cities; and,

WHEREAS, a 2005 committee report, *Adult Entertainment Zoning and Licensing Committee Report* to the City of Mount Vernon, identified schools, businesses where or areas where youth

are likely to be present and churches, among other uses, as sensitive to the secondary effects of adult businesses; and,

WHEREAS, this same report identified secondary negative impacts to include increased crime, creation of an atmosphere for crime, declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism, human trafficking associations, and harm to the public's health safety and welfare; and,

WHEREAS, within the American Planning Association's Report *Everything You Always Wanted to Know about Regulating Sex Businesses*, xxx Report No. 495/496, by Eric Damian Kelly and Connie Cooper, a survey from Rochester/ Monroe County New York showed the impact from adult entrapment businesses on neighboring properties stopped between 1000 feet and 1500 feet away; and,

WHEREAS, the sponsor and City staff have reviewed studies and articles on adult businesses, and made these available to the Council and public, including *Sex, But Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, Mathew L. McGinnis, 46 B.C.L. Rev. 625 (2005), a 2005 committee report, *Adult Entertainment Zoning and Licensing Committee Report* to the City of Mount Vernon; the American Planning Association's Report *Everything You Always Wanted to Know about Regulating Sex Businesses*, xxx Report No. 495/496, by Eric Damian Kelly and Connie Cooper, all of which contain and discuss numerous other studies and reports; and,

WHEREAS, the zoning restrictions proposed reduces the available property for adult businesses in the City by less than one percent and leaves sufficient property available within the City, for locating adult businesses, at least five percent, especially given the rural and residential nature of the small community and amount of lands within the City that are unavailable for commercial development; and,

WHEREAS, it is in the best interest of the City, and a compelling government interest, to restrict the location of adult businesses due to their demonstrated negative secondary effects to the proposed zones and outside 1000 feet of sensitive uses to protect residents, youth, businesses and visitors from the negative secondary effects of adult businesses; and,

WHEREAS, this buffer distance is consistent with other buffer distances from other property uses contained in the City's code; and,

WHEREAS, further limitations may be recommended in the future, but it is difficult to provide reasonable alternative avenues of communication, locations within the City, given the unique rural makeup of the City's lands, with very limited available commercial space; and,

WHEREAS, the restriction imposed are narrowly tailored to meet the City's compelling government interest as even an increase in law enforcement presence and action at potential adult business sites would not be sufficient to combat many of the negative secondary effects such as declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, protecting youth and declining tourism; and,

WHEREAS, many other municipalities in Alaska and across the nation have successfully utilized a 1000 foot buffer from sensitive uses; and,

WHEREAS, it is not the intent of this ordinance to suppress any free speech activities protected by the state and federal constitution, but only to enact regulations addressing the secondary effects of adult businesses; and,

WHEREAS, at the (date) _____ Planning and Zoning Commission Meeting, the Commission recommended _____.

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

Section 1. Amendment of Section 14.20.175 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.175 – Adult Businesses, is hereby amended as follows:

14.20.175 Adult businesses.

(a) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) “Adult bookstore” means a commercial establishment where at least fifty-one percent (51%) of its interior floor area or retail merchandise is devoted to the sale, rent, lease, inspection, or viewing of books, films, video cassettes, DVDs, magazines, other periodicals or digital presentations whose dominant theme is the actual or simulated specified sexual activities, display or exhibition of specified anatomical areas, removal of articles of clothing, or total nudity.

(2) “Adult cabaret” means a restaurant, coffee house, bar or cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers who provide live adult entertainment for commercial purposes.

(3) “Adult entertainment” means any motion picture, live performance, display, or dance of any type whose dominant theme is actual or simulated specified sexual activities, display or exhibition of specified anatomical areas, removal of articles of clothing, or total nudity, offered for commercial purposes.

(4) “Adult mini-theater” means an enclosed building with a capacity of less than fifty (50) persons used for displaying adult entertainment through films, video, or other motion pictures for commercial purposes.

(5) “Adult motion picture theatre” means an enclosed building with a capacity of fifty (50) or more persons used for displaying adult entertainment through films, video, or other motion pictures for commercial purposes.

(6) “Adult business” means any adult bookstore, adult cabaret, adult mini-theater, or adult motion picture theater.

(7) “Commission” means the City of Kenai Planning and Zoning Commission.

(8) “Operator or manager” means any natural person responsible for the actual operation and management of an adult business.

- (9) "Sexual conduct" means acts of:
- (i) Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
 - (ii) Any penetration of the vagina or anus, however slight, by an object; or
 - (iii) Any contact between persons involving the sex organs of one person and the mouth or anus of another; or
 - (iv) Masturbation, manual or instrumental, of oneself or of one person by another; or
 - (v) Touching of the sex organs or anus, whether clothed or unclothed, of oneself or of one person by another.

- (10) "Specified anatomical areas" means:

- (i) Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breast below a point immediately above the top of the areola; and
- (ii) Human male genitals in a discernible erect state, even if opaquely covered.

- (11) "Specified sexual activities" means simulated or actual:

- (i) Display of human genitals in a state of sexual stimulation or arousal;
- (ii) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus; and
- (iii) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

(12) "Sensitive Use" means a church or other place of worship, a public or private school (licensed pre-K through 12th grade) or businesses where or areas where youth are likely to be present (limited to public parks, youth recreational centers, public playgrounds, public libraries).

- (b) *Location Requirements.*

(1) Adult businesses may be located only in the CC, CG, IL and HI zones. Additionally, no adult business may be located within one thousand [FIVE HUNDRED FEET] ([5]1000') of another adult business, [A CHURCH OR OTHER PLACE OF WORSHIP OR PUBLIC OR PRIVATE SCHOOL] or sensitive use.

(2) The distances specified in this section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the premises in which the proposed adult business is to be established to the nearest property line of a use listed above.

(c) *Development and Operation Standards.* The following development and operation standards shall apply to adult businesses:

- (1) No adult business shall be located in any temporary or portable structure.
- (2) Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public.
- (3) No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.
- (4) Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance or exit to the business.
- (5) The entire exterior grounds, including the parking lot, shall be lighted in such a manner that all areas are clearly visible at all times.
- (6) Signage shall be governed by KMC 14.20.220 (Signs).
- (7) All entrances to an adult business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) are prohibited from entering the premises.
- (8) No adult business shall be operated in any manner that permits the observation of any persons or material depicting, describing or related to specified sexual activities or specified anatomical areas, inside the premises, from any public way or from any location outside the building or area of such establishment. This provision shall apply to any merchandise, display, decoration, sign, show window or other opening.
- (9) Each adult business shall conform to all applicable laws and regulations.
- (10) The adult business shall not operate or be open between the hours of 2:00 a.m. and 9:00 a.m.
- (11) Amplified sound may not be broadcast outside the building and structures used for the adult business.
- (12) No tip or gratuity offered or accepted by an adult entertainer may be offered or accepted prior to any live performance, dance or exhibition provided by the adult entertainer. No adult entertainer performing live upon any stage shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any adult entertainer performing live upon any stage must be placed into a receptacle provided for receipt of gratuities by the business or through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any live performance, dance or exhibition in or about the nonstage area of the adult business shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

- (13) No live entertainer shall engage in acts of sexual conduct.
- (14) An adult cabaret shall provide separate dressing room facilities for performers, which are exclusively dedicated to the performers' use.
- (15) An adult cabaret shall provide an entrance/exit for performers, which is separate from the entrance/exit used by patrons.
- (16) An adult cabaret shall provide access for performers between the stage and the dressing rooms, which are completely separated from the patrons. If such separate access is not physically feasible, the cabaret shall provide a minimum three (3) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers that is capable of preventing any physical contact between patrons and performers.
- (17) All indoor areas of the adult cabaret where patrons or members of the public are permitted, excluding restrooms, shall be open to view by management at all times.
- (d) If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of this chapter as a whole, or any portion thereof, and its application to other persons or circumstances, shall not be affected.
- (e) *Nonconforming Use.* Any adult business operating at the time of the effective date of the ordinance codified in this section shall be considered a nonconforming use under KMC [14.20.050](#). However, a business that only periodically engages in adult business activity may continue to operate as a nonconforming use at the same level of activity it operated for the one (1) year period prior to the adoption of this ordinance. For example, a bar or restaurant that operated as an adult cabaret five (5) times in the previous one (1) year period would be allowed to operate as a nonconforming use five (5) times per year.

