



Kenai City Council - Regular Meeting

October 02, 2019 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

AGENDA

A. CALL TO ORDER

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

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

B. SCHEDULED PUBLIC COMMENTS

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

C. UNSCHEDULED PUBLIC COMMENTS

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

D. PUBLIC HEARINGS

- 1. Ordinance No. 3083-2019 Substitute** - Amending Kenai Municipal Code 14.20.175 - Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1000 Feet And Define Sensitive Uses. (Council Members Pettey and Knackstedt) [**Clerk's Note:** *At the September 4 Meeting, this item was Referred to the Planning & Zoning Commission for a Recommendation and to be Scheduled for a Second Public Hearing at the October 2 Meeting. A Motion to Enact as Amended is On the Floor.*]
- 2. Ordinance No. 3085-2019** - Increasing Estimated Revenues and Appropriations in the Water and Sewer Fund for the Purchase of Well Radius Property Described as Tract A, Alaska State Land Survey No. 2013-49, Filed Under Plat 2017-8, for the City's Public Water System. (Administration)

- 3. Ordinance No. 3086-2019** - Accepting and Appropriating a Grant from the Rasmuson Foundation and Accepting and Appropriating Private Donations in the Senior Center Capital Improvement Fund for the Purchase of New Flooring for the Dining Room and Administration Offices of the Kenai Senior Center. (Administration)
- 4. Ordinance No. 3087-2019** - Authorizing a Budget Transfer in the Senior Center Capital Improvement Fund and Increasing Estimated Revenues and Appropriations in the Public Safety Improvement Capital Project Fund to Provide Supplemental Funding for the Fire Department Kitchen Remodel Project. (Administration)
- 5. Ordinance No. 3088-2019** - Amending Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, to Incorporate Limitations on Hours of Operation for Retail Marijuana Establishments. (Administration)

E. MINUTES

- 1.** *Regular Meeting of September 18, 2019.

F. UNFINISHED BUSINESS

- 1. Ordinance No. 3072-2019 Substitute** - Renaming, Repealing and Re-Enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Residential, Recreational and Cultural Community through Responsible Land Policies and Practices. (Administration) *[Clerk's Note: At the September 4 Meeting this Item was Postponed to this Meeting. A Motion to Enact is On the Floor.]*
- 2. Resolution No. 2019-58** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes to Application Fees for Lands Outside the Airport Reserve. (Administration) *[Clerk's Note: At the September 4 Meeting this Item was Postponed to this Meeting. A Motion to Enact is On the Floor.]*

G. NEW BUSINESS

- 1. *Action/Approval** - Bills to be Ratified. (Administration)
- 2. *Action/Approval** - Purchase Orders Exceeding \$15,000. (Administration)
- 3. *Ordinance No. 3089-2019** - Amending Kenai Municipal Code Section 1.15.040, Agenda, to Revise Public Notice Requirements and Amend the Agenda/Packet Preparation, Distribution, And Publication Administrative Policies and Procedures to make Standard Revisions and Housekeeping Changes. (Council Members Molloy and Knackstedt)
- 4. *Ordinance No. 3090-2019** - Increasing Estimated Revenues And Appropriations In The General And Public Safety Capital Project Funds And Accepting An

Assistance To Firefighter Grant From The Federal Emergency Management Agency For The Cooperative Purchase Of Self-Contained Breathing Apparatus For The City Of Kenai Fire Department, Nikiski Fire Department And Central Emergency Services. (Administration)

- [5.](#) ***Ordinance No. 3091-2019** - Amending Kenai Municipal Code Section 17.10.010 – Mandatory Connection and Abandonment of Old Well, and Section 17.20.010 - Mandatory Connections and Abandonment of Old On-Site Sewer Systems, to Clarify the Intent of Ordinance 3003-2018 and Make Housekeeping Changes. (Council Member Knackstedt)
- [6.](#) **Ordinance No. 3079-2019 Substitute** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds and Accepting a Grant from the Federal Aviation Administration for the Purchase of Two Aircraft Rescue and Firefighting (ARFF) Vehicles, Rehabilitation of the Fire Training Props, and Rehabilitation of the Training Facility for the Alaska Regional Fire Training Facility. (Administration) *[Clerk's Note: This ordinance was enacted at the 9/04/19 meeting. It has been discovered that a purchase order increase was inadvertently excluded from the amounts. A motion to amend something previously adopted is in order and as such, appearance on this agenda serves as notice.]*
- [7.](#) **Action/Approval** - Supporting the Draft Environmental Impact Statement for the Alaska LNG Project and Approving Comments to be Submitted on Behalf of the City of Kenai to the Federal Environmental Regulatory Commission. (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
2. Upper Cook Inlet Finfish Meeting Location Correspondence

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



Sponsored by: Councilmembers Pettey
and Knackstedt

CITY OF KENAI

ORDINANCE NO. 3083-2019 (Substitute)

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.175 - ADULT BUSINESSES, TO INCREASE THE BUFFER DISTANCES BETWEEN ADULT BUSINESSES AND SENSITIVE USES FROM 500 FEET TO 1,000 FEET AND DEFINE SENSITIVE USES AND AMEND KENAI MUNICIPAL CODE 14.22.010-LAND USE TABLE, TO ADD ADULT BUSINESSES.

WHEREAS, the City currently permits adult businesses in the Central Commercial, General Commercial, Light Industrial and Heavy Industrial Zones as long as they are located more than 500 feet from other adult businesses, churches or public or private schools; and,

WHEREAS, a review of the zoning restrictions on adult businesses in the City show that they are currently inadequate to sufficiently protect the City's residents, youth, business community and visitors from the convincingly demonstrated secondary effects of adult businesses, which is a compelling government interest; and,

WHEREAS, the Alaska Supreme Court recently concluded in *Club Sinrock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, Supreme Court No. S-17068 (Alaska, 2019) that while Alaska's free speech clause is more protective of individual rights than the federal constitution, the government need not wait for harm to arise before enacting legislation aimed at combating harmful secondary effects of adult businesses, but must approach the issue with an evidence based analysis demonstrating how restrictions are narrowly tailored to meet a compelling government interest; and,

WHEREAS, in *Club Sinrock*, the Court held that restrictions on adult businesses may satisfy the constitutional protections of free speech by relying on solid evidence of other communities experiences or specific studies presented to the legislative body, and,

WHEREAS, the U.S. Supreme Court in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) and *Renton v. Playtime Theatres*, 475 U.S. 41 (1986) identified harmful secondary effects of increased crime, decreased property values and urban blight; and,

WHEREAS, in *Sex, But Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, Mathew L. McGinnis, 46 B.C.L. Rev. 625 (2005), the Law Review Article cited that rural and predominately residential municipalities are especially susceptible to the negative secondary effects of adult businesses and that adult businesses arguably pose a greater risk to the quality of life in these communities than in larger cities; and,

WHEREAS, a 2005 committee report, *Adult Entertainment Zoning and Licensing Committee Report* to the City of Mount Vernon, identified schools, businesses where or areas where youth

are likely to be present and churches, among other uses, as sensitive to the secondary effects of adult businesses; and,

WHEREAS, this same report identified secondary negative impacts to include increased crime, creation of an atmosphere for crime, declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism, human trafficking associations, and harm to the public's health safety and welfare; and,

WHEREAS, within the American Planning Association's Report *Everything You Always Wanted to Know about Regulating Sex Businesses*, xxx Report No. 495/496, by Eric Damian Kelly and Connie Cooper, a survey from Rochester/ Monroe County New York showed the impact from adult entrapment businesses on neighboring properties stopped between 1000 feet and 1500 feet away; and,

WHEREAS, the sponsor and City staff have reviewed studies and articles on adult businesses, and made these available to the Council and public, including *Sex, But Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, Mathew L. McGinnis, 46 B.C.L. Rev. 625 (2005), a 2005 committee report, *Adult Entertainment Zoning and Licensing Committee Report* to the City of Mount Vernon; the American Planning Association's Report *Everything You Always Wanted to Know about Regulating Sex Businesses*, xxx Report No. 495/496, by Eric Damian Kelly and Connie Cooper, all of which contain and discuss numerous other studies and reports; and,

WHEREAS, the zoning restrictions proposed reduces the available property for adult businesses in the City by less than one percent and leaves sufficient property available within the City, for locating adult businesses, at least five percent, especially given the rural and residential nature of the small community and amount of lands within the City that are unavailable for commercial development; and,

WHEREAS, it is in the best interest of the City, and a compelling government interest, to restrict the location of adult businesses due to their demonstrated negative secondary effects to the proposed zones and outside 1000 feet of sensitive uses to protect residents, youth, businesses and visitors from the negative secondary effects of adult businesses; and,

WHEREAS, this buffer distance is consistent with other buffer distances from other property uses contained in the City's code; and,

WHEREAS, further limitations may be recommended in the future, but it is difficult to provide reasonable alternative avenues of communication, locations within the City, given the unique rural makeup of the City's lands, with very limited available commercial space; and,

WHEREAS, the restriction imposed are narrowly tailored to meet the City's compelling government interest as even an increase in law enforcement presence and action at potential adult business sites would not be sufficient to combat many of the negative secondary effects such as declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, protecting youth and declining tourism; and,

WHEREAS, many other municipalities in Alaska and across the nation have successfully utilized a 1000 foot buffer from sensitive uses; and,

WHEREAS, it is not the intent of this ordinance to suppress any free speech activities protected by the state and federal constitution, but only to enact regulations addressing the secondary effects of adult businesses; and,

WHEREAS, at the (date) _____ Planning and Zoning Commission Meeting, the Commission recommended _____.

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

Section 1. Amendment of Section 14.20.175 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.175 – Adult Businesses, is hereby amended as follows:

14.20.175 Adult businesses.

(a) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) “Adult bookstore” means a commercial establishment where at least fifty-one percent (51%) of its interior floor area or retail merchandise is devoted to the sale, rent, lease, inspection, or viewing of books, films, video cassettes, DVDs, magazines, other periodicals or digital presentations whose dominant theme is the actual or simulated specified sexual activities, display or exhibition of specified anatomical areas, removal of articles of clothing, or total nudity.

(2) “Adult cabaret” means a restaurant, coffee house, bar or cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers who provide live adult entertainment for commercial purposes.

(3) “Adult entertainment” means any motion picture, live performance, display, or dance of any type whose dominant theme is actual or simulated specified sexual activities, display or exhibition of specified anatomical areas, removal of articles of clothing, or total nudity, offered for commercial purposes.

(4) “Adult mini-theater” means an enclosed building with a capacity of less than fifty (50) persons used for displaying adult entertainment through films, video, or other motion pictures for commercial purposes.

(5) “Adult motion picture theatre” means an enclosed building with a capacity of fifty (50) or more persons used for displaying adult entertainment through films, video, or other motion pictures for commercial purposes.

(6) “Adult business” means any adult bookstore, adult cabaret, adult mini-theater, or adult motion picture theater.

(7) “Commission” means the City of Kenai Planning and Zoning Commission.

(8) “Operator or manager” means any natural person responsible for the actual operation and management of an adult business.

- (9) "Sexual conduct" means acts of:
- (i) Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
 - (ii) Any penetration of the vagina or anus, however slight, by an object; or
 - (iii) Any contact between persons involving the sex organs of one person and the mouth or anus of another; or
 - (iv) Masturbation, manual or instrumental, of oneself or of one person by another; or
 - (v) Touching of the sex organs or anus, whether clothed or unclothed, of oneself or of one person by another.

- (10) "Specified anatomical areas" means:

- (i) Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breast below a point immediately above the top of the areola; and
- (ii) Human male genitals in a discernible erect state, even if opaquely covered.

- (11) "Specified sexual activities" means simulated or actual:

- (i) Display of human genitals in a state of sexual stimulation or arousal;
- (ii) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus; and
- (iii) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

(12) "Sensitive Use" means a church or other place of worship, a public or private school (licensed pre-K through 12th grade) or businesses where or areas where youth are likely to be present (limited to public parks, youth recreational centers, public playgrounds, public libraries).

- (b) *Location Requirements.*

(1) Adult businesses may be located only in the CC, CG, IL and HI zones. Additionally, no adult business may be located within one thousand [FIVE HUNDRED FEET] ([5]1000') of another adult business, [A CHURCH OR OTHER PLACE OF WORSHIP OR PUBLIC OR PRIVATE SCHOOL] or sensitive use.

(2) The distances specified in this section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the premises in which the proposed adult business is to be established to the nearest property line of a use listed above.

(c) *Development and Operation Standards.* The following development and operation standards shall apply to adult businesses:

- (1) No adult business shall be located in any temporary or portable structure.
- (2) Trash dumpsters shall be enclosed by a screening enclosure so as not to be accessible to the public.
- (3) No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.
- (4) Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance or exit to the business.
- (5) The entire exterior grounds, including the parking lot, shall be lighted in such a manner that all areas are clearly visible at all times.
- (6) Signage shall be governed by KMC 14.20.220 (Signs).
- (7) All entrances to an adult business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) are prohibited from entering the premises.
- (8) No adult business shall be operated in any manner that permits the observation of any persons or material depicting, describing or related to specified sexual activities or specified anatomical areas, inside the premises, from any public way or from any location outside the building or area of such establishment. This provision shall apply to any merchandise, display, decoration, sign, show window or other opening.
- (9) Each adult business shall conform to all applicable laws and regulations.
- (10) The adult business shall not operate or be open between the hours of 2:00 a.m. and 9:00 a.m.
- (11) Amplified sound may not be broadcast outside the building and structures used for the adult business.
- (12) No tip or gratuity offered or accepted by an adult entertainer may be offered or accepted prior to any live performance, dance or exhibition provided by the adult entertainer. No adult entertainer performing live upon any stage shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any adult entertainer performing live upon any stage must be placed into a receptacle provided for receipt of gratuities by the business or through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any live performance, dance or exhibition in or about the nonstage area of the adult business shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

- (13) No live entertainer shall engage in acts of sexual conduct.
- (14) An adult cabaret shall provide separate dressing room facilities for performers, which are exclusively dedicated to the performers' use.
- (15) An adult cabaret shall provide an entrance/exit for performers, which is separate from the entrance/exit used by patrons.
- (16) An adult cabaret shall provide access for performers between the stage and the dressing rooms, which are completely separated from the patrons. If such separate access is not physically feasible, the cabaret shall provide a minimum three (3) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers that is capable of preventing any physical contact between patrons and performers.
- (17) All indoor areas of the adult cabaret where patrons or members of the public are permitted, excluding restrooms, shall be open to view by management at all times.

(d) If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of this chapter as a whole, or any portion thereof, and its application to other persons or circumstances, shall not be affected.

(e) *Nonconforming Use.* Any adult business operating at the time of the effective date of the ordinance codified in this section shall be considered a nonconforming use under KMC [14.20.050](#). However, a business that only periodically engages in adult business activity may continue to operate as a nonconforming use at the same level of activity it operated for the one (1) year period prior to the adoption of this ordinance. For example, a bar or restaurant that operated as an adult cabaret five (5) times in the previous one (1) year period would be allowed to operate as a nonconforming use five (5) times per year.

Section 2. Amendment of Section 14.22.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.22.010 – Land Use Table, is hereby amended as follows:

14.22.010 Land use table.

LAND USE TABLE

KEY:

- P = Principal Permitted Use
- C = Conditional Use
- S = Secondary Use
- N = Not Permitted

NOTE: Reference footnotes on following pages for additional restrictions

ZONING DISTRICTS																	
LAND USES	ALI	C	RR	RR-1	RS	RS-1	RS-2	RU	CC	CG	IL	IH	ED	R	TSH	LC	CMU
RESIDENTIAL																	
One-Family Dwelling	N	C ¹⁸	P	P	P	P	P	P	P ²¹	S ¹	S ²	S ²	C ²²	P	P	P	S ¹ /C ²¹
Two-, Three-Family Dwelling	N	C ¹⁸	P	P	P	P	P	P	P ²¹	S ¹	C	C	C ²²	P	P	P	S ¹ /C ²¹
Four-Family Dwelling	N	C ¹⁸	P	C ^{3, 29}	P	N	N	P	P ²¹	S ¹	C	C	C ²²	N	P	C	S ¹ /C ²¹
Five-, Six-Family Dwelling	N	C ¹⁸	C ³	N	P	N	N	P	P ²¹	S ¹	C	C	N	N	P	C	S ¹ /C ²¹
Seven- or More Family Dwelling	N	C ¹⁸	C ³	N	C ³	N	N	P	P ²¹	S ¹	C	C	N	N	P	C	S ¹ /C ²¹
Mobile Home Parks ⁶	N	N	C	N	C	C	C	C	C	C	C	C	N	C	N	N	C
Planned Unit Residential Development ⁷	N	C ¹⁸	C	C ²⁹	C	C	C	C	C	C	C	C	N	C	C	C	C
Townhouses ⁴	N	C ¹⁸	C ³	C ^{3, 29}	C ³	C ³	C ³	C ³	C	C	C	C	C ²²	C	C	C	C
Accessory Building on Parcel Without Main Building or Use (See KMC 14.20.200)	N	N	C	C	C	C	C	C	N	N	N	N	N	N	C	N	N
COMMERCIAL																	
Airport Compatible Uses	P	N	N	N	N	N	N	N	C	C	C	C	N	N	N	C	C
<u>Adult Businesses</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P³¹</u>	<u>P³¹</u>	<u>P³¹</u>	<u>P³¹</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
Automotive Sales	C	N	C	N	N	N	N	C	P	P	P	P	N	N	N	N	P
Automotive Service Stations	C	N	C	N	N	N	N	C	P	P	P	P	N	C	N	N	P
Banks	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Business/Consumer Services	C	N	C	C	C	N	N	C	P	P	P	C	N	C	C	C	P
Commercial Recreation	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Guide Service	C	N	C	N	C	N	N	C	P	P	P	P	N	P	P	C	P
Hotels/Motels	C	N	C	N	C	N	N	C	P	P	P	C	N	C	P	C	P
Lodge	C	N	C	N	C	N	N	C	P	P	P	C	N	P	P	C	P
Marijuana Cultivation Facility, Standard ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	N

ZONING DISTRICTS																	
LAND USES	AL I	C	R R	RR -1	RS	RS -1	RS -2	RU	C C	C G	IL	IH	ED	R	TS H	L C	CM U
Marijuana Cultivation Facility, Standard ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	N
Marijuana Product Manufacturing Facility ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	N	N
Marijuana Testing Facility ³⁰	N	N	N	N	N	N	N	N	C	C	P	P	N	N	N	C	C
Professional Offices	C	N	C	C	C	N	N	P	P	P	P	P	N	C	P	P	P
Restaurants	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Retail Business	C	N ² ₆	C	N	C	N	N	C	P	P	P	P	S ² ₄	S ² ₄	C	C	P
Retail Marijuana Store ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	C
Theaters	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Wholesale Business	C	N	C	N	C	N	N	C	C	P	P	P	N	S ² ₄	C	C	N
INDUSTRIAL																	
Airports	C	P ²⁰	C	N	C	N	N	C	C	C	C	C	N	C	N	N	C
Necessary Aviation Facilities	P	P	C	C	C	C	C	C	P	P	P	P	C	P	C	P	P
Automotive Repair	P	N	C	N	C	N	N	C	P	P	P	P	N	N	N	N	P
Gas Manufacturer/Storage	C ⁹	N	N	N	C	N	N	N	N	N	C ⁹	C ⁹	N	N	N	N	N
Manufacturing/Fabricating/Assembly	P	N	C	N	C	N	N	C	C	P	P	P	N	C	C	N	C
Mini-Storage Facility	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	C	C
Storage Yard	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	N	C
Warehouses	C	N	C	N	C	N	N	C	N	P	P	P	N	C	N	N	N
PUBLIC/INSTITUTIONAL																	
Assisted Living	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Churches*	N	C	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	C	C	P	P ¹⁰	P	P	P
Clinics	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	P	P
Colleges*	N	C	C	C ²⁹	C	C	C	C	P	P	C	C	P	C	C	C	P
Elementary Schools*	N	C	C	C ²⁹	C	C	C	C	P	P	C	C	P	C	C	C	P
Governmental Buildings	P	C	C	C ²⁹	C	C	C	C	P	P	P	C	P	C	C	P	P
High Schools*	N	C	C	C ²⁹	C	C	C	C	P	P	C	C	P	C	C	C	P

ZONING DISTRICTS																	
LAND USES	AL I	C	R R	RR -1	RS	RS -1	RS -2	RU	C C	C G	IL	IH	ED	R	TS H	L C	CM U
Hospitals*	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	C	P
Libraries*	N	C	C	C ²⁹	C	C	C	C ¹ ₂	P	P	P	C	P	C	P	C	P
Museums	C	C	C	C ²⁹	C	C	C	C	P	P	P	C	P	C	P	C	P
Parks and Recreation	N	P	C	C ²⁹	C	C	C	C	P	P	P	P	P	P	P	C	P
MISCELLANEOUS																	
Animal Boarding/Commercial Kennel ¹³	C	C	C	N	C	C	N	N	C	C	C	C	N	C	N	C	C
Assemblies ¹⁵ (Large: Circuses, Fairs, etc.)	P	C	C	N	C	C	C	C	P ¹⁵	P ¹⁵	P ¹ ₅	P ¹ ₅	P ¹ ₅	C	P	N	P ¹⁵
Bed and Breakfasts	N	C	C	C	C	C	C	C	C	C	C	C	N	P	C	C	P
Cabin Rentals	N	C	C	N	C	N	N	N	P	P	P	C	N	P	P	C	P
Cemeteries	P	C	C	N	C	N	N	N	N	C	C	C	N	C	C	N	N
Communications Towers and Antenna(s), Radio/TV Transmitters/Cell Sites** ²⁸	C	P	C	N	C	C	C	C	P	P	P	P	P	C	C	C	C
Crematories/Funeral Homes	N	N	C	N	C	N	N	C	C	C	C	C	N	C	C	C	C
Day Care Centers ¹²	N	C	C	C ²⁹	C	C	C	C	P	P	P	C	C	C	C	P	P
Dormitories/Boarding Houses	N	C	C	N	C	C	C	P	P ²¹	S	C	P	P ² ₃	C	C	C	P
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Farming/General Agriculture***	N	P	P	N	N	N	N	N	N	N	N	P	N	P	N	N	N
Fraternal Organizations/ Private Clubs/Social Halls and Union Halls	N	N	C	N	C	C	C	C	P	P	P	C	N	C	P	C	P
Greenhouses/Tree Nurseries ¹³	N	C	C	N	C	C	C	C	P	P	P	C	N	C	C	C	P
Gunsmithing, Taxidermy	N	N	C	C	C	C	C	C	P	P	P	P	N	C	P	P	P
Nursing, Convalescent or Rest Homes	N	N	C	N	C	C	C	C	P	P	C	C	C	C	C	C	P
Parking, Public Lots ¹²	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C

ZONING DISTRICTS																	
LAND USES	ALI	C	RR	RR-1	RS	RS-1	RS-2	RU	CC	CG	IL	IH	ED	R	TSH	LC	CMU
Personal Services ²⁵	N	C	C	N	C	C	C	C	P	P	P	P	C	C	P	P/C ²⁷	P
Recreational Vehicle Parks	N	C	C	N	C	N	N	C	C	C	C	C	N	C	C	N	C
Subsurface Extraction of Natural Resources ¹⁶	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N	N	N
Surface Extraction of Natural Resources ¹⁷	C	C	C	N	C	N	N	C	N	C	C	C	N	C	N	N	N

* See 42 USCA Sec. 2000cc (Religious Land Use and Institutionalized Persons Act of 2000)

** See 42 Telecommunications Act of 1996, Sec. 704(a)

*** See, however, the limitations imposed under KMC 3.10.070

Footnotes:

1 Allowed as a secondary use except on the ground floor of the part of the building fronting on collector streets and major highways. Commercial or industrial which falls under the landscaping/site plans requirements of KMC Chapter 14.25 shall include any secondary uses in the landscaping and site plans.

2 One (1) single-family residence per parcel, which is part of the main building.

3 Allowed as a conditional use, subject to satisfying the following conditions:

a The usable area per dwelling unit shall be the same as that required for dwelling units in the RS Zone;

b The site square footage in area must be approved by the Commission;

c Yards around the site, off-street parking, and other development requirements shall be the same as for principal uses in the RR Zone;

d Water and sewer facilities shall meet the requirements of all applicable health regulations;

e The proposed dwelling group will constitute a residential area of sustained desirability and stability, will be in harmony with the character of the surrounding neighborhood, and will not adversely affect surrounding property values;

f The buildings shall be used only for residential purposes and customary accessory uses, such as garages, storage spaces, and recreational and community activities;

g There shall be provided, as part of the proposed development, adequate recreation areas to serve the needs of the anticipated population;

h The development shall not produce a volume of traffic in excess of the capacity for which the access streets are designed;

i The property adjacent to the proposed dwelling group will not be adversely affected.

4 See "Townhouses" section.

5 See “Mobile Homes” section.

6 Allowed as a conditional use, subject to “Mobile Homes” section; and provided, that any mobile home park meets the minimum Federal Housing Authority requirements.

7 See “Planned Unit Residential Development” section.

8 Allowed as a conditional use; provided, that the proposed location and the characteristics of the site will not destroy the residential character of the neighborhood.

9 Allowed as a conditional use; provided, that all applicable safety and fire regulations are met.

10 Provided that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line.

11 Allowed as a conditional use; provided, that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line; and provided further, that the proposed location and characteristics of the use will not adversely affect the commercial development of the zone.

12 Allowed as a conditional use; provided, that the following conditions are met:

- a** The proposed location of the use and the size and characteristics of the site will maximize its benefit to the public;
- b** Exits and entrances and off-street parking for the use are located to prevent traffic hazards on public streets.

13 Allowed as a conditional use; provided, that setbacks, buffer strips, and other provisions are adequate to assure that the use will not be a nuisance to surrounding properties. The Commission shall specify the conditions necessary to fulfill this requirement. Animal boarding and commercial kennels require a kennel license (see KMC Chapter 3.15).

14 Allowed as a conditional use; provided, that no indication of said use is evident from the exterior of the mortuary.

15 Allowed; provided, that the following conditions are met:

- a** An uncleared buffer strip of at least thirty (30) feet shall be provided between said use and any adjoining property in a residential zone.
- b** Exits and entrances and off-street parking for the use shall be located to prevent traffic hazards on the public streets.

16 See “Conditional Uses” section.

17 See “Conditional Use Permit for Surface Extraction of Natural Resources” section.

18 **Conditional use allowed only on privately held property.** Not allowed on government lands.

19 Reserved.

20 The airport related uses allowed under this entry are aircraft approach and departure zones pursuant to KMC 14.20.070(a), except that for properties contained inside the airport perimeter fence or having access to aircraft movement areas, taxiways or parking aprons, FAA authorized uses are allowed.

21 Developments for use shall be the same as those listed in the Development Requirements Table for the RU/TSH Zones.

22 Allowed as a conditional use in conjunction with a permitted use in the ED Zone. For example, housing for teachers or students for a school in the zone.

23 Allowed as an accessory use in conjunction with a permitted use in the ED Zone. For example, a dormitory used to house students for a school or educational facility.

24 Retail businesses allowed as a secondary use in conjunction with the primary use (e.g., a gift shop or coffee shop within another business).

25 Art studios, barbers, beauticians, tattoo parlors, dressmakers, dry cleaners and self-service laundries, fitness centers, photographic studios, tailors, tanning salons and massage therapists.

26 Food services are allowed on a temporary or seasonal basis of not more than four (4) months per year.

27 Personal services not set forth in the below matrix are conditional uses.

Limited Commercial Zone		
Personal Services	Permitted (P)	Conditional Use (C)
Art Studios	X	
Barbers	X	
Beauticians	X	
Dressmakers	X	
Dry Cleaners		X
Fitness Centers	X	
Massage Therapist		X
Photographic Studios	X	
Self-Service Laundries		X
Tailors	X	
Tanning Salons	X	
Tattoo Parlors		X

28 Communications tower/antenna(s) allowed as a principal permitted (P) use if the applicable conditions set forth in KMC 14.20.255 are met or a conditional use (C) if the applicable conditions set forth in KMC 14.20.150 and 14.20.255 are met.

