

**KENAI AIRPORT COMMISSION  
REGULAR MEETING  
AUGUST 8, 2019 – 6:00 P.M.  
KENAI CITY COUNCIL CHAMBERS  
210 FIDALGO AVE., KENAI, AK 99611  
<http://www.kenai.city>**

1. **CALL TO ORDER**
  - a. Pledge of Allegiance
  - b. Roll Call
  - c. Agenda Approval
  
2. **SCHEDULED PUBLIC COMMENT** *(Public comment limited to ten (10) minutes per speaker)*
  
3. **UNSCHEDULED PUBLIC COMMENT** *(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)*
  
4. **APPROVAL OF MEETING SUMMARY**
  - a. July 11, 2019 .....Pg. 2
  
5. **UNFINISHED BUSINESS** – None.
  
6. **NEW BUSINESS**
  - a. **Discussion/Recommendation** – Ordinance No. 3072-2019 .....Pg. 5
  - b. **Discussion/Recommendation** – Lease Application – SOAR Ministries – Tract A, General Aviation Apron No. 2. .... Pg. 97
  
7. **REPORTS**
  - a. Airport Manager
  - b. City Council Liaison
  
8. **NEXT MEETING ATTENDANCE NOTIFICATION** – September 12, 2019
  
9. **COMMISSIONER COMMENTS AND QUESTIONS**
  
10. **ADDITIONAL PUBLIC COMMENT**
  
11. **INFORMATION ITEMS**
  - a. June 2019 Midmonth Report..... Pg. 113
  - b. July 2019 Midmonth Report ..... Pg. 115
  - c. June 2019 Enplanements ..... Pg. 117
  
12. **ADJOURNMENT**

<b>**PLEASE CONTACT US IF YOU WILL NOT BE ABLE TO ATTEND THE MEETING** JAMIE -- 283-8231 OR, MARY -- 283-8281</b>
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**KENAI AIRPORT COMMISSION  
REGULAR MEETING  
JULY 11, 2019 – 6:00 P.M.  
KENAI CITY COUNCIL CHAMBERS  
CHAIR GLENDA FEEKEN, PRESIDING**

**MEETING SUMMARY**

**1. CALL TO ORDER**

Chair Feeken called the meeting to order at 6:01 p.m.

**a. Pledge of Allegiance**

Chair Feeken led those assembled in the Pledge of Allegiance.

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

Commissioners Present: G. Feeken, P. Minelga, K. Dodge, D. Pitts

Commissioners Absent: J. Bielefeld, J. Zirul

Staff/Council Liaison Present: Airport Manager M. Bondurant, Airport Assistant E. Brincefield, City Manager P. Ostrander, Assistant to the City Manager C. Cunningham

A quorum was present.

**c. Agenda Approval**

**MOTION:**

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

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

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

**4. APPROVAL OF MEETING SUMMARY**

**a. June 13, 2019**

**MOTION:**

Commissioner Minelga **MOVED** to approve the meeting summary of June 13, 2019 and Commissioner Dodge **SECONDED** the motion. There were no objections; **SO ORDERED.**

**5. UNFINISHED BUSINESS – None.**

## 6. NEW BUSINESS

### a. Discussion/Recommendation – Land Sale Leasing Program Presentation.

City Manager Ostrander and Assistant to City Manager Cunningham presented on proposed changes to the Land Sale Leasing Policy noting the administration was striving for uniform policies for both leasing and sale.

## 7. REPORTS

### a. Airport Manager

Airport Manager Bondurant reported on the following:

- The Terminal Rehabilitation Project was moving along;
- The Airfield Marking Project would begin in the coming weeks;
- The FAA Certification Inspection went well; reported on corrective items;
- The Field of Flowers sign was completed;
- The Wildlife Refuge / State Parks display in the terminal was to be updated.

### b. City Council Liaison

None.

## 8. NEXT MEETING ATTENDANCE NOTIFICATION – August 8, 2019

## 9. COMMISSIONER COMMENTS AND QUESTIONS

Commissioner Minelga thanked the City Manager and Assistant to the City Manager for their presentation.

Commissioner Dodge echoed appreciation for the presentation; looking forward to a streamlined process.

Commissioner Pitts noted he was glad SOAR was moving forward with another lease application.

## 10. ADDITIONAL PUBLIC COMMENT – None.

## 11. INFORMATION ITEMS

- a. June 2019 Mid-Month Report
- b. July 2019 Mid-Month Report
- c. May 2019 Enplanements
- d. 2019 Float Plane Basin Activity
- e. Airport Bulletin 10-2019 Security Awareness

## 12. ADJOURNMENT

### MOTION:

Commissioner Minelga **MOVED** to adjourn and Commissioner Dodge **SECONDED** the motion.

There were no objections; **SO ORDERED.**

Meeting summary prepared and submitted by:

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Jamie Heinz  
City Clerk

DRAFT



Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3072-2019

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

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

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

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

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

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

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

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

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

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

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

CITY AIRPORT RESERVE [AND AIRPORT] LANDS

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

**[CHAPTER 21.15**

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

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

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

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

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

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

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

**21.15.020 QUALIFICATIONS OF APPLICANTS OR BIDDERS.**

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

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

**21.15.030 APPLICATIONS.**

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

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

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

**21.15.040 FILING FEE AND DEPOSIT.**

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

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

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

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

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

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

**21.15.050 RIGHTS PRIOR TO LEASING.**

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



**21.15.060 PROCESSING PROCEDURE.**

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

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

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

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

**21.15.070 REVIEW.**

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

**21.15.080 APPRAISAL.**

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

**21.15.090 TERMS OF LEASE.**

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

**21.15.100 ANNUAL MINIMUM RENTAL.**

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

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

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

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

**21.15.110 BIDDING PROCEDURE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**21.15.140 LEASE EXECUTION.**

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

**21.15.150 LEASE UTILIZATION.**

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

**21.15.160 FORM OF LEASE.**

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

(1) DRAFTED TO:

