



## Kenai City Council - Regular Meeting

August 21, 2019 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

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

## AGENDA

### A. CALL TO ORDER

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

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

### B. SCHEDULED PUBLIC COMMENTS

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

1. **Tim Dillon, Executive Director, Kenai Peninsula Economic Development District** - Overview of New Kenai Peninsula Economic Development District website and resources.

### 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)

- 2. Ordinance No. 3073-2019** - Accepting and Appropriating a Grant from the State of Alaska for the Purpose of Purchasing Books. (Administration)
- 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)
- 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)
- 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)
- 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)
- 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)
- 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)
- 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)

**E. MINUTES**

- 1.** \*Regular Meeting Minutes of August 7, 2019

**F. UNFINISHED BUSINESS**

**G. NEW BUSINESS**

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



- [2.](#) \***Action/Approval** – Purchase Orders Exceeding \$15,000. (Administration)
- [3.](#) \***Action/Approval** - Non-Objection to the Renewal of Limited Marijuana Cultivation Facility Licenses for Peninsula Botanicals, LLC and Herban Extracts, LLC. (City Clerk)
- [4.](#) \***Action/Approval** - Non-Objection to the renewal of a Retail Marijuana Store Licenses for Kenai River Cannabis Company and Majestic Gardens. (City Clerk)
- [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)
- [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)
- [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)
- [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)
- [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)
- [10.](#) **Discussion** - Public Notice of City Council Meetings. (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.
- [2.](#) Performing Arts Society Request

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



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## 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 21<sup>st</sup> 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**

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### 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)]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)]k 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

<b>APPLICANT'S INVESTMENT/VALUE</b>	<b>MAXIMUM TERM OF YEARS</b>
\$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

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



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3073-2019**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING A GRANT FROM THE STATE OF ALASKA FOR THE PURCHASE OF LIBRARY BOOKS.

WHEREAS, the City of Kenai received a grant from the State of Alaska, Department of Education and Early Development for the purchase of library books; and,

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

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

**Section 1.** That the City Manager is authorized to accept a grant from the State of Alaska, Department of Education and Early Development in the amount of \$7,000 for the purchase of library books and to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of this ordinance.

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

General Fund:

Increase Estimated Revenues – Library – State Grants	<u>\$7,000</u>
Increase Appropriations – Library - Books	<u>\$7,000</u>

**Section 3.** That the City Manager is authorized to accept a grant and expend the funds to fulfill the purpose of this Ordinance.

**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 immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21<sup>st</sup> day of August, 2019.

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

ATTEST:

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

Approved by Finance: 

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



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary Jo Joiner, Library Director  
**DATE:** July 19, 2019  
**SUBJECT:** **Ordinance 3073-2019**

---

The library has been awarded the annual public library assistance grant by the Alaska State Library. As per the grant award, the amount of \$7,000 is to be used for the purchase of books and should be deposited in account 001-440-4666.

The library director completes an application each year in order to receive these funds. Certain minimum standards must be met in order to receive this grant. These include reporting requirements on expenditures and collection statistics, number of hours that the library is open to the public, minimum educational requirements for the Library Director and continuing education requirements.

Your consideration is appreciated.





THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Education  
& Early Development

DIVISION OF LIBRARY, ARCHIVES & MUSEUMS

P.O. Box 110571  
Juneau, Alaska 99811-0571  
Main: 907.465.4837  
Fax: 907.465.2151

The **Public Library Assistance (PLA)** grant for FY2020 for **Kenai Community Library** will be **\$7,000**. We are delighted that your library is eligible to receive this annual operating grant so that you can provide the best possible service to your library patrons.

**In order to receive your grant money, please return the attached grant agreement as soon as you can.** Two different people (the librarian and the appropriate legal authority) must sign the grant agreement, since it is a legal document committing your library to certain obligations in return for receiving the public library assistance grant. Once we have your agreement, we will electronically deposit your grant award (or mail a paper check in specific instances).

The FY2020 Public Library Assistance grant year starts July 1, 2019. Librarians and officials should carefully note and follow the regulations governing the administration of this grant. To remain eligible for the grant, the library **MUST**:

- Submit the online Alaska Public Library Report by September 1, 2020.
- Spend **at least \$3,500** on library materials and online services.
- Be open the appropriate number of hours for your population.
- Be open **at least 48 weeks**.
- Schedule five hours during evenings and/or weekends each week.
- Have **trained** paid or volunteer staff on duty in the library during **all** open hours.
- Combined school/public libraries must take special care to **not** use grant money or local funds used as matching money for *school library or curriculum support purposes*. This includes purchasing school-type library materials (books, magazines, etc.). These funds must be used for the purchase of public library-type materials.

Each library director is required to attend **at least 6 hours of continuing education** (CE) during the current two year cycle, which includes FY2020 and FY2021 (July 2019 through June 2021). If you attended continuing education during FY2019, do be sure to record that training on your FY2019 Alaska Public Library Report.

The State Library audits the records of selected libraries at the end of the grant year and reclaims any grant funds not properly accounted for. Also, any portion of this grant money not spent or encumbered by June 30, 2020 should be returned to the State Library. You may request an extension to spend unused FY2020 public library grant funds.

You may contact me at: [tracy.swaim@alaska.gov](mailto:tracy.swaim@alaska.gov) or 907-465-1018 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Swaim".

Tracy Swaim  
Alaska State Library, Grants & Data Coordinator



Sponsored by: Administration

**CITY OF KENAI**

**ORDINANCE NO. 3074-2019**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS BY \$1,504.82 IN THE FY2019 GENERAL FUND – POLICE DEPARTMENT FOR STATE TRAFFIC GRANT OVERTIME EXPENDITURES.

WHEREAS, the Kenai Police Department joins with other law enforcement agencies statewide to support Alaska Highway Safety Office (AHSO) traffic safety programs to reduce fatalities and injuries on roadways; and,

WHEREAS, AHSO traffic-related overtime funds require no local match and allow the department to provide specific traffic safety patrols; and,

WHEREAS, actual AHSO overtime expenditures for traffic safety patrols totaled \$1,504.82 from May 13, 2019 to June 3, 2019; and,

WHEREAS, overtime for these additional traffic safety patrols was not budgeted and the department is requesting appropriation into the FY19 overtime budget equal to the amount of AHSO grant funding received.

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 these grant funds from the State of Alaska in the amount of \$1,504.82 and to expend grant funds to fulfill the purpose and intent of this ordinance.

**Section 2.** That the Fiscal Year 2019 estimated revenues and appropriations be increased as follows:

General Fund:

Increase Estimated Revenues – State Grants - Police–	<u>\$1,504.82</u>
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Increase Appropriations – Police - Overtime	<u>\$1,504.82</u>
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**Section 3.** Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances.

The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


**Section 4.** Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment. The appropriation and transfer shall be made effective June 30, 2019 and shall be considered an action of Fiscal year 2019.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21<sup>st</sup> day of August, 2019.

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

ATTEST:

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

Approved by Finance: 

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





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## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** David Ross, Police Chief

**DATE:** 7-22-2019

**SUBJECT:** **Ordinance No. 3074-2019 - Ordinance accepting and appropriating Alaska Highway Safety Office grant funds for Police Overtime**

---

The Kenai Police Department continues to participate in traffic enforcement overtime patrols, reimbursed to the City of Kenai through a grant by the Alaska Highway Safety Office (AHSO). These overtime patrols were not budgeted in the FY19 budget.

Actual overtime costs for traffic enforcement around the Memorial Day holiday, that qualifies for AHSO reimbursement, was \$1,504.82.

AHSO – overtime reimbursements are deposited into the general fund. I would respectfully request appropriation to the police overtime account for FY19.





Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3077-2019

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

WHEREAS, a magnitude 7.0 earthquake struck Southcentral Alaska on November 30, 2018 causing damage to the City's Well House #1; and,

WHEREAS, the administration has determined that Well House #1 should be relocated and the production well abandoned rather than being reconstructed; and,

WHEREAS, arsenic in the water produced from Well #1 exceeds current regulatory levels and the production of Well #1 has declined to insignificant levels; and,

WHEREAS, Well #1 is currently and has been off line for years allowing for its decommissioning; and,

WHEREAS, the City insured Well House #1 for replacement cost which also provides for reconstruction on an alternate site; and,

WHEREAS, the City's insurer, Alaska Public Entity Insurance, has retained Nelson Engineering to provide design documents for the disassembly and reconstruction of the well house; and,

WHEREAS, the City will be responsible for some costs associated with reconstruction of the building on an alternate site and the requested funds will allow Nelson Engineering to prepare site specific design sheets for reconstruction at the Well #2, near Beaver Loop off Shotgun Drive, site; and,

WHEREAS, once designed, Nelson Engineering will provide engineer estimates for the project including the City's share for which an Ordinance will be prepared requesting funding for the remainder of the project.

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:

Water & Sewer Special Revenue Fund:	
Increase Estimated Revenues –	
Appropriation of Fund Balance	<u>\$10,000</u>
Increase Appropriations –	
Transfer to Other Funds	<u>\$10,000</u>
Water & Sewer Improvements Capital Project Fund:	
Increase Estimated Revenues –	
Transfer from Other Funds	<u>\$10,000</u>
Increase Appropriations –	
Construction	<u>\$10,000</u>

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


**Section 4.** Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21<sup>st</sup> day of August, 2019.

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

ATTEST:

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

Approved by Finance: 

Introduced: August 7, 2019  
Enacted: August 21, 2019  
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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Terry Eubank, Finance Director  
**DATE:** July 30, 2019  
**SUBJECT:** **Ordinance No. 3077-2019**

The purpose of this memo is to recommend adoption of Ordinance 3077-2019 that will provide funding for site specific design for the relocation of Well House #1 which was damaged by the magnitude 7.0 earthquake which struck Southcentral Alaska on November 30, 2018.

The City insurance on the damaged facility will provide for total replacement cost at the existing site or reconstruction on an alternate site of the City's choosing. The City will be responsible for the incremental costs of moving to an alternate site vs reconstruction on the existing site. The administration has determined that Well #1 should be decommissioned and the building relocated to the Well #2, at Beaver Loop and Shotgun Drive, site.

The City's insurer, Alaska Public Entity Insurance, has contracted with Nelson Engineering to provide design and bid ready documents for the building disassembly and reconstruction. Nelson Engineering performed the original damage assessment at the site. The City will provide funding for design of site specific sheets for reconstruction at the Well #2 site with the requested \$10,000.

Once design is complete, cost estimates will be prepared and subsequent legislation will be prepared authorizing completion of the project and providing supplemental funding for the City's deductible and the incremental costs associated with reconstruction on an alternate site. Your support for Ordinance 3077-2019 is respectfully requested.





Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3078-2019

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

WHEREAS, The 2019 Airfield Marking, Crack Sealing, Seal Coating, and Minor Pavement Repair Project was awarded to Northwest Contracting, LLC on June 6, 2019 in the amount of \$713,998.50 with a Notice to Proceed issued on July 11, 2019; and,

WHEREAS, during the course of completing the work it has become evident two bid items are scheduled to over-run the estimated quantities: rubber / paint removal by hydro-blasting anticipated to exceed by \$34,900 and asphalt crack sealing anticipated to exceed by \$135,000; and,

WHEREAS, the additional \$34,900 of paint removal was the result of a Letter of Correction for Markings received from the Federal Aviation Administration during the June 2019 Certification Inspection and the \$135,000 increase in asphalt crack sealing may be the result of a combination of the number and depth of cracks increasing after last fall's earthquakes, an inventory based on the previous year's inspection, and the pavement being another year older; and,

WHEREAS, the total cost of pending Change Order 1 to Northwest Contracting, LLC is \$169,900; and,

WHEREAS, total project costs, including Northwest Contracting, LLC Change Order 1, are estimated at \$978,040; and,

WHEREAS, the Airport has confirmation from the Federal Aviation Administration that additional work incurred over the course of the project will be eligible for 93.75% FAA reimbursement upon completion of the 2019 Airfield Marking, Crack Sealing, Seal Coating, and Minor Pavement Repair Project with the exception of any amount in excess of 115% of the original project amount or \$960,411; and,

WHEREAS, a condition of the grant states the FAA can issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitation for grant amendments; and,

WHEREAS, the maximum obligation increase for primary airports may be increased by not more than 15 percent for development projects, which for this project is estimated to be \$125,270, comprised of \$117,441 in FAA Grant Funds and \$7,829 in required local match; and,

WHEREAS, because of the 15% statutory grant amendment limitation and to provide the required local match to the grant amendment, an additional \$25,459 is needed from the Airport Special Revenue Fund to make up the remaining required funds to execute Change Order #1.

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

**Section 1.** That the City Manager is authorized to accept additional grant funding of \$117,441 from the Federal Aviation Administration, and to expend the funds in accordance with grant provisions and conditions.

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

Airport Special Revenue Fund	
Increase Estimated Revenues –	
Appropriation of Fund Balance	<u>\$25,459</u>
Increase Appropriations -	
Airfield -	
Transfer to Other Funds	<u>\$25,459</u>

**Section 3.** That the estimated revenues and appropriations be increased as follows:

Airport Improvement Capital Project Fund	
Increase Estimated Revenues:	
FAA Grants	\$117,441
Transfer from Other Funds	<u>25,459</u>
	<u>\$142,900</u>
Increase Appropriations -	
2019 Airfield Marking, Crack Sealing, Seal Coating,	
and Minor Pavement Repair Project -	
Construction	<u>\$142,900</u>

**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 immediately upon 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

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

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



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

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
[www.kenai.city](http://www.kenai.city)

## 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. 3078 - 2019**

The 2019 Airfield Marking, Crack Sealing, Seal Coating, and Pavement Repair Project was released for formal Invitation to Bid on May 7, 2019. On June 6, 2019 a Construction Contract was awarded to Northwest Contracting, LLC in the amount of \$713,998.50.

Also taking place in June 2019 was an annual Federal Aviation Administration (FAA) Airport Certification Safety Inspection. Detailed within their report received on July 1, 2019 were some requested modifications to the runway markings. In order to prevent reworking portions of the current project after completion, it is appropriate to address these issues now within the project. The projected total cost impact to the project for these requested modifications is \$34,900.00.

Additionally, the estimated quantities for crack sealing are insufficient to complete the project as designed. This may be the result of several factors, including the earthquake last November as well as additional wear and tear on the runway, depth and size of cracks, etc., over the last year. It is projected another \$135,000 in crack seal will be necessary to complete the current scope of the project.

The total cost of Change Order 1 to Northwest Contracting, LLC is \$169,900.00 for a total construction contract cost of \$883,898.50. The additional costs, with Council's approval, will be covered by \$117,441.00 in FAA eligible funding, \$25,459.00 in a new appropriation from the Airport Special Revenue Fund, and \$27,000.00 in funds currently remaining in the project as Admin.

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: City Clerk

**CITY OF KENAI****RESOLUTION NO. 2019-56**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, 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.

WHEREAS, High Mark Distillery, Inc. has made an application with the Alaska Alcohol and Marijuana Control Office (AMCO), for consideration by the Alcohol Control Board, and has paid the required fee for the issuance of a new Distillery Liquor License No. 5826, to be used for High Mark Distillery, Inc., located at 2270 Royal Street, Warehouse #1, Kenai, Alaska 99611; and,

WHEREAS, the City Council must enter any protest to the AMCO within 60 days following receipt of the application; and,

WHEREAS, the Kenai City Clerk's Office received a copy of this application on June 25, 2019 and has determined that the last day for the Council to file a protest is August 24, 2019; and,

WHEREAS, the Council Meeting on August 21, 2019 is the last scheduled regular meeting of the City Council prior to the expiration of the protest period; and,

WHEREAS, the City Clerk reports the following status concerning this location:

1. There are no financial obligations owed to the City of Kenai; and
2. Certification from the Legal Department has been received; and
3. Certification from the Police Department has been received; and
4. Certification from the Lands Department has been received; and
5. Certification from the Planning Department **has not been received** as an approved Conditional Use Permit remains outstanding; and
6. Certification from the Building Official **has not been received** as an approved Building Permit remains outstanding; and,

WHEREAS, protest by the City Council is in order, pending Council confirmation, that outstanding items are required to be completed for this location.

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

**Section 1.** That the Kenai City Council hereby enters its **CONDITIONAL PROTEST** for the new Distillery Liquor License No. 5826, until these conditions are met:

- Certification from the Planning Department that the requirement of an approved Conditional Use Permit has been met.
  - Certification from the Building Official that the requirement of an approved Building Permit has been met.
-

**Section 2.** That a copy of this Resolution may be presented to the AMCO as proof that the Kenai City Council, as the local governing body, has stated its protest in order to allow the Director of AMCO to hold processing of the new Distillery Liquor License No. 5826 under local protest, until receipt by the Director of confirmation from the City Clerk that the conditions in Section 1 have been met, and this protest is lifted as authorized by this Resolution.

**Section 3.** That the Kenai City Council here by authorizes the City Clerk, upon the City Clerk's confirmation that all City Council conditions in Section 1 have been met, to provide written notification to the AMCO that this protest by the Kenai City Council is lifted, without further action by the City Council.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21<sup>st</sup> day of August, 2019.

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

ATTEST:

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



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

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Jamie Heinz, City Clerk  
**DATE:** August 12, 2019  
**SUBJECT:** Resolution No. 2019-56

The Alcoholic & Marijuana Control Office (AMCO) has sent notification that the following applicant has requested a Distillery Liquor License:

Applicant: High Mark Distillery, Inc.  
D/B/A: High Mark Distillery, Inc.

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

A review of City accounts has been completed and the applicant notified that a Conditional Use Permit is required for manufacturing and/or blending of liquor. Additionally, a building permit is required in order for the Planning and Zoning Commission to consider the Conditional Use Permit.

Entering a conditional protest will allow the Director of AMCO to hold processing the liquor license until such time as the applicant has satisfied the obligations listed above. With the approval of Council, a letter conditionally protesting the Distillery Liquor License will be forwarded to AMCO and the applicant. This Resolution authorizes the City Clerk to lift the conditional protest upon confirmation that the requirements listed above have been met.

Your consideration is appreciated.

Attachments



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

## MEMORANDUM

**TO:** Jamie Heinz, City Clerk  
**FROM:** Elizabeth Appleby, City Planner  
**DATE:** August 5, 2019  
**SUBJECT:** **High Mark Distillery Liquor License Conditional Protest**

Kenai Municipal Code 14.20.320 Definitions states the following definition for manufacturing, which includes the blending of liquors:

"Manufacturing/Fabricating/Assembly" means the mechanical or chemical transformation of materials or substances into new products including assembling of components parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

The parcel proposed for High Mark Distillery is within the Rural Residential (RR) Zone of the City. A conditional use permit for manufacturing is required within this zone according to Kenai Municipal Code 14.22.010 Land Use Table. On July 22, 2019, High Mark Distillery submitted an application to the City for a conditional use permit for manufacturing. However, City staff was unable to deem the application complete as the design and building location on the parcel were not finalized.

In order to bring forth the application for consideration by the Planning and Zoning Commission, High Mark Distillery must provide an updated premises diagram that will meet the requirements of the Building Code and provide accurate information. A conditional use permit is necessary in order to clear obligations to the Planning and Zoning Department of the City of Kenai and to remove the conditional protest of the liquor license.

Thank you for your consideration.





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

**TO:** Jamie Heinz, City Clerk  
**FROM:** Michael Wesson, Building Official  
**DATE:** August 12, 2019  
**SUBJECT:** High Mark Distillery, Inc.

---

This structure which is intended for the location for High Mark Distillery will need to obtain a building permit per Section 105.1 of the 2009 Building Code due to the fact that the structure will be changing uses. Once the structure has been issued a permit and it has been determined that the structure meets all aspects of the code for the new use, a Certificate of Occupancy will be issued and the Structure will be allowed to operate under the new Use.







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## MEMORANDUM

TO: David Ross, Chief of Police  
Willie Anderson, Lands  
Terry Eubank, Finance Department  
Scott Bloom, Legal Department  
Elizabeth Appleby, City Planner

FROM: Jamie Heinz, City Clerk

DATE: June 27, 2019

RE: **New Liquor License Application**

The Alcoholic Beverage Control Board has sent notification that the following applicant has applied for a new Distillery liquor license:

Applicant: High Mark Distillery, Inc.  
D/B/A: High Mark Distillery, Inc.

Pursuant to KMC 2.40.010, *it is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

Please review account(s) maintained by your department (i.e. water and sewer billings, lease/property payment history, citations, etc.) by the above reference applicant. Initial whether account(s) and/or payment plan(s) are current or delinquent. If accounts are delinquent, attach information to this memorandum indicating amounts owed and for which accounts.

Please let me know if you have any questions. Once you have completed your section, please route to the next department. Thanks!

1. Police Department DR initials

- I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

2. Finance TE initials

- I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

3. Legal SB initials

- I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

4. Lands Management EA initials

- I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

5. Planning and Zoning EA initials

- I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

Returned to Clerk's office: 7/15



June 25, 2019

City of Kenai  
Attn: Jamie Heinz, City Clerk  
VIA Email: [jheinz@kenai.city](mailto:jheinz@kenai.city)  
Cc: [cityclerk@kenai.city](mailto:cityclerk@kenai.city)  
[joanne@borough.kenai.ak.us](mailto:joanne@borough.kenai.ak.us)  
[jblankenship@borough.kenai.ak.us](mailto:jblankenship@borough.kenai.ak.us)  
[tshassetz@kpb.us](mailto:tshassetz@kpb.us)

<b>License Type:</b>	Distillery	<b>License Number:</b>	5826
<b>Licensee:</b>	High Mark Distillery, Inc.		
<b>Doing Business As:</b>	High Mark Distillery, Inc.		
<b>Premises Address:</b>	2270 Royal St, Warehouse #1		

- New Application**
 **Transfer of Ownership Application**  
 **Transfer of Location Application**
 **Transfer of Controlling Interest Application**

We have received a completed application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable. To protest the application referenced above, please submit your protest within 60 days and show proof of service upon the applicant.

AS 04.11.491 – AS 04.11.509 provide that the board will deny a license application if the board finds that the license is prohibited under as a result of an election conducted under AS 04.11.507.

AS 04.11.420 provides that the board will not issue a license when a local governing body protests an application on the grounds that the applicant’s proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the alcohol establishment, unless the local government has approved a variance from the local ordinance.

Sincerely,

Erika McConnell, Director  
[amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov)





Alaska Alcoholic Beverage Control Board

**Form AB-00: New License Application**

**What is this form?**

This new license application form is required for all individuals or entities seeking to apply for a new liquor license. Applicants should review **Title 04 of Alaska Statutes** and **Chapter 304 of the Alaska Administrative Code**. All fields of this form must be completed, per AS 04.11.260 and 3 AAC 304.105.

This form must be completed and submitted to AMCO's main office, along with all other required forms and documents, before any license application will be considered complete.

**Section 1 – Establishment and Contact Information**

Enter information for the business seeking to be licensed.

Licensee:	High Mark Distillery, Inc.		
License Type:	Distillery	Statutory Reference:	04.11.170
Doing Business As:	High Mark Distillery, Inc.		
Premises Address:	2270 Royal St. , Warehouse #1		
City:	Kenai	State:	AK
		ZIP:	99611
Local Governing Body:	City of Kenai, and the Kenai Peninsula Borough		
Community Council:	NA		

Mailing Address:	11381 Messina Ct.		
City:	Reno	State:	NV
		ZIP:	89521

Designated Licensee:	Felicia Keith-Jones, President		
Contact Phone:	907-355-3492	Business Phone:	907-355-3492
Contact Email:	highmarkdistillery@hotmail.com		

Seasonal License?  Yes  No If "Yes", write your six-month operating period: July-December

OFFICE USE ONLY			
Complete Date:	4/21/19	License Years:	19/20
Board Meeting Date:	7/8/19	Transaction #:	1078755
Issue Date:		BRE:	ADC





Alaska Alcoholic Beverage Control Board  
**Form AB-00: New License Application**

**Section 2 – Premises Information**

Premises to be licensed is:

- an existing facility       a new building       a proposed building

The next two questions must be completed by beverage dispensary (including tourism) and package store applicants only:

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the outer boundaries of the nearest school grounds? Include the unit of measurement in your answer.

-NA-

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the public entrance of the nearest church building? Include the unit of measurement in your answer.

-NA-

**Section 3 – Sole Proprietor Ownership Information**

This section must be completed by any sole proprietor who is applying for a license. Entities should skip to Section 4.

If more space is needed, please attach a separate sheet with the required information.

The following information must be completed for each licensee and each affiliate (spouse).