29 Use allowed only for those parcels that abut the Kenai Spur Highway. The access to any such parcel must be either from: (a) driveway access on the Kenai Spur Highway; or (b) driveway access from a dedicated right-of-way and that driveway access is not more than two hundred seventy-five (275) feet as measured from the constructed centerline of

the Kenai Spur Highway to the center of the driveway access as shown on an as-built drawing/survey of the parcel.

30 See marijuana regulations, KMC 14.20.230—Home Occupations, 14.20.320—Definitions, 14.20.330—Standards for commercial marijuana establishments.

31 See 14.20.175-Adult Businesses, no adult business may be located within one thousand feet (1,000') of another adult business, or sensitive use. "Sensitive Use" means a church or other place of worship, a public or private school (licensed pre-K through 12th grade) or businesses where or areas where youth are likely to be present (limited to public parks, youth recreational centers, public playgrounds, public libraries).

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 2nd day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: August 21, 2019
Public Hearing: September 4, 2019
Enacted: October 2, 2019
Effective: November 1, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Glenese Pettey, Council Member

DATE: August 26, 2019

SUBJECT: **Ordinance No. 3083-2019 – Adult Businesses**

I decided to sponsor Ordinance No. 3083-2019 after it became evident that our City Code, as currently written, does not adequately protect our residents from the secondary effects of adult businesses. I have attached an exhibit that provides an example of one area within our City that, as our Code is currently crafted, would allow adult business establishments. While municipalities are mandated to provide sufficient area inside their boundaries where adult business could be located, allowing those businesses close to sensitive uses where the secondary effects would harm other property uses does not support the vision we have for our City.

Our Comprehensive Plan – Imagine Kenai 2030 – contains eight primary goals. To successfully implement three of these goals, the Code must be changed as proposed by this Ordinance.

Goal 1 – Quality of Life: Promote and encourage quality of life in Kenai, Objective Q-4 states that the City should promote the siting and design of land uses that are in harmony and scale with surrounding uses. Based on the attached exhibit, it is clear that the siting of adult businesses allowed under our current Code is not in harmony with many of our existing land uses.

Goal 2 – Economic Development: Provide economic development to support the fiscal health of Kenai, Objective ED-3 states that the City should use regional economic and workforce statistics to match the most suitable type of industry for particular areas and then market those areas. The retail sector of the City of Kenai is the primary driver of sales in the City and is a strong indicator of the economic health of our community. The City should continue to market and incentivize that sector in our core commercial area. Adult entertainment businesses located in this area would limit its attractiveness for many businesses and make incentives and marketing much less effective.

Goal 3 – Land Use: Develop land use strategies to implement a forward-looking approach to community growth and development, Objective LU-1 states the City should establish siting and



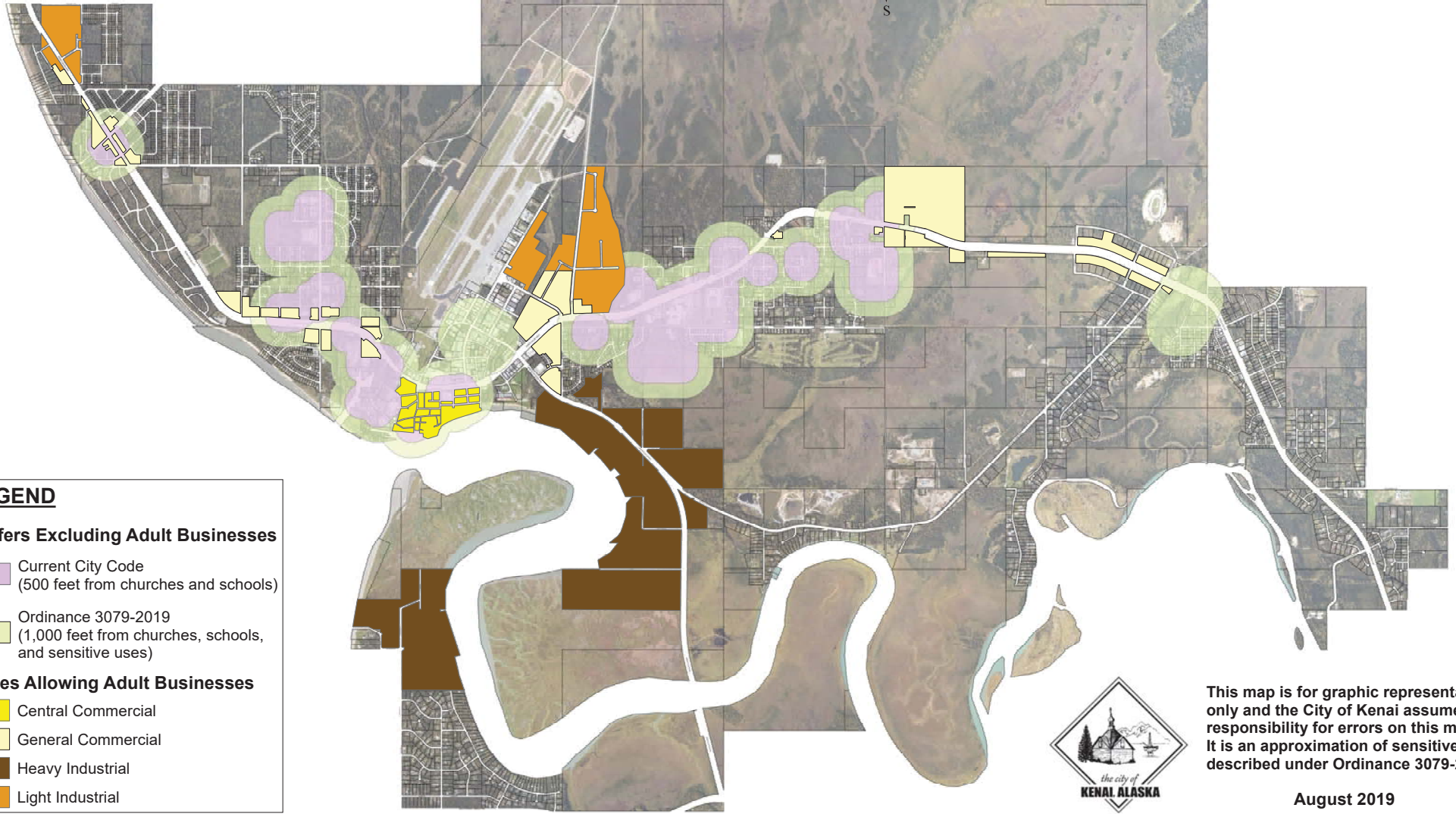
design standards so that development is in harmony and scale with surrounding uses. In addition to quality of life, it is clear the City must consider future growth and development when siting businesses which may share future access by frontage roads or trails with existing uses such as schools, neighborhoods, and other land uses which serve sensitive populations and which may require separation from adult businesses.

The proposed Ordinance provides a solution in accordance with the goals of the City's Comprehensive Plan – Imagine Kenai 2030, while providing sufficient area inside City boundaries where adult business could be located.

Your consideration is appreciated.



Required Zone Locations for Adult Businesses

0 2,000 4,000 8,000
Feet



LEGEND

Buffers Excluding Adult Businesses

-  Current City Code (500 feet from churches and schools)
-  Ordinance 3079-2019 (1,000 feet from churches, schools, and sensitive uses)

Zones Allowing Adult Businesses

-  Central Commercial
-  General Commercial
-  Heavy Industrial
-  Light Industrial



This map is for graphic representation only and the City of Kenai assumes no responsibility for errors on this map. It is an approximation of sensitive uses described under Ordinance 3079-2019.

August 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Council Members Pettey and Knackstedt
DATE: August 29, 2019
SUBJECT: **Ordinance No. 3083 – 2019 (Substitute)**

This Substitute Ordinance adds adult businesses to the Land Use Table. For unknown reasons, adult businesses have never been placed in the Land Use Table similar to other land uses. This amendment will add clarity to the code and make it easier for the public to understand where adult businesses may be located.

Your consideration is appreciated.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom, City Attorney
DATE: March 12, 2019
SUBJECT: Ordinance No. 3083 - 2019

The Alaska Supreme Court recently issued a decision in *Club SinRock*, providing that Article I, Section 5 of the Alaska Constitution, protecting free speech, includes the protection of nude dancing, and affords more protection in this regard than the federal constitution. The Court held that it will apply strict scrutiny to regulations restricting nude dancing, and that any such regulations must be narrowly tailored to achieve the desired goals. However, the Court recognized that municipalities have a compelling interest in "combating" the secondary effects of adult businesses. The Court requires an evidence based analysis that shows how restrictions are "narrowly tailored to meet specific, compelling government interests." The Court held that this can be satisfied by relying on "solid" evidence from other communities or studies presented to the Council. Further, in regulating adult businesses, the Council must show evidence of potential harm and how "non-infringing" law enforcement techniques are unavailable or unlikely to be effective. Federal case law also provides guidance, suggesting that under federal law, allowing adult businesses on at least 5% of property within a municipality meets aspects of federal zoning requirements in this regard. The two cases expressing these holdings are presented in your material for your review. Also presented in your material is a Boston College law review article suggesting that the 5% rule is difficult to apply in small rural communities such as Kenai, and should not be applied.

A Map created by the Planning Department is attached, showing the zones in which adult businesses are permitted and the current 500 foot buffer and proposed 1000 foot buffer. The increased buffer distance, and proposed new sensitive uses which must be buffered from, reduce the available land for adult businesses by less than 1% in the City, and maintains available land opportunities greater than 5%, in compliance with federal case law. This is true even though large portions of the City are undevelopable, non-commercial or government owned.



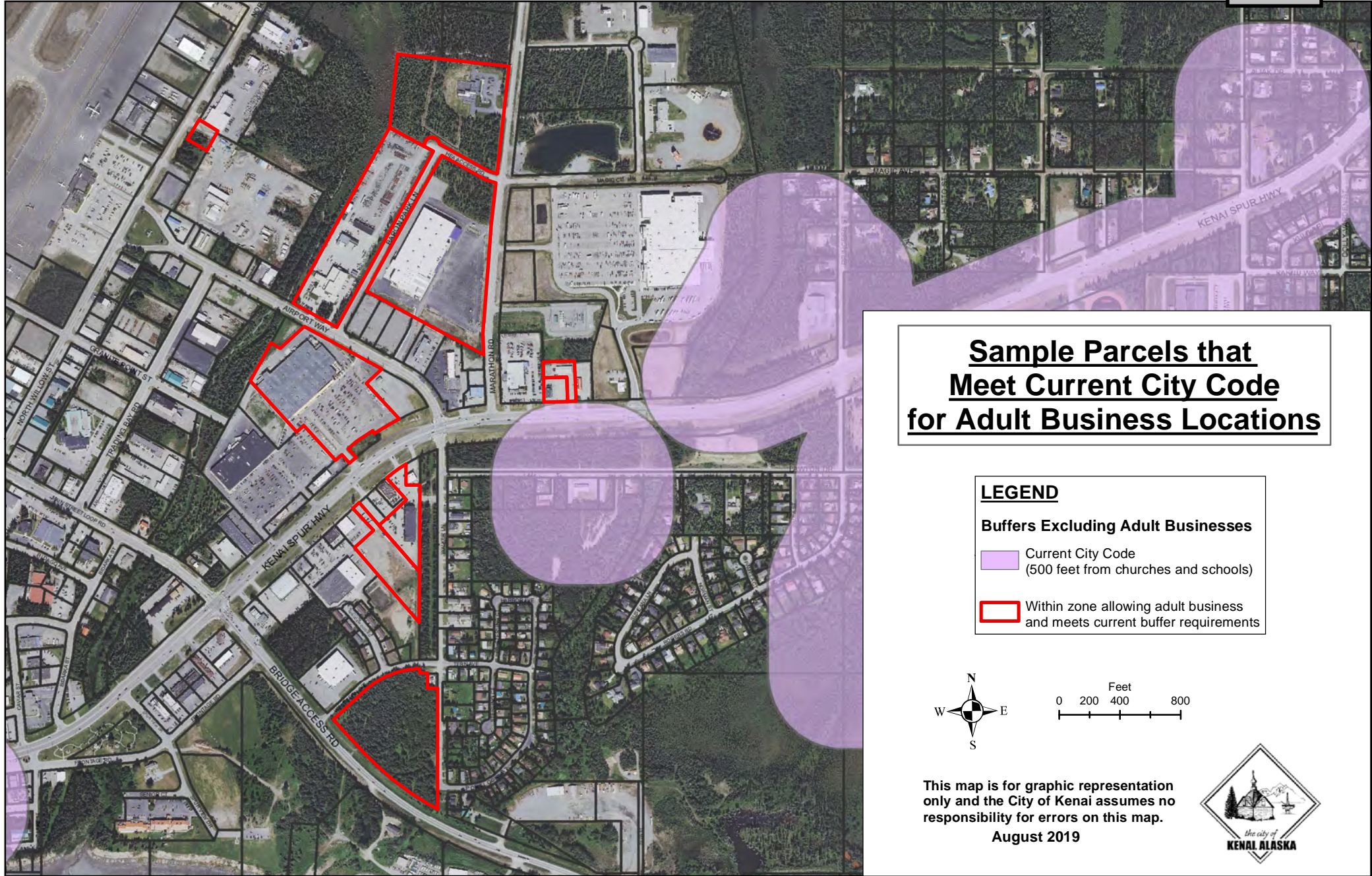
Many studies and surveys have shown secondary negative impacts of adult businesses including increased crime, creation of an atmosphere for crime, declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism, human trafficking associations, and harm to the public's health safety and welfare. The Boston Law Review Article in the material provided suggests that rural communities are more susceptible to these negative impacts than larger communities. The case law presented in your material acknowledges many of these secondary effects discussed in the studies and surveys in your material. The intent of this Ordinance is to regulate these effects.

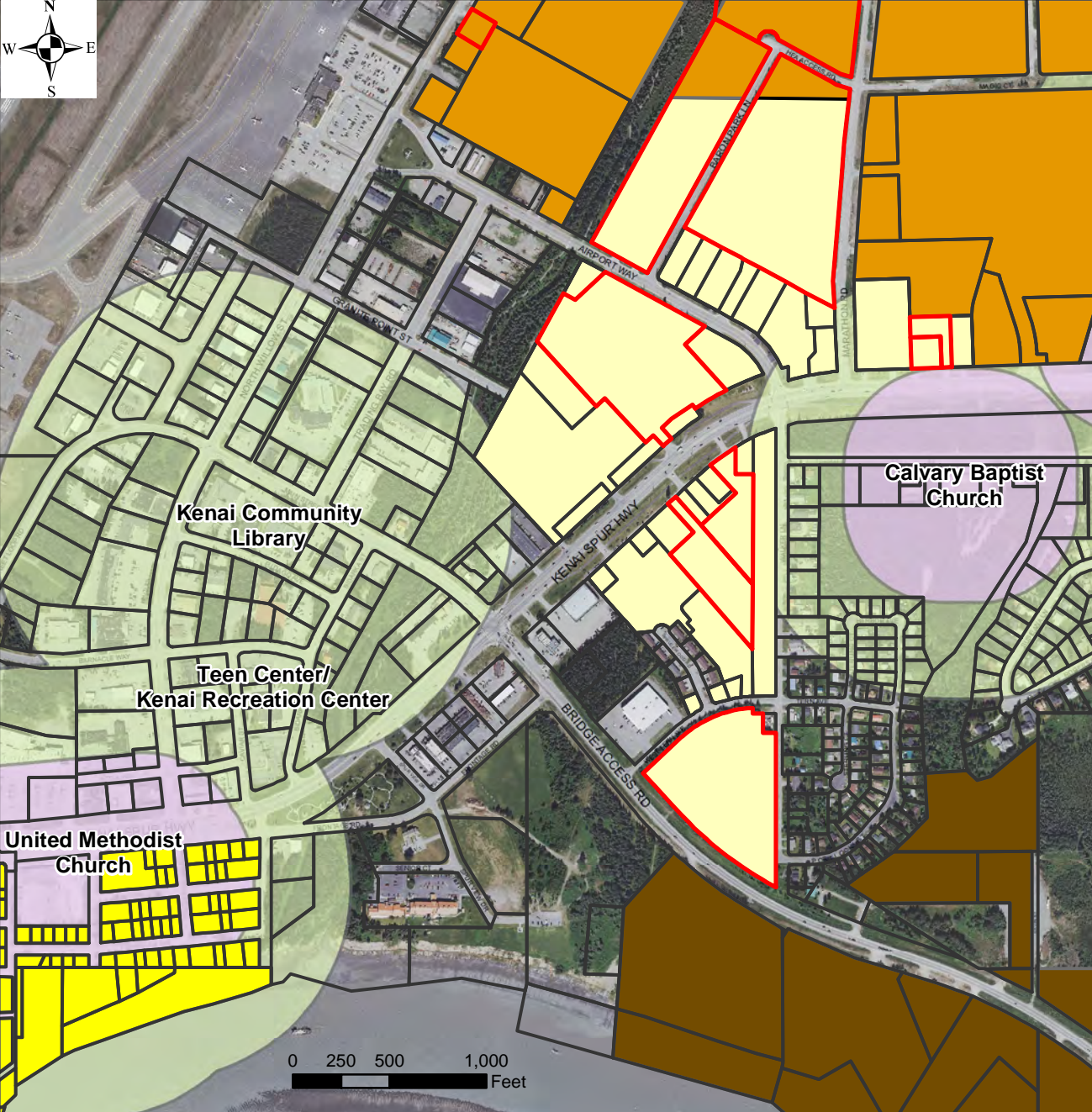
In your material for review is a study from other communities showing that the negative secondary effects of adult business often extend from 1000 feet to 1500 feet beyond the business. Buffering adult businesses from 1000 feet of sensitive uses appears reasonable given the rural nature of our community, the walkability and bike friendly nature of our commercial core and surrounding areas, the desire of our community to encourage tourism and effort put into our youth facilities in Kenai.

The Ordinance is intended to be narrowly tailored, that is only protecting the City from the negative secondary effects of adult businesses. These negative secondary effects, such as declining property values, deterioration of areas, incompatibility with other uses, negative land use impacts, negative impacts on quality of life, declining tourism and protecting youth cannot reasonably otherwise be prevented by acceptable law enforcement techniques. For example the police can not influence tourist impressions of our community, convince a potential property buyer that their business or property value will not be impacted by negative secondary effects of an adult business. Likewise, the police can not prevent youth in our area, utilizing, schools, libraries, parks and recreational facilities, and walking and riding their bikes back and forth, from many of the secondary effects.

I have provided the Council numerous articles and studies discussing adult oriented businesses, other communities experiences with this issue, secondary effects from these businesses, and approaches to zoning for adult oriented businesses. I request Council review this material prior to making a decision on this Ordinance or providing input.

Your consideration is appreciated.





Sample Parcels for Current Code and Proposed Code Change for Adult Businesses

LEGEND

Buffers Excluding Adult Businesses

- Current City Code (500 feet from churches and schools)
- Ordinance 3079-2019 (1,000 feet from churches, schools, and sensitive uses)

- Within Zone Allowing Adult Businesses and Meets Current Buffer Requirements

Zones Allowing Adult Businesses

- Central Commercial
- General Commercial
- Heavy Industrial
- Light Industrial



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Elizabeth Appleby, City Planner

DATE: September 26, 2019

SUBJECT: **Ordinance No. 3083 – 2019 (Substitute) – Resolution PZ2019-33 Recommendation of the Planning and Zoning Commission**

After a public hearing at their meeting on September 25, 2019, the City of Kenai Planning and Zoning Commission passed Resolution PZ2019-33 - Recommending the Council of the City of Kenai Enact Ordinance No. 3083-2019 (Substitute) Amending Kenai Municipal Code 14.20.175-Adult Businesses to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses, and Amending Kenai Municipal Code 14.22.010-Land Use Table to Add Adult Businesses to the Land Use Table. Commissioners confirmed the zones where adult businesses would be allowed and how buffers would be computed. Commissioners also requested and received clarification on the definition of an adult businesses from the City Attorney, who noted that an occasional show or event of an adult nature at an existing business would not meet the definition of an adult business.

Please consider this additional information for Ordinance No. 3083-2019 (Substitute) at your City Council meeting on October 2, 2019. Thank you.





**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ2019 – 33**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI ENACT ORDINANCE 3083-2019 (SUBSTITUTE) AMENDING KENAI MUNICIPAL CODE 14.20.175 - ADULT BUSINESSES, TO INCREASE THE BUFFER DISTANCES BETWEEN ADULT BUSINESSES AND SENSITIVE USES FROM 500 FEET TO 1,000 FEET AND DEFINE SENSITIVE USES AND AMEND KENAI MUNICIPAL CODE 14.22.010-LAND USE TABLE TO ADD ADULT BUSINESSES.

WHEREAS, 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 Kenai City Council referred Ordinance 3083-2019 (Substitute) to the City of Kenai Planning and Zoning Commission at their meeting on September 4, 2019, and requested the Commission provide a recommendation by October 2, 2019; and,

WHEREAS, the Code changes support the goals identified in the 2016 Imagine Kenai 2030 Comprehensive Plan, including Goal 1-Quality of Life, Goal 2-Economic Development, and Goal 3-Land Use; and,

WHEREAS, the Code changes will promote the siting and design of land uses that are in harmony and scale with surrounding uses, a stated objective in the 2016 Imagine Kenai 2030 Comprehensive Plan under Quality of Life-4; and,

WHEREAS, the Code changes will support the marketing of Kenai as a destination for tourism and a desirable location for events, a stated objective in the 2016 Imagine Kenai 2030 Comprehensive Plan under Economic Development-9; and,

WHEREAS, the Code changes will use buffers and buffer zones to separate incompatible land uses, a stated objective in the 2016 Imagine Kenai 2030 Comprehensive Plan under Land Use-6; and,

WHEREAS, adult businesses are an incompatible land use with sensitive uses, which include churches, schools, or areas where youth are likely to be present (limited to public parks, youth recreational centers, public playgrounds, public libraries); and,

WHEREAS, there is evidence the negative secondary effects of adult businesses often extend to 1,000 feet beyond the adult businesses and the currently permitted 500 feet buffer is insufficient to separate adult businesses from incompatible sensitive uses; and,

WHEREAS, the addition of adult businesses to Kenai Municipal Code 14.22.010-Land Use Table will provide clarity on areas of the City where adult businesses are and are not allowed; and,

WHEREAS, Ordinance 3083-2019 (Substitute) is narrowly-tailored to address the substantial government interest in regulating secondary effects of adult businesses while providing available parcels part of the real estate market within the City of Kenai where adult businesses may locate.

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 3083-2019 (Substitute).

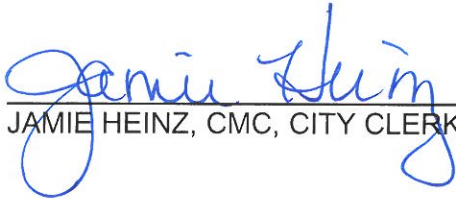
Section 2. That a copy of Resolution PZ2019-33 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 25th day of September, 2019.



JEFF TWAIT, CHAIRPERSON

ATTEST:



JAMIE HEINZ, CMC, CITY CLERK





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STAFF REPORT

To: Planning & Zoning Commission

From: Elizabeth Appleby, City Planner

Date: September 19, 2019

Subject: Resolution PZ2019-33 - Recommending the Council of the City of Kenai Enact Ordinance No. 3083-2019 (Substitute) Amending Kenai Municipal Code 14.20.175-Adult Businesses to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses, and Amending Kenai Municipal Code 14.22.010-Land Use Table to Add Adult Businesses to the Land Use Table

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 from the Planning and Zoning Commission for Ordinance 3083-2019 (Substitute) that would amend City Code to address adult businesses and sensitive uses. The Kenai City Council referred Ordinance 3083-2019 (Substitute) to the City of Kenai Planning and Zoning Commission at their meeting on September 4, 2019, and requested the Commission provide a recommendation by October 2, 2019.

Currently adult businesses may be located in the Central Commercial (CC), General Commercial (CG), Light Industrial (IL), or Heavy Industrial (IH) zones of the City if the adult business is 500 or more feet from a church or school. The Ordinance would add a definition of a sensitive use to include a church, school, or other area where youth are likely to be present and distance requirement from a sensitive use to 1,000 feet. The allowed zones for adult businesses in the City would not change. In addition, the Ordinance would add adult businesses as a category in the Land Use Table under Kenai Municipal Code 14.22.010. Adult businesses are currently not part of the Land Use Table.

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 September 19, 2019.

ANALYSIS

Several attachments are included for consideration along with this memorandum:

- City Attorney memorandum to City Council of the proposed Code changes and pertinent legal precedents
- Council Member Pettey Memorandum to City Council describing how the Ordinance meets goals of the Comprehensive Plan
- Council Member Pettey and Knackstedt memorandum to City Council describing the proposed addition of adult businesses to the Land Use Table in the Substitute Ordinance
- Map showing zones allowing adult businesses and approximate buffers from sensitive uses and proposed changes to those buffers
- Packet of court cases and studies initially distributed to the Planning and Zoning Commission during the Discussion held on August 28, 2019

The City Council conducted an evidence-based analysis of restrictions on adult businesses and City Attorney provided studies that support a compelling government interest for the City of Kenai to regulate adult businesses. There is documentation from other communities that the negative secondary effects of adult businesses often extend to 1,000 to 1,500 feet beyond the business. These studies are also available to the Planning and Zoning Commission as supporting documents for Resolution PZ2019-33 and are discussed in the memorandum from the City Attorney.

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

- Objective Q-4 under Goal 1-Quality of Life to “promote the siting and design of land uses that are in harmony and scale with surrounding uses.”
- Objective LU-6 under Goal 3-Land Use to “review Zoning Code to consider use of buffers and buffer zones to separate incompatible land uses.”

In addition, Objective ED-9 under Goal 2-Economic Development states the City will, “capitalize on the tourism industry by marketing Kenai as a destination for recreational activities, conventions, festivals, arts, cultural and other events.” Increasing the buffer distances for adult businesses will also support this objective as studies have shown a secondary negative impact of adult businesses to include declining tourism.

The changes to buffers for adult businesses would still leave over five percent of land in Kenai open to adult businesses within the CC, CG, IL, and IH zones, which follows federal case law.

The addition of adult businesses to Kenai Municipal Code 14.22.010-Land Use Table will provide clarity on areas of the City where adult businesses are and are not allowed. The Land Use Table would be updated to show zones adult businesses are allowed a Principal Permitted Use (permitted if development and operation standards are met, including buffer distances from sensitive uses). This follows guidance in the studies and articles made available to the Planning and Zoning Commission, including the American Planning Association’s Report entitled Everything You Always Wanted to Know about Regulating Sex Businesses, xxx Report No.

RECOMMENDATIONS

City staff advises the Planning and Zoning Commission to adopt Resolution PZ2019-33 recommending the Kenai City Council amend Kenai Municipal Code for adult businesses and sensitive uses by enacting Ordinance No. 3083-2019.

ATTACHMENTS

- A. Resolution No. PZ2019-33
- B. Ordinance No. 2083-2019 (Substitute)
- C. Memorandum to City Council from Council Member Glenese Pettey
- D. Memorandum to City Council from Council Members Glenese Pettey and Henry Knackstedt
- E. Memorandum to City Council from the City Attorney regarding Ordinance No. 3083-2019
- F. Map



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3085-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE WATER AND SEWER FUND FOR THE PURCHASE OF WELL RADIUS PROPERTY DESCRIBED AS TRACT A, ALASKA STATE LAND SURVEY NO. 2013-49, FILED UNDER PLAT 2017-8, FOR THE CITY'S PUBLIC WATER SYSTEM.