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

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

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

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

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

**21.15.170 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.**

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

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

**21.15.180 SALE.**

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

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

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

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

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

**21.15.190 SALE PROCEDURE.**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**21.15.220 PROPERTY EXCHANGES.**

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

**21.15.230 PROPERTY SALE TO ADJACENT OWNERS.**

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

**21.15.240 GRANT OR DEVOTION.**

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

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

**21.15.250 USE PERMITS.**

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

**21.15.260 ACQUISITION OF REAL PROPERTY.**

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

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

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

**[TITLE 22  
GENERAL FUND LANDS**

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

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

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

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

**22.05.015 SALE OR DISPOSAL.**

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

**22.05.020 QUALIFICATIONS OF APPLICANTS OR BIDDERS.**

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

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

**22.05.025 APPLICATIONS.**

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

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

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

**22.05.030 FILING FEE AND DEPOSIT.**

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

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

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

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

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

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

**22.05.035 RIGHTS PRIOR TO LEASING.**

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

**22.05.040 PROCESSING PROCEDURE.**

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



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

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

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

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

**22.05.045 REVIEW.**

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

**22.05.050 APPRAISAL.**

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

**22.05.055 TERMS OF LEASE.**

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

**22.05.060 ANNUAL MINIMUM RENTAL.**

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

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

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

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

**22.05.065 BIDDING PROCEDURE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.080 LEASE EXECUTION.**

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

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

**22.05.085 LEASE UTILIZATION.**

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

**22.05.090 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.**

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

**22.05.095 SALE.**

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

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

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

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

**22.05.100 SALE PROCEDURE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.115 PROPERTY EXCHANGES.**

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

**22.05.120 PROPERTY SALE TO ADJACENT OWNERS.**

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

**22.05.125 GRANT OR DEVOTION.**

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

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

**22.05.130 USE PERMITS.**

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

**22.05.135 ACQUISITION OF REAL PROPERTY.**

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

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

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

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

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

**22.05.05 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.025 Initial Lease Application.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

**22.05.055 Length of Lease Term.**

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

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

Term Table

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.095 Methods of Sale or Disposal.**

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

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

(1) Non-competitive process:

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

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

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

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

(2) Competitive process:

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

(ii) Sealed bid to the highest responsible bidder.

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

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

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

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

**22.05.100 Sale Procedure.**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

(1) The legal description of the land;

(2) A brief physical description of the land;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

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

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



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

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## MEMORANDUM

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

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### Introduction:

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

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

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

### Procedure:

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



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

**Sectional Analysis:**

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

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

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

**Title 22**

**[GENERAL FUND]CITY-OWNED LANDS**

**Chapter 22.05**

**DISPOSITION OF CITY [GENERAL FUND]LANDS**

**22.05.05 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.025 Initial Lease Application[S].**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[22.05.030 FILING FEE AND DEPOSIT.**

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

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

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

(A) AN APPRAISAL COST RECOVERY DEPOSIT; AND

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

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

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

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

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

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

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

**22.05.040 [PROCESSING PROCEDURE] Lease Application Review.**

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

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

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

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

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

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

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

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

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

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

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

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

(1) The purpose of the proposed amendment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[22.05.050 APPRAISAL.**

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

**22.05.050 Competing Lease Applications.**

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

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

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

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

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

Term Table



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.065 [B]Lease Bidding [P]Procedure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.070 Development Incentives.**

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

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

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

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

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

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

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

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

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

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

**22.05.075 Ownership of Improvements.**

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

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

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

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

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

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

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

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

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



**22.05.080 Lease [E]Execution.**

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

**22.05.085 Lease [U]Utilization.**

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

**22.05.086 Form of Lease.**

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

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

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

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

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

(5) Adopted by resolution of the City Council.

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

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

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

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

**22.05.087 Lease Payments.**

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

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

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

#### **[22.05.090 CONVEYANCE TO ENCOURAGE NEW ENTERPRISES.**

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

#### **22.05.095 [S] Methods of Sale or Disposal.**

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

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

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

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

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

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

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

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

(2) [BY]Competitive process:

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

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

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

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

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

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

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

#### **22.05.100 Sale [P]Procedure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The length of the note; and

(iii) A fixed or variable interest rate.

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

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



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

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

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

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

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

**[22.05.115 PROPERTY EXCHANGES.**

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

**22.05.120 PROPERTY SALE TO ADJACENT OWNERS.**

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

**22.05.125 GRANT OR DEVOTION.**

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

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

**22.05.130 Special Use [P]Permits.**

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

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

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

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

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

**Title 22  
CITY-OWNED LANDS**

**Chapter 22.05  
DISPOSITION OF CITY LANDS**

**22.05.05 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **22.05.025 Initial Lease Application.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.05.050 Competing Lease Applications.**

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

**22.05.055 Length of Lease Term.**

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

Term Table

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **22.05.065 Lease Bidding Procedure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Adopted by resolution of the City Council.

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

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

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

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

### **22.05.087 Lease Payments.**

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

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

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

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

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

#### **22.05.100 Sale Procedure.**

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

(b) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to engineering services, surveying and consulting costs, unless in the sole discretion of the City Council it is determined the subdivision serves other City purposes.

(1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.

(2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.

(3) If the City enters into a sale with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will be credited toward the purchaser at closing.

(4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the sale.

(5) If the application is rejected or if the applicant withdraws the application or fails to enter into a sale offered to the applicant, the City will return any unused deposit balance to the applicant.

(c) The City will retain the services of an independent, real estate appraiser certified under Alaska State statutes to determine the fair market value for a determination of the minimum price on the land to be paid for from the deposit made by the applicant unless such an appraisal has been obtained within one (1) year prior to the date of sale. The cost of the appraisal will be credited toward the purchaser at closing.

(d) If at any time during the process of preparing for sale, the applicant withdraws the application for sale, the City shall stop all procedures, pay expenses incurred prior to withdrawal of the application for sale, and reimburse applicant for any deposit advanced in excess of expenses incurred. However, if another party desires the sale to proceed, files an application for sale, executes and files an agreement to purchase, and deposits sufficient funds, then the prior applicant will be reimbursed for expenses which can be attributed to the subsequent applicant.

(e) If all actions necessary for preparation for sale have been accomplished, and if neither the applicant nor any other party purchases said land when first offered for sale after such

request, then all expenses incurred in preparation for the sale will be paid from the applicant's deposit, and the balance, if any, shall be returned to the applicant. If the amount of the deposit is insufficient to pay all of the costs, the applicant will be billed for the balance due.

(f) If the land is sold in a competitive public sale set in response to such request to anyone other than the applicant, the applicant's deposit will be refunded in total to the applicant. The City's expenses will be first deducted from the deposit of the successful bidder.

(g) If the land is sold to the applicant, any deposit advanced, after deducting the City's expenses, will be credited to the purchaser at closing.

(h) If the land is leased land in which the lease contains an option to purchase once the minimum development requirements have been met, the lessee may request the sale of the land at not less than the fair market value.

(i) If the land is to be sold through a competitive process, notice of sale and the manner in which the land is to be sold must be posted to the extent possible to be visible from each improved street adjacent to the property and published in a newspaper of general circulation within the City. The published notice must contain:

- (1) The legal description of the land;
- (2) A brief physical description of the land;
- (3) The area and general location of the land;
- (4) The minimum acceptable offer for the land (which shall be the fair market value);
- (5) The terms under which the land will be sold;
- (6) Any limitations on the sale of the land;
- (7) The time and place set for the auction or bid opening;
- (8) The amount of deposit to be submitted with each bid in order to cover the City's expenses such as survey, appraisal, and reviews;
- (9) Any other matters concerning the sale of which the City Manager believes the public should be informed.

