



## Kenai Planning & Zoning Commission - Regular Meeting

August 14, 2019 – 7:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

<https://www.kenai.city>

### AGENDA

#### A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda
5. \*Excused Absences

\*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.

#### B. APPROVAL OF MINUTES

1. \*July 24, 2019

#### C. SCHEDULED PUBLIC COMMENT

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

#### D. UNSCHEDULED PUBLIC COMMENT

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

#### 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.

#### 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.

**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.

**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.

**G. UNFINISHED BUSINESS**

**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.

**I. PENDING ITEMS**

**J. REPORTS**

- 1.** City Council
- 2.** Borough Planning
- 3.** Administration

**K. ADDITIONAL PUBLIC COMMENT**

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

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

**L. INFORMATIONAL ITEMS**

**M. NEXT MEETING ATTENDANCE NOTIFICATION**

- 1.** August 27, 2019 – 6pm Sign Code Work Session
- 2.** August 28, 2019 – 6pm iPad Training

3. August 28, 2019 – 7pm Regular Meeting

N. **COMMISSION COMMENTS AND QUESTIONS**

O. **ADJOURNMENT**

**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



*"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

**STAFF REPORT**

To: Planning & Zoning Commission

From: Elizabeth Appleby, City Planner

Date: August 9, 2019

Subject: Resolution PZ2019-31 – Preliminary Subdivision Plat – Evergreen Subdivision 2019 Replat

Applicant: Wallace and Leona Jackson  
P.O. Box 1948  
Kenai, AK 99611

Submitted By: McLane Consulting, Inc.  
P. O. Box 498  
Soldotna, AK 99669

Requested Action: Preliminary Subdivision Plat – Evergreen Subdivision 2019 Replat

Legal Description: Lot 5, Block 1, Evergreen Subdivision Kim Addition  
Lot 6, Block 1, Evergreen Subdivision Kim Addition

Property Address: 405 Evergreen Street  
403 Evergreen Street

KPB Parcel No: 04302049  
04302050

Lot Size: 13,068 square feet (0.30 acres)  
13,068 square feet (0.30 acres)

Existing Zoning: Suburban Residential 1 (RS-1)

Current Land Use: Single Family Dwelling and Vacant Lot

Land Use Plan: Suburban Residential

## GENERAL INFORMATION

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The applicants, Wallace and Leona Jackson, own Lots 5 and 6, Block 1, Evergreen Subdivision Kim Addition, and have submitted a plat that would vacate the property lines between the two lots to create one larger lot. The applicants reside in a single family dwelling located on Lot 5, Block 1, Evergreen Subdivision Kim Addition. They wish to construct a detached garage on Lot 6, Block 1, Evergreen Subdivision Kim Addition. *Kenai Municipal Code 14.20.200, Accessory Structures*, details the process wherein an accessory structure may be located on an adjacent parcel with a Conditional Use Permit without vacating a property line, which houses a main building, as follows:

*(b) Unoccupied accessory structures may be allowed as a conditional use on a residential parcel that does not have a main building or use of the land only when the parcel on which the unoccupied accessory structure proposed is adjacent to and shares a common lot line with a parcel owned by the same owner and a main building or use is constructed or used on the adjacent parcel. The conditional use for an unoccupied accessory structure on an adjacent parcel shall expire upon transfer of either parcel to a third party and all accessory buildings on adjacent parcels without a main building or main use must be removed.*

Criteria: Met

*(c) Unoccupied accessory structures allowed as a conditional use on residential parcels adjacent to a parcel owned by the same owner with a main structure or use of the land shall be limited to structures without a permanent foundation and less than four hundred (400) square feet.*

Criteria: Not Met. Applicant must vacate the lot line in order to meet zoning requirements to build their proposed garage.

The detached garage that the applicants wish to construct is an accessory structure larger than 400 square feet and will have a permanent foundation; therefore, it does not meet the criteria for a Conditional Use Permit. The vacation of the property line between the two lots would allow the applicants to have a single family dwelling and a detached garage on the larger lot.

### Application, Public Notice, Public Comment

*KMC 14.10.010 General under Chapter 14.10 Subdivision Regulations* states preliminary plats or replats must first be submitted to the City for review prior to the submittal of the plat to the Kenai Peninsula Borough Planning Department. *Kenai Municipal Code (KMC) 14.10.060* describes the process in more detail. The plat will be reviewed first by the City of Kenai Planning and Zoning Commission and then by the Kenai Peninsula Borough's Plat Committee and Planning Commission.

The property owners completed the City of Kenai preliminary plat submittal form. City staff deemed the application to be complete. The City of Kenai follows *Kenai Peninsula Borough Code 20.25.070* and *20.25.080* for preliminary plat submittal requirements.

City staff published notice of the consideration of the plat as part of the agenda for the City of Kenai Planning and Zoning Commission in the *Peninsula Clarion*. No public comments have been received as of August 9, 2019.

## ANALYSIS

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The parcels are within the Suburban Residential 1 Zone of the City of Kenai. Pursuant to *KMC 14.24.010 Minimum lot area requirements*, the minimum lot size for a single family dwelling is 12,500 square feet. The proposed Lot 5A, Block 1, Evergreen Subdivision 2019 Replat would be approximately 26,136 square feet (approximately 0.60 acres) and meets the minimum lot size requirements. The proposed lot also meets the minimum lot width of sixty (60) feet as specified by *KMC 14.24.020 General requirements*. The lot size is consistent with the size of other lots in the surrounding neighborhood.

Evergreen Street provides access to the proposed lot and is a paved, City-maintained street. The right-of-way for Evergreen Street is eighty-three feet (83') in width, which meets the minimum width of sixty feet (60') pursuant to *KMC 14.10.070(b)(2) Subdivision design standards, Street and Alley Width*. The proposed plat does not dedicate any additional rights-of-way. Street names are denoted accurately on the preliminary plat.

City of Kenai water and sewer lines are within the right-of-way of Evergreen Street. The single family dwelling located on Lot 5, Block 1, Evergreen Subdivision Kim Addition is connected to City water and sewer services. If the proposed detached garage is going to contain bathroom facilities or a sink, the property owner will be required to connect to City water and sewer service because existing public water and sewer lines are within 200 feet of the property, pursuant to *KMC 17.10 Connection to Public Water System and KMC 17.20 Connection to Public Sewer System*.

The easement for utilities is along the front ten feet (10') of the property line fronting Evergreen Street. An installation agreement is not required.

Based upon the submitted materials and this review, the preliminary plat meets requirements of *KMC Subdivision design standards* and *KMC 14.10.080 Minimum improvements required under Chapter 14.10 Subdivision Regulations*. City staff recommends a condition of approval for the property to conform to all federal, State of Alaska, and local regulations. Conforming to local regulations would require the applicant to obtain a Building Permit from the City of Kenai prior to construction.

## RECOMMENDATIONS

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City staff recommends approval of the preliminary plat of Shoreline Heights Thiele Replat, subject to the following condition:

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

## ATTACHMENTS

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1. Resolution No. PZ2019-31
2. Preliminary Plat

3. Application

4. Maps



**CITY OF KENAI  
PLANNING AND ZONING COMMISSION  
RESOLUTION NO. 2019 - 31**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THAT EVERGREEN SUBDIVISION 2019 REPLAT ATTACHED HERETO AS EXHIBIT "A" BE APPROVED SUBJECT TO THE CONDITIONS OUTLINED BELOW.

WHEREAS, the City of Kenai received the plat attached as Exhibit A from McLane Consulting, Incorporated; and,

WHEREAS, the plat meets City Code requirements of the Suburban Residential 1 Zone; and,

WHEREAS, the plat accurately represents street names and surrounding properties; and,

WHEREAS, the plat will not change the existing access to the properties; and,

WHEREAS, Evergreen Street, which is a paved and City-maintained road, provides access to the property; and,

WHEREAS, the plat accurately shows utility easements; and,

WHEREAS, City water and sewer lines are located within the right-of-way of Evergreen Street and the property owner connect to City water and sewer service as required; and,

WHEREAS, an installation agreement is not required; and,

WHEREAS, the applicant will obtain a building permit from the City of Kenai prior to construction in order to follow local regulations; and,

WHEREAS, the Planning and Zoning Commission finds:

1. Pursuant to Kenai Municipal Code 14.10.070 Subdivision design standards, the plat conforms to the minimum street widths, an easement is sufficiently provided for utilities, the proposed lot would be arranged to provide satisfactory and desirable building sites, and the proposed lot meets standards for connection to City water and sewer lines.
  2. Pursuant to Kenai Municipal Code 14.10.080 Minimum improvements required, there is adequate access and facilities available to the proposed parcel. An installation agreement is not required.
  3. Pursuant to Kenai Municipal Code 14.24.010 Minimum lot area requirements, the lot meets City standards for minimum lot sizes.
-

4. Pursuant to Kenai Municipal Code 14.24.020 General Requirements, the lots meet City standards for minimum lot width, maximum lot coverage, maximum height, and setbacks.

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

**Section 1.** That the Evergreen Subdivision 2019 Replat attached as Exhibit "A" be approved subject to the following condition:

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

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

\_\_\_\_\_  
JEFF TWAIT, CHAIRPERSON

ATTEST:

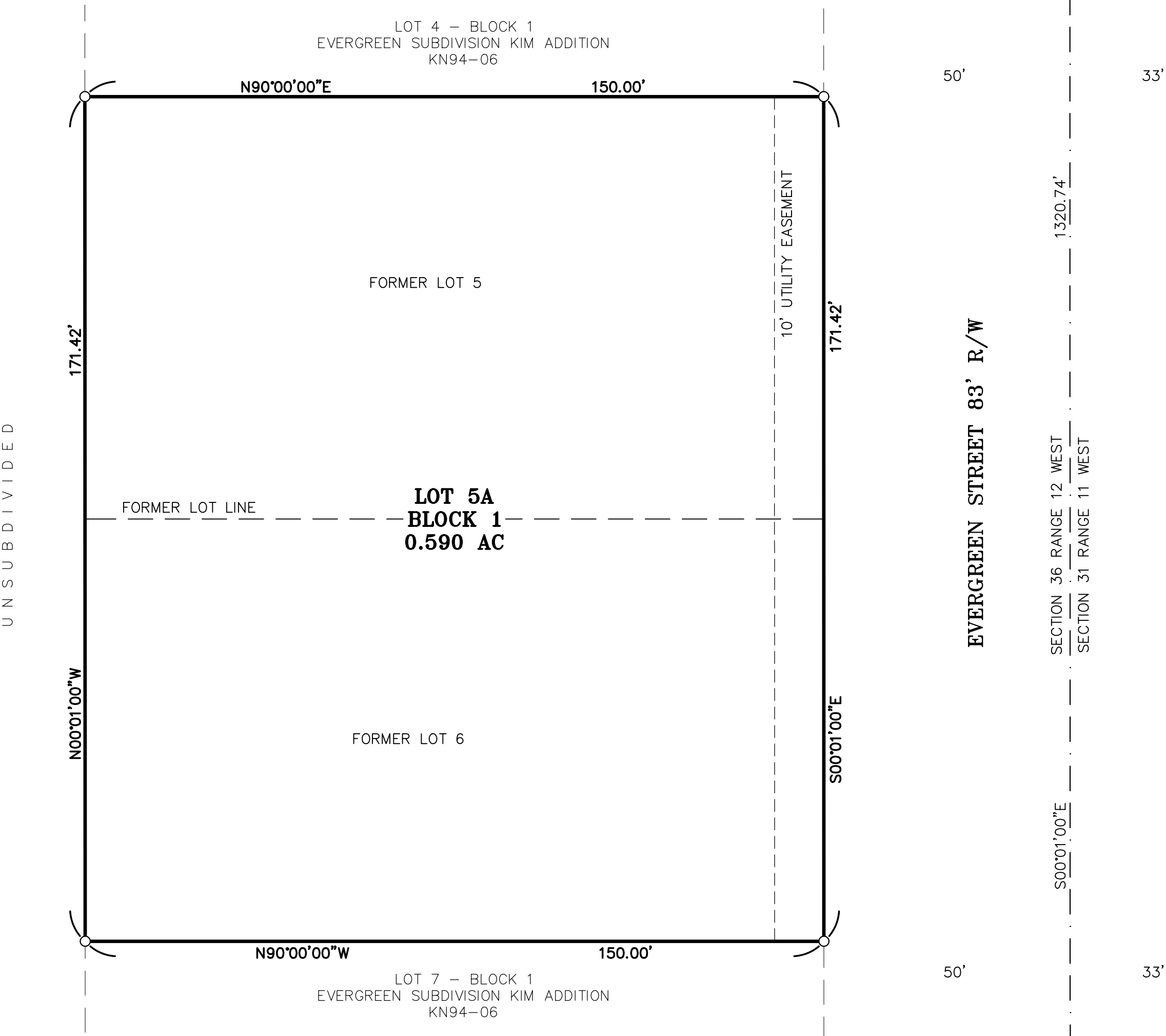
\_\_\_\_\_  
JAMIE HEINZ, CITY CLERK

DRAFT

**WASTEWATER DISPOSAL**

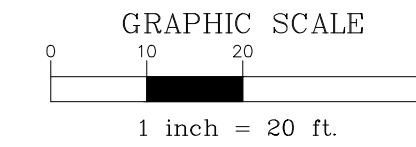
PLANS FOR WASTEWATER DISPOSAL THAT MEET REGULATORY REQUIREMENTS ARE ON FILE AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