WHEREAS, the parcel adjacent to the Beaver Creek Subdivision located at the intersection of the Kenai Spur Highway and Shotgun Drive, described as Alaska State Land Survey 2013-49 Tract A and recorded as Plat 2017-8, Kenai Recording District and located in Section 36, Township 6 North, Range 11 West, Seward Meridian, will be used for well site and watershed protection; and,

WHEREAS, on August 31, 2010, the City of Kenai applied to purchase the property from the State of Alaska Department of Natural Resources, Division of Mining, Land, and Water; and,

WHEREAS, on October 29, 2012, pursuant to Alaska Statute 38.05, the State of Alaska Department of Natural Resources, Division of Mining, Land, and Water issued a Final Finding and Decision allowing the property to be sold through a non-competitive sale to the City subject to a reversionary interest by the State should the property cease to be used for public and charitable purposes; and,

WHEREAS, on March 27, 2014, pursuant to Alaska Statute 38.05, the State of Alaska Department of Natural Resources, Division of Mining, Land, and Water issued a First Amended Final Finding and Decision to address Boundbrook Drive and the dedication of a 30-foot right-of-way; and,

WHEREAS, on February 25, 2019, the Department of Natural Resources, Division of Mining, Land, and Water issued a Second Final Finding and Decision to address the School Trust Land, an appraisal valuation date, and fee; and,

WHEREAS, on February 25, 2019, the Alaska Department of Natural Resources, Division of Mining, Land, and Water gave notice to the City of Kenai to proceed to appraisal following the State requirements; and,

WHEREAS, on August 26, 2019, the City of Kenai received the final corrected appraisal report dated August 12, 2019, which estimated the market value of the parcel to be \$44,000 after taking into account deed restrictions and reversionary interest; and,

WHEREAS, on August 28, 2019, the City of Kenai received a letter dated August 26, 2019 from the State of Alaska giving notice to proceed to purchase the parcel by completing the Declaration of Intent form, paying the \$345.00 document handling fee, and giving options for paying the purchase price of \$44,000.00; and,

WHEREAS, paying the full purchase price of \$44,000.00 instead of entering into a Contract for the Sale of Real Property will avoid the City having to pay an interest rate of prime plus three percent and having ownership remain with the State of Alaska until the Contract for Sale of Real Property is paid off; and,

WHEREAS, sufficient funds are available for the purchase within the Water and Sewer Fund for the purchase of this property.

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

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

Water & Sewer Fund – Water Department:

Increase Estimated Revenues -	
Appropriation of Fund Balance	<u>\$44,345</u>
Increase Appropriations –	
Land	<u>\$44,345</u>

Section 3. That the City Manager is authorized to complete the Declaration of Intent form and execute a purchase of Tract A, Alaska State Land Survey No. 2013-49, filed under Plat 2017-8 from the State of Alaska, Department of Natural Resources.

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 2nd day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: September 18, 2019
Enacted: October 2, 2019
Effective: October 2, 2019



"Village with a Past, City with a Future"

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

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

Cc: Scott Curtin, Public Works Director

FROM: Elizabeth Appleby, City Planner

DATE: September 9, 2019

SUBJECT: **Ordinance No. 3085 – 2019 – Increasing Estimated Revenues and Appropriations in the Water and Sewer Fund for the Purchase of Well Radius Property to Protect the City’s Public Water System**

In 2010, the City of Kenai applied to the State of Alaska to acquire a parcel as a preference right applicant for a public and charitable use of municipal well site and for protection of the Beaver Creek Watershed. In 2012, the State signed a Final Finding and Decision to approve the sale of the property to the City. The Decision allows for a non-competitive sale to the City for the appraised fair market value, subject to a reversionary interest by the State should the property cease to be used for public and charitable purposes. In 2014, pursuant to Alaska Statute 38.05, the State of Alaska Department of Natural Resources, Division of Mining, Land, and Water issued a First Amended Final Finding and Decision to address Boundbrook Drive and the dedication of a 30-foot right-of-way on the plat of the parcel.

The City paid for a survey of the property which created the subject parcel, described as Alaska State Land Survey 2013-49 Tract A and recorded as Plat 2017-8, Kenai Recording District. The parcel is approximately 28.77 acres within the Rural Residential Zone of the City.

In 2019, the City received a Second Final Finding and Decision to address the School Trust Land, appraisal valuation date, and appraisal fee. The City also received notice to proceed to appraisal in 2019. At the end of August 2019, the City received an appraisal of fair market value of \$44,000, which took into account deed restrictions and reversionary interest.

In late August 2019, the City received a notice to proceed with purchase from the State of Alaska Department of Natural Resources. In order to proceed with the purchase, the City must complete the Declaration of Intent form, pay the \$345.00 document handling fee, and either pay the full



purchase price of \$44,000.00 or enter into a Contract for the Sale of Real Property with a minimum five percent deposit (\$2,200.00). The Contract for the Sale of Real Property would have an interest rate of prime plus three percent and ownership would remain with the State of Alaska until the Contract for Sale of Real Property is paid off.

Sufficient funds are available for the purchase within the Water and Sewer Fund for the full purchase price and document handling fee of \$44,345.00. Ordinance No. 3085-2019 would appropriate \$44,345.00 from the Water and Sewer Fund to purchase Tract A, Alaska State Land Survey No. 2013-49, filed under Plat 2017-8 and authorize the City Manager to complete the Declaration of Intent form to the State of Alaska Department of Natural Resources and execute a purchase of Tract A.

Thank you for your consideration.



DIVISION OF MINING, LAND & WATER
Land Sales Section

550 West 7th Avenue, Suite 640
Anchorage, Alaska 99501-3576
Main: 907.269.8594
TDD: 907.269.8411
Fax: 907.269.8916
<http://landsales.alaska.gov>
<http://facebook.com/alaskaland/>

August 26, 2019

Elizabeth Appleby, City Planner
City of Kenai
210 Fidalgo Ave
Kenai, AK 99611

RECEIVED
CITY OF KENAI
DATE *8-28-19*
PLANNING DEPARTMENT

Re: Noncompetitive Purchase/ADL 231036

Dear Elizabeth Appleby,

I am pleased to inform you that the appraisal of Tract A, Alaska State Land Survey No. 2013-49, filed under Plat 2017-8 that you applied to purchase under AS 38.05.102 has been approved by the Department of Natural Resources. The appraised fair market value is \$44,000.00. Enclosed for your records is a copy of Appraisal Review Report #4507-0.

This letter constitutes your notice to proceed to purchase of Tract A, Alaska State Land Survey No. 2013-49, as depicted on Plat 2017-8. The purchase price is \$44,000.00. Within 90 days of your receipt of this letter the City of Kenai must do the following if they wish to proceed with the purchase:

1. Complete the enclosed Declaration of Intent (DOI) form;
2. Pay the \$265.00 document handling fee, preferably by cashiers check or money order payable to the State of Alaska with ADL 231036 written on the check or money order; and
3. Payment of either the full purchase price of \$44,000.00, or a minimum 5% deposit (\$2,200.00) to enter into a Contract for the Sale of Real Property, by cashiers check or money order payable to the State of Alaska, or by credit card.

Please send the aforementioned purchase materials to the above letterhead address with Attn: Krista Weydahl as recipient. Credit card payments may be made at the Public Information Center at 550 West 7th Avenue, Suite 1360 in the Atwood Building in Anchorage in person or by phone at (907) 269-8400.

If you elect to make a deposit and enter into a contract for sale with the state for the parcel, the state will send you a contract to sign following receipt of the DOI and payment of the document handling fee and deposit. Under state regulation (11 AAC 67.875) the state can finance property with a sale price of \$44,000.00 or more for no more than 20 years. The interest rate is prime plus 3% set the first day of the month in which the contract for sale is sent to you for signature. Be aware that, until the contract for sale is paid off, ownership of the land remains with the state. If you have any questions, please contact Krista Weydahl at 269-5639 (krista.veydahl@alaska.gov) or Ki Jung Contracts Manager, at 269-8594 (kijung.lee@alaska.gov).

Sincerely,



Krista Weydahl
Natural Resource Specialist II
Land Sales Section

Encl: Declaration of Intent

Cc: Ki Jung
Contracts Unit

Cc: Mr. Kevin Hindmarch
State Review Appraiser

**A. SUMMARY OF APPRAISAL NO. 4507-0**

1. ADL NO(S): 231036
2. SIZE: 28.78 acres
3. APPLICANT: City of Kenai
4. LOCATION: North side of Kenai Road at Beaver Loop Road and Shotgun Drive
5. LEGAL DESCRIPTION(S): Tract A, ASLS 2013-49, Plat 2017-8, Kenai Recording District
6. INTEREST APPRAISED: Fee Simple Title less Mineral Rights
7. PURPOSE OF THE APPRAISAL: Estimate Market Value
8. APPRAISED BY: MacSwain Associates
9. DATE of REPORT: August 12, 2019
10. DATE of VALUE(S): August 6, 2019
11. APPRAISED VALUE(S): \$44,000

B. SUMMARY OF REVIEW

1. DATE of REVIEW: August 23, 2019
2. REVIEWER'S CLIENT: DNR Other: _____
3. INTENDED USERS of the REVIEW: DNR General Public Other: _____
4. INTENDED USE of the REVIEW: Establish market value for a preference right purchase
5. PURPOSE of REVIEW: Evaluate for Technical Compliance with DNR Instructions & USPAP
 Evaluate for Technical Compliance with UASFLA Develop Independent Estimate of Value
 Other: _____
6. SCOPE OF REVIEW: I Inspected the Subject on _____ I Did Not Inspect the Subject
 I Inspected the Comparable Sales on _____ I Did Not Inspect the Comparable Sales
 I Independently Verified the Comparable Sales in the Report Yes No
 Data and Information Considered in Addition to that Contained in the Report: None See Sections C thru F
 Extraordinary Assumptions, Hypothetical Conditions, & Other Limiting Conditions for this review:
 None See Section G Related appraisals reviewed: _____
 Proofread DNR data entry: Yes No
7. RESULTS OF REVIEW: Not Approved Approved Approved Value: \$44,000

C. COMPLETENESS OF APPRAISAL MATERIAL WITHIN SCOPE OF WORK APPLICABLE TO THE ASSIGNMENT/CONFORMANCE with APPRAISAL INSTRUCTIONS: Adequate**D. ADEQUACY and RELEVANCE of APPRAISAL DATA and PROPRIETY OF ADJUSTMENTS: Adequate****E. APPROPRIATENESS OF APPRAISAL METHODS and TECHNIQUES: Adequate****F. ANALYSES, OPINIONS, and CONCLUSIONS ARE APPROPRIATE and REASONABLE, except:**



G. REVIEWER'S ASSUMPTIONS AND LIMITING CONDITIONS

1. This review is based on data and information contained in the appraisal report as well as any additional data from other sources that is identified in this review.
2. The reviewer assumes that the data and information in the appraisal are factual and accurate.
3. The reviewer reserves the right to consider any additional data or information that may subsequently become available, and to revise an opinion or conclusion, if such data and information warrant a revision.
4. All assumptions and limiting conditions contained in the appraisal report are part of this review unless otherwise stated.
5. A title report has not been provided to the appraiser and the reviewer. Unless specifically noted in the report or this review, it is assumed that the only easements and restrictions that affect the property are those shown on the plat.
6. The value of commercial timber, if any, is specifically excluded from the final conclusion of value.

REVIEW APPRAISER'S CERTIFICATION APPRAISAL NO. 4507-0

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or use of, this review.
- My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I did did not personally inspect the subject property of the report under review.
- No one provided significant professional assistance to the person signing this review report.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment

Reviewed by Kevin Hindmarch
Kevin Hindmarch, Review Appraiser

Date 8/23/19

Cc: Krista Weydahl
Rachel Longacre

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
CONTRACT ADMINISTRATION
550 W. 7th AVENUE, SUITE 640, ANCHORAGE, AK 99501
907-269-8594

DECLARATION OF INTENT

ADL Number _____

AN INCOMPLETE AND/OR UNSIGNED APPLICATION MAY DELAY PROCESSING
Complete required information on all pages as applicable.

Purchaser 1: ENTER FULL LEGAL NAME (PLEASE PRINT)

NAME PROVIDED MUST BE YOUR FULL LEGAL NAME AS IT APPEARS ON YOUR DRIVER'S LICENSE

Last Name				First Name	Middle Name	Suffix	Marital Status (check one)	
Mailing Address								<input type="checkbox"/> Single Person
City				State	Zip Code		<input type="checkbox"/> Married Person	Citizenship
Contact Phone No.				Alternative Contact Phone No.				<input type="checkbox"/> U.S. Citizen
Email address								<input type="checkbox"/> Non-U.S. Citizen
Are you applying for a Veteran's Discount under AS 38.05.940?								Alien Registration No. _____
See page 4 for further instruction								<input type="checkbox"/> Business Organization
								(Over-the-Counter purchases only)
								EIN No. _____
								<input type="checkbox"/> Yes <input type="checkbox"/> No

Purchaser 2: ENTER FULL LEGAL NAME (PLEASE PRINT)

NAME PROVIDED MUST BE YOUR FULL LEGAL NAME AS IT APPEARS ON YOUR DRIVER'S LICENSE

Last Name				First Name	Middle Name	Suffix	Marital Status (check one)	
Mailing Address								<input type="checkbox"/> Single Person
City				State	Zip Code		<input type="checkbox"/> Married Person	Citizenship
Contact Phone No.				Alternative Contact Phone No.				<input type="checkbox"/> U.S. Citizen
Email address								<input type="checkbox"/> Non-U.S. Citizen
Are you applying for a Veteran's Discount under AS 38.05.940?								Alien Registration No. _____
See page 4 for further instruction								<input type="checkbox"/> Business Organization
								(Over-the-Counter purchases only)
								EIN No. _____
								<input type="checkbox"/> Yes <input type="checkbox"/> No

If more than two purchasers, copy pages 1, 2, and 3 for applicable information and signatures

AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.

TENANCY

It may be advisable to seek legal counsel if you have concerns about how your estate and property are affected by the types of tenancy. For more information see page 4.

ONE APPLICANT	
<input type="checkbox"/> TITLE TAKEN INDIVIDUALLY	Defined: In the event of death of the sole owner, beneficiary is determined through Alaska property and probate law
MORE THAN ONE APPLICANT	
<input type="checkbox"/> AS TENANTS IN COMMON	Defined: In the event of death of one applicant, beneficiary is determined through Alaska property and probate law
<input type="checkbox"/> AS TENANTS BY THE ENTIRETY	Defined: In the event of death of one applicant, beneficiary is determined by rights of survivorship and all interest is transferred to the surviving spouse. <i>*This option is only available to a married couple.</i>

PAYMENT OPTIONS

Please complete CONTRACT or PAYOFF and indicate funds enclosed. Payment options include money order, check, or credit card. Required credit card info is on Page 3. CONTRACT	
<p>A purchase agreement is available by Contract to those that meet eligibility requirements under 11 AAC 67.008. Ineligibility is determined if an applicant's previous or current contract:</p> <ul style="list-style-type: none"> (1) has been administratively foreclosed or terminated for cause within the past three years; (2) is currently in default for nonpayment; (3) is currently in default for nonpayment of municipal taxes or assessments. 	<p>The Contract will provide a monthly level-payment unless the department determines a quarterly or annual payment is more administratively efficient, according to the following financed principal amounts pursuant to 11 AAC 67.875:</p> <ol style="list-style-type: none"> 1. \$2,000.00 or less must be paid in full 2. \$2,000.01 to \$9,999.99, not more than 5 years; 3. \$10,000.00 to \$14,999.99, not more than 10 years; 4. \$15,000.00 to \$19,999.99, not more than 15 years; 5. \$20,000.00 or more, not more than 20 years.
TERMS	Receipt code
Down Payment, if enclosed (5% of Purchase Price) † \$ _____	19
Contract Application Fee* + _____	5A
Recording Fee* + _____	VR
Total Enclosed \$ _____	
	* See current Director's Fee Order for applicable fees

PAYOFF	
Payoff Price ‡ \$ _____	19
Patent Application Fee* + _____	5C
Recording Fee* + _____	VR
Total Enclosed \$ _____	
	* See current Director's Fee Order for applicable fees

This Declaration of Intent is part of the offer to purchase on behalf of the person(s) listed on this form as Purchasers. In the event that the State of Alaska agrees to accept the offer to purchase, the person(s) signing below agree that he/she/they shall not transfer or attempt to transfer interest of this parcel without prior written approval from the State of Alaska or receipt of a final conveyance document (Patent or Quit Claim Deed). Such unauthorized transfer is prohibited and will be prosecuted in accordance with all applicable law.

By signing below, I, the purchaser(s), certify that I understand and accept the conditions of title as explained above and agree that I shall not transfer or attempt to transfer interest of the land that is subject to the Contract to Purchase without prior written approval from the State of Alaska.

Signature _____

Date _____

Signature _____

Date _____

SOCIAL SECURITY INFORMATION

Social Security information will not become public information from the submission of this form. These are required identifiers for the internal customer information database, revenue and billing reporting system, and to report paid loan interest to the contract holder and the Internal Revenue Service.

Purchaser 1 – Name	Social Security Number	Date of Birth
Purchaser 2 – Name	Social Security Number	Date of Birth

CREDIT CARD PAYMENT

Credit card information is not kept on file and will be destroyed upon the completion of your application.

Credit Card Users: This authorization constitutes an unconditional promise to pay on demand or on the date of acceptance of this offer the amount due from Page 2. This authorization includes consent to adjust the amount charged if the amount you specify is less than the required 5% of the down payment amount plus fees. If at the time your Declaration of Intent form is processed and we are unable to obtain authorization to charge against the credit card presented due to specific limitations of the account, your application may be declared void. Please make prearrangements with your financial institutions to ensure funds will be available at the time of payment.

Check one: Visa MasterCard

Credit card number: _____ - _____ - _____ - _____

Expiration date: _____

Applicant's name as embossed on card: _____

Amount of charge: \$ _____

Billing address: _____

Signature of card holder: _____

Card holder contact phone number: _____

This page will be destroyed after payment has been processed.

DECLARATION OF INTENT INSTRUCTIONS AND DEFINITIONS

Veteran's discount applicants: Please provide a copy of your Form DD 214 showing character of discharge and length of service. You must currently be an Alaska resident and have been a resident for one year preceding the date of sale; submit proof of such residency. If there is more than one purchaser, all purchasers must be residents and submit proof of residency. If co-purchasers are eligible veterans, only one purchaser need submit their DD 214.

Limited Liability Companies or Corporations: Organizations are not individuals and are not required to disclose the marital status of the partners. Please submit business license, corporate resolution and signatory authorities.

Address Changes: It is your responsibility to notify the State of any changes in your mailing address, phone number or email. Address changes must be received in writing and signed by the primary purchaser to be considered valid. When a valid change of address form or a written letter submitted by the customer has been received, the address of record will be changed. To obtain an address change form, contact Contract Administration at 907-269-8594.

TYPES OF TITLE

A married couple, as tenants by the entirety

This option is only available for married persons, e.g., "John Q. Smith and Deborah R. Smith, a married couple, as tenants by the entirety". The law presumes tenancy by the entirety for a married couple unless it is expressly declared otherwise. (AS 34.15.110)

As tenants in common

A married couple can choose to purchase property together as tenants in common. A married couple are encouraged to seek the services of an attorney before selecting this form of tenancy. Those persons who wish to purchase property together can do so as tenants in common. It is possible for each person to have a different marital status. This example illustrates a possible combination, e.g., "William P. Jones, a married person, Sandra S. Smith, a single person, and Andrew X. Read and Barbara A. Read, a married couple; as tenants in common." There is no right of survivorship for the tenants under this type of tenancy.

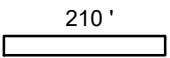
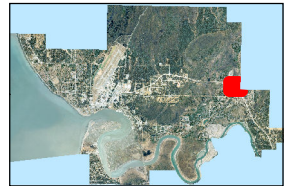
Title taken individually

If just one purchaser, whether single or married, that person can only select this option.

Alaska State Land Survey
2013-49
Tract A

(Kenai Peninsula Borough
Parcel Number
04103060)

460 Shotgun Drive



1 inch equals 250 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: 4/26/2019





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3086-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, ACCEPTING AND APPROPRIATING A GRANT FROM THE RASMUSON FOUNDATION AND ACCEPTING AND APPROPRIATING PRIVATE DONATIONS IN THE SENIOR CENTER CAPITAL IMPROVEMENT FUND FOR THE PURCHASE OF NEW FLOORING FOR THE DINING ROOM AND ADMINISTRATION OFFICES OF THE KENAI SENIOR CENTER.

WHEREAS, the City of Kenai received a grant in the amount of \$22,500 from the Rasmuson Foundation for the purchase of new flooring for the dining room and administration offices; and,

WHEREAS, private donations have been received in the amount of \$3,501 towards this new flooring; and,

WHEREAS, the Senior Center Improvement Capital Project Fund has \$34,500 appropriated to complete the purchase and installation of the new flooring; and,

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

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

Section 1. That the City Manager is authorized to accept and expend the grant, in the amount of \$22,500, from the Rasmuson Foundation for the purchase and installation of new flooring for the dining room and administrative offices at the Kenai Senior Center.

Section 2. That the City Manager is authorized to accept and expend donations, in the amount of \$3,501, from private donors for the purchase and installation of new flooring for the dining room and administrative offices at the Kenai Senior Center.

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

Senior Center Capital Improvement Fund:	
Increase Estimated Revenues –	
Other Grants	\$22,500
Donations	<u>3,501</u>
	<u>\$26,001</u>
Increase Appropriations –	
Construction	<u>\$26,001</u>

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 2nd day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: September 18, 2019
Enacted: October 2, 2019
Effective: October 2, 2019



"Village with a Past, City with a Future"

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

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Kathy Romain, Senior Center Director

DATE: September 5, 2019

SUBJECT: **Ordinance No. 3086-2019 – Ordinance Accepting and Appropriating a Rasmuson Grant and Private Donations for New Flooring for the Senior Center Dining Room and Administrative Offices**

The Kenai Senior Center has received a Tier I grant through the Rasmuson Foundation in the amount of \$22,500 for the purchase and installation of new flooring for the Center Dining Room and Administrative Offices. We have also received \$3,501 in private donations for this project. The remainder of the funds would come from the Senior Citizen Capital Project Fund.

I respectfully request consideration of the ordinance and accepting and appropriating the grant funds and donations for the flooring project.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3087-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING A BUDGET TRANSFER IN THE SENIOR CENTER CAPITAL IMPROVEMENT FUND AND INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE PUBLIC SAFETY IMPROVEMENT CAPITAL PROJECT FUND TO PROVIDE SUPPLEMENTAL FUNDING FOR THE FIRE DEPARTMENT KITCHEN REMODEL PROJECT.

WHEREAS, excess funds in the amount of \$15,000 are available in the Senior Center Improvement Capital Project fund as a result of private donations and receipt of a grant from the Rasmuson Foundation for the dining room and administrative offices flooring replacement project; and,

WHEREAS, recent testing has indicated the presence of asbestos in the flooring and drywall of the Kenai Public Safety building; and,

WHEREAS, prior to completion of the kitchen remodel project, asbestos in the kitchen area must be abated; and,

WHEREAS, the kitchen remodel project does not have sufficient funds for the abatement and requires supplemental funding to complete; and,

WHEREAS, \$15,000 will provide sufficient funds for asbestos abatement and provide a small contingency to complete the Kitchen Remodel project; and,

WHEREAS, the excess funds from the Senior Center Dining Room and Administrative Offices Flooring Replacement Project may be used to provide supplemental funding with any remaining funds to be transferred back to the General Fund.

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

Section 1. The following budget transfer is authorized as follows:

Senior Center Capital Improvement Fund:	
Decrease – Construction	<u>\$15,000</u>
Increase – Transfer to Other Funds	<u>\$15,000</u>

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

Public Safety Capital Improvement Fund:	
Increase Estimated Revenues –	
Transfer from Other Funds	<u>\$15,000</u>
Increase Appropriations –	
Construction	<u>\$15,000</u>

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 2nd day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance:

Introduced: September 18, 2019
Enacted: October 2, 2019
Effective: October 2, 2019



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

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Terry Eubank, Finance Director

DATE: September 5, 2019

SUBJECT: **Ordinance No. 3087-2019**

The purpose of this memo is to recommend adoption of Ordinance 3087-2019 that will provide supplemental funding for the Fire Department Kitchen Remodel Project. Recent asbestos testing identified asbestos in the flooring mastic and sheetrock mud of the Public Safety Building. Abatement in the kitchen area is required prior to completion of the remodel project. The abatement costs were not included in the original project budget and are estimated at approximately \$12,500. An additional \$2,500 is being requested for project contingency.

With the receipt of a Rasmuson Grant in the amount of \$22,500 and private donations of \$3,501 funds previously appropriated for the Senior Center Dining Room and Administrative Office Flooring Replacement Project are available to provide the needed \$15,000 of supplemental funding for the Fire Department Kitchen Remodel Project. The remaining funds in Senior Center Improvement Capital Project Fund will be available for project contingency or redirection to other improvement projects by future Council action.

Utilization of previously appropriated General Funds for completion of the Fire Department Kitchen Remodel Project will allow for timely completion of that project and your support for Ordinance 3087-2019 is respectfully requested.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3088-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA AMENDING KENAI MUNICIPAL CODE 14.20.330 - STANDARDS FOR COMMERCIAL MARIJUANA ESTABLISHMENTS, TO INCORPORATE LIMITATIONS ON HOURS OF OPERATION FOR RETAIL MARIJUANA ESTABLISHMENTS.

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,

WHEREAS, the City, can enact ordinances regulating commercial marijuana establishments in the city; and,

WHEREAS, on January 20, 2016, the City of Kenai enacted regulations governing commercial marijuana establishments in the City, which did not include a local regulation on operating hours for retail marijuana stores; and,

WHEREAS, retail marijuana stores are limited in their hours of operation by State Regulation 3 ACC 306.310 which requires the businesses to be closed between the hours of 5:00 a.m. and 8:00 a.m.; and,

WHEREAS, there is a need to further regulate hours of operation for retail marijuana stores in the City to reduce negative impacts on residential neighborhoods and protect public health and safety; and,

WHEREAS, the proposed closure between 2:00 a.m. and 8:00 a.m. daily for retail marijuana stores within the City is no more restrictive than the regulations of adjacent jurisdictions and would match the regulations of hours of operation for retail marijuana stores within the Kenai Peninsula Borough under Kenai Peninsula Borough Code Section 7.30.020(C)(2) – Assembly Review-Standards; and,

WHEREAS, during a public hearing at a regular meeting on August 14, 2019 the City of the Kenai Planning and Zoning Commission recommended the Kenai City Council enact a change to Kenai Municipal Code that would prohibit retail marijuana stores from operating between the hours of 2:00 a.m. and 8 a.m. daily.

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

Section 1. Amendment of Section of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, is hereby amended as follows:

14.20.330 Standards for commercial marijuana establishments.

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

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

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

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

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

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

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

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

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

from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.

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

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

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

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

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 2nd day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: September 18, 2019
Enacted: October 2, 2019
Effective: November 1, 2019



"Village with a Past, City with a Future"

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

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Elizabeth Appleby, City Planner

DATE: September 9, 2019

SUBJECT: **Ordinance No. 3088 – 2019 – Amending Kenai Municipal Code Section – Standards for Commercial Marijuana Establishments to Incorporate Hours of Operation Requiring a Closure Between 2:00a.m. and 8:00a.m. Daily**

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. As such, the Planning and Zoning Commission approved Resolution PZ2019-29 recommending the Council of the City of Kenai amend Kenai Municipal Code to incorporate hours of operation for retail marijuana stores. The Planning and Zoning Commission recommended requiring closure between the hours of 2:00 a.m. and 8:00 a.m. daily.