(j) If a buyer desires to obtain a preliminary commitment for title insurance or title insurance to the land, it shall be the responsibility of the buyer to obtain and pay for such commitment or insurance.

(k) The City Manager is authorized to negotiate a division of the costs of sale to a maximum of fifty percent (50%) of the required costs being borne by the City, provided however that no costs of sale will be paid by the City where a sale is negotiated at a price below the fair market value of the land.

#### **22.05.101 No Right of Occupancy – Land Purchase Application Expiration.**

(a) Submitting an application to purchase land does not give the applicant a right to purchase or use City-owned land.

(b) The application shall expire upon closing of the sale or rejection of a land purchase application by the City Council or within twelve (12) months after the date the application has been submitted.

#### **22.05.105 Terms for Financing Sale of City-Owned Lands.**

(a) In order to expedite and facilitate the sale of City lands, the City Manager is authorized to accept terms for sales and may accept a note secured by a deed of trust for a portion of the purchase price thereof, subject to the following restrictions:

- (1) Except for property sold by the City subsequent to foreclosure for delinquent taxes or assessments, prior to making a determination to accept a note and deed of trust from a prospective purchaser, the City shall order a preliminary commitment for title insurance and a review of the grantee index covering the party desiring to purchase the land at the

cost of the party requesting to purchase the land, and no credit will be advanced on such sale if there are any delinquent liens or unpaid judgments found in the title company report until any such judgments or liens are paid and releases therefor have been filed.

(2) In the event of a credit sale, terms shall be approved by the City Council in the Ordinance approving the sale, as follows:

- (i) The down payment required, which shall not be less than fifteen percent (15%) of the sales price; and
- (ii) The length of the note; and
- (iii) A fixed or variable interest rate.

#### **22.05.110 Determination as to Need for Public Use.**

(a) Whether land shall be acquired, retained, devoted, or dedicated to a public use shall be determined by ordinance which shall contain the public use for which the property is to be dedicated, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.

(b) Whether land previously dedicated to a public use should be dedicated to a different public use or should no longer be needed for public use shall be determined by the City Council by ordinance, except in cases of vacation of rights-of-way or easements which may be determined by resolution, either of which shall contain the new public use for which the property is to be dedicated or the reason the land is no longer needed for public use, the legal description of the property, and the address or a general description of the property sufficient to provide the public with notice of its location.

#### **22.05.130 Special Use Permits.**

The City Council may authorize the City Manager to grant special use permits for the temporary use of real property owned by the City for a period not to exceed one (1) year, without appraisal of the value of the property or public auction, for any purpose compatible with the zoning of the land, and on such terms and for such rentals as the Council shall determine.

#### **22.05.135 Acquisition of Real Property.**

(a) The City, by authorization of the City Council, expressed in a resolution for such purpose, may lease, purchase or acquire an interest in real property needed for a public purpose on such terms and conditions as the Council shall determine. No purchase shall be made until a qualified independent appraiser has appraised the property and given the Council an opinion as to the fair market value of the land unless the Council, upon resolution so finding, determines that the public interest will not be served by an appraisal.

(b) Rights-of-way and easements may be accepted or issued by the City Manager after approval by the City Council for utility lines and services of all types and for necessary rights-of-way easements. This requirement does not apply to rights-of-way or easements dedicated through the City and Borough platting process.





*"Village with a Past, City with a Future"*

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
Telephone: (907) 283-7535 | Fax: (907) 283-3014  
www.kenai.city

## MEMORANDUM

**TO:** Airport Commission

**FROM:** Mary Bondurant – Airport Manager

**DATE:** August 1, 2019

**SUBJECT:** **SOAR International Ministries Lease Application – Tract A, General Aviation Apron No. 2**

---

SOAR International Ministries has submitted an Airport Reserve Lease Application for Tract A, General Aviation Apron No. 2 for your recommendation.

A lease application was submitted previously in 2018 that Airport Commission reviewed at the July 12, 2018, meeting and was unanimously recommended for City Council approval. City Council did approve the lease application; however, the application expired after one year because the lease was not executed and Council did not grant an extension.

Included for you review and consideration is a memo from the City Planner, Airport review memo from June 12, 2018, and a memo to Planning and Zoning stating Airport Commissions recommendation.

Does Airport Commission recommend Council approve the subject lease?

Attachments





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Telephone: (907) 283-7535 | Fax: (907) 283-3014  
www.kenai.city

## MEMORANDUM

**TO:** Airport Commission and Mary Bondurant, Airport Manager  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Elizabeth Appleby, City Planner  
**DATE:** July 31, 2019  
**SUBJECT:** **Kenai Municipal Airport Reserve Lease Application – Tract A, General Aviation Apron No. 2**

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SOAR International Ministries, Incorporated (SOAR) submitted a lease application to develop a hangar, office, and parking on the undeveloped portion of Tract A, General Aviation Apron No. 2 within the Airport Reserve on July 1, 2019. SOAR had previously submitted an application for the same parcel for the same use in 2018 that was approved by City Council, but it expired after one year after no lease was executed and an extension was not granted pursuant to Kenai Municipal Code 21.10.050 No right of occupancy - Application expiration in May 2019.

The parcel is 5.25 acres fronting the aviation apron. It has street frontage on North Willow and Granite Point streets. The area adjacent to the taxiway has been developed for airplane parking and the back half of the lot with the street frontages remains treed and undeveloped. SOAR proposes to build on the portion of the lot that is currently treed, and would need to subdivide the lot prior to construction. SOAR is proposing the City share evenly in the cost of the subdivision required before the parcel may be leased. Kenai Municipal Code 21.10.040(c) states subdivision costs may be shared in whatever amount the City Council determines is reasonable given benefit to the Airport if City Council determines the subdivision serves other Airport purposes. City staff recommends an even split as both SOAR benefits and the City benefits from the creation of a more desirable parcel for lease. SOAR is current on rent payments for existing leases within the Airport Reserve from the City of Kenai.

SOAR proposes to lease a portion of Tract A, General Aviation Apron No. 2 for an aeronautical use. SOAR proposes to construct an approximately 120 foot x 180 foot hangar for aircraft storage and maintenance. There would also be a connecting office facility of approximately 100-foot x 110-foot, an aircraft ramp and tie-down area, and parking. Possible activities noted on SOAR's lease application include flight training, aircraft parts sales, aviation safety meetings,



community meetings, and storage of aircraft floats. SOAR requested a lease term of 55 years to start on September 1, 2019, however, the maximum term of a lease allowed under KMC 21.10.080 is 45 years. In addition, with timing of Commission and Council meetings and the 30-day waiting period to allow for a competitive lease process to accept other lease applications, the lease may not reasonably start until mid-September 2019. SOAR would need to ensure the fence encompassing its development met Airport safety and security standards.