This individual is an:  applicant       affiliate

Name:	-NA-				
Address:					
City:		State:		ZIP:	

This individual is an:  applicant       affiliate

Name:	-NA-				
Address:					
City:		State:		ZIP:	



**Alaska Alcoholic Beverage Control Board**  
**Form AB-00: New License Application**

**Section 4 – Entity Ownership Information**

This section must be completed by any entity, including a corporation, limited liability company (LLC), partnership, or limited partnership, that is applying for a license. Sole proprietors should skip to Section 5.

If more space is needed, please attach a separate sheet with the required information.

- If the applicant is a corporation, the following information must be completed for each *stockholder who owns 10% or more* of the stock in the corporation, and for each *president, vice-president, secretary, and managing officer*.
- If the applicant is a limited liability organization, the following information must be completed for each *member with an ownership interest of 10% or more*, and for each *manager*.
- If the applicant is a partnership, including a limited partnership, the following information must be completed for each *partner with an interest of 10% or more*, and for each *general partner*.

Entity Official:	Felicia Keith-Jones				
Title(s):	Pres., VP, SEC., Officer	Phone:	907-355-3492	% Owned:	100
Address:	11381 Messina Ct.				
City:	Reno	State:	Nevada	ZIP:	89521

Entity Official:	-NA-				
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

Entity Official:	-NA-				
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

Entity Official:	-NA-				
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	



## Alaska Alcoholic Beverage Control Board Form AB-00: New License Application

This subsection must be completed by any applicant that is a corporation or LLC. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations (DOC) and have a registered agent who is an individual resident of the state of Alaska.

DOC Entity #:	131654	AK Formed Date:	11/2010	Home State:	Alaska
Registered Agent:	Gail Keith		Agent's Phone:	907-252-0819	
Agent's Mailing Address:	PO Box 287				
City:	Soldotna	State:	Alaska	ZIP:	99669

Residency of Agent: Yes No

Is your corporation or LLC's registered agent an individual resident of the state of Alaska?

### Section 5 – Other Licenses

Ownership and financial interest in other alcoholic beverage businesses: Yes No

Does any representative or owner named in this application have any direct or indirect financial interest in any other alcoholic beverage business that does business in or is licensed in Alaska?

If "Yes", disclose which individual(s) has the financial interest, what the type of business is, and if licensed in Alaska, which license number(s) and license type(s):

-NA-

### Section 6 – Authorization

Communication with AMCO staff: Yes No

Does any person other than a licensee named in this application have authority to discuss this license with AMCO staff?

If "Yes", disclose the name of the individual and the reason for this authorization:

-NA-





# Alaska Alcoholic Beverage Control Board Form AB-00: New License Application

## Section 7 - Certifications

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

Initials

I certify that all proposed licensees (as defined in AS 04.11.260) and affiliates have been listed on this application.

[Handwritten initials]

I certify that all proposed licensees have been listed with the Division of Corporations.

[Handwritten initials]

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

[Handwritten initials]

I certify that all licensees, agents, and employees who sell or serve alcoholic beverages or check the identification of a patron will complete an approved alcohol server education course, if required by AS 04.21.025, and, while selling or serving alcoholic beverages, will carry or have available to show a current course card or a photocopy of the card certifying completion of approved alcohol server education course, if required by 3 AAC 304.465.

[Handwritten initials]

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

[Handwritten initials]

As an applicant for a liquor license, I declare under penalty of perjury that I have read and am familiar with AS 04 and 3 AAC 304, and that this application, including all accompanying schedules and statements, is true, correct, and complete.

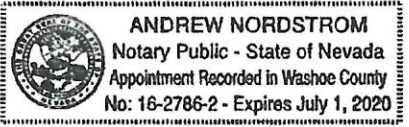
*Felicia Keith-Jones*  
Signature of licensee

*[Handwritten Signature]*  
Signature of Notary Public

Felicia Keith-Jones  
Printed name of licensee

Notary Public in and for the State of Nevada

My commission expires: 7/1/2020



Subscribed and sworn to before me this 31<sup>st</sup> day of May, 2019.



**Alaska Alcoholic Beverage Control Board**  
**Form AB-02: Premises Diagram**

**What is this form?**

A detailed diagram of the proposed licensed premises is required for all liquor license applications, per AS 04.11.260 and 3 AAC 304.185. Your diagram must include dimensions and must show all entrances and boundaries of the premises, walls, bars, fixtures, and areas of storage, service, consumption, and manufacturing. If your proposed premises is located within a building or building complex that contains multiple businesses and/or tenants, please provide an additional page that clearly shows the location of your proposed premises within the building or building complex, along with the addresses and/or suite numbers of the other businesses and/or tenants within the building or building complex.

The second page of this form is not required. Blueprints, CAD drawings, or other clearly drawn and marked diagrams may be submitted in lieu of the second page of this form. The first page must still be completed, attached to, and submitted with any supplemental diagrams. An AMCO employee may require you to complete the second page of this form if additional documentation for your premises diagram is needed.

This form must be completed and submitted to AMCO's main office before any license application will be considered complete.

Yes No

I have attached blueprints, CAD drawings, or other supporting documents in addition to, or in lieu of, the second page of this form.

**Section 1 – Establishment Information**

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	High Mark Distillery, Inc.	License Number:	
License Type:	Distillery		
Doing Business As:	High Mark Distillery, Inc.		
Premises Address:	2270 Royal St., Warehouse #1		
City:	Kenai	State:	AK
		ZIP:	99611

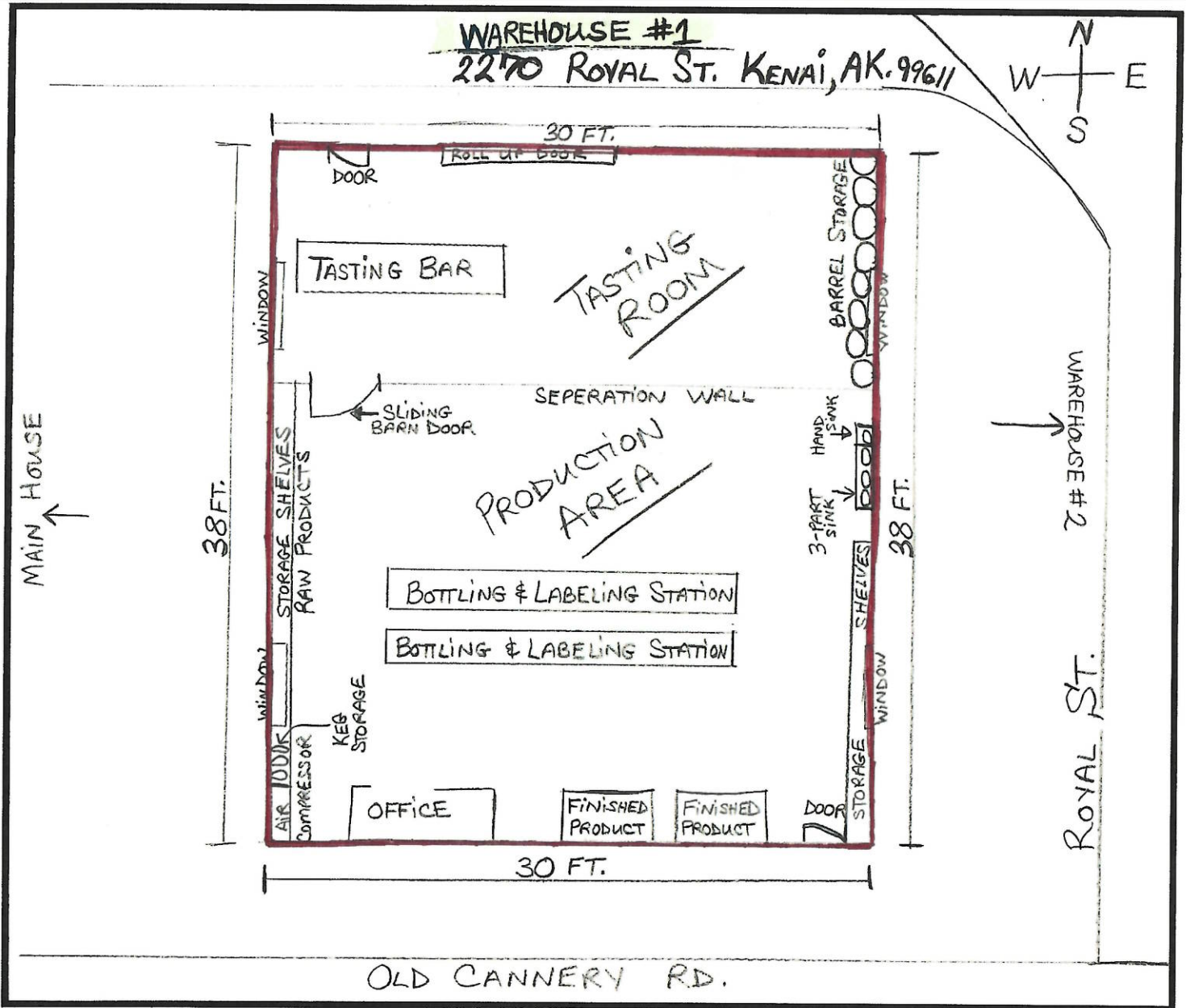




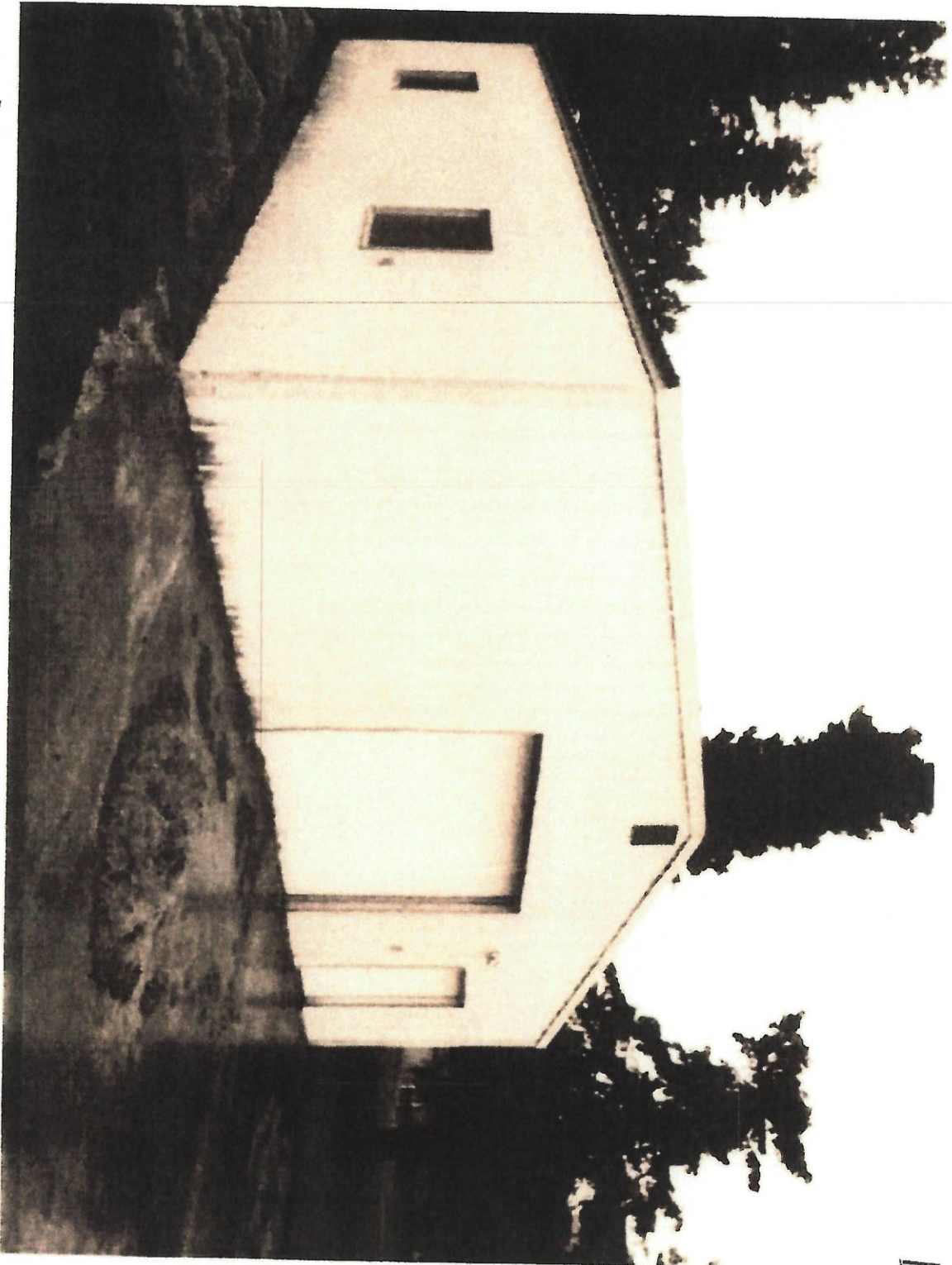
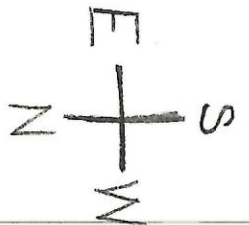
### Alaska Alcoholic Beverage Control Board Form AB-02: Premises Diagram

#### Section 2 - Detailed Premises Diagram

Clearly indicate the boundaries of the premises and the proposed licensed area within that property. Clearly indicate the interior layout of any enclosed areas on the proposed premises. Clearly identify all entrances and exits, walls, bars, and fixtures, and outline in red the perimeter of the areas designated for alcohol storage, service, consumption, and manufacturing. Include dimensions, cross-streets, and points of reference in your drawing. You may attach blueprints or other detailed drawings that meet the requirements of this form.



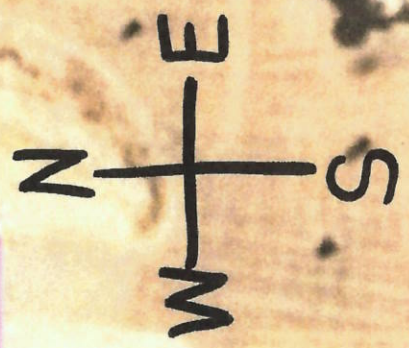
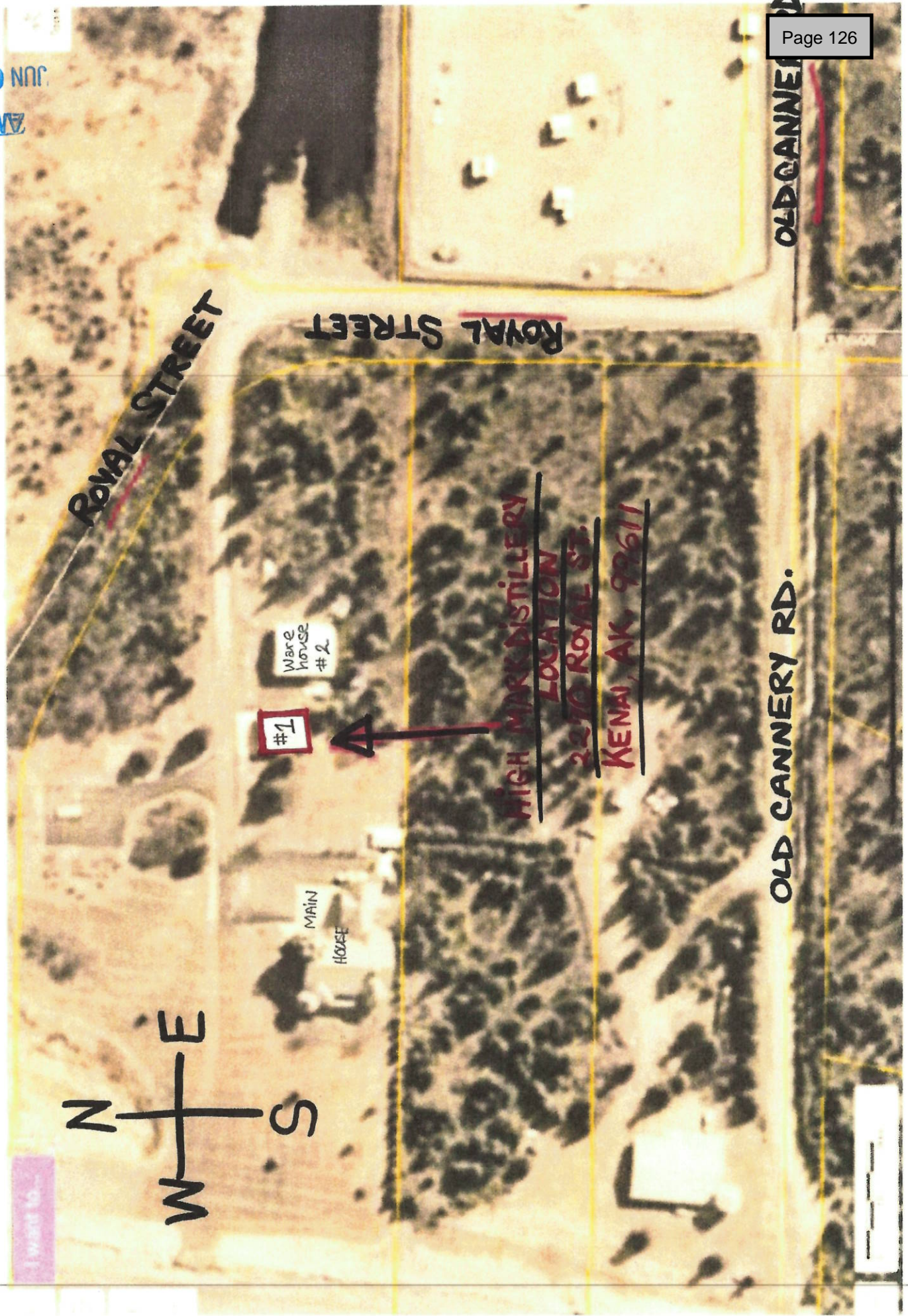
# High Mark Distillery Location



**WAREHOUSE #1  
(VIEW FROM N, NE)**

**2270 ROYAL ST. 1280 sq. ft.  
KENAI, AK. 99611**





ROYAL STREET

ROYAL STREET

OLD CANNERY RD.

#1

WAREHOUSE #2

MAIN HOUSE

HIGH MARK DISTILLERY  
LOCATION  
2270 ROYAL ST.  
KENAI, AK, 99611

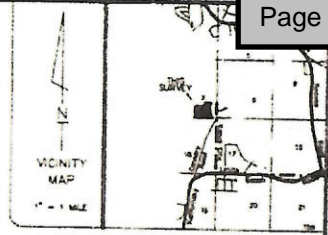
gis.kpb.us

c



**NOTES**

- 1) DEVELOPMENT OF THESE PARCELS IS SUBJECT TO THE CITY OF KENAI ZONING REGULATIONS.
- 2) FRONT 18 FEET ADJACENT TO THE RIGHTS-OF-WAY IS ALSO A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT UNLESS SUCH STRUCTURE INTERFERES WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
- 3) THIS PROPERTY MAY BE AFFECTED BY LOW WET AREAS. ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION IF APPLICABLE.
- 4) ROADS MUST MEET THE DESIGN AND CONSTRUCTION STANDARDS ESTABLISHED BY THE CITY OF KENAI IN ORDER TO BE CONSIDERED FOR CERTIFICATION AND INCLUSION IN THE ROAD MAINTENANCE PROGRAM.
- 5) THE NATURAL MEANDERS OF THE JUNE OF NEAR HIGH WATER FORMING THE TRUE BOUNDARY OF THE SUBDIVISION. THE APPROXIMATE LINE OF NEAR HIGH WATER AS SHOWN IS FOR COMPUTATIONAL PURPOSES ONLY. THE TRUE PROPERTY BOUNDARY BOUNDS ON THE EXTENSION OF THE SEE LIST LINES AND THEIR INTERSECTION WITH THE NATURAL MEANDERS.
- 6) THESE PARCELS MAY BE AFFECTED BY A GENERAL ELECTRIC EASEMENT GRANTED TO HOMER ELECTRIC ASSOCIATION, INC. ON DECEMBER 23, 1978 BY SR PAGE 208 9100.
- 7) EXCEPTIONS TO AFB 2006110 - BLOCK 1 (A/CN) AND AFB 2006180 - 54' DEPTH TO HIGH WATER WAS GRANTED AT THE 2017 AFB PLAT COMMITTEE MEETING.
- 8) WASTEWATER DISPOSAL: THESE TRACTS ARE AT LEAST 200,000 SQUARE FEET ON A NONWATER TABLE IN TRACT AND CONDITIONS MAY NOT BE SUITABLE FOR ON-SITE WASTEWATER TREATMENT AND DISPOSAL. ANY WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.



**CERTIFICATE OF OWNERSHIP AND DEDICATION**

I, THE UNDERSIGNED HEREBY CERTIFY THAT THE CITY OF KENAI, IS THE OWNER OF THE REAL PROPERTY SHOWN AND DECIDES HERON AND ON BEHALF OF THE CITY OF KENAI, I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY THIS DOCUMENT DEDICATE ALL RIGHTS-OF-WAY AND GRANT ALL EASEMENTS TO THE USE SHOWN.

PAUL OSTRANDER - CITY MANAGER  
CITY OF KENAI  
210 FRIDLAND ST.  
KENAI, AK 99611

**NOTARY'S ACKNOWLEDGMENT**

PAUL OSTRANDER  
ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2017

NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES \_\_\_\_\_

**CERTIFICATE OF ACCEPTANCE**

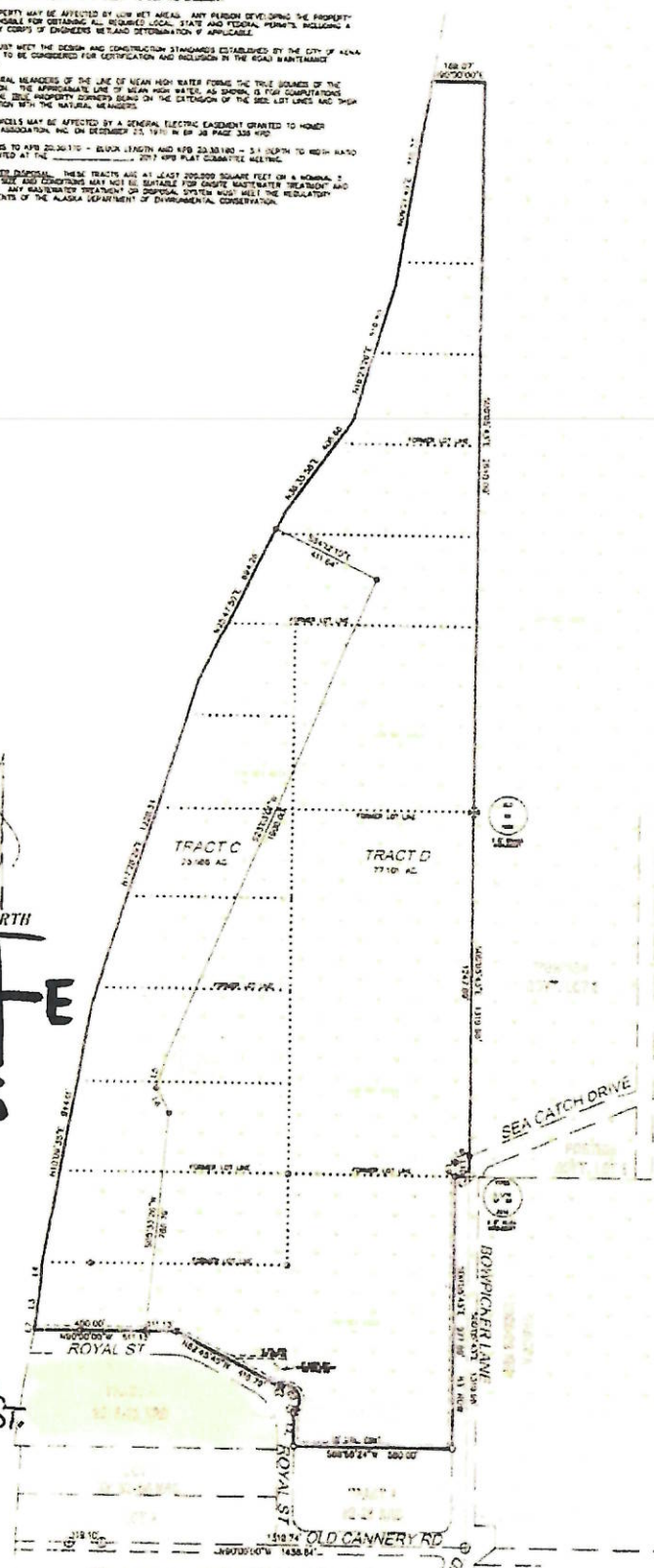
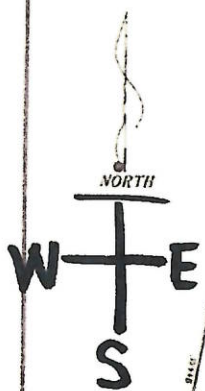
THE UNDERSIGNED OFFICIAL, IDENTIFIED BY NAME AND TITLE IS AUTHORIZED TO ACCEPT AND HEREBY ACCEPTS ON BEHALF OF THE CITY OF KENAI FOR PUBLIC USE AND FOR PUBLIC PURPOSES THE REAL PROPERTY TO BE DEDICATED BY THIS PLAN INCLUDING EASEMENTS, RIGHTS-OF-WAY, ALLEYS, AND OTHER PUBLIC AREAS SHOWN ON THIS PLAN IDENTIFIED AS FOLLOWS:  
- RIGHT OF WAY DEDICATION.  
THE ACCEPTANCE OF LANDS FOR PUBLIC USE OR PUBLIC PURPOSE DOES NOT OBLIGATE THE PUBLIC OR ANY GOVERNING BODY TO CONSTRUCT, OPERATE OR MAINTAIN IMPROVEMENTS.