Section 2. Amendment of Section 14.22.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.22.010 – Land Use Table, is hereby amended as follows:

14.22.010 Land use table.

LAND USE TABLE

KEY:	P = Principal Permitted Use C = Conditional Use S = Secondary Use N = Not Permitted	NOTE: Reference footnotes on following pages for additional restrictions
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ZONING DISTRICTS																	
LAND USES	ALI	C	RR	RR-1	RS	RS-1	RS-2	RU	CC	CG	IL	IH	ED	R	TSH	LC	CMU
RESIDENTIAL																	
One-Family Dwelling	N	C ¹⁸	P	P	P	P	P	P	P ²¹	S ¹	S ²	S ²	C ²²	P	P	P	S ¹ /C ²¹
Two-, Three-Family Dwelling	N	C ¹⁸	P	P	P	P	P	P	P ²¹	S ¹	C	C	C ²²	P	P	P	S ¹ /C ²¹
Four-Family Dwelling	N	C ¹⁸	P	C ^{3, 29}	P	N	N	P	P ²¹	S ¹	C	C	C ²²	N	P	C	S ¹ /C ²¹
Five-, Six-Family Dwelling	N	C ¹⁸	C ³	N	P	N	N	P	P ²¹	S ¹	C	C	N	N	P	C	S ¹ /C ²¹
Seven- or More Family Dwelling	N	C ¹⁸	C ³	N	C ³	N	N	P	P ²¹	S ¹	C	C	N	N	P	C	S ¹ /C ²¹
Mobile Home Parks ⁶	N	N	C	N	C	C	C	C	C	C	C	C	N	C	N	N	C
Planned Unit Residential Development ⁷	N	C ¹⁸	C	C ²⁹	C	C	C	C	C	C	C	C	N	C	C	C	C
Townhouses ⁴	N	C ¹⁸	C ³	C ^{3, 29}	C ³	C ³	C ³	C ³	C	C	C	C	C ²²	C	C	C	C
Accessory Building on Parcel Without Main Building or Use (See KMC 14.20.200)	N	N	C	C	C	C	C	C	N	N	N	N	N	N	C	N	N
COMMERCIAL																	
Airport Compatible Uses	P	N	N	N	N	N	N	N	C	C	C	C	N	N	N	C	C
<u>Adult Businesses</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P³¹</u>	<u>P³¹</u>	<u>P³¹</u>	<u>P³¹</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
Automotive Sales	C	N	C	N	N	N	N	C	P	P	P	P	N	N	N	N	P
Automotive Service Stations	C	N	C	N	N	N	N	C	P	P	P	P	N	C	N	N	P
Banks	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Business/Consumer Services	C	N	C	C	C	N	N	C	P	P	P	C	N	C	C	C	P
Commercial Recreation	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Guide Service	C	N	C	N	C	N	N	C	P	P	P	P	N	P	P	C	P
Hotels/Motels	C	N	C	N	C	N	N	C	P	P	P	C	N	C	P	C	P
Lodge	C	N	C	N	C	N	N	C	P	P	P	C	N	P	P	C	P
Marijuana Cultivation Facility, Standard ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	N

ZONING DISTRICTS																	
LAND USES	AL I	C	R R	RR -1	RS	RS -1	RS -2	RU	C C	C G	IL	IH	ED	R	TS H	L C	CM U
Marijuana Cultivation Facility, Standard ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	N
Marijuana Product Manufacturing Facility ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	N	N
Marijuana Testing Facility ³⁰	N	N	N	N	N	N	N	N	C	C	P	P	N	N	N	C	C
Professional Offices	C	N	C	C	C	N	N	P	P	P	P	P	N	C	P	P	P
Restaurants	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Retail Business	C	N ² ₆	C	N	C	N	N	C	P	P	P	P	S ² ₄	S ² ₄	C	C	P
Retail Marijuana Store ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	C
Theaters	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Wholesale Business	C	N	C	N	C	N	N	C	C	P	P	P	N	S ² ₄	C	C	N
INDUSTRIAL																	
Airports	C	P ²⁰	C	N	C	N	N	C	C	C	C	C	N	C	N	N	C
Necessary Aviation Facilities	P	P	C	C	C	C	C	C	P	P	P	P	C	P	C	P	P
Automotive Repair	P	N	C	N	C	N	N	C	P	P	P	P	N	N	N	N	P
Gas Manufacturer/Storage	C ⁹	N	N	N	C	N	N	N	N	N	C ⁹	C ⁹	N	N	N	N	N
Manufacturing/Fabricating/Assembly	P	N	C	N	C	N	N	C	C	P	P	P	N	C	C	N	C
Mini-Storage Facility	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	C	C
Storage Yard	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	N	C
Warehouses	C	N	C	N	C	N	N	C	N	P	P	P	N	C	N	N	N
PUBLIC/INSTITUTIONAL																	
Assisted Living	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Churches*	N	C	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	C	C	P	P ¹⁰	P	P	P
Clinics	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	P	P
Colleges*	N	C	C	C ²⁹	C	C	C	C	P	P	C	C	P	C	C	C	P
Elementary Schools*	N	C	C	C ²⁹	C	C	C	C	P	P	C	C	P	C	C	C	P
Governmental Buildings	P	C	C	C ²⁹	C	C	C	C	P	P	P	C	P	C	C	P	P
High Schools*	N	C	C	C ²⁹	C	C	C	C	P	P	C	C	P	C	C	C	P

ZONING DISTRICTS																	
LAND USES	AL I	C	R R	RR -1	RS	RS -1	RS -2	RU	C C	C G	IL	IH	ED	R	TS H	L C	CM U
Hospitals*	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	C	P
Libraries*	N	C	C	C ²⁹	C	C	C	C ¹ ₂	P	P	P	C	P	C	P	C	P
Museums	C	C	C	C ²⁹	C	C	C	C	P	P	P	C	P	C	P	C	P
Parks and Recreation	N	P	C	C ²⁹	C	C	C	C	P	P	P	P	P	P	P	C	P
MISCELLANEOUS																	
Animal Boarding/Commercial Kennel ¹³	C	C	C	N	C	C	N	N	C	C	C	C	N	C	N	C	C
Assemblies ¹⁵ (Large: Circuses, Fairs, etc.)	P	C	C	N	C	C	C	C	P ¹⁵	P ¹⁵	P ¹ ₅	P ¹ ₅	P ¹ ₅	C	P	N	P ¹⁵
Bed and Breakfasts	N	C	C	C	C	C	C	C	C	C	C	C	N	P	C	C	P
Cabin Rentals	N	C	C	N	C	N	N	N	P	P	P	C	N	P	P	C	P
Cemeteries	P	C	C	N	C	N	N	N	N	C	C	C	N	C	C	N	N
Communications Towers and Antenna(s), Radio/TV Transmitters/Cell Sites** ²⁸	C	P	C	N	C	C	C	C	P	P	P	P	P	C	C	C	C
Crematories/Funeral Homes	N	N	C	N	C	N	N	C	C	C	C	C	N	C	C	C	C
Day Care Centers ¹²	N	C	C	C ²⁹	C	C	C	C	P	P	P	C	C	C	C	P	P
Dormitories/Boarding Houses	N	C	C	N	C	C	C	P	P ²¹	S	C	P	P ² ₃	C	C	C	P
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Farming/General Agriculture***	N	P	P	N	N	N	N	N	N	N	N	P	N	P	N	N	N
Fraternal Organizations/ Private Clubs/Social Halls and Union Halls	N	N	C	N	C	C	C	C	P	P	P	C	N	C	P	C	P
Greenhouses/Tree Nurseries ¹³	N	C	C	N	C	C	C	C	P	P	P	C	N	C	C	C	P
Gunsmithing, Taxidermy	N	N	C	C	C	C	C	C	P	P	P	P	N	C	P	P	P
Nursing, Convalescent or Rest Homes	N	N	C	N	C	C	C	C	P	P	C	C	C	C	C	C	P
Parking, Public Lots ¹²	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C

ZONING DISTRICTS																	
LAND USES	ALI	C	RR	RR-1	RS	RS-1	RS-2	RU	CC	CG	IL	IH	ED	R	TSH	LC	CMU
Personal Services ²⁵	N	C	C	N	C	C	C	C	P	P	P	P	C	C	P	P/C ²⁷	P
Recreational Vehicle Parks	N	C	C	N	C	N	N	C	C	C	C	C	N	C	C	N	C
Subsurface Extraction of Natural Resources ¹⁶	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N	N	N
Surface Extraction of Natural Resources ¹⁷	C	C	C	N	C	N	N	C	N	C	C	C	N	C	N	N	N

* See 42 USCA Sec. 2000cc (Religious Land Use and Institutionalized Persons Act of 2000)

** See 42 Telecommunications Act of 1996, Sec. 704(a)

*** See, however, the limitations imposed under KMC 3.10.070

Footnotes:

1 Allowed as a secondary use except on the ground floor of the part of the building fronting on collector streets and major highways. Commercial or industrial which falls under the landscaping/site plans requirements of KMC Chapter 14.25 shall include any secondary uses in the landscaping and site plans.

2 One (1) single-family residence per parcel, which is part of the main building.

3 Allowed as a conditional use, subject to satisfying the following conditions:

a The usable area per dwelling unit shall be the same as that required for dwelling units in the RS Zone;

b The site square footage in area must be approved by the Commission;

c Yards around the site, off-street parking, and other development requirements shall be the same as for principal uses in the RR Zone;

d Water and sewer facilities shall meet the requirements of all applicable health regulations;

e The proposed dwelling group will constitute a residential area of sustained desirability and stability, will be in harmony with the character of the surrounding neighborhood, and will not adversely affect surrounding property values;

f The buildings shall be used only for residential purposes and customary accessory uses, such as garages, storage spaces, and recreational and community activities;

g There shall be provided, as part of the proposed development, adequate recreation areas to serve the needs of the anticipated population;

h The development shall not produce a volume of traffic in excess of the capacity for which the access streets are designed;

i The property adjacent to the proposed dwelling group will not be adversely affected.

4 See "Townhouses" section.

5 See “Mobile Homes” section.

6 Allowed as a conditional use, subject to “Mobile Homes” section; and provided, that any mobile home park meets the minimum Federal Housing Authority requirements.

7 See “Planned Unit Residential Development” section.

8 Allowed as a conditional use; provided, that the proposed location and the characteristics of the site will not destroy the residential character of the neighborhood.

9 Allowed as a conditional use; provided, that all applicable safety and fire regulations are met.

10 Provided that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line.

11 Allowed as a conditional use; provided, that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line; and provided further, that the proposed location and characteristics of the use will not adversely affect the commercial development of the zone.

12 Allowed as a conditional use; provided, that the following conditions are met:

- a** The proposed location of the use and the size and characteristics of the site will maximize its benefit to the public;
- b** Exits and entrances and off-street parking for the use are located to prevent traffic hazards on public streets.