Pursuant to Kenai Municipal Code 21.10.060 Lease application review, notice of the new lease application was posted in the *Peninsula Clarion* and stated competing applications may be submitted for the parcel within 30-days to the City. The 30-day window from publication will end on August 3, 2019. The Airport Manager will confirm at the Airport Commission meeting on August 8, 2019 if the City received a competing application as this memorandum was drafted before the 30-days had passed. No competing applications have been received as of the date of this memorandum.

The parcel is within the Airport Light Industrial (ALI) Zone. Pursuant to KMC 14.20.065, the purpose of the ALI Zone is to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. The proposed aeronautical use by SOAR is a permitted and compatible use in the ALI Zone.

The Imagine Kenai 2030 Comprehensive Plan outlines goals, objectives, and action items for the City, including this one pertaining to the Kenai Municipal Airport:

- Objective T-1: *Support future development near or adjacent to the airport when such development is in alignment with the Kenai Municipal Airport's primary mission, "To be the commercial air transportation gateway to the Kenai Peninsula Borough and Cook Inlet."*

The proposed use by SOAR complies with the Imagine Kenai 2030 Comprehensive Plan in that it supports development on lease lots and the development is in alignment with the Kenai Municipal Airport's marketing strategy.

The Airport Land Use Plan was developed to identify the highest and best uses of Kenai Municipal Airport land. The Airport Land Use Plan discusses leasing land and enhancing opportunities for local economic development. The proposed use by SOAR complies with the Airport Land Use Plan. It would enhance local economic development.

**Does the Airport Commission recommend the execution of a 45-year lease between the City of Kenai and SOAR?** The City Council and Planning and Zoning Commission would be notified of the Airport Commission's decision as part of their evaluation of the lease applications. The Airport Commission makes their decisions on lease applications based on the proposed development's compliance with the Airport Land Use Plan, Airport Layout Plan, Federal Aviation Administration regulations, Airport Master Plan, Airport Improvement Program grant assurances, and Airport operations.

Thank you for your consideration.



# City of Kenai Kenai Municipal Airport Land Lease Application

Application for:

- New Lease
- Amendment
- Extension/Renewal

Application Date: July 1, 2019

## Applicant Information

Name of Applicant:	Richard Page						
Mailing Address:	34225 Page street	City:	Soldotna	State:	Alaska	Zip Code:	99669
Phone Number(s):	Home Phone: (907) 252-1841 Cell		Work/ Message Phone: (907) 283-1961				
E-mail: (Optional)	RichardPage@soarinternational.org						
Name to Appear on Lease:	SOAR International Ministries						
Mailing Address:	P.O. Box 1714	City:	Kenai	State:	Alaska	Zip Code:	99611
Phone Number(s):	Home Phone: (907) 252-1841 Cell		Work/ Message Phone: (907) 283-1961				
E-mail: (Optional)							
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Government <input type="checkbox"/> Other _____						

## Description of Property and Term Requested

Legal Description of Property:	Undeveloped portion of General Aviation Subdivision #2 Tract A		
Does the Property Require Subdivision? (if Yes, answer next two questions)	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	
Are you prepared to be responsible for all costs associated with subdivision?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	
Do you believe the proposed subdivision would serve other Airport purposes?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	
Do you have or have you ever had a lease with the City of Kenai?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	
If Yes, please provide description of property leased (e.g. legal or physical description):			
Is this application for renewal or term extension of an existing lease?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	
If Yes, please provide a description of the property leased:			
Lease Term Requested:	45 <del>55</del> Years <i>City approved</i>	Starting Date:	September 1, 2019

## Proposed Use and Activities

Proposed Use (check one):	<input checked="" type="checkbox"/> Aeronautical	<input type="checkbox"/> Non-Aeronautical	
Do you plan to construct new or additional improvements?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	

Will the proposed improvement char ) or alter the use under an existing lea: )  YES  NO

If yes, what is the new proposed use?

What is the type (e.g. building, land) and nature (e.g. maintenance, new construction) of the proposed improvement?  
New office and hangar facility for SOAR International Ministries and additional hangar facility to accommodate transient corporate aircraft. Potential FBO and flight training facility.

What is the estimated amount of investment in the construction of new permanent improvements on the premises?  
The complete project is estimated to cost 3.5 million dollars.

List of proposed use and business activities:  
Base of operations for SOAR International Ministries. Aircraft storage and maintenance, hangaring transient aircraft, potential FBO, potential flight training facility, potential aircraft parts sales, installation, removal, and inside storage of aircraft floats, facility to host community events such as aviation safety meetings, community fundraising events, etc.

**Lease Extension or Renewal\***

\*This section not required for new lease or amendment applications

Method to determine value of improvements/term for a lease renewal or expiring lease:

- Professional estimate of the remaining useful life of the principle improvement on the property
- Market value appraisal of the principle improvement on the property
- Purchase price of improvements

Submitting an application for a lease does not give the applicant a right to lease or use the land requested in the application. The application shall expire twelve (12) months after the date the application has been made if the City and the applicant have not, by that time, entered into a lease, unless the City Council for good cause grants an extension for a period not to exceed six (6) months. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City

Signature:	<i>Richard L Page</i>	Date:	07/01/2019
Print Name:		Title:	

**RECEIVED**  
CITY OF KENAI  
DATE 7-1-19  
PLANNING DEPARTMENT

## Elizabeth Appleby

---

**From:** Elizabeth Appleby  
**Sent:** Monday, July 22, 2019 3:40 PM  
**To:** 'Richard Page'  
**Cc:** Wilma Anderson  
**Subject:** Lease Application (new lease)

Good afternoon,

Thanks for dropping off the new assignment request today. I was reviewing your application for the new lease and noticed you had requested a term of 55 years. The maximum term allowed in City Code is 45 years. I will amend your application term request to 45 years. Please let me know if you have questions. I think this was just a copy carry-over from when you had applied to lease this lot in 2018 as the same change was made then to the requested term.