PAUL OSTRANDER, CITY MANAGER - CITY OF KENAI  
210 FRIDLAND ST.  
KENAI, AK 99611

**PLAT APPROVAL**

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF \_\_\_\_\_  
KENAI PENINSULA BOROUGH.

AUTHORIZED OFFICIAL \_\_\_\_\_



CURVE	BEARING	AND LENGTH	CHORD LENGTH	CHORD BEARING	TRUTH ANGLE
C1	150° 00'	15.00'	15.00'	S00°00'00"W	45°00'00"
C2	200° 00'	15.00'	15.00'	S01°29'42"W	101°29'31"
C3	270° 00'	15.00'	15.00'	S84°00'00"E	126°00'00"

LINE	BEARING	DISTANCE
L1	N00°00'00"W	15.00'
L2	N00°00'00"W	15.00'
L3	N00°00'00"W	15.00'
L4	N00°00'00"W	15.00'
L5	N00°00'00"W	15.00'
L6	N00°00'00"W	15.00'
L7	N00°00'00"W	15.00'
L8	N00°00'00"W	15.00'
L9	N00°00'00"W	15.00'
L10	N00°00'00"W	15.00'
L11	S00°00'00"E	15.00'

**LEGEND**

- ⊕ QLS/BLM MONUMENT RECOVERED AS NOTED
- ⊙ PRIMARY MONUMENT SET THIS SURVEY
- ⊙ 1/2" ALUMINUM MARK ON 2" ALUMINUM PIPE
- ⊙ PRIMARY MONUMENT RECOVERED AS NOTED
- ⊙ SECONDARY MONUMENT SET THIS SURVEY
- ⊙ 3/8" x 30" REBAR w/ PLASTIC CAP
- ⊙ SECONDARY MONUMENT RECOVERED 1/2" RSR
- ⊙ SECONDARY MONUMENT RECOVERED
- ⊙ 3/8" REBAR w/ PLASTIC CAP LS 11720
- ⋯⋯⋯ FORMER 1/2" LINE (TYPICAL)
- || RECORD PER DRASETH SUBDIVISION 2016 ADDITION
- || RECORD PER QLS 15th RITE SH
- || RECORD PER QLS 15th RITE SH

**PLAT APPROVAL**

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF \_\_\_\_\_  
KENAI PENINSULA BOROUGH.

AUTHORIZED OFFICIAL \_\_\_\_\_

KPE FILE NO. \_\_\_\_\_  
DRASETH SUBDIVISION - 2017 ADDITION

A SUBDIVISION OF TRACT B DRASETH SUBDIVISION 2016 ADDITION (PLAT NO 2016-22) AND D3, 1624 5TH AND 524 5TH AND GOVT. LOTS 4-14 SEC 7, T10N R11W  
OWNER: CITY OF KENAI  
210 FRIDLAND AVE.  
KENAI, AK 99611-7794  
LOCATED WITHIN THE NE 1/4 SE 1/4 SECTION 7, T10N, R11W, SEWARD MERIDIAN, CITY OF KENAI, KENAI RECORDING DISTRICT, KENAI PENINSULA BOROUGH, ALASKA  
CONTAINING 102,967 ACRES

**INTEGRITY SURVEYS INC.**  
870 SET NET DRIVE KENAI, AK 99611  
PHONE - (907) 383-8647  
SURVEYORS FAX - (907) 383-8647  
PLANNERS

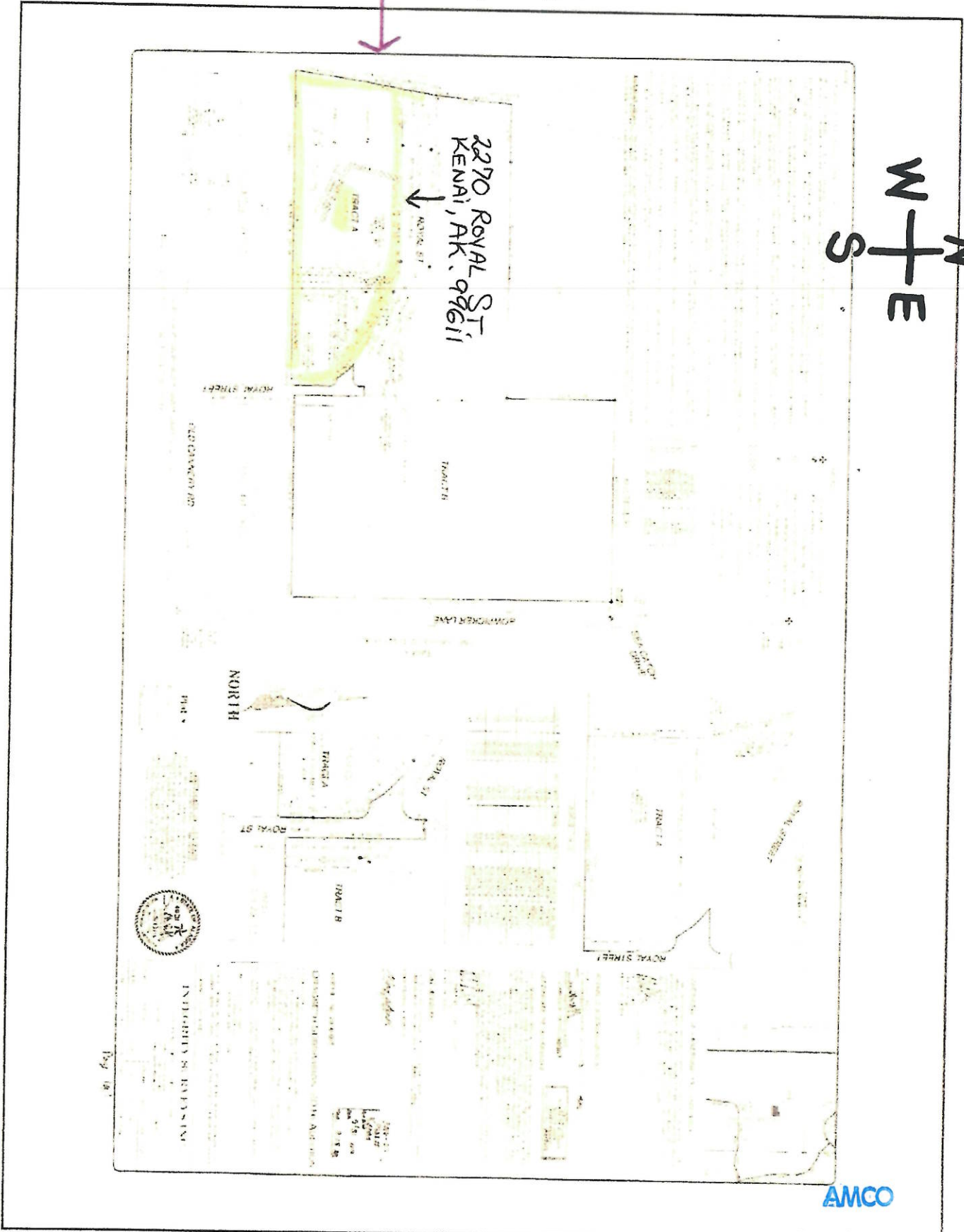
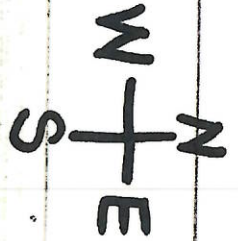
JOB NO.	217126	DRAWN	JUNE 19, 2017 SH
SURVEYOR	T	SCALE	1" = 200'
FIELD SK.	7	FILE	217126 PP.DWG

2270 ROYAL ST.  
KENAI, AK  
99611

AMCO  
JUN 06 2019

Plat #	
Map Dist	20
Sheet	1
Scale	1" = 200'

Plat Map - Page 1



AMCO

JUN 06 2019



# Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

7/9/2019

**Sent via email:** amco.localgovernmentonly@alaska.gov

Kenai City Hall  
City of Kenai

RE: Non-Objection of Application

Licensee/Applicant	:	High Mark Distillery, Inc.
Business Name	:	High Mark Distillery, Inc.
License Type	:	Beverage Dispensary
License Location	:	2270 Royal Street, Warehouse #1, City of Kenai
License No.	:	5826
Application Type	:	New Liquor License

Dear Ms. Heinz,

This serves to advise that the Kenai Peninsula Borough has reviewed the above referenced application and has no objection.

Should you have any questions, or need additional information, please do not hesitate to let us know.

Sincerely,

Johni Blankenship, MMC  
Borough Clerk

JB/TS

Encl.

cc: highmarkdistillery@hotmail.com; amco.localgovernmentonly@alaska.gov;  
DHenry@kpb.us; JRodgers@kpb.us



Sponsored by: Administration

## CITY OF KENAI

### RESOLUTION NO. 2019 - 57

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA APPROVING THE EXECUTION OF A LEASE OF AIRPORT RESERVE LANDS USING THE STANDARD LEASE FORM BETWEEN THE CITY OF KENAI AND SOAR INTERNATIONAL MINISTRIES, INCORPORATED, FOR THE UNDEVELOPED PORTION OF TRACT A, GENERAL AVIATION APRON NUMBER TWO.

WHEREAS, on July 1, 2019, SOAR International Ministries, Inc., (SOAR) submitted an application to lease City owned properties within the Airport Reserve, described as the undeveloped portion of Tract A, General Aviation Apron Number 2; and,

WHEREAS, SOAR's lease application states plans to construct a hangar facility for aircraft storage and maintenance; a connecting office facility, an aircraft ramp and tie-down area, and parking, an investment that gives a lease term of 45 years according to the term table in Kenai Municipal Code 21.10.080; and,

WHEREAS, the proposed development would be mutually beneficial and would conform with the Kenai Municipal Code for zoning, Kenai's Comprehensive Plan, the Airport Land Use Plan, Airport Layout Plan, Federal Aviation Administration regulations, Airport Master Plan, Airport Improvement Program grant assurances, and Airport operations; and,

WHEREAS, the City of Kenai did not receive a competing lease application within thirty (30) days of publishing a public notice of the lease application from SOAR; and,

WHEREAS, at their regular meeting on August 14, 2018, the Planning and Zoning Commission reviewed the lease application and recommended approval by the City Council; and,

WHEREAS, at their regular meeting on August 8, 2018, the Airport Commission reviewed the lease application and recommended approval by the City Council.

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

**Section 1:** That a Lease of Airport Reserve Lands is approved and the City Manager is authorized to execute a lease between the City of Kenai, Lessor, and SOAR International Ministries, Incorporated, Lessee, as follows:

Lot improvements as outlined in lease application from SOAR International Ministries, Incorporated, including an approximately 120 foot x 180 foot hangar facility for aircraft storage and maintenance, an approximately 100 foot x 110 foot connecting office facility, an aircraft ramp and tie-down area, and parking to be completed within two (2) years of signing the lease;

---

The evidence must be submitted to the City within 60 days of the completion of the development and improvements;

The lease term will be 45 years;

Lot developments will prevent unauthorized access to the airfield;

Structures will be built behind the 100 foot building restriction line;

The relocation of the airport perimeter fence will allow aircraft full access to the proposed aircraft ramp and tie down area;

Paving will be completed up to the existing transient aircraft apron pavement;

SOAR is responsible for all snow removal, and snow may not touch the perimeter security fence or be piled to a height that would allow access to the airport; and

SOAR will subdivide the property to designate the portion of Tract A, General Aviation Apron Number Two (2) that it wishes to lease from the City of Kenai as set forth on Exhibit A attached hereto, and the subdivision will include a 40-foot easement for utilities with the cost of the subdivision being shared equally by the City and SOAR.

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

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





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

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
[www.kenai.city](http://www.kenai.city)

## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Elizabeth Appleby, City Planner

**DATE:** August 14, 2019

**SUBJECT:** Resolution 2019-57

SOAR International Ministries, Incorporated (SOAR) submitted a lease application to develop a hangar, office, and parking on the undeveloped portion of Tract A, General Aviation Apron No. 2 within the Airport Reserve on July 1, 2019. SOAR had previously submitted an application for the same parcel for the same use in 2018 that was approved by City Council, but it expired after one year after no lease was executed and an extension was not granted pursuant to Kenai Municipal Code 21.10.050 No right of occupancy - Application expiration in May 2019.

The parcel is 5.25 acres fronting the aviation apron. It has street frontage on North Willow and Granite Point streets. The area adjacent to the taxiway has been developed for airplane parking and the back half of the lot with the street frontages remains treed and undeveloped. SOAR proposes to build on the portion of the lot that is currently treed, and would need to subdivide the lot prior to construction. SOAR is proposing the City share evenly in the cost of the subdivision required before the parcel may be leased. Kenai Municipal Code 21.10.040(c) states subdivision costs may be shared in whatever amount the City Council determines is reasonable given benefit to the Airport if City Council determines the subdivision serves other Airport purposes. City staff recommends an even split as both SOAR benefits and the City benefits from the creation of a more desirable parcel for lease. SOAR is current on rent payments for existing leases within the Airport Reserve from the City of Kenai.

SOAR proposes to lease a portion of Tract A, General Aviation Apron No. 2 for an aeronautical use. SOAR proposes to construct an approximately 120 foot x 180 foot hangar for aircraft storage and maintenance. There would also be a connecting office facility of approximately 100-foot x 110-foot, an aircraft ramp and tie-down area, and parking. Possible activities noted on SOAR's lease application include flight training, aircraft parts sales, aviation safety meetings, community meetings, and storage of aircraft floats. SOAR requested a lease term of 55 years to start on September 1, 2019, however, the maximum term of a lease allowed under KMC 21.10.080 is 45



years. In addition, with timing of Commission and Council meetings and the 30-day waiting period to allow for a competitive lease process to accept other lease applications, the lease may not reasonably start until mid-September 2019. SOAR would need to ensure the fence encompassing its development met Airport safety and security standards.

Pursuant to Kenai Municipal Code 21.10.060 Lease application review, notice of the new lease application was posted in the *Peninsula Clarion* and stated competing applications may be submitted for the parcel within 30-days to the City. The 30-day window from publication ended on August 3, 2019, and no competing applications were submitted to the City.

The parcel is within the Airport Light Industrial (ALI) Zone. Pursuant to KMC 14.20.065, the purpose of the ALI Zone is to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. The proposed aeronautical use by SOAR is a permitted and compatible use in the ALI Zone.

The Imagine Kenai 2030 Comprehensive Plan outlines goals, objectives, and action items for the City, including this one pertaining to the Kenai Municipal Airport:

- Objective T-1: *Support future development near or adjacent to the airport when such development is in alignment with the Kenai Municipal Airport's primary mission, "To be the commercial air transportation gateway to the Kenai Peninsula Borough and Cook Inlet."*

The proposed use by SOAR complies with the Imagine Kenai 2030 Comprehensive Plan in that it supports development on lease lots and the development is in alignment with the Kenai Municipal Airport's marketing strategy.

The Airport Land Use Plan was developed to identify the highest and best uses of Kenai Municipal Airport land. The Airport Land Use Plan discusses leasing land and enhancing opportunities for local economic development. The proposed use by SOAR complies with the Airport Land Use Plan. It would enhance local economic development.

The Airport Commission and Airport Manager recommended approval of the lease application during their meeting on August 8, 2019, as they found it complied with the Airport Land Use Plan, Airport Layout Plan, Federal Aviation Administration regulations, Airport Master Plan, Airport Improvement Program grant assurances, and Airport operations. The Planning and Zoning Commission recommended approval during their meeting on August 14, 2019.

Thank you for your consideration.



*"Serving the Greater Kenai Peninsula"*

305 N. WILLOW ST. SUITE 200 KENAI, ALASKA 99611  
TELEPHONE 907-283-7951  
FAX 907-283-3737

# Memo

**To:** Elizabeth Appleby – City Planner  
Wilma Anderson – Assistant to City Planner

**From:** Mary Bondurant - Airport Manager 

**Date:** August 9, 2019

**Subject:** **SOAR Lease Application – Tract A General Aviation Apron No. 2**

---

Airport Commission reviewed the lease application from SOAR International Ministries at the August 8, 2019 Commission meeting.

Airport Commission unanimously recommends Council approve the subject lease.

If you have any questions, please contact me.

Cc: Wilma Anderson





# City of Kenai Kenai Municipal Airport Land Lease Application

Application for:

New Lease  
 Amendment  
 Extension/Renewal

Application Date: July 1, 2019

### Applicant Information

Name of Applicant:	Richard Page						
Mailing Address:	34225 Page street	City:	Soldotna	State:	Alaska	Zip Code:	99669
Phone Number(s):	Home Phone: ( 907) 252-1841 Cell		Work/ Message Phone: ( 907) 283-1961				
E-mail: (Optional)	RichardPage@soarinternational.org						
Name to Appear on Lease:	SOAR International Ministries						
Mailing Address:	P.O. Box 1714	City:	Kenai	State:	Alaska	Zip Code:	99611
Phone Number(s):	Home Phone: ( 907) 252-1841 Cell		Work/ Message Phone: ( 907) 283-1961				
E-mail: (Optional)							
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Government <input type="checkbox"/> Other _____						

### Description of Property and Term Requested

Legal Description of Property: Undeveloped portion of General Aviation Subdivision #2 Tract A

Does the Property Require Subdivision? (if Yes, answer next two questions)  YES  NO

Are you prepared to be responsible for all costs associated with subdivision?  YES  NO

Do you believe the proposed subdivision would serve other Airport purposes?  YES  NO

Do you have or have you ever had a lease with the City of Kenai?  YES  NO

If Yes, please provide description of property leased (e.g. legal or physical description):

Is this application for renewal or term extension of an existing lease?  YES  NO

If Yes, please provide a description of the property leased:

Lease Term Requested: ~~55~~ <sup>45</sup> Years *City of Kenai* Starting Date: September 1, 2019

### Proposed Use and Activities

Proposed Use (check one):  Aeronautical  Non-Aeronautical

Do you plan to construct new or additional improvements?  YES  NO

Will the proposed improvement char ) or alter the use under an existing lea: )

Yes  No

If yes, what is the new proposed use?

What is the type (e.g. building, land) and nature (e.g. maintenance, new construction) of the proposed improvement?  
New office and hangar facility for SOAR International Ministries and additional hangar facility to accommodate transient corporate aircraft. Potential FBO and flight training facility.

What is the estimated amount of investment in the construction of new permanent improvements on the premises?  
The complete project is estimated to cost 3.5 million dollars.

List of proposed use and business activities:  
Base of operations for SOAR International Ministries. Aircraft storage and maintenance, hangering transient aircraft, potential FBO, potential flight training facility, potential aircraft parts sales, installation, removal, and inside storage of aircraft floats, facility to host community events such as aviation safety meetings, community fundraising events, etc.

**Lease Extension or Renewal\***

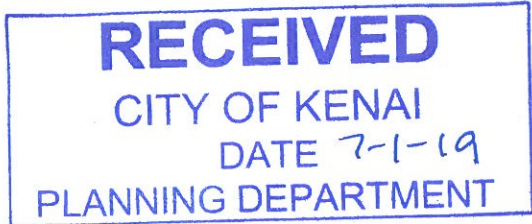
\*This section not required for new lease or amendment applications

Method to determine value of improvements/term for a lease renewal or expiring lease:

- Professional estimate of the remaining useful life of the principle improvement on the property
- Market value appraisal of the principle improvement on the property
- Purchase price of improvements

Submitting an application for a lease does not give the applicant a right to lease or use the land requested in the application. The application shall expire twelve (12) months after the date the application has been made if the City and the applicant have not, by that time, entered into a lease, unless the City Council for good cause grants an extension for a period not to exceed six (6) months. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City

Signature:	<i>Richard L Page</i>	Date:	07/01/2019
Print Name:		Title:	



**Elizabeth Appleby**

---

**From:** Elizabeth Appleby  
**Sent:** Monday, July 22, 2019 3:40 PM  
**To:** 'Richard Page'  
**Cc:** Wilma Anderson  
**Subject:** Lease Application (new lease)

Good afternoon,

Thanks for dropping off the new assignment request today. I was reviewing your application for the new lease and noticed you had requested a term of 55 years. The maximum term allowed in City Code is 45 years. I will amend your application term request to 45 years. Please let me know if you have questions. I think this was just a copy carry-over from when you had applied to lease this lot in 2018 as the same change was made then to the requested term.

--Elizabeth

Elizabeth Appleby, AICP  
City Planner  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611  
(907) 283-8235/phone  
[eappleby@kenai.city](mailto:eappleby@kenai.city)

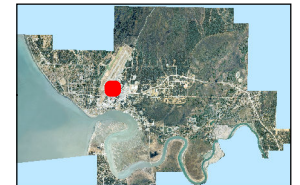




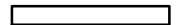
# Lease Application

Parcel No:  
04324025

Undeveloped  
portion of  
General Aviation #2  
Tract A



90'



1 inch equals 110 feet

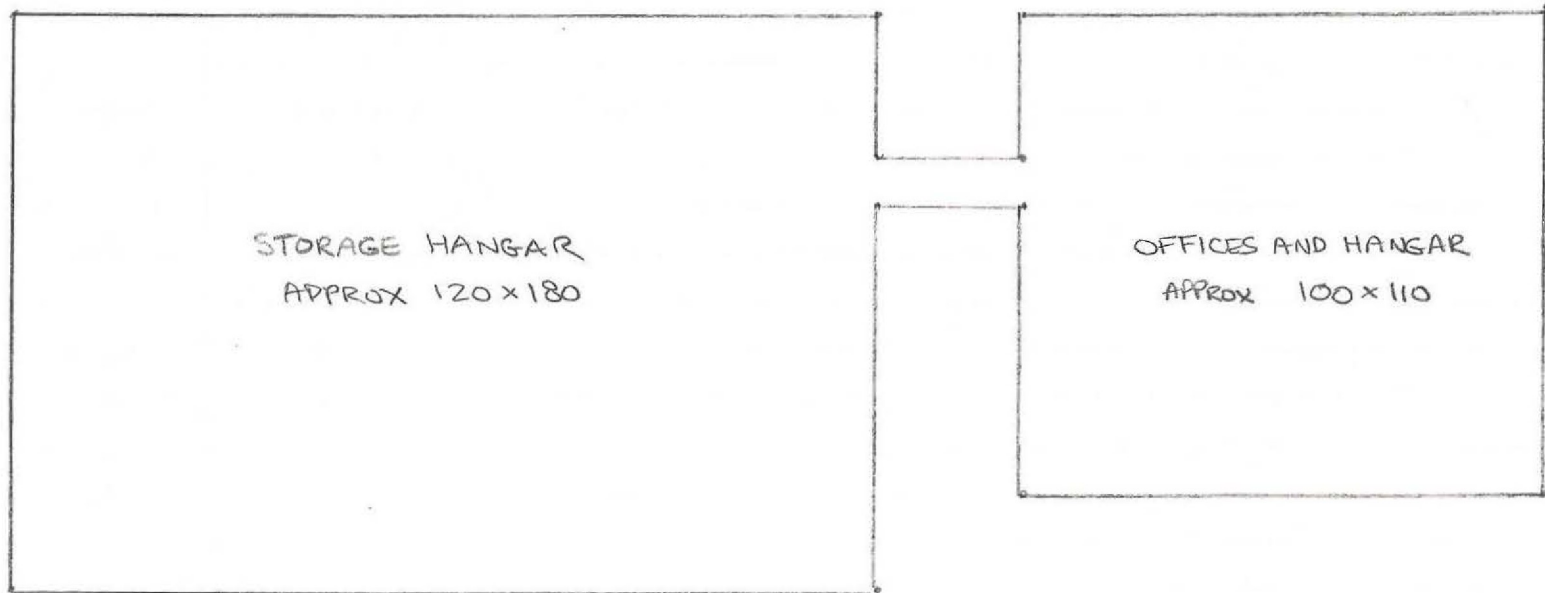
The information depicted here on is for graphic representation only of the best available sources. The City of Kenai assumes no responsibility for errors on this map.