JAMES A. HALL L.S. 85032 AK DATE



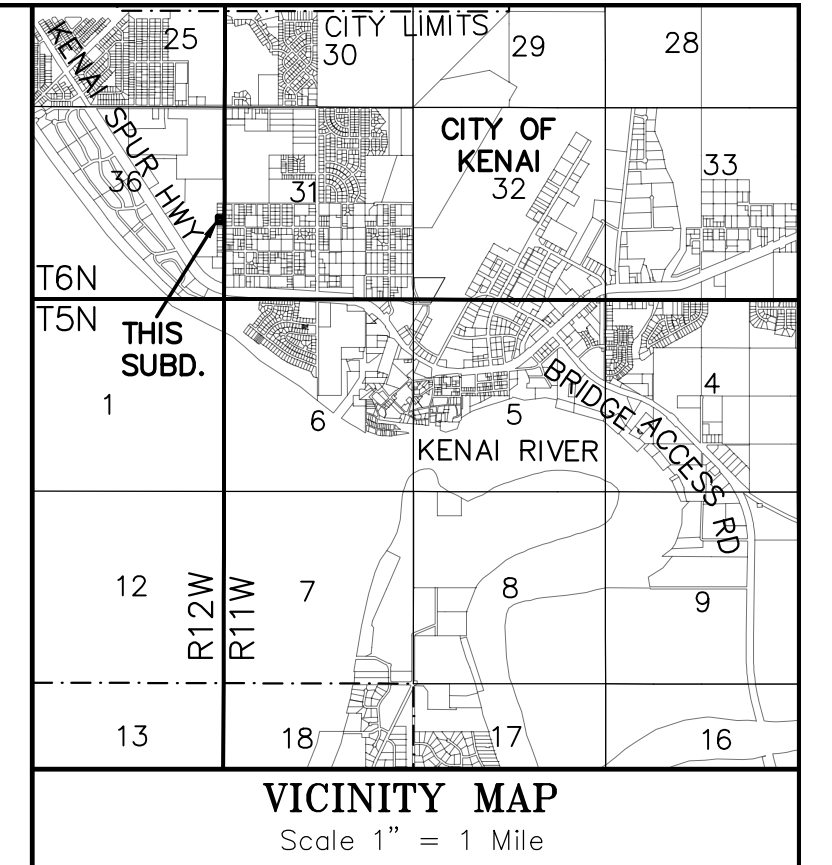
**NOTES**

1. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
2. DEVELOPMENT MUST MEET THE CITY OF KENAI CHAPTER 14 ZONING CODE REQUIREMENTS.
3. THIS PLAT WAS PREPARED FROM DATA OF RECORD (KN 94-06) WITH NO ADDITIONAL FIELD SURVEY.



**LEGEND**

- ⊕ RECORD PRIMARY MONUMENT
  - RECORD 5/8" REBAR
- (RECORD) RECORD DATA FROM KN 94-06



**CERTIFICATE OF OWNERSHIP AND DEDICATION**

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

WALLACE R. JACKSON, OWNER  
PO BOX 1948, KENAI, AK 99611

LEONA M. JACKSON, OWNER  
PO BOX 1948, KENAI, AK 99611

**NOTARY'S ACKNOWLEDGEMENT**

FOR: WALLACE R. AND LEONA M. JACKSON  
ACKNOWLEDGED BEFORE ME THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_, 2019

MY COMMISSION EXPIRES : \_\_\_\_\_

NOTARY PUBLIC FOR THE  
STATE OF ALASKA



<b>Plat #</b>	
Rec Dist	
Date	20
Time	M

**PLAT APPROVAL**

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH IN ACCORDANCE WITH KPB 20.10.040.

AUTHORIZED OFFICIAL

<b>EVERGREEN SUBDIVISION 2019 REPLAT</b>			
REPLAT OF EVERGREEN SUBDIVISION KIM ADDITION LOT 5 & 6, BLOCK 1 (KN 94-06)			
WALLACE R. AND LEONA M. JACKSON, OWNERS PO BOX 1948 KENAI, AK 99611			
0.590 AC. M/L SITUATED IN THE SE1/4 OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 12 WEST, SEWARD MERIDIAN, CITY OF KENAI, KENAI PENINSULA BOROUGH, AND THE KENAI RECORDING DISTRICT, ALASKA.			
	ENGINEERING - TESTING SURVEYING - MAPPING P.O. BOX 468 SOLDOTNA, AK. 99669 VOICE: (907) 283-4218 FAX: (907) 283-3265 WWW.MCLANECG.COM	KPB FILE NO. 2019-0XX	
	PROJECT NO. 192012		
SCALE 1" = 20'	DATE : AUG. 2019	BOOK NO. : -	DRAWN BY : JAH



# McLANE

**CONSULTING, INC.**  
P.O. Box 468 Soldotna, Alaska 99669  
(907) 283-4218 fax (907) 283-3265

## LETTER OF TRANSMITTAL

To: City of Kenai  
Elizabeth Appleby  
210 Fidalgo Ave  
Kenai, AK 99611

DATE: 8/2/19 JOB # 192012  
ATTENTION: Elizabeth Appleby  
RE: Evergreen Subdivision 2019 Replat  
Prelim-Plat  
From: James Hall

We are sending you:  Attached  Under separate Cover  
Via: Email

Copies	Description
1	Plat City of Kenai Submittal Form
1	Preliminary Plat - Full Scale
2	Preliminary Plat - 11x17
1	Plat KPB Submittal Form-Signed
1	Certificate to plat

Reason for Transmittal Checked Below:

FOR APPROVAL  AS REQUESTED  APPROVED AS SUBMITTED  REVIEW/COMMENT  
 FOR YOUR USE  APPROVED AS NOTED  RETURNED FOR CORRECTIONS

Remarks:

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Copy to: File Signed: James



CITY OF KENAI PLANNING DEPARTMENT  
PRELIMINARY PLAT SUBMITTAL FORM

APPLICANT	Wallace and Leona Jackson
MAILING ADDRESS	PO Box 1948
CITY, STATE, ZIP	Kenai, AK 99611
PHONE	907-398-6526 / 907-398-4159

NAME OF PLAT	Evergreen Subdivision 2019 Replat
	<b>Preliminary Plat</b> Revised Preliminary Plat

CURRENT ZONING WHERE APPLICABLE: Suburban Residential 2

USE:      **Residential**      Recreational      Commercial      Other

SEWER:	On Site	<b>City</b>	Community
WATER:	On Site	<b>City</b>	Community

Vacation of Public Right-of-Way      Yes      **No**

STREET NAME:

EXCEPTIONS REQUIRED AND REQUESTED:

COMMENTS:

*Wallace R Jackson*  
Applicant's Signature

8-1-19  
Date

Map for PZ2019-31  
(1:4,000 Scale)

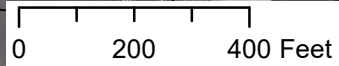
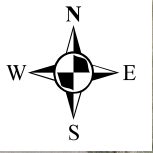
04302049  
Lot 5,  
Block 1,  
Evergreen Subd  
Kim Addn

04302050  
Lot 6, Block 1,  
Evergreen Subd  
Kim Addn



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: 8/7/2019



**Map for PZ2019-31  
(1:400 Scale)**

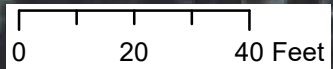
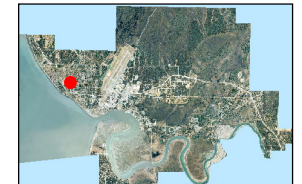
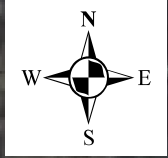
**04302049  
Lot 5, Block 1,  
Evergreen Subd  
Kim Addn**

**04302050  
Lot 6, Block 1,  
Evergreen Subd  
Kim Addn**

**04302049  
Lot 5,  
Block 1**

**04302050  
Lot 6,  
Block 1**

**EVERGREEN ST**



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: 8/7/2019**



*"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

**STAFF REPORT**

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To: Planning & Zoning Commission  
Date: August 9, 2019  
Subject: Resolution PZ2019-27 – Conditional Use Permit – Retail Marijuana Store

Applicant: ACG, LLC  
Marc Theiler, Representative  
Roger Boyd, Representative  
P.O. Box 1016  
Soldotna, AK 99669

Property Owner: ACG, LLC  
386 Heath Place  
Soldotna, AK 99669

Requested Action: Conditional Use Permit – Retail Marijuana Store

Legal Description: Lot 2, C Plaza Subdivision

Property Address: 12516 Kenai Spur Highway

KPB Parcel No: 04314013

Lot Size: 42,253 square feet (0.97 acres)

Existing Zoning: General Commercial (CG)

Current Land Use: Marijuana Product Manufacturing Facility

Land Use Plan: Mixed Use (MU)

**GENERAL INFORMATION**

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Application

The City has received an application for an approximately 250 square foot retail marijuana store from ACG, LLC d/b/a Red Run Cannabis Company, LLC (applicant). An additional 50 square



feet will be used for storage related to the retail marijuana store. The retail marijuana store would be located in the same building as an existing 2,500 square foot marijuana product manufacturing facility that was granted a conditional use permit on June 28, 2017, through Resolution PZ2017-20. PZ2017-20 also granted a conditional use permit for an approximately 3,000 square foot marijuana cultivation facility within the same building, but the applicant wrote the City in December 2018 stating they no longer were pursuing the marijuana cultivation facility and wanted that use deleted from the conditional use permit. The building is approximately 5,500 square feet in size, was built in 1977, and is located on an approximately 42,253 square foot lot. Access is from the Kenai Spur Highway between McKinley Street and Haller Street. Second Avenue borders the north edge of the parcel. The building is connected to City water and sewer.

#### Public Notice, Public Comment

KMC 14.20.150(b) details application requirements for conditional use permits. City staff deemed the application to be complete and the City is in receipt of the application fee. Pursuant to KMC 14.20.280, Public hearing and notifications, City staff published notice of the public hearing in the *Peninsula Clarion* newspaper, notification was sent to adjacent property owners within 500 feet, and notification was posted on the property. The City has not received any comments as of August 7, 2019.

## **ANALYSIS**

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### Kenai Municipal Code 14.20.150(d) – Review Criteria for Conditional Use Permits

KMC 14.20.150 contains review criteria for conditional use permits. The application for a retail marijuana store is evaluated against these criteria as follows:

- *KMC 14.20.150(d)(1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;*

Criteria Met: The subject parcel is within the General Commercial (CG) Zone. Previous to the use of the building as a marijuana product manufacturing facility and purchase by the applicant, it was used to operate the Peninsula Moose Lodge until its closure in 2017. The Peninsula Moose Lodge was a private social club with a restaurant and bar and is a principally permitted use in the CG Zone. The marijuana product manufacturing facility would continue to operate in the building proposed for a retail marijuana store. The product manufacturing facility is not open to the public and would remain in an area of the building without public access. The application notes the exterior of the existing building will remain largely unchanged with minimal new signage. The applicant did note their intent to modify the conditional use permit for the marijuana manufacturing facility in the near future to expand the square footage allowed for that activity in the building. A condition will be added to ensure the marijuana manufacturing permit is modified when there is a change in the use or the conditions of the use.

Retail marijuana stores are a conditional use within the CG Zone and require a conditional use permit. KMC 14.20.120 outlines the intent of the CG zone to provide for areas with a broad range of retail, wholesale, and service establishments, with uses regulated to concentrate commercial development to the greatest extent possible. Residences and other

non-commercial uses are not principally permitted in the CG Zone. A retail marijuana store is a commercial use that aligns with the intent of the CG Zone.

The retail marijuana store would primarily be accessed via the Kenai Spur Highway. The Kenai Spur Highway is classified by the State of Alaska Department of Transportation and Public Facilities as a Major Collector. A collector is defined as “A road classification applicable to roads serving a mixture of local access and through traffic, for which the volume, average speed, and trip length of vehicles using the road are usually lower than for principal or minor arterials, but higher than for local roads.” Furthermore, KMC 14.20.320 defines a Collector as “...a street located and designed for the primary purpose of carrying traffic and of connecting major areas of the City”. It would be unlikely that vehicles would continue northbound along McKinley Street or Haller Street and bring additional traffic into the Suburban Residential (RS) Zone to the north of the subject parcel. The application also notes the proposed retail marijuana store to be a low volume business. Thus, the proposed retail marijuana store would meet the intent of the CG Zone while not adversely impacting the intent of the adjacent RS Zone by generating heavy traffic.

- *KMC 14.20.150(d)(2) The value of the adjoining property and neighborhood will not be significantly impaired;*

Criteria Met: The proposed retail store would occupy a structure that has a permitted marijuana cultivation facility. The adjacent property to the east has commercial development, including a restaurant, coffee shop, and retail and grocery stores. To the west is an auto repair business. The proposed location fronts the Kenai Spur Highway. Across the Kenai Spur Highway to the south are undeveloped parcels within the Suburban Residential Zone. North of the commercial development where the retail marijuana store would be located are homes in the Suburban Residential Zone. The applicant states proposed operating hours to be approximately 10am-10pm.

Off-street parking requirements in KMC 14.20.250(8) for a “Manufacturing/Industrial, research and laboratories”, which requires one (1) space for every 500 square feet of floor area plus three (3) for patron parking. Retail sales of non-bulky items requires one (1) space for every 300 square feet of floor area. This would mean 14 parking spaces are required. There is sufficient space on site in the parking lot and this will be verified with any site plans submitted to the City associated with building modifications.

City staff conducted a site visit on July 26, 2019. The retail marijuana store would be contained within a fully enclosed secure indoor facility as required by KMC 14.20.330(d). City staff noticed the dumpster was not enclosed, which is required with site plan approval. The enclosure of the dumpster is added as a condition of approval.

If the dumpster is enclosed and local, state, and federal laws are followed as conditions of the conditional use permit, City staff does not believe the value of the adjoining property and neighborhood would be significantly impaired.