--Elizabeth

Elizabeth Appleby, AICP  
City Planner  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611  
(907) 283-8235/phone  
[eappleby@kenai.city](mailto:eappleby@kenai.city)

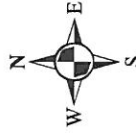




**SOAR  
Lease Application**

Parcel No:  
04324025

Undeveloped  
portion of  
General Aviation #2  
Tract A



90'



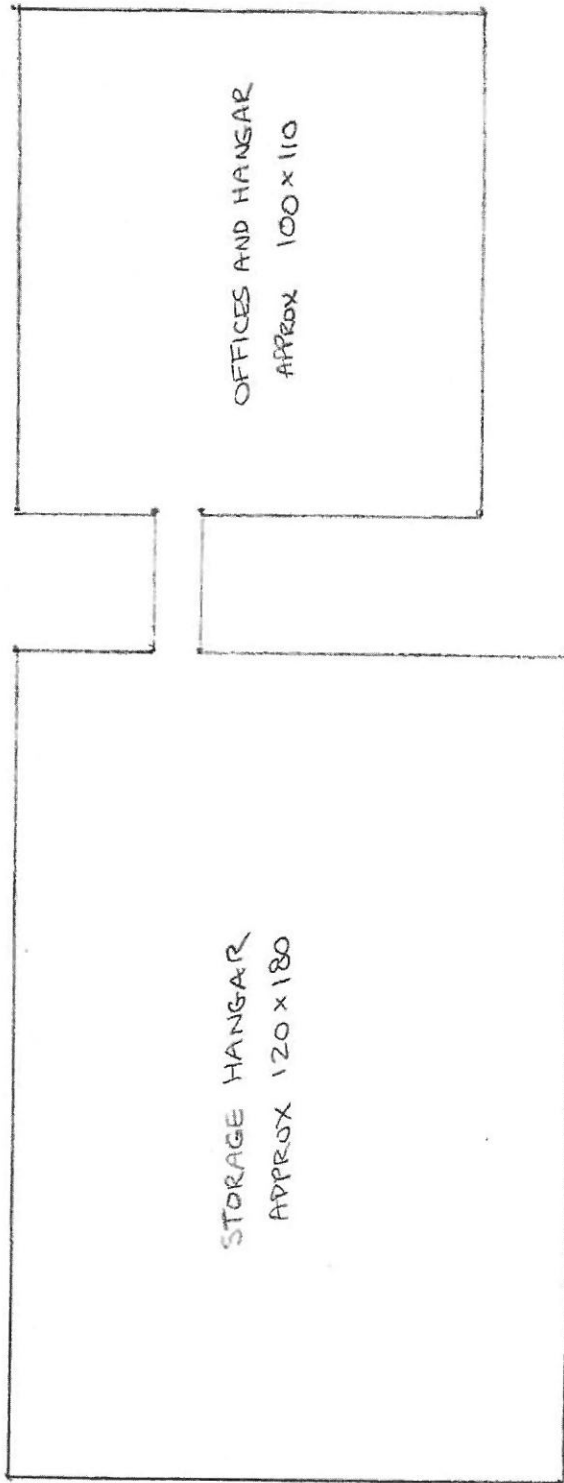
1 inch equals 110 feet

The information depicted here  
on is for graphic representation  
only of the best available sources.  
The City of Kenai assumes no  
responsibility for errors on this  
map.

Date: 7/23/2019



AIRCRAFT RAMP AND TIE-DOWN AREA



STORAGE HANGAR  
APPROX 120 x 180

OFFICES AND HANGAR  
APPROX 100 x 110

PARKING

APPROX 350'

APPROX 350'