Date: 7/23/2019



AIRCRAFT RAMP AND TIE-DOWN AREA

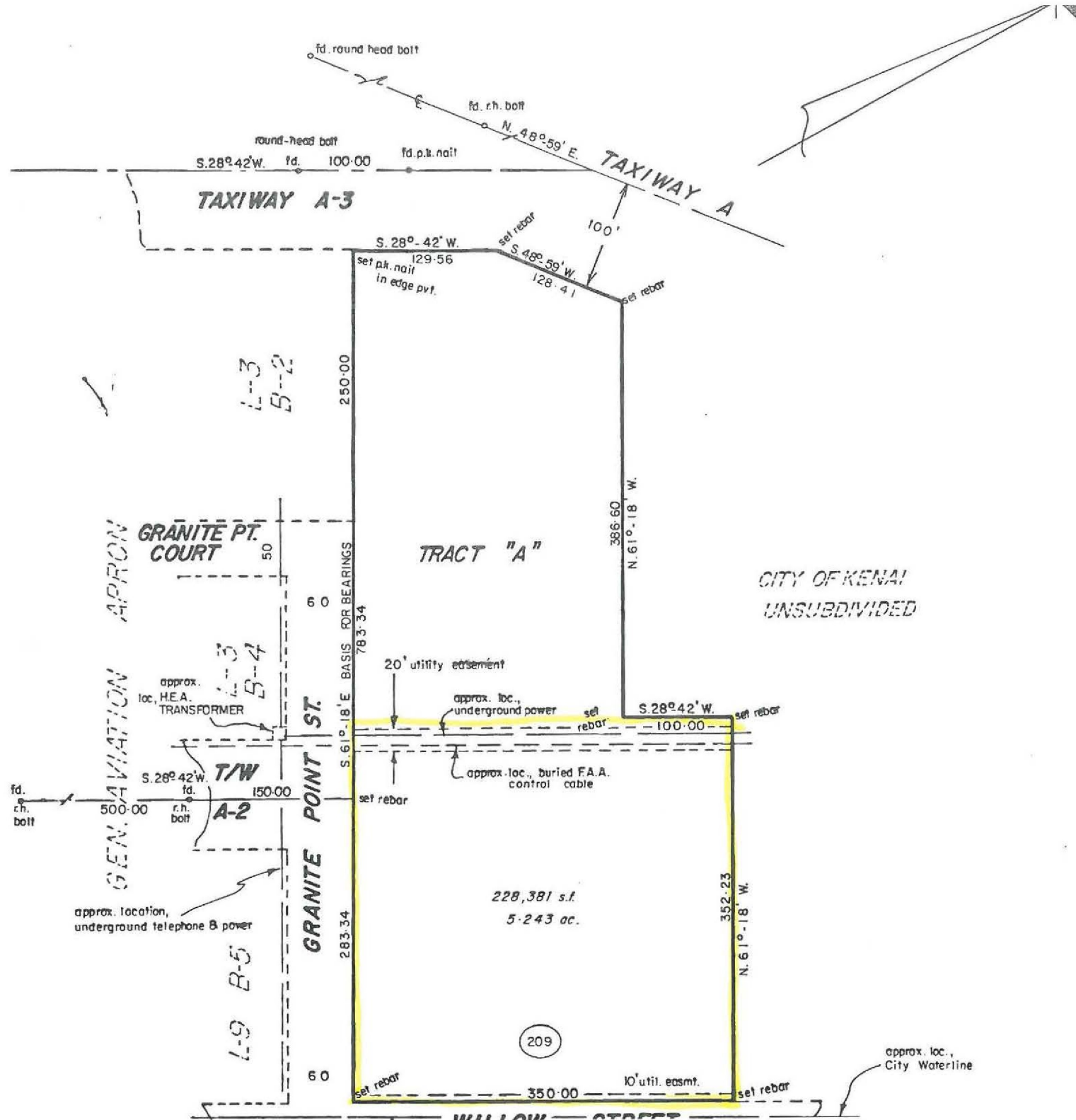
APPROX 350'



PARKING

APPROX 350'





I HEREBY  
PROPERTY S  
PLAN OF SUI  
THE USE SH

*W...*  
CITY MANA

ATTEST:  
*Jane*  
CITY CLERK

NOTARY'S

SUBSCRIBED  
19 81

*Janice*  
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MY COMMIS

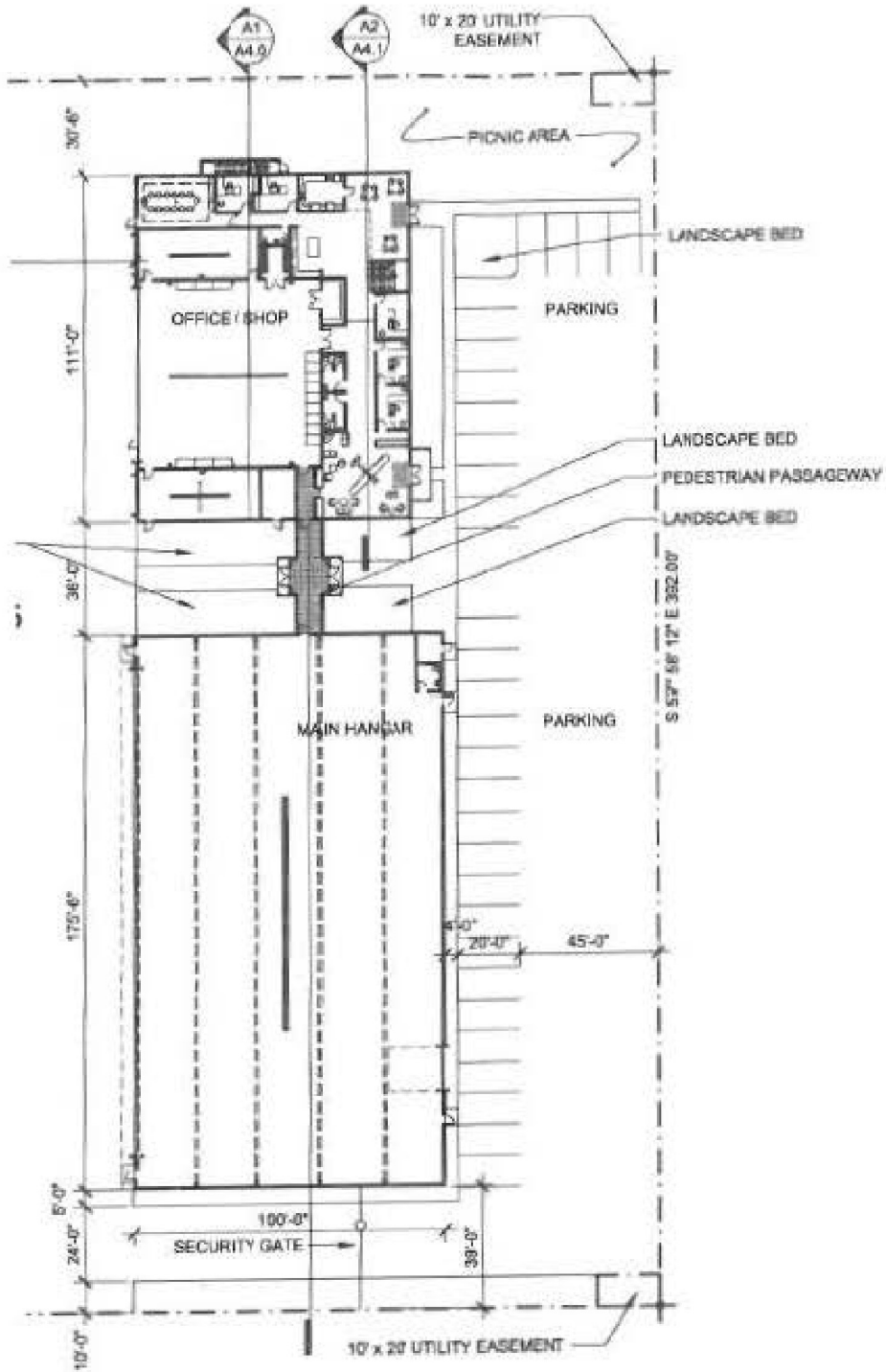
PLAT APPF

THIS PL  
PLANNING

KENAI PEN

BY: *Pro*  
AUTHOR

209 = 5





A1 SOUTH ELEVATION  
A3.0 3/32" = 1'-0" (22x34); 3/64" = 1'-0" (11x17)

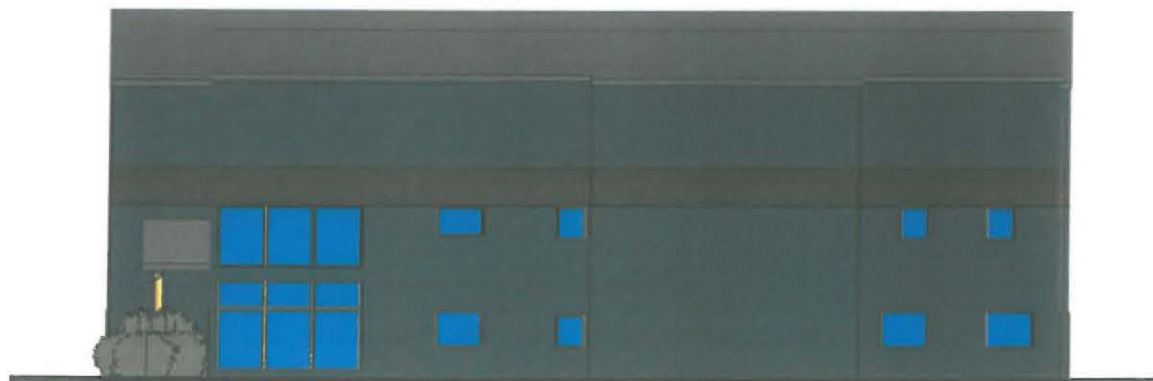


A2 EAST ELEVATION  
A3.0 3/32" = 1'-0" (22x34); 3/64" = 1'-0" (11x17)





A1 NORTH ELEVATION  
A3.1 3/32" = 1'-0" (22x34); 3/64" = 1'-0" (11x17)



A2 WEST ELEVATION  
A3.1 3/32" = 1'-0" (22x34); 3/64" = 1'-0" (11x17)



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 21<sup>st</sup> day of August, 2019.

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

ATTEST:

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



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

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
Telephone: (907) 283-7535 | Fax: (907) 283-3014  
[www.kenai.city](http://www.kenai.city)

## 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.





Sponsored by: Administration

## CITY OF KENAI

### RESOLUTION NO. 2019 - 59

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, APPROVING AN AMENDMENT EXTENDING THE AGREEMENT FOR SERVICES TO PROVIDE ON-SITE FACILITY MANAGEMENT FOR VINTAGE POINTE MANOR CONGREGATE HOUSING.

WHEREAS, the City entered into an agreement with William Sadler to provide on-site facility management services for Vintage Pointe Manor Congregate Housing for three years with an expiration date of September 31, 2019; and,

WHEREAS, the agreement provides for two one year extensions of the agreement by mutual consent of the parties; and,

WHEREAS, Mr. Sadler has performed well under the contract and it is in the best interest of the City to approve the extension and authorize the City Manager to approve the future one-year extension at the City Managers discretion.

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

**Section 1.** That the First Amendment to Agreement for Services attached hereto, extending the Agreement for provide on-site facility management services for Vintage Pointe Manor Congregate Housing is approved for execution by the City Manager, and the City Manager is authorized to execute the one remaining one year extension at the City Manger's discretion without bringing the matter back to Council.

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

ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21<sup>st</sup> day of August, 2019.

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

ATTEST:

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

**FIRST AMENDMENT TO AGREEMENT FOR SERVICES**

This First Amendment to Agreement for Services is between the City of Kenai (Owner), whose address is 210 Fidalgo, Kenai, AK 99611 and William Sadler (Contractor), whose address is 381 Senior Ct., Apt. 106, Alaska 99611.

**WITNESSETH:**

**WHEREAS**, Owner and Contractor entered into an Agreement for Services for Contractor effective October 1, 2019, to provide on-site facility management services for the Vintage Pointe Manor Congregate Housing Facility, owned by the City of Kenai; and,

**WHEREAS**, the Agreement for Services expires on September 31, 2019, subject to their mutual agreement to extend the contract for a period of no greater than one year.

**WHEREAS**, Owner and Contractor both desire to extend the Agreement for one year as permitted in the Agreement for Services.

**NOW THEREFORE**, the parties agree as follows:

1. Paragraph 1 of the Agreement for Services is amended to extend the term of the agreement for one (1) year from October 1, 2019, to September 30, 2020, unless terminated earlier as provided in the Agreement.

2. All other terms and conditions of the Agreement for Services remain in full force and effect except as expressly modified or stated herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment to Agreement for Services the day and year set forth below.

**CITY OF KENAI**

By: \_\_\_\_\_

Paul Ostrander

Its: City Manager

**CONTRACTOR**

By: \_\_\_\_\_

William Sadler

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by Paul Ostrander, City Manager of the City of Kenai, an Alaska municipal corporation, on behalf of the City.

\_\_\_\_\_  
NOTARY PUBLIC for State of Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by William Sadler.

\_\_\_\_\_  
NOTARY PUBLIC for State of Alaska  
My Commission Expires: \_\_\_\_\_

Approved as to form:

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





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210 Fidalgo Ave, Kenai, Alaska 99611-7794  
Telephone: (907) 283-7535 | Fax: (907) 283-3014  
www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Kathy Romain, Senior Center Director  
**DATE:** August 9, 2019  
**SUBJECT:** Resolution No. 2019-59

---

The current contract for Vintage Pointe Manor is a three year agreement with Sadler Property Management. This agreement expires on September 30, 2019, but does allow for two, one-year extensions.

Mr. Sadler has maintained a good working relationship with the City during this agreement period, as well as having a 100% approval rating based on a resident survey completed earlier this year.

I respectfully request passage of Resolution No. 2019 – 59, authorizing the first of two, one-year extensions of the Agreement for Contract Services for Vintage Pointe Manor Congregate Housing Facility and the City Manager be authorized to execute the one remaining one-year extension at the City Manager's discretion without bringing the matter back to Council.

Thank you for your consideration.



**KENAI CITY COUNCIL – REGULAR MEETING  
AUGUST 7, 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 7, 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
Glenese Pettey	

A quorum was present.

Also in attendance were:

Terry Eubank, Acting 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 G.7.	Special Use Permit for Kenai Chamber of Commerce and Visitor Center
	<ul style="list-style-type: none"> <li>Letter from Kenai Chamber of Commerce and Visitor Center</li> </ul>

**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** – None

**C. UNSCHEDULED PUBLIC COMMENTS** – None.

**D. PUBLIC HEARINGS**

1. **Resolution No. 2019-54** - Designating Management Authority for Tract 2, Baron Park Subdivision to Reflect that Revenues and Expenses Associated with the Property are Allocated to the Airport Fund. (Administration)

**MOTION:**

Council Member Molloy **MOVED** to adopt Resolution No. 2019-54 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.

Appreciation was expressed for the Resolutions.

An overview of the transactions since the early 1990's was provided. Clarification was provided that the Airport purchased assets from a former lease with the University of Alaska Anchorage which was terminated. It was suggested the payment for the assets extinguished the lease and was essentially like buying the property back.

Management authority for each of the tracts was provided as Tract 1 – General Fund, Tract 2 – Airport Fund, Tract 3 – Airport Fund, Tract 4 – General Fund, Tract 5 – General Fund, so long as this resolution and the next resolution were adopted.

It was noted the intent was that if any land was sold or any revenue derived, it would remain with the fund with management authority. Clarification was provided that no Federal Aviation Administration deed restrictions were on any of the properties. Clarification was also provided that this action did not encumber another Council's actions on the property such as building trails or parks.

**MOTION TO AMEND:**

Council Member Knackstedt **MOVED** to amend Section 1 to read, "that management authority for tract 2 Baron Park Subdivision is designated to the Airport Fund and revenue, including future sales and associated expenses are allocated to the Airport Fund and Airport Land Sale Permanent Fund as appropriate and Council Member Molloy **SECONDED** the motion.

Clarification was provided that the property had been surveyed, the boundaries were known, and the City intended to take further platting action in the future.

**VOTE ON THE AMENDMENT:**

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

**MOTION PASSED UNANIMOUSLY.****VOTE ON THE MAIN MOTION AS AMENDED:**

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

**MOTION PASSED UNANIMOUSLY.**

2. **Resolution No. 2019-55** - Designating Management Authority for Tract 3, Baron Park Subdivision to Reflect That Revenues And Expenses Associated With The Property Are Allocated To The Airport Fund. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-55 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.

**MOTION TO AMEND:**

Council Member Knackstedt **MOVED** to amend Section 1 to read, "that management authority for tract 2 Baron Park Subdivision is designated to the Airport Fund and revenue, including future sales and associated expenses are allocated to the Airport Fund and Airport Land Sale Permanent Fund as appropriate and Council Member Molloy **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

Clarification was provided that code and/or charter was what required funds from the sale of properties to go to permanent funds, not these resolutions.

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

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

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

**MOTION PASSED UNANIMOUSLY.**

**E. MINUTES**

1. \*Regular Meeting of July 3, 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. **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 introduce Ordinance No. 3072-2019 and Council Member Knackstedt **SECONDED** the motion.

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to refer to the Airport Commission for recommendation at their August 8 meeting, the Harbor Commission for recommendation at their August 19 meeting, the Planning and Zoning Commission Meeting for recommendation at their August 14 meeting and set for Public Hearing before City Council on August 21. Council Member Knackstedt **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

**UNANIMOUS CONSENT** was requested on the main motion.

**VOTE ON THE MAIN MOTION AS AMENDED:** There being no objections, **SO ORDERED**.

4. \***Ordinance No. 3073-2019** - Accepting and Appropriating a Grant from the State of Alaska for the Purpose of Purchasing Books. (Administration)

Introduced by the consent agenda and public hearing set for August 21.

5. **\*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)

Introduced by the consent agenda and public hearing set for August 21.

6. **\*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)

Introduced by the consent agenda and public hearing set for August 21.

7. **Action/Approval** - Authorizing a Special Use Permit for the Kenai Chamber of Commerce and Visitor Center for the Use of the "Moose Meat John" Cabin. (Administration)

#### **MOTION:**

Council Member Knackstedt **MOVED** to authorize a Special Use Permit for the Kenai Chamber of Commerce and Visitor Center for the Use of the "Moose Meat John" Cabin. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

Clarification was provided that the cabin sat on a 100 ft. by 100 ft. piece of property within a parcel and subdivision would be required to allow for a lease. Clarification was also provided that the current practice for Special Use Permits was one year and Ordinance No. 3072-2019, currently being considered, restricted Special Use Permits to one year.

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

#### **H. COMMISSION/COMMITTEE REPORTS**

1. Council on Aging – It was reported the July 11 meeting was cancelled.
2. Airport Commission – It was reported the Commission heard the presentation regarding the Land Sale and Leasing Policies and Procedures and heard updates on the Airfield Marking Project, the certification inspection, Field of Flowers sign, and wildlife display at the terminal; next meeting August 8.
3. Harbor Commission – No report; next meeting August 19.
4. Parks and Recreation Commission – It was reported the Commission met on August 1 and discussed locations for placement of bike racks; next meeting September 5.
5. Planning and Zoning Commission – It was reported that at their July 24 meeting the Commission heard the presentation regarding the Land Sale and Leasing Policies and Procedures, approved a plat, a Conditional Use Permit for a guide service, and the transfer of a Conditional Use Permit for a gravel pit; next meeting August 14.

6. Beautification Committee – No report; next meeting September 10.
7. Mini-Grant Steering Committee – No report.

#### **I. REPORT OF THE MAYOR**

Mayor Gabriel reported on the following:

- Attended the Fourth of July festivities;
- Attended the final meeting for the Election Stakeholder Group who was recommending the Vote-by-mail system for the Borough;
- Had spent time fishing; and
- Was attending upcoming Alaska Municipal League meetings.

#### **J. ADMINISTRATION REPORTS**

1. City Manager – Acting City Manager T. Eubank reported on the following:
  - Dipnet operations and financials noting the City was within 95% of projected revenues; thanked the staff that made the fishery successful;
  - The Cemetery Expansion Project was ongoing;
  - The Airfield Crack Sealing Project was ongoing; noted an ordinance for supplemental appropriation should be expected;
  - The Terminal Rehabilitation Project was ongoing;
  - Replacement blowers for the Wastewater Treatment Plant were onsite and ready for installation;
  - Expressed appreciation for the US Coast Guard's presence during the Dipnet Fishery.
2. City Attorney – No Report.
3. City Clerk – City Clerk J. Heinz noted the Candidate Filing Period for the Regular Election was open, the deadline for registering to vote or changing voter registration was September 1 for the October 1 election, and would be watching the Borough Assembly as they considered the recommendations of the Election Stakeholder Group recommendations.

#### **K. ADDITIONAL PUBLIC COMMENT**

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

None.

2. Council Comments

Vice Mayor Navarre noted the upcoming Alaska Municipal League meetings in Soldotna, the Alaska Gasline Development Corporation Advisory Council was focusing on finalizing the feasibility study and scaling back with state budget cuts, also provided a reminder of the upcoming Industry Appreciation Day.

Council Member Pettey noted good reports regarding Dipnet Fishery operations and thanked staff; also noted the City looked clean and the flowers looked nice and thanked staff for that as well.

Council Member Glendening noted the Kenai Peninsula Borough Alaska LNG Project Advisory Committee had an upcoming meeting and the group was focusing on finalizing the Environmental Impact Study and getting the project permitted as the permit was then good for five years.

Council Member Peterkin noted upcoming travel.

Council Member Molloy thanked administration and the departments for successful Dipnet Fishery operations.

Council Member Knackstedt noted the Dipnet Fishery went very well; attended the Fourth of July Parade and thanked the Chamber of Commerce President for the festivities; noted Beaver Loop was under construction; thanked Kenai Police Department for their work in apprehending the suspect in the recent double homicide.

L. **EXECUTIVE SESSION** – None.

M. **PENDING ITEMS** – None.

N. **ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 7:32 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of August 7, 2019.

---

Jamie Heinz, CMC  
City Clerk



PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION  
COUNCIL MEETING OF: AUGUST 21, 2019

<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>DEPARTMENT</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
HOMER ELECTRIC	ELECTRIC USAGE	VARIOUS	UTILITIES	114,128.49

**INVESTMENTS**

<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>MATURITY DATE</u>	<u>AMOUNT</u>	<u>Effect. Int.</u>
---------------	--------------------	----------------------	---------------	---------------------

PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL  
 COUNCIL MEETING OF: AUGUST 21, 2019

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
HACH	COMPUTER SOFTWARE	WASTE WATER TREATMENT	COMPUTER SOFTWARE	22,069.00

INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
NORTH STAR PAVING	SITE MATERIALS AT CEMETERY	118644 - CEMETARY IMP. CAP. PROJ.	INCREASE	25,000.00	30,000.00



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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 14, 2019  
**SUBJECT:** **Purchase Orders over \$15K**

The purpose of this memo is to request approval for a new purchase order over \$15K for the purchase of Hach WIMS Software for the City of Kenai's Waste Water Treatment Plant. WIMS (Water Information Management Solutions) software is utilized by staff for the recording of all lab testing and analysis which is reported on a monthly basis ADEC to remain in compliance with our Discharge Permit.

This purchase was approved during the budgeting process earlier in the year, sufficient funds are already provided within the account below. It should be noted the cost of the software has increased slightly but the funds accounted for remain sufficient to complete the purchase. New funds are not being requested at this time.

Account 010 467 2026 Waste Water Treatment Plant – Computer Software  
 Purchase Order to Hach for \$22,069.00

Approval of these POs will allow the Public Works Department to continue to meet the needs of the community while remaining within compliance with environmental regulations.

Council's approval is respectfully requested.





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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:** **Purchase Orders over \$15K**

---

The purpose of this memo is to request approval to increase PO118644 to North Star Paving and Construction to \$30,000.00 for site materials at the new Cemetery. The Streets Division of the Public Works Department has been performing the site work in house. The site materials for the project were competitively quoted and North Star Paving and Construction was found to be the lowest responsive bidder.