The proposed closure for retail marijuana stores between 2:00 a.m. and 8:00 a.m. would match regulations for hours of operation within the Kenai Peninsula Borough under Kenai Peninsula Borough Code Section 7.30.020(C)(2) and would not be any more restrictive than other neighboring jurisdictions. The City of Kenai currently has no local regulation for hours of operation of retail marijuana stores. State of Alaska regulation 3 AAC 306.310-Acts prohibited at retail marijuana store, states, "A licensed retail marijuana store may not (1) conduct business on or allow a consumer to access the retail marijuana store's licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day". There are currently no additional limitations on hours of operation in any of the conditional use permits granted to retail marijuana stores within the City of Kenai.

The proposed Code change would allow the City of Kenai to customize marijuana retail store hours to meet the needs of our community as allowed under State law regarding marijuana. It would not provide an unreasonable restriction on commerce within the City and may have public safety and quality of life benefits to prevent late-night driving and reduce late-night lighting.



Please reference the attached Resolution PZ2019-29 and associated staff report presented to the Planning and Zoning Commission. I have also included a written comment received from a resident requesting a closure time of midnight instead of 2:00 a.m. with concerns for late night drivers and headlights as well as a comment recorded in the notes of the Planning and Zoning Commission public hearing for PZ2019-29 from a retail marijuana store owner who opposed the hours restriction because it removed flexibility to stay open longer during times of high volume, such as during the dipnet fishery.

Thank you for your consideration.



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www.kenai.city

STAFF REPORT
<p>To: Planning & 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 PZ2019-29 for a change to Kenai Municipal Code that would restrict the operating hours of retail marijuana stores within the City of Kenai.

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

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

Public Notice, Public Comment

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

ANALYSIS

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

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

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

RECOMMENDATIONS

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

ATTACHMENTS

- A. Resolution No. PZ2019-29



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

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

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

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

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

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

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

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

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

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

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

14.20.330 Standards for commercial marijuana establishments.

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

- (a) Commercial marijuana establishments may be permitted or allowed with a conditional use permit under KMC 14.20.150, as provided in the City of Kenai's land use table, KMC 14.22.010, and the provisions of this section.
- (b) Applicants applying for a conditional use permit must include an area map drawn to scale indicating all land uses on other properties within a five hundred (500) foot proximity of the lot upon which the applicant is seeking a conditional use permit. This shall be in addition to the conditional use permit submission requirements in KMC 14.20.150.
- (c) A public hearing shall be scheduled before the Planning and Zoning Commission to review the conditional use permit application once it has been deemed complete. The public hearing shall be scheduled in accordance with the requirements in KMC 14.20.280, except that notification shall be mailed to all real property owners on record on the Borough Assessor's records within a five hundred (500) foot periphery of the parcel affected by the proposed action.
- (d) The preparation, packaging, manufacturing, processing, and storing of all marijuana, marijuana concentrate or marijuana products must be conducted within a fully enclosed, secure indoor facility. The growing and cultivating of marijuana must be conducted within a fully enclosed, secure indoor facility or greenhouse with view-obscuring rigid walls, a roof and doors, unless a nonrigid greenhouse, or other structure, is specifically approved, in which case the cultivation must be enclosed by a sight-obscuring wall or fence at least six (6) feet high.
- (e) All commercial marijuana establishments shall not emit an odor that is detectable by the public from outside the commercial marijuana establishment.
- (f) No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:
- (1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and
 - (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.

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

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

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

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

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

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



JEFF WAIT, CHAIRPERSON

ATTEST:



JAMIE HEINZ, CMC, CITY CLERK



8/14/19

Elizabeth - and Planning Commission
I'm registering an objection to a 2 AM closure
for pet stores in Kenai - I have a couple of
reasons.

#1 is that if pet stores close in Soldotna
at midnight, will that increase traffic between
Kenai & Soldotna so folks who suddenly "need"
a pet will make the drive? That may be a
public safety issue. I think midnight is
plenty late enough for people to be out and
about looking for a pet.

#2 The newest shop in Kenai already keeps
erratic closing hours - between 11^{PM} and 4 AM
at his whim - no guarantee anyone will police
him to keep any restrictive hours no matter what is
set.

#3 I've lived in my home 23 years with
quiet enjoyment despite the assorted businesses
that have moved in and out of that premises -
now headlights flash through my house at all
hours of the night. At least a midnight closing
will be less disruptive - if he even complies.

Thank you for your time.

Marilyn Wheeler
Box 3, Kenai

meww2@qci.net

Text 907-252-1880

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

Clarification was provided that in 2017, it was found that the main entrance door to be 504-feet from the marijuana establishment using GIS Software and a survey showed 516-feet from proposed establishment to the main, covered entrance of the church.

The applicant noted the double glass doors would be the main entrance to the Marijuana Retail Store; the same entrance as the former establishment.

It was noted that the establishment had been operating as a manufacturing facility without complaint and legally met the requirements.

Clarification was provided that, in 2017, there wasn't a condition put in place regarding signage, just that a sign permit be obtained.

Appreciation was expressed for the testimony presented, it was noted the legal criteria had been met and the Commission members agreed with staff's findings and would support the Permit.

Clarification provided that a Conditional Use Permit for each use was preferred so, if one use was ended, the associated permit would expire with the specific use.

VOTE:

YEA: Springer, Fikes, Twait, Halstead
NAY:

MOTION PASSED UNANIMOUSLY.

Commission Chair Twait noted the fifteen-day appeal period.

- 2. **Resolution PZ2019-29** - Recommending the Council of the City of Kenai Amend Kenai Municipal Code 14.20.330 - Standards for Commercial Marijuana Establishments, to Incorporate Hours of Operation for Retail Marijuana Establishments into the City of Kenai's Code of Ordinances.

MOTION:

Commissioner Halstead **MOVED** to approve Resolution No. PZ2019-29 and Commissioner Springer **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the recommendation would go to City Council to amend the Municipal Code to provide local closure requirement be from 2:00 a.m. to 8:00 a.m., consistent with other areas in the Kenai Peninsula Borough; also noted the State of Alaska's regulations were from 5:00 a.m. to 8:00 a.m.

Chair Twait opened the floor for public testimony.

Ron Isaacs spoke against the resolution noting alcohol establishments could be open later; suggested alcohol and other drugs were more dangerous than marijuana. Mr. Isaacs also suggested that if a retail marijuana store wanted to stay open until 5:00 a.m. during times of high

volume, such as during the Dipnet Fishery, they should be able to.

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

It was noted the desire was to match the Kenai Peninsula Borough regulations so there was no undue advantage.

The suggestion was made that it may be an issue for Kenai to be open later than Soldotna in terms of a customer driving to get product. Cost effectiveness of being open versus being closed during slow times was also discussed.

VOTE:

YEA: Springer, Fikes, Twait, Halstead
NAY:

MOTION PASSED UNANIMOUSLY.

- 3. **Resolution PZ2019-32** - Recommending the Council of the City of Kenai Enact Ordinance 3072-2019 to Renaming, Repealing, and Re-enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Recreation and Cultural Community through Responsible Land Policies and Practices.

MOTION:

Commissioner Springer **MOVED** to approve Resolution No. PZ2019-32 and Commissioner Halstead **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting that a working group within Administration developed the policies and procedures and Council had referred the Ordinance to the Commission for a recommendation. She added that the Ordinance offered development incentives, provided for a competitive lease and sale process, and required development to discourage speculation. Appleby also noted the proposed changes aligned with two objectives identified in the Comprehensive Plan.

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

VOTE:

YEA: Springer, Fikes, Twait, Halstead
NAY:

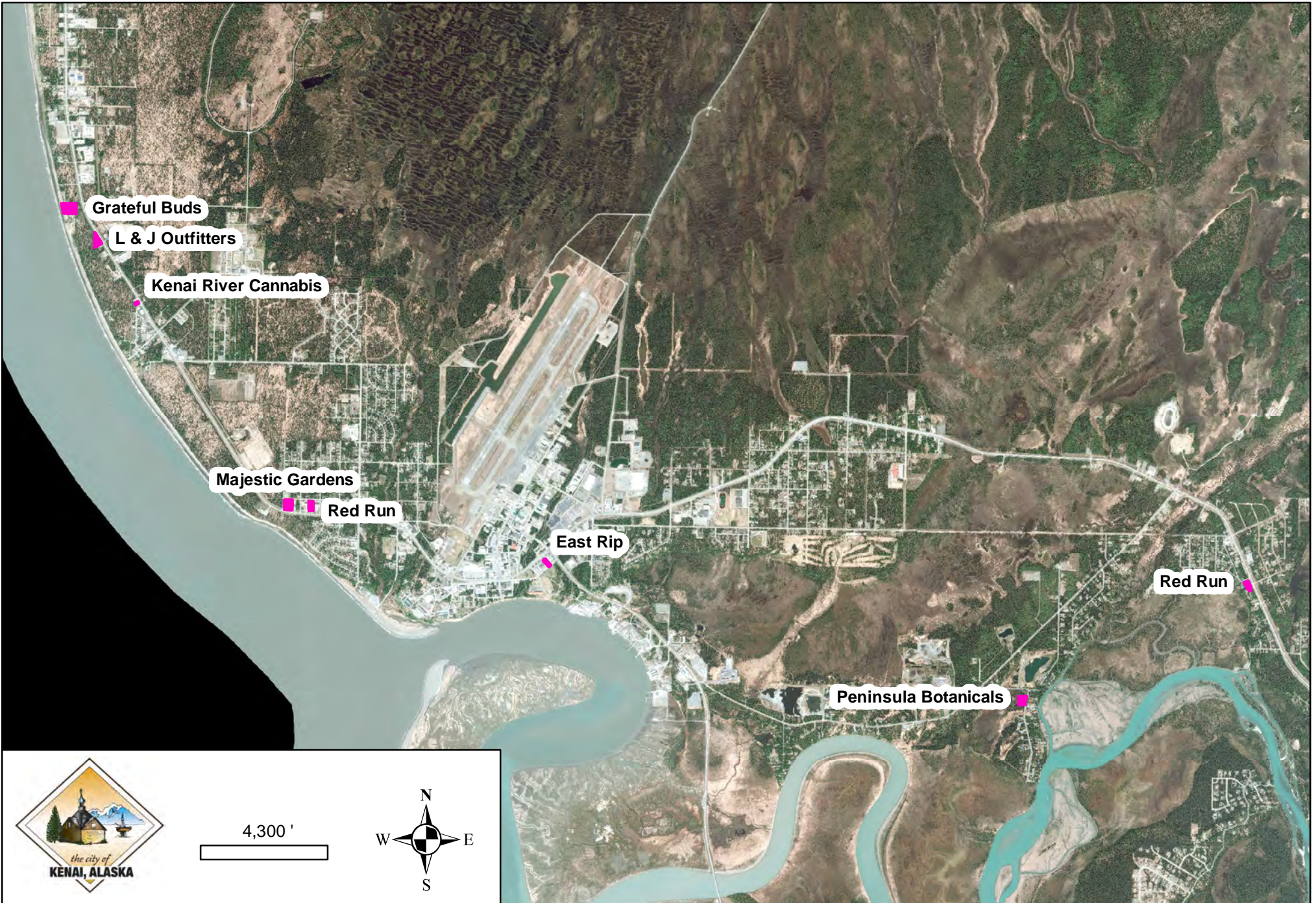
MOTION PASSED UNANIMOUSLY.

G. UNFINISHED BUSINESS – None.

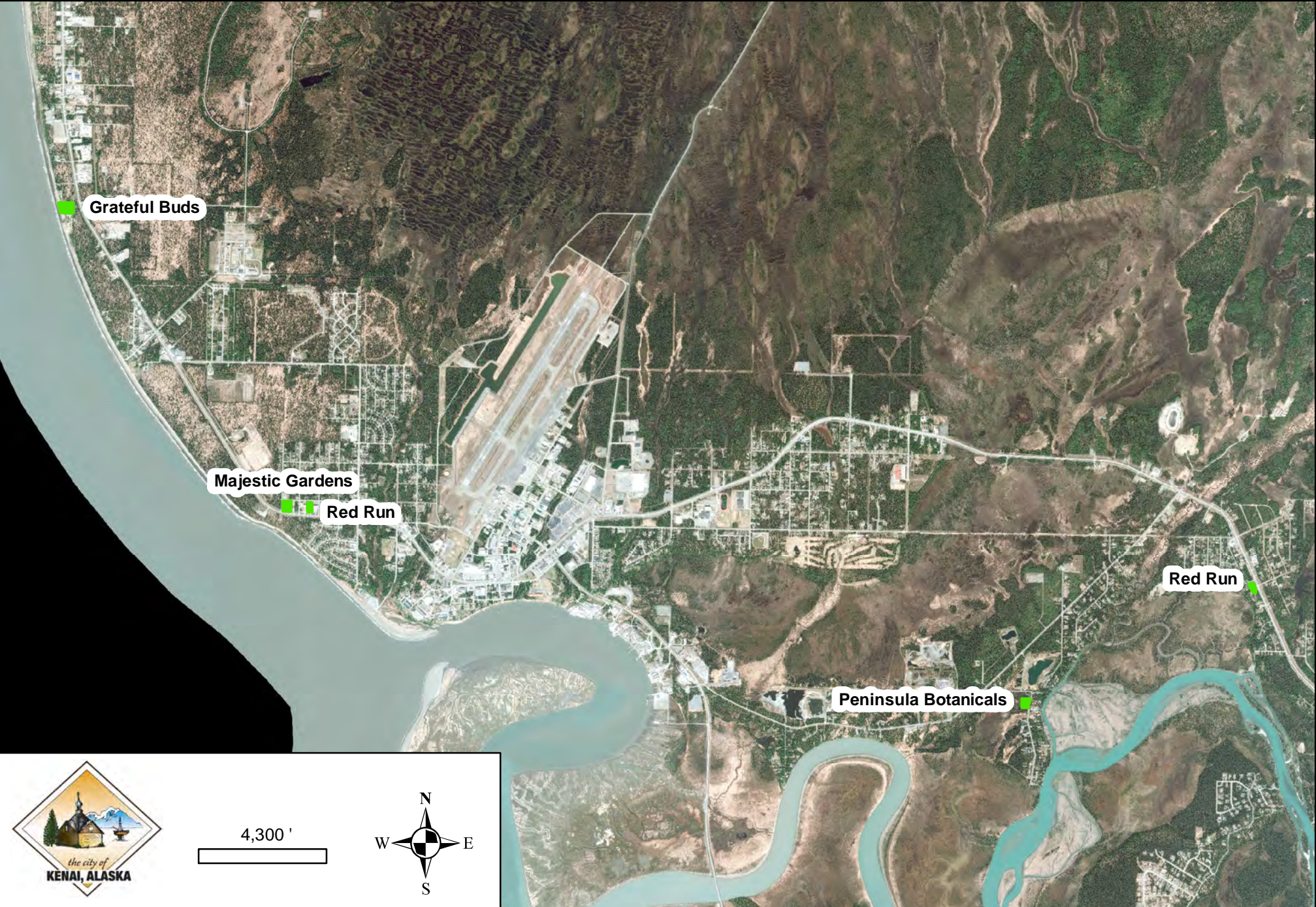
All Permitted Marijuana Facilities

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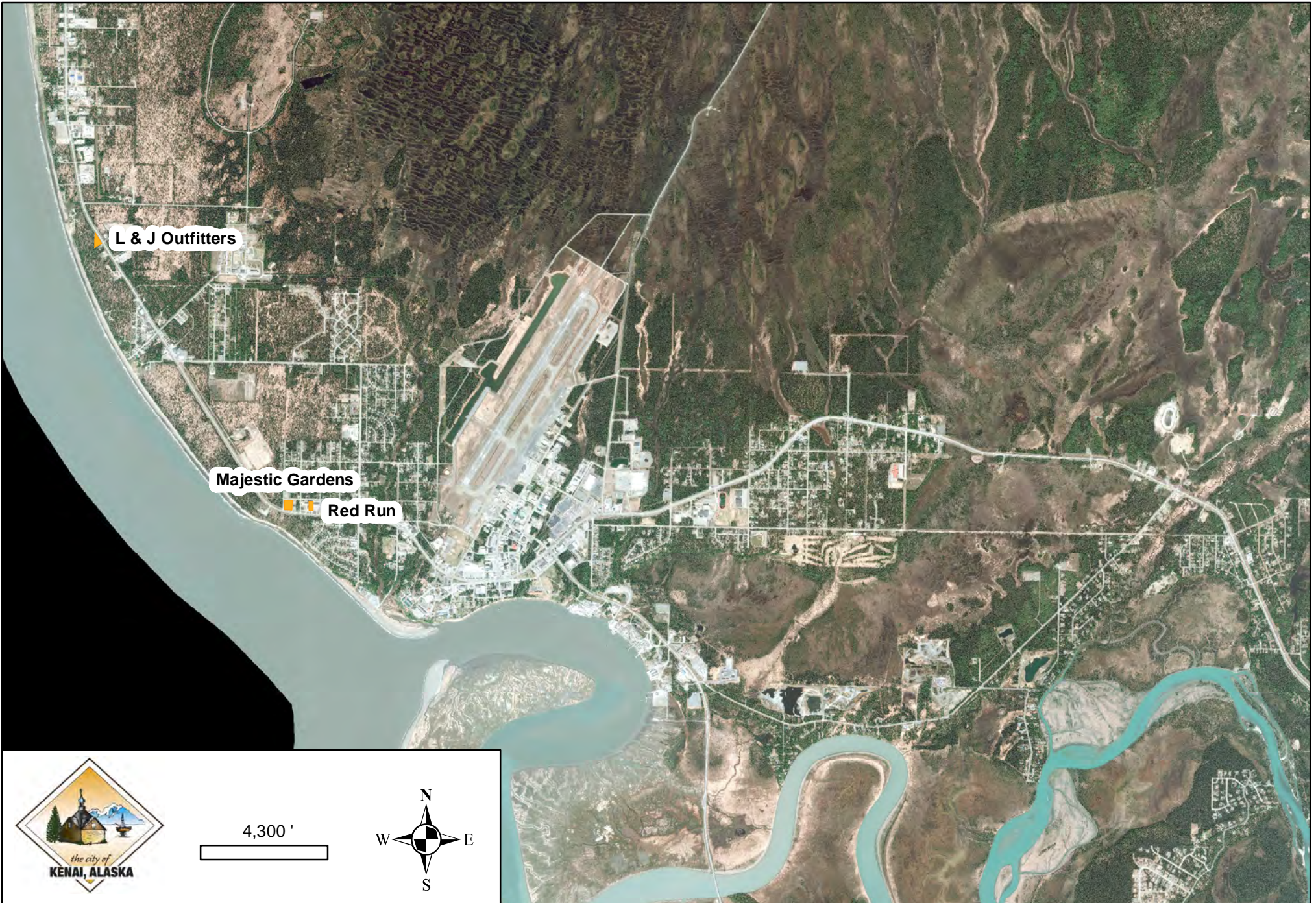
Page 64



Marijuana Cultivation Facilities



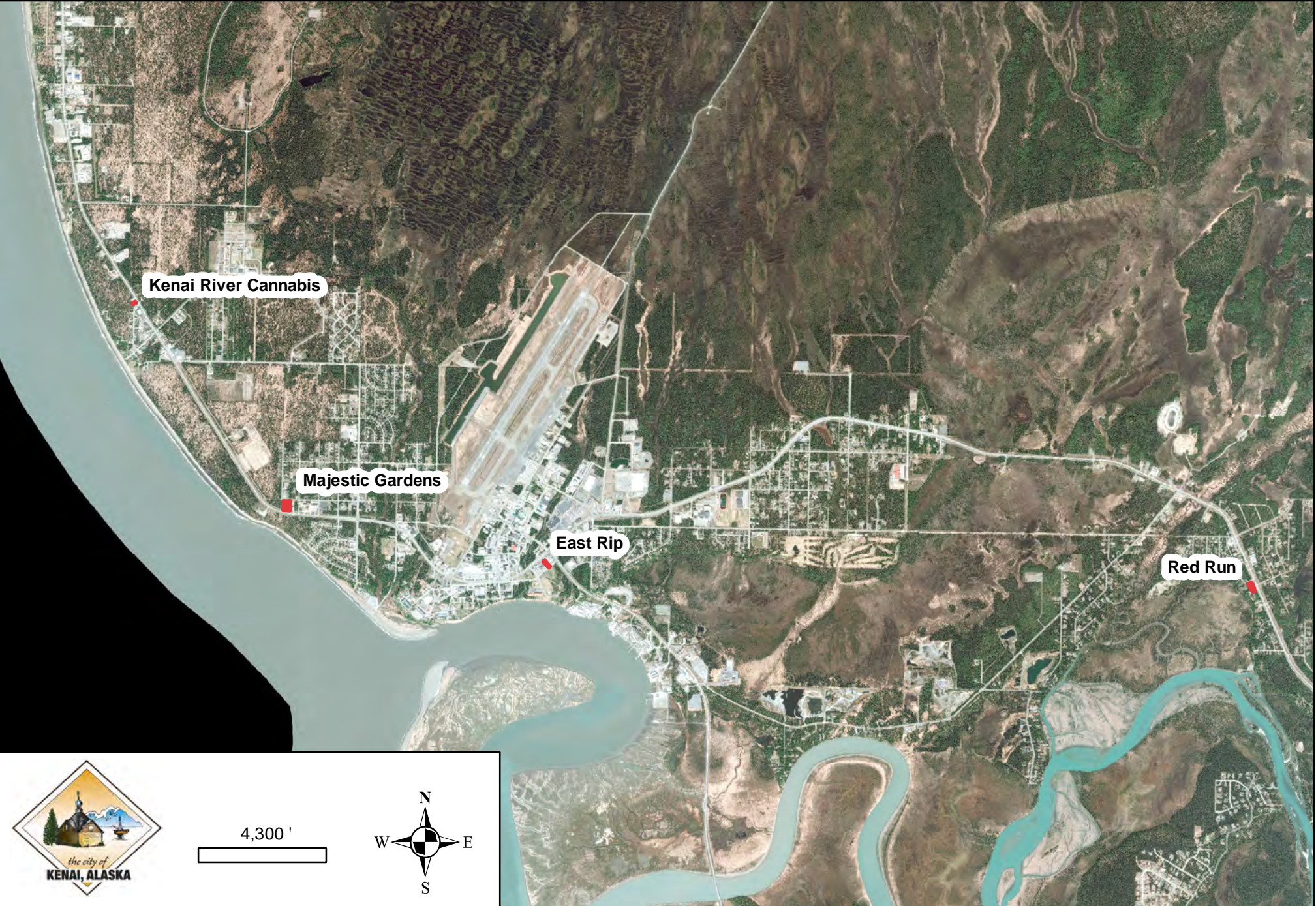
Marijuana Manufacturing Facilities



Marijuana Retail Stores

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NOTE OF OPPOSITION

PUBLIC COMMENT

Limiting hours of operations of Marijuana businesses is an unsupported and unjust ordinance.

The allowed hours of operation for the alcohol sales in the surrounding jurisdictions of Seward and Homer are the same as their allowed marijuana sales.

Anything otherwise is discriminating against marijuana retail stores, leaving unfair and unbalanced advantages in commerce.

Liquor stores and marijuana stores should withhold the same allowed hours of operation. Marijuana stores are like a liquor store in the fact that people go into a controlled environment to purchase their items and leave.

Comparing the advantages of commerce from the hours of operation in Soldotna, to the hours of operation in Kenai is unbalanced in the amount in tourist traffic they receive in the summer. Their needs as business owners are based on different economic values than the city of Kenai.

Thank you,



Clyde Spillman
Kenai AK

NOTE OF OPPOSITION

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Thank you,

Denise M. Jones
PO Box 3526
Kenai AK 99611

NOTE OF OPPOSITION

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Thank you,

David Autry
514 Hemlock Ave.
Kenai, AK 99611

NOTE OF OPPOSITION

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Thank you,

JEFFERY A. ROBINSON
701 N. FOREST DR.
KENAI AK, 99611



NOTE OF OPPOSITION

PUBLIC COMMENT

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Comparing the advantages of commerce from the hours of operation in Soldotna, to the hours of operation in Kenai is unbalanced in the amount in tourist traffic they receive in the summer. Their needs as business owners are based on different economic values than the city of Kenai.

Thank you,

Cathleen Pinkerton
1024 1st St.
Kenai, AK. 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,



4404 N. Dogwood Rd.
Kenai AK 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,



48487 Grant Ave.

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

 - Sherri Demello

47810 Michelle Ave. #1
Soldotna, AK. 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Cheryle Fitzpatrick Cheryle Fitzpatrick
name signature

8/23/19
Date

1503 Cottonwood Circle
Address (proof of residency, Kenai,

NOTE OF OPPOSITION

PUBLIC COMMENT

Limiting hours of operations of Marijuana businesses is an unsupported and unjust ordinance.

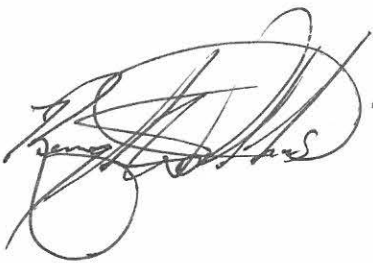
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Thank you,

- Remington Williams, 

- 1129 Alder Ave, Kenai, Alaska, 99611

NOTE OF OPPOSITION

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Thank you,

George Dalton George C Dalton III

09/22/2019/1503^A Cottonwood cr. Kenai, Ak
996611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Peter Strunk



9/22/19

202 S. Forest Dr #12
Kenai, AK 99611

NOTE OF OPPOSITION

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Thank you,

Tyles Strunk

Tyles Strunk

9/22/2019

202 S Forest #12, 99611 AK

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Thank you,

Shawnee Hunter

Shawnee Hunter

09/22/19

4409 N. Degwood Rd. Kenai, AK 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Anna E. Strunk Anna E. Strunk

9/22/19 202 S. Forest Kenai AK
99611

NOTE OF OPPOSITION

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Thank you, Arthur Joe Smith III [Signature]
9/22/19 421 Balcer APT 4

NOTE OF OPPOSITION

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Thank you,

Maissa Conner

Murphy

Sep. 22. 2019

47455 St. Andrews Ct. Soldotna AK 99669

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

M. Wall
09/27/19

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Miles Richardson

1545 Stellar Dr. Kenai AK 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Eara Dixon
1809 Julie Anna Dr. Kenai

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

STEVEN J GIRGUS

211 MCKINLEY RD

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Maureen DiFranco
47791 Baranoff Drive
Kenai, ALASKA USA
99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Danyel Isaacs

907 Highland Ave Apt #2 Kenai AK

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Mariah Saari
Tina Sui
90

1129 Alder Ave.
Kenai, AK

NOTE OF OPPOSITION

PUBLIC COMMENT

Uncalculated and unjust ordinance. Allowed hours of operation for the alcohol sales in the surrounding jurisdictions of Seward and Homer are the same as their allowed marijuana sales.

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Cazin L. YAGER, 907 Highland Ave. Kenai AK 

NOTE OF OPPOSITION

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Thank you,

Tammy Phillips
Linwood St Kenai

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Thank you,

KmeyerR

104 S. TINKER lane KENAI, AK ~~99508~~ 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Rose Naushman

1415 O'Brien Ct

Kenai, AK 99611

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Josh Haushman

1415 O'Brien Ct

Kenai, AK 99611

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Olav H. Fujell 1003 KAKINA WAY KENAI AK 99611

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Thank you,

Annmarie Squires
701 N. Forrest Dr. #19
Kenai, AK 99611

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Thank you,

ROBERT CAREW *Robert Carew* P.O. BOX 7307
NIKISKI 99635

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Thank you,



~~52~~ P.O. Box 2098
Kenai, AK 99611

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Thank you,

Amanda Olson

Amanda Olson 740-8787

2705 Seine St

Kenai, AK 99611



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Thank you,

 5702 Seine St Kenai

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Thank you,

Kristina Pace
411 Candlelight
Kenai AK 996
KristinaK Pace

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Thank you,

Austin Cunningham

Alpha Coughlin

1207 4th Ave. #2 Kenai AK 99681

NOTE OF OPPOSITION

PUBLIC COMMENT

Limiting hours of operations of Marijuana businesses is an unsupported and unjust ordinance.

