

**KENAI CITY COUNCIL - REGULAR MEETING**  
**JUNE 19, 2019 - 6:00 PM**  
**KENAI CITY COUNCIL CHAMBERS**  
**210 FIDALGO AVE., KENAI, AK 99611**  
<http://www.kenai.city>

**A. CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**AGENDA APPROVAL**

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

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

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

**C. UNSCHEDULED PUBLIC COMMENTS** *(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)*

**D. PUBLIC HEARINGS**

D.1. Ordinance No. 3069-2019 – Appropriating FY2019 Budgeted Funds for Municipal Roadway Improvements in the Municipal Roadway Improvements Capital Project Fund for Future Roadway Projects. (Administration)

[Ordinance No. 3069-2019.pdf](#)

D.2. Ordinance No. 3070-2019 – Authorizing a Budget Transfer in the General Fund, Decreasing Estimated Revenues and Appropriations in the Senior Citizen Special Revenue Fund and Appropriating FY2019 Budgeted Amounts in the Senior Center Improvement Capital Project Fund for Carpet Replacement. (Administration)

[Ordinance No. 3070-2019.pdf](#)

D.3. Ordinance No. 3071-2019 - Increasing Estimated Revenues and Appropriations in the General, Airport Special Revenue, Personal Use Fishery Special Revenue, and Senior Citizen Special Revenue Funds; Authorizing the Binding of Insurance Coverage for the City for the Period of July 1, 2019 through June 30, 2020; and Authorizing Execution of a Three-Year Agreement for Insurance Coverage. (Administration)

- a. Motion for Introduction
- b. Motion for Second Reading (Requires a Unanimous Vote)
- c. Motion for Adoption (Requires Five Affirmative Votes)

[Ordinance No. 3071-2019.pdf](#)

- D.4. Resolution No. 2019-37 - Authorizing the City Manager to Enter Into an Automated Teller Machine (ATM) Concession for the Kenai Municipal Airport. (Administration)  
[Resolution No. 2019-37.pdf](#)
- D.5. Resolution No. 2019-38 – Amending City Council Policy 2017-01, Procedures for the Use and Management of City Issued Mobile Devices, to Provide Procedures for Planning and Zoning Commission Use and Make Other Housekeeping Amendments. (Council Member Knackstedt)  
[Resolution No. 2019-38.pdf](#)
- D.6. Resolution No. 2019-39 - Authorizing the Transfer of Funds from the General Fund Library Department to the General Fund Buildings Department; and Authorizing the Issuance of a Purchase Order in the Amount of \$16,795.00 for the Replacement of ADA Automatic Door Operators at the Library. (Administration)  
[Resolution No. 2019-39.pdf](#)
- D.7. Resolution No. 2019-40 – Authorizing a Budget Transfer in the General Fund – Police Department for the Purchase of a Forensic Investigation Tool. (Administration)  
[Resolution No. 2019-40.pdf](#)
- D.8. Resolution No. 2019-41 – Authorizing a Facility Management Agreement with the Boys & Girls Club of the Kenai Peninsula, Inc. for the Operation and Management of the Kenai Recreation Center in the Amount of \$130,000 Per Year. (Administration)  
[Resolution No. 2019-41.pdf](#)
- D.9. Resolution No. 2019-42 – Awarding an Agreement for Providing and Servicing Portable Restrooms and Dumpsters on the North and South Kenai Beaches, Including Portable Restrooms at the City Dock, During the 2019 Personal Use Fishery. (Administration)  
[Resolution No. 2019-42.pdf](#)
- D.10. Resolution No. 2019-43 – Awarding An Agreement For Providing And Servicing Road Accessible Dumpsters At The End Of South Spruce Street, Kenai Little League Parking Lot And Kenai City Dock During The 2019 Personal Use Fishery. (Administration)  
[Resolution No. 2019-43.pdf](#)
- D.11. Resolution No. 2019-44 - Supporting Kenai Peninsula Borough Ordinance 2019-11, Repealing KPB 5.18.430(F) which Requires Voter Approval to Increase the Sales Tax Cap. (Vice Mayor Navarre)  
[Resolution No. 2019-44.pdf](#)

## **E. MINUTES**

- E.1. \*Regular Meeting of May 15, 2019  
[05-15-19 Council Minutes - DRAFT.pdf](#)
- E.2. \*Regular Meeting of June 5, 2019  
[06-05-19 Council Minutes - DRAFT.pdf](#)

## **F. UNFINISHED BUSINESS**

- F.1. Ordinance No. 3068-2019 – Amending Kenai Municipal Code 14.20.320- Definitions and 14.20.330- Standards for Commercial Marijuana Establishments to Prohibit Onsite