The PO was originally setup for \$5,000.00. The additional funds will allow the work to continue in preparation for asphalt pavement which may not take place until the spring. The Site materials being purchased through this PO include Pit Run gravel, Sub base 2" minus gravel, D1, and topsoil. The Asphalt, Fencing, and Site Lighting work will be contracted out to others at a future date.

Funding for this project is currently available within the Cemetery Improvement Capital Project Fund - Activity Code 228.

Council's approval is respectfully requested.





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Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

TO: Mayor Gabriel and City Council Members

FROM: Jamie Heinz, City Clerk

DATE: August 6, 2019

RE: **Limited Marijuana Cultivation Facility License Renewal**

---

The Alcoholic & Marijuana Control Office has sent notifications that the following applicants have requested to renew their Limited Marijuana Cultivation Facility Licenses:

Applicant: Herban Extracts, LLC  
Owners: Buddy Crowder  
D/B/A: Herban Extracts, LLC

Applicant: Peninsula Botanicals, LLC  
Owners: Kathryn Staskon  
D/B/A: Peninsula Botanicals

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

A review of City accounts has been completed and the applicants have satisfied all obligations to the City. With the approval of Council, letters of non-objection to the requests for the renewal of the Limited Marijuana Cultivation Licenses will be forwarded to the Alcoholic & Marijuana Control Office and the applicants.

Your consideration is appreciated.

Attachments



"Village with a Past, City with a Future"

Page 164

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

TO: David Ross, Police Chief  
Tina Williamson, Finance Department  
Scott Bloom, Legal Department  
Willie Anderson, Lands Management  
Elizabeth Appleby, City Planner  
Mike Wesson, Building Official  
Jeremy Hamilton, Fire Marshal

FROM: Jamie Heinz, City Clerk

DATE: July 25, 2019

RE: Limited Marijuana Cultivation Facility License Renewal

---

The Alcoholic & Marijuana Control Office has sent notification that the following applicant has applied for renewal of their license:

Applicant: Peninsula Botanicals, LLC  
Owners: Kathryn Staskon  
D/B/A: Peninsula Botanicals  
Phone: 907-420-4176  
Location: 1030 Angler Drive, Unit B

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

Please review records maintained by your department (i.e. water and sewer billings, lease/property payment history, occupancy certifications, premises inspections, citations, etc.) regarding the above referenced applicant and/or property and advise if obligations have been met by marking the appropriate box on the next page. **If obligations have not been met, attach information to this memorandum indicating what obligations are outstanding and how the obligations can be cured.**

Once you have completed your section, please route to the next department.

Please let me know if you have any questions. Thanks.



- 1. **Police Department** D.R. **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 2. **Finance** [Signature] **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 3. **Legal** SB **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 4. **Lands Management** [Signature] **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 5. **Planning and Zoning** EA **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 6. **Building Official** MW **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 7. **Fire Marshal** [Signature] **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

Returned to Clerk's office: 8/6/19



July 2, 2019

**City of Kenai**

Attn: Jamie Heinz

VIA Email: [jheinz@kenai.city](mailto:jheinz@kenai.city)

**Kenai Peninsula Borough**

Attn: Borough Clerk

Via Email: [tshassetz@kpb.us](mailto:tshassetz@kpb.us)  
[jblankenship@kpb.us](mailto:jblankenship@kpb.us)  
[micheleturner@kpb.us](mailto:micheleturner@kpb.us)

<b>License Number:</b>	12303
<b>License Type:</b>	Limited Marijuana Cultivation Facility
<b>Licensee:</b>	Peninsula Botanicals, LLC
<b>Doing Business As:</b>	PENINSULA BOTANICALS
<b>Physical Address:</b>	1030 angler drive Unit B kenai, AK 99611
<b>Designated Licensee:</b>	kathryn staskon
<b>Phone Number:</b>	907-420-4176
<b>Email Address:</b>	katestaskon@gmail.com

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

3 AAC 306.060 states that the board will uphold a local government protest and deny an application for a marijuana establishment license unless the board finds that a protest by a local government is arbitrary, capricious, and unreasonable. If the protest is a "conditional protest" as defined in 3 AAC 306.060(d)(2) and the application otherwise meets all the criteria set forth by the regulations, the Marijuana Control Board may approve the license renewal, but require the applicant to show to the board's satisfaction that the requirements of the local government have been met before the director issues the license.

At the May 15, 2017, Marijuana Control Board meeting, the board delegated to me the authority to approve renewal applications with no protests, objections, or notices of violation. However, if a timely protest or objection is filed for this application, or if any notices of violation have been issued for this



license, the board will consider the application. In those situations, a temporary license may be issued pending board consideration.

If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,



Erika McConnell  
Director



# Form MJ-20: Renewal Application Certifications

## What is this form?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

### Section 1 - Establishment Information

*Peninsula Botanicals LLC*

Enter information for the licensed establishment, as identified on the license application.

Licensee:	<i>Peninsula Botanicals</i>	License Number:	<i>12303</i>		
License Type:	<i>Limited cultivation facility</i>				
Doing Business As:	<i>Peninsula Botanicals</i>				
Premises Address:	<i>1030 Angler Dr Unit B</i>				
City:	<i>Kenai</i>	State:	<i>AK</i>	ZIP:	<i>99611</i>

### Section 2 - Individual Information

Enter information for the individual licensee who is completing this form.

Name:	<i>Kathryn Ann Staskon</i>
Title:	<i>Chief Executive Officer</i>

### Section 3 - Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

Initials

*KS*

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

*KS*

I certify that a notice of violation has **not** been issued for this license.

Sign your initials to the following statement **only if you are unable to certify one or more of the above statements**:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).

*KS*



Section 4 - Certifications

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

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

KS

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

KS

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

KS

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

KS

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

KS

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

KS

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

KS

As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Marijuana Control Board in support of this application and understand that failure to do so by any deadline given to me by AMCO staff may result in additional fees or expiration of this license.

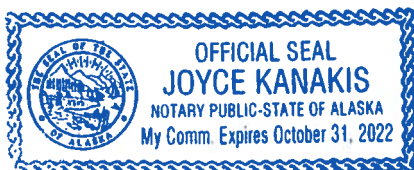
Kathryn Staskon CEO Peninsula Botanicals  
Signature of licensee

Joyce Kanakis  
Notary Public in and for the State of Alaska

Kathryn STASKON  
Printed name of licensee

My commission expires: 10/31/22

Subscribed and sworn to before me this 7 day of June, 2019.



# Notice of Violation

(3AAC 306.805)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 1/30/19

License #/Type: Limited Marijuana Cultivation Facility - 12303

Licensee: Kathryn Staskon

Address: 1030 Angler Drive, Unit B, Kenai, AK

DBA: Peninsula Botanicals

AMCO Case #: AM19-0200

This is a notice to you as licensee that an alleged violation has occurred. If the Marijuana Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

On 1-29-19, you emailed AMCO Enforcement a Fm MJ-25, Waste Disposal Notice. Upon reviewing the notice, it indicated that on 1-28-19 you had disposed of the plants, tag numbers ending in 498, 496, 526, 528 and 524, for a total weight of 906 grams. This is a violation.

Your attention is referred to 3AAC 306.740A(c)(1) Waste Disposal: A marijuana establishment shall in the marijuana inventory tracking system required under 3AAC 306.730, give the board notice not later than three days before making the waste unusable and disposing of it; however, the director may authorize immediate disposal on an emergency basis

**3 AAC 306.805 provides that upon receipt of a Notice of Violation, a licensee may request to appear before the board and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice of Violation. A licensee may respond, either orally or in writing to the Notice. 3 AAC 306.810 (2)(A)(B)(C) failed, within a reasonable time after receiving a notice of violation, to correct any defect that is the subject of the notice of violation of AS 17.8 or this chapter.**

**IT IS RECOMMENDED THAT YOU RESPOND IN WRITING TO DOCUMENT YOUR RESPONSE FOR THE MARIJUANA CONTROL BOARD.**

**\*Please send your response to the address below and include your marijuana license number in your response.**

Alcohol & Marijuana Control Office  
ATTN: Enforcement  
550 W. 7<sup>th</sup> Ave, Suite 1600  
Anchorage, Alaska 99501  
[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)

Issuing Investigator: J. Hamilton

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: Email

Date:



Hello, my name is Kathryn Staskon license #12303 owner of Peninsula Botanicals. I am writing this letter in response to N.O.V. that I received on 1/29/2019. I would like to take this time to acknowledge my respect for the board, the investigators, and the cannabis industry here in Alaska. I feel that it is an honor to be part of this industry.

On Jan 28<sup>th</sup> 2019, I did destroy plants # 498,496,526,528, and 524, and provided video to Mr. Hamilton per his request. I really just want to address the board on a poorly written rule concerning waste and how it affects a cultivator first hand. I destroyed the plants due to them showing signs of being Hermaphroditic, as a cultivator this is my worst nightmare. One open flower can spread through my facility and pollinate most or all of my other flowering plants. This would cause seeds. I will have unusable bud and take a huge financial loss on my product, it might even force me to close the doors. Being a small grower, I can't even afford to lose one crop. The most appropriate approach is to destroy the plants. I ground them up with cardboard, and took them out of my facility.

According to The Center for Disease Control aspergillus, fungus and mold colonies can begin in a matter of hours. Mold spores can also contaminate my whole facility along with all my crops. Such spores can rapidly reproduce and being a grower, I know that all my fans air intake, heat. Air conditioning, air filtration can quickly spread these airborne particulates. Due to the fact that the state requires testing for all these agents on all cannabis products this matter should be of concern to the board.

We need to change how this rule is written. I don't understand with all of the scientific evidence that has proven mold to be such a harm to the public, why the board requests us to hold on to waste for 72 hrs. Much of this danger can easily be eliminated, by allowing immediate, or at least timely destruction and or disposal, on camera, of course. I should not be asked to put my whole facility, employees, and crops at risk.

I do not mind holding on to waste, I would just hope that the board sees fit to change the wording somehow to allow the waste to be destroyed immediately. I would like to see an amendment to the waste portion of regulations, this subject needs attention brought to it immediately. We have public safety seats on the board for a reason, and this is a public safety issue.

I have been a restaurant manager/bartender my whole life, in fact I still hold a valid TAPS card, never once was the alcohol control board involved in the clean up and disposal of a broken liquor bottle, or case of beer. Much less did they require us to leave it in the trash can for 3 days until we got permission to dispose of it. As a license holder, I would like to see the board set forth regulations which are practical and efficient, not regulations that are make-work or even hazardous.

Thankyou,  
Kathryn Staskon  
Peninsula Botanicals  
#12303

# Alcohol & Marijuana Control Office

**License Number:** 12303

**License Status:** Active-Operating

**License Type:** Limited Marijuana Cultivation Facility

**Doing Business As:** PENINSULA BOTANICALS

**Business License Number:** 1049951

**Designated Licensee:** kathryn staskon

**Email Address:** katestaskon@gmail.com

**Local Government:** Kenai (City of)

**Community Council:**

**Latitude, Longitude:** 60.545068, -151.859760

**Physical Address:** 1030 angler drive  
Unit B  
kenai, AK 99611  
UNITED STATES

## Licensee #1

**Type:** Entity

**Alaska Entity Number:** 10051115

**Alaska Entity Name:** Peninsula Botanicals, LLC

**Phone Number:** 907-420-4176

**Email Address:** katestaskon@gmail.com

**Mailing Address:** 1030 angler drive  
kenai, AK 99611  
UNITED STATES

## Entity Official #1

**Type:** Individual

**Name:** kathryn staskon

**SSN:** [REDACTED]

**Date of Birth:** [REDACTED]

**Phone Number:** 907-420-4176

**Email Address:** katestaskon@gmail.com

**Mailing Address:** 1030 angler drive  
kenai, AK 99611  
UNITED STATES

**Note:** No affiliates entered for this license.



# Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

July 8, 2019

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

City of Kenai  
Kenai City Hall

RE: Renewal Application for Limited Marijuana Cultivation Facility

Business Name : Peninsula Botanicals, LLC  
License Location : Kenai/1030 Angler Drive, Kenai  
License No. : 12303

Dear Ms. Heinz,

This serves to advise that the Kenai Peninsula Borough (KPB) has reviewed the above referenced application and has no objection to the issuance of the license.

Should you have any questions, or need additional information, please don't hesitate to let us know.

Sincerely,

Johni Blankenship, MMC  
Borough Clerk

JB/TS

Encl.

cc: [katestaskon@gmail.com](mailto:katestaskon@gmail.com); [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov)



July 10, 2019

**City of Kenai**

Attn: Jamie Heinz

VIA Email: [jheinz@kenai.city](mailto:jheinz@kenai.city)

**Kenai Peninsula Borough**

Attn: Borough Clerk

Via Email: [tshassetz@kpb.us](mailto:tshassetz@kpb.us)  
[jblankenship@kpb.us](mailto:jblankenship@kpb.us)  
[micheleturner@kpb.us](mailto:micheleturner@kpb.us)

<b>License Number:</b>	14432
<b>License Type:</b>	Marijuana Product Manufacturing Facility
<b>Licensee:</b>	Herban Extracts, LLC
<b>Doing Business As:</b>	HERBAN EXTRACTS, LLC
<b>Physical Address:</b>	14927 Kenai Spur Highway Kenai, AK 99611
<b>Designated Licensee:</b>	Buddy Crowder
<b>Phone Number:</b>	907-252-4755
<b>Email Address:</b>	buddy@907maryjane.com

License Renewal Application       Endorsement Renewal Application

AMCO has received a complete renewal application and/or endorsement renewal application for a marijuana establishment within your jurisdiction. This notice is required under 3 AAC 306.035(c)(2). Application documents will be sent to you separately via ZendTo.

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

3 AAC 306.060 states that the board will uphold a local government protest and deny an application for a marijuana establishment license unless the board finds that a protest by a local government is arbitrary, capricious, and unreasonable. If the protest is a “conditional protest” as defined in 3 AAC 306.060(d)(2) and the application otherwise meets all the criteria set forth by the regulations, the Marijuana Control Board may approve the license renewal, but require the applicant to show to the board’s satisfaction that the requirements of the local government have been met before the director issues the license.

At the May 15, 2017, Marijuana Control Board meeting, the board delegated to me the authority to approve renewal applications with no protests, objections, or notices of violation. However, if a timely



protest or objection is filed for this application, or if any notices of violation have been issued for this license, the board will consider the application. In those situations, a temporary license will be issued pending board consideration.

If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,



Erika McConnell  
Director



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

Page 176

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

TO: David Ross, Police Chief  
Tina Williamson, Finance Department  
Scott Bloom, Legal Department  
Willie Anderson, Lands Management  
Elizabeth Appleby, City Planner  
Mike Wesson, Building Official  
Jeremy Hamilton, Fire Marshal

FROM: Jamie Heinz, City Clerk

DATE: July 25, 2019

RE: Limited Marijuana Cultivation Facility License Renewal

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The Alcoholic & Marijuana Control Office has sent notification that the following applicant has applied for renewal of their license:

Applicant: Herban Extracts, LLC  
Owners: Buddy Crowder  
D/B/A: Herban Extracts, LLC  
Phone: 907-252-4755  
Location: 14927 Kenai Spur Highway

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

Please review records maintained by your department (i.e. water and sewer billings, lease/property payment history, occupancy certifications, premises inspections, citations, etc.) regarding the above referenced applicant and/or property and advise if obligations have been met by marking the appropriate box on the next page. **If obligations have not been met, attach information to this memorandum indicating what obligations are outstanding and how the obligations can be cured.**

Once you have completed your section, please route to the next department.

Please let me know if you have any questions. Thanks.

- 1. **Police Department** DR **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 2. **Finance** SM **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 3. **Legal** SS **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 4. **Lands Management** WLA **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 5. **Planning and Zoning** EA **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 6. **Building Official** MW **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 7. **Fire Marshal** JD **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

Returned to Clerk's office: 7/31/19



Alaska Marijuana Control Board  
**Form MJ-20: Renewal Application Certifications**

**What is this form?**

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

**Section 1 – Establishment Information**

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Herban Extracts, LLC	License Number:	14432		
License Type:	Marijuana Product Manufacturing Facility				
Doing Business As:	Herban Extracts, LLC				
Premises Address:	14927 Kenai Spur Highway				
City:	Kenai	State:	Alaska	ZIP:	99611

**Section 2 – Individual Information**

Enter information for the individual licensee who is completing this form.

Name:	Lisa Coates
Title:	Manager, Member

**Section 3 – Violations & Charges**

Read each line below, and then sign your initials in the box to the right of any applicable statements: Initials

- I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.
- I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.
- I certify that a notice of violation has **not** been issued for this license.

Sign your initials to the following statement **only if you are unable to certify one or more of the above statements:** Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).





Section 4 - Certifications

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

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

LC

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

LC

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

LC

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

LC

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

LC

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

LC

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

LC

As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Marijuana Control Board in support of this application and understand that failure to do so by any deadline given to me by AMCO staff may result in additional fees or expiration of this license.

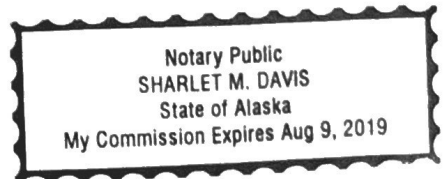
Lisa Coates  
Signature of licensee

Sharlet M Davis  
Notary Public in and for the State of Alaska

Lisa Coates  
Printed name of licensee

My commission expires: 8-9-19

Subscribed and sworn to before me this 17<sup>th</sup> day of June, 2019.





# Alaska Marijuana Control Board Form MJ-20: Renewal Application Certifications

## What is this form?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

### Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Herban Extracts, LLC	License Number:	14432		
License Type:	Marijuana Product Manufacturing Facility				
Doing Business As:	Herban Extracts, LLC				
Premises Address:	14927 Kenai Spur Highway				
City:	Kenai	State:	Alaska	ZIP:	99611

### Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Buddy Crowder
Title:	Manager, Member

### Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

BC

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

BC

I certify that a notice of violation has **not** been issued for this license.

BC

Sign your initials to the following statement **only if you are unable to certify one or more of the above statements:**

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).



Section 4 - Certifications

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

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

BC

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

BC

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

BC

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

BC

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

BC

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

BC

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

BC

As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Marijuana Control Board in support of this application and understand that failure to do so by any deadline given to me by AMCO staff may result in additional fees or expiration of this license.

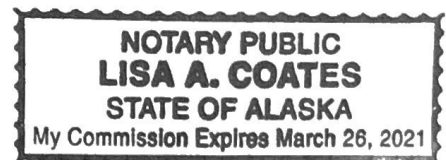
Buddy Crowder
Signature of licensee

Lisa Coates
Notary Public in and for the State of Alaska

Buddy Crowder
Printed name of licensee

My commission expires: March 26, 2021

Subscribed and sworn to before me this 16 day of June, 2019.



# Alcohol & Marijuana Control Office

**License Number:** 14432

**License Status:** Active-Operating

**License Type:** Marijuana Product Manufacturing Facility

**Doing Business As:** HERBAN EXTRACTS, LLC

**Business License Number:** 1058315

**Designated Licensee:** Buddy Crowder

**Email Address:** buddy@907maryjane.com

**Local Government:** Kenai (City of)

**Community Council:**

**Latitude, Longitude:** 60.359000, -151.193000

**Physical Address:** 14927 Kenai Spur Highway  
Kenai, AK 99611  
UNITED STATES

## Licensee #1

**Type:** Entity

**Alaska Entity Number:** 10064893

**Alaska Entity Name:** Herban Extracts, LLC

**Phone Number:** 907-252-4755

**Email Address:** buddy@907maryjane.com

**Mailing Address:** 410 Magic Ave.  
Kenai, AK 99611  
UNITED STATES

## Entity Official #1

**Type:** Individual

**Name:** Buddy Crowder

**SSN:** [REDACTED]

**Date of Birth:** [REDACTED]

**Phone Number:** 907-252-4755

**Email Address:** buddy@907maryjane.com

**Mailing Address:** 410 Magic Ave.  
Kenai, AK 99611  
UNITED STATES

## Entity Official #2

**Type:** Individual

**Name:** Lisa Coates

**SSN:** [REDACTED]

**Date of Birth:** [REDACTED]

**Phone Number:** 907-252-4755

**Email Address:** lisa@ljoutfitters.com

**Mailing Address:** 410 Magic Avenue  
Kenai, AK 99611  
UNITED STATES

*Note: No affiliates entered for this license.*





# Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

July 15, 2019

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

City of Kenai  
Kenai City Hall

RE: Renewal Application for Marijuana Product Manufacturing Facility

Business Name : Herban Extracts, LLC  
License Location : Kenai/14927 Kenai Spur Hwy  
License No. : 14432

Dear Ms. Heinz,

This serves to advise that the Kenai Peninsula Borough (KPB) has reviewed the above referenced application and has no objection to the issuance of the license.

Should you have any questions, or need additional information, please don't hesitate to let us know.

Sincerely,

Johni Blankenship, MMC  
Borough Clerk

JB/TS

Encl.

cc: [buddy@907maryjane.com](mailto:buddy@907maryjane.com)



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

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

TO: Mayor Gabriel and City Council Members  
FROM: Jamie Heinz, City Clerk  
DATE: August 9, 2019  
RE: **Marijuana Retail Store License Renewal**

---

The Alcoholic & Marijuana Control Office has sent notification that the following applicants have requested to renew their Marijuana Retail Store Licenses:

Applicant: KRC, LLC  
Owners: Clint Pickarsky  
D/B/A: Kenai River Cannabis

Applicant: Majestic Gardens, LLC  
Owners: Deniece Isaacs  
D/B/A: Majestic Gardens, LLC

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

A review of City accounts has been completed and the applicants have satisfied all obligations to the City. With the approval of Council, a letter of non-objection to the request for the renewal of the Marijuana Retail Store Licenses will be forwarded to the Alcoholic & Marijuana Control Office and the applicants.

Your consideration is appreciated.

Attachments



210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

TO: David Ross, Police Chief  
Tina Williamson, Finance Department  
Scott Bloom, Legal Department  
Willie Anderson, Lands Management  
Elizabeth Appleby, City Planner  
Mike Wesson, Building Official  
Jeremy Hamilton, Fire Marshal

FROM: Jamie Heinz, City Clerk

DATE: July 25, 2019

RE: Retail Marijuana Store License Renewal

---

The Alcoholic & Marijuana Control Office has sent notification that the following applicant has applied for renewal of their license:

Applicant: KRC, LLC  
Owners: Clint Pickarsky  
D/B/A: Kenai River Cannabis  
Phone: 907-953-1985  
Location: 14429 Kenai Spur Highway

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

Please review records maintained by your department (i.e. water and sewer billings, lease/property payment history, occupancy certifications, premises inspections, citations, etc.) regarding the above referenced applicant and/or property and advise if obligations have been met by marking the appropriate box on the next page. **If obligations have not been met, attach information to this memorandum indicating what obligations are outstanding and how the obligations can be cured.**

Once you have completed your section, please route to the next department.

Please let me know if you have any questions. Thanks.

- 1. **Police Department** DR initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 2. **Finance** JW initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 3. **Legal** SB initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 4. **Lands Management** WLA initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 5. **Planning and Zoning** EA initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 6. **Building Official** NEW initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 7. **Fire Marshal** [Signature] initials  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

Returned to Clerk's office: 7/30/19





July 22, 2019

**City of Kenai**

Attn: Jamie Heinz

VIA Email: [jheinz@kenai.city](mailto:jheinz@kenai.city)

**Kenai Peninsula Borough**

Attn: Borough Clerk

Via Email: [tshassetz@kpb.us](mailto:tshassetz@kpb.us)  
[jblankenship@kpb.us](mailto:jblankenship@kpb.us)  
[micheleturner@kpb.us](mailto:micheleturner@kpb.us)

<b>License Number:</b>	17808
<b>License Type:</b>	Retail Marijuana Store
<b>Licensee:</b>	KRC LLC
<b>Doing Business As:</b>	KENAI RIVER CANNABIS
<b>Physical Address:</b>	14429 Kenai Spur Highway Kenai, AK 99611
<b>Designated Licensee:</b>	Clint Pickarsky
<b>Phone Number:</b>	907-953-1985
<b>Email Address:</b>	kenairivercannabis@yahoo.com

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

3 AAC 306.060 states that the board will uphold a local government protest and deny an application for a marijuana establishment license unless the board finds that a protest by a local government is arbitrary, capricious, and unreasonable. If the protest is a "conditional protest" as defined in 3 AAC 306.060(d)(2) and the application otherwise meets all the criteria set forth by the regulations, the Marijuana Control Board may approve the license renewal, but require the applicant to show to the board's satisfaction that the requirements of the local government have been met before the director issues the license.