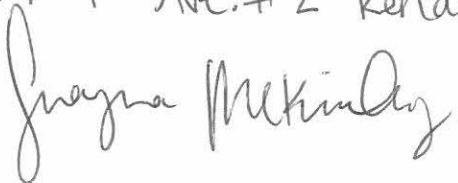
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Thank you,

Shayna M. McKinley
1207 4th Ave. #2 Kenai, AK 99611


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Thank you,

 - 907 513 8012
47787 Lady ave Soldotna AK 99669

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Thank you,

Charlene Benson

35955 Summerset Cr. Soldotna, AK
996611

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Thank you,



412 N Forest, C1
Kenai Ak
99611

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PUBLIC COMMENT

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Thank you,

Garrett N. Austin


2438 California Ave #4
Soldotna, AK 99611

NOTE OF OPPOSITION

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Thank you,

STEVE KENNARD
1104 2ND STREET
KENAI, AK 99611

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Thank you,



P.O. Box 16 Kenai, AK 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

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Thank you,

Shawn M. M. M.
216 Bonberose St
Kenai, AK 99511

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Thank you,

Michael Chaback
2438 California Ave #4
Kenai AK 99611

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*Seward Rest 714 Cypress Drive
Kenai*

Thank you,

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Thank you,

Curtis Plunn P.O. Box 3267

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Thank you,

Ron McCleary
P.O. Box 7415
N. Kiski, AK
99635

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Thank you,

KLAYTON JUSTICE ~~424~~ 585 TROWLES AVE. SOLDOTNA, 99669

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Thank you,

CHARLES ALLEN

5125 SILVER SALMON
#27



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Thank you,

Shanija Walters
48181 Woken Ct Kenai, AK
Shanija

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Thank you,



508 Pine Ave. Kenai AK 99611

P.O. Box 1103 Kenai AK 99611

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Jason Newman
P.O. Box 559 Kasiloff AK

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Thank you,

Deaton Jos 1709 4th ave Kenai AK 99611

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Thank you,

Ron Isaacs
620 Cedar Dr.
Kenai 99611

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Thank you,


404 birch street
907-690-2349
Joshua Barton

NOTE OF OPPOSITION

PUBLIC COMMENT

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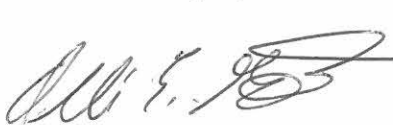
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Thank you,

 2824 J. L. Lomax

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Thank you,



Box 7311 NIKISRI

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Thank you,

Melby Pull

P.O. Box 542

Kenai AK 99611

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Thank you,

Richard C Rogers

RICHARD C ROBERS

1111 FIRST ST

Kenai AK 99611

907-741-0544

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Thank you,

Lindsay T. Sagami
46723 Pintail Ave
Kenai, AK

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Thank you,

Katherine Harrington
104 N. Gill
Kenai, AK. -99611-
283-5466

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Thank you,

Haylynn Pearce
313 Weller St Apt A
Kenai, AK 99601

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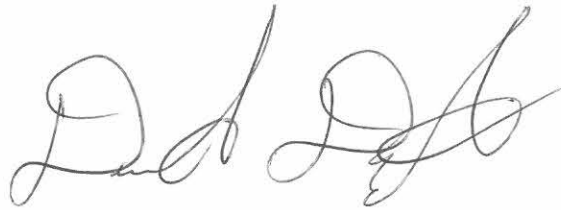
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1103 4th Ave

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Thank you,

Sheri Phillips
PO Box 163
Anchor Point AK 99556

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Thank you,

Kirra Kviteng PO BOX 8533

NIKISKI 😊
Kenai, AK
99635

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Jeff Hunt


P.O. Box 208 Anchorage Pt., AK 99554

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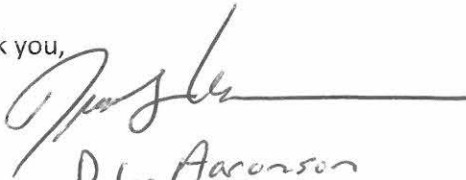
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D.L. Aronson

Kenai, AK

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Natasha Harrington

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Thank you,

Tammy Spillman
53105 Henley Ave.
Kenai, AK 99611

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Thank you,

Tiffany Case Tiffany Case P.O. Box 2381 Soldotna, AK 99669

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Thank you,

Kate Toloff
49832 Two Junes Ave
Kenai AK 99611-
0110

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Thank you,

BreAnna Hamman



1125 Alder Ave, Kenai, AK 99611

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Thank you,

Jens Bajowski

4 Fairbanks, AK 99712

JOB

MARIJUANA is way safer
& there are more alcohol related
Deaths per year than guns

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Thank you,

Christopher Jones 210 McIney St

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810 Peninsula Ave dr. apt # 21

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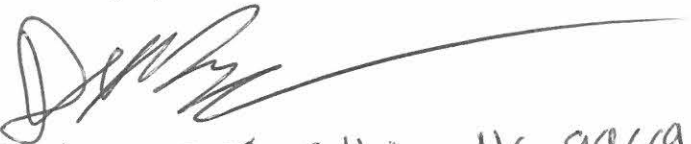
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Thank you,



P.O. Box 288 Soldotna, AK 99669

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Thank you,

A handwritten signature in black ink, appearing to be the initials 'AJ' with a stylized flourish.

810 Peninsula dr #21
Kenai AK 99611

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Shawn Isaacs - P.O. Box 3526


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Liquor stores and marijuana stores should withhold the same allowed hours of operation. Marijuana stores are like a liquor store in the fact that people go into a controlled environment to purchase their items and leave.

Comparing the advantages of commerce from the hours of operation in Soldotna, to the hours of operation in Kenai is unbalanced in the amount in tourist traffic they receive in the summer. Their needs as business owners are based on different economic values than the city of Kenai.

Thank you,


1121 Second St
Kenai, AK 99611

NOTE OF OPPOSITION

PUBLIC COMMENT

Limiting hours of operations of Marijuana businesses is an unsupported and unjust ordinance.

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Thank you,

Dustin S Kulbroth 35970 Sunset PK ST Soldotna, AK
JD Perkins 2438 California Ave 99611 Kenai, AK

NOTE OF OPPOSITION

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Thank you,


Tessy L. Ashley
2703 William Rd
Kenai, AK

NOTE OF OPPOSITION

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Thank you,

Paul S Felton
PAUL FELTON BOX 7377 NIKISKI

NOTE OF OPPOSITION

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Thank you,

Natalie Richards

1513 Pine Ave

Kenai, AK 99611

907-252-7893

NOTE OF OPPOSITION

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Thank you,

Clarissa Wrate
PO Box 816
Kenai AK 99610

NOTE OF OPPOSITION

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Thank you,

Shawn T Kuhuski
197 East Redoubt #4
Soldotna 99669

NOTE OF OPPOSITION

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Thank you,


Anna B Pond
313 Portlock st
99611 Kenai, AK

NOTE OF OPPOSITION

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Thank you,

A handwritten signature in cursive script, appearing to read "Susa Qui".

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Thank you,

Jordan Collins

PO BOX 1443

Kenai AK, 99611

NOTE OF OPPOSITION

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Thank you,

Felicia Wall
P.O. Box 1443
Kenai AK 99611

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Thank you,
Joshua Redington PO BOX 550 STERLING

NOTE OF OPPOSITION

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Thank you,

A handwritten signature in black ink, appearing to be "K. H. H. H.", written over a horizontal line.

44199 Wallers Street
Kenai AK 99611

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313 PortLock St
Kenai AK 99611

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Thank you,

 KLAYTON JUSTICE

PO Box 1001
STERLING AK

NOTE OF OPPOSITION

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Thank you,

SeD Chapman
511 South Willow #20
Kenai AK 99611

**KENAI CITY COUNCIL – REGULAR MEETING
 SEPTEMBER 18, 2019 – 6:00 P.M.
 KENAI CITY COUNCIL CHAMBERS
 210 FIDALGO AVE., KENAI, AK 99611
 VICE MAYOR TIM NAVARRE, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai City Council was held on September 18, 2019, in City Hall Council Chambers, Kenai, AK. Vice Mayor Navarre called the meeting to order at approximately 6:00 p.m.

1. Pledge of Allegiance

Vice Mayor Navarre led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Brian Gabriel, Mayor (absent)	Robert Molloy
Henry Knackstedt	Tim Navarre
Jim Glendening	Robert Peterkin (absent)
Glenese Pettey	

A quorum was present.

Also in attendance were:

Paul Ostrander, City Manager
 Jamie Heinz, City Clerk

3. Agenda Approval

Vice Mayor Navarre noted the following revisions to the packet:

Add to item G.4.	Approving Election Workers <ul style="list-style-type: none"> • Substitute Memo
Add to item G.9.	Assignment of Shore Fishery Lease <ul style="list-style-type: none"> • Supplemental Memo
Add to item G.10.	Assignment of Tidelands Lease <ul style="list-style-type: none"> • Supplemental Memo
Add to item J.1.	City Manager's Report <ul style="list-style-type: none"> • Fire Department Mid-month Report

Add item B.1. Assembly Member Brent Hibbert

MOTION:

Council Member Molloy **MOVED** to approve the agenda with the requested revisions to the packet and the addition of Brent Hibbert as Scheduled Public Comment and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

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

4. Consent Agenda

MOTION:

Council Member Knackstedt **MOVED** to approve the consent agenda and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

Vice Mayor Navarre opened the floor for public comment.

Ron Isaacs stated objection to the Ordinance No. 3088-2019 noting Seward hours of operation for marijuana stores were mentioned and pointed out that Seward bars were also required to close at 2:00 a.m. He pointed out that Homer wasn't discussed in the staff report but their marijuana stores and bars both closed at 5:00 a.m. Finally, he suggested it was a disadvantage to marijuana stores to close at 2:00 a.m. when bars were open until 5:00 a.m.

Ryan Tunseth spoke against Ordinance No. 3088-2019 suggesting the City look for opportunities to grow its economy suggesting that with both topics of onsite consumption and hours of operation, there may be someone that can assist the economy with those business ventures. He asked that consideration be given to what could be done to support business. Mr. Tunseth also provided an update on recent matters before the Marijuana Control Board, issues the Director wanted addressed by the legislature. He also discussed recent deaths from vaping and pointed out that the vape juice was coming from black market sources and contained Vitamin E Acetate which was outlawed in the State of Alaska.

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

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

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

B. SCHEDULED PUBLIC COMMENTS

[Clerk's Note: This item was added to the agenda during approval of the agenda.]

- 1. Brent Hibbert, Assembly Member – Kenai Peninsula Borough Assembly Update.**

Assembly Member Hibbert provided an update on Borough Assembly action from September 17 noting they also toured the South Peninsula Hospital and observed parking issues.

C. UNSCHEDULED PUBLIC COMMENTS

Lisa Coates expressed appreciation for being included in Industry Appreciation Day. She noted her business created marijuana vape cartridges but their product didn't have any of the additives that were being reported in the news. She further noted that, as a manufacturer she gets inquiries 24 hours a day, seven days a week and encouraged Council to not judge folks purchasing marijuana products. She pointed out that some consumers may be working a night shift or in pain and marijuana provided options adding that they needed to make a purchase in the middle of the night, and there was a storeowner that could make a sale, they should be allowed.

D. PUBLIC HEARINGS

1. **Ordinance No. 3084-2019** - Increasing Estimated Revenues and Appropriations in the General Fund for Reimbursement Received for Support of the Swan Lake Fire Suppression Efforts. (Administration)

MOTION:

Council Member Molloy **MOVED** to enact Ordinance No. 3084-2019 and Council Member Knackstedt **SECONDED** the motion.

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

Kenai Fire Department and the Division of Forestry were thanked for their efforts on the Swan Lake Fire.

Clarification was provided that the additional funds were in the General Fund until appropriation.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Navarre, Molloy

NAY:

MOTION PASSED UNANIMOUSLY.

2. **Resolution No. 2019-64** - Approving an Agency Fund Agreement with Kenai Senior Connection, Inc. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-64 and Council Member Glendening **SECONDED** the motion.

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

Clarification was provided that the funds would be segregated and tracked internally and would be subject to Freedom of Information Act requests; information regarding the funds would be provided in the annual Comprehensive Annual Financial Report.

UNANIMOUS CONSENT was requested.

There was objection to unanimous consent.

VOTE:

YEA: Knackstedt, Glendening, Pettey, Molloy, Navarre

NAY:

MOTION PASSED UNANIMOUSLY.

3. **Resolution No. 2019-65** - Adopting Joint Resolution No. 2019-001 of the Assembly of the Kenai Peninsula Borough and Councils of the Cities of Homer, Kachemak, Kenai, Seldovia, Seward, and Soldotna, Recognizing the Recommendations of the Kenai Peninsula Borough's Election Stakeholder's Group and Directing Staff to Explore Implementation of the Recommendations. (Council Member Peterkin)

MOTION:

Council Member Molloy **MOVED** to adopt Resolution No. 2019-65 and Council Member Knackstedt **SECONDED** the motion.

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

The Clerk provided an overview of the Election Stakeholder Group formed by the Kenai Peninsula Borough, the guiding principles they developed, the meetings they conducted, and the final recommendations they produced. She noted the resolution supported her in the exploration of implementation of the Election Stakeholder Group's recommendations at the City level and providing information to the Council for future action.

Clarification was provided that the resolution recognized the recommendations of the Election Stakeholder Group and was not supporting them; also clarified that only two recommendations had an impact on the City's elections.

VOTE:

YEA: Knackstedt, Pettey, Molloy, Navarre

NAY: Glendening

MOTION PASSED.

4. **Resolution No. 2019-66** - Approving a One year Extension for Facility Management Services at the City of Kenai Multi-Purpose Facility. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-66 and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

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

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

E. MINUTES

1. *Regular Meeting of September 4, 2019

Approved by the consent agenda.

2. *Work Session of September 3, 2019

Approved by the consent agenda.

F. UNFINISHED BUSINESS – None.

G. NEW BUSINESS

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

Approved by the consent agenda.

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

Approved by the consent agenda.

3. ***Action/Approval** - Non-Objection to the Renewal of a Marijuana Product Manufacturing Facility License and a Standard Marijuana Cultivation Facility License for Red Run Cannabis Cultivators, LLC, a Retail Marijuana Store License for Red Run Cannabis Company, LLC, and a Limited Marijuana Cultivation Facility License for Grateful Bud, LLC. (City Clerk)

Approved by the consent agenda.

4. **Action/Approval** - Approving Election Workers for the October 1, 2019 Regular Election. (City Clerk)

MOTION:

Council Member Molloy **MOVED** to approve the election workers for the October 1, 2019 Regular Election as provided by the City Clerk in the laydown and Council Member Knackstedt **SECONDED** the motion.

The Clerk read the names of those who had agreed to work as election workers; gratitude was expressed for their willingness to work in support of the election.

UNANIMOUS CONSENT was requested.

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

5. ***Ordinance No. 3085-2019** - Authorizing the Appropriation of \$44,345.00 from the Water and Sewer Fund for the Purchase of Well Radius Property to Protect the City's Public Water System. (Administration)

Introduced by the consent agenda and public hearing set for October 2.

6. ***Ordinance No. 3086-2019** - Accepting and Appropriating a Grant from the Rasmuson Foundation and Accepting and Appropriating Private Donations in the Senior Center Capital Improvement Fund for the Purchase of New Flooring for the Dining Room and Administration Offices of the Kenai Senior Center. (Administration)

Introduced by the consent agenda and public hearing set for October 2.

7. ***Ordinance No. 3087-2019** - Authorizing a Budget Transfer in the Senior Center Capital Improvement Fund and Increasing Estimated Revenues and Appropriations in the Public Safety Improvement Capital Project Fund to Provide Supplemental Funding for the Fire Department Kitchen Remodel Project. (Administration)

Introduced by the consent agenda and public hearing set for October 2.

8. ***Ordinance No. 3088-2019** - Amending Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, to Incorporate Limitations on Hours of Operation for Retail Marijuana Establishments. (Administration)

Introduced by the consent agenda and public hearing set for October 2.

9. **Action/Approval** - Assignment of Shore Fishery Lease from Michael Markham to Nancy Hillman-Scow for Tract Two, Shore Fishery Plat No. 71. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to approve the assignment of shore fishery lease from Michael Markham to Nancy Hillman-Scow for Tract Two, Shore Fishery Plat No. 71 and Council Member Glendening **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

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

10. **Action/Approval** - Assignment of Tidelands Lease from Snug Harbor Seafoods, Inc., to CRS Can Operate, Inc., for Tract B, Kenai Tidelands Survey No. 2, According to Plat No. 89-2. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to approve the assignment of tidelands lease from Snug Harbor Seafoods, Inc., to CRS Can Operate, Inc., for Tract B, Kenai Tidelands Survey No. 2, according to Plat No. 89-2 and Council Member Molloy **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

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

- 11. Action/Approval** - Assignment of Three (3) Kenai Municipal Airport Reserve Leases from SOAR International Ministries, Inc., to Schilling Rentals, LLC, for Lot 3, Block 1 and Lot 2, Block 3, General Aviation Apron Subdivision No. 1 Amended and Lot 1A, Block 2, General Aviation Subdivision No. 3. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to approve the assignment of three (3) Kenai Municipal Airport Reserve Leases from SOAR International Ministries, Inc., to Schilling Rentals, LLC for Lot 3, Block 1 and Lot 2, Block 3, General Aviation Apron Subdivision No. 1 Amended and Lot 1A, Block 2, General Aviation Subdivision No. 3. Council Member Molloy **SECONDED** the motion and requested **UNANIMOUS CONSENT.**

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

H. COMMISSION/COMMITTEE REPORTS

1. Council on Aging – It was reported that at their September 12 meeting the Council on Aging discussed implementation of a Code of Conduct and what should be included; will have ongoing discussion at the next meeting on October 10.
2. Airport Commission – It was reported that the Commission didn't have a quorum at their September 12 meeting; next meeting October 10.
3. Harbor Commission – It was reported that the Commission recommended approval of the assignments of the Shore Fishery lease and Tidelands lease; next meeting November 12.
4. Parks and Recreation Commission – It was reported that the Commission discussed upcoming events and the Parks and Recreation department was soliciting for poems for pathways of poetry; next meeting October 3.
5. Planning and Zoning Commission – It was reported that at their September 11 meeting the Commission approved a preliminary plat and the transfer of a Conditional Use Permit; next meeting September 25.
6. Beautification Committee – It was reported the Committee discussed a Poppy Flower Bed at Leif Hansen Memorial Park; next meeting October 8.
7. Mini-Grant Steering Committee – No report.

I. REPORT OF THE MAYOR

Vice Mayor Navarre reported on the following:

- He attended the Chamber of Commerce Luncheon;
- Would present information at the Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse meetings on September 24 on behalf of the Mayor.

J. ADMINISTRATION REPORTS

1. City Manager –City Manager P. Ostrander reported on the following:
 - Spoke with Unocal Retirees who were engaged with the Senior Center;
 - Work ongoing with the Soldotna City Manager on the Upper Cook Inlet meeting and the creation of a fact sheet and rationale for a rotational schedule;
 - Worked with Dr. Hanson regarding the location of the Bush Doctor’s Cabin at the Visitor’s Center;
 - Noted good participation with the Silver Salmon Derby despite tough fishing; purse anticipated around \$1,200;
 - Contracted with Divining Point to develop a brand for Kenai; money would remain in the budget for actual marketing;
 - Kenai’s request to use a portion of its matching funds for the design phase of the Bluff Erosion Project had been forwarded from the Alaska Division to headquarters;
 - Mr. Boyle from Senator Murkowski’s office had added language to a bill to fund the Bluff Erosion Project which was above and beyond just the design phase which was what was asked for; and
 - Noted upcoming leave.
2. City Attorney – No Report.
3. City Clerk – City Clerk J. Heinz reported on the upcoming election and absentee voting, noted the upcoming Alaska Municipal League Conference, and noted she had worked with Council Member Knackstedt and recommended a new iPad application if anyone was interested in a Work Session to learn about it.

K. ADDITIONAL PUBLIC COMMENT

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

Bob Peters thanked Mayor Gabriel and Council Members Petty and Glendening for running a clean campaign. He also asked about regulations regarding camping on the beach noting he had observed several campsites on beaches which were not a part of the dipnet fishery. Finally, he asked about crime tape on the beach. It was noted the City Manager would look into the camping situations and the area with the crime tape was an ongoing investigation and could not be discussed.

2. Council Comments

Council Member Pettey expressed appreciation regarding Mr. Peters’ comments, adding that she was not using campaign signs this year to honor complaints from the past about the signs. She also encouraged everyone to get out and vote and provided a reminder regarding the Harvest Art Auction.

Council Member Glendening noted election technology was outdated and election policies were a complex issue; promoted participation for all borough voters and broadening the base of political opportunity.

Council Member Molloy congratulated his colleagues on the ballot, wished them well, and noted appreciation for their willingness to continue their service to the City. He noted he believed

Service Area Boards should be elected instead of appointed by administration and adoption of Resolution No. 2019-65 was simply recognizing the recommendations of the Election Stakeholder Group. He also expressed concern with going completely by mail noting he liked going to polls and hated to see that part of voting go away.

Council Member Knackstedt noted it was important to have a voice in the election discussion and felt a “no” vote took away our voice, noted construction in the Beaver Loop Road area, and noted he attended the Chamber of Commerce luncheon and listened to assembly hopefuls. He also pointed out that a constituent asked him if the City of Kenai was also going to ban plastic bags, discussed conversations he’d had with constituents regarding bags, and mentioned reasons to keep them.

Vice Mayor Navarre noted he attended Nels Anderson’s memorial service in Soldotna and thanked the community for honoring his service to the community. Noted that people don’t typically run for Service Area Boards that then requires their being filled by the Mayor and Assembly; suggested giving a two-year period and, if a service area filled all seats by election, then that area would not move to an appointment based procedure. He also encouraged continued education regarding plastic bags so people looked at the environment and made a choice.

L. **EXECUTIVE SESSION** – None.

M. **PENDING ITEMS**

1. **Ordinance No. 3072-2019** - Renaming, Repealing and Re-Enacting Kenai Municipal Code Title 22-General Fund Lands, Renaming Title 21-City Airport and Airport Lands, and Repealing Kenai Municipal Code Chapter 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve to Encourage Responsible Growth and Development to Support a Thriving Business, Residential, Recreational and Cultural Community through Responsible Land Policies and Practices. (Administration) *[Clerk’s Note: At the September 4 Meeting, this item was Postponed to the October 2 Council Meeting. A Motion to Enact as Amended is On the Floor.]*
2. **Ordinance No. 3083-2019** - Amending Kenai Municipal Code 14.20.175 - Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1000 Feet And Define Sensitive Uses. (Council Member Pettey) *[Clerk’s Note: At the September 4 Meeting, this item was Referred to the Planning & Zoning Commission for a Recommendation and to be Scheduled for a Second Public Hearing at the October 2. A Motion to Enact as Amended is On the Floor.]*
3. **Resolution No. 2019-58** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes to Application Fees for Lands Outside the Airport Reserve. (Administration) *[Clerk’s Note: At the September 4 Meeting, this item was Postponed to the October 2 Council Meeting. A Motion to Enact is On the Floor.]*

N. **ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 7:37 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of September 18, 2019.

Jamie Heinz, CMC
City Clerk



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3072-2019 (SUBSTITUTE)

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 enact Ordinance No. 3072-2019; and,

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

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

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 purpose, 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. Lands leased, sold or disposed of must be of appropriate size for the intended development or use to meet the intent of this Chapter. Council may require a subdivision prior to lease, sale or disposal of lands.

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 Manager or designee 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. The recommendation may include a recommendation for a subdivision to reduce or enlarge a parcel to meet the intended development or use.

(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, renewal, amendment or extension is consistent with the intent of this Chapter and in the best interest of the City. 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 Manager or designee 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 or purchase agreement dated within one (1) year of the requested starting date of the renewal; 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 or purchase agreement dated within one (1) year of the requested starting date of the renewal 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 dated within one (1) year of the requested starting date of the renewal 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 interest 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 or purchase agreement, 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 or purchase agreement, 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 interest 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 interest 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 interest 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 in the best interest of the City, 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 in the best interest of 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, including lands held for the use and benefit of the Airport 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 in the best interest of 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 or exchange for less than equal value shall require a deposit in the amount of the difference 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 Manager or designee on approved forms provided by the City. Applications will be dated on receipt and payment of the nonrefundable application fee and must include applicable deposit as set forth in the City's schedule of fees adopted by the City Council. The City Council may decide to sell lands consistent with the intent of this Chapter after a recommendation from the City Manager and any appropriate City commission. The City Council may always recommend a lease as opposed to a sale when in the best interest of the City and consistent with the intent of this Chapter.

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

(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 Purpose.

(a) Whether land shall be acquired, retained, devoted, or dedicated to a public purpose shall be determined by ordinance which shall contain the public purpose 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 purpose should be dedicated to a different public purpose or should no longer be needed for public purpose 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 purpose for which the property is to be dedicated or the reason the land is no longer needed for public purpose, 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 best interest of the City 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 2nd day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: August 7, 2019
Public Hearing: August 21, 2019
Second Public Hearing: September 4, 2019
Enacted: October 2, 2019
Effective: November 1, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom City Attorney
DATE: July 31, 2019
SUBJECT: **Ordinance No. 3072-2019 – City Owned Lands**

Introduction:

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

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

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

Procedure:

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



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

Sectional Analysis:

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

- 11. Former KMC 22.05.030:** This section formerly titled “Filing Fee and Deposit” is repealed in its entirety, as fees and deposits are now addressed in KMC 22.05.025 and other sections of code.
- 12. KMC 22.05.035:** “No Right of Occupancy-Lease Application Expiration,” formerly titled “Rights Prior to Leasing,” clarifies that submission of a lease application does not give an applicant the right to lease or occupy the land. It also provides that a lease application expires within 12 months of the date of submission, upon execution of a lease, or rejection of the application by the Council.
- 13. KMC 22.05.040:** “Lease Application Review” formerly titled “Processing Procedure” provides the following review process:

 - (i) Administration reviews for completeness and conformance with City ordinances,
 - (ii) If complete, Manager forwards to appropriate commissions for review and comment together with a Manager’s recommendation for approval or rejection,
 - (iii) Notice of complete applications are published and posted on the property, with a date in which any competing applications must be received,
 - (iv) The recommendations of the City Manager and any applicable commissions are provided to Council, which decides whether the application meets the intent of the code and whether the application should be approved.
- 14. KMC 22.05.045:** “Application for Lease Amendment, Assignment, Extension or Renewal,” formally “Review,” provides the process for lease amendments, assignments, extensions, or renewals. Similar to the airport reserve properties, the term of a lease can be based on other factors than new development, such as the purchase price or estimated remaining useful life of improvements. These transactions are generally reviewed by the City in the same way as a new lease application, although lease assignments are not required to be reviewed by planning and zoning.
- 15. KMC 22.05.050:** “Competing Lease Applications,” replaces former “Appraisal,” to provide a process for evaluating competing lease applications. Information regarding appraisal requirements has been incorporated into other code sections. When more than one application is submitted for a property, the Council can choose which applicant to lease to based on which application is found to be in the best interest of the City, after review and recommendation by the City Manager and applicable commissions. A safe harbor is provided for existing lessees seeking an extension or renewal, by allowing them to withdraw their application and stop the competitive process at any time prior to Council making a decision.
- 16. KMC 22.05.055:** “Length of Lease Term” describes how the term of a new lease, extension, or renewal is determined. The term table matches that of the term table for properties within the airport reserve. Development of \$307,500 or greater receives the maximum term of 45 years. The term of a lease can also be determined by the purchase price of improvements, an appraisal value of improvements, or the remaining useful life of improvements depending on the transaction.
- 17. KMC 22.05.060:** “Principals and Policy of Lease Rates” was formerly 22.05.070. This provides that annual rent is based on 8% of the fair market value of the land. Annual rental adjustments are based on the Consumer Price Index (CPI). Every ten years, or pursuant to extraordinary circumstances, the City will conduct a market analysis to determine whether its rates and adjustments are in line with the market or whether changes need to be made. A process for a lessee to appeal is provided in this section as well, however, CPI adjustments are not appealable.
- 18. KMC 22.05.65:** “Lease Bidding Procedure” provides a process for the City to designate lots to be leased through a competitive bid process to the highest bidder.