13 Allowed as a conditional use; provided, that setbacks, buffer strips, and other provisions are adequate to assure that the use will not be a nuisance to surrounding properties. The Commission shall specify the conditions necessary to fulfill this requirement. Animal boarding and commercial kennels require a kennel license (see KMC Chapter 3.15).

14 Allowed as a conditional use; provided, that no indication of said use is evident from the exterior of the mortuary.

15 Allowed; provided, that the following conditions are met:

- a** An uncleared buffer strip of at least thirty (30) feet shall be provided between said use and any adjoining property in a residential zone.
- b** Exits and entrances and off-street parking for the use shall be located to prevent traffic hazards on the public streets.

16 See “Conditional Uses” section.

17 See “Conditional Use Permit for Surface Extraction of Natural Resources” section.

18 **Conditional use allowed only on privately held property.** Not allowed on government lands.

19 Reserved.

20 The airport related uses allowed under this entry are aircraft approach and departure zones pursuant to KMC 14.20.070(a), except that for properties contained inside the airport perimeter fence or having access to aircraft movement areas, taxiways or parking aprons, FAA authorized uses are allowed.

21 Developments for use shall be the same as those listed in the Development Requirements Table for the RU/TSH Zones.

22 Allowed as a conditional use in conjunction with a permitted use in the ED Zone. For example, housing for teachers or students for a school in the zone.

23 Allowed as an accessory use in conjunction with a permitted use in the ED Zone. For example, a dormitory used to house students for a school or educational facility.

24 Retail businesses allowed as a secondary use in conjunction with the primary use (e.g., a gift shop or coffee shop within another business).

25 Art studios, barbers, beauticians, tattoo parlors, dressmakers, dry cleaners and self-service laundries, fitness centers, photographic studios, tailors, tanning salons and massage therapists.

26 Food services are allowed on a temporary or seasonal basis of not more than four (4) months per year.

27 Personal services not set forth in the below matrix are conditional uses.

Limited Commercial Zone		
Personal Services	Permitted (P)	Conditional Use (C)
Art Studios	X	
Barbers	X	
Beauticians	X	
Dressmakers	X	
Dry Cleaners		X
Fitness Centers	X	
Massage Therapist		X
Photographic Studios	X	
Self-Service Laundries		X
Tailors	X	
Tanning Salons	X	
Tattoo Parlors		X

28 Communications tower/antenna(s) allowed as a principal permitted (P) use if the applicable conditions set forth in KMC 14.20.255 are met or a conditional use (C) if the applicable conditions set forth in KMC 14.20.150 and 14.20.255 are met.

29 Use allowed only for those parcels that abut the Kenai Spur Highway. The access to any such parcel must be either from: (a) driveway access on the Kenai Spur Highway; or (b) driveway access from a dedicated right-of-way and that driveway access is not more than two hundred seventy-five (275) feet as measured from the constructed centerline of

the Kenai Spur Highway to the center of the driveway access as shown on an as-built drawing/survey of the parcel.

30 See marijuana regulations, KMC 14.20.230—Home Occupations, 14.20.320—Definitions, 14.20.330—Standards for commercial marijuana establishments.

31 See 14.20.175-Adult Businesses, no adult business may be located within one thousand feet (1,000') of another adult business, or sensitive use. "Sensitive Use" means a church or other place of worship, a public or private school (licensed pre-K through 12th grade) or businesses where or areas where youth are likely to be present (limited to public parks, youth recreational centers, public playgrounds, public libraries).

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 * day of **, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: August 21, 2019
Public Hearing: September 4, 2019
Effective: ***, 2019



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Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Council Members Pettey and Knackstedt
DATE: August 29, 2019
SUBJECT: **Ordinance No. 3083 – 2019 (Substitute)**

This Substitute Ordinance adds adult businesses to the Land Use Table. For unknown reasons, adult businesses have never been placed in the Land Use Table similar to other land uses. This amendment will add clarity to the code and make it easier for the public to understand where adult businesses may be located.

Your consideration is appreciated.





Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2019-61

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AWARDING A CONSTRUCTION CONTRACT FOR REHABILITATION OF TRAINING PROPS AT THE ALASKA REGIONAL FIRE TRAINING FACILITY.

WHEREAS, the Public Works Department released an Invitation to Bid on August 1, 2019 with Bids Due on August 29, 2019; the following Bids were received:

Bidder	Bid

and,

WHEREAS, _____ was found to be the lowest responsive and responsible bidder and award to this bidder will be in the best interest of the City; and,

WHEREAS, the recommendation from the City Administration is to award the agreement to _____ for completion of the Alaska Regional Fire Training Center Training Equipment Rehabilitation Project; and,

WHEREAS, sufficient monies are appropriated through passage of Ordinance 3079-2019.

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

Section 1. That the City Manager is authorized to execute a construction contract with _____ for \$_____.


Section 2. That the City Manager is authorized to issue a purchase order to _____ in the amount of \$_____ for the contract amount of \$_____ and \$XXX,XXX of contingency funding, which may be authorized for construction change orders during completion of the project.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 
(Contingent upon passage of Ordinance 3079-2019)



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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: August 28, 2019

SUBJECT: **Resolution No. 2019 – 61 & Resolution No. 2019 - 62**

The Alaska Regional Fire Training Facility located at 450 Daubenspeck is now 20+ years old and is showing signs of wear and tear within the facility as well as on the facilities operational equipment. The City in close coordination with the Federal Aviation Administration (FAA), is working toward bringing the facility back to its original fully operational status.

The City of Kenai released a formal Invitation to Bid on August 1, 2019 for the Rehabilitation of the Alaska Regional Fire Training Center. The renovations have been separated into two different projects. The first rehabilitating items associated with the main building, the second rehabilitating items associated with the fire training props and controls. Each project requires unique specialty contractors, as a result the project was split into two parts being bid individually to provide the most competition.

Bids were opened on August 29, 2019 at 2:00pm with Orion Construction the apparent low bidder at \$1,938,755.00 for the Building Rehabilitation Project and Kirila Fire USA the apparent low bidder at \$1,993,000.00 for the Training Equipment Rehabilitation Project.

Funding for these projects is being provided by a Federal Aviation Administration (FAA) grant at 93.75% of eligible work; with a City contribution at 6.25%. Ordinance No. 3079-2019 appropriates the funds for these projects.

The Public Works Director, Airport Manager and the Administration all agree this work is in the best interest of the City.

Council's approval is respectfully requested.





Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2019-62

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AWARDING A CONSTRUCTION CONTRACT FOR REHABILITATION OF THE ALASKA REGIONAL FIRE TRAINING FACILITY.

WHEREAS, the Public Works Department released an Invitation to Bid on August 1, 2019 with Bids Due on August 29, 2019; the following Bids were received:

Bidder	Bid

and,

WHEREAS, _____ was found to be the lowest responsive and responsible bidder and award to this bidder will be in the best interest of the City; and,

WHEREAS, the recommendation from the City Administration is to award the agreement to _____ for completion of the Alaska Regional Fire Training Center Training Equipment Rehabilitation Project; and,

WHEREAS, sufficient monies are appropriated through passage of Ordinance 3079-2019.

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

Section 1. That the City Manager is authorized to execute a construction contract with _____ for \$_____.


Section 2. That the City Manager is authorized to issue a purchase order to _____ in the amount of \$_____ for the contract amount of \$_____ and \$XXX,XXX of contingency funding, which may be authorized for construction change orders during completion of the project.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 
(Contingent upon passage of Ordinance 3079-2019)



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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: August 28, 2019

SUBJECT: **Resolution No. 2019 – 61 & Resolution No. 2019 - 62**

The Alaska Regional Fire Training Facility located at 450 Daubenspeck is now 20+ years old and is showing signs of wear and tear within the facility as well as on the facilities operational equipment. The City in close coordination with the Federal Aviation Administration (FAA), is working toward bringing the facility back to its original fully operational status.

The City of Kenai released a formal Invitation to Bid on August 1, 2019 for the Rehabilitation of the Alaska Regional Fire Training Center. The renovations have been separated into two different projects. The first rehabilitating items associated with the main building, the second rehabilitating items associated with the fire training props and controls. Each project requires unique specialty contractors, as a result the project was split into two parts being bid individually to provide the most competition.

Bids were opened on August 29, 2019 at 2:00pm with Orion Construction the apparent low bidder at \$1,938,755.00 for the Building Rehabilitation Project and Kirila Fire USA the apparent low bidder at \$1,993,000.00 for the Training Equipment Rehabilitation Project.

Funding for these projects is being provided by a Federal Aviation Administration (FAA) grant at 93.75% of eligible work; with a City contribution at 6.25%. Ordinance No. 3079-2019 appropriates the funds for these projects.

The Public Works Director, Airport Manager and the Administration all agree this work is in the best interest of the City.

Council's approval is respectfully requested.





Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2019-63

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING THE USE OF THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FLEET PROCUREMENT PROGRAM FOR THE PURCHASE OF TWO AIRCRAFT RESCUE AND FIREFIGHTING (ARFF) VEHICLES FOR THE ALASKA REGIONAL TRAINING FACILITY.