At the May 15, 2017, Marijuana Control Board meeting, the board delegated to me the authority to approve renewal applications with no protests, objections, or notices of violation. However, if a timely protest or objection is filed for this application, or if any notices of violation have been issued for this

license, the board will consider the application. In those situations, a temporary license may be issued pending board consideration.

If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,



Erika McConnell  
Director



Alaska Marijuana Control Board

# Cover Sheet for Marijuana Establishment Applications

Alcohol & Marijuana  
550 W 7<sup>th</sup> Aven  
Anchorage  
marijuana.licensing@alaska.gov  
https://www.commerce.alaska.gov/web/amco  
Phone: 907.269.0350

### What is this form?

This cover sheet **must** be completed and submitted any time a document, payment, or other marijuana establishment application item is emailed, mailed, or hand-delivered to AMCO's main office.

**Items that are submitted without this page will be returned in the manner in which they were received.**

### Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

<b>Licensee:</b>	KRC LLC	<b>License Number:</b>	17808
<b>License Type:</b>	Retail Marijuana Store		
<b>Doing Business As:</b>	KENAI RIVER CANNABIS		
<b>Physical Address:</b>	14429 Kenai Spur Highway		
<b>City:</b>	Kenai	<b>State:</b>	AK
		<b>Zip Code:</b>	99611
<b>Designated Licensee:</b>	Clint Pickarsky		
<b>Email Address:</b>	kenairivercannabis@yahoo.com		

### Section 2 – Attached Items

List all documents, payments, and other items that are being submitted along with this page.

<b>Attached Items:</b>	Form MJ-20: Renewal Application Certifications.
------------------------	---

### OFFICE USE ONLY

Received Date:		Payment Submitted Y/N:		Transaction #:	
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Alaska Marijuana Control Board

# Form MJ-20: Renewal Application Certifications

### What is this form?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

## Section 1 - Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	KRC LLC	License Number:	17808		
License Type:	Retail Marijuana Store				
Doing Business As:	KENAI RIVER CANNABIS				
Premises Address:	14429 Kenai Spur Highway				
City:	Kenai	State:	AK	ZIP:	99611

## Section 2 - Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Clint Pickarsky
Title:	Member/Manager

## Section 3 - Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

Initials

CP

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

CP

I certify that a notice of violation has **not** been issued for this license.

CP

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).



**Section 4 – Certifications**

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

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

CP

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

CP

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

CP

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

CP

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

CP

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

CP

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

CP

As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Marijuana Control Board in support of this application and understand that failure to do so by any deadline given to me by AMCO staff may result in additional fees or expiration of this license.

*Clint Pickarsky*  
Signature of licensee

Clint Pickarsky

Printed name of licensee

Notary Public  
SHAUNTEALA GRAHAM  
State of Alaska  
My Commission Expires April 10, 2022

*Shaunteala Graham*  
Notary Public in and for the State of Alaska

My commission expires: April 10, 2022

Subscribed and sworn to before me this 24 day of June, 2019.



**Alcohol & Marijuana Control Office****License Number:** 17808**License Status:** Active-Operating**License Type:** Retail Marijuana Store**Doing Business As:** KENAI RIVER CANNABIS**Business License Number:** 1069832**Designated Licensee:** Clint Pickarsky**Email Address:** kenairivercannabis@yahoo.com**Local Government:** Kenai (City of)**Community Council:****Latitude, Longitude:** 60.579850, -151.320238**Physical Address:** 14429 Kenai Spur Highway  
Kenai, AK 99611  
UNITED STATES**Licensee #1****Type:** Entity**Alaska Entity Number:** 10081943**Alaska Entity Name:** KRC LLC**Phone Number:** 907-953-1985**Email Address:** kenairivercannabis@yahoo.com**Mailing Address:** PO Box 1016  
Soldotna, AK 99669  
UNITED STATES**Entity Official #1****Type:** Individual**Name:** Clint Pickarsky**SSN:** [REDACTED]**Date of Birth:** [REDACTED]**Phone Number:** 907-953-1985**Email Address:** kenairivercannabis@yahoo.com**Mailing Address:** PO Box 1016  
Soldotna, AK 99669  
UNITED STATES**Affiliate #1****Type:** Individual**Name:** Clint Pickarsky**SSN:** [REDACTED]**Date of Birth:** [REDACTED]**Phone Number:** 907-953-1985**Email Address:** kenairivercannabis@yahoo.com**Mailing Address:** PO Box 1016  
Soldotna, AK 99669  
UNITED STATES



# Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

July 24, 2019

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

City of Kenai  
Kenai City Hall

RE: Renewal Application for Retail Marijuana Store

Business Name : Kenai River Cannabis  
License Location : Kenai/14429 Kenai Spur Hwy, Kenai, AK 99611  
License No. : 17808

Dear Ms. Heinz,

This serves to advise that the Kenai Peninsula Borough (KPB) has reviewed the above referenced application and has no objection to the issuance of the license.

Should you have any questions, or need additional information, please don't hesitate to let us know.

Sincerely,

Johni Blankenship, MMC  
Borough Clerk

JB/TS

Encl.

cc: [kenairivercannabis@yahoo.com](mailto:kenairivercannabis@yahoo.com)



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

Page 194

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / FAX: 907-283-3014



## MEMORANDUM

TO: David Ross, Police Chief  
Tina Williamson, Finance Department  
Scott Bloom, Legal Department  
Willie Anderson, Lands Management  
Elizabeth Appleby, City Planner  
Mike Wesson, Building Official  
Jeremy Hamilton, Fire Marshal

FROM: Jamie Heinz, City Clerk

DATE: July 30, 2019

RE: Retail Marijuana Store License Renewal

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The Alcoholic & Marijuana Control Office has sent notification that the following applicant has applied for renewal of their license:

Applicant: Majestic Gardens, LLC  
Owners: Deniece Isaacs  
D/B/A: Majestic Gardens, LLC  
Phone: 907-398-3267  
Location: 12656 Kenai Spur Highway

Pursuant to KMC 2.40.010, *It is determined to be in the public interest that holders of or applicants for licenses issued by the Alcoholic Beverage Control Board or the Marijuana Control Board of the State of Alaska shall have all obligations to the City of Kenai on a satisfactory basis prior to the City Council approval of any activity of said license holder or applicant.*

Please review records maintained by your department (i.e. water and sewer billings, lease/property payment history, occupancy certifications, premises inspections, citations, etc.) regarding the above referenced applicant and/or property and advise if obligations have been met by marking the appropriate box on the next page. **If obligations have not been met, attach information to this memorandum indicating what obligations are outstanding and how the obligations can be cured.**

Once you have completed your section, please route to the next department.

Please let me know if you have any questions. Thanks.

- 1. **Police Department** BDL **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 2. **Finance** [initials] **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 3. **Legal** [initials] **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 4. **Lands Management** wea **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 5. **Planning and Zoning** EA **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 6. **Building Official** mw **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.
- 7. **Fire Marshal** [initials] **initials**  
 I have reviewed all records for my department and the applicant is current on obligations or obligations do not exist.  
 The applicant has outstanding obligations and an additional page has been attached.

Returned to Clerk's office: 2/7/19



July 30, 2019

**City of Kenai**

Attn: Jamie Heinz

VIA Email: [jheinz@kenai.city](mailto:jheinz@kenai.city)

**Kenai Peninsula Borough**

Attn: Borough Clerk

Via Email: [tshassetz@kpb.us](mailto:tshassetz@kpb.us)  
[jblankenship@kpb.us](mailto:jblankenship@kpb.us)  
[micheleturner@kpb.us](mailto:micheleturner@kpb.us)

<b>License Number:</b>	15393
<b>License Type:</b>	Retail Marijuana Store
<b>Licensee:</b>	Majestic Gardens llc
<b>Doing Business As:</b>	MAJESTIC GARDENS LLC
<b>Physical Address:</b>	12656 Kenai Spur Hwy Kenai, AK 99611
<b>Designated Licensee:</b>	Deniece M Isaacs
<b>Phone Number:</b>	907-398-3267
<b>Email Address:</b>	magicalgardens@alaska.net

AMCO has received a complete renewal application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under 3 AAC 306.035(c)(2).

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant.

3 AAC 306.060 states that the board will uphold a local government protest and deny an application for a marijuana establishment license unless the board finds that a protest by a local government is arbitrary, capricious, and unreasonable. If the protest is a “conditional protest” as defined in 3 AAC 306.060(d)(2) and the application otherwise meets all the criteria set forth by the regulations, the Marijuana Control Board may approve the license renewal, but require the applicant to show to the board’s satisfaction that the requirements of the local government have been met before the director issues the license.

At the May 15, 2017, Marijuana Control Board meeting, the board delegated to me the authority to approve renewal applications with no protests, objections, or notices of violation. However, if a timely protest or objection is filed for this application, or if any notices of violation have been issued for this



license, the board will consider the application. In those situations, a temporary license may be issued pending board consideration.

If you have any questions, please email [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

Sincerely,

*Erika McConnell*

Erika McConnell  
Director



Alaska Marijuana Control Board

# Form MJ-20: Renewal Application Certifications

### What is this form?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

## Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	Majestic Gardens llc	License Number:	15393
License Type:	Retail Marijuana Store		
Doing Business As:	Majestiac Gardens llc		
Premises Address:	12656 Kenai Spur		
City:	Kenai	State:	AK
		ZIP:	99611

## Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Ronald D Isaacs
Title:	Owner/member

## Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

*RI*

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

*RI*

I certify that a notice of violation has **not** been issued for this license.

*RI*

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).



Section 4 – Certifications

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

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

RI

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

RI

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

RI

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

RI

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

RI

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

RI

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

RI

As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Marijuana Control Board in support of this application and understand that failure to do so by any deadline given to me by AMCO staff may result in additional fees or expiration of this license.

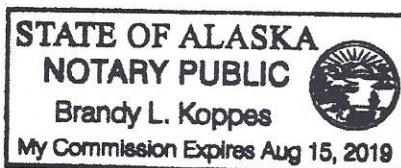
Ronald Isaac  
Signature of licensee

Brandy L. Koppes  
Notary Public in and for the State of Alaska

Ronald D Isaac  
Printed name of licensee

My commission expires: Aug. 15, 2019

Subscribed and sworn to before me this 18th day of June, 2019.



# Alcohol & Marijuana Control Office

**License Number:** 15393

**License Status:** Active-Operating

**License Type:** Retail Marijuana Store

**Doing Business As:** MAJESTIC GARDENS LLC

**Business License Number:** 1037289

**Designated Licensee:** Deniece M Isaacs

**Email Address:** majesticgardens@alaska.net

**Local Government:** Kenai (City of)

**Community Council:**

**Latitude, Longitude:** 60.334010, -151.728000

**Physical Address:** 12656 Kenai Spur Hwy  
Kenai, AK 99611  
UNITED STATES

## Licensee #1

**Type:** Entity

**Alaska Entity Number:** 10038100

**Alaska Entity Name:** Majestic Gardens llc

**Phone Number:** 907-953-4872

**Email Address:** majesticgardens@alaska.net

**Mailing Address:** 12656 Kenai Spur Hwy  
PObox 3526  
Kenai, AK 99611  
UNITED STATES

## Entity Official #1

**Type:** Individual

**Name:** Deniece M Isaacs

**Phone Number:** 907-398-3267

**Email Address:** magicalgardens@alaska.net

**Mailing Address:** 12656 KENAI SPUR HIGHWAY  
PO Box 3526  
KENAI, AK 99611  
UNITED STATES

## Entity Official #2

**Type:** Individual

**Name:** Ronald D Isaacs

**Phone Number:** 907-953-4872

**Email Address:** isaacs@alaska.net

**Mailing Address:** PObox 3526  
Kenai, AK 99611-3526  
UNITED STATES

## Affiliate #1

**Type:** Individual

**Name:** Deniece M Isaacs

**Phone Number:** 907-398-3267

**Email Address:** isaacs@alask.net

**Mailing Address:** POBOX 3526  
Kenai, AK 99611  
UNITED STATES

## Affiliate #2

**Type:** Individual

**Name:** Ronald D Isaacs

**Phone Number:** 907-283-7784

**Email Address:** isaacs@alaska.net

**Mailing Address:** POBOX 3526  
Kenai, AK 99611  
UNITED STATES





# Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

July 31, 2019

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

City of Kenai  
Kenai City Hall

RE: Renewal Application for Retail Marijuana Store

Business Name : Majestic Gardens LLC  
License Location : Kenai/12656 Kenai Spur Highway, Kenai, AK 99611  
License No. : 15393

Dear Ms. Heinz,

This serves to advise that the Kenai Peninsula Borough (KPB) has reviewed the above referenced application and has no objection to the issuance of the license.

Should you have any questions, or need additional information, please don't hesitate to let us know.

Sincerely,

Johni Blankenship, MMC  
Borough Clerk

JB/TS

Encl.

cc: [majesticgardens@alaska.net](mailto:majesticgardens@alaska.net)



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



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

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
[www.kenai.city](http://www.kenai.city)

## 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.

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**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 4<sup>th</sup> 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.

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**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 4<sup>th</sup> 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 4<sup>th</sup> 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**

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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 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 12<sup>th</sup> 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 4<sup>th</sup> 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



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

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
 www.kenai.city

## MEMORANDUM

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

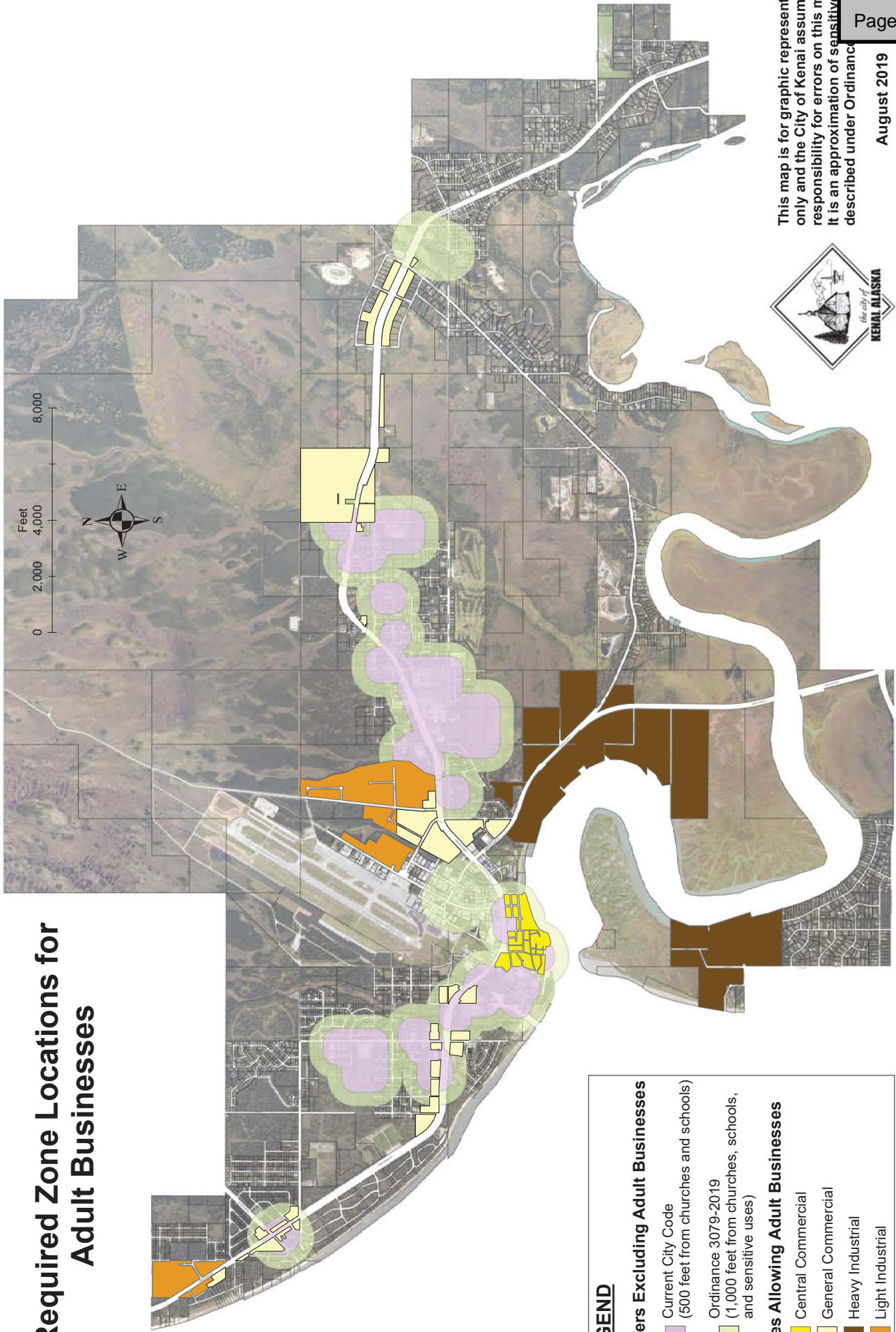
The Ordinance is intended to be narrowly tailored, that is only protecting the City from the negative secondary effects of adult businesses. These negative secondary effects, such as declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative 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



**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 3079-2019.

August 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:** Jamie Heinz, City Clerk  
**DATE:** August 13, 2019  
**SUBJECT:** Council Agenda Publication – Efficiency Initiative

Identification and execution of strategies that result in efficiencies and cost savings within the departments of the City of Kenai has been a focus of the administration. In the past, the matter of publishing the entire Council agenda in a newspaper of general circulation had been the topic of discussion and additional information was requested at that time. For an efficiency initiative for FY2020, I am asking Council to consider whether publishing the entire agenda in the newspaper is cost effective and whether it makes sense to revise Kenai Municipal Code (KMC) to change the requirement to list only public hearings instead.

Alaska Statute 44.62.310, Alaska’s Open Meetings Act, requires that reasonable public notice shall be given, that the notice must include the date, time, and place of the meeting...may be given using print or broadcast media, and shall be posted at the principal office of the public entity.

KMC 1.15.040(f) currently states that, “Notice of the date, time, place, and agenda for each Council meeting shall be given to the public by publication in a newspaper of general circulation and by posting to the City’s website and to the official bulletin board at City Hall under policies and procedures adopted under subsection (j). Additional public notice of meetings may be given by other means.”


After researching the practice of other municipalities, the Kenai Peninsula Borough and the City of Homer publish date, time, place, and public hearings in the newspaper. The Municipality of Anchorage publishes only to their website and posts at the principal office of the public entity.

Below shows actual expenditures to the newspaper on City Council meeting notifications for the past three fiscal years:

Year	City Council Agenda
FY19	\$7,198.96
FY18	\$8,048.02
FY17	\$6,757.79
<b>Totals:</b>	<b>\$22,004.77</b>



Below is the actual Agenda/Meeting Notice for the August 7, 2019 Council Meeting. This ad cost \$328.85.



**KENAI CITY COUNCIL AGENDA  
REGULAR MEETING  
AUGUST 7, 2019, 6:00 P.M.  
KENAI CITY COUNCIL CHAMBERS  
210 FIDALGO AVE., KENAI, AK 99611**

**A. CALL TO ORDER**

**B. SCHEDULED PUBLIC COMMENT** *(Public comment limited to ten (10) minutes per speaker.)*

**C. UNSCHEDULED PUBLIC COMMENT** *(Testimony limited to three (3) minutes per speaker; thirty (30) minutes aggregated)*

**D. PUBLIC HEARINGS**

1. **Resolution No. 2019-54** - Designating Management Authority For Tract 2, Baron Park Subdivision To Reflect That Revenues And Expenses Associated With The Property Are Allocated To The Airport Fund. (Administration)
2. **Resolution No. 2019-55** - Designating Management Authority For Tract 3, Baron Park Subdivision To Reflect That Revenues And Expenses Associated With The Property Are Allocated To The Airport Fund. (Administration)

**E. UNFINISHED BUSINESS** – None.

**F. NEW BUSINESS**

1. **\*Action/Approval** – Bills to be Ratified. (Administration)
2. **\*Action/Approval** – Purchase Orders Exceeding \$15,000. (Administration)
3. **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)
4. **\*Ordinance No. 3073-2019** - Accepting and Appropriating a Grant from the State of Alaska for the Purpose of Purchasing Books. (Administration)
5. **\*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)
6. **\*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)
7. **Action/Approval** - Authorizing a Special Use Permit for the Kenai Chamber of Commerce and Visitor Center for the Use of the "Moose Meat John" Cabin. (Administration)

**G. ADDITIONAL PUBLIC COMMENT**

1. Citizens Comments *(Limited to five (5) minutes per speaker)*
2. Council Comments

**H. EXECUTIVE SESSION** – None.

**I. PENDING ITEMS** – None.

**J. ADJOURNMENT**


The public is invited to attend and participate. Additional information is available through the City Clerk's Office or by visiting our website at <http://www.kenai.city>  
Jamie Heinz, CMC, City Clerk  
Publish: 08/04/19

D/211





Alternatively, a Public Hearing/Meeting ad similar to the one below would have cost approximately \$79.60.



**CITY OF KENAI**  
**City Council**  
**Notice of Meeting and**  
**Public Hearings**

City Hall Council Chambers,  
210 Fidalgo Ave, Kenai, AK

The following public hearings will be before the Kenai City Council at the August 7, 2019 regular meeting, beginning at 6:00 p.m.:

- **Resolution No. 2019-54** - Designating Management Authority For Tract 2, Baron Park Subdivision To Reflect That Revenues And Expenses Associated With The Property Are Allocated To The Airport Fund. (Administration)
- **Resolution No. 2019-55** - Designating Management Authority For Tract 3, Baron Park Subdivision To Reflect That Revenues And Expenses Associated With The Property Are Allocated To The Airport Fund. (Administration)

The public is invited to attend and participate. Additional information is available through the City Clerk's Office or by visiting our website at <http://www.kenai.city>  
Jamie Heinz, CMC, City Clerk  
Publish: 08/04/19                      D/211

In the same exercise with the actual Agenda/Meeting Notice for the July 3, 2019 Council meeting, the actual cost was \$330.34. Alternatively, a Public Hearing/Meeting ad similar to the one proposed above, would have cost \$218.90.

It could be that other means such as email notifications, provided by our website vendor, and posting a full agenda at the library in addition to City Hall could be more cost effective ways to provide the public with the information regarding the full agenda.

Other factors to consider include:

- Only one person is employed by the newspaper for coordinating ad placement and, while it hasn't happened yet, vacations and/or illness could impact our ability to have an ad placed when needed;
- In May, the newspaper discontinued publication of the paper which we consistently advertised in requiring a change in the day we published which impacts compliance with our code;
- On occasion there have been circumstances where our ad was not published or the paper was not delivered on the day we published; and
- Potential legal implications should an agenda not be published for reasons beyond our control.

If a Council member is interested in sponsoring an ordinance to change the noticing requirements for City Council meetings, I would be happy to assist.

Thank you for your consideration.



**KENAI AIRPORT COMMISSION  
REGULAR MEETING  
AUGUST 8, 2019 – 6:00 P.M.  
KENAI CITY COUNCIL CHAMBERS  
CHAIR GLENDA FEEKEN, PRESIDING**

**MEETING SUMMARY**

**1. CALL TO ORDER**

Chair Feeken called the meeting to order at 6:00 p.m.

**a. Pledge of Allegiance**

Chair Feeken led those assembled in the Pledge of Allegiance.

**b. Roll was confirmed as follows:**

Commissioners Present: G. Feeken, P. Minelga, J. Bielefeld, J. Zirul, D. Pitts

Commissioners Absent: K. Dodge

Staff/Council Liaison Present: Airport Manager M. Bondurant, Airport Assistant E. Brincefield, City Attorney S. Bloom, Council Liaison G. Pettey

A quorum was present.

**c. Agenda Approval**

**MOTION:**

Commissioner Bielefeld **MOVED** to approve the agenda and Commissioner Zirul **SECONDED** the motion. There were no objections; **SO ORDERED.**

**2. SCHEDULED PUBLIC COMMENT – None.**

**3. UNSCHEDULED PUBLIC COMMENT**

Richard Page encouraged the Commission to look at improving marketing for the airport suggesting leasing was not an easy process with the City.

**4. APPROVAL OF MEETING SUMMARY**

**a. July 11, 2019**

**MOTION:**

Commissioner Minelga **MOVED** to approve the meeting summary of July 11, 2019 and Commissioner Pitts **SECONDED** the motion. There were no objections; **SO ORDERED.**

**5. UNFINISHED BUSINESS – None.**

**6. NEW BUSINESS**

**a. Discussion/Recommendation – Ordinance No. 3072-2019.**

The differences in lease, sale, and assignment were discussed and clarification was provided on how lease rates would increase with the removal of the regular land appraisals.

Ensuring the application process was uniform and encouraged business was expressed.