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

Title 22

[GENERAL FUND]CITY-OWNED LANDS

Chapter 22.05

DISPOSITION OF CITY [GENERAL FUND]LANDS

22.05.05 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.05.025 Initial Lease Application[S].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[22.05.030 FILING FEE AND DEPOSIT.

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

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

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

(A) AN APPRAISAL COST RECOVERY DEPOSIT; AND

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

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

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

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

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

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

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

22.05.040 [PROCESSING PROCEDURE] Lease Application Review.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The purpose of the proposed amendment;

(2) The proposed change in use or activity, if any;

(3) A comprehensive description of the proposed business or activity, if applicable; and

(4) How the proposed amendment meets the intent of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[22.05.050 APPRAISAL.

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

22.05.050 Competing Lease Applications.

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

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

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

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

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

Term Table

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.05.065 [B]Lease Bidding [P]Procedure.

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

[22.05.070 PRINCIPLES AND POLICY OF LEASE RATES.

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

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

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

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

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

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

22.05.075 REIMBURSEMENT FOR CITY-CONSTRUCTED IMPROVEMENTS.

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

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

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

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

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

22.05.070 Development Incentives.

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

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

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

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

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

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

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

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

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

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

22.05.075 Ownership of Improvements.

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

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

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

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

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

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

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

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

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

22.05.080 Lease [E]Execution.

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

22.05.085 Lease [U]Utilization.

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

22.05.086 Form of Lease.

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

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

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

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

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

(5) Adopted by resolution of the City Council.

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

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

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

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

22.05.087 Lease Payments.

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

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

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

[22.05.090 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.

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

22.05.095 [S]Methods of Sale or Disposal.

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

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

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

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

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

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

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

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

(2) [BY]Competitive process:

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

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

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

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

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

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

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

22.05.100 Sale [P]Procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(I)]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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.05.060 Principles and Policy of Lease Rates.

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

22.05.065 Lease Bidding Procedure.

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

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

22.05.070 Development Incentives.

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

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

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

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

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

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

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

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

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

22.05.075 Ownership of Improvements.

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

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

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

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

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

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

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

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

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

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

22.05.080 Lease Execution.

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

22.05.085 Lease Utilization.

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

22.05.086 Form of Lease.

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

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

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

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

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

(5) Adopted by resolution of the City Council.

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

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

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

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

22.05.087 Lease Payments.

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

22.05.095 Methods of Sale or Disposal.

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

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

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

22.05.100 Sale Procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.05.101 No Right of Occupancy – Land Purchase Application Expiration.

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

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

22.05.105 Terms for Financing Sale of City-Owned Lands.

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

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

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

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

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

22.05.110 Determination as to Need for Public Use.

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

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

22.05.130 Special Use Permits.

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

22.05.135 Acquisition of Real Property.

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

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



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Paul Ostrander, City manager and Scott Bloom, City Attorney

DATE: September 4, 2019

SUBJECT: **Ordinance No. 3072 – 2019 (Substitute)**

This memorandum discusses recommended changes to Ordinance No. 3072-2019 from previous amendment memos and Council's work session on September 3, 2019. Recommended changes are shown in red. The recommended amendments are incorporated into the Substitute Ordinance. Your consideration is appreciated.

1. Including "purchase agreement" where a "bill of sale" is referenced.

When there is a transaction between a current lessee and purchaser of the lessee's interest on leased City land, the proposed Code allows for the lease to be renewed and the new term for the purchaser to be based on the sales price of the existing lessee's improvements on the premises. The term of the renewed lease offered by the City was proposed to be based on a bill of sale. The issue was raised that there may not be a bill of sale until a renewal is approved by the City, as the transaction between the private parties may be contingent on a renewal. This issue is addressed by allowing the City to base the term of a renewed lease on a bill of sale or a purchase agreement. These changes are in the Substitute in 22.05.045 and 22.05.055 as shown below.

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 **or purchase agreement**; 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 **or purchase agreement** 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.

22.05.055 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 **or purchase agreement**, 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 **or purchase agreement**, 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.

2. Clarifying that applications for a lease or purchase need to be provided to the City Manager or designee.

It was brought to Administration's attention that the proposed Ordinance provides for applications for lease or purchase to be submitted to the "City", which by definition includes its elected officials, whom should not be accepting applications. To address this, the Substitute provides for applications to be submitted to City Manager or designee.

22.05.025 Initial Lease Application.

(a) All applications for lease of lands must be submitted to the City **Manager or designee** 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.

22.05.045 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 **Manager or designee** 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.

22.05.100 Sale Procedure.

- (a) All requests to purchase City land must be submitted to the City **Manager or designee** 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.

3. Providing consistency in the use of the term "best interest."

The Ordinance uses the terms "best interest", "best interests", "advantageous", "beneficial" and "serves other City purposes" to guide the City Council in making decisions whether to lease or sell land, or share in subdivision costs. In order to provide consistency, the Substitute proposes

to uses the term “best interest” except in reference to sharing subdivision costs. When the question is whether the City should share in costs of a subdivision proposed by the applicant lessee or purchaser, the relevant question is, does the subdivision benefit the City beyond facilitating the sale? In cases of sharing subdivision costs, there is not a recommended change from “other City purposes” to “best interest” Where the term “best interest” is already used and where “other City purpose” is used, the language is provided below in blue to show how the terms are used throughout the Ordinance.

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.

22.05.045 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.

22.05.075 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.

22.05.086 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.

22.05.095 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 in the best interest of~~ ~~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~~ ~~in the best interest of~~ 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~~ ~~in the best interest of~~ 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.

22.05.135 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 best interest of the City** 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.

4. Clarifying when appraisals must be obtained and how long they are valid for.

City land must generally be leased or sold at not less than fair market value. In order to ensure this occurs, the Code requires a recent appraisal, within one year. An appraisal is required by the FAA for land exchanges, typically the FAA requires review of sale or lease of properties one year from the date of submission of the appraisal. Banks and other lenders consider six months to be the optimum timeframe for appraisals pertaining to commercial property and three months for residential property. Because the City's standard is already generous in allowing an appraisal up to one year from the date of sale, costs of the appraisal are refunded to the applicant upon execution of a lease or sale, and the provision is consistent with other Code chapters, administration does not recommend any changes. The sections below show in blue where the one year requirement is contained in the Chapter for Council's review.

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.

22.05.095 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.

5. Clarifying that decisions to lease or sell property are legislative decision made in the sole discretion of the City Council.

The intent of the Ordinance is that before land can be leased or sold, the Council must first determine that the lease or sale meets the intent of the Chapter, that the lease or sale encourages responsible growth and development to support a thriving business, residential, recreational and cultural community. If this determination is made, then Council can decide whether the lease or sale is in the best interest of the City. The following amendments clarify this are incorporated in the Ordinance:

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, **renewal, amendment or extension** is consistent with the intent of this **Chapter and in the best interest of the City**. 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 .

6. Providing consistency in the terms “Public Purpose” and “Public Use.”

The Ordinance uses the terms “public purpose” and “public use.” While public use can be different from a public purpose, for example, a buffer or future use could be for a public purpose, but not necessarily public use, public purpose includes all public uses. The Substitute uses only the term “public purpose” as shown below (red indicates changes, blue shows where the term is already used):

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, purpose~~ 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 use, purpose~~ 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.

22.05.095 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.

22.05.110 Determination as to Need for Public ~~Use-Purpose~~.

(a) Whether land shall be acquired, retained, devoted, or dedicated to a public ~~purpose use~~ shall be determined by ordinance which shall contain the public ~~purpose 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 ~~purpose use~~ should be dedicated to a different public ~~purpose use~~ or should no longer be needed for public ~~purpose 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 ~~purpose use~~ for which the property is to be dedicated or the reason the land is no longer needed for public ~~purpose 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.

22.05.135 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.

7. Clarifying that 'Airport Land' can be exchanged.

There were questions whether the Ordinance clearly indicates that 'Airport' lands or lands restricted by the FAA can be exchanged. The intent is to allow for Airport land exchanges subject to FAA rules and regulations. The following changes in the substitute clarify this:

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, including lands held for the use and benefit of the Airport, 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 or exchange for less than equal 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.

8. Clarifying that a bill of sale, purchase agreement, or estimate of remaining useful life can only be used within one year of a transaction for purposes of a renewal of a lease.

A lease renewal can be approved along with a new lease term based on a bill of sale, purchase agreement (new in Substitute) or professional estimate of the remaining useful life of an existing improvement. The amendment below clarifies that the renewal must occur within one year of the bill of sale, purchase agreement, or professional estimate to be used to determine the term as shown below:

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

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

(1) For a lease renewal of an existing lease: (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 dated within one (1) year of the requested starting date of the renewal; and

(2) For a lease renewal of an expiring lease: (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 dated within one (1) year of the requested starting date of the renewal 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 dated within one (1) year of the requested starting date of the renewal and how it was determined;

9. Clarifying that the City should not sell large parcels of land when only a portion is needed for the intended use.

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

22.05.015 Lands Available for Lease, Sale or Disposal.

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

22.05.040 Lease Application Review.

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

22.05.100 Sale Procedure.

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

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



**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,

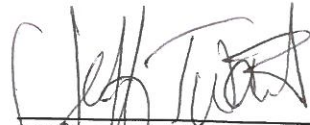
WHEREAS, the changes will not adversely impact residential areas of the City and will maintain or improve the quality of life in the City; and,

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.

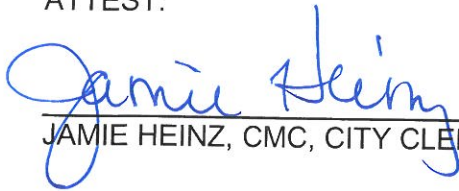
Section 2. That a copy of Resolution PZ2019-32 be forwarded to the Kenai City Council.

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

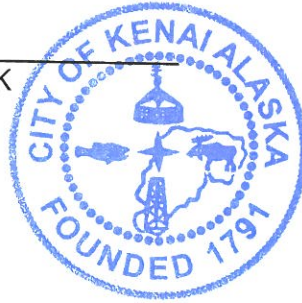


JEFF TWAIT, CHAIRPERSON

ATTEST:



JAMIE HEINZ, CMC, CITY CLERK





"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 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

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

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



210 Fidalgo Avenue, Kenai, AKMCKa 99611-7794
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www.kenai.city

MEMORANDUM

TO: Mayor Gabriel, Council Members, Administration
FROM: Council Member Molloy 
DATE: September 25, 2019
SUBJECT: Ordinance No. 3072-2019 (Substitute), City Owned Lands

There are potential amendments to this substitute ordinance that I may offer for Council's consideration. Council's support of these amendments is respectfully requested.

Move to amend KMC 22.05.010 Authority and Intent, Paragraph (c), [p. 33 ORD SUB]:

(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, and the retention or acquisition of land needed or that may be needed for a public purpose.

Rationale: The statement of intent should include reference to Council's responsibility for determination of what city lands should be retained or acquired for a public purpose, or are no longer needed for a public purpose. See proposed KMC 22.05.110 **Determination as to Need for Public Purpose**; proposed KMC 22.05.135 **Acquisition of Real Property**; KMC 22.05.095 **Methods of Sale or Disposal**, paragraph (a);

o

Move to amend KMC 22.05.040 Lease Application Review, Paragraph (a), [p. 35 ORD SUB]

(a) Applications shall be reviewed by City staff for application completeness and conformance with the intent of this chapter, City ordinances, and for substantial conformance with the City's Comprehensive Plan.

Rationale: Staff review should also include conformance with the intent of this chapter and substantial conformance with the City's Comprehensive plan. See, proposed **KMC 22.05.085 Lease Utilization**, p. 45 of ORD SUB: "Leased lands shall be utilized ... in conformance with the ordinances of the city, and in substantial conformance with the Comprehensive Plan." And see, proposed KMC 22.05.040 paragraph (d), Council needs to find that the lease application is "consistent with the intent of this chapter and in the best interest of the City."



Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2019-58

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING ITS COMPREHENSIVE SCHEDULE OF RATES, CHARGES, AND FEES TO INCORPORATE CHANGES TO APPLICATION FEES FOR LANDS OUTSIDE THE AIRPORT RESERVE.

WHEREAS, in 2017, City Administration formed a working group to address the City's land leasing program and make recommendations that would encourage growth, development, and a thriving business community through reasonable and responsible land policies and practices; and,

WHEREAS, Ordinance No. 2998-2018 repealed, renamed and re-acted Kenai Municipal Code (KMC) Chapter 21.10-Leasing of Airport Reserve Lands to encourage growth, development, and a thriving aviation community through responsible land policies and practices; and,

WHEREAS, Resolution 2018-09 amended the comprehensive schedule of rates, charges, and fees to incorporate changes to land lease application and renewal application fees for Airport Reserve Land; and,

WHEREAS, in 2018, the working group focused its efforts on City-owned lands outside of the Airport Reserve and expanded its scope to recommend land lease and sale policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community; and,

WHEREAS, Ordinance No. 3072-2019 renamed, repealed and reenacted KMC Title 22-General Fund Lands, Renamed Title 21-City Airport and Airport Lands, and repealed KMC 21.15-Lease and Sale of Airport Lands Outside of the Airport Reserve as part of a City-wide approach to land management; and,

WHEREAS, amendments to the City's Comprehensive Schedule of Rates, Charges and Fees are needed to reflect the recommendations of the City Administration and comply with Ordinance No. 3072-2019.

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

Section 1. The Land Management section of the City's Comprehensive Schedule of Rates, Charges and Fees be amended as follows:

Land Management Fees

[LAND LEASE FEES]

<u>21.10.040 (a) and 21.05.025 (a)</u>	[AIRPORT RESERVE]Land Lease Application Fee	\$100.00
[21.10.050 (a)(1) & 21.10.080] <u>21.10.070 (a) and 22.05.045 (a)</u>	[AIRPORT RESERVE LAND]Land Lease Amendment Application Fee	\$100.00
<u>21.10.070(a) and 22.05.045 (a)</u>	Land Lease Extension[OR RENEWAL] Application Fee	\$100.00
<u>21.10.070(a) and 22.05.045 (a)</u>	Land Lease Renewal Application Fee	\$100.00
[21.10.070 (a)	REQUEST FOR LEASE AMENDMENT FEE	\$100.00]
	[REQUEST FOR]Consent to Sublease Application Fee	\$50.00
<u>22.05.045 (a)</u>	[REQUEST FOR]Land Lease Assignment Application Fee	\$100.00
[22.05.030 (a)(1)	GENERAL FUND LAND LEASE APPLICATION FEE	\$100.00]
<u>22.05.100 (a)</u>	Competitive Land Purchase Application Fee	\$100.00
<u>22.05.100 (a)</u>	Non-Competitive Land Lease or Purchase Fee	\$100.00
	Special Use Permit Application Fee	\$100.00

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

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

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Paul Ostrander, City Manager
DATE: August 8, 2019
SUBJECT: **Resolution No. 2019-58**

Resolution 2019-58 amends the City's fee schedule in conjunction with the amendments to Title 21 and Title 22 for the leasing and sale of City-owned lands included in Ordinance No. 3072-2019. The proposed fee amounts are competitive with other markets and are similar to fees included in Kenai Municipal Code for the leasing of Airport Reserve properties.

Your consideration is appreciated.



PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION
 COUNCIL MEETING OF: OCTOBER 2, 2019

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
HOMER ELECTRIC	ELECTRIC USAGE	VARIOUS	UTILITIES	114,475.64
PERS	PERS	VARIOUS	LIABILITY	90,234.73

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
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PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL
 COUNCIL MEETING OF: OCTOBER 2, 2019

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
FLOOR-EVER	SENIOR CENTER CARPET REPLACEMENT	SENIOR CENTER IMP CAP PROJECT	CONSTRUCTION	34,453.00

INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
SADLER PROPERTY MANAGEMENT	VINTAGE POINTE MANAGEMENT	118373 - CONGREGATE HOUSING	OCTOBER - JUNE MANAGEMENT	48,097.56	63,412.56



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Michael Wesson, Building Official
DATE: September 24, 2019
SUBJECT: Purchase Order – Floor-Ever, Inc.

The purpose of this memo is to request approval to purchase and install new carpet tiles, rubber base, and luxury vinyl plank (LVP) at the Senior Center. Two offices and the majority of the dining area will get new carpet tiles and the serving area and the area used for exercise will receive LVP and rubber base. This also includes the demolition and disposal of the existing flooring. This was a previously funded project and has recently received funding from a Rasmuson Grant which is part of Ordinance 3086-2019.

Three vendors were asked for quotes:

Floor-Ever, Inc. -	\$29,953.00
Four D Carpet One, Inc. -	\$32,146.82
Furniture and Flooring Specialist -	\$34,550.00
Contingency	\$4,500.00
Total PO Requested	\$34,453.00

Floor-Ever, Inc.'s price was found to be fair and reasonable.

Thank you for your consideration.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Kathy Romain, Senior Center Director
DATE: September 23, 2019
SUBJECT: Purchase Order Increase to Sadler Property Management

The purpose of this memo is to request a change order to purchase order #118373 to Sadler Property Management (Contractor) for the FY20 Contractor's Fee for Vintage Pointe Manor.

The initial purchase order was as follows:

FY 20 Contractor's Fee	\$14,612.52
Emergency Repairs	470.67
Repair Parts	231.81
<u>Total</u>	<u>\$15,315.00</u>

The original purchase order was to cover the first three months of FY20 through the end of the current contract, which expired September 30, 2019. Subsequent to the first of two, one-year extensions passed by Council on August 21, 2019, this change order could then come forward to cover the remaining nine months of FY20.

These changes would be as follows:

FY 20 Contractor's Fee	\$43,837.56
*Emergency Repairs	3,360.00
*Repair Parts	900.00
<u>Total</u>	<u>\$48,097.56</u>

*Emergency parts and repairs historically were paid through the department. The current contract dated October 1, 2016, allows these to be paid through the Contractor. These amounts have been increased from the previous purchase order due to recent issues (dry sprinkler system) requiring more time on the part of the Contractor.

Thank you for your consideration.





Sponsored by: Council Members Knackstedt
And Molloy

CITY OF KENAI

ORDINANCE NO. 3089-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE SECTION 1.15.040, AGENDA, TO REVISE PUBLIC NOTICE REQUIREMENTS AND AMEND THE AGENDA/PACKET PREPARATION, DISTRIBUTION, AND PUBLICATION ADMINISTRATIVE POLICIES AND PROCEDURES TO MAKE STANDARD REVISIONS AND HOUSEKEEPING CHANGES.

WHEREAS, identification and execution of strategies that result in efficiencies and cost savings within the departments of the City have been a focus of the administration; and,

WHEREAS, Kenai Municipal Code (KMC) Section 1.15.040(f) requires that the agenda for each Council meeting be published in a newspaper of general circulation, among other means of notification; and,

WHEREAS, the City has spent \$7,200, \$8,050, and \$6,760 in FY2019, FY2018, and FY2017 respectively in public meeting notification in a newspaper of general circulation; and,

WHEREAS, AS 44.62.310, also known as the Alaska Open Meetings Act, states that reasonable public noticing must include the date, time, and place of the meeting; and,

WHEREAS, it has been the intent of the City to exceed minimum statutory standards for notice of City Council meetings; and,

WHEREAS, amending notification requirements by reducing what is provided in paid notifications and providing alternative resources where additional information can be located is fiscally responsible and will continue to exceed minimum statutory standards.

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

Section 1. Amendment of Section 1.15.040 of the Kenai Municipal Code: That Kenai Municipal Code, Section 1.15.040 – Agenda, is hereby amended as follows:

- (a) The Mayor or other Council Member, City Clerk, City Attorney, or City Manager may sponsor an ordinance for introduction or a resolution for adoption, and such ordinance or resolution shall be placed on the agenda of the regular Council meeting requested by the sponsor.
- (b) The Mayor or other Council Member, City Clerk, City Attorney, or City Manager may request that a discussion item be placed on the agenda of a regular Council meeting, and

such discussion item shall be placed on the agenda of the regular Council meeting requested by the sponsor.

(c) A member of the public may request that a matter be placed on the agenda subject to policies and procedures adopted under subsection (j). Being placed on the agenda on the "Scheduled Public Comment" portion of the agenda does not limit or restrict the requestor's ability to speak on a different subject for which public comment is allowed.

(d) A sponsor, all co-sponsors, proposer or requester may request that an item be removed from the agenda before the agenda is published under the policies and procedures adopted under subsection (j) and such item shall be removed from the agenda, unless the item has been carried over or postponed from a previous agenda.

(e) The City Clerk shall prepare the agenda for each Council meeting after consultation with the Mayor and City Manager, subject to subsections (a) through (d). A draft agenda shall be circulated to the Mayor and other Council Members, and the City Manager.

(f) Notice [OF THE DATE, TIME, PLACE, AND AGENDA] for each Council meeting shall be given to the public under policies and procedures adopted under subsection (j). [BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION AND BY POSTING TO THE CITY'S WEBSITE AND TO THE OFFICIAL BULLETIN BOARD AT CITY HALL UNDER POLICIES AND PROCEDURES ADOPTED UNDER SUBSECTION (J)]. Additional public notice of meetings may be given by other means as required by code or at the direction of Council.

(g) A meeting packet containing the agenda, all legislative items, and supporting documentation for all agenda items shall be distributed to the Mayor, Council Members, and the City Manager.

(h) The City Clerk shall cause a copy of the meeting packet to be posted on the City's website and to be provided to the Kenai Community Library, in order to be made available for public viewing under policies and procedures adopted under subsection (j). The City Clerk shall cause a paper copy or electronic copy of the meeting packet to be provided to any member of the public, or to any organization, upon request under policies and procedures adopted under subsection (j). At least one paper copy of the meeting packet shall be made available to the public at the meeting.

(i) The City Clerk shall provide paper copies of any late materials to the Mayor, each Council Member, City Manager, and City Attorney. The City Clerk shall also make paper copies of late materials available to the public at the meeting.

(j) The administration shall [MAY] develop policies and procedures to implement this section, subject to review and approval of Council by Resolution or Ordinance.

(k) Failure to comply with the above policies and procedures or with any administrative policies will not invalidate any ordinance or Council action as long as there was a good faith effort at compliance by the City Clerk.

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such

judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Policy Amendment: That the City Council of Kenai amends the Agenda and Packet Administrative Policies and Procedures as attached which will govern agenda and packet preparation, distribution, and publication. Future amendments to the policy may be made by resolution.

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: October 2, 2019
Enacted: October 16, 2019
Effective: November 15, 2019

~~ADMINISTRATIVE POLICIES AND PROCEDURES~~**POLICY NO. 2019-01 - AGENDA AND PACKET – PREPARATION, DISTRIBUTION, AND PUBLICATION****A. Agenda Preparation and Format; Public Testimony**

1. The City Clerk shall prepare the agenda for each Council meeting after consultation with the Mayor and the City Manager, subject to paragraphs (a) through (d) of KMC 1.15.040. The City Clerk shall circulate a draft agenda to the Mayor, to other Council Members, and to the City Manager.

2. Scheduled Public Comment. The agenda shall include time for “Scheduled Public Comment.” Any member of the public may request that an item be placed on the agenda for a regular Council meeting under “Scheduled Public Comment. A person who desires to address the Council under Scheduled Public Comment shall make that request in writing on a form provided by the City Clerk a minimum of eight (8) days in advance of the Council meeting. The speaker will be permitted 10 minutes to address the Council after which the speaker may elect whether to address any questions from the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves ~~in writing~~, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person may speak on any topic except:

- a. items scheduled for consideration on that consent agenda;
- b. items scheduled for public hearing on that agenda;
- c. personnel matters; and,
- d. items upon which litigation involving the person or his/her representative and the City is currently pending.

3. Unscheduled Public Comment. The agenda shall include time for “Unscheduled Public Comment.” Any member of the public may address the Council during the schedule on the agenda. The speaker will be permitted three (3) minutes to address the Council after which the speaker may elect whether to address any questions from the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves ~~in writing~~, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person may speak on any topic except:

- a. items scheduled for consideration on that consent agenda;
- b. items scheduled for public hearing on that agenda;
- c. personnel matters; and,
- d. items upon which litigation involving the person or his/her representative and the City is currently pending.

4. Public Hearings; Consent Agenda Testimony. (a) Any member of the public present may be heard at public hearings on resolutions and ordinances at the time designated on that agenda for the public hearing or as that time may be extended at the discretion of the Council. Any member of the public present may be heard at a time designated on that agenda to accept public comment on matters appearing on the consent agenda. The agenda shall state that the speaker will be permitted three (3) minutes to address the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves ~~in writing~~, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person shall speak to the issue that is the subject of the public

hearing or item on the consent agenda. The speaker may elect whether to address any questions from the Council.

(b) With respect to public testimony in public hearings and relating to items on the consent agenda, persons present at a meeting may give their time over to another speaker present at the meeting; provided, however, that no single speaker present may speak for more than 30 minutes combined on their own and on others' behalf.

5. Citizen Discussion. The agenda shall include time for citizen discussion ("Discussion"). Any member of the public may be heard under an agenda section for "Citizens" under agenda item "Discussion." The speaker will be permitted five (5) minutes to address the Council after which the speaker may elect whether to address any questions from the Council. The time limitation should be reflected on the agenda. The speaker shall identify themselves in writing, providing their name, city of residency, and address for the record. Omission of an address will not bar a person from speaking. The person may speak on any topic except:

- a. personnel matters; and,
- b. items upon which litigation involving the person or his/her representative and the City is currently pending.

B. Council Packet Preparation

1. All reports, ordinances, resolutions, contracts, documents, or other matters to be submitted to the Council for a regular meeting shall be submitted to the City Clerk not later than four p.m. on the Thursday preceding the Wednesday meeting. The City Clerk shall prepare the agenda for all of these matters according to the order of business, numbering each item consecutively.

2. Council Members and Administration are each encouraged to submit explanatory memoranda for any ~~action~~ item requiring Council action that person requests be placed on the agenda.

C. Agenda and Council Packet Publication and Distribution

1. Notice of the date, time and place, and ~~the~~ non-routine agenda items for each regular Council meeting shall be published in a newspaper of general circulation no later than three (3) days prior to each regular Council meeting.

2. Notice of the date, time, and place, and the agenda for each regular Council meeting shall be posted on the City's official bulletin board at City Hall no later than six (6) days prior to each regular Council meeting.

3. The City Clerk shall post a copy of the meeting packet to the City's web site, and shall also provide a copy of the packet to the Kenai Municipal Library, no later than six (6) days prior to each regular Council meeting.

4. Any person and any organization may request a copy of the meeting packet, either by paper or electronic copy. The City Clerk will provide the copy as soon as practical.

5. "Day" is a calendar day. The day of posting and/or publication and the day of the Council meeting each shall be counted for the purpose of computing compliance with the posting and publication deadlines.

6. “Non-routine agenda items” means scheduled public comments, public hearings, unfinished business items, ordinances for introduction, action items not appearing on the consent agenda, and executive session items.

D. Special Meetings

The agenda format, preparation, posting, publication, and public participation policies set forth in sections A, B, and C, above, do not apply to special meetings of the Council. Notice of special meetings shall be made under KMC 1.10.060 and the agenda shall be circulated to each member of the Council and to the City Manager at least 24 hours prior to the special meeting where practicable. The City Clerk will prepare the agenda for a special meeting after consultation with the Mayor and the City Manager, subject to paragraphs (a) through (d) of KMC 1.15.040. The agenda for a special meeting will not include time for Scheduled Public Comment, Unscheduled Public Comment, or Discussion (Citizen) unless requested by a Council member, the City Manager, or the City Attorney. The agenda shall include time for a public hearing where otherwise required by law for adoption of ordinances and resolutions.