**CERTIFICATE**

I HEREBY  
PROPERTY OF  
PLAN OF SURVEY  
THE USE OF SAID  
CITY MANAGER

ATTEST:  
CITY CLERK

NOTARY'S  
SUBSCRIBED  
19 81

NOTARY PUBLIC  
MY COMMISSION

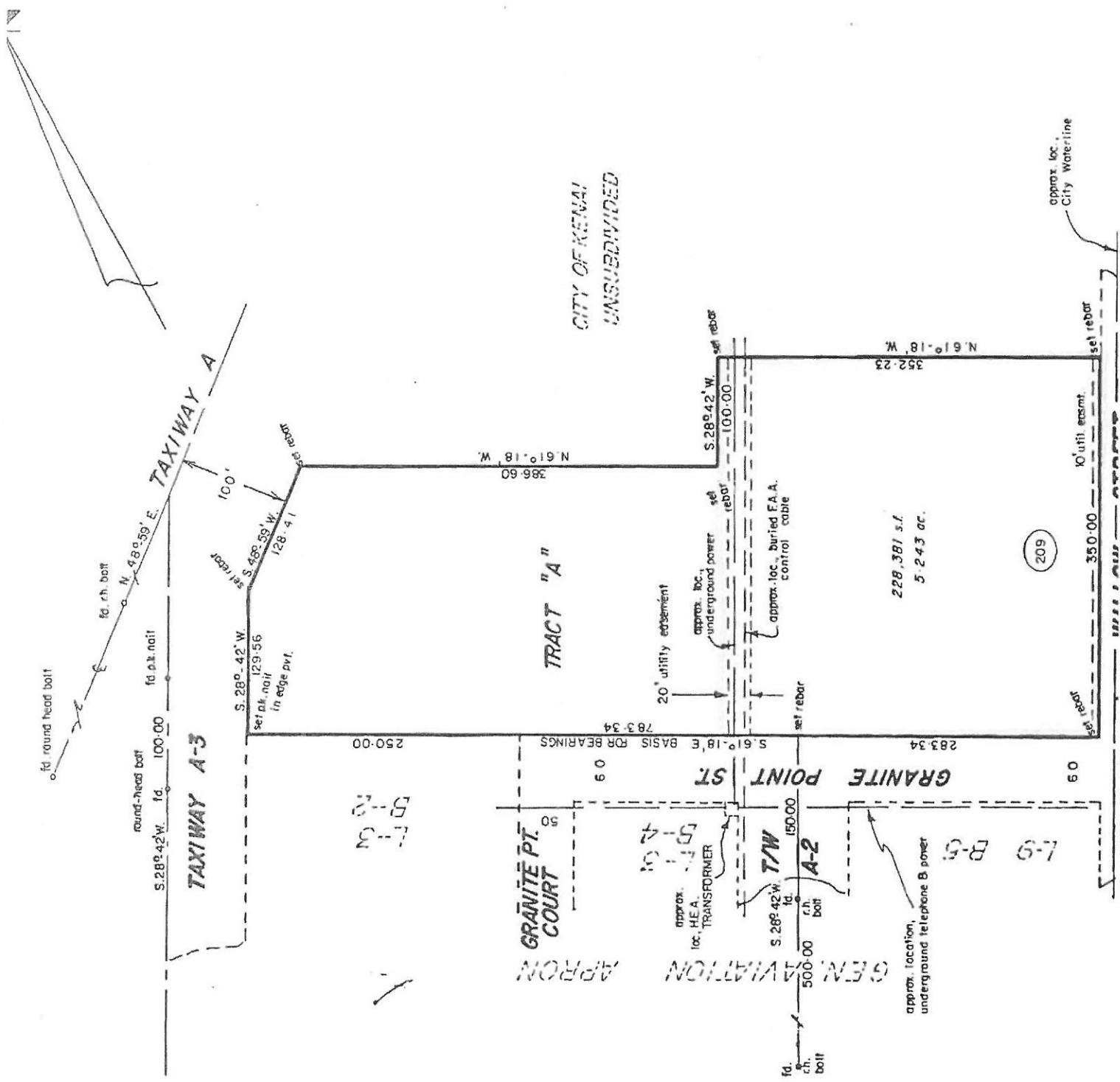
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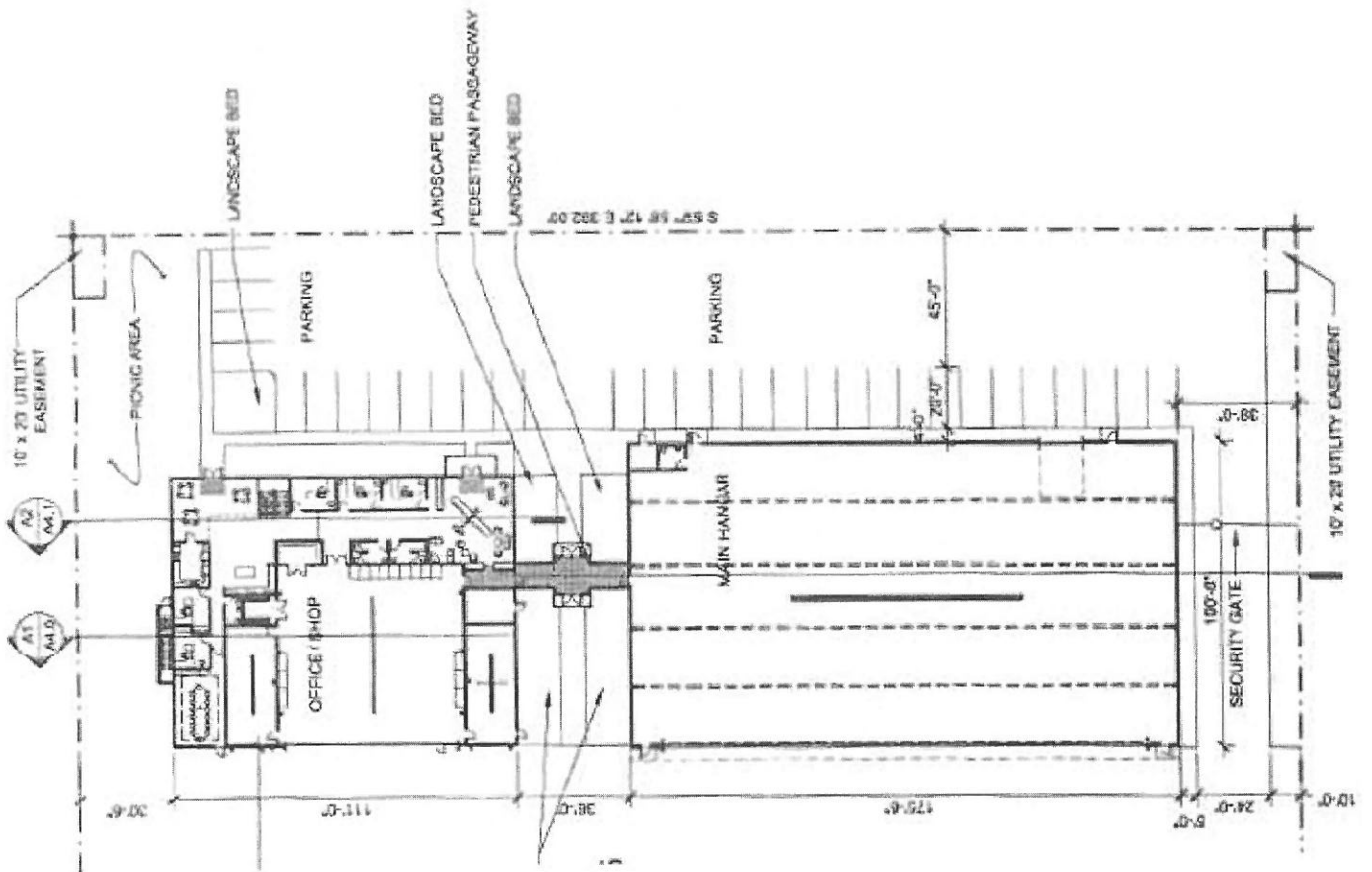
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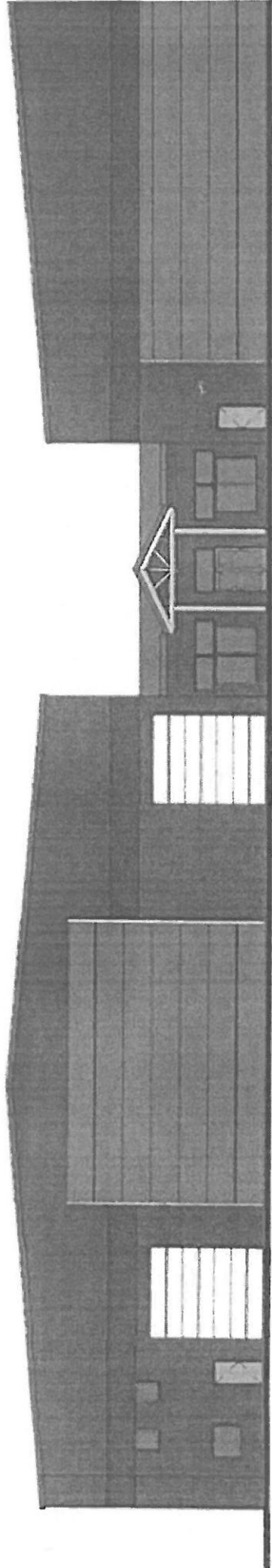
KENAI PENINSULA

BY: AUTHOR

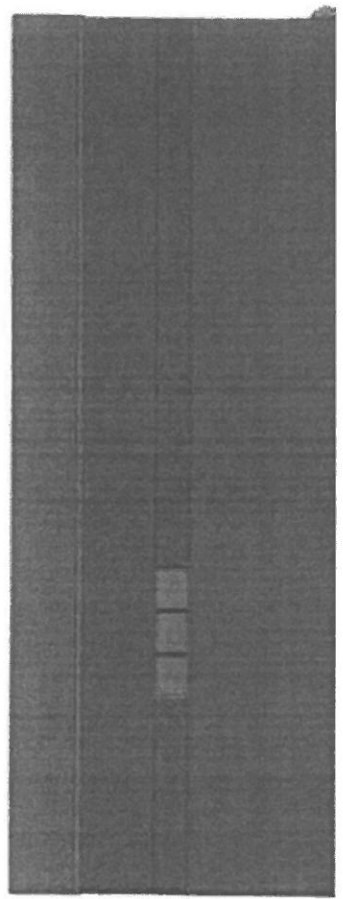
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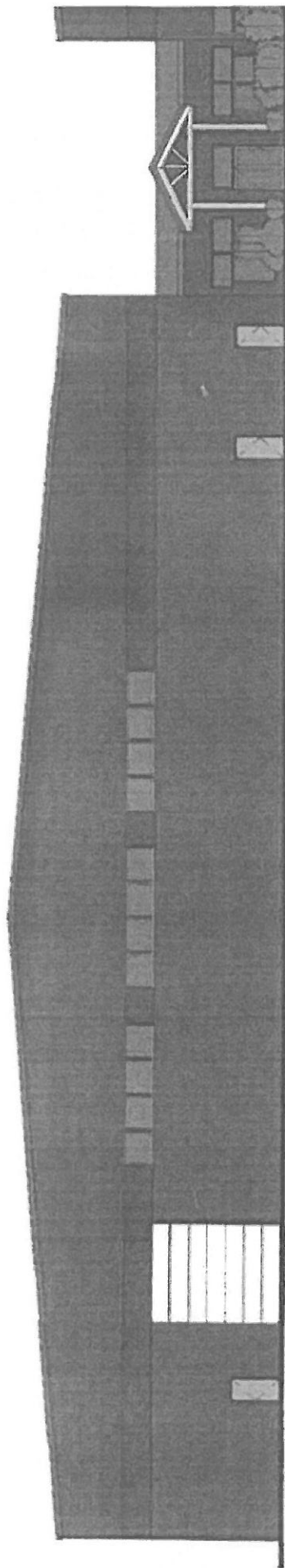