WHEREAS, the City of Kenai in coordination with the FAA, intend to move forward with the rehabilitation of the Alaska Regional Fire Training Facility; and,

WHEREAS, the renovations include rehabilitation of the training props (Resolution No. 2019-61), rehabilitation of the training building (Resolution No. 2019-62), as well as the purchase of two new ARFF Vehicles for training purposes within this Resolution; and,

WHEREAS, the purchase of these vehicles will allow for the most realistic and appropriate training opportunities for the long term continued success of facility operations; and,

WHEREAS, purchasing through the Alaska Department of Transportation and Public Facilities Fleet Procurement Program assures competitive bidding has taken place, and fulfills all purchasing procurement requirements of the City; and,

WHEREAS, procurement through this method is acceptable to the Federal Aviation Administration; and,

WHEREAS, the Administration is in support of this method and has determined that this purchase is in the best interest of the City; and,

WHEREAS, \$1,600,000 was appropriated through passage of Ordinance No. 3079-2019.

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

Section 1: That the Administration is authorized to utilize the Alaska Department of Transportation and Public Facilities Fleet Procurement Program for the purchase of two (2) ARFF vehicles for use at the Alaska Fire Training Facility.

Section 2: Because the actual purchase price is unknown at this time, purchase orders for the purchase of the vehicles will appear on a future agenda for approval prior to issuance.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: *J. Luk*



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Mary L. Bondurant, Airport Manager
 Scott Curtin, Public Works Director

DATE: August 28, 2019

SUBJECT: **Resolution 2019-63 – Alaska Fire Training Center ARFF Vehicles**

A component of the rehabilitation project at the Alaska Regional Fire Training Facility was replacement of the two 1998 Aircraft Rescue and Firefighting Vehicles that are used for firefighter training.

These trucks far exceed what the Federal Aviation Administration considers their useful life (15 years), maintenance and repair costs are increasing in frequency and cost, and firefighters are training on ARFF vehicles older than what they operate on their airports.

Airport Administration has been working with the FAA on the replacement in anticipation of FY19 discretionary funds. The replacement cost for the two trucks is approximately \$1,600,000. The FAA obligation is 93.75% and City obligation of 6.25%.

The FAA and the Alaska Department of Transportation have agreed and approved the City utilizing the State's open competitive bid process and tagging those contracts for both the 3,000 and 1,500 gallon trucks. The 3,000 gallon ARFF vehicle State contract in place with Oshkosh is \$ 809,595 (excluding delivery) and the 1,500 gallon ARFF vehicle is bidding in August 2019 (estimate is \$850,000).

Thank you for your consideration.



**KENAI CITY COUNCIL – REGULAR MEETING
AUGUST 21, 2019 – 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 August 21, 2019, 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 (absent)
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.1.	Ordinance No. 3072-2019
	<ul style="list-style-type: none"> • Amendment Memo • Amendment Memo • Forms

MOTION:

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

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 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

1. **Tim Dillon, Executive Director, Kenai Peninsula Economic Development District**
Overview of New Kenai Peninsula Economic Development District website and resources.

Tim Dillon provided a tour and overview of the Kenai Peninsula Economic Development District's updated website noting they highlight statistical information and link to many other resources including cities on the Kenai Peninsula and other agencies.

C. UNSCHEDULED PUBLIC COMMENTS – None.

D. PUBLIC HEARINGS

1. **Ordinance No. 3072-2019** - Renaming, Repealing and Re-Enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Residential, Recreational and Cultural Community through Responsible Land Policies and Practices. (Administration)

MOTION:

Council Member Molloy **MOVED** to enact Ordinance No. 3072-2019 and Council Member Glendening **SECONDED** the motion.

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

It was noted the ordinance was a good work product; suggested a work session to review it all. It was noted development incentives, the discussion of language such as "included but not

limited to,” and “best interest of the City vs. advantageous,” could also be reviewed at the work session.

Clarification was provided Administration put lot of time into the product, and welcomed as many work sessions as necessary to end up with the final product.

MOTION TO POSTPONE:

Council Member Molloy **MOVED** to postpone Ordinance No. 3072-2019 to a meeting no later than the first meeting in October where it will be scheduled for a second public hearing, for there to be a work session scheduled at a date to be determined before the first meeting in October, and direct the City Clerk to communicate with the Council Members for their availability and to set the date of the Work Session and Council Member Knackstedt **SECONDED** the motion.

VOTE ON POSTPONEMENT:

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

MOTION PASSED UNANIMOUSLY.

2. **Ordinance No. 3073-2019** - Accepting and Appropriating a Grant from the State of Alaska for the Purpose of Purchasing Books. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3073-2019 and Council Member Glendening **SECONDED** the motion.

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

The Library Director was thanked for obtaining the grant.

VOTE:

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

MOTION PASSED UNANIMOUSLY.

3. **Ordinance No. 3074-2019** - Increasing Estimated Revenues and Appropriations by \$1,504.82 in the FY2019 General Fund - Police Department for State Traffic Grant Overtime Expenditures. (Administration)

MOTION:

Council Member Molloy **MOVED** to enact Ordinance No. 3074-2019 and Council Member Knackstedt **SECONDED** the motion.

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

VOTE:

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

MOTION PASSED UNANIMOUSLY.

4. **Ordinance No. 3077-2019** - Increasing Estimated Revenues and Appropriations in the Water & Sewer Special Revenue and Water & Sewer Improvements Capital Project Funds for Engineering and Design Services to Relocate Well House #1 which was Damaged by the November 30, 2018 Magnitude 7.0 Southcentral Alaska Earthquake. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3077-2019 and Council Member Glendening **SECONDED** the motion.

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

Clarification was provided that the insurance company was covering the costs that were coverable under the insurance policy and the City was responsible for the rest; it was added that this funding was for design only. Clarification was also provided that the plan was to move the well house from Well #1 to the site of Well #2 where it would be a building supporting the water plant; it was added that Well #1 would be abandoned in the future.

VOTE:

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

MOTION PASSED UNANIMOUSLY.

5. **Ordinance No. 3078-2019** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvement Capital Project Funds to Provide Supplemental Funding for the 2019 Airfield Marking, Crack Sealing, Seal Coating, and Minor Pavement Repair Project. (Administration)
 - a. Motion for Introduction
 - b. Motion for Second Reading (Requires a Unanimous Vote)
 - c. Motion for Adoption (Requires Five Affirmative Votes)

MOTION FOR INTRODUCTION:

Council Member Molloy **MOVED** to introduce Ordinance No. 3078-2019 and Vice Mayor Navarre **SECONDED** the motion.

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

VOTE ON INTRODUCTION:

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

MOTION PASSED UNANIMOUSLY.

MOTION FOR SECOND READING:

Council Member Molloy **MOVED** to hold the second reading on Ordinance No. 3078-2019 due to the emergent circumstances and Vice Mayor Navarre **SECONDED** the motion

VOTE ON SECOND READING:

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

MOTION PASSED UNANIMOUSLY.

MOTION FOR ENACTMENT:

Vice Mayor Navarre **MOVED** to enact Ordinance No. 3078-2019 and Council Member Molloy **SECONDED** the motion

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

Clarification was provided that the additional damage could have been caused by the earthquake or the additional time between the project design and construction and, given the difficulty in determining the cause, it would be difficult to obtain disaster funds.

It was noted that staff acted appropriately to save remobilization funds.

It was pointed out that because of actions of staff, the portion of the change order due to FAA's Certification Inspection, would be eligible for grant funding.

VOTE ON ENACTMENT:

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

MOTION PASSED UNANIMOUSLY.

6. **Resolution No. 2019-56** - Stating its Conditional Protest Regarding the Issuance of a New Distillery Liquor License No. 5826, for High Mark Distillery, Inc., DBA High Mark Distillery, Inc., Located at 2270 Royal Street, Warehouse #1, Kenai AK, 99611

and Authorizing the City Clerk to Notify the Alaska Alcohol and Marijuana Control Office if Conditions are Met. (City Clerk)

MOTION:

Council Member Glendening **MOVED** to adopt Resolution No. 2019-56 and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

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

Clarification was provided the conditional protest provided the applicant time to obtain the necessary permits and, once obtained, the City Clerk would lift the protest.

There was concern there would be additional delays caused by a need to be revisited by the Alcohol Control Board. It was suggested there were alternative methods available to the City to require the permits prior to opening.

Clarification was provided that often, authority was delegated to the Director of the Alcohol and Marijuana Control Office, to issue the licenses once all approvals were received and there was not likely to be an additional delay.

It was pointed out there was protection of life safety with an approved Building Permit.

VOTE:

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

MOTION PASSED.

7. **Resolution No. 2019-57** - Application for Lease of City-owned Land within the Airport Reserve from SOAR International Ministries, Inc. for the Undeveloped Portion of Tract A, General Aviation Subdivision No. 2. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-57 and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

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

Clarification was provided that required obligations were not completed subsequent to the first lease application and the timeframe wasn't extended in that process; there were assurances that obligations would be completed with this second process to prevent the property from being held up.

It was suggested the development would be a positive addition to the airport.

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

8. **Resolution No. 2019-58** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes to Application Fees for Lands Outside the Airport Reserve. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-58 and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

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

MOTION TO POSTPONE:

Council Member Molloy **MOVED** to postpone Resolution No. 2019-58 to appear on the same agenda as Ordinance No. 3072-2019. Council Member Knackstedt **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

9. **Resolution No. 2019-59** - Approving an Amendment Extending the Agreement for Services to Provide On-Site Facility Management for Vintage Pointe Manor Congregate Housing. (Administration)

MOTION:

Vice Mayor Navarre **MOVED** to adopt Resolution No. 2019-59 and requested **UNANIMOUS CONSENT**. Council Member Glendening **SECONDED** the motion.

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

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

E. MINUTES

1. *Regular Meeting of August 7, 2019

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** – Purchase Orders Over \$15,000. (Administration)

Approved by the consent agenda.