- *KMC 14.20.150(d)(3) The proposed use is in harmony with the Comprehensive Plan;*

Criteria Met: The Land Use Plan within the 2016 *Imagine Kenai 2030 Comprehensive Plan* identifies the subject parcels as Mixed Use (MU). The Land Use Plan describes the City’s

vision of a generalized desirable pattern of land uses, but it is not a zoning ordinance. The plan defines MU as “Mixed Use is intended for a compatible mix of residential, retail, service, office, public, institutional and recreational uses. Uses are co-located in an integrated way that supports sustainable forms of transport such as public transport, walking and biking, and increases neighborhood amenities. Compatibility issues are addressed through careful site layout and building design.” The proposed retail marijuana store aligns with the vision for land use in the City of Kenai as it will add a retail store. The subject building along with the adjacent strip mall should be considered into City plans to improve pedestrian access in order to help achieve the Mixed Use vision of development as outline in the Land Use Plan.

The proposed use is in line with goals and objectives identified in the Comprehensive Plan, including the vision for Goal 2 – Economic Development to provide a built environment for long-term economic viability and growth that promotes affordable residential development. The application notes the retail marijuana store business will create jobs and tax revenue while being consistent with other surrounding commercial uses.

- *KMC 14.20.150(d)(4) Public services and facilities are adequate to serve the proposed use;*

Criteria Met: City water and sewer serve the subject property. The site also has connections to natural gas, telephone, and three phase electric power. The parking lot is paved with adequate spaces.

- *KMC 14.150(d)(5) The proposed use will not be harmful to the public safety, health or welfare;*

Criteria Met: ACG, LLC d/b/a Red Run Cannabis Company, LLC has applied for a license for a retail marijuana store from the State of Alaska Marijuana Control Office (AMCO) and would not operate until obtaining the license. The applicant currently holds a license for its existing manufacturing facility on the premises from AMCO. ACG, LLC d/ba/ Red Run Cannabis Company, LLC also has a business license with the State of Alaska and has record of paying taxes to the Kenai Peninsula Borough.

KMC 14.20.330(e) requires the retail marijuana store not emit an odor that is detectable by the public. The application notes that odors will be treated on site with the building already designed to contain odors from the manufacturing facility.

The existing conditional use permit granted in 2017 through Resolution PZ2017-20 for the marijuana manufacturing facility met the buffer distances for retail marijuana stores required in KMC 14.20.330(f). City staff again checked the buffer distances required to make sure the following buffer distances required by KMC 14.20.330(f) were still met:

- (1) 1,000 feet of any primary and secondary schools (K-12) and 500 feet of any vocational programs, post-secondary schools including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and,
- (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer



boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, a substance abuse treatment facility providing substance abuse treatment.

Resolution PZ2017-20 discussed Kenai Christian Church being located to the east of the parcel with a public entrance off of McKinley Street, but that Kenai Christian Church still met the buffer requirements of City Code for commercial marijuana facilities because it was over 500 feet away. City staff used mapping software to review property owners within 500 and 1,000 of the parcel in August 2019. The location for the retail marijuana store that would be added the building with an existing marijuana manufacturing facility still meets buffers distances required by City Code and would not have a harmful impact to public safety, health, or welfare.

- *KMC 14.150(d)(6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.*

Recommended conditions are stated under recommendations.

## **RECOMMENDATIONS**

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Staff recommends the Planning and Zoning Commission approve the Resolution PZ2019-27 with the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. 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 as stipulated by the State of Alaska Marijuana Control Office.
3. Pursuant to Kenai Municipal Code Section 14.20.330(e), the Commercial Marijuana Establishment shall not emit an odor that is detectable by the public from outside the Commercial Marijuana Establishment.
4. Pursuant to Kenai Municipal Code Section, 14.20.150(f) the applicant shall submit an Annual Report to the City of Kenai.
5. 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.

6. The applicant will also comply with the conditions of PZ2017-20 granting their commercial marijuana manufacturing facility conditional use permit for the facility in the same building and modify that permit if the use changes.

## **ATTACHMENTS**

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- A. Resolution No. PZ2019-27
- B. Application
- C. Map



"Village with a Past, City with a Future"

Page 27

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Telephone: 907-283-7535 / Fax: 907-283-3014  
www.kenai.city

**CITY OF KENAI  
PLANNING AND ZONING COMMISSION  
RESOLUTION NO. PZ2019-27**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI  
**GRANTING** A REQUEST FOR A CONDITIONAL USE PERMIT FOR A RETAIL MARIJUANA  
STORE TO:

APPLICANT: ACG, LLC

USE: RETAIL MARIJUANA STORE

LEGAL DESCRIPTION: LOT 2, C PLAZA SUBDIVISION

PHYSICAL ADDRESS: 12516 KENAI SPUR HIGHWAY

KENAI PENINSULA BOROUGH PARCEL NUMBER: 04314013

WHEREAS, a complete application meeting the requirements of Kenai Municipal Code 14.20.150 was submitted to the City; and,

WHEREAS, the application affects land zoned as General Commercial (CG); and,

WHEREAS, the City of Kenai Planning and Zoning Commission conducted a duly advertised public hearing on August 14, 2019, following requirements outlined in Kenai Municipal Code 14.20.280 for public hearings and notifications; and,

WHEREAS, the Planning and Zoning Commission finds the application meets the requirements for issuing a conditional use permit that are outlined in Kenai Municipal Code 14.20.150 and has made the following findings:

1. The applicant meets criteria for conditional use permits in *KMC 14.20.150(d)(1)* *The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;*

Criteria Met: The subject parcel is within the General Commercial (CG) Zone. Previous to the use of the building as a marijuana product manufacturing facility and purchase by the applicant, it was used to operate the Peninsula Moose Lodge until its closure in 2017. The Peninsula Moose Lodge was a private social club with a restaurant and bar and is a principally permitted use in the CG Zone. The marijuana product manufacturing facility would continue to operate in the building proposed for a retail marijuana store. The product manufacturing facility is not open to the public and would remain in an area of the building without public access. The application notes the exterior of the existing building will remain

largely unchanged with minimal new signage. The applicant did note their intent to modify the conditional use permit for the marijuana manufacturing facility in the near future to expand the square footage allowed for that activity in the building. A condition will be added to ensure the marijuana manufacturing permit is modified when there is a change in the use or the conditions of the use.

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2. The applicant meets criteria for conditional use permits in *KMC 14.20.150(d)(2) The value of the adjoining property and neighborhood will not be significantly impaired;*

Criteria Met: The proposed retail store would occupy a structure that has a permitted marijuana cultivation facility. The adjacent property to the east has commercial development, including a restaurant, coffee shop, and retail and grocery stores. To the west is an auto repair business. The proposed location fronts the Kenai Spur Highway. Across the Kenai Spur Highway to the south are undeveloped parcels within the Suburban Residential Zone. North of the commercial development where the retail marijuana store would be located are homes in the Suburban Residential Zone. The applicant states proposed operating hours to be approximately 10am-10pm.

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If the dumpster is enclosed and local, state, and federal laws are followed as conditions of the conditional use permit, City staff does not believe the value of the adjoining property and neighborhood would be significantly impaired.

3. The applicant meets criteria for conditional use permits in *KMC 14.20.150(d)(3) The proposed use is in harmony with the Comprehensive Plan;*

Criteria Met: The Land Use Plan within the 2016 Imagine Kenai 2030 Comprehensive Plan identifies the subject parcels as Mixed Use (MU). The Land Use Plan describes the City's vision of a generalized desirable pattern of land uses, but it is not a zoning ordinance. The plan defines MU as "Mixed Use is intended for a compatible mix of residential, retail, service, office, public, institutional and recreational uses. Uses are co-located in an integrated way that supports sustainable forms of transport such as public transport, walking and biking, and increases neighborhood amenities. Compatibility issues are addressed through careful site layout and building design." The proposed retail marijuana store aligns with the vision for land use in the City of Kenai as it will add a retail store. The subject building along with the adjacent strip mall should be considered into City plans to improve pedestrian access in order to help achieve the Mixed Use vision of development as outline in the Land Use Plan.

The proposed use is in line with goals and objectives identified in the Comprehensive Plan, including the vision for Goal 2 – Economic Development to provide a built environment for long-term economic viability and growth that promotes affordable residential development. The application notes the retail marijuana store business will create jobs and tax revenue while being consistent with other surrounding commercial uses.

4. The applicant meets criteria for conditional use permits in *KMC 14.20.150(d)(4) Public services and facilities are adequate to serve the proposed use;*

Criteria Met: City water and sewer serve the subject property. The site also has connections to natural gas, telephone, and three phase electric power. The parking lot is paved with adequate spaces.

5. The applicant meets criteria for conditional use permits in *KMC 14.150(d)(5) The proposed use will not be harmful to the public safety, health or welfare;*

Criteria Met: ACG, LLC d/b/a Red Run Cannabis Company, LLC has applied for a license for a retail marijuana store from the State of Alaska Marijuana Control Office (AMCO) and would not operate until obtaining the license. The applicant currently holds a license for its existing manufacturing facility on the premises from AMCO. ACG, LLC d/b/a/ Red Run Cannabis Company, LLC also has a business license with the State of Alaska and has record of paying taxes to the Kenai Peninsula Borough.

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Resolution PZ2017-20 discussed Kenai Christian Church being located to the east of the parcel with a public entrance off of McKinley Street, but that Kenai Christian Church still met the buffer requirements of City Code for commercial marijuana facilities because it was over 500 feet away. City staff used mapping software to review property owners within 500 and 1,000 of the parcel in August 2019. The location for the retail marijuana store that would be added the building with an existing marijuana manufacturing facility still meets buffers distances required by City Code and would not have a harmful impact to public safety, health, or welfare.

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

**Section 1.** That a conditional use permit for a retail marijuana store is granted to ACG, LLC.

**Section 2.** That the conditional use permit is subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. 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 as stipulated by the State of Alaska Marijuana Control Office.
3. Pursuant to Kenai Municipal Code Section 14.20.330(e), the Commercial Marijuana Establishment shall not emit an odor that is detectable by the public from outside the Commercial Marijuana Establishment.
4. Pursuant to Kenai Municipal Code Section, 14.20.150(f) the applicant shall submit an Annual Report to the City of Kenai.
5. 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.

6. The applicant will also comply with the conditions of PZ2017-20 granting their commercial marijuana manufacturing facility conditional use permit for the facility in the same building and modify that permit if the use changes.

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

\_\_\_\_\_  
JEFF TWAIT, CHAIRPERSON

ATTEST:

\_\_\_\_\_  
JAMIE HEINZ, CMC, CITY CLERK

DRAFT



APPLICATION FOR CONDITIONAL USE PERMIT  
KMC 14.20.150

PROPERTY OWNER	PETITIONER REPRESENTATIVE
Name: ACG, LLC	Name: Marc Theiler / Roger Boyd
Mailing Address: 5455 Kenai Spur Hwy	Mailing Address: 5455 Kenai Spur Hwy
City, State Zip: Kenai, AK 99611	City, State Zip: Kenai, AK 99611
Phone Number: (907) 953-9453	Phone Number: (907) 953-9453
Fax Number:	Fax Number: N/A
Email: marc@redruncannabiscompany.com	Email: marc@redruncannabiscompany.com

**PROPERTY INFORMATION**

Property Tax ID #: 04314013

Site Street Address: 12516 Kenai Spur Hwy

Current Legal Description: T 6N R 11W SEC 31 Seward Meridian KN 0910028 C PLAZA SUB LOT 2

Conditional Use Requested For: (Describe the project, and use additional sheets if necessary)

Red Run Cannabis Company is requesting the City of Kenai for a Conditional Use Permit to allow our company to operate a legally licensed Cannabis Retail Establishment located at the above listed Site Street Address (12516 Kenai Spur Hwy).

Zoning: General Commercial

Acreage: 42,450 S.F.

**DOCUMENTATION**

Required Attachments:

- Completed Application Form
- Site Plan/Floor Plan with Square Footage
- \$250 Fee (plus applicable sales tax)
- KPB Tax Compliance (if applicable)
- State Business License (if applicable)

**AUTHORITY TO APPLY FOR CONDITIONAL USE:**

I hereby certify that (I am) (I have been authorized to act for) owner of the property described above and that I petition for a conditional use permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.

Date: 7/19/19

Signature: Roger Boyd

398-7848  
rogerboyd@hotmail.com

P2 2019-27

**RECEIVED**  
CITY OF KENAI  
DATE 7-19-19  
PLANNING DEPARTMENT  
Revised 7/5/2017



**CONDITIONAL USE STANDARD (KMC 14.20.150)**  
The Planning and Zoning Commission may only approve the conditional use if the Commission finds that the following six (6) standards are satisfied. Each standard must have a response in as much detail as it takes to explain how your project satisfies the standard. The burden of proof rests with you. Feel free to use additional paper if needed.

The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district:

The value of the adjoining property and neighborhood will not be significantly impaired:

The proposed use is in harmony with the Comprehensive Plan:

Public services and facilities are adequate to serve the proposed use:

The proposed use will not be harmful to the public safety, health or welfare:

Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

LAND USE	
Describe current use of property covered by this application:	Cannabis manufacturing facility,
Surrounding property: (Describe how land adjacent to the property is currently being used)	
North:	2nd Ave. Sub rban Resditenial Zone, residential
South:	Kenai Spur Hwy, SR zone, undeveloped
East:	C-Plaza Shopping Center, GC zone
West:	Todds Garage, Auto Repair GC zone

**PROCEDURES FOR PERMITS REQUIRING PUBLIC HEARINGS AND NOTIFICATIONS**

The permit you have applied for may require Public Hearing and Notification under KMC 14.20.280. The Planning and Zoning Commission meets the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday of each month. To meet notice requirements, the Planning Department must receive your completed application **21 days prior** to the meeting when the Public Hearing is scheduled.