**MOTION:**

Commissioner Bielefeld **MOVED** to recommend Council enact Ordinance No. 3072-2019 of the and Commissioner Zirul **SECONDED** the motion. There were no objections; **SO ORDERED**.

**b. Discussion/Recommendation – SOAR Lease Application.**

**MOTION:**

Commissioner Bielefeld **MOVED** to recommend approval of the SOAR Lease Application and Commissioner Zirul **SECONDED** the motion. There were no objections; **SO ORDERED**.

**7. REPORTS**

**a. Airport Manager**

Airport Manager Bondurant reported on the following:

- Provided an update on the Terminal Rehabilitation Project;
- Provided an update on the Airfield Marking Project;
- Noted the Alaska Fire Training Facility Rehabilitation Project would be out to bid soon; and
- Staff preparing for a mass casualty drill in October.

**b. City Council Liaison**

Council Member Pettey provided a report of the actions taken at the August 7 City Council Meeting.

**8. NEXT MEETING ATTENDANCE NOTIFICATION – September 12, 2019**

Commissioner Bielefeld noted he would be absent. Commissioner Pitts noted there was a possibility he would be absent.

**9. COMMISSIONER COMMENTS AND QUESTIONS**

Commissioner Bielefeld inquired about old Aircraft Rescue and Firefighting trucks.

Commissioner Pitts offered kudos to airport staff for handling struggles with the Airport Terminal Rehabilitation Project.

Commissioner Minelga noted he observed the roof on the new entrance slopes back and expressed concern with water leaking.

**10. ADDITIONAL PUBLIC COMMENT** – None.

**11. INFORMATION ITEMS**

- a. June 2019 Midmonth Report
- b. July 2019 Midmonth Report
- c. June 2019 Enplanements

**12. ADJOURNMENT**

**MOTION:**

Commissioner Zirul **MOVED** to adjourn and Commissioner Bielefeld **SECONDED** the motion. There were no objections; **SO ORDERED.**

Meeting summary prepared and submitted by:

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Jamie Heinz  
City Clerk



**KENAI PARKS & RECREATION COMMISSION  
AUGUST 1, 2019 – 6:00 PM  
KENAI CITY COUNCIL CHAMBERS  
CHAIR CHARLIE STEPHENS, PRESIDING**

**MEETING SUMMARY**

**1. CALL TO ORDER**

Chair Stephens called the meeting to order at 6:05 p.m.

**a. Pledge of Allegiance**

Chair Stephens led those assembled in the Pledge of Allegiance.

**b. Roll was confirmed as follows:**

Commissioners present: Chair C. Stephens, S. Kisena, J. Dennis, T. Winger

Commissioners absent: T. Wisniewski, J. Joanis, F. Perez,

Staff/Council Liaison present: Parks & Rec Director B. Frates, Council Liaison H. Knackstedt

A quorum was present.

**c. Agenda Approval**

**MOTION:**

Commissioner Dennis **MOVED** to approve the agenda as presented; Commissioner Kisena **SECONDED** the motion. There were no objections; **SO ORDERED**.

**2. SCHEDULED PUBLIC COMMENTS – None.**

**3. UNSCHEDULED PUBLIC COMMENT – None.**

**4. APPROVAL OF MEETING SUMMARY**

**a. February 7, 2019**

**MOTION:**

Commissioner Dennis **MOVED** to approve the meeting summary of February 7, 2019 and Commissioner Kisena **SECONDED** the motion. There were no objections; **SO ORDERED**.

**b. March 7, 2019**

**MOTION:**

Commissioner Dennis **MOVED** to approve the meeting summary of March 7, 2019 and

Commissioner Kisenia **SECONDED** the motion. There were no objections; **SO ORDERED.**

c. April 4, 2019

**MOTION:**

Commissioner Dennis **MOVED** to approve the meeting summary of April 4, 2019 and Commissioner Winger **SECONDED** the motion. There were no objections; **SO ORDERED.**

d. May 2, 2019

**MOTION:**

Commissioner Dennis **MOVED** to approve the meeting summary of May 2, 2019 and Commissioner Kisenia **SECONDED** the motion. There were no objections; **SO ORDERED.**

5. **UNFINISHED BUSINESS** – None.

6. **NEW BUSINESS**

a. **Discussion/Recommendation** – Bike Rack Locations

The Parks and Recreation Director noted there were six bike racks donated to the City and designated areas for placement included Old Town, Kenai Fine Arts, Kenai Community Library, Municipal Park, End of S. Forest Drive, and the sixth would be determined. He noted options for the sixth included Daubenspeck Park, Visitors & Cultural Center or the Kenai Recreation Center.

It was noted that the Recreation Center and Visitor's Center already had bike racks, however, due to their size, were limited to where they could be placed.

7. **REPORTS**

a. **Parks and Recreation Director** – The Parks and Recreation Director provided an update on the Dipnet Fishery noting that overall, operations went well; also noted some misleading information from several years ago that had resurfaced on social media.

b. **Commission Chair** – None.

c. **City Council Liaison** – Council Member Knackstedt reported on the action items from City Council meetings from February through June.

8. **NEXT MEETING ATTENDANCE NOTIFICATION** – September 5, 2019

9. **COMMISSION QUESTIONS & COMMENTS**

Commissioner Kisenia asked for an update on the operating hours of the parks.

10. **ADDITIONAL PUBLIC COMMENT** – None.

**11. INFORMATION**

**12. ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 6:56 p.m.

Meeting summary prepared and submitted by:

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Jamie Heinz  
City Clerk

DRAFT

**KENAI PLANNING & ZONING COMMISSION  
REGULAR MEETING  
JULY 24, 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, V. Askin, T. McIntyre, G. Greenberg

Commissioners absent: J. Halstead

Staff/Council Liaison present: City Planner E. Appleby, Planning Assistant W. Anderson, City Clerk J. Heinz, City Manager P. Ostrander, Assistant to City Manager, C. Cunningham, Council Liaison B. Molloy

A quorum was present.

3. Agenda Approval

**MOTION:**

Commissioner Greenberg **MOVED** to approve the agenda as presented with the inclusion of the supplemental documentation for item 6a and Commissioner Askin **SECONDED** the motion. There were no objections; **SO ORDERED**.

4. Consent Agenda

**MOTION:**

Commissioner Askin **MOVED** to approve the consent agenda and Commissioner Greenberg **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 – J. Halstead.

**B. \*APPROVAL OF MINUTES**

1. June 26, 2019

The minutes were approved by the Consent Agenda.

**C. SCHEDULED PUBLIC COMMENT**

1. Presentation on Land Sale and Leasing Policies and Procedures by Assistant to City Manager, Christine Cunningham.

City Manager, P. Ostrander, noted a working group of staff members were reviewing and providing recommendations for Land Sale and Leasing Policies and Procedures and provided an overview of the goals of the working group.

Assistant to the City Manager, C. Cunningham, provided an overview of City-owned lands, the need for the sale and leasing policies, the ongoing work creating a land management database, and recommendations of the working group for policies and procedures to be ultimately adopted by the City Council for City-owned land off the airport.

Clarification was provided in how the highest and best use was to be determined noting appraisal instructions, property restrictions, and processes for leasing and sale would be utilized. Clarification was also provided that the Land Management Plan was to be a guiding document for City Council.

**D. UNSCHEDULED PUBLIC COMMENT – None.**

**E. CONSIDERATION OF PLATS**

1. **Resolution PZ2019-24** – Original Preliminary Plat of Shoreline Heights Thiele Replat, submitted by Edge Survey and Design LLC, 43335 K-Beach Rd., Ste.16b, Soldotna, AK 99669, on behalf of the Kim Thiele, 36901 Mallard Road, Kenai, AK 99611.

**MOTION:**

Commissioner Askin **MOVED** to approve Resolution No. PZ2019-24 and Commissioner McIntyre **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the plat was vacating a property line to alleviate setback concerns with a new building permit and recommended approval with the following condition:

- Further development of the property shall conform to all federal, State of Alaska, and local regulations.

Chair Twait opened the floor for public testimony; there being no one wishing to be heard, public comment was closed.

**VOTE:**

YEA: Springer, Fikes, Askin, Twait, McIntyre, Greenberg  
 NAY:

**MOTION PASSED UNANIMOUSLY.**

**F. PUBLIC HEARINGS**

1. **Resolution PZ2019-25** – Application for a Conditional Use Permit to operate a Guide Business, located at 1325 Angler Drive, Kenai, Alaska 99611, and further described as Lot 18, Block 1, Anglers Acres Part Two. The application was submitted by Jeff Bressler, P.O. Box 271, Kasilof, AK 99610.

**MOTION:**

Commissioner Askin **MOVED** to approve Resolution No. PZ2019-25 and Commissioner Springer **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the laydown noting the Conditional Use Permit would allow a guiding business to be conducted from the home and, based on the review of criteria, found that the permit could be approved with the following conditions:

- Further development of the property shall conform to all federal, State of Alaska, and local regulations;
- Applicant shall file an annual report for the Conditional Use Permit as set forth in Kenai Municipal Code 14.20.155;
- The applicant will meet with City staff for on-site inspections, when requested;
- If there is a change in use for the above described property, a new Conditional Use Permit must be obtained pursuant to 14.20.150 (i)(5);
- Pursuant to KMC 14.20.150(i)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.

Chair Twait opened the floor for public testimony; there being no one wishing to be heard, public comment was closed.

Clarification was provided that the previous owner had operated a guide business and short term rentals and administration had received no complaints on the property.

**VOTE:**

YEA: Springer, Fikes, Askin, Twait, McIntyre, Greenberg  
 NAY:

**MOTION PASSED UNANIMOUSLY.**

Commission Chair Twait noted the fifteen-day appeal period.

**G. UNFINISHED BUSINESS** – None.

**H. NEW BUSINESS**

1. **Resolution PZ2019-26** – Application for Transfer of Conditional Use Permit PZ75-54 for Operation of a Gravel Pit for Extraction of Natural Resources, from the Estate of Mavis Cone, Transferor, to Colaska, Inc. dba QAP, Transferee, located at 2817, 2881, 3073 Beaver Loop Road, 1605 Cone Avenue, and 835 Gravel Street, Kenai, Alaska 99611, and further described as Tracts 1 and 2, Tundra Rose Subd. according to Plat No. 84-19; a Portion of the NW1/4 NW1/4 Lying North of Beaver Loop Rd, Section 11, T5N, R11W, Excluding Tundra Rose Subd.; the West 990 Feet of the South 660 Feet Excluding Therefrom the West 330 Feet, Section 2, T5N, R11W; and the West 330 Feet of the South 660 Feet, Section 2, T5N, R11W.

**MOTION:**

Commissioner Springer **MOVED** to approve Resolution No. PZ2019-26 and Commissioner Greenberg **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the applicant had applied for a transfer of Conditional Use Permit for resource extraction and, based on the review of criteria, found that transfer of the Permit could be approved with the following conditions:

- Transferee must comply with all federal, State of Alaska, and local regulations;
- The transferee will properly store fuel oil and hazardous materials away from wetlands or other sensitive areas of the landscape;
- The transferee will not store fill materials, such as concrete and construction waste, in or near areas with an exposed water table;
- The transferee will block fish passage between water areas if necessary to avoid violating regulations pertaining to anadromous streams and fish habitat;
- The transferee will limit noise disturbances and not use compression release engine brakes (Jake brakes);
- The transferee will ensure the gate that can be used to block access from Beaver Loop Road or any other access point will be kept in working order;
- A vegetated buffer of a minimum of six foot high will be constructed along Beaver Loop Road;
- The transferee will not extend the nonconformity of breached buffers and install fences/berms where necessary to remedy visual disturbances. The transferee will conform to current extraction setbacks where possible on the parcels;
- Transferee shall file an annual report for the Conditional Use Permit as set forth in Kenai Municipal Code 14.20.155;
- The transferee will meet with City staff for on-site inspections when requested;
- If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(i)(5).

Chair Twait opened the floor for public testimony.

Mike Zudd, Area Manager with QAP, offered to answer questions, clarifying a portable rock crusher placed in the middle of the properties would be used during the day, only their company would be in the pit, they use white noise instead of back-up beepers, had drilled 45 to 50 test holes and didn't see a need to go below the water table in the near future, were seeking City approval of the permit transfer prior to purchasing the property, and added that the six-foot buffer they were adding where the transferor had breached was consistent with Mat-Su Valley requirements. He also added that beginning the reclamation plan was dependent on how long it



took to mine the gravel; their standard operating procedure was to leave the slopes flattened during the winter months, where they planned to mine the gravel over time, and mitigation plans for drainage from the property on to Beaver Loop Road.

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

Commissioner McIntyre expressed concern that it appeared the owner was not applying for the transfer and that the permit may be expired due to three years of inactivity; may be more appropriate to go through a new application process.

It was asked if the area would be more properly zoned commercial.

It was noted a new Conditional Use Permit required a site plan with contours and, this one being so old, that plan was not available; it was asked if it was appropriate to extend grandfather rights to that type of thing.

Staff pointed out that the transfer process provided an opportunity to put additional restrictions onto a permit that did not have any; also noted that if denied, the owner would have to find a new buyer, leaving the property sitting vacant, with breached buffers, until that happened. It was suggested the transfer was in the best interest of the City and followed code requirements for a transfer of a Conditional Use Permit for surface extraction.

#### **MOTION TO AMEND:**

Commissioner Springer **MOVED** to include staff recommendations and replace, "Peninsula Commercial Ventures, LLC" in Section 1 with, "Colaska, Inc. DBA QAP," and Commissioner Askin **SECONDED** the motion.

#### **VOTE ON THE AMENDMENT:**

YEA: Springer, Fikes, Askin, Twait, Greenberg, McIntyre

NAY:

#### **MOTION PASSED UNANIMOUSLY.**

Clarification was provided that the owner, the Estate of Mavis Cone, was applying for the transfer and that the permit hadn't been operated in approximately three years but it hadn't been expired yet.

#### **VOTE:**

YEA: Springer, Fikes, Askin, Twait, Greenberg

NAY: McIntyre

#### **MOTION PASSED.**

**I. PENDING ITEMS** – None.

**J. REPORTS**

1. **City Council** – Council Member Molloy reviewed the action agenda from the July 3 City Council meeting.
2. **Borough Planning** – Vice-Chair Fikes reported the Commission met in a work session on July 15 regarding gravel pit regulations noting the Commission would be making a recommendation to the Assembly for adoption of an ordinance. She also reported the Commission approved five plats and a Conditional Use Permit at their regular meeting.
3. **Administration** – City Planner Appleby reported on the following:
  - Upcoming meetings, including a sign code work session;
  - Update on implementation of iPads;
  - Update on an ordinance regarding marijuana retail store hours;
  - Noted the Draft Environmental Impact Statement for the Alaska LNG project had been released;

K. **ADDITIONAL PUBLIC COMMENT** – None.

L. **INFORMATIONAL ITEMS** – None.

M. **NEXT MEETING ATTENDANCE NOTIFICATION** – August 14, 2019

N. **COMMISSION COMMENTS & QUESTIONS**

Commission Vice-Chair Fikes thanked Commission Chair Twait for the explanation on the Conditional Use Permit Transfer.

O. **ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 8:56 p.m.

Minutes prepared and submitted by:

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Jamie Heinz, CMC  
City Clerk

**KENAI PLANNING & ZONING COMMISSION  
REGULAR MEETING  
AUGUST 14, 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

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.**

4. Consent Agenda

**MOTION:**

Commissioner Halstead **MOVED** to approve the consent agenda and Commissioner Springer

**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 – V. Askin, T. McIntyre, G. Greenberg

**B. \*APPROVAL OF MINUTES**

1. July 24, 2019

The minutes were approved by the Consent Agenda.

**C. SCHEDULED PUBLIC COMMENT** – None.

**D. UNSCHEDULED PUBLIC COMMENT** – None.

**E. CONSIDERATION OF PLATS**

1. **Resolution PZ2019-31** - The Original Preliminary Plat of Evergreen Subdivision 2019 Replat, submitted by McLane Consulting, Inc., P.O. Box 498, Soldotna, AK 99669, on behalf of Wallace and Leona Jackson, P.O. Box 1948, Kenai, AK 99611.

**MOTION:**

Commissioner Halstead **MOVED** to approve Resolution No. PZ2019-31 and Commissioner Springer **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the plat vacated a property line between two lots so the accessory structure stood on the same lot as the residence and recommended approval with the following condition:

- Further development of the property shall conform to all federal, State of Alaska, and local regulations.

Chair Twait opened the floor for public testimony; there being no one wishing to be heard, public comment was closed.

Clarification was provided that water could be provided to the garage so long as it did not cross another property line and would be a part of the Building Permit process.

**VOTE:**

YEA: Springer, Fikes, Twait, Halstead

NAY:

**MOTION PASSED UNANIMOUSLY.**

## F. PUBLIC HEARINGS

1. **Resolution PZ2019-27** - Application for a Conditional Use Permit to Operate an Approximately Retail Marijuana Store Described as Lot 2, C Plaza Subdivision and Located at 12516 Kenai Spur Highway. The application was submitted by ACG, LLC, 5455 Kenai Spur Highway, Kenai, AK 99611.

### MOTION:

Commissioner Springer **MOVED** to approve Resolution No. PZ2019-27 and Commissioner Halstead **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the Conditional Use Permit would allow an approximately 200 square foot Retail Marijuana Store area within an already permitted Marijuana Product Manufacturing Facility and, based on the review of criteria, found that the permit could be approved with the following conditions:

- Further development of the property shall conform to all federal, State of Alaska, and local regulations;
- Prior to operation of the retail marijuana establishment, the applicant shall submit a copy of an approved and fully executed license from the State of Alaska Alcohol and Marijuana Control Office. The applicant shall comply with all regulations stipulated by the State of Alaska Marijuana Control Office;
- Pursuant to Kenai Municipal Code Section 14.20.330(e), the Commercial Establishment shall not emit an odor that is detectable by the public from outside the Commercial Marijuana Establishment;
- Pursuant to Kenai Municipal Code Section, 14.20.150(f) the applicant shall submit an Annual Report to the City of Kenai;
- The applicant will enclose the dumpster on the premises with a sight-obscuring structure to meet requirements outlined in KMC 14.25.045 for their site plan of the premises;
- The applicant will also comply with the conditions of PZ2017-20 granting their Commercial Marijuana Product Manufacturing Facility Conditional Use Permit for the facility in the same building and modify that permit if the use changes.

Chair Twait opened the floor for public testimony.

Roger Boyd, Principal of ACG, addressed the letter from Kenai Christian Church provided in the laydown noting the former Planner watched the church on several occasions during the permitting process for the Marijuana Product Manufacturing Facility in 2017 and it was determined the main entrance of the church was further than the required distance and noted a neon beer sign was closer to the church than 500-feet. He pointed out regulations being in place brought marijuana off the black market. Finally, Mr. Boyd provided a history of the building and suggested marijuana retail shops were similar to small neighborhood convenience stores.

David Hall spoke against the Conditional Use Permit noting the family orientation of the adjacent strip mall, which he owned; also noted his building shared a parking lot with the subject building and expressed concern with the measurement of distance between the facility and church. He added that the coffee shop in the plaza occasionally hosted bible studies and the Friendship Mission for men was nearby.

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

Clarification was provided that in 2017, it was found that the main entrance door to be 504-feet from the marijuana establishment using GIS Software and a survey showed 516-feet from proposed establishment to the main, covered entrance of the church.

The applicant noted the double glass doors would be the main entrance to the Marijuana Retail Store; the same entrance as the former establishment.

It was noted that the establishment had been operating as a manufacturing facility without complaint and legally met the requirements.

Clarification was provided that, in 2017, there wasn't a condition put in place regarding signage, just that a sign permit be obtained.

Appreciation was expressed for the testimony presented, it was noted the legal criteria had been met and the Commission members agreed with staff's findings and would support the Permit.

Clarification provided that a Conditional Use Permit for each use was preferred so, if one use was ended, the associated permit would expire with the specific use.

**VOTE:**

YEA: Springer, Fikes, Twait, Halstead

NAY:

**MOTION PASSED UNANIMOUSLY.**

Commission Chair Twait noted the fifteen-day appeal period.

2. **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.**

3. **Resolution PZ2019-32** - Recommending the Council of the City of Kenai Enact Ordinance 3072-2019 to 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, Recreation and Cultural Community through Responsible Land Policies and Practices.

**MOTION:**

Commissioner Springer **MOVED** to approve Resolution No. PZ2019-32 and Commissioner Halstead **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting that a working group within administration developed the policies and procedures and Council had referred the ordinance to the Commission for a recommendation. She added that the ordinance offered development incentives, provided for a competitive lease and sale process, and required development to discourage speculation. Appleby also noted the proposed changes aligned with two objectives identified in the Comprehensive Plan.

Chair Twait opened the floor for public testimony; there being no one wishing to be heard, public comment was closed.

**VOTE:**

YEA: Springer, Fikes, Twait, Halstead

NAY:

**MOTION PASSED UNANIMOUSLY.**

**G. UNFINISHED BUSINESS – None.**



**H. NEW BUSINESS**

1. **Action/Approval-** Application for Lease of City-owned Land within the Airport Reserve Described as a Portion of Tract A, General Aviation Apron Subdivision No. 2 and Located at 209 N. Willow Street. The application was submitted by SOAR International Ministries, P.O. Box 1714, Kenai, AK 99611.

**MOTION:**

Commissioner Halstead **MOVED** to recommend approval of the SOAR lease application and Commissioner Springer **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting this was a re-application after SOAR did not take development action on its former application as required and an extension on the timeline for the necessary development was not granted. She added that the proposed development was to construct a 120-foot x 180-foot hangar with associated office facility and tie-down space for flight training and aircraft part sales.

Clarification was provided that a Site Plan and Building Permit would be required prior to a certain percentage of tree removal or construction.

**VOTE:**

YEA: Springer, Fikes, Twait, Halstead

NAY:

**MOTION PASSED UNANIMOUSLY.**

**I. PENDING ITEMS** – None.

**J. REPORTS**

1. **City Council** – Council Member Molloy reviewed the action agenda from the August 7 City Council meeting.
2. **Borough Planning** – Vice-Chair Fikes reported action from the August 12 Borough Planning and Platting Committee meetings.
3. **Administration** – City Planner Appleby reported on the following:
  - Upcoming meetings; and
  - Attended a Kenai Peninsula Borough Alaska LNG Project Advisory Committee meeting.

**K. ADDITIONAL PUBLIC COMMENT** – None.

**L. INFORMATIONAL ITEMS** – None.

**M. NEXT MEETING ATTENDANCE NOTIFICATION** – August 28, 2019

**N. COMMISSION COMMENTS & QUESTIONS** – None.

**O. ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 8:45 p.m.

Minutes prepared and submitted by:

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Jamie Heinz, CMC  
City Clerk



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Terry Eubank, Finance Director  
**DATE:** August 13, 2019  
**SUBJECT:** **Finance Department, August 2019 Mid-month Report**

The department completed its part of the 2019 Personal Use Fishery management and is working toward completion of the annual report on the fishery. Fishery revenue was \$416,232 which was 95.5% of the FY2020 budgeted amount of \$435,675. Total expenditures are still being compiled and a full financial analysis will be part of the annual report.

IT has completed the rough wiring of the public safety building for its new camera system. Camera hardware is still arriving and will be installed as it becomes available. The entire system should be operational by October 31<sup>st</sup>.

The project to upgrade the fiber optic cable between the Public Safety Building, Library, and City Hall was completed. The upgraded link will provide improved data transfer speeds when system backups are being performed.

The FY2020 City Budget has been submitted to the Government Finance Officers Association of the United States and Canada for review in anticipation of receiving its Distinguished Budget Presentation Award. Review will likely takes several months.

With the end of FY2019, the department's focus has switched to closing of that year's books and completion of the City's Comprehensive Annual Financial Report. This process includes closing of the FY19 financial records, fiscal year end grant reporting, completion of the annual Audit and finally financial statement preparation. The annual audit is scheduled for the week of October 7<sup>th</sup>.

Finance is working with many City departments to implement electronic timesheets. Currently the Fire, Parks, Recreation, and Beautification, and Legal departments are submitting timesheets electronically to Finance. Electronic timesheets are more efficient and provide increased reporting for departments. It is Finance's goal to transition all City departments to electronic timesheets by the end of this fiscal year.





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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 16, 2019

**SUBJECT:** **Fire Department Mid-Month Report - July**

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In July the department responded to 140 calls for service as compared to 128 calls in July 2018. This is a 9.4% increase compared to 2018. Through July the department has responded to 921 calls for service as compared to 859 in 2018. This is a 7.22% increase over the preceding year.