3. ***Action/Approval** - Non-Objection to the Renewal of Limited Marijuana Cultivation Facility Licenses for Peninsula Botanicals, LLC and Herban Extracts, LLC. (City Clerk)

Approved by the consent agenda.

4. ***Action/Approval** - Non-Objection to the renewal of a Retail Marijuana Store Licenses for Kenai River Cannabis Company and Majestic Gardens. (City Clerk)

Approved by the consent agenda.

5. ***Ordinance No. 3079-2019** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds and Accepting a Grant from the Federal Aviation Administration for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles, Rehabilitation of the Fire Training Props, and Rehabilitation of the Training Facility for the Alaska Regional Fire Training Facility. (Administration)

Introduced by the consent agenda and public hearing set for September 4.

6. ***Ordinance No. 3080-2019** - Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund, and Authorizing an Increase to the Construction Purchase Order to Blazy Construction, Inc. (Administration)

Introduced by the consent agenda and public hearing set for September 4.

7. ***Ordinance No. 3081-2019** - Increasing Estimated Revenues and Appropriations in the Airport Improvements Capital Project Fund, and Authorizing an Increase to the Construction Purchase Order to Polar North Construction, Inc. (Administration)

Introduced by the consent agenda and public hearing set for September 4.

8. ***Ordinance No. 3082-2019** - Amending Kenai Municipal Code Chapter 5.35, Oil and Gas Wells, to Provide that Applications and Supplemental Applications be Filed with the City Manager. (City Clerk)

Introduced by the consent agenda and public hearing set for September 4.

9. **Ordinance No. 3083-2019** - Amending Kenai Municipal Code 14.20.175 - Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1000 Feet And Define Sensitive Uses. (Council Member Pettey)

MOTION:

Council Member Pettey **MOVED** to introduce, refer to Planning and Zoning for their August 28 meeting for a recommendation, and set a public hearing before City Council for September 4. Council Member Glendening **SECONDED** the motion.

Opposition to introduction was expressed. There were differing opinions with the Planning & Zoning Commission reviewing the legislation prior to Council making potential amendments.

Council Member Knackstedt requested to divide the question, voting on introduction first and referring to the Planning and Zoning Commission for their August 28 meeting for a recommendation and setting a public hearing for September 4 second.

VOTE ON INTRODUCTION:

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

MOTION PASSED.

MOTION TO AMEND:

Council Member Pettey **MOVED** to amend by removing the referral to the Planning and Zoning Commission for their August 28 meeting for a recommendation requirement and Council Member Glendening **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

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

MOTION TO AMEND:

Vice Mayor Navarre **MOVED** to amend by changing September 4 to September 18.

The motion died for lack of a second.

VOTE ON REFERRAL AND SETTING A PUBLIC HEARING AS AMENDED:

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

MOTION PASSED UNANIMOUSLY.

10. **Discussion** - Public Notice of City Council Meetings. (City Clerk)

The City Clerk provided an overview of the memo provided in the packet noting other communities only publish public hearings in the newspaper and, if the City were to also only publish public hearings, an annual savings of approximately forty-percent could be seen.

Cost savings and not limiting to only public hearings were topics discussed.

Council Members volunteered to work with the City Clerk to develop an option for noticing requirements.

H. COMMISSION/COMMITTEE REPORTS

1. Council on Aging – No report; next meeting September 12.

2. Airport Commission – It was reported the Commission heard updates on the Terminal Rehabilitation Project and the Crack Sealing Project, and recommended approval of Ordinance No. 3072-2019. It was also reported the airport staff was preparing for a mass casualty drill; next meeting September 12.
3. Harbor Commission – It was reported the Commission discussed the land sale and leasing policies and procedures, amendments of the harbor section of Kenai Municipal Code, dredging at the dock, and Dipnet fishery operations; next meeting September 16.
4. Parks and Recreation Commission – It was noted the Commission, along with the Beautification Committee, were attending an upcoming tour of the parks and gardens; next meeting September 5.
5. Planning and Zoning Commission – It was reported that at their August 14 meeting the Commission approved a preliminary plat, a Conditional Use Permit to operate a marijuana retail store, recommended a change to Kenai Municipal Code regarding hours of operation for marijuana retail stores, recommended adoption of Ordinance No. 3072-2019, and recommended approval of the SOAR lease application; next meeting August 28.
6. Beautification Committee – It was noted the Committee would be attending an upcoming tour of the parks and gardens with the Parks & Recreation Commission; next meeting September 10.
7. Mini-Grant Steering Committee – No report.

I. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Attended the summer Alaska Municipal League meetings;
- Noted the upcoming Industry Appreciation Day.

J. ADMINISTRATION REPORTS

1. City Manager –City Manager P. Ostrander reported on the following:
 - Attended Alaska Municipal League and Alaska Municipal Manager's Association meetings;
 - Met with Kenai Watershed Forum;
 - Presented the Election Stakeholder Group report to the Borough Assembly and noted a resolution of support was coming forth;
 - Expecting to conduct an online auction in the near future;
 - Provided an update on the Sales Tax Working Group within the Alaska Municipal League;
 - Provided an update on the Airport Terminal Rehabilitation Project;
 - Noted Senator Murkowski was attempting to appropriate funding for the Bluff Erosion Project in an upcoming energy bill.
2. City Attorney – No Report.

3. City Clerk – City Clerk J. Heinz noted candidates that had been certified for election and provided a reminder of upcoming election dates; also noted when the Deputy Clerk was expected to return to work.

K. ADDITIONAL PUBLIC COMMENT

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

None.

2. Council Comments

Council Member Pettey noted she attended the Alaska Municipal League meetings and found them to be enriching; also noted the \$4,000 donation to Kenai Boys & Girls Club of the Kenai Peninsula and thanked Arby's for matching and increasing the donation. She added that she was looking forward to running for Council.

Council Member Glendening noted he attended the Alaska Municipal League meetings and found them useful; noted he was attending Industry Appreciation Day; encouraged folks to exercise their civic duty; noted the AK LNG Advisory Committee was meeting at the end of the month and deciding whether or not to sunset.

Council Member Molloy thanked the Mayor, Councilor Glendening and Councilor Pettey for running for office, suggesting that there being no competition meant the public was not dissatisfied with the work of the body and administration.

Council Member Knackstedt wished the candidates for election, good luck; agreed the public was satisfied with the body and how it was functioning; attended Alaska Municipal League and found it educational; discussed the community PFD proposal; noted he was attending Industry Appreciation Day; noted the Kenai Fire Department was providing excellent updates regarding the Swan Lake Fire.

L. EXECUTIVE SESSION – None.

M. PENDING ITEMS – None.

N. ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 8:57 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of August 21, 2019.

Jamie Heinz, CMC
City Clerk



Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2019-58

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING ITS COMPREHENSIVE SCHEDULE OF RATES, CHARGES, AND FEES TO INCORPORATE CHANGES TO APPLICATION FEES FOR LANDS OUTSIDE THE AIRPORT RESERVE.

WHEREAS, in 2017, City Administration formed a working group to address the City's land leasing program and make recommendations that would encourage growth, development, and a thriving business community through reasonable and responsible land policies and practices; and,

WHEREAS, Ordinance No. 2998-2018 repealed, renamed and re-acted Kenai Municipal Code (KMC) Chapter 21.10-Leasing of Airport Reserve Lands to encourage growth, development, and a thriving aviation community through responsible land policies and practices; and,

WHEREAS, Resolution 2018-09 amended the comprehensive schedule of rates, charges, and fees to incorporate changes to land lease application and renewal application fees for Airport Reserve Land; and,

WHEREAS, in 2018, the working group focused its efforts on City-owned lands outside of the Airport Reserve and expanded its scope to recommend land lease and sale policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community; and,

WHEREAS, Ordinance No. 3072-2019 renamed, repealed and reenacted KMC Title 22-General Fund Lands, Renamed Title 21-City Airport and Airport Lands, and repealed KMC 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve as part of a City-wide approach to land management; and,

WHEREAS, amendments to the City's Comprehensive Schedule of Rates, Charges and Fees are needed to reflect the recommendations of the City Administration and comply with Ordinance No. 3072-2019.

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

Section 1. The Land Management section of the City's Comprehensive Schedule of Rates, Charges and Fees be amended as follows:

Land Management Fees

[LAND LEASE FEES]

<u>21.10.040 (a) and 21.05.025 (a)</u>	[AIRPORT RESERVE]Land Lease Application Fee	\$100.00
[21.10.050 (a)(1) & 21.10.080] <u>21.10.070 (a) and 22.05.045 (a)</u>	[AIRPORT RESERVE LAND]Land Lease Amendment Application Fee	\$100.00
<u>21.10.070(a) and 22.05.045 (a)</u>	Land Lease Extension[OR RENEWAL] Application Fee	\$100.00
<u>21.10.070(a) and 22.05.045 (a)</u>	Land Lease Renewal Application Fee	\$100.00
[21.10.070 (a)	REQUEST FOR LEASE AMENDMENT FEE	\$100.00]
	[REQUEST FOR]Consent to Sublease Application Fee	\$50.00
<u>22.05.045 (a)</u>	[REQUEST FOR]Land Lease Assignment Application Fee	\$100.00
[22.05.030 (a)(1)	GENERAL FUND LAND LEASE APPLICATION FEE	\$100.00]
<u>22.05.100 (a)</u>	Competitive Land Purchase Application Fee	\$100.00
<u>22.05.100 (a)</u>	Non-Competitive Land Lease or Purchase Fee	\$100.00
	Special Use Permit Application Fee	\$100.00

Section 2. That this resolution takes effect immediately upon adoption.

ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21st day of August, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Paul Ostrander, City Manager
DATE: August 8, 2019
SUBJECT: **Resolution No. 2019-58**

Resolution 2019-58 amends the City's fee schedule in conjunction with the amendments to Title 21 and Title 22 for the leasing and sale of City-owned lands included in Ordinance No. 3072-2019. The proposed fee amounts are competitive with other markets and are similar to fees included in Kenai Municipal Code for the leasing of Airport Reserve properties.

Your consideration is appreciated.



**PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION
COUNCIL MEETING OF: SEPTEMBER 4, 2019**

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
PERS	PERS	VARIOUS	LIABILITY	90,928.13
INTEGRITY JANITORIAL	JULY SERVICE AT CITY HALL	NON-DEPARTMENTAL	REPAIR & MAINTENANCE	1,389.00
PRECIOUS JANITORIAL	JULY SERVICE AT LIBRARY	LIBRARY	REPAIR & MAINTENANCE	2,795.00
PRECIOUS JANITORIAL	JULY SERVICE AT TERMINAL	AIRPORT	REPAIR & MAINTENANCE	4,495.00
PRECIOUS JANITORIAL	JULY SERVICE AT POLICE	POLICE	REPAIR & MAINTENANCE	978.00
PRECIOUS JANITORIAL	JULY SERVICE AT VISITOR CENTER	VISITOR CENTER	REPAIR & MAINTENANCE	928.00

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
---------------	--------------------	----------------------	---------------	---------------------

PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL
 COUNCIL MEETING OF: SEPTEMBER 4, 2019

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
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INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
MORRISON-MAIERLE, INC.	PROFESSIONAL SERVICES FOR AK. REGIONAL TRAINING FACILITY	118152 - A/P IMPS.	AMENDMENT	353,000.00	569,000.00



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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: August 29, 2019
SUBJECT: Purchase Orders over \$15K

The purpose of this memo is to request approval to increase the existing PO118152 to Morrison-Maierle, Inc. as Design Engineer for the Alaska Regional Fire Training Facility Equipment Rehabilitation and Building Rehabilitation Projects. The Purchase Order was originally opened for \$216,000.00 to cover the Design Phase Services. With the pending approval of Ordinance 3079-2019 to accept a grant from the Federal Aviation Administration (FAA) for the completion of the projects, A/E Construction Admin Services through Project Closeout will now be necessary.

These costs were anticipated and are included in the Grant from the FAA. These services will require an additional \$353,000.00 added to the PO for a total cost of \$569,000.00. Services are anticipated to extend through August 31, 2020 for final closeout.

The Alaska Regional Fire Training Center Projects have proceeded well through the Design Phase. Bids were opened on August 29, 2019 and are within projections previously reviewed with the FAA. Approval of this PO increase is the next necessary step and is in the best interest of the City.

Council's approval is respectfully requested.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3084-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL FUND FOR REIMBURSEMENT RECEIVED FOR SUPPORT OF THE SWAN LAKE FIRE SUPPRESSION EFFORTS.

WHEREAS, Kenai Fire Department personnel have worked in support of the Swan Lake Fire suppression efforts; and,

WHEREAS, an agreement between the City and the State of Alaska Department of Natural Resources, Division of Forestry entitles the City to reimbursement of personnel and equipment costs associated with this support; and,

WHEREAS, Kenai Fire Department received reimbursement from the State of Alaska Department of Natural Resources, Division of Forestry for personnel and equipment costs associated with this support in the amount of \$56,808; and,

WHEREAS, the FY20 overtime worked by department staff was not budgeted and the budget is not able to support these expenditures in the amount of \$16,400 without appropriation of the proceeds; and,

WHEREAS, because of personnel vacancies the department expects higher than budgeted overtime in FY20 from normal operations and is requesting to appropriate the FY19 overtime reimbursement amount of \$11,733 for additional FY20 overtime.

WHEREAS, the remaining \$28,675 in equipment reimbursement is not being appropriated at this time.

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

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

General Fund:

Increase Estimated Revenues:
Miscellaneous Revenue

\$28,133

Increase Appropriations –	
Fire – Overtime	\$20,737
Fire – PERS	6,189
Fire – Workers Compensation	658
Fire – Medicare	408
Fire – Unemployment	<u>141</u>
	<u>\$28,133</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 immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 18th day of September, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: September 4, 2019
Enacted: September 18, 2019
Effective: September 18, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Jeff Tucker, Fire Chief
DATE: August 27, 2019
SUBJECT: **Ordinance No. 3084-2019**

The purpose of this memo is to recommend adoption of Ordinance No. 3084-2019 that will allow appropriation of reimbursement funds received by the fire department for support of the Swan Lake Fire Suppression efforts.

The fire department provided a type 6 engine and 2 personnel to the suppression efforts. The fire department received funds in the amount of \$28,133 for personnel overtime and \$28,675 for equipment. \$28,133 is requested to be appropriated to the fire department overtime budget for FY20 and the remaining \$28,675 for equipment reimbursement will remain unappropriated.

I respectfully request consideration of the ordinance.





**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ2019 - 29**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI AMEND KENAI MUNICIPAL CODE, 14.20.330 - STANDARDS FOR COMMERCIAL MARIJUANA ESTABLISHMENTS, TO INCORPORATE HOURS OF OPERATION FOR RETAIL MARIJUANA ESTABLISHMENTS INTO THE CITY OF KENAI'S CODE OF ORDINANCES.

WHEREAS, Kenai Municipal Code 14.05.010 states the City of Kenai Planning and Zoning Commission will act in an advisory capacity to the Kenai City Council regarding the Kenai Zoning Code; and,

WHEREAS, on November 4, 2014, the Alaskan voters passed Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana and Marijuana Local Option Laws are found in Title 17.38 of Alaska Statutes and Title 3 of the Alaska Administrative Code; and,

WHEREAS, on January 20, 2016 the City of Kenai enacted regulations governing commercial marijuana establishments in the City; and,

WHEREAS, the hours of operation limitations on retail marijuana stores would not unreasonably limit the potential commercial activity of retail marijuana store businesses within the City of Kenai and are not any more restrictive than those of adjacent jurisdictions; and,

WHEREAS, setting a standard limitation on hours of operation for all retail marijuana stores in the City will ensure the businesses are compatible with surrounding uses; and,

WHEREAS, setting the hours of closure between 2:00 a.m. and 8:00 a.m. is consistent with Kenai Peninsula Borough Ordinances; and,

WHEREAS, the City of Kenai Planning and Zoning Commission conducted a duly advertised public hearing regarding Resolution PZ2019-29 on August 14, 2019.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the Kenai City Council amend Kenai Municipal Code 14.20.330 – Standards for Commercial Marijuana Establishments, to incorporate hours of operation for retail marijuana stores through a public hearing process as follows:

14.20.330 Standards for commercial marijuana establishments.

The purpose of this section is to establish general standards for commercial marijuana establishments.

- (a) Commercial marijuana establishments may be permitted or allowed with a conditional use permit under KMC 14.20.150, as provided in the City of Kenai's land use table, KMC 14.22.010, and the provisions of this section.
- (b) Applicants applying for a conditional use permit must include an area map drawn to scale indicating all land uses on other properties within a five hundred (500) foot proximity of the lot upon which the applicant is seeking a conditional use permit. This shall be in addition to the conditional use permit submission requirements in KMC 14.20.150.
- (c) A public hearing shall be scheduled before the Planning and Zoning Commission to review the conditional use permit application once it has been deemed complete. The public hearing shall be scheduled in accordance with the requirements in KMC 14.20.280, except that notification shall be mailed to all real property owners on record on the Borough Assessor's records within a five hundred (500) foot periphery of the parcel affected by the proposed action.
- (d) The preparation, packaging, manufacturing, processing, and storing of all marijuana, marijuana concentrate or marijuana products must be conducted within a fully enclosed, secure indoor facility. The growing and cultivating of marijuana must be conducted within a fully enclosed, secure indoor facility or greenhouse with view-obscuring rigid walls, a roof and doors, unless a nonrigid greenhouse, or other structure, is specifically approved, in which case the cultivation must be enclosed by a sight-obscuring wall or fence at least six (6) feet high.
- (e) All commercial marijuana establishments shall not emit an odor that is detectable by the public from outside the commercial marijuana establishment.
- (f) No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:
- (1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and
 - (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.

(g) As provided in the Land Use Table, a person or licensee may apply for a conditional use permit to allow for a marijuana cultivation facility, standard, on lots of forty thousand (40,000) square feet or greater in size, and a marijuana cultivation facility, limited, on any size lot.

(h) A marijuana cultivation facility, standard, or a marijuana cultivation facility, limited, shall only be allowed on a lot which has an existing structure consistent with a principal permitted use.

(i) A marijuana cultivation facility located in an accessory building shall be subject to the setback provisions in KMC 14.24.020, Development Requirements Table. A person or licensee seeking relief from the provisions in the Development Requirements Table may apply for a variance subject to the provisions of KMC 14.20.180.

(j) No retail marijuana store may conduct business on, or allow any customer or consumer to access, the licensed premises between the hours of 2:00 a.m. and 8:00 a.m. each day.

Section 2. That a copy of Resolution PZ2019-29 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA,
this 14th day of August, 2019.