- Applications requiring Public Hearings must be filed no later than noon on the date of the deadline.
- Home Occupations and Landscape/Site Plans do not require a Public Hearing.
- Allow up to 4 weeks for the permitting process.
- If required:
  - The Fire Inspection Report must be received prior to processing the application.
  - The Affidavit of Posting must be received 2 weeks prior to the hearing date in order to schedule a public hearing.
  - Resolutions cannot be issued until expiration of the 15-day appeal period.
  - Resolutions cannot be issued until documentation is received that the certificate of compliance is met.

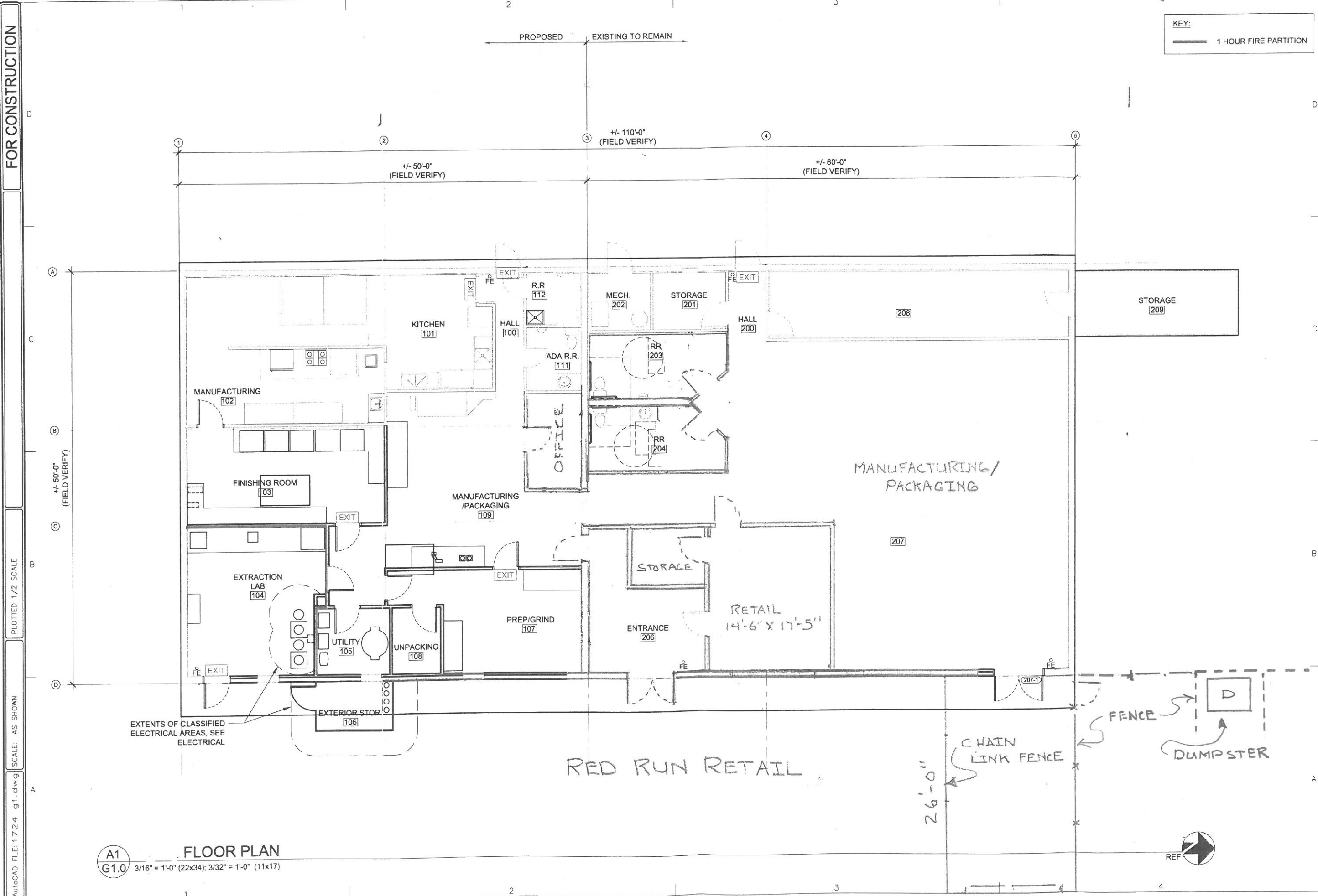
**WHEN YOU HAVE A COMPLETED APPLICATION, CALL 283-8237 TO SCHEDULE AN APPOINTMENT WITH THE PLANNING DEPARTMENT TO REVIEW THE APPLICATION.**

**IF THE APPLICATION IS DETERMINED COMPLETE AND ACCEPTED, THE PUBLIC HEARING FEE OF \$125 PLUS TAX WILL BE COLLECTED. YOU WILL BE GIVEN A SIGN TO POST AND AN AFFIDAVIT OF POSTING TO SIGN AND RETURN TO THE PLANNING DEPARTMENT TO BEGIN PROCESSING THE APPLICATION.**

### Addendum to Conditional Use Permit for Lot 2, C Plaza Subdivision

1. The proposed use is consistent with the intent of the General Commercial zoning district and is allowed in the GC zone with a Conditional Use Permit. It will consist of a Cannabis Retail establishment which is similar to and compatible with other established commercial uses in the area including the Cannabis Manufacturing facility currently in the same building. The proposed use is a low volume business, providing an appropriate transition area between existing commercial and residential districts.
2. The value of the adjoining property and neighborhood will not be significantly impaired by the proposed use. The exterior of the existing building will remain largely unchanged with minimal new signage. Currently the space is unused so the successful development of the proposed new business will enhance the surrounding property values by creating jobs, and will bring new vitality and tax revenue to the City of Kenai.
3. The proposed use is in harmony with the Comprehensive plan. The proposed Retail cannabis establishment is typical uses for GC zone and will provide new jobs and new commercial development in the city of Kenai. It will help boost the surrounding neighborhood by occupying a vacant space and provide 3 to 6 new jobs.
4. Public services and facilities are adequate to serve the proposed use. The site is served by City of Kenai water and sewer as well as natural gas, telephone and three phase electric power. It has a main entrance off Kenai Spur highway, an arterial roadway, and a back drive off 2<sup>nd</sup> Avenue with a paved parking lot oversized for the intended use. It is within the central area of Kenai and well served by City Police and Fire services.
5. The proposed use will not be harmful to the public safety, health or welfare: The proposed use will consist of a small retail outlet. Any odors will be treated and contained on site. The facility's use will be regulated by and conform to stringent state regulations and licensing requirements designed specifically to protect the public safety, health and welfare.

KEY:  
 ——— 1 HOUR FIRE PARTITION



FOR CONSTRUCTION

PLOTTED 1/2 SCALE

SCALE: AS SHOWN

AutoCAD FILE: 1724\_g1.dwg

**A1**  
**G1.0** FLOOR PLAN  
 3/16" = 1'-0" (22x34); 3/32" = 1'-0" (11x17)

PROJECT: **RED RUN MANUFACTURING PROJECT**  
 CLIENT: **ROGER BOYD**  
 (907) 398-7848  
 rogerboyd@hotmail.com

DESIGN BY: **KLAUDER & COMPANY ARCHITECTS, INC.**  
 606 Petersen Way  
 Kenai, Alaska 99611  
 Tel (907) 283-1919 : Fax (907) 283-0450  
 klauder@alaska.net

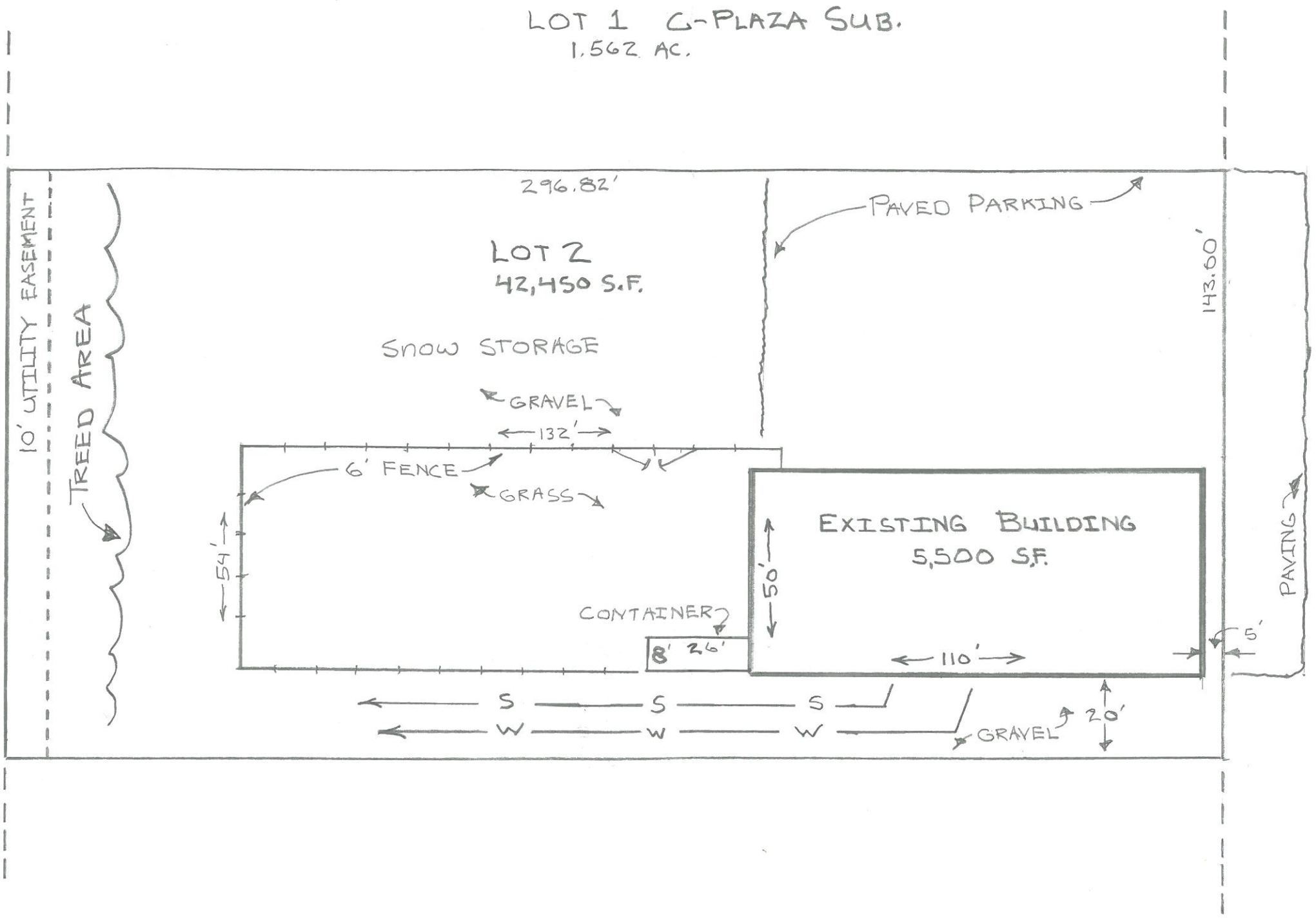
DESIGN BY: PK  
 DRAWN: AB, EF  
 CHECKED: PK  
 JOB NO: 1724  
 DATE: February 1, 2018  
 REVISIONS:

CATEGORY: **G** SHEET: **1.0**  
 SHEET CONTENTS:  
 CODE FLOOR PLAN





2ND AVE. 33' R/W



KENAI SPUR HWY

ACGG LLC.

LOT 2 C-PLAZA SUB.

SCALE 1" = 30'

5/18/17

1" = 30'

# Map for (1:4,000 Scale)

04314013  
Lot 2,  
C Plaza Subd

## LEGEND

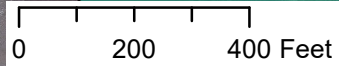
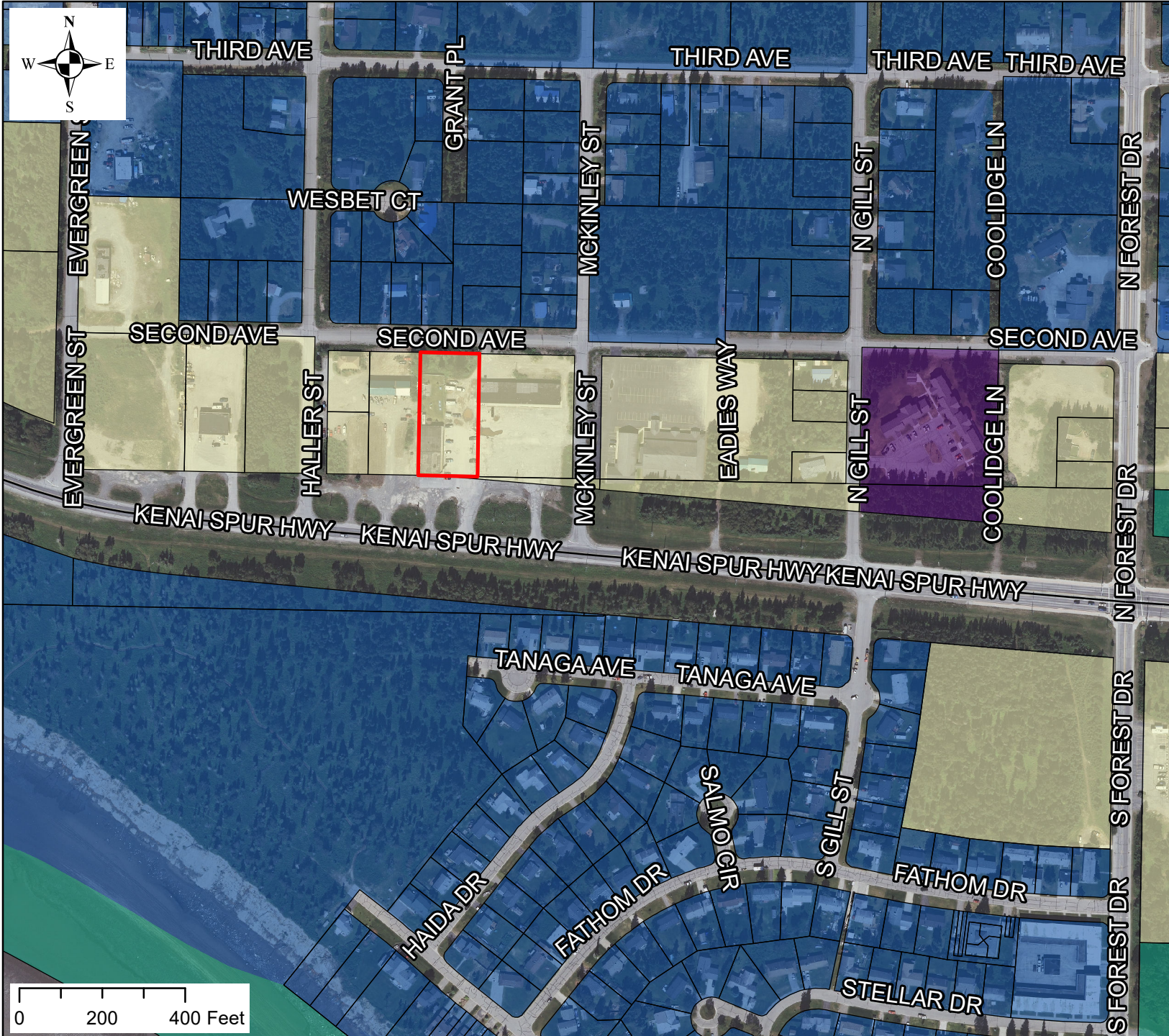
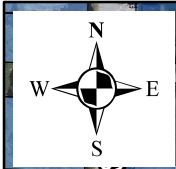
### Zoning