Effective Date: November 15, 2019

Established by Ordinance No. 2347-2009
Amended by Resolution No. 2010-07
Amended by Ordinance No. 3089-2019



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MEMORANDUM

TO: Mayor Gabriel and Kenai City Council
FROM: Council Members Knackstedt and Molloy
DATE: September 23, 2019
SUBJECT: **Ordinance No. 3089-2019**

At the August 21st City Council meeting, the City Clerk brought up a potential cost saving measure by reducing what from the Council's agenda is published in newspaper ads. We have worked with the City Clerk and the City Attorney to develop some amendments to Kenai Municipal Code and an accompanying policy. If enacted, this ordinance would amend Kenai Municipal Code to indicate that noticing requirements are included in policies and procedures which may be amended from time to time by the Council. This ordinance would also amend an associated policy, which has been in place since 2009, to indicate that proper notice includes the date, time and place, and non-routine agenda items being published in a newspaper. "Non-routine agenda items" is also defined in the policy.

Attached to this memo is a spreadsheet that provides examples from the last four months of actual costs to publish the agenda, the cost to publish non-routine agenda items as defined in the policy amendment, and the cost to publish only public hearing items.

Your consideration is appreciated.



Meeting Date	Actual	Non-Routine as defined in proposed policy amendment	Only Public Hearings
5/1/19	\$263.97	\$201.49	\$129.35
5/15/19	\$473.62	\$388.05	\$199.00
6/5/19	\$341.09	\$261.19	\$184.08
6/19/19	\$422.68	\$343.28	\$248.75
7/3/19	\$330.34	\$253.73	\$218.90
8/7/19	\$328.85	\$194.03	\$79.60
8/21/19	\$426.36	\$343.28	\$238.80
9/4/19	\$375.71	\$313.43	\$253.73
9/18/19	\$409.94	\$238.80	\$104.48
Totals	\$3372.56	\$2537.28	\$1656.69

Approximately 25% savings can be seen if Non-Routine items, as defined in the proposed policy amendment, were required to be published.

Approximately 50% savings can be seen if only public hearings were required to be published.

In her memo dated August 13, 2019, the Clerk provided the following actual annual costs:

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



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MEMORANDUM

TO: Mayor Gabriel and Kenai City Council
FROM: Council Member Knackstedt
DATE: September 23, 2019
SUBJECT: Ordinance No. 3089-2019 Amendments

Council Member Molloy and I worked with the City Clerk and the City Attorney to develop amendments to Kenai Municipal Code and an accompanying policy amending what is published in the newspaper as public notice. While my co-sponsor and I agree that the entire agenda does not need to be published, as reflected in the ordinance and policy, I think the City can go even further. I intend to make the following amendments to the policy:

Amend Policy item C.1. to read as follows:

1. Notice of the date, time and place, and the non-routine public hearing agenda items for each regular Council meeting shall be published in a newspaper of general circulation no later than three (3) days prior to each regular Council meeting.

Amend Policy item C.6. by removing it in its entirety:

6. "Non-routine agenda items" means scheduled public comments, public hearings, unfinished business items, ordinances for introduction, action items not appearing on the consent agenda, and executive session items.

The spreadsheet provided with the sponsor memo provides a cost savings difference of actual costs to publish the agenda, the cost to publish non-routine agenda items as defined in the policy amendment, and the cost to publish only public hearing items.

Consideration was given to also including Executive Sessions in the notice published in a newspaper but after discussions with the City Clerk and City Attorney, it was pointed out that the City Council should retain its ability to go into Executive Session regarding any item on the agenda and Executive Sessions are often informational and action is typically not taken after the session.

Your consideration is appreciated.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3090-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL AND PUBLIC SAFETY CAPITAL PROJECT FUNDS AND ACCEPTING AN ASSISTANCE TO FIREFIGHTER GRANT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR THE COOPERATIVE PURCHASE OF SELF-CONTAINED BREATHING APPARATUS FOR THE CITY OF KENAI FIRE DEPARTMENT, NIKISKI FIRE DEPARTMENT AND CENTRAL EMERGENCY SERVICES.

WHEREAS, the City of Kenai Fire Department (KFD), Nikiski Fire Department (NFD), and Central Emergency Services (CES) were successfully awarded a regional Federal Emergency Management Agency, Assistance To Firefighter Grant to purchase new Self Contained Breathing Apparatus (SCBA's); and,

WHEREAS, the City of Kenai Fire Department was the author of the grant and will be responsible for purchasing the SCBA's; and,

WHEREAS, the total amount to purchase the SCBA's is \$1,094,400.00, including \$994,909.09 in Federal grant funding and 10%, \$99,490.91 in required matching funds; and,

WHEREAS, the Fire Department is requesting an increase in estimated revenues and appropriations in the General and Public Safety Capital Project Funds in the amount of \$12,218.19 to cover the City's matching funds portion of the grant; and,

WHEREAS, the City will accept and appropriate matching funds from the Kenai Peninsula Borough in the amount of \$87,272.72, \$68,654.53 from Central Emergency Services and \$18,618.19 from Nikiski Fire, in the Public Safety Capital Project Fund; and,

WHEREAS, it is in the best interest of the City and Borough to use these funds as intended.

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

Section 1. That the City Manager is authorized to accept and expend an Assistance to Firefighter's grant from the Federal Emergency Management Agency for the cooperative purchase of self-contained breathing apparatus for the City of Kenai Fire Department, Nikiski Fire Department, and Central Emergency Services.

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

General Fund:

Increase Estimated Revenues –
Appropriation of Fund Balance

\$12,218.19

Increase Appropriations –
Non-Departmental – Transfer Out \$12,218.19

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

Public Safety Capital Project Fund:
Increase Estimated Revenues:
Transfer from General Fund \$ 12,218.19
Miscellaneous Revenue – Central Emergency Services 68,654.53
Miscellaneous Revenue – Nikiski Fire 18,618.19
Federal Grants – Fire 994,909.09
\$1,094,400

Increase Appropriations –
Machinery & Equipment \$1,094,400

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Introduced: October 2, 2019
Enacted: October 16, 2019
Effective: October 16, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Tony Prior, Deputy Chief
DATE: September 25, 2019
SUBJECT: Ordinance 3090-2019

The City of Kenai Fire Department (KFD), Nikiski Fire Department (NFD), and Central Emergency Services (CES) cooperatively applied for and were successful in receiving a U.S. Department of Homeland Security, Federal Emergency Management Agency, Assistance to Firefighter Grant (AFG) for the purchase of 171 Self Contained Breathing Apparatus (SCBAs). In order to maintain interoperability in the event of emergencies, and with an aging fleet of SCBA's for the three departments, a memorandum of agreement (MOA) was written to define roles if we were successful in receiving a regional grant for the replacement of the SCBA's. It was felt that chances for award were higher for regional applications and the application was successful in receiving a grant award totalling \$994,909.09 with a required 10% non-federal match of \$99,490.91 for a total project budget of \$1,094,400.00. The \$99,490.91 is divided among the three departments based on the number of air packs each department will receive through the grant.

The City of Kenai Fire Department is the grantee and will be responsible for procurement of the air packs and administration of the grant. As written in the MOA, each department is responsible for providing the 10% grant match funds for their respective number of air packs as listed in the grant. Of the \$99,490.91, KFD is responsible for \$12,218.19, NFD is responsible for \$18,618.18, and CES is responsible for \$68,654.54.

A joint selection and evaluation committee will be formed to test and evaluated air packs for the overall selection and purchase of these packs. We are anticipating on having an RFP done, testing completed and recommendation for purchase by the end of November, 2019.



The chart below describes funding and obligations for each department.

Entity	Awarded Value	90 % Federal Funds	10% Matching Obligation
City of Kenai Fire Dept.	\$134,400.00	\$122,181.82	\$12,218.19
Central Emergency Services	\$755,200.00	\$686,545.45	\$68,654.53
Nikiski Fire Department	\$204,800.00	\$186,181.82	\$18,618.19

We are requesting an increase in estimated revenue and appropriations of \$12,218.19 in the General and Public Safety Capital Projects Fund for the City's match, appropriation \$87,272.72 in match from Borough departments, and the grant amount of \$994,909.09 in the Public Safety Capital Projects Fund.

Your support is respectfully requested.





Sponsored by: Council Member Knackstedt

CITY OF KENAI

ORDINANCE NO. 3091-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE SECTION 17.10.010 – MANDATORY CONNECTION AND ABANDONMENT OF OLD WELL, AND SECTION 17.20.010 - MANDATORY CONNECTIONS AND ABANDONMENT OF OLD ON-SITE SEWER SYSTEMS, TO CLARIFY THE INTENT OF ORDINANCE 3003-2018 AND MAKE HOUSEKEEPING CHANGES.

WHEREAS, Ordinance 3003-2018 was enacted February 7, 2018 limiting the mandatory water and sewer connection requirements in KMC 17.10.010 and 17.20.010 to situations where a mainline is located in a right-of-way or other applicable easement 200 feet or less from a structure and providing an alternative payment option in lieu of a connection; and,

WHEREAS, further review of the water and sewer connection requirements demonstrate that to accomplish the intended purpose of Ordinance 3003-2018 additional code changes are required; and,

WHEREAS, clarifying that the actual public water and sewer mains must be adjacent to a property line on either side of the right of way or easement and not just 200 feet from the applicable structure in a right of way or easement that is adjacent to the property line trigger a connection requirement is necessary; and,

WHEREAS, other housekeeping changes are needed to effectuate the intent of the Ordinance.

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

Section 1. Amendment of Section 17.10.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 17.10.010- Mandatory connection and abandonment of old well, is hereby amended as follows:

17.10.10 Mandatory Connection and Abandonment of Old Well.

(a) Except as provided in subsection (c) below, it shall be mandatory for all structures susceptible to being or currently being a source from which water is being used, to be connected to the public water system provided that any part of the structure is or is to be within two hundred feet (200') of an existing public water main adjacent to the property line [THAT IS] in a right-of-way or other applicable easement (on either side of the right-of-way or easement) [ADJACENT TO THE PROPERTY LINE]. Such distance shall be measured by a straight line notwithstanding the possible impracticality of such being the necessary distance of line being required.

(b) It shall be mandatory for the owner, operator, or users of a private well supplying water to a structure to arrange and to pay for connection of said structure to the available municipal

water system and the abandonment of well(s) no longer being utilized. Connections to the City water distribution system and abandonment of old well(s) shall be as specified by ordinances and regulations of the City of Kenai, and applicable law and regulation of the State of Alaska relating to use of and connection to public water systems and abandonment of old wells.

(c) If a property owner does not connect to a public water main in a location that otherwise requires a property owner to connect as described above, the property owner shall pay the applicable water fee based on the use of the structure as if connected. A property owner cannot maintain a water well when the location of the well interferes with the City's ability to extend a sewer main in a right-of-way or easement. If a well is located in a location that would interfere with the City's ability to extend a sewer main, the property owner must connect to the City water main and appropriately abandon the well at the property owners cost.

Section 2. Amendment of Section 17.20.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 17.20.010- Mandatory connections and abandonment of old on-site sewer systems, is hereby amended as follows:

17.20.010. Mandatory Connections and Abandonment of Old On-Site Sewer Systems.

(a) Except as provided in subsection (c) below it shall be mandatory for all structures susceptible to being or currently being a source from which sewage may or is being generated, to be connected to the public sewage system provided that any part of the structure is or is to be within two hundred feet (200') of an existing public sewer main adjacent to the property line in a right-of-way or other applicable easement (on either side of the right-of-way or easement). Such distance shall be measured by a straight line notwithstanding the possible impracticality of such being the necessary distance of line being required.

(b) It shall be mandatory for the owner, operator, or users of a private sewer system to a structure to arrange and to pay for connection of said structure to the available municipal sewer system and the abandonment of the on-site sewer system no longer being utilized. Connections and extensions to the City sewer system and abandonment of the old on-site sewer system shall be as specified by ordinances and regulations of the City of Kenai, and applicable law and regulation of the State of Alaska relating to use of and connection to public sewer systems and abandonment of old on-site sewer systems .

(c) If a property owner does not connect to a public sewer main in a location that otherwise requires a property owner to connect as described above, the property owner shall pay the applicable [WATER] sewer fee based on the use of the structure as if connected.

(d) If a sewer service customer has the reasonable possibility they will produce grease or oil-laden wastes, the customer's facility shall be provided with interceptors as required in the plumbing code. This includes any establishment that uses a deep fat fryer or cooking grease or oil. Grease, oil, and sand interceptors shall be provided when, in the opinion of City, they are necessary for the proper handling of wastewater containing grease and oil, or sand. All interception units shall be of type and capacity approved by the Building Official and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at the customer's expense. The sewer service customer is required to keep an interceptor inspection, cleaning,

and repair log which contains information as to the date, time, what is removed, quantity removed, who removed the material and how, when, and where the material from the interceptor is disposed of.

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of October, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: October 2, 2019
Enacted: October 16, 2019
Effective: November 15, 2019



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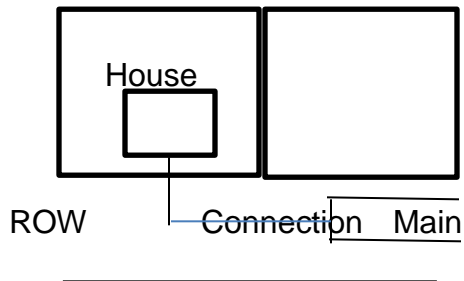
210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

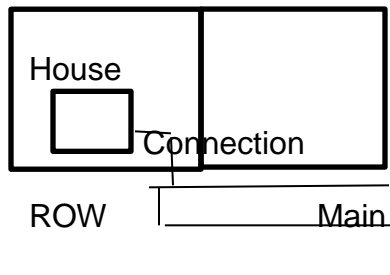
TO: Mayor Gabriel and Kenai City Council
FROM: Council Member Knackstedt
DATE: September 26, 2019
SUBJECT: Ordinance No. 3091-2019

Ordinance No 3091-2019 clarifies the intent of Ordinance 3003-2018 that limited the mandatory water and sewer connection requirements in KMC 17.10.010 and 17.20.010 to situations where a mainline is located in a right-of-way or other applicable easement 200 feet or less from a structure and providing an alternative payment option in lieu of a connection. The original ordinance was enacted in response to unreasonable hardships the prior code language imposed on property owners in certain situations where mains were located within 200 feet of structures but were not in adjacent rights-of ways to the property. The clarification in this Ordinance is that in order to trigger the mandatory connection requirement there must be a main line adjacent to the property line in a right-of-way or easement and the line must within 200 feet of the applicable structure. The prior language did not specify that the main line had to be adjacent to the property line, only that the right-of-way or easement had to be adjacent to the property line. The prior language could result in situations where a property owner runs a connection to a right-of-way or easement and then down the right-of-way or easement to connect to a main that is not adjacent to the property. The City does not want connections running down rights-of-ways or easements. The two scenarios are demonstrated below:

Ordinance 3003-2018



Ordinance 3091-2019



The house keeping amendments include adding the limiting language in 17.20.010 (a) regarding the main being in the right-of-way or an easement that was inadvertently left out of the prior Ordinance and changing the reference to water fee to sewer fee in 17.20.010(c).

Your consideration is appreciated.





Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3079-2019 SUBSTITUTE

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

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

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

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

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

WHEREAS, the cost to replace the aging ARFF vehicles is \$1,600,000.00 and funding to be provided by FAA grant funding of \$1,500,000.00, 93.75% and required local match of \$100,000.00, 6.25%; and,

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

WHEREAS, the Federal Aviation Administration has expressed their interest in seeing the facility's operations brought back to current standards; and,

WHEREAS, the Design and Construction Costs for this work will be eligible under the grant from the Federal Aviation Administration; and,

WHEREAS, on March 14, 2019 the City of Kenai released a Request for Proposals (RFP) where Morrison-Maierle was determined to be the successful proposer; and,

Ordinance 3079-2019 SUBSTITUTE
Page 2 of 3

WHEREAS, on August 1, 2019 a formal Invitation to Bid was released for rehabilitation of the training equipment and training facility, with bids due on August 29, 2019; and,

WHEREAS, the cost to rehabilitate the Training Facility's Props is \$1,993,000 and funding to be provided by FAA grant funding of \$1,868,437.00, 93.75% and required local match of \$124,563.00, 6.25% and an additional \$150,000.00 in project contingency to be initially funded by the airport; and,

WHEREAS, the cost to rehabilitate the Training Facility is \$1,938,755.00 and funding to be provided by FAA grant funding of \$1,817,582.00, 93.75% and required local match of \$121,173.00, 6.25% and an additional \$150,000.00 in project contingency to be initially funded by the airport; and; and,

WHEREAS, with future concurrence from the FAA, contingency amounts will become eligible for 93.75% reimbursement; and,

WHEREAS, sufficient funds are available in the Airport Special Revenue Fund to provide the required \$384,735.00 local match.

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

Section 1. That the City Manager is authorized to accept grant funding in the amount of \$5,771,020.00 from the Federal Aviation Administration and to execute a grant agreement and to expend grant funds to fulfill the purpose and intent of this ordinance.

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

Airport Special Revenue Fund	
Increase Estimated Revenues –	
Appropriation of Fund Balance	\$468,735.00
Increase Appropriations -	
Airport Training Facility -	
Transfer to Other Funds	\$468,735.00

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

Airport Improvement Capital Project Fund	
Increase Estimated Revenues:	
FAA Grants	\$5,771,020.00
Transfer from Other Funds	<u>\$468,735.00</u>
	\$6,239,755.00
Increase Appropriations -	
Fire Training Center ARFF Vehicle Purchase -	
Machinery & Equipment	\$1,605,000.00
Fire Training Center Training Prop Rehabilitation –	
Construction	\$2,168,000.00

Fire Training Center Training Facility Rehabilitation –
Construction

\$2,113,755.00
\$5,886,755.00

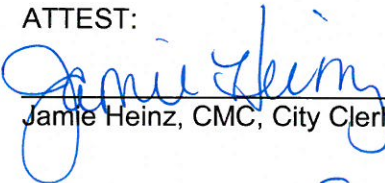
Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September 2019.



BRIAN GABRIEL SR., MAYOR

ATTEST:


Jamie Heinz, CMC, City Clerk

Approved by Finance: 

Sue Best, Acting



Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: September 4, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Public Works Director
DATE: August 14, 2019
SUBJECT: Ordinance No. 3079 - 2019

The Alaska Regional Fire Training Facility located at 450 Daubenspeck Circle was originally constructed approximately 20 years ago. Throughout the last fiscal year, Public Works and Airport Staff have been coordinating with the Federal Aviation Administration (FAA) to develop a project to rehabilitate the facility. These types of facilities are becoming fewer and far between nationwide, and the FAA has expressed good interest and intentions in seeing the Facility fully operational.

Morrison-Maierle Engineering Consultants are the firm that designed the facility originally. This spring they were the successful proposer on providing professional services for the rehabilitation. In June 2019 a Facility Assessment Report was provided, identifying all of the areas within the facility in need of improvement.

The grant is anticipated to cover three areas of improvement including: the purchase of two new ARFF Vehicles, Rehabilitation of Training Equipment & Props, Rehabilitation of Training Building.

On July 31, 2019 the City was provided Construction Bid Documents, and a formal Invitation to Bid was released on August 1, 2019 with bids due on August 29, 2019. The Public Works Department anticipates accepting a grant from the FAA in September 2019, with a Notice to Proceed projected for October 1, 2019 with Project completions before June 30, 2020. The ARFF Vehicles may take as long as a year to arrive from the time they are ordered.

Completion of this project is a great opportunity for the community, it will restore a City asset, and allow for continued and improved operations at the facility.

Council's approval is respectfully requested.





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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Scott Curtin, Public Works Director

DATE: September 3, 2019

SUBJECT: Ordinance No. 3079 – 2019 Amendments

On August 29, 2019 the City opened bids for the Alaska Regional Fire Training Center Building and Equipment Rehabilitation Projects. The Following Bids were received:

Alaska Regional Fire Training Building Rehabilitation Project	
Contractor	Bid
Orion Construction, Inc	\$1,938,755.00
Blazy Construction, Inc	\$2,453,446.00
Alaska Regional Fire Training Equipment Rehabilitation Project	
Contractor	Bid
Kirila Fire, Inc	\$1,993,000.00
Alpine Metal, Inc	\$2,767,428.00
Blazy Construction, Inc	\$4,505,246.00

The Bid totals cover all Bid schedules with Additive Alternates included. Orion Construction, Inc. and Kirila Fire, Inc. were found to be the lowest responsive and responsible bidders; and it is the Administration's recommendation that an Award to both Contractors is in the best interest of the City.

Procurement of the ARFF Vehicles will be through State Contract purchasing. As the State finalizes these contracts it will be the City's intent to quickly get them on order, as the vehicles may take as long as a year to build.



With the information above now available the Ordinance No. 3079-2019 costs are now available. The FAA Grant shall be in the amount of \$6,155,755 with the Federal share being \$5,771,020 and the City of Kenai's local share being \$384,735. These amounts cover costs for Admin, Design, Construction, Equipment and Permits.

The City's total cost share for this project, including our required 6.25% match of \$384,735, and the \$300,000 in contingency, is \$684,735. The City has previously appropriated \$216,000 for Design Services under Ordinance 3059-2019 so the additional match required under this ordinance is \$468,735. It is anticipated that any contingency that is required for the project will be eligible for a 93.75% federal match.

Contingency funds are being appropriated at this time for the processing of change orders as they arise. Council will continue to be notified of any change orders through the Public Works Director Mid-Month Reports.

Acceptance of this Grant and completion of this project is a great opportunity for the community, it will restore a City asset, and allow for continued and improved operations at the facility.

Because of the number of amendments requested, a substitute ordinance has been provided to allow the amendments to be made in one motion.

A tracked changes version of the ordinance is attached to this memo for informational purposes.

Council's approval is respectfully requested.



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3079-2019

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

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

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

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

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

WHEREAS, the cost to replace the aging ARFF vehicles is \$1,600,000.00 and funding to be provided by FAA grant funding of \$1,500,000.00, 93.75% and required local match of \$100,000.00, 6.25%; and,

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

WHEREAS, the Federal Aviation Administration has expressed their interest in seeing the facility's operations brought back to current standards; and,

WHEREAS, the Design and Construction Costs for this work will be eligible under the grant from the Federal Aviation Administration; and,

WHEREAS, on March 14, 2019 the City of Kenai released a Request for Proposals (RFP) where Morrison-Maierle was determined to be the successful proposer; and,

New Text Underlined [Deleted text bracketed]

WHEREAS, on August 1, 2019 a formal Invitation to Bid was released for rehabilitation of the training equipment and training facility, with bids due on August 29, 2019; and,

WHEREAS, the cost to rehabilitate the training facility's props is estimated to be \$1,993,000 and funding to be provided by FAA grant funding of \$1,868,437.00, 93.75% and required local match of \$124,563.00, 6.25% and an additional \$150,000.00 in project contingency to be initially funded by the airport; and,

WHEREAS, the cost to rehabilitate the Training Facility is \$1,938,755.00 and funding to be provided by FAA grant funding of \$1,817,582.00, 93.75% and required local match of \$121,173.00, 6.25% and an additional \$150,000.00 in project contingency to be initially funded by the airport; and; and,

WHEREAS, with future concurrence from the FAA, contingency amounts will become eligible for 93.75% reimbursement; and,

WHEREAS, sufficient funds are available in the Airport Special Revenue Fund to provide the required \$384,735.00 local match.

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

Section 1. That the City Manager is authorized to accept grant funding in the amount of \$5,771,020.00 from the Federal Aviation Administration and to execute a grant agreement and to expend grant funds to fulfill the purpose and intent of this ordinance.

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

Airport Special Revenue Fund	
Increase Estimated Revenues –	
Appropriation of Fund Balance	<u>\$468,735.00</u>
Increase Appropriations -	
Airport Training Facility -	
Transfer to Other Funds	<u>\$468,735.00</u>

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

Airport Improvement Capital Project Fund	
Increase Estimated Revenues:	
FAA Grants	<u>\$5,771,020.00</u>
Transfer from Other Funds	<u>\$468,735.00</u>
	<u>\$6,239,755.00</u>
Increase Appropriations -	
Fire Training Center ARFF Vehicle Purchase -	
Machinery & Equipment	<u>\$1,605,000.00</u>

Fire Training Center Training Prop Rehabilitation – Construction	<u>\$2,168,000.00</u>
Fire Training Center Training Facility Rehabilitation – Construction	<u>\$2,113,755.00</u>
	<u>\$5,886,755.00</u>

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 4th day of September 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Approved by Finance: _____

Introduced: August 21, 2019
Enacted: September 4, 2019
Effective: September 4, 2019



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Terry Eubank, Finance Director

DATE: September 20, 2019

SUBJECT: Request to amend previously adopted legislation Ordinance 3079-2019.

The purpose of this memo is to respectfully request amendment to previously adopted legislation, Ordinance 3079-2019. Ordinance 3079-2019 was adopted on September 18, 2019 and provided for acceptance of a grant from the Federal Aviation Administration and appropriation of funds for the purchase of aircraft rescue fire fighting vehicles for, rehabilitation of fire training props at, and rehabilitation of the training facility of the Alaska Regional Fire Training Center. After adoption of the ordinance it was determined that a portion of the required local match should have been provided from fund balance committed in the Airport Special Revenue Fund for major maintenance of the facility. This committed fund balance is the result of a \$10.00 per student facility maintenance fee which was established in 2008 and has resulted in \$136,328 in funds committed to major maintenance of the facility.

In addition to the omission of utilizing committed fund balance, the capital project fund appropriation section of the Ordinance, Section 3, was out of balance by \$353,000. The revenue portion contained the correct amount of required local match and grant funds but \$353,000 for construction administration services by Morrison-Mairle, Inc was not included in the appropriation amount for rehabilitation of the fire training props and the facility.

To rectify these issues, the following four amendments are respectfully requested:

Amendment #1 - Before the final WHEREAS insert the following new WHEREAS:

WHEREAS, pursuant to the Alaska Fire Training Center Facility Management Agreement, which was entered into in March 2008, a \$10.00 facility maintenance fee has been charged to each student for major maintenance on the facility and through June 30, 2019 total fees available in committed fund balance are \$136,328; and,



Amendment #2 – Delete the final WHEREAS and replace with the following:

WHEREAS, sufficient fund balance including, \$136,328 of committed fund balance and \$332,407 of assigned fund balance, are available in the Airport Special Revenue Fund to provide the additional \$168,735 of local match and \$300,000 of project contingency funding which may become eligible for grant reimbursement as change orders are processed.

Amendment #3 – Amend Section 2 by deleting -

Appropriation of Fund Balance	\$468,735.00
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Amendment #4 – Further amend Section to by inserting -

Appropriation of:	
Assigned Fund Balance	\$332,407.00
Committed Fund Balance	<u>136,328.00</u>
	\$468,735.00

Amendment #5 – Amend Section 3 by the following:

Amend \$2,168,000.00, \$2,113,755.00 and \$5,866,755.00 to \$2,344,500, \$2,290,255 and \$6,219,755 respectively.

Your support for these amendments to previously adopted Ordinance 3079-2019 is appreciated.



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October 3, 2019

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

RE: Letter of Support for the Alaska LNG Project

Dear Ms. Bose:

The City of Kenai supports the construction and operation of the Alaska Liquefied Gas (LNG) Project. The Project would be largely located in existing corridors and industrial areas with measures to minimize disturbance to wildlife, provide Alaskans and Alaska companies with economic opportunities, improve air quality in Alaska, and reduce emissions on a global scale.

In December 2018, the Kenai City Council passed Resolution 2018-65 supporting Nikiski, Alaska, as the preferred alternative for the siting of the LNG facility and marine terminal. A copy of Resolution 2018-65 was submitted to FERC upon passage. The City of Kenai is adjacent to the community of Nikiski and the closest incorporated City to the liquefaction facility. This location has been an important industrial area on the Kenai Peninsula for over 50 years. The route for the gas pipeline from Prudhoe Bay to Beluga would follow the existing corridors for the Trans-Alaska Pipeline System (TAPS) and the George Parks Highway right-of-way and is the same route permitted by the United States Army Corps of Engineers for the Alaska Stand Alone Pipeline (ASAP) Project.