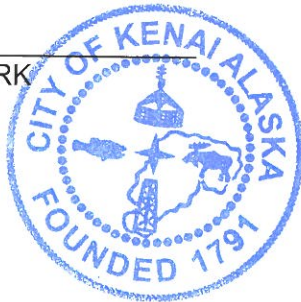


JEFF WAIT, CHAIRPERSON

ATTEST:



JAMIE HEINZ, CMC, CITY CLERK





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STAFF REPORT

To: Planning & Zoning Commission

From: Elizabeth Appleby, City Planner

Date: August 1, 2019

Subject: Resolution PZ2019-29 - Recommending the Council of the City of Kenai Amend Kenai Municipal Code 14.20.330 - Standards for Commercial Marijuana Establishments, to Incorporate Hours of Operation for Retail Marijuana Establishments into the City of Kenai's Code of Ordinances.

GENERAL INFORMATION

The City of Kenai Planning and Zoning Commission acts in an advisory capacity to the Kenai City Council on the City of Kenai Zoning Code as specified in *KMC 14.05.010 Duties and powers* under *Title 14 Planning and Zoning Commission*. As requested by the Planning and Zoning Commission, City Staff is providing background information and a recommendation with Resolution PZ2019-## for a change to Kenai Municipal Code that would restrict the operating hours of retail marijuana stores within the City of Kenai.

Alaska State Statutes prohibit consumers to access a retail marijuana store's premises or for business to be conducted between the hours of 5:00 a.m. and 8:00 a.m. each day. Those hours are the current limitation in the City of Kenai on hours of operation for retail marijuana stores. None of the conditional use permits within the City for retail marijuana stores have a condition for a specific hours of operation limitation as part of a conditional use permit.

Local governments may enact more stringent regulations on hours of operation than those set by the State of Alaska. City staff recommends prohibiting retail marijuana store sales between the hours of 2:00 a.m. and 8:00 a.m. within the City of Kenai.

Public Notice, Public Comment

Pursuant to *KMC 14.20.280, Public hearing and notifications*, City staff published notice of the Planning and Zoning Commission public hearing in the *Peninsula Clarion* and posted notice in three public places. No public comments have been submitted to the City of Kenai as of August 1, 2019.

ANALYSIS

The following is a selection of retail marijuana store hour limitations for other jurisdictions in Alaska to provide comparative information:

- Kenai Peninsula Borough – may not operate between 2:00 a.m. and 8:00 a.m. daily
- City of Soldotna – may not operate between 12:00 a.m. and 8:00 a.m. daily
- City of Seward – may not operate between 2:00 a.m. and 10:00 a.m. daily
- Municipality of Anchorage – may not operate between 12:00 a.m. and 8:00 a.m. daily

There are currently four permitted retail marijuana stores in the City of Kenai and one pending conditional use permit application that would allow for a fifth retail marijuana store within the City of Kenai. All owners of these stores were contacted by the City Planner to obtain informal feedback on potential hours of operation restrictions via a phone conversation. All retail marijuana store owners voiced support for required retail marijuana store closures between 2:00 a.m. and 8:00 a.m. Most owners said they would also not object to a 1:00 a.m. closure and one store owner would support a midnight closure time. Two owners requested to open earlier than 8:00 a.m., particularly to serve customers fishing early in the morning in summer. State laws, however, prohibit an opening time before 8:00 a.m.

RECOMMENDATIONS

City staff recommends the Planning and Zoning Commission advise the Kenai City Council to amend Kenai Municipal Code to prohibit retail marijuana stores from operating between 2:00 a.m. and 8:00 a.m. daily through Resolution PZ2019-29. This would not be any more restrictive than neighboring jurisdictions and would not limit the potential commercial activity of retail marijuana store businesses within the City of Kenai. This change to City Code may provide public safety benefits, particularly to discourage late night driving to or from retail marijuana stores within the City.

ATTACHMENTS

- A. Resolution No. PZ2019-29

8/14/19

Elizabeth - and Planning Commission
in registering an objection to a 2 AM closure
for pet stores in Kenai - I have a couple of
reasons.

#1 is that if pet stores close in Soldotna
at midnight, will that increase traffic between
Kenai & Soldotna so folks who suddenly "need"
pet will make the drive? That may be a
public safety issue. I think midnight is
plenty late enough for people to be out and
about looking for pet.

#2 The newest shop in Kenai already keeps
erratic closing hours - between 11^{PM} and 4 AM
at his whim - no guarantee anyone will police
him to keep any restrictive hours no matter what is
set.

#3 I've lived in my home 23 years with
quiet enjoyment despite the assorted businesses
that have moved in and out of that premises -
now headlights flash through my house at all
hours of the night. At least a midnight closing
will be less disruptive - if he even complies.

Thank you for your time.

Marilyn Wheeler
Box 3, Kenai

mew2@oci.net

TEXT 907-252-1880

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING – AUGUST 14, 2019 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
CHAIR JEFF TWAIT, PRESIDING**

EXCERPT OF APPROVED MINUTES

A. CALL TO ORDER

Commission Chair Twait called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

Commission Chair Twait led those assembled in the Pledge of the Allegiance.

2. Roll Call

Commissioners present: Chair J. Twait, Vice-Chair D. Fikes, R. Springer, J. Halstead

Commissioners absent: V. Askin, T. McIntyre, G. Greenberg

Staff/Council Liaison present: City Planner E. Appleby, Planning Assistant W. Anderson, City Clerk J. Heinz, City Attorney S. Bloom, Council Liaison B. Molloy

A quorum was present.

3. Agenda Approval

The following revisions to the packet were noted:

Add to item F.1. Resolution No. PZ2019-27

- Public Comment

Add to item F.2. Resolution No. PZ2019-29

- Public Comment

MOTION:

Commissioner Halstead **MOVED** to approve the agenda with the additions to the packet and Commissioner Springer **SECONDED** the motion. There were no objections; **SO ORDERED.**

F. PUBLIC HEARINGS

1. **Resolution PZ2019-29** - Recommending the Council of the City of Kenai Amend Kenai Municipal Code 14.20.330 - Standards for Commercial Marijuana Establishments, to Incorporate Hours of Operation for Retail Marijuana Establishments into the City of Kenai's Code of Ordinances.

MOTION:

Commissioner Halstead **MOVED** to approve Resolution No. PZ2019-29 and Commissioner Springer **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the recommendation would go to City Council to amend the Municipal Code to provide local closure requirement be from 2:00 a.m. to 8:00 a.m., consistent with other areas in the Kenai Peninsula Borough; also noted the State of Alaska’s regulations were from 5:00 a.m. to 8:00 a.m.

Chair Twait opened the floor for public testimony.

Ron Isaacs spoke against the resolution noting alcohol establishments could be open later; suggested alcohol and other drugs were more dangerous than marijuana. Mr. Isaacs also suggested that if a retail marijuana store wanted to stay open until 5:00 a.m. during times of high volume, such as during the Dipnet Fishery, they should be able to.

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

It was noted the desire was to match the Kenai Peninsula Borough regulations so there was no undue advantage.

The suggestion was made that it may be an issue for Kenai to be open later than Soldotna in terms of a customer driving to get product. Cost effectiveness of being open versus being closed during slow times was also discussed.

VOTE:

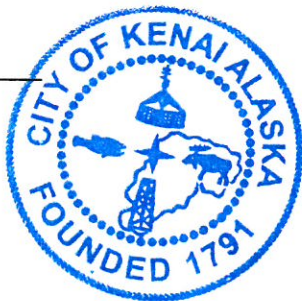
YEA: Springer, Fikes, Twait, Halstead
NAY:

MOTION PASSED UNANIMOUSLY.

I certify the above represents accurate excerpt of approved minutes of the Kenai Planning & Zoning Commission meeting of August 14, 2019.

Jamie Heinz

Jamie Heinz, CMC
City Clerk





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Jamie Heinz, CMC, City Clerk
DATE: August 29, 2019
SUBJECT: **Appeal of Planning and Zoning Commission Action**

Applications appealing the Planning and Zoning Commission's decision to approve a Conditional Use Permit to applicant, ACG, LLC, to operate an approximately 250 square-foot Retail Marijuana Store within an existing commercial building, located at 12516 Kenai Spur Highway, Lot 2, C Plaza Subdivision have been received.

KMC 14.20.290(f)(1), "Appeals - Board of Adjustment" provides,

(1) The Board of Adjustment shall ordinarily set a date for and hold a hearing on all appeals within forty-five (45) days of the filing of the appeal. However, should the forty-fifth day fall on a weekend or a municipal holiday, the hearing may be scheduled for the next following weekday which is not a municipal holiday under KMC 23.40.020(a)(1)-(10) and (b). For good cause, the Board of Adjustment may hold the hearing up to sixty (60) days after the filing of the appeal. Notice of the time and place of such hearing shall be mailed to all parties interested and to all property owners within 300 feet of the property involved at least fifteen (15) days prior to the hearing. Notices to the appellant and/or applicant for the action or determination must be sent by certified mail, return receipt requested.

The following information is provided to help in setting a Board of Adjustment hearing date:

FORTY-FIVE DAY END DATE	Thursday, October 10, 2019
COUNCIL MEETING DATES (within 45-day requirement)	Wednesday, September 18, 2019 Wednesday, October 2, 2019
SIXTY-DAY END DATE	Friday, October 25, 2019
COUNCIL MEETING DATE(S) (within 60-day requirement)	Wednesday, September 18, 2019 Wednesday, October 2, 2019 Wednesday, October 16, 2019



Pursuant to KMC 14.20.290 referenced above, the City is required to provide notice of the hearing at least fifteen (15) days prior to the hearing. As such, to comply with the notice requirements, the hearing must be scheduled no sooner than Friday, September 20, 2019.

KMC 14.20.290 allows for an extension, "For good cause, the Board of Adjustment may hold the hearing up to sixty (60) days after the filing of the appeal."