- Conservation
- Suburban Residential
- Urban Residential
- General Commercial



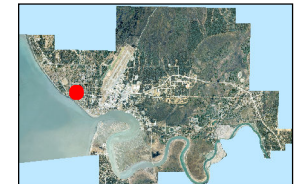
The information depicted here on is for graphic representation only of the best available sources. The City of Kenai assumes no responsibility for errors on this map.

Date: 8/7/2019



**Map for PZ2019-27  
(1:800 Scale)**

**04314013  
Lot 2,  
C Plaza Subd**



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: 8/7/2019**





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www.kenai.city

<b>STAFF REPORT</b>
<p>To: Planning &amp; Zoning Commission</p> <p>From: Elizabeth Appleby, City Planner</p> <p>Date: August 1, 2019</p> <p>Subject: Resolution PZ2019-29 - Recommending the Council of the City of Kenai Amend Kenai Municipal Code 14.20.330 - Standards for Commercial Marijuana Establishments, to Incorporate Hours of Operation for Retail Marijuana Establishments into the City of Kenai's Code of Ordinances.</p>

**GENERAL INFORMATION**

The City of Kenai Planning and Zoning Commission acts in an advisory capacity to the Kenai City Council on the City of Kenai Zoning Code as specified in *KMC 14.05.010 Duties and powers* under *Title 14 Planning and Zoning Commission*. As requested by the Planning and Zoning Commission, City Staff is providing background information and a recommendation with Resolution PZ2019-## for a change to Kenai Municipal Code that would restrict the operating hours of retail marijuana stores within the City of Kenai.

Alaska State Statutes prohibit consumers to access a retail marijuana store's premises or for business to be conducted between the hours of 5:00 a.m. and 8:00 a.m. each day. Those hours are the current limitation in the City of Kenai on hours of operation for retail marijuana stores. None of the conditional use permits within the City for retail marijuana stores have a condition for a specific hours of operation limitation as part of a conditional use permit.

Local governments may enact more stringent regulations on hours of operation than those set by the State of Alaska. City staff recommends prohibiting retail marijuana store sales between the hours of 2:00 a.m. and 8:00 a.m. within the City of Kenai.

Public Notice, Public Comment

Pursuant to *KMC 14.20.280, Public hearing and notifications*, City staff published notice of the Planning and Zoning Commission public hearing in the *Peninsula Clarion* and posted notice in three public places. No public comments have been submitted to the City of Kenai as of August 1, 2019.



## **ANALYSIS**

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The following is a selection of retail marijuana store hour limitations for other jurisdictions in Alaska to provide comparative information:

- Kenai Peninsula Borough – may not operate between 2:00 a.m. and 8:00 a.m. daily
- City of Soldotna – may not operate between 12:00 a.m. and 8:00 a.m. daily
- City of Seward – may not operate between 2:00 a.m. and 10:00 a.m. daily
- Municipality of Anchorage – may not operate between 12:00 a.m. and 8:00 a.m. daily

There are currently four permitted retail marijuana stores in the City of Kenai and one pending conditional use permit application that would allow for a fifth retail marijuana store within the City of Kenai. All owners of these stores were contacted by the City Planner to obtain informal feedback on potential hours of operation restrictions via a phone conversation. All retail marijuana store owners voiced support for required retail marijuana store closures between 2:00 a.m. and 8:00 a.m. Most owners said they would also not object to a 1:00 a.m. closure and one store owner would support a midnight closure time. Two owners requested to open earlier than 8:00 a.m., particularly to serve customers fishing early in the morning in summer. State laws, however, prohibit an opening time before 8:00 a.m.

## **RECOMMENDATIONS**

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City staff recommends the Planning and Zoning Commission advise the Kenai City Council to amend Kenai Municipal Code to prohibit retail marijuana stores from operating between 2:00 a.m. and 8:00 a.m. daily through Resolution PZ2019-29. This would not be any more restrictive than neighboring jurisdictions and would not limit the potential commercial activity of retail marijuana store businesses within the City of Kenai. This change to City Code may provide public safety benefits, particularly to discourage late night driving to or from retail marijuana stores within the City.

## **ATTACHMENTS**

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- A. Resolution No. PZ2019-29



**CITY OF KENAI  
PLANNING AND ZONING COMMISSION  
RESOLUTION NO. PZ2019 - 29**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI AMEND KENAI MUNICIPAL CODE, 14.20.330 - STANDARDS FOR COMMERCIAL MARIJUANA ESTABLISHMENTS, TO INCORPORATE HOURS OF OPERATION FOR RETAIL MARIJUANA ESTABLISHMENTS INTO THE CITY OF KENAI'S CODE OF ORDINANCES.

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

WHEREAS, on November 4, 2014, the Alaskan voters passed Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana and Marijuana Local Option Laws are found in Title 17.38 of Alaska Statutes and Title 3 of the Alaska Administrative Code; and,

WHEREAS, on January 20, 2016 the City of Kenai enacted regulations governing commercial marijuana establishments in the City; and,

WHEREAS, the hours of operation limitations on retail marijuana stores would not unreasonably limit the potential commercial activity of retail marijuana store businesses within the City of Kenai and are not any more restrictive than those of adjacent jurisdictions; and,

WHEREAS, setting a standard limitation on hours of operation for all retail marijuana stores in the City will ensure the businesses are compatible with surrounding uses; and,

WHEREAS, setting the hours of closure between 2:00 a.m. and 8:00 a.m. is consistent with Kenai Peninsula Borough Ordinances; and,

WHEREAS, the City of Kenai Planning and Zoning Commission conducted a duly advertised public hearing regarding Resolution PZ2019-29 on August 14, 2019.

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

**Section 1.** That the Kenai City Council amend Kenai Municipal Code 14.20.330 – Standards for Commercial Marijuana Establishments, to incorporate hours of operation for retail marijuana stores through a public hearing process as follows:

14.20.330 Standards for commercial marijuana establishments.  
The purpose of this section is to establish general standards for commercial marijuana establishments.

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(a) Commercial marijuana establishments may be permitted or allowed with a conditional use permit under KMC 14.20.150, as provided in the City of Kenai's land use table, KMC 14.22.010, and the provisions of this section.

(b) Applicants applying for a conditional use permit must include an area map drawn to scale indicating all land uses on other properties within a five hundred (500) foot proximity of the lot upon which the applicant is seeking a conditional use permit. This shall be in addition to the conditional use permit submission requirements in KMC 14.20.150.

(c) A public hearing shall be scheduled before the Planning and Zoning Commission to review the conditional use permit application once it has been deemed complete. The public hearing shall be scheduled in accordance with the requirements in KMC 14.20.280, except that notification shall be mailed to all real property owners on record on the Borough Assessor's records within a five hundred (500) foot periphery of the parcel affected by the proposed action.

(d) The preparation, packaging, manufacturing, processing, and storing of all marijuana, marijuana concentrate or marijuana products must be conducted within a fully enclosed, secure indoor facility. The growing and cultivating of marijuana must be conducted within a fully enclosed, secure indoor facility or greenhouse with view-obscuring rigid walls, a roof and doors, unless a nonrigid greenhouse, or other structure, is specifically approved, in which case the cultivation must be enclosed by a sight-obscuring wall or fence at least six (6) feet high.

(e) All commercial marijuana establishments shall not emit an odor that is detectable by the public from outside the commercial marijuana establishment.

(f) No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:

(1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and

(2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.

(g) As provided in the Land Use Table, a person or licensee may apply for a conditional use permit to allow for a marijuana cultivation facility, standard, on lots of forty thousand (40,000) square feet or greater in size, and a marijuana cultivation facility, limited, on any size lot.

(h) A marijuana cultivation facility, standard, or a marijuana cultivation facility, limited, shall only be allowed on a lot which has an existing structure consistent with a principal permitted use.

(i) A marijuana cultivation facility located in an accessory building shall be subject to the setback provisions in KMC 14.24.020, Development Requirements Table. A person or licensee seeking relief from the provisions in the Development Requirements Table may apply for a variance subject to the provisions of KMC 14.20.180.

(j) No retail marijuana store may conduct business on, or allow any customer or consumer to access, the licensed premises between the hours of 2:00 a.m. and 8:00 a.m. each day.

**Section 2.** That a copy of Resolution PZ2019-29 be forwarded to the Kenai City Council.

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

---

JEFF TWAIT, CHAIRPERSON

ATTEST:

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JAMIE HEINZ, CMC, CITY CLERK



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**STAFF REPORT**

To: Planning & Zoning Commission  
 From: Elizabeth Appleby, City Planner  
 Date: August 5, 2019  
 Subject: Resolution PZ2019-32 - Recommending the Council of the City of Kenai Enact Ordinance No. 3072-2019 Covering Kenai Municipal Code for City-Owned Lands

**GENERAL INFORMATION**

The City of Kenai Planning and Zoning Commission acts in an advisory capacity to the Kenai City Council on the City of Kenai Zoning Code as specified in Kenai Municipal Code 14.05.010 Duties and powers under Title 14 Planning and Zoning Commission. City Council has requested a recommendation for Ordinance 3072-2019 that would amend Code for City-owned lands. The Ordinance repeals and reenacts Chapter 22.05, changes the title of Title 22, repeals Chapter 21.15 (Airport lands outside the Airport Reserve), and renames Title 21.

The proposed changes to Kenai Municipal Code build on recent amendments to Kenai Municipal Code for City-owned lands within the Airport Reserve to address all City-owned lands tied to the General Fund, City-owned lands tied to the Airport Fund outside of the Airport Reserve, and some shore fishery areas.

Public Notice, Public Comment

Pursuant to Kenai Municipal Code 14.20.280, Public hearing and notifications, City staff published notice of the Planning and Zoning Commission public hearing in the *Peninsula Clarion* newspaper and posted notice in three public places. No public comments have been submitted to the City of Kenai as of August 8, 2019.

**ANALYSIS**

The City Attorney provided a sectional analysis of the proposed Code changes in his memorandum to City Council dated July 31, 2019. This memorandum is included as an attachment summarizing the specific Code changes and procedure for reviewing the proposed Code changes. Ordinance 3072-2019 is also provided as an attachment.

Ordinance No. 3072-2019 would offer development incentives, provide for a competitive lease and sale process, and require development in order to discourage speculation. The changes would also offer uniform conditions for determining lease lengths, predetermined conditions for lease extension and renewal, and protections for lessees from large rent increases.

The proposed changes to Kenai Municipal Code align with the purposes of the Land Use Plan contained in Chapter 5 of the 2016 Imagine Kenai 2030 Comprehensive Plan to “create a stable, predictable setting for future investment”, “maintain the quality of existing development”, and efficiently use public roads, utilities, and services.

The proposed changes to Kenai Municipal Code also align with objectives identified in the 2016 Imagine Kenai 2030 Comprehensive Plan, including:

- Objective ED-2 under Goal 2-Economic Development to “implement business-friendly regulations, taxation and incentives to create a stable, positive climate for private investment”.
- Objective LU-2 under Goal 3-Land Use to “promote the infill of existing, unimproved subdivision lots”

The changes to Kenai Municipal Code proposed under Ordinance No. 3072-2019 would implement recommendations for City-owned lands identified by a City staff work group. These recommendations were covered in a presentation to the Planning and Zoning Commission at their meeting on July 24, 2019.

## **RECOMMENDATIONS**

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City staff advises the Planning and Zoning Commission to adopt Resolution PZ2019-32 recommending the Kenai City Council amend Kenai Municipal Code for City-owned lands by enacting Ordinance No. 3072-2019.

## **ATTACHMENTS**

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- A. Resolution No. PZ2019-32
- B. Memorandum dated July 31, 2019 to City Council from the City Attorney
- C. Ordinance 3072-2019



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

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

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

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

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

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

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

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

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

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

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

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

---

JEFF TWAIT, CHAIRPERSON

ATTEST:

---

JAMIE HEINZ, CMC, CITY CLERK





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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.



Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3072-2019

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

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

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

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

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

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

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

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

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

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

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

CITY AIRPORT RESERVE [AND AIRPORT] LANDS

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

**[CHAPTER 21.15**

**LEASE AND SALE OF AIRPORT LAND OUTSIDE OF THE AIRPORT RESERVE**

**21.15.010 AIRPORT LAND OUTSIDE OF THE AIRPORT RESERVE.**

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

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

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

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

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

**21.15.020 QUALIFICATIONS OF APPLICANTS OR BIDDERS.**

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

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

**21.15.030 APPLICATIONS.**

(A) ALL APPLICATIONS FOR LEASE OF LANDS SHALL BE FILED WITH THE CITY MANAGER ON FORMS PROVIDED BY THE CITY AVAILABLE AT CITY HALL. APPLICATIONS SHALL BE DATED ON RECEIPT AND PAYMENT OF FILING FEE AND DEPOSIT. NO APPLICATION WILL BE ACCEPTED BY THE CITY MANAGER UNLESS IT APPEARS TO THE CITY MANAGER TO BE COMPLETE. FILING FEES ARE NOT REFUNDABLE.

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

- (1) THE PURPOSE OF THE PROPOSED LEASE;
- (2) THE USE, VALUE AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED;
- (3) THE TYPE OF CONSTRUCTION;
- (4) THE DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED (ORDINARILY A MAXIMUM OF TWO (2) YEARS); AND
- (5) *WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY.* APPLICATIONS SHALL BECOME A PART OF THE LEASE.

**21.15.040 FILING FEE AND DEPOSIT.**

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

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

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

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

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

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

**21.15.050 RIGHTS PRIOR TO LEASING.**

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



**21.15.060 PROCESSING PROCEDURE.**

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

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

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

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

**21.15.070 REVIEW.**

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

**21.15.080 APPRAISAL.**

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

**21.15.090 TERMS OF LEASE.**

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

**21.15.100 ANNUAL MINIMUM RENTAL.**

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

(B) UPON EXECUTION OF THE LEASE, THE LANDS BECOME TAXABLE TO THE EXTENT OF ITS LEASEHOLD INTEREST AND LESSEE SHALL PAY ALL REAL PROPERTY TAXES LEVIED UPON SUCH LEASEHOLD INTEREST IN THESE LANDS, AND SHALL PAY ANY SPECIAL ASSESSMENTS AND TAXES AS IF LESSEE WERE THE OWNER OF SAID LAND.

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

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

**21.15.110 BIDDING PROCEDURE.**

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

**21.15.120 PRINCIPLES AND POLICY OF LEASE RATES.**

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

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

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

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

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

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

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

**21.15.130 REIMBURSEMENT FOR CITY-CONSTRUCTED IMPROVEMENTS.**

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

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

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

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

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

**21.15.140 LEASE EXECUTION.**

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

**21.15.150 LEASE UTILIZATION.**

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

**21.15.160 FORM OF LEASE.**

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

(1) DRAFTED TO:

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

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

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

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

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

**21.15.170 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.**

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

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

**21.15.180 SALE.**

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

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

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

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

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

**21.15.190 SALE PROCEDURE.**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**21.15.200 TERMS FOR FINANCING SALE OF CITY LANDS.**

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

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

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

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

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

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

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

**21.15.210 DETERMINATION AS TO NEED FOR PUBLIC USE.**

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

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

**21.15.220 PROPERTY EXCHANGES.**

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

**21.15.230 PROPERTY SALE TO ADJACENT OWNERS.**

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

**21.15.240 GRANT OR DEVOTION.**

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

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

**21.15.250 USE PERMITS.**

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

**21.15.260 ACQUISITION OF REAL PROPERTY.**

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

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

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

**[TITLE 22  
GENERAL FUND LANDS**

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

**22.05.010 POWER TO DISPOSE OF REAL PROPERTY.**

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

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

**22.05.015 SALE OR DISPOSAL.**

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

**22.05.020 QUALIFICATIONS OF APPLICANTS OR BIDDERS.**

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

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

**22.05.025 APPLICATIONS.**

(A) ALL APPLICATIONS FOR LEASE OF LANDS SHALL BE FILED WITH THE CITY MANAGER ON FORMS PROVIDED BY THE CITY AVAILABLE AT CITY HALL. APPLICATIONS SHALL BE DATED ON RECEIPT AND PAYMENT OF FILING FEE AND DEPOSIT. NO APPLICATION WILL BE ACCEPTED BY THE CITY MANAGER UNLESS IT APPEARS TO THE CITY MANAGER TO BE COMPLETE. FILING FEES ARE NOT REFUNDABLE.

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

- (1) THE PURPOSE OF THE PROPOSED LEASE;
- (2) THE USE, VALUE AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED;
- (3) THE TYPE OF CONSTRUCTION;
- (4) THE DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED (ORDINARILY A MAXIMUM OF TWO (2) YEARS); AND
- (5) WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY. APPLICATIONS SHALL BECOME A PART OF THE LEASE.

**22.05.030 FILING FEE AND DEPOSIT.**

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

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

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

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

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

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

**22.05.035 RIGHTS PRIOR TO LEASING.**

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

**22.05.040 PROCESSING PROCEDURE.**

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



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

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

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

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

**22.05.045 REVIEW.**

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

**22.05.050 APPRAISAL.**

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

**22.05.055 TERMS OF LEASE.**

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

**22.05.060 ANNUAL MINIMUM RENTAL.**

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

(B) UPON EXECUTION OF THE LEASE, THE LANDS BECOME TAXABLE TO THE EXTENT OF ITS LEASEHOLD INTEREST AND LESSEE SHALL PAY ALL REAL PROPERTY TAXES LEVIED UPON SUCH LEASEHOLD INTEREST IN THESE LANDS, AND SHALL PAY ANY SPECIAL ASSESSMENTS AND TAXES AS IF HE OR SHE WERE THE OWNER OF THE LAND.

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

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

**22.05.065 BIDDING PROCEDURE.**

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

**22.05.070 PRINCIPLES AND POLICY OF LEASE RATES.**

(A) A FAIR RETURN TO THE GENERAL FUND IS THE POLICY OF THE CITY, UNLESS DEVIATION FROM THAT POLICY IS IN THE BEST INTEREST OF THE CITY AS DETERMINED BY THE CITY COUNCIL. TO ENSURE A FAIR RETURN, ALL LEASES FOR

A PERIOD IN EXCESS OF FIVE (5) YEARS SHALL INCLUDE A REDETERMINATION CLAUSE AS OF THE FIFTH ANNIVERSARY OF THE LEASE AND EVERY FIVE (5) YEARS THEREAFTER, AND ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. LEASE RATES:

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

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

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

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

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

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

**22.05.075 REIMBURSEMENT FOR CITY-CONSTRUCTED IMPROVEMENTS.**

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

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

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

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

**22.05.080 LEASE EXECUTION.**

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

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

**22.05.085 LEASE UTILIZATION.**

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

**22.05.090 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.**

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

**22.05.095 SALE.**

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

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

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

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

**22.05.100 SALE PROCEDURE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

**22.05.105 TERMS FOR FINANCING SALE OF CITY LANDS.**

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

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

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

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

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

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

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

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

**22.05.110 DETERMINATION AS TO NEED FOR PUBLIC USE.**

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

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

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

**22.05.115 PROPERTY EXCHANGES.**

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

**22.05.120 PROPERTY SALE TO ADJACENT OWNERS.**

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

**22.05.125 GRANT OR DEVOTION.**

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

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

**22.05.130 USE PERMITS.**

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

**22.05.135 ACQUISITION OF REAL PROPERTY.**

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

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

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

**Title 22**  
**CITY-OWNED LANDS**

**Chapter 22.05**  
**DISPOSITION OF CITY LANDS**

**22.05.05 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **22.05.010 Authority and Intent.**

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

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

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

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

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

**22.05.015 Lands Available for Lease, Sale or Disposal.**

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

**22.05.020 Qualifications of Lease Applicants or Bidders.**

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

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

**22.05.025 Initial Lease Application.**

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

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

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

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

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

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

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

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

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

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

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

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

#### **22.05.035 No Right of Occupancy – Lease Application Expiration.**

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

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

#### **22.05.040 Lease Application Review.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **22.05.050 Competing Lease Applications.**



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

**22.05.055 Length of Lease Term.**

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

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

Term Table

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

#### **22.05.060 Principles and Policy of Lease Rates.**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **22.05.065 Lease Bidding Procedure.**

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

#### **22.05.070 Development Incentives.**

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

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

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

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

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

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

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

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

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

#### **22.05.075 Ownership of Improvements.**

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

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

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

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

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

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

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

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

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

#### **22.05.080 Lease Execution.**

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

#### **22.05.085 Lease Utilization.**

Leased lands shall be utilized for purposes within the scope of the application, the terms of the lease and in conformity with the ordinances of the City, and in substantial conformity with the Comprehensive Plan. Utilization or development for other than the allowed uses shall constitute a material breach of the lease and subject the lease to cancellation at any time. Failure to substantially complete the development plan for the land shall constitute grounds for cancellation.

#### **22.05.086 Form of Lease.**

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

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

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

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

#### **22.05.087 Lease Payments.**

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

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

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

## **22.05.095 Methods of Sale or Disposal.**

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

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

(1) Non-competitive process:

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

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

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

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

(2) Competitive process:

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

(ii) Sealed bid to the highest responsible bidder.

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

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

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

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

**22.05.100 Sale Procedure.**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

(1) The legal description of the land;

(2) A brief physical description of the land;

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

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

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

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

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

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

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

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

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

#### **22.05.101 No Right of Occupancy – Land Purchase Application Expiration.**

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

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

#### **22.05.105 Terms for Financing Sale of City-Owned Lands.**

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

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

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

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

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

#### **22.05.110 Determination as to Need for Public Use.**

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

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

#### **22.05.130 Special Use Permits.**

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

#### **22.05.135 Acquisition of Real Property.**

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

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

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

**Section 5.** Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances.

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

**Section 6.** Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 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

## 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.



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

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## MEMORANDUM

**TO:** Planning and Zoning Commission

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Elizabeth Appleby, City Planner

**DATE:** August 9, 2019

**SUBJECT:** **Kenai Municipal Airport Reserve Lease Application – Tract A, General Aviation Apron No. 2**

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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 proposed subdivision and lease of the parcel matches preliminary draft internal recommendations that may

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.

**Does the Planning and Zoning Commission recommend the execution of a 45-year lease between the City of Kenai and SOAR?** The City Council will be notified of the Planning and Zoning Commission's decision as part of their evaluation of the lease application.

Thank you for your consideration.



# 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:  Individual (at least 18 years of age)  Partnership  Corporation  
 Limited Liability Company (LLC)  Government  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: <sup>45</sup> ~~55~~ 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:	

**RECEIVED**  
 CITY OF KENAI  
 DATE 7-1-19  
 PLANNING DEPARTMENT



**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

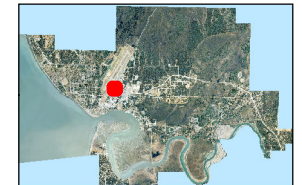
Elizabeth Appleby, AICP  
City Planner  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611  
(907) 283-8235/phone  
[eappleby@kenai.city](mailto:eappleby@kenai.city)



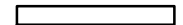
# Lease Application

Parcel No:  
04324025

Undeveloped  
portion of  
General Aviation #2  
Tract A



90'



1 inch equals 110 feet

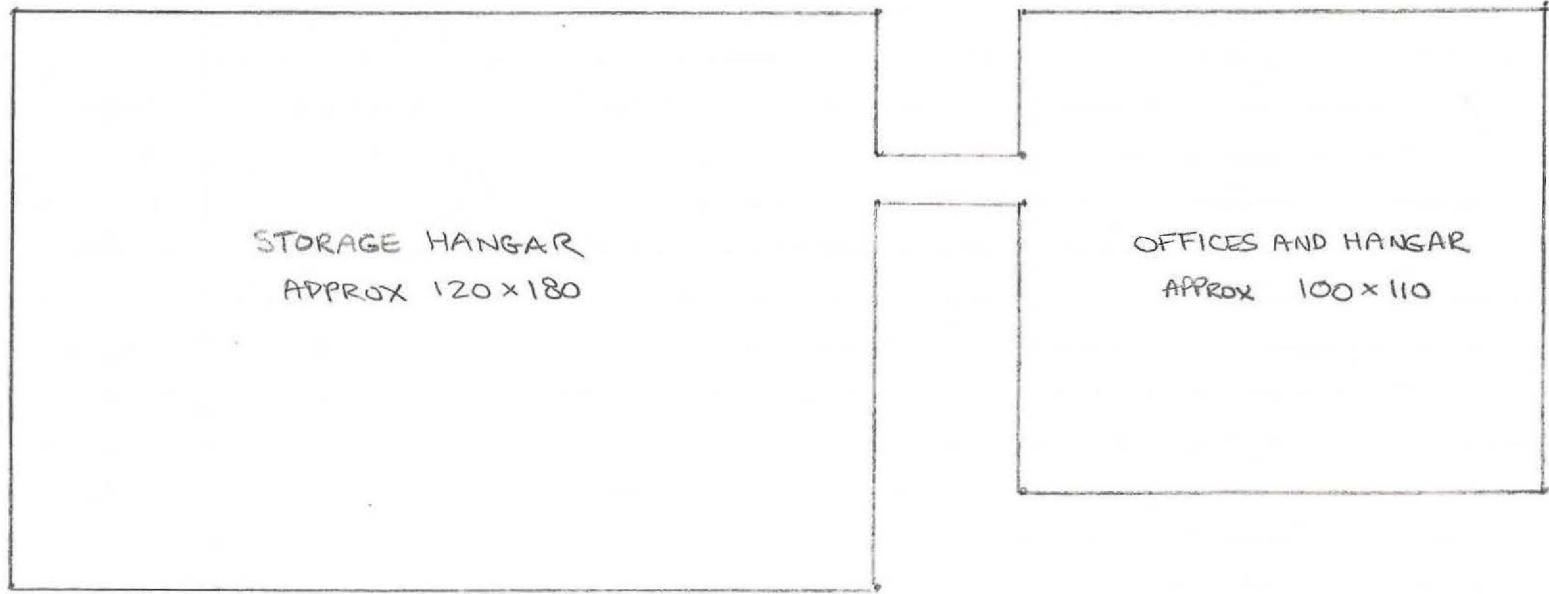
The information depicted here on is for graphic representation only of the best available sources. The City of Kenai assumes no responsibility for errors on this map.