The Alaska LNG Project will create much needed, high-paying jobs for Alaskans. Table 4.11.2-7 on page 4-608 of the draft Environmental Impact Statement estimates 2,000 residents of the Kenai Peninsula Borough to be employed by the Alaska LNG Project from indirect and induced job opportunities during peak construction. The liquefaction facility in Nikiski would employ approximately 240 people during operation, and approximately 980 jobs would be concentrated in the Kenai Peninsula Borough. Additional direct and indirect employment throughout the State of Alaska from the Alaska LNG Project would increase economic opportunities in most industries.

The Alaska LNG Project would also bring natural gas to Alaskans and improve air quality. In-State gas could also potentially fuel new resource development projects in Alaska. Potential sales of natural gas to Asian countries will reduce greenhouse gases on a global scale by providing a cleaner energy source.

The Alaska Gasline Development Corporation (ADGC) has responded to public concerns and comments about the Alaska LNG Project. The City of Kenai is ready to see the liquefaction facility developed in the neighboring community of Nikiski and fully supports the permitting of the Alaska LNG Project by the Federal Energy Regulatory Commission.

Thank you for the opportunity to provide input on the Draft Environmental Impact Statement.

Sincerely,

CITY OF KENAI

Mayor Brian Gabriel

cc: Kenai City Council
Paul Ostrander, Kenai City Manager

Page	Section	Comment	Commenter
2-35	2.1.5.1 - Project Description, Proposed Facilities and Land Requirements, Liquefaction Facilities, LNG Plant, Marine Terminal MOF	Consider using the City of Kenai Dock as part of the Project design for some Project activities to avoid displacement of fishing and smaller traditional uses from existing facilities.	City of Kenai
4-595	4.11.1.2 Environmental Analysis, Socioeconomics, Population, Impacts and Mitigation, paragraph 1	Workcamps may not be a sufficient mitigation measure in the Kenai area. Project Management staff will be primarily located in the Kenai Peninsula Borough and many of them will locate in the City of Kenai. Additionally, the project will attract people to the area looking for work who will not be living in the construction workcamp or alternatively move to the area to avoid living in the workcamp.	City of Kenai
4-599	4.11.1.2 Environmental Analysis, Socioeconomics, Population, Impacts and Mitigation	How will home prices and rental prices be affected by the Project? Please address this more fully in your analysis or make additional comment as to this potential impact.	City of Kenai
4-620, paragraph 3	4.11.4.2 Environmental Analysis, Socioeconomics, State and Local Taxes and Government Revenues, Impacts and Mitigation	Comment/question: How would the Project mitigate for the lag time in tax dollars to fulfill societal needs from instant impacts? Concern that initial expenditures by local governments may be underestimated.	City of Kenai
4-623, paragraph 1	4.11.4.2 Environmental Analysis, Socioeconomics, State and Local Taxes and Government Revenues, Impacts and Mitigation	Add: The lag between increases in local government revenues and initial increases in expenditures on education and public health and safety would be a challenge for local government during the construction phase.	City of Kenai
4-625, paragraph 1	4.11.5.2 Environmental Analysis, Socioeconomics, Housing, General Impacts and Mitigation	Add sentence to state: The exemption for Kenai Peninsula Borough workers from living in the work camps may attract additional workers or people hoping to find employment with the Project to the Kenai Peninsula Borough.	City of Kenai
4-683, paragraph 3	4.12.2.4 Environmental Analysis, Transportation,	Add/replace the following text: Upgrades to the Kenai Municipal Airport terminal would depend upon the size of the aircraft and frequency of operations for air	City of Kenai

	Impacts and Mitigation, Air Transportation	travel for the Alaska LNG Project. A lower degree of adverse impacts would be created by private charter flights as compared to those created by public charter or scheduled air service. Depending on the aircraft size, there may need to be increased security screening and/or airfield improvements. There is room to the north for expansion and City-owned parcels are available for lease adjacent to the Kenai Municipal Airport to accommodate potential additional hangars, parking lots, or other ancillary facilities related to air travel for the Alaska LNG Project and a remodel of the terminal will be completed in 2020.	
4-683, paragraph 4	4.12.2.4 Environmental Analysis, Transportation, Impacts and Mitigation, Air Transportation	“These conditions would likely occur only during scheduled rotation periods every 2 weeks.” Amend this sentence to reflect that there would still likely be increased traffic at the Kenai Municipal Airport from the Alaska LNG Project other days besides once every two weeks.	City of Kenai
4-1144, paragraph 3	4.19.4.9 Cumulative Impacts - Land Use, Recreation, and Special Interest Areas: Land Use	Do you mean the Kenai Peninsula Borough Economic Development District (KPEDD)? (add word District)	City of Kenai
4-1144	4.19.4.9 Cumulative Impacts - Land Use, Recreation, and Special Interest Areas: Proposed Developments	Please note that the Kenai LNG Plant for which Marathon has filed to import LNG would likely be constructed prior to the Alaska LNG liquefaction facility and would not be likely to be a simultaneous construction. Suggest not using the word “simultaneous” and instead state that construction of some geographically grouped projects is expected to be close in timing (or other similar wording). Also suggest stating that there could be positive impacts if timing is such that one project in same geographic area would be finished just before construction on the Alaska LNG Project began.	City of Kenai
4-1147, third paragraph	4.19.4.11 Cumulative Impacts - Socioeconomics	Add to this section a sentence to state: Reductions in State of Alaska revenues to local governments may impair the ability of local municipalities to respond to adverse impacts from the Project.	City of Kenai
4-1148, First full paragraph	4.19.4.11 Cumulative Impacts - Socioeconomics	After the first two sentences add the following sentence: Some workers or those speculating to find work either directly or indirectly from the Project may choose to relocate in the Kenai Peninsula Borough to avoid the requirement to reside in the temporary housing camp.	City of Kenai
4-1148, First full paragraph	4.19.4.11 Cumulative Impacts - Socioeconomics	Add to the paragraph on housing or add a new paragraph discussing increased potential demand for social services and law enforcement. Homeless or other illegal camps on both public and private lands have been an increasingly visible	City of Kenai

		and key issue in the City of Kenai, Municipality of Anchorage, and potentially the entire state. There may be an increase in illegal dry cabins, RV-camps, or other illegal makeshift camps from both workers trying to avoid the requirement to live in project work camps and from workers who migrate to the project area seeking employment directly or indirectly with the project.	
5-52	5.2 FERC Staff's Recommended Mitigation #37	Add: The plan shall also include plans for wastewater disposal for all camps. The plan shall also identify water sources and volumes for emergency use, such as in case of fire, during construction and operation of the Project.	City of Kenai

**KENAI HARBOR COMMISSION
SEPTEMBER 16, 2019 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
CHAIR MIKE DUNN, PRESIDING**

MEETING SUMMARY

1. CALL TO ORDER

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

a. Pledge of Allegiance

Chair Dunn led those assembled in the Pledge of Allegiance.

b. Roll Call

Roll was confirmed as follows:

Commissioners present: Chair M. Dunn, Vice-Chair C. Crandall, B. Peters, G. Greenberg, C. Hutchison

Commissioners absent: J. Desimone, N. Berga

Staff/Council Liaison present: City Planner E. Appleby, Public Works Assistant K. Feltman, Council Member J. Glendening

A quorum was present.

c. Agenda Approval

MOTION:

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

2. SCHEDULED PUBLIC COMMENTS – (10 minutes) None scheduled.

3. UNSCHEDULED PUBLIC COMMENT – None.

4. APPROVAL OF MEETING SUMMARY

a. August 19, 2019

It was noted that the date on the meeting summary needed correcting from June 10, 2019 to August 19, 2019.

MOTION:

Commissioner Peters **MOVED** to approve the meeting summary of August 19, 2019 as revised; and Commissioner Hutchison **SECONDED** the motion. There were no objections; **SO ORDERED**.

5. UNFINISHED BUSINESS – None.

6. NEW BUSINESS

- a. **Discussion/Recommendation** – Assignment of Shore Fishery Lease – Tract Two, Shore Fishery Plat No. 71

The City Planner provided an overview of the memo and lease assignment as provided in the packet.

MOTION:

Commissioner Crandall **MOVED** to approve the Assignment of Shore Fishery Lease; and Commissioner Greenberg **SECONDED** the motion.

VOTE:

YEA: Dunn, Hutchison, Greenberg, Peters, Crandall
NAY:

MOTION PASSED UNANIMOUSLY.

- b. **Discussion/Recommendation** – Assignment of Tidelands Lease – Tract B, Kenai Tidelands Survey No. 2, According to Plat No. 89-2

The City Planner provided an overview of the memo and lease assignment as provided in the packet.

MOTION:

Commissioner Peters **MOVED** to approve the Assignment of Tidelands Lease – Tract B, Kenai Tidelands Survey No. 2, According to Plat No. 89-2; and Commissioner Crandall **SECONDED** the motion.

VOTE:

YEA: Hutchison, Greenberg, Crandall, Peters, Dunn
NAY:

MOTION PASSED UNANIMOUSLY.

7. REPORTS

- a. **Public Works Director** – The following was reported:
- The status of the Dock Repair project would be provided at the next meeting; and
 - The design documents for the Peninsula Avenue Bluff Erosion project were complete and waiting approval from the granting agency to advertise.
- b. **Commission Chair** – No report.
- c. **City Council Liaison** – J. Glendening provided an overview of the actions at the September 4 Council Meeting and he thanked Commission members for the focused discussion and questions regarding the shore fishery.

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

9. **COMMISSIONER COMMENTS AND QUESTIONS**

Commissioner Crandall requested to have the Personal Use Fishery Report provided to all Commission members when available and suggested raising the cost of the Personal Use Fishery. He also asked the status of the U.S. Coast Guard Report.

Commissioner Peters noted he looked forward to the Bluff Erosion project.

Commissioner Greenberg inquired about the survey monkey results surrounding Harbor Use. It was noted the results would be provided at the next meeting.

Commissioner Dunn addressed ideas around the cost of the Personal Use Fishery. He further noted interest in discussing how to monitor and count fish coming off Kenai beaches, at the next Harbor Commission meeting.

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

11. **INFORMATION ITEMS** – None.

12. **ADJOURNMENT**

MOTION:

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

There being no further business before the Commission, the meeting was adjourned at 6:55 p.m.

Meeting summary prepared and submitted by:

Jacquelyn LaPlante
Deputy Clerk

**KENAI PARKS & RECREATION COMMISSION
SEPTEMBER 5, 2019 – 6:00 PM
KENAI CITY COUNCIL CHAMBERS
CHAIR CHARLIE STEPHENS, PRESIDING**

MEETING SUMMARY

1. CALL TO ORDER

Chair Stephens called the meeting to order at 6:10 p.m.

a. Pledge of Allegiance

Chair Stephens led those assembled in the Pledge of Allegiance.

b. Roll was confirmed as follows:

Commissioners present: Chair C. Stephens, T. Wisniewski, J. Joanis, S. Kisen, T. Winger

Commissioners absent: J. Dennis, F. Perez

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

A quorum was present.

c. Agenda Approval

MOTION:

Commissioner Joanis **MOVED** to approve the agenda as presented and Commissioner Kisen **SECONDED** the motion. There were no objections; **SO ORDERED.**

2. SCHEDULED PUBLIC COMMENTS – None.

3. UNSCHEDULED PUBLIC COMMENT – None.

4. APPROVAL OF MEETING SUMMARY

a. August 1, 2019

MOTION:

Commissioner Wisniewski **MOVED** to approve the meeting summary of August 1, 2019 and Commissioner Winger **SECONDED** the motion. There were no objections; **SO ORDERED.**

5. UNFINISHED BUSINESS – None.

6. NEW BUSINESS

a. Discussion/Recommendation – September and October Events

The Parks and Recreation Director reported on two major events coming up in September and October. The first event scheduled was the Kenai River Marathon on September 29 with 121 runners currently registered to participate. He added that the number of participants may lessen due to this year's course not certified as a Boston Marathon qualifier. The second event was the Fall Festival on October 12. Parks and Recreation staff was currently seeking possible sponsors for the pumpkins and face painting. It was noted that Mountain View Elementary PTA may be interested in doing face painting. Other activities at the festival would include music, food trucks, a hay maze, petting zoo, hayride, and a Farmer's Market. It was mentioned that Pamela Parker had a photo booth that was very popular at other events.

7. REPORTS

a. Parks and Recreation Director – The Parks and Recreation Director reported on the following:

- The Department was working on their 2nd Pathway of Poetry Contest, geared towards adults with the topic of "Man's Best Friend," noting the poems would be installed on the trail at Daubenspeck Park;
- A third Little Free Library station was donated and would also be installed at the Daubenspeck Park;
- The Dog Park Group was still working with Home Depot for a grant and was recently notified they were the recipient of a technical grant from the National Park System;
- Funds may be sought in FY21 budget for chain link dugouts to replace the wooden ones at the softball fields; and
- The Latter Day Saints Church would be performing 4-5 hours of community service on September 28.

b. Commission Chair – Stephens thanked the Parks and Recreation Director for the Beautification tour and the additional fencing at the Lawton trail extension. He also thanked the Commission members for their participation.

c. City Council Liaison – Knackstedt reported on the action items and presentations from the recent City Council meetings.

8. NEXT MEETING ATTENDANCE NOTIFICATION – October 3, 2019

Chairman Stephens noted he would not be in attendance.

9. COMMISSION QUESTIONS & COMMENTS

Commissioner Joanis reported on the Kenai Little League's Fall Ball Program.

Commissioner Winger reported that Mountain View Elementary would be sponsoring a bike rack and they would like it placed at the Visitor's Center.

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

11. **INFORMATION** – None.

12. **ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 7:12 p.m.

Meeting summary prepared and submitted by:

Jacquelyn LaPlante
Deputy Clerk

DRAFT

KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
SEPTEMBER 25, 2019 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVENUE, KENAI, ALASKA
COMMISSION 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: Vice-Chair D. Fikes, J. Halstead, V. Askin, G. Greenberg,
Chair J. Twait, R. Springer, T. McIntyre

Commissioners absent: None

Staff/Council Liaison present: City Planner E. Appleby, Planning Assistant W. Anderson,
City Clerk J. Heinz, Council Liaison B. Molloy

A quorum was present.

3. Agenda Approval

MOTION:

Commissioner Halstead **MOVED** to approve the agenda and Commissioner Askin **SECONDED** the motion.

There were no objections on the amendment; **SO ORDERED.**

4. Consent Agenda

MOTION:

Commissioner Askin **MOVED** to approve the consent agenda and Commissioner Halstead **SECONDED** the motion. There were no objections; **SO ORDERED.**

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

as part of the General Orders.

5. *Excused absences – None.

B. APPROVAL OF MINUTES

1. *September 11, 2019

The minutes were approved by the Consent Agenda.

C. SCHEDULED PUBLIC COMMENT – None.

D. UNSCHEDULED PUBLIC COMMENT – None.

E. CONSIDERATION OF PLATS – None.

F. PUBLIC HEARINGS

1. **Resolution PZ2019-37** – Application for a Conditional Use Permit to operate Gunsmithing Business, located at 310 Princess Street, Kenai, Alaska 99611, and further described as Lot 2, Cinderella Subdivision. The application was submitted by Ronald Carlson, 310 Princess Street, Kenai, Alaska 99611.

MOTION:

Commissioner Askin **MOVED** to approve Resolution No. PZ2019-37 and Commissioner Springer **SECONDED** the motion.

City Planner Appleby reviewed the staff report and rationale for how the application met the approval criteria provided in the packet noting the Conditional Use Permit was for a gunsmithing business in the RR-1 Zone and recommended approval with the following conditions:

- Applicant must comply with 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 of 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;
- Prior to operation, the applicant must submit a copy of the federal firearms license issued by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives;
- Prior to operation, the applicant must schedule and appointment for an inspection by the City of Kenai Fire Marshal and shall comply with instructions from the Fire Marshal to meet municipal Fire Code. The applicant will provide documentation to the City of biannual fire inspections (once every two years) after the initial inspection prior to operation;
- Prior to operation, the applicant will install security cameras, improved door locks, and update the security of his fencing as required by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives and the City of Kenai Fire Marshal. Casual access shall not be available to the garage;

- If the applicant decides to put up a sign for his business, he will first obtain a sign permit from the City of Kenai;
- Failure to provide documentation to the City of meeting these conditions prior to operation of the gunsmithing business shall be grounds for the suspension or revocation of the Conditional Use Permit.

Commission Chair Twait opened the floor for public testimony.

Ronald Carlson noted he had already begun work on the necessary improvements; clarified that test firing would take place at the gun club.

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

Clarification was provided that after the federal permit was applied for, an agent would inspect the property and make recommendations on what additional security measures needed to be in place.

VOTE:

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

NAY:

MOTION PASSED UNANIMOUSLY.

Commission Chair Twait noted the 15-day appeal period.

2. **Resolution PZ2019-33** - Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.175 – Adult Businesses, To Increase The Buffer Distances Between Adult Businesses And Sensitive Uses From 500 Feet To 1,000 Feet and Define Sensitive Uses and Amend Kenai Municipal Code 14.22.010 - Land Use Table, to Add Adult Businesses.

MOTION:

Commissioner Springer **MOVED** to approve Resolution No. PZ2019-33 and Commissioner Askin **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the Council had requested a recommendation from the Commission and that the ordinance provided a definition for sensitive uses and added adult uses to the Land Use Table. She also referenced the supplemental information provided at a previous meeting, which contained information regarding negative secondary effects and noted goals in the Comprehensive Plan which would be met with the adoption of the ordinance.

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

Clarification was provided on the following:

- If a property owner met buffer requirements and existing code, an adult business would be a principally permitted use;

- Once an adult business was established, they wouldn't have to close if an establishment defined as a sensitive use wanted to locate within the buffer;
- Distance was measured in a straight line from the nearest point on the premises to the nearest property line;
- The buffer tool in the City's GIS Software would be utilized to measure distances;
- The measurement described in the code was the most clear way to measure and was comparable to marijuana buffer measurement points;
- A one time or occasional show could not be regulated the same as a full-time establishment because the secondary effects are not the same; and
- Secondary effects related to each particular type of adult business needed review because a firm line did not exist on what constituted an occasional show versus a full-time establishment.

The point was made that the map would need to be checked any time a new adult business was seeking to establish.

It was restated that the adult businesses would be principally permitted in only four specific zones.

VOTE:

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

MOTION PASSED UNANIMOUSLY.

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

1. **Resolution PZ 2019-39** – Application for a Home Occupation Permit for a Home Day Care of No More Than Eight (8) Children Under the Age of Twelve (12) years, located at 604 Laurel Drive, Kenai, Alaska 99611, and further described as Lot 1, Block J, Woodland Subdivision Part One (1). The application was submitted by Mindy Dalebout, 604 Laurel Drive, Kenai, AK 99611.

MOTION:

Commissioner Springer **MOVED** to approve Resolution No. PZ2019-39 and Commissioner Askin **SECONDED** the motion.

City Planner Appleby reviewed the staff report provided in the packet noting the Home Occupation Permit required improvements to the home and was intended for a daycare within a residence of no more than eight (8) children under the age of twelve (12), including children related to the caregiver and recommended approval with the following condition:

- Applicant must comply with all federal, State of Alaska, and local regulations;
- The City of Kenai Fire Marshal must perform an inspection to verify that the applicant has complied with his requirements set forth on the inspection dated August 22, 2019; including, but not limited to, the installation of egress windows. The applicant may not operate her business until this has been done.

- The applicant will discuss plans for the egress windows with the City Building Official and, if necessary, will obtain a Building Permit from the City to install the egress windows.
- Pursuant to KMC 14.20.230(h)(1), the premises shall be inspected every other year by the Fire Marshal for the City of Kenai;
- A copy of the license issued by the State of Alaska for the day care facilities must be submitted to the City of Kenai prior to operating the day care;
- Pursuant to KMC 14.20.230(f), this Home Occupation Permit is not transferable to another person or location;
- If the applicant decides to put up a sign for her business, she will first obtain a sign permit from the City of Kenai;
- Failure to provide documentation to the City of meeting these conditions prior to operation of the gunsmithing business shall be grounds for the suspension or revocation of the Conditional Use Permit.

Clarification was provided that the Fire Marshal provided the inspection on the residence.

It was suggested that, being a daycare, fire code requirements may need to be followed instead of City building codes.

VOTE:

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

MOTION PASSED UNANIMOUSLY.

I. PENDING ITEMS – None.

J. REPORTS

1. **City Council** – Council Member Molloy reviewed the action agenda from the September 18 meeting.
2. **Borough Planning** – Vice-Chair Fikes reported action from the September 23 Borough Planning Commission and Platting Committee meetings.
3. **Administration** – City Planner Appleby reported on the following:
 - Asked if there was objection to rescheduling the October 23 meeting to October 30; there was no objection;
 - Noted the consultant for the Hazard Mitigation Plan would be present at the rescheduled October 30 meeting;
 - The adult business ordinance would be before the Council at their next meeting;
 - Alaska LNG Draft Environmental Impact Statement comments were being accepted until October 3;
 - The land sale and leasing policy ordinance would be before Council at their next meeting; and
 - Work on the Land Management Plan was ongoing.

K. ADDITIONAL PUBLIC COMMENT – None.

L. **INFORMATIONAL ITEMS** – None.

M. **NEXT MEETING ATTENDANCE NOTIFICATION** – October 9, 2019

N. **COMMISSION COMMENTS & QUESTIONS**

Commissioner Greenberg noted that the regulation had changed for gunsmithing in the RR-1 zone and asked about the professional offices; it was confirmed both uses were approved by the ordinance.

Commissioner Springer noted he appreciated an inspection was completed in the daycare Home Occupation Permit.

O. **ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 8:03 p.m.

Minutes prepared and submitted by:

Jamie Heinz, CMC
City Clerk



Kenai Chamber of Commerce and Visitor Center

Kenai Visitor and Cultural Center Report

August 2019

KVCC Walk in Visitor Count

Month	2015	2016	2017	2018	2019
August	9,269	6,709	6,235	6,594	6,643*

*Of the 6,643 KVCC walk-ins, we estimate 305 attendees for facility rentals.

The remaining 6,338 would be Saturday Market and visitor traffic.

Official Kenai Guide Mailings

Month	2015	2016	2017	2018	2019
August	0	1,290	638	667	1,185

Official Kenai Guide Display Racks

Location	2016	2017	2018	2019
Airport Hotel – Kenai	-	-	-	-
Aspen – Kenai	-	-	75	-
Aspen – Soldotna	-	-	100	-
Charlotte’s Restaurant			65	35
City Hall	30	-	-	-
Country Foods/IGA	-	48	153	56
Diamond M Ranch	-	-	-	135
Everything Bagels	-	-	-	10
Kenai Airport	445	164	311	265
Kenai Wash & Dry				25
Paradisos Restaurant	51	-	144	43
Quality Inn	77	62	108	30
Safeway – Kenai	120	196	62	95
Safeway – Soldotna			24	57
Soldotna Inn	10	-	-	-
Sportsmans Warehouse	212	160	224	145
The Cannery Lodge			200	50
Three Bears	96	16	115	107
Veronica’s	57	60	159	95
Other				
August Total Guide Count	1,290	706	1,740	1,148



Kenai Chamber of Commerce and Visitor Center

Kenai Visitor and Cultural Center Report

August 2019

Note: In January, we send guides to Anchorage Brochure Distribution to distribute to the following locations throughout the year. ABD also supplies literature to many hotels and businesses that do not have one of their displays.

Downtown

Downtown Tour Group
 4th Street Mall
 Anchorage Guesthouse
 Anchorage Grand Hotel
 Anchorage Historic Hotel
 Clarion Suites
 Comfort Inn
 International Auto Logistics
 Marriott
 Ramada
 Ship Creek RV
 The Aviator
 Quality Inn

JBER

Outdoor Rec Ft. Rich
 Oasis Travel
 YMCA
 Outdoor Rec Elm AFB
 Airforce Inn

Whittier/Girdwood

Inn at Whittier
 Portage Train Station

Midtown

Best Western Golden Lion
 AAA Travel
 Clippership RV
 Extended Stay
 Golden Nugget RV
 Cruise America RV Rentals
 Fairfield Inn Marriott
 Hilton Garden Inn
 Home2 by Hilton
 Marriott
 Springhill Suites 36th
 Springhill Suites Providence

Spenard

ABC Motorhome
 ALEX Inn & Suites
 Coast International Inn
 Comfort Suites
 Courtyard Marriott
 Executive Suites
 Holiday Inn Express
 La Quinta
 Midnight Sun Car Rental
 Rent-A-Subaru
 Puffin Inn
 Microtel
 Barratts Travel Lodge

of guides sent to Anchorage Brochure Distribution in January
 5yr Comparison

	2015	2016	2017	2018	2019
Anchorage Brochure Distribution	20,000	20,000	15,000	15,000	22,425*

*Anchorage Brochure ran out of guides in July. We shipped 7,425.



Kenai Chamber of Commerce and Visitor Center

Kenai Visitor and Cultural Center Report

August 2019

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Facility Rental/Community Usage

<u>Organization/Company</u>	<u>Hours of Usage</u>
Alaska VA	4
Bristol Bay Native Corporation	5
Kenai Chamber Board Meetings	2
Kenai Chamber of Commerce Luncheon	3
Kenai Peninsula Realtor Association	4
Kenai Saturday Market	30
State of Alaska – CIPT	5
August Facility Usage:	53

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

COUNCIL MEETING OF: OCTOBER 2, 2019

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
CRAIG TAYLOR EQUIPMENT	EXCAVATOR RENTAL	STREETS	RENTALS	3,480.00
KONICA MINOLTA	COPIER	POLICE	SMALL TOOLS	3,419.70
INDUSTRIAL SOFTWARE	WONDERWARE RENEWAL	WATER, SEWER, WWTP	SOFTWARE	7,650.00
LEGACY ELECTRIC	FY20 STREET LIGHT REPAIRS	STREET LIGHTING	REPAIR & MAINTENANCE	14,000.00
NORRIS & SONS	D-1 GRAVEL	RECREATION	OPERATING SUPPLIES	2,530.00
ZONES	CISCO EQUIPMENT	NON-DEPARTMENTAL	SMALL TOOLS	10,643.09
ARCTIC ELEVATOR	FY20 ELEVATOR MAINTENANCE	VARIOUS	REPAIR & MAINTENANCE	7,760.00



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Fish and Game

BOARDS SUPPORT SECTION
Headquarters Office

1255 West 8th Street
P.O. Box 115526
Juneau, Alaska 99811-5526
Main: 907.465.4110
Fax: 907.465.6094

Email: dfg.bof.comments@alaska.gov
Website: boardoffisheries.adfg.alaska.gov

September 25, 2019

The Honorable Nels Anderson, Mayor
City of Soldotna
Office of the Mayor
177 N Birch Street
Soldotna, Alaska 99669

The Honorable Brian Gabriel, Mayor
Office of the Mayor
City of Palmer
210 Fidalgo Avenue
Kenai, Alaska 99611

The Honorable Charlie Pierce, Borough Mayor
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, Alaska 99669

Subject: Upper Cook Inlet Finfish meeting location

Dear Mayors:

As you likely know, the Board of Fisheries recently decided to revote on where to hold the 2020 Upper Cook Inlet Finfish meeting. This vote will occur at the October 23-24, 2019 work session at the Egan Civic and Convention Center in Anchorage. We anticipate it will occur under miscellaneous business on the second day (the 24th). The deadline for public comment is October 8.

If my office can assist you in any way please let me know, glenn.haight@alaska.gov, 907-465-6095.

Sincerely,

A handwritten signature in blue ink that reads "Glenn Haight".

Glenn Haight
Executive Director