The department conducted the annual testing of our equipment including our apparatus pumps, ladders, and hoses. Even though the crews have been busy with calls they continue to conduct pre-fire plans and walk-throughs of area businesses. In July they completed 7 pre-fire plans.

The department wrapped up our involvement with the Swan Lake fire in July. The department staffed a type 6 engine (pick-up with slide in water tank and pump) for a total of 24 shifts during the duration of the fire.

On August 10<sup>th</sup> the department responded to a wildfire within the City of Kenai in the area of Redoubt and Cypress. The fire was quickly contained to an estimated 1.5 acres. No structures were involved and the cause of the fire is under investigation.

Engineer Sam Satathite and Chief Tucker attended the Fire Rescue International (FRI) conference in Atlanta. Eng. Satathite is in his second year of the three year Company Officer Leadership Symposium (COLS) hosted at FRI. Captain Porter completed the COLS program in 2018.

The department conducted a hiring process to fill our one vacant firefighter position. A job offer was extended and accepted and we are looking forward to being fully staffed.





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## MEMORANDUM

**TO:** Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary Jo Joiner, Library Director  
**DATE:** August 9, 2019  
**SUBJECT:** Library Mid-Month Report

<b>July Circulation Figures</b>			
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Adult Fiction	1,562	Internet Access	931
Adult Non-Fiction	1,085	iPad use	140
Young Adult Fiction	252	Games	10
Periodicals	114	Room Booking	179
Juvenile Fiction	551	Music	19
Juvenile Non-Fiction	441	DVDs	2,109
Easy Fiction	1,268	Audio books	81
Easy Non-Fiction	242	Miscellaneous	99
Interlibrary Loan	1	Computer Programs	
Books – Consortium	275	Media – Consortium	191
<b>Total Print</b>	<b>5,791</b>	<b>Total Non-Print</b>	<b>3,759</b>

	<b>Total Circulation 7/19</b>	<b>9,550</b>	<b>Downloadable Audio</b>	<b>643</b>
	<b>Total Circulation 7/18</b>	<b>9,798</b>	<b>Downloadable EBooks</b>	<b>567</b>
	<b>% change</b>	<b>-2.5%</b>	<b>% change in downloadable</b>	<b>0%</b>
	<b>In-House circulation</b>	<b>264</b>		





**Library Door Count..... 8,241 THIS IS A 30% INCREASE OVER JUNE FIGURES!**

**Income**

Fines	\$ 417.80
Xerox	262.70
Lost/Damaged	133.26
Test Proctoring Fee	20.00
Printing	412.00
Other	<u>.00</u>
<b>Total income</b>	<b>\$ 1,245.76</b>



<b>Library Cards Issued</b>	<b>July</b>
Kasilof	1
Kenai	30
Nikiski	16
Non-Resident	13
Other Peninsula	4
<u>Soldotna</u>	<u>3</u>
<b>Total</b>	<b>67</b>

**Programs**

In July 18 volunteers worked about 115 hours. This number includes the Friends of the Library who had their annual book sale in the library. They raised approximately \$1,100. There were 23 children's programs with 442 total in attendance, and 11 adult and family programs with 82 attendees. We are no longer using OCLC for Interlibrary Loan. With membership in the Alaska Library Catalog, the number of actual ILLs has declined precipitously. Any ILL activity will now be processed through Anchorage.



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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 2019  
**SUBJECT:** Mid-Month Report; Public Works / Capital Projects

- Terminal Building Rehabilitation Project – Blazy Construction was issued a Notice to Proceed on October 1, 2018. The project is approximately *61% complete* to date. Inside the facility Ravn's future space has final finishes being installed. The restaurant exterior wall has now been demo'd, the final exterior addition at the baggage areas is now underway. Exterior sidewalks and snow melt systems are being completed, installing drywall in Arrival entry. See photos below. On the exterior the roofing is now 85% complete. Installation of the new baggage conveyors for Ravn and Baggage Claim is expected for late August. Project Completion date remains scheduled for February 2, 2020. The A/E Team and Contractor have processed roughly 98% of the required submittals, as well as responding to 219 RFIs to date. The project is proceeding well.



North End New Ramp/Stairs



New Two Story Arrival in drywall phase





- Automated Flight Service Station Renovations Phase 3 (Interior remodel) – Invitations to Bid were released on November 16, 2018 with Bids due on December 14, 2018. Ordinance 3049-2019 was enacted on February 20, 2019 accepting additional Funding from the FAA for the Project to be completed as requested. Polar North Construction was issued a formal Notice of Award on February 27, 2019; Agreement has been executed with a Notice to Proceed issued on March 14, 2019. *Update: The FAA has requested some additional work as reflected in Ordinance 3081-2019 within this packet. Work is very near completion with Final Completion expected in September 2019.*
- WWTP Improvements – The combined Aeration Blower Replacement / DO Probes project Invitation to Bid was released on February 13, 2019 with Bids due on March 27, 2019. Two Bids were received with Peninsula Construction being the lowest responsive and responsible bidder. The City elected to execute a deductive alternate #1 which removed the digester blowers and associated DO probe from the project for budget purposes. Executed Contract is for \$1,035,000.00 and shall provide for complete replacement of the three Aeration Basin Blowers and associated DO Probes and analyzer. Project is anticipated to take place throughout the summer with completion in the fall. Council approved the project through Resolution 2019-21 at the April 3, 2019 meeting. Notice to Award was issued to Peninsula Construction on April 10, 2019. *Update: The Blowers, Stainless Steel blower piping, DO Probes and Controller have now all arrived in Alaska. Anticipating installation over the next month, with blowers operational by October 1<sup>st</sup> ahead of schedule!*



*Stainless Piping on Site*



*New Blower Pad prepped for concrete*

- Dock repair – The City Dock received some new damages as a result of the November 30, 2018 Earthquake. Public Works and Finance are coordinating with the insurance company to complete an Engineer's assessment of the damages. Anticipating the current project documents being modified to account for the new damages. Insurance company and engineer will be on site 6/21 to further inspect the property from the water. *Update: Due to*



*weather conditions Engineer rescheduled for August 2, 2019 high tide to complete inspection of trestle from boat. A few additional areas do require modifications to the existing bid documents. Awaiting cost and document completion from Nelson Engineering before we can issue an Invitation to Bid.*

- Recreation Center Improvements – Grant extension was requested to allow additional time to coordinate with other projects. Work scope will be finalized in August, improvements beginning in September.
- Kenai Cemetery Expansion 2018 – Project Documents were recently finalized. The Public Works Department is completing a majority of this work in house. Storm Water Protection Plan has been developed and submitted with the state. Clearing of the site is now complete, survey staking is now in place. *Update: Installation of parking lot sub-base is underway.*



- Peninsula Avenue Bluff Erosion 2018 – Design Documents are now 100% complete. Invitation to Bid is pending, working with Granting agency for approval to advertise.
- Alaska Regional Fire Training Facility – RFP for Engineering, Design, and Construction Administration Services Released March 14, 2019 with Proposals due on April 4, 2019. A Professional Services Agreement was executed with Morrison Maierle on May 8, 2019. Site Visits are schedule for 5/13-5/14 with Design Documents anticipated completion of July 31, 2019, and a formal invitation to bid for construction first week of August 2019. The Preliminary Design Report was received on June 4, 2019 detailing the design teams findings from May's site visit. *Update: Invitation to Bid was released on August 1, 2019 with Bids Due on August 29, 2019.*



- Kenai Municipal Airport Crack Seal and Pavement Marking – The City released a formal Invitation to Bid on May 7, 2019 with Bids received on 5/28/19. Two Bids were received with Northwest Contracting dba Pacific Asphalt being the lowest responsive responsible bidder at \$713,998.50. Notice to Proceed was issued on July 11, 2019 to Northwest Contracting LLC, the project is approximately 65% complete with Ordinance 3078-2019 pending to add additional funds to complete the project. Final Project completion is anticipated for September 2019.
- USACE Bluff Erosion – See City Manager’s report. Director’s Report from the Army Corp of Engineers was signed April 10, 2019.
- DOT KSH Rehabilitation (Widening to 5 lanes) Phase 1 Swires Rd. to Eagle Rock Dr. was bid on March 30, 2018. City of Kenai water main replacement crossing KSH at Shotgun/Beaver Loop designed, funded, and will be bid with DOT project. The 16” new water main associated with this project has now been installed under the Highway. *Update:*
- DOT KSH Rehabilitation (Widening to 5 lanes) Phase 2 Eagle Rock Dr. to Sports Lake – ADOT advises this project will take place 2019.
- DOT Beaver Loop Road and Pedestrian Pathway Project – QAP was awarded the project. Signage was posted the week of June 10<sup>th</sup>, clearing of the right of ways and directional boring of utilities is actively underway. DOT advises final asphalt for both the new road and bike path will not be until May/June 2020.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary Bondurant, Airport Manager  
**DATE:** August 8, 2019  
**SUBJECT:** **August Mid-month Report**

2018 Terminal Rehabilitation Project – Construction: This project is well underway and all areas of the terminal inside and out are experiencing some form of construction.

2019 Airfield Marking, Crack Sealing, & Pavement Repair – The runway crack sealing is complete and the runway painting is scheduled to start the week of August 12, 2019.

2019 Alaska Fire Training Facility Rehabilitation – This project is currently being advertised. Bids will open the end of August and a grant application will be sent to the FAA in September 2019. Construction will start late fall.

2019 Acquire Aircraft Rescue & Firefighting Trucks (ARFF) – Airport Administration is working with FAA on the grant application. The City will tag the State of Alaska Department of Transportation contracts to purchase 3,000 gallon and 1,500 gallon ARFF vehicles for the Alaska Fire Training Facility.

In-house Activities – Airport Operations continues summer maintenance, wildlife hazing, fence maintenance, brush cutting, mowing, fence repair, and equipment maintenance.

Tri-annual Mass Casualty – A requirement of CFR 139.325 for a holder of a Class 1 Airport Operating Certificate is a full-scale mock airport emergency plan exercise at least once every 36 consecutive calendar months. This drill is scheduled for October 2, 2019. The updated and approved Kenai Municipal Airport Emergency Control Plans (AECPP) have been delivered to all plan participants. If you would like to volunteer, please call the Airport Administrative office at 283-7951.



Out of Office – Airport Manager will be out of the office from Monday, August 19 through August 23, 2019 to attend the annual AMAC conference. I will be back in the office on Monday, August 26, 2019.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**THROUGH:** Dave Ross, Police Chief  
**FROM:** Jessica "JJ" Hendrickson, Animal Control Chief  
**DATE:** August 1, 2019  
**SUBJECT:** July 2019 Monthly Report

This month the Kenai Animal Shelter took in **67** animals. Animal intake and disposition:

DOGS:				
	INTAKE	<b>23</b>	DISPOSITION	<b>21</b>
	Waiver	3	Adopted	4
	Stray	13	Euthanized	1
	Impound	2	Claimed	15
	Protective Custody	1	Field Release	0
	Quarantine	4	Transferred to Rescue	1
	Other Intakes	0	Other Dispositions	0
CATS:				
	INTAKE	<b>37</b>	DISPOSITION	<b>50</b>
	Waiver	15	Adopted	19
	Stray	17	Euthanized	0
	Impound	0	Claimed	7
	Protective Custody	4	Field Release	0
	Quarantine	0	Transferred to Rescue	24
	Other Intakes	1	Other Dispositions	0
OTHER ANIMALS:				
	INTAKE	<b>7</b>	DISPOSITION	<b>8</b>
	Bird	3	Bird	3
	Bat	1	Horse	1
	Guinea Pig	3	Guinea Pig	3



			Bat	1
DOA:		2	OTHER STATISTICS:	
	Dog	2	Licenses (City of Kenai Dog Licenses)	19
	Cat	2	Microchips (Dog and Cat)	24

- 7** Animal dropped with After Hours (days we are closed but cleaning and with KPD)
- 38** Animals are *known* borough animals
- 24** Animals are *known* City of Kenai
- 2** Animals are *known* City of Soldotna
- 5** Animals from unknown location
- 35** Field Investigations & patrols
- 50.14** Volunteer Hours Logged
- 10** Citations
- 2** Educational Outreach

Statistical Data:

- 468** 2017 YTD Intakes
- 469** 2018 YTD Intakes
- 505** 2019 YTD Intakes







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210 Fidalgo Ave, Kenai, Alaska 99611-7794  
 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
 www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Elizabeth Appleby, City Planner  
**DATE:** August 13, 2019  
**SUBJECT:** **Planning and Zoning July 2019 Report**

Below are a summary of activity in July 2019 for the Planning and Zoning Department.

### Planning and Zoning Commission Agenda Items and Resolutions

The Planning and Zoning Commission approved of two transfers of conditional use permits, one application for a conditional use permit for surface extraction of natural resources, one application for amendment to a conditional use permit, one applications for a home occupation permit, and recommended the City Planner respond affirmatively to a plat time extension request:

- Resolution PZ2019-25 – Application for a Conditional Use Permit to operate a Guide Business, located at 1325 Angler Drive, Kenai, Alaska 99611, and further described as Lot 18, Block 1, Anglers Acres Part Two. The application was submitted by Jeff Bressler, P.O. Box 271, Kasilof, AK 99610
- Resolution PZ2019-24 – Original Preliminary Plat of Shoreline Heights Thiele Replat, submitted by Edge Survey and Design LLC, 43335 K-Beach Rd., Ste.16b, Soldotna, AK 99669, on behalf of the Kim Thiele, 36901 Mallard Road, Kenai, AK 99611
- Resolution PZ2019-26 – Application for Transfer of Conditional Use Permit PZ75-54 for Operation of a Gravel Pit for Extraction of Natural Resources, from the Estate of Mavis Cone, Transferor, to Colaska, Inc. dba QAP, Transferee, located at 2817, 2881, 3073 Beaver Loop Road, 1605 Cone Avenue, and 835 Gravel Street, Kenai, Alaska 99611, and further described as Tracts 1 and 2, Tundra Rose Subd. according to Plat No. 84-19; a Portion of the NW1/4 NW1/4 Lying North of Beaver Loop Rd, Section 11, T5N, R11W, Excluding Tundra Rose Subd.; the West 990 Feet of the South 660 Feet Excluding



Therefrom the West 330 Feet, Section 2, T5N, R11W; and the West 330 Feet of the South 660 Feet, Section 2, T5N, R11W.

- Presentation – Land Sale and Leasing Policies and Procedures by Assistant to City Manager Christine Cunningham

#### Lands, Economic Development, and Outreach

The City Planner attend a board meeting for the Alaska Chapter of the American Planning Association.

The City Planner prepared materials for the dipnet fishery.

City staff conducted a site visit for a gravel pit.

The City Planner worked on the draft Land Management Plan and data supporting the creation of the plan.

#### Code Enforcement

3 cases were opened in July 2019:

- 3 – Junked or Abandoned Vehicles



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## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Robert J. Frates, Parks & Recreation Director

**DATE:** August 13, 2019

**SUBJECT:** **Mid-month Report – August 2019**

With the personal use fishery coming to a close on July 31, the crews have been settling back into their normal routine and completing deferred projects. Below is a list of tasks that have been completed in July or currently in progress:

- A total of 80 hours community service work was accomplished since August 3. Activities completed involved landscaping, weeding and ballfield maintenance.
- An "all hands on deck" beach clean-up effort took place August 1 immediately following the personal use fishery.
- A total of 9 shelter reservations occurred during the month of July.
- Industry Appreciation is scheduled for August 24 and preparation is currently underway. Staff will once again assist with initial set-up, restroom cleaning and trash throughout the day.
- The small greenstrip located at 4<sup>th</sup> Ave. and N. Forest Drive received some landscape improvements thanks to our very talented gardener, Ashlynn Eagle.
- Crews installed gravel trails at Daubenspeck Family Park near the shelters.
- Department coordinated with the LeeShore Center for delivery of supplies to assist with the 32nd Kenai Peninsula Annual Run for Women.
- Crew members installed a new sign at the Wildflower Garden with assistance from the Airport.
- Staff picked up left-over slash piles from volunteers limbing at the Kenai Dog Park.
- Landscape improvements were made to the Airport Triangle.
- Several spruce bark beetle trees were removed from along Ryan's Creek Trail.
- Considerable maintenance was performed on three out of the four ballfields located at the Kenai Little League complex.
- Planted one (1) tree at Leif Hansen Memorial Park and performed sprinkler repair work.





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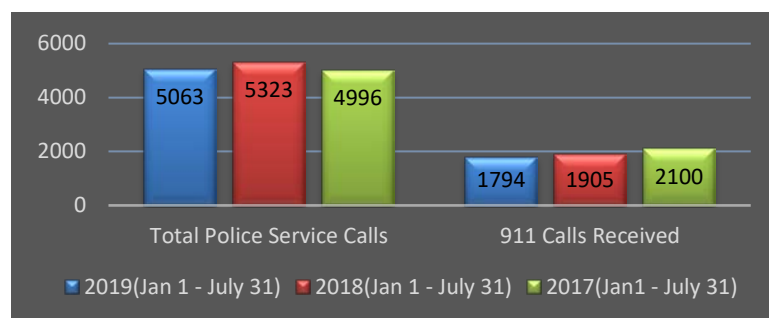
## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** David Ross, Police Chief  
**DATE:** August 12, 2019  
**SUBJECT:** **Police & Communications Department Activity – July 2019**

Police handled 1021 calls for service in July. Dispatch received 338 9-1-1 calls. Officers made 65 arrests. Traffic enforcement resulted in 244 traffic contacts and 87 traffic citations. There were 6 DUI arrests. Officers investigated 8 motor vehicle crashes. There was one collision involving caribou. There were no collisions involving drugs or alcohol. A double homicide investigation in July required, and continues to require, extensive time and resources of the police department.

July training included: The KPD officer on the SERT team completed two days of training. One officer attended a three day course on vehicle interdiction in Anchorage. One officer attended a week long fugitive apprehension training in Anchorage. One new hire started the 16 week DPS academy in Sitka.

A hiring process in the police department continues in order to fill two remaining vacancies. The department has taken steps, including training, to adjust to statutory criminal justice changes that took effect in July.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Kathy Romain, Senior Center Director  
**DATE:** August 7, 2019  
**SUBJECT:** **July 2019 Monthly Report**

Congregate Meals Served (Dining Room)	1217
Home Delivered Meals	1271
Volunteer Hours	(45 individuals) = 566
Unassisted Transportation Rides	445
Assisted Transportation Rides	119
Social Security Video Service	41 individuals
Senior Center Rentals	1
Total Event Sign-Ins (through MySeniorCenter)	2460
Total Unduplicated Participants (through MySeniorCenter)	279

July activities highlights included:

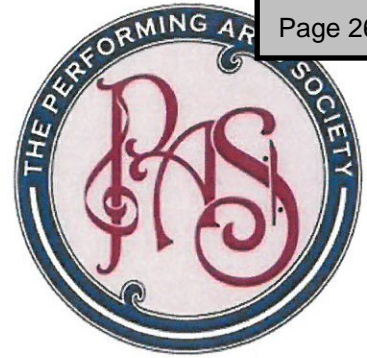
- No Host Dinner to Brothers Restaurant in Kenai. This was attended by eight for good food and fellowship. The comment was made "that getting to dine and watch planes coming and going always makes for great time".
- The Senior Center hosted the Alaska Button Box Gang on July 25. The evening was a great success complete with dancing, Howard's Snack Shack with fun and memorable music.
- The Mystery Drive was once again, full of mystery. Steve took twelve seniors to the Kasilof Crooked Creek Fish Hatchery to view the King Salmon counting station. They viewed the fish weir (counter) across Crooked Creek and the video recording stations as well as getting a King Salmon anatomy lesson from the biologist. They stopped for ice cream and then continued to Jim's Honey Bees where he has 100 hives and sells honey roadside. A Jackson's Gardens tour was next and then off to the Farmer's Market at the Food Bank visiting our local gardeners.
- A group of 18 seniors and staff took the Rainbow Connection Ferry from Homer to Seldovia for a day trip. For a few, this was the first time they had ever been to Seldovia and fortunately the weather and Kachemak Bay were welcoming.



**PURCHASE ORDERS BETWEEN \$2,500.00 AND \$15,000.00 FOR COUNCIL REVIEW**  
**COUNCIL MEETING OF: AUGUST 21, 2019**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPT.</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
RELIANT LLC	APPRAISAL-LOTS 1&1A, ALYESKA SUBD	AIRPORT	DEPOSITS	3,000.00
ALASKA ABATEMENT CORP.	ASBESTOS ABATEMENT-KFD KITCHEN	PUBLIC SAFETY PROJ	CONSTRUCTION	11,450.00
NORTHSTAR SUPPLY	CRACK SEALANT	STREETS	REPAIR & MAINTENANCE	7,812.00
GMW FIRE PROTECTION	FIRE SYSTEMS TESTING	VARIOUS	REPAIR & MAINTENANCE	11,928.24





July 1, 2019

City of Kenai  
 City of Kenai  
 210 Fidalgo Ave  
 Kenai, AK 99611

Dear City of Kenai ,

Thank you for your support of the Performing Arts Society. As a nonprofit organization, we rely completely on donations and sponsorships from businesses like yours. Your past sponsorship has brought music to many. *Thank you!*

As you know, we are a non-profit, all-volunteer board with two equal goals: one, to arrange and fund four classical or jazz community concerts by world-class musicians and vocalists; and two, to supplement Central Peninsula school music programs with free in-school concerts, workshops, or master classes by our artists. Last season, nearly 1000 local K-12 students heard or worked with these talented musicians.

***Presenting our 2019-2020 concert season:***

October 26, 2019	<b>Debussy Trio</b> (Viola, Flute, Harp)
January 18, 2020	<b>Low &amp; Lower</b> (Sharpe & Whitehouse, Cello & Bass)
February 8, 2020	<b>Armin Abdihodzic</b> (Classical Guitar)
March 21, 2020	<b>Aaron Lohmeyer and Friends</b> (Classical Saxophone and Jazz Ensemble)

May we count on your sponsorship again this year? I've enclosed a sample program so you can see how attractive and engaging it is for our audiences with the page for your past ad marked. In your packet you will also find a sponsorship form with directions for submitting or changing this year's ad. Once we receive your information and donation, we will promptly send a receipt containing all the necessary tax-deduction information.

As your representative, I'm eager to answer any and all questions. Thank you again for your support. We truly couldn't do this without you.

Sincerely,

Rosemary Bird  
 907 252-9106





2019-2020 Season

# Program Sponsor - Ad Order Form

**Thank you for helping us bring world class musicians to our community and schools!**

## City of Kenai

Contact: City of Kenai

Address: 210 Fidalgo Ave  
Kenai, AK 99611

Phone: 907 283-7535

Email:

Your Rep: Rosemary Bird

Contact #: 907 252-9106

2018-19 Ad Size: 1/8 page

*1/4 page*

*see program*



## Instructions:

1. Verify information above.
2. Choose an ad size AND ad status on right
3. Make Checks payable to Performing Arts Society
4. Send check and this form to PAS, PO Box 1181, Kenai AK 99611 or give to your representative.
5. Email print ready artwork in jpg, gif or png format to jennyneman@gmail.com. Please include "PAS" in the subject line.
6. If you have questions about your ad or need help putting it together, please email Jenny at the above with "PAS" in the subject line and she will help you the best she can.

## Please Choose an Ad Size:

- Full Page ~ 8.5 by 5.5 Inches = \$500
- Half Page ~ 8.5 by 5.5 Inches \$300
- Quarter Page ~ 8.5 by 5.5 Inches = \$175
- Eighth Page or Business Card ~ 8.5 by 5.5 Inches = \$100

## Your Ad Status:

- Please use the SAME AD as last year
- I'm sending a NEW AD to Jenny
- I'm sending CHANGES to Jenny
- I need help with my ad
- See addtl notes

## Opt Out:

- Please let us know if you would prefer we do **NOT** use your ad on our website where we list and thank our sponsors.





# The Performing Arts Society

Page 268

## 2019-2020 concert season



**October 26, 2019**  
***Debussy Trio***

Amy Tatum, flute  
Andrew Duckles, viola  
Marcia Dickstein, harp



**January 18, 2020**  
***Low & Lower***

Paul Sharpe, bass  
Brooks Whitehouse, cello  
*Music from the bottom up!*



[performingartsociety.org](http://performingartsociety.org)

**February 8, 2020**  
***Armin***  
***Abdihodžic***

Classical guitar



**March 21, 2020**  
***Aaron Lohmeyer & Friends***

Classical saxophone and jazz ensemble  
*Maria Allison, piano; John Damberg, keyboard;*  
*Cameron Cartland, drums; Paul Hettwer, trombone;*  
*Mark Teckenbrock, guitar; Daryl Hollingsworth, bass;*  
*and Linnea Hollingsworth, vocals*