Date: 7/23/2019



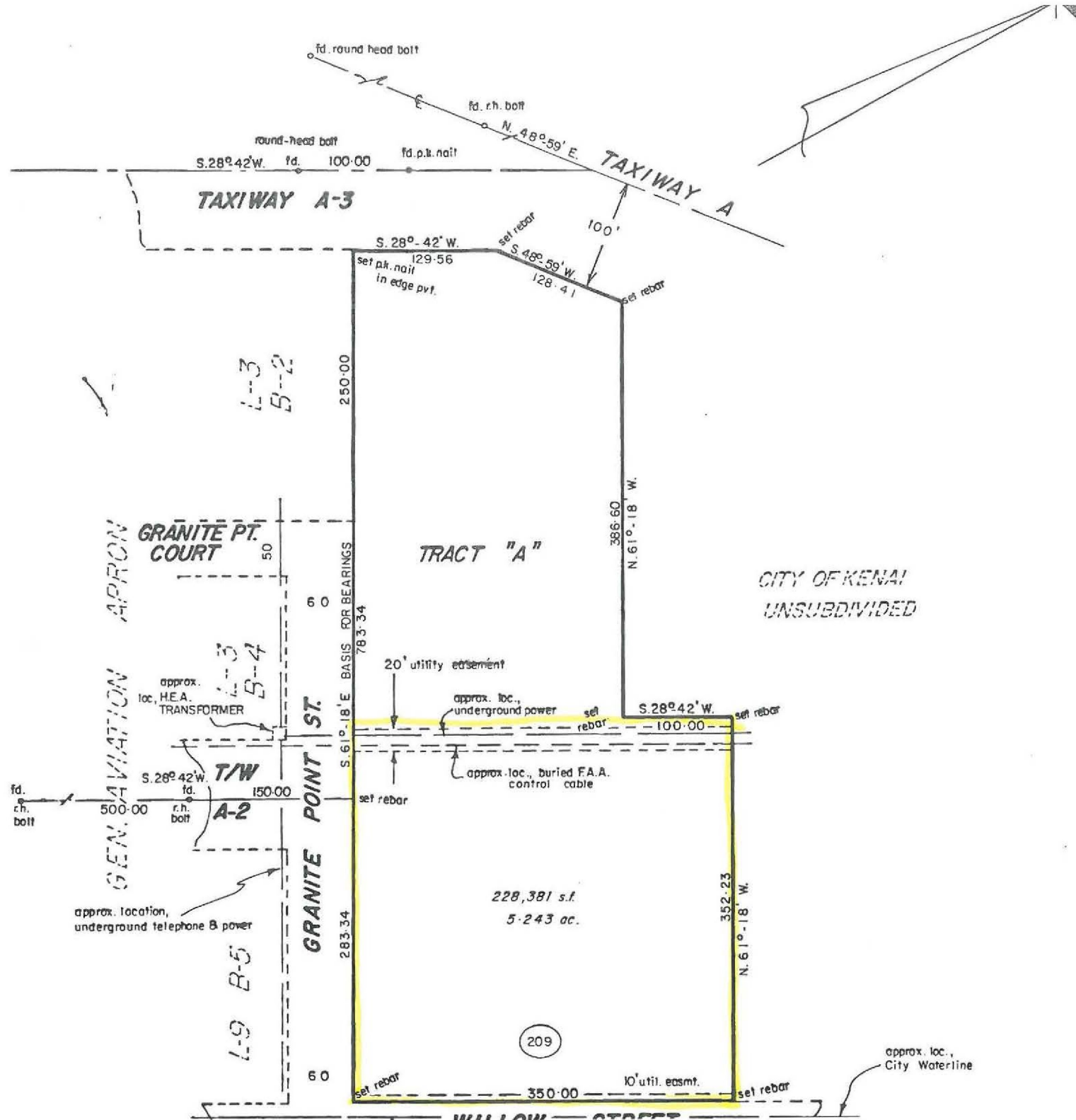
AIRCRAFT RAMP AND TIE-DOWN AREA

APPROX 350'



PARKING

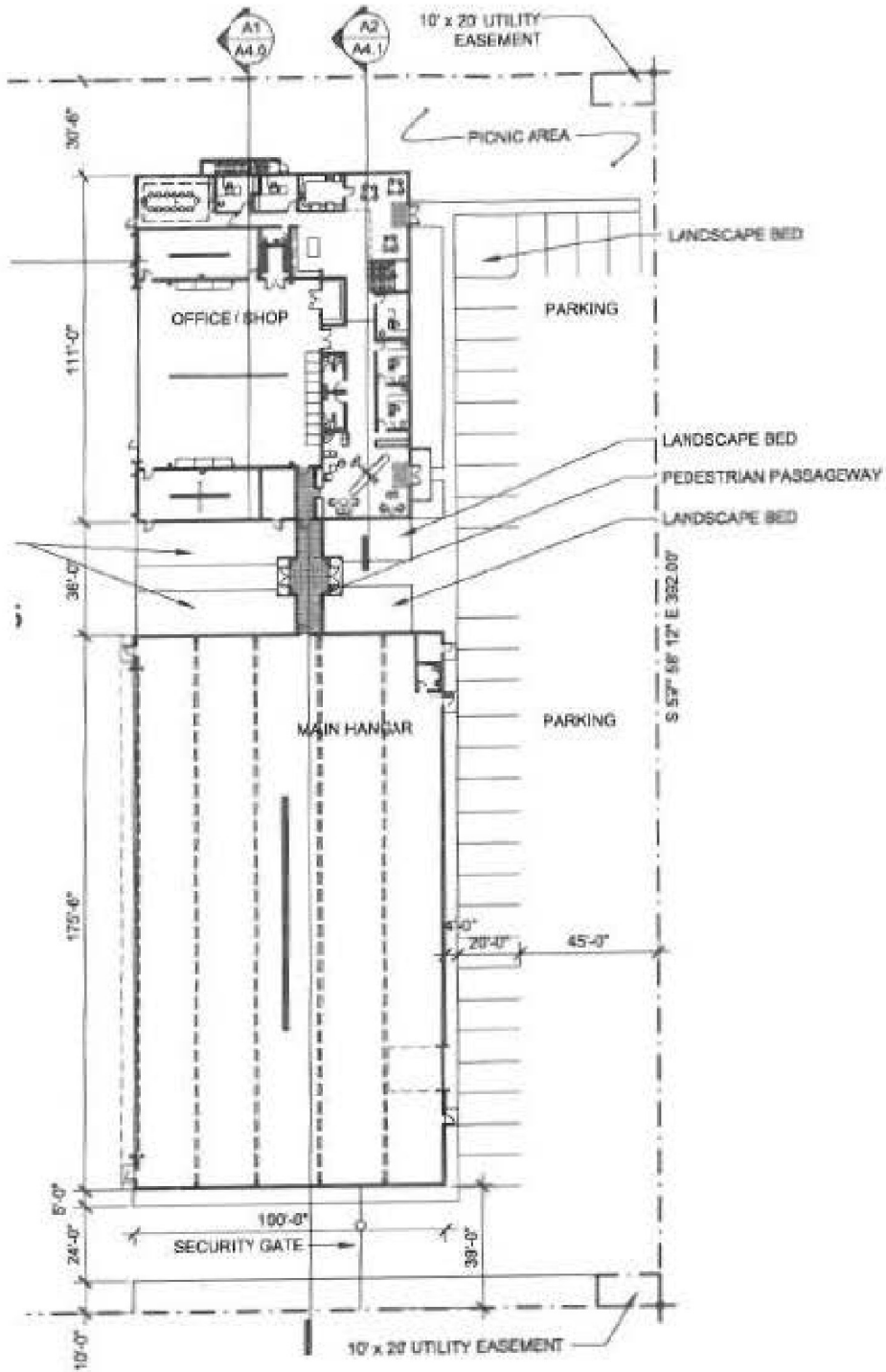
APPROX 350'



I HEREBY  
 PROPERTY S  
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 BY: Pro  
 AUTHOR

209 = 5





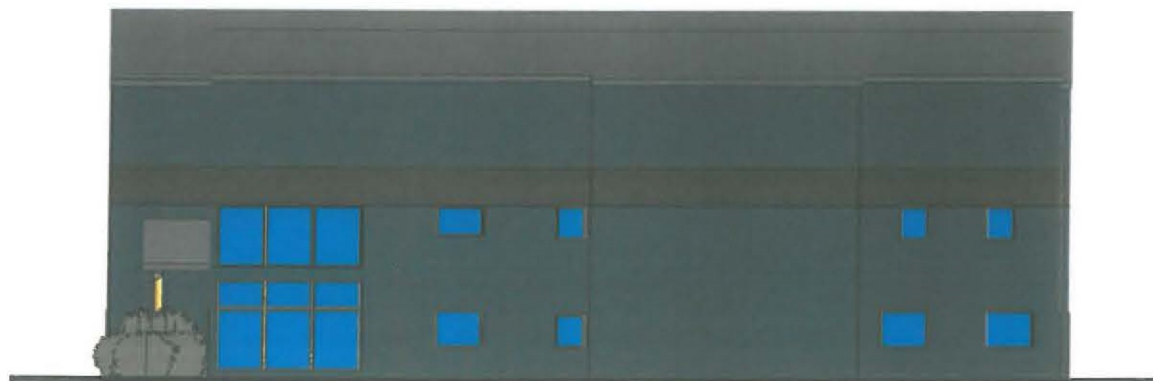
A1 SOUTH ELEVATION  
A3.0 3/32" = 1'-0" (22x34); 3/64" = 1'-0" (11x17)



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)



## Kenai City Council - Regular Meeting

August 07, 2019 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

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

## **ACTION AGENDA**

### **A. CALL TO ORDER**

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

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

### **B. SCHEDULED PUBLIC COMMENTS**

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

### **C. UNSCHEDULED PUBLIC COMMENTS**

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

### **D. PUBLIC HEARINGS**

1. **ADOPTED UNANIMOUSLY AS AMENDED. 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. **ADOPTED UNANIMOUSLY AS AMENDED. 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. MINUTES**

1. **APPROVED BY THE CONSENT AGENDA** \*Regular Meeting of July 3, 2019.



**F. UNFINISHED BUSINESS**

**G. NEW BUSINESS**

1. **APPROVED BY THE CONSENT AGENDA \*Action/Approval** - Bills to be Ratified (Administration)
2. **APPROVED BY THE CONSENT AGENDA \*Action/Approval** - Purchase Orders Exceeding \$15,000 (Administration)
3. **INTRODUCED, REFERRED TO THE AIRPORT COMMISSION, PLANNING AND ZONING COMMISSION, AND HARBOR COMMISSION AND SET PUBLIC HEARING FOR 08/21/19. 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. **INTRODUCED BY CONSENT AGENDA/PUBLIC HEARING SET FOR 08/21/19. \*Ordinance No. 3073-2019** - Accepting and Appropriating a Grant from the State of Alaska for the Purpose of Purchasing Books. (Administration)
5. **INTRODUCED BY CONSENT AGENDA/PUBLIC HEARING SET FOR 08/21/19. \*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. **INTRODUCED BY CONSENT AGENDA/PUBLIC HEARING SET FOR 08/21/19. \*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. **APPROVED UNANIMOUSLY. 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)

**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 for Council Review
2. Kenai Chamber of Commerce Thank You Letter
3. Kenai Performers Sponsorship 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.*



# Planning Commission Tentative Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

Max J. Best, Planning Director • Charlie Pierce, Borough Mayor

*Blair Martin, Chairman – Kalifornsky Beach • Robert Ruffner, Vice Chairman – Kasilof/Clam Gulch  
Dr. Rick Foster, Parliamentarian – Southwest Borough • Syverine Abrahamson-Bentz – Anchor Point/Ninilchik  
Jeremy Brantley – Sterling • Paulette Bokenko-Carluccio – City of Seldovia • Cindy Ecklund – City of Seward  
Robert F. Ernst – Northwest Borough • Diane Fikes – City of Kenai • Virginia Morgan – East Peninsula  
Franco Venuti – City of Homer • Paul Whitney – City of Soldotna*

**August 12, 2019**

**7:30 p.m.**

**A. CALL TO ORDER**

**B. ROLL CALL**

1. Election of Officers – Chairman, Vice Chairman, and Parliamentarian

**C. APPROVAL OF CONSENT AND REGULAR AGENDA**

All items marked with an asterisk (\*) are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

**\*1. Time Extension Request**

- a. Lake Vista Estates 2012 Replat  
KPB File 2012-034 [Whitford / Lake Vista #1 LLC]  
Location: Salamatof

**\*2. Planning Commission Resolutions - None**

**\*3. Plats Granted Administrative Approval**

**\*4. Plats Granted Final Approval (20.10.070) - None**

**\*5. Plat Amendment Request - None**

**\*6. Utility Easement Vacations**

- a. Vacate a utility easement in the Nikiski area. Location: Vacate the 10 foot wide utility easements adjoining the south lot lines of Lots 11 and 12, Block 5, Baranoff Terrace Subdivision (Plat KN 1556); within Section 26, Township 7 North, Range 12 West, Seward Meridian, Kenai Peninsula Borough, Alaska. KPB File 2019-082V. Petitioner: Estate of Victoria Johnson of Kenai, Alaska.