**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
AUGUST 28, 2019 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVENUE, KENAI, ALASKA
CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

Commission Chair Twait called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

Commission Chair Twait led those assembled in the Pledge of the Allegiance.

2. Roll Call

Commissioners present: Chair J. Twait, Vice-Chair D. Fikes, R. Springer, J. Halstead, V. Askin, T. McIntyre, G. Greenberg

Commissioners absent: None.

Staff/Council Liaison present: City Planner E. Appleby, Planning Assistant W. Anderson, City Clerk J. Heinz, City Attorney S. Bloom, Council Liaison B. Molloy

A quorum was present.

3. Agenda Approval

The following revisions to the agenda were noted:

Move item F.1. to Resolution No. PZ2019-33
H.1. as a discussion item.

MOTION:

Commissioner Askin **MOVED** to approve the agenda and Commissioner Fikes **SECONDED** the motion.

MOTION TO AMEND:

Commissioner Fikes **MOVED** to amend the agenda by moving item F.1. to New Business as a discussion item and Commissioner Askin **SECONDED** the motion.

There were no objections on the amendment; **SO ORDERED.**

There were no objections on the motion as amended; **SO ORDERED.**

4. Consent Agenda

MOTION:

Commissioner Askin **MOVED** to approve the consent agenda and Commissioner Fikes **SECONDED** the motion. There were no objections; **SO ORDERED.**

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission 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.

5. *Excused absences – None.

B. APPROVAL OF MINUTES

1. *August 14, 2019

The minutes were approved by the Consent Agenda.

C. SCHEDULED PUBLIC COMMENT – None.

D. UNSCHEDULED PUBLIC COMMENT – None.

E. CONSIDERATION OF PLATS – None.

F. PUBLIC HEARINGS

1. **Resolution PZ2019-33** - Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.175 – Adult Businesses, to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses.

[Clerk's Note: This item was moved to item H.1. during agenda approval.]

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

[Clerk's Note: This item was moved to item H.1. during agenda approval.]

1. **Discussion** - Resolution PZ2019-33 - Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.175 – Adult Businesses, to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses.

City Attorney Bloom noted an ordinance had been introduced to change the zoning of adult businesses adding that naked dancing was protected under federal and state constitutions as a

form of expression. He provided an overview of an Alaska Superior Court ruling and the guidance it provided in narrowly tailoring regulations to combat harmful secondary effects of adult oriented businesses which was a compelling government interest and providing an evidence-based analysis demonstrating restriction was combatting harmful secondary effects. He reviewed case law which provided that buffers could not be crafted in a way that less than five percent of property in the City would be available for the use of adult oriented businesses noting that the proposed ordinance increased the buffer from 500 to 1,000-feet which would leave approximately six percent available. He added that, as currently written, the Code provided for adult establishments as an allowed use without a Conditional Use Permit and that would remain the case in the proposed ordinance, which expanded the buffer and provided more defined sensitive uses such as libraries, schools, etc. Mr. Bloom provided examples of evidence based decisions from other cities and a legal review which showed the difficulty in achieving the five percent requirement and why that requirement should not be applied to rural communities such as ours. He noted a report from Mt. Vernon, which discussed the evidence they found, and the process used to obtain the evidence. The final report Mr. Bloom provided showed evidence from New York where the harmful secondary effects can have impacts up to 1,000-feet and more likely even 1,500-feet from adult businesses.

Mr. Bloom noted that, when looking at adult oriented businesses in the Kenai Municipal Code, the regulations were detailed, out of date, and a lot potentially need to be changed but Council Member Pettey wanted to propose initial action now and may want to propose additional action later. He added that there was case law where a distinction was made between a business periodically featuring adult oriented material such as an occasional show, and a business which was in the business of featuring adult oriented material.

Clarification was provided that a recommendation from the Planning & Zoning Commission was legally required in the amendment of the zoning law.

Clarification was also provided on certain constitutional protections and how the percentage of available land was calculated.

I. PENDING ITEMS – None.

J. REPORTS

1. **City Council** – Council Member Molloy noted the decisions on Ordinance No. 3083-2019 relating to the adult oriented businesses discussed and the potential for its referral to the Planning and Zoning Commission, reviewed the action agenda from the August 21 City Council meeting, and noted the recommendation for hours of operation for Marijuana Retail Stores would be a discussion item at Council's meeting September 4.
2. **Borough Planning** – Vice-Chair Fikes reported action from the August 26 Borough Planning Commission and Platting Committee meetings.
3. **Administration** – City Planner Appleby reported on the following:
 - Noted the department had received two inquiries on the adult business ordinance and if it was related to marijuana;
 - Noted the supplemental information for the ordinance related to adult businesses was also available online;
 - Noted an increase in complaints on gravel pits and most were resolved;

- Work was ongoing on material for a sign code ordinance and would schedule another work session; and
- Work on the Lands Management Plan was also ongoing.

K. ADDITIONAL PUBLIC COMMENT – None.

L. INFORMATIONAL ITEMS – None.

M. NEXT MEETING ATTENDANCE NOTIFICATION – September 11, 2019

Commission Chair Twait and Commissioner Springer noted they would be absent from the September 11 meeting.

N. COMMISSION COMMENTS & QUESTIONS

Vice Chair Fikes thanked Council and administration for the iPads.

O. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 7:49 p.m.

Minutes prepared and submitted by:

Jamie Heinz, CMC
City Clerk



Kenai Chamber of Commerce and Visitor Center

Kenai Visitor and Cultural Center Report

July 2019

KVCC Walk in Visitor Count

Month	2015	2016	2017	2018	2019
July	9,662	10,661	8,523	7,377	8,727*

*Of the 8,727 KVCC walk-ins, we estimate 180 attendees for facility rentals. The remaining 8,547 would be July 4th, Saturday Market, and visitor traffic.

Official Kenai Guide Mailings

Month	2015	2016	2017	2018	2019
July	250	1,765	576	1,100	654

Official Kenai Guide Display Racks

Location	2016	2017	2018	2019
Airport Hotel – Kenai	-	-	-	-
Aspen – Kenai	-	-	-	-
Aspen – Soldotna	-	-	-	-
Century 21 Soldotna		96	-	-
Charlotte’s Restaurant			100	67
City Hall	10	-	-	-
Country Foods/IGA	50	118	32	29
Diamond M Ranch	96	-	100	100
Everything Bagels	-	78	48	-
Kenai Airport	612	315	538	218
Kenai Wash & Dry				75
Paradisos Restaurant	61	98	100	158
Quality Inn	111	32	32	35
Safeway – Kenai	203	278	23	23
Safeway – Soldotna			37	23
Soldotna Inn	65		100	-
Sportsmans Warehouse	261	312	356	135
The Cannery Lodge			0	-
Three Bears	181	198	129	185
Veronica’s	125	78	175	-
Other				
July Total Guide Count	1,775	1,603	1,770	1,048



Kenai Chamber of Commerce and Visitor Center

Kenai Visitor and Cultural Center Report July 2019

Note: In January, we send guides to Anchorage Brochure Distribution to distribute to the following locations throughout the year. ABD also supplies literature to many hotels and businesses that do not have one of their displays.

Downtown

Downtown Tour Group
4th Street Mall
Anchorage Guesthouse
Anchorage Grand Hotel
Anchorage Historic Hotel
Clarion Suites
Comfort Inn
International Auto Logistics
Marriott
Ramada
Ship Creek RV
The Aviator
Quality Inn

JBER

Outdoor Rec Ft. Rich
Oasis Travel
YMCA
Outdoor Rec Elm AFB
Airforce Inn

Whittier/Girdwood

Inn at Whittier
Portage Train Station

Midtown

Best Western Golden Lion
AAA Travel
Clippership RV
Extended Stay
Golden Nugget RV
Cruise America RV Rentals
Fairfield Inn Marriott
Hilton Garden Inn
Home2 by Hilton
Marriott
Springhill Suites 36th
Springhill Suites Providence

Spenard

ABC Motorhome
ALEX Inn & Suites
Coast International Inn
Comfort Suites
Courtyard Marriott
Executive Suites
Holiday Inn Express
La Quinta
Midnight Sun Car Rental
Rent-A-Subaru
Puffin Inn
Microtel
Barratts Travel Lodge

of guides sent to Anchorage Brochure Distribution in January
5yr Comparison

	2015	2016	2017	2018	2019
Anchorage Brochure Distribution	20,000	20,000	15,000	15,000	22,425*

*Anchorage Brochure ran out of guides in July. We shipped 7,425.



Kenai Chamber of Commerce and Visitor Center

Kenai Visitor and Cultural Center Report

July 2019

Facility Rental/Community Usage

<u>Organization/Company</u>	<u>Hours of Usage</u>
Department of Transportation	3
Kenai Chamber Board Meetings	2
Kenai Chamber of Commerce Luncheons	3
Kenai Saturday Market	28
Zurixx	6
July Facility Usage:	42

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

COUNCIL MEETING OF: SEPTEMBER 4, 2019

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
MARVIN FREDERICKSON	DIPNET SOFTWARE SUPPORT	PERSONAL USE FISHERY	PROFESSIONAL SERVICES	5,460.00
CROWLEY	FUEL FOR FLOAT PLANE BASIN	AIRPORT	OPERATING SUPPLIES	4,000.00
PHYSIO-CONTROL	ANNUAL SERVICING AGREEMENT	FIRE	PROFESSIONAL SERVICES	6,331.98
THOMSON-REUTERS	FY20 LEGAL RESOURCE SUBSCRIPTION	LEGAL	BOOKS	5,055.72
CELLEBRITE	REGISTRATION FEE	POLICE	TRANSPORTATION	3,850.00