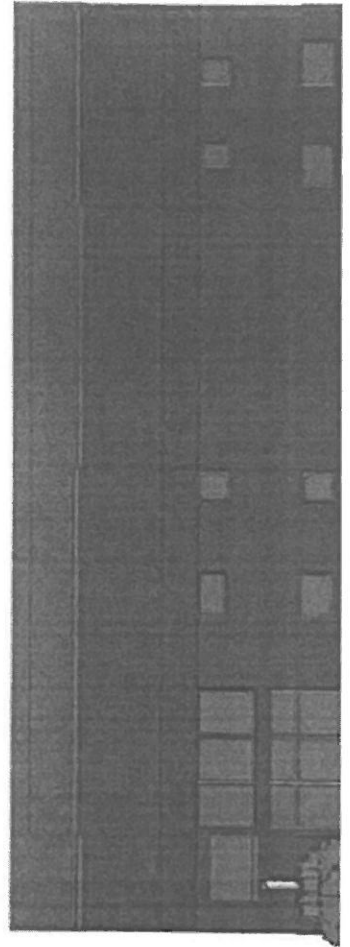


A1 SOUTH ELEVATION  
A3.0 3/32" = 1'-0" (22x34); 3/16" = 1'-0" (11x17)





A1 NORTH ELEVATION  
A3.1 3/32" = 1'-0" (22x34); 3/64" = 1'-0" (11x17)





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305 N. WILLOW ST. SUITE 200 KENAI, ALASKA 99611  
TELEPHONE 907-283-7951  
FAX 907-283-3737

## MEMO

**To:** Wilma Anderson – Planning Assistant

**From:** Mary Bondurant – Airport Manager

**Date:** June 12, 2018

**Subject:** *SOAR Lease Application– Tract A General Aviation Apron No. 2*

---

This lease application was reviewed in conjunction with the FAA approved February 28, 2018 Airport Layout Plan based on the August 2017 Master Plan.

I have reviewed the above lease application in accordance with KMC 21.10.060:

✓ Airport Layout Plan:

Sheet 13 of 19, Existing Land Use - designates land as *undeveloped subdivided lots*;

Sheet 14 of 16, Future Land Use - designates land as *general aviation and small commercial; areas used for aviation activities requiring airfield taxiway access such as air cargo facilities, hangars, aircraft parking aprons, corporate jet support facilities, fueling facilities, airline and air taxi hangar/office facilities, government and military aviation facilities and primarily for large aircraft (more than 12,500 pounds)*

The proposed use is Aeronautical - Base of operations for SOAR International Ministries including aircraft storage and maintenance, hangaring of transient aircraft, possible FBO operations, possible flight training facility, possible aircraft parts & sales, facilities for installation, removal, and inside storage of aircraft floats, facilities for community activities such as aviation safety meetings, community fundraisers, etc.

This use complies with the land use definition above.

Sheet 15 of 19, Existing Zoning – Airport Light Industrial;

The ALI Zone is established by Ordinance No. 2884-2016 to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses, densities and reducing hazards that may endanger the lives and property of the public and aviation users. Industrial and Commercial uses which are usually compatible with aviation users are permitted which have no nuisance effects upon surrounding property, or which may be controlled to prevent nuisance effects upon surrounding property. New residential uses are not permitted in this zone because it is intended that lots classified in the ALI Zone are reserved for aviation-related commercial and industrial uses.

Meets the requirements for KMC 14.20.065 Airport Light Industrial Zone.

Sheet 16 of 19, Future Zoning – Airport Light Industrial;

ALI defined above.

Meets the requirements for KMC 14.20.065 Airport Light Industrial Zone.

✓ Airport Master Plan:

Defines the land as *commercial and non-commercial aviation; areas used for aviation activities requiring taxiway access such as air cargo facilities, aircraft parking aprons, corporate jet support facilities, fueling facilities, airline and air taxi hangar/office facilities, government and military aviation facilities and primarily for large aircraft (more than 12,500 pounds).*

Sheet 12 of 19, Terminal Area Plan – shows future terminal parking lot expansion at the south side of the current car rental lot abutting Tract A General Aviation Apron No. 2.

✓ FAA Regulations:

- Airport perimeter fence - 8' security fence that meets FAA and TSA Security requirements. All perimeter gates must remain closed at all times. 49 CFR 139.335
- Vehicle parking lot to be contained to prevent unauthorized access to airfield. All public is restricted from all air operations areas and all other areas except the terminal or loading area or such other areas as may be designated by the Airport Manager or designated representative. 49 CFR 139.335

- ✓ AIP Grant Assurances: No conflict appears.
- ✓ Airport Operations:
  - Lessee must comply with sector-specific requirements of the Kenai Airport's Multi Sector General Permit #AKR06AD35 if conducting an industrial activity with a SIC code in the range 4512-4581 (Air Transportation Facility).
  - Tract A requires a subdivision – the west side of the lot was developed with Airport Improvement (AIP) funds designated for transient aircraft parking. The subdivision should include locating the utilities, fence line, gates and pavement edges and establish an easement that will accommodate future utilities to the terminal; water, sewer. Engineering has recommended a 40 foot easement for these future utilities. The property line could be relocated east of the easement and SOAR would not be paying for the utility easement area.
  - Structures to be constructed behind the 100' building restriction line.
  - Relocation of the Airport perimeter fence that currently runs north and south to run east and west (on the north side of the lot) will allow aircraft full access to the proposed lease lot aircraft ramp and tie down area.
  - The tenant is responsible for all snow removal on the lot. Snow piles cannot touch the perimeter security fence or be piled to a height that wildlife or people can gain access to the airport.
  - One airport flood light along the fence will need to be relocated to the north.
  - Developer will be required to pave up to and tie into the existing transient aircraft apron pavement.