- b. Vacate a utility easement in the Kalifornsky area. Location: Vacate the 20-foot-wide utility easement centered on the shared lot line of Lot 5, Block 3, Ravenwood Subdivision Addition No. 1 (Plat KN 72-10) and Lot 5A, Block 3 Ravenwood Subdivision Addition No. 3 (Plat KN 81-42); within Section 24, Township 5 North, Range 11 West, Seward Meridian, Kenai Peninsula Borough, Alaska. KPB File 2019-027V2. Petitioner: Alex and Courtney Matiaco of Kenai, Alaska and the Kenai Peninsula Borough of Soldotna, Alaska.

**\*7. Commissioner Excused Absences**

- a. Cindy Ecklund, City of Seward
- b. Robert Ruffner, Kasilof / Clam Gulch
- c. Vacant, Ridgeway

**\*8. Minutes**

- a. July 15, 2019 Planning Commission Minutes
- b. July 15, 2019 Planning Commission Work Session

**D. PUBLIC COMMENT/PRESENTATIONS/COMMISSIONERS**

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made.)

1. Reappointments to the Planning Commission
  - a. Syverine Abrahamson-Bentz, Anchor Point / Ninilchik
  - b. Diane Fikes, City of Kenai
  - c. Virginia Morgan, East Peninsula
  - d. Franco Venuti, City of Homer

**E. UNFINISHED BUSINESS**

1. May 13, 2019 Kenai Peninsula Borough Planning Commission review of the November 13, 2018 Kenai Peninsula Borough Plat Committee preliminary approval of:  
Michael J. Pelch Homestead Jr. Addition No. 3  
KPB File 2018-124 [McLane Consulting / Pelch, Miller]  
Location: in the City of Kenai

**F. PUBLIC HEARINGS**

1. Ordinance 2019-22; An Ordinance Authorizing A Negotiated Sale with Alex and Courtney Matiaco at Fair Market Value for Lot 5A, Block 3, Ravenwood Subdivision, Addition No. 3, Plat No. 81-42, Kenai Recording District, Which was Previously Retained for a Public Purpose.

2. Resolution 2019-\_\_; A Resolution Supporting the Kenai Peninsula Coordinated Public Transit-Human Services Transportation Plan to be Submitted to the State of Alaska Department of Transportation and Public Facilities
3. Ordinance 2019-21; An Ordinance Amending KPB 21.02 Regarding Advisory Planning Commissions Establishing an Advisory Planning Commission in the Kalifornsky Area
4. Ordinance 2019-\_\_; An Ordinance Adopting the Updated 2014 Kenai Peninsula Borough All-Hazard Mitigation Plan and Removing the Word "All" from KPB 2.80.010
5. Vacate three public rights-of-way in the City of Kenai. Location: The easternmost portion of the Riverview Drive right-of-way between Broad Street and Lot 2C, Block 18, Original Townsite of Kenai Laddville Replat No. 3 (Plat KN 98-93); The portion of Broad Street right-of-way south of Cook Avenue; and the unnamed east/west right-of-way south of Cook Avenue adjoining Lot 2C, Block 18, Original Townsite of Kenai Laddville Replat No. 3 (Plat KN 98-93) and Lot 1, Block 18, Original Townsite of Kenai (Plat KN 2970). The rights-of-way being vacated are unconstructed and located within the SW ¼ of Section 5, Township 5 North, Range 11 West, Seward Meridian, Kenai Peninsula Borough, Alaska. KPB File 2018-057V2. Petitioners: City of Kenai, Jerry A Sprague & Patricia Bushman-Sprague 2012 Trust, and Kenai River Brewing Company of Kenai, Alaska.
6. Vacate a Section Line Easement in the City of Soldotna. Location: Vacate the westerly portion of the remaining Section Line Easement to reduce the easement to 15 feet in width within Lot 1A Riverview Subdivision Coghill Replat (Plat KN 2015-95). The Section Line Easement being vacated is unconstructed and located within the SE ¼ NE ¼ of Section 31, Township 5 North, Range 10 West, Seward Meridian, Kenai Peninsula Borough, Alaska. KPB File 2019-064V. Petitioners: David Allen Rodgers and Susan Marie Rodgers Revocable Trust of Atascadero, CA.
7. Vacate a Section Line Easement and a pedestrian easement in the Diamond Ridge area. Location: -Vacate those portions of the 33 foot Section Line Easements lying within Tract A Gruening Vista 1993 Subdivision (Plat HM 93-61), Lot 34 Gruening Vista Subdivision 1986 Addition No. 2 (Plat HM 86-110), Lot 43 Gruening Vista 1998 Addition Amended (Plat HM 99-12), Tract 25 Gruening Vista 1978 Addition (Plat HM 78-49), and the parcel describe as that portion of the S ½ SW ¼ and that portion of NW ¼ SW ¼ Section 2 excluding Gruening Vista Subdivision 1978 Addition; -Vacate the 10 foot wide pedestrian easement adjoining the eastern lot line of Lot 35-A Gruening Vista 1993 Addition and vacate the 10 foot wide pedestrian easement adjoining the western lot line of Tract 26 Gruening Vista 1978 Addition. The easements being vacated are unconstructed and located within the SW ¼ of Section 2 and the SE ¼ of Section 3, Township 6 South, Range 13 West, Seward Meridian, Kenai Peninsula Borough, Alaska. KPB File 2019-085V.

Petitioners: Spotty Merle, LLC of Peachtree City, GA, Peter and Kathleen Zuyus, and Richard Koskovich of Homer, AK.

**G. ANADROMOUS WATERS HABITAT PROTECTION DISTRICT (21.18)**

1. Resolution 2019-21; Application for a Conditional Use Permit to enclose an existing 28' x 48' structure within the 50 foot Anadromous Waters Habitat Protection District. The project is located on a canal on the right bank of the Kenai River near River Mile 17, Lot 175, Poachers Cove HOA Subdivision Amended (KN 87-69), Section 19, Township 5 North, Range 10 West, Seward Meridian, Kenai, Alaska. Parcel: 057-487-66. Petitioner: Peter Calkins of Dallas, PA.
2. Resolution 2019-22; Application for a Conditional Use Permit for the installation of an in-ground sleeve for a removable/adjustable aluminum flag pole within the 50 foot Anadromous Waters Habitat Protection District. The project is located on a canal on the right bank of the Kenai River near River Mile 15, Lot 70, River Quest Phase 1 Amended Subdivision (KN 2004-111), Section 19, Township 5 North, Range 10 West, Seward Meridian, Kenai, Alaska. Parcel: 055-033-68. Petitioner: Terry Weber of Kenai , AK.

**H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None**

**I. SPECIAL CONSIDERATIONS**

1. Review of the May 13, 2019 Kenai Peninsula Borough Plat Committee preliminary approval Diamond Ridge Estates No. 5  
KPB File 2019-037 [Geovera, LLC / Arno]  
Location: in the Diamond Ridge area  
*(Postponed from the June 24, 2019 Planning Commission Meeting)*
2. Review of the June 24, 2019 Kenai Peninsula Borough Plat Committee preliminary approval House Subdivision 2019 Replat  
KPB File 2019-068 [McLane Consulting Group / Plagge, The Dennis Ward Bible and Susan Bible Revocable Living Trust]  
Location: in the Funny River area

**J. SUBDIVISION PLAT PUBLIC HEARINGS**

1. The Plat Committee will review 13 preliminary plat.

**K. OTHER/NEW BUSINESS**

**L. ASSEMBLY COMMENTS**

**M. LEGAL REPRESENTATIVE COMMENTS**

- N. DIRECTOR'S COMMENTS**
- O. COMMISSIONER COMMENTS**
- P. PENDING ITEMS FOR FUTURE ACTION**
- Q. ADJOURNMENT**

**MISCELLANEOUS INFORMATIONAL ITEMS  
NO ACTION REQUIRED**

**NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING**

The next regularly scheduled Planning Commission meeting will be held **Monday, August 26, 2019** in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley St, Soldotna, Alaska at **7:30 p.m.**

**ADVISORY PLANNING COMMISSION MEETINGS**

<b>ADVISORY COMMISSION</b>	<b>MEETING LOCATION</b>	<b>DATE</b>	<b>TIME</b>
Anchor Point	Anchor Point Chamber of Commerce	September 4, 2019	7:00 p.m.
Cooper Landing	Cooper Landing Community Hall	September 4, 2019	6:00 p.m.
Funny River	TBD	TBD	TBD
Moose Pass	Moose Pass Community Hall	TBD	6:30 p.m.
Hope / Sunrise	Hope Social Hall	TBD	6:00 p.m.
The Kachemak Bay Advisory Planning Commission is inactive at this time.			

**NOTE:** Advisory planning commission meetings are subject to change. Please verify the meeting date, location, and time with the advisory planning commission chairperson. Chairperson contact information is on each advisory planning commission website, which is linked to the Planning Department website.

**CONTACT INFORMATION**

**KENAI PENINSULA BOROUGH PLANNING DEPARTMENT**

Phone: 907-714-2215  
 Phone: toll free within the Borough 1-800-478-4441, extension 2215  
 Fax: 907-714-2378  
 e-mail address: [planning@kpb.us](mailto:planning@kpb.us)  
 website: <http://www.kpb.us/planning-dept/planning-home>



# Plat Committee Tentative Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

*Paulette Bokenko-Carluccio – City of Seldovia • Jeremy Brantley – Sterling  
Cindy Ecklund – City of Seward • Franco Venuti – City of Homer • Paul Whitney – City of Soldotna  
Alternates: Diane Fikes – City of Kenai*

**AUGUST 12, 2019**

**6:00 p.m.**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA, EXCUSED ABSENCES, AND MINUTES**

1. Agenda
2. Member/Alternate Excused Absences
3. Minutes
  - a. July 15, 2019 Plat Committee Minutes

**D. PUBLIC COMMENT**

(Items other than those appearing on the agenda or not scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made.)

**E. SUBDIVISION PLAT PUBLIC HEARINGS**

1. Glacierview Farm 2019  
KPB File 2019-090 [Ability Surveys / Petkash, Cotogno]  
Location: on Timber Bay Court, off East End Road; Fritz Creek
2. Lloyd Race 2019  
KPB File 2019-086 [Ability Surveys / Ulmer]  
Location: on Mission Road, off East Hill Road; City of Homer
3. The Shire  
KPB File 2019-088; [Seabright Surveying / McAllistar, Pate]  
Location: on W Bayview Avenue, off Main Street; City of Homer
4. Alaska State Land Survey No. 2018-30 Forest Knolls Subdivision  
KPB File 2019-089 [Geovera, LLC / State of Alaska]  
Location: on the Old Sterling Highway and Rosehip Drive; Anchor Point  
Anchor Point APC



- 
5. Primrose Subdivision 2019 Replat  
KPB File 2019-084 [Johnson Surveying / Thrall]  
Location: on Primrose Road, off the Seward Highway; Primrose  
Moose Pass APC
  6. Standefer Subdivision  
KPB File 2019-078 [Johnson Surveying / Ellis]  
Location: on Secora Avenue, off Cohoe Loop Road; Cohoe
  7. Moerlein Subdivision  
KPB File 2019-081 [Johnson Surveying / Moerlein]  
Location: on Tustumena Lake Road; Cohoe
  8. Deep Creek Estates Russo Replat  
KPB File 2019-080 [Peninsula Surveying, LLC / Russo]  
Location: on Bluff Drive, off Oilwell Road; Ninilchik
  9. Ravenwood Subdivision 2019 Replat  
KPB File 2019-027R1 [Segesser Surveys / Kenai Peninsula Borough, Matiaco]  
Location: on Pintail Avenue, off Ciechanski Road; Kalifornsky
  10. Misty Subdivision Thomas Addition No. 2  
KPB File 2019-079 [Segesser Surveys / Thomas]  
Location: on Edgington Road, off the Sterling Highway; Sterling
  11. Don Jack Subdivision Cook Addition  
KPB File 2019-083 [Segesser Surveys / Cook]  
Location: on Ashley Avenue and Detroit Street, off Funny River Road; Funny River  
Funny River APC
  12. Strawberry Acres Chappell Addition Replat  
KPB File 2019-087 [Segesser Surveys / Peters]  
Location: on Big Ridge Circle and Teaberry Avenue, off Strawberry Road; Ridgeway
  13. Baranoff Terrace Subdivision Johnson-Quale Addition  
KPB File 2019-082 [Edge Survey & Design, LLC / Quale, Estate of Victoria Johnson]  
Location: on Cabin Lake Drive and Interlake Drive, off Miller Loop; Nikiski
- F. FINAL SUBDIVISION PLAT PUBLIC HEARING - None**
- G. OTHER / NEW BUSINESS**
- H. MISCELLANEOUS INFORMATION – NO ACTION REQUIRED**
- I. ADJOURNMENT**
-

**NEXT REGULARLY SCHEDULED MEETING**

The next regularly scheduled Plat Committee meeting will be held **Monday, August 26, 2019** in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley, Soldotna, Alaska at **5:30 p.m.**

**PLANNING DEPARTMENT**

Phone: 907-714-2215 Fax: 907-714-2378

Phone: toll free within the Borough 1-800-478-4441, extension 2215

e-mail address: [planning@kpb.us](mailto:planning@kpb.us)

web site: <http://www.kpb.us/planning-dept/planning-home>