This development will create new land lease revenue, employment opportunities, and offer services to airport users that are currently not available; hangar space, float storage, flight training, etc.

This can be presented to the Airport Commission as a laydown at the June 14, 2018 meeting or scheduled for the July 12, 2018 meeting.

Please contact me if you have any questions.



*"Serving the Greater Kenai Peninsula"*

305 N. WILLOW ST. SUITE 200 KENAI, ALASKA 99611

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# Memo

**To:** Elizabeth Appleby – City Planner  
Wilma Anderson – Assistant to City Planner

**From:** Mary Bondurant - Airport Manager

**Date:** July 13, 2018

**Subject:** **SOAR Lease Application – Tract A General Aviation Apron No. 2**

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Airport Commission reviewed the lease application from SOAR International Ministries, at the July 12, 2018 Commission meeting.

Airport Commission unanimously recommends Council approve the subject lease.

If you have any questions, please contact me.

Cc: Wilma Anderson





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary Bondurant, Airport Manager  
**DATE:** June 7, 2019  
**SUBJECT:** **June Mid-month Report**

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2018 Terminal Rehabilitation Project – Construction: This project is well under way; the Upper Deck reopened on June 5, 2019; Grant Aviation moved into their new space, RAVN was temporarily relocated to the Administrative Office area, and the car rentals will be moved into their new spaces on Tuesday, June 11.

2019 Airfield Marking, Crack Sealing, & Pavement Repair – This project was bid and awarded at the June 5, 2019 City Council meeting. The project will start around June 15, 2019.

2019 Alaska Fire Training Facility Rehabilitation – A draft preliminary design report was received the week of June 3<sup>rd</sup> and is being reviewed by City Administration. When the design is complete, the project will be bid with construction to start in the late fall.

2019 Acquire Aircraft Rescue & Firefighting Trucks (ARFF) – The two ARFF trucks currently used for training at the Alaska Fire Training Facility were purchased in 1998 and are due for replacement. Airport Manager is working with the FAA to secure funding to replace the trucks.

### In-house Activities –

Airport Operations continues summer maintenance at the terminal and the airfield. The crew completed the cleaning of the slips at the float plane basin, are brush cutting along the fence line and preparing for the air fair.



FAA Certification Inspection – The annual FAA 139 certification inspection will be held June 25-27, 2019.

Tri-annual Mass Casualty – A requirement of CFR 139.325 for a holder of a Class 1 Airport Operating Certificate is a full-scale airport emergency plan exercise at least once every 36 consecutive calendar months. This drill is scheduled for October 2, 2019.



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary Bondurant, Airport Manager  
**DATE:** July 8, 2019  
**SUBJECT:** July Mid-month Report

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2018 Terminal Rehabilitation Project – Construction: This project is well underway and all areas of the terminal are experiencing some form of construction.

2019 Airfield Marking, Crack Sealing, & Pavement Repair – This project was bid and awarded at the June 5, 2019 City Council meeting. The project will start as soon as the FAA grant is received. Project consists of crack sealing, seal coating, and airfield marking.

2019 Alaska Fire Training Facility Rehabilitation – This project will be bid late July, early August with construction to start in late fall 2019.

2019 Acquire Aircraft Rescue & Firefighting Trucks (ARFF) – Airport Administration is working with FAA to secure funding to replace the 1998 ARFF vehicles used at the Alaska Fire Training Facility.

In-house Activities –

Airport Operations continues summer maintenance, wildlife hazing, fence maintenance, brush cutting, etc.

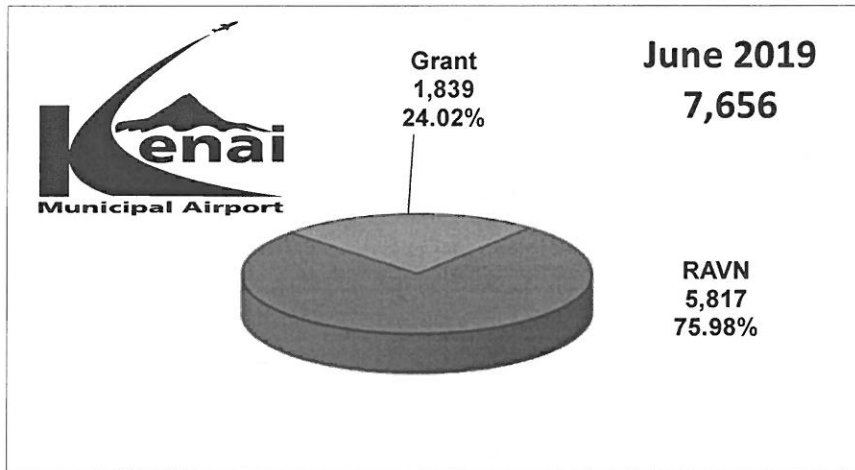
Compliance with Security Directive 1542-18-01A – Airport Administration was required by TSA to write a Law Enforcement Officer (LEO) training program on airport security program responsibilities for the Kenai Police Department. A training program was written, approved by TSA, and all KPD officers completed the training.



Runway Safety Action Team – Meeting is scheduled for Tuesday, July 30 in the Kenai City Council Chambers at 2:30pm. These meetings are held at Towered airports annually to improve surface safety. This gives airfield users that are actively involved in air traffic operations and movement of aircraft, operating vehicles and equipment on the airport operations area a chance to discuss ways to enhance surface safety at the Kenai Airport.

Tri-annual Mass Casualty – A requirement of CFR 139.325 for a holder of a Class 1 Airport Operating Certificate is a full-scale airport emergency plan exercise at least once every 36 consecutive calendar months. This drill is scheduled for October 2, 2019.

## June Enplanement Report



Month	RAVN ALASKA	GRANT AVIATION	Total 2019	2018	Change from 2018
January	5,248	1,537	6,785	6,148	637
February	4,573	1,384	5,957	5,651	306
March	4,941	1,867	6,808	6,999	-191
April	4,702	1,739	6,441	6,383	58
May	5,330	1,868	7,198	7,501	-303
June	5,817	1,839	7,656	8,048	-392
July				10,568	
August				11,485	
September				7,990	
October				7,433	
November				6,905	
December				7,016	
<b>Totals</b>	<b>30,611</b>	<b>10,234</b>	<b>40,845</b>	<b>92,127</b>	<b>115</b>

### Terminal - Vehicle Parking Revenues

June

<b>FY18</b>	<b>\$19,113</b>
<b>FY19</b>	<b>\$18,112</b>

<b>FY18 Total</b>	<b>\$232,372</b>
<b>FY19 YTD</b>	<b>\$245,918</b>