Consumption of Marijuana at Retail Marijuana Stores Requiring an Onsite Consumption Endorsement. (Council Members Pettey and Glendening) [Clerk's Note: This Item was Postponed from the June 5 Meeting to This Meeting; A Motion to Enact is On the Floor]

- [Substitute Ordinance No. 3068-2019 – Amending Kenai Municipal Code 14.20.320 – Definitions, and Implementing a Moratorium Prohibiting Onsite Consumption of Marijuana at Retail Marijuana Stores Requiring an Onsite Consumption Endorsement Until July 1, 2021.](#)

[Ordinance No. 3068-2019.pdf](#)

[Substitute Ordinance No. 3068-2019.pdf](#)

## **G. NEW BUSINESS**

- G.1. \*Action/Approval – Bills to be Ratified. (Administration)  
[Payments over \\$15,000.pdf](#)
- G.2. \*Action/Approval – Purchase Orders Exceeding \$15,000. (Administration)  
[FY20 Purchase Orders.pdf](#)
- G.3. \*Action/Approval – Non-Objection to the Renewal of a Marijuana Retail Store License for Cook Inlet Cannabis Company, D/B/A East Rip. (City Clerk)  
[East Rip Renewal.pdf](#)
- G.4. \*Action/Approval – Special Use Permit to Alaska Air Fuel, Inc. for Aircraft Loading and Parking on the Apron. (Administration)  
[Alaska Air Fuel SUP.pdf](#)
- G.5. \*Action/Approval – Special Use Permit to Crowley Fuels, LLC for Aircraft Loading and Parking on the Apron. (Administration)  
[Crowley Fuel SUP.pdf](#)
- G.6. \*Action/Approval – Special Use Permit to Empire Airlines, Inc. for Aircraft Parking on the Apron. (Administration)  
[Empire Airlines SUP.pdf](#)
- G.7. \*Action/Approval – Special Use Permit to Everts Air Fuel, Inc. for Aircraft Loading and Parking on the Apron. (Administration)  
[Everts Air Fuel SUP.pdf](#)
- G.8. \*Action/Approval – Special Use Permit to United Parcel Service Company for Aircraft Loading and Parking on the Apron. (Administration)  
[United Parcel Service Co. SUP.pdf](#)
- G.9. Action/Approval – Special Use Permit to James Doyle d/b/a Weaver Brothers for Truck and Trailer Storage. (Administration)  
[Weaver Brothers SUP.pdf](#)
- G.10. Action/Approval – Special Use Permit to Alaska Salmon Fertilizer for Filet Services to Collect Fish Cleaning Waste. (Administration)  
[Alaska Salmon Fertilizer SUP.pdf](#)
- G.11. Action/Approval – Confirm Mayoral Nomination for Recommendation of City of Kenai Representative to Kenai Peninsula Borough Planning and Zoning Commission. (Mayor)

Gabriel)  
[Borough P&Z Recommendation.pdf](#)

G.12. Discussion – Land Sale and Leasing Policies and Procedures. (Administration)  
[Land Sale and Leasing Discussion.pdf](#)

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

H.1. Council on Aging

H.2. Airport Commission

H.3. Harbor Commission

H.4. Parks and Recreation Commission

H.5. Planning and Zoning Commission

H.6. Beautification Committee

H.7. Mini-Grant Steering Committee

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

## **J. ADMINISTRATION REPORTS**

J.1. City Manager  
[Midmonth Reports.pdf](#)

J.2. City Attorney

J.3. City Clerk

## **K. ADDITIONAL PUBLIC COMMENT**

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

K.2. Council Comments

## **L. EXECUTIVE SESSION**

## **M. PENDING ITEMS**

## INFORMATION ITEMS

Purchase Orders between \$2,500 and \$15,000 for Council Review

[Purchase Orders between \\$2,500 - \\$15,000.pdf](#)

Federal Energy Regulatory Commission Notice of Intent – Kenai LNG Cool Down Project

[Info - Trans Foreland.pdf](#)

## N. ADJOURNMENT

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



Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3069-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, APPROPRIATING FY2019 BUDGETED FUNDS FOR MUNICIPAL ROADWAY IMPROVEMENTS IN THE MUNICIPAL ROADWAY IMPROVEMENT CAPITAL PROJECT FUND FOR FUTURE ROADWAY PROJECTS.

WHEREAS, the FY2019 General Fund Budget included a \$200,000 transfer to the Municipal Roadway Improvement Capital Project Fund for project to be identified; and,

WHEREAS, in order to expend funds on projects, the funds must first be appropriated in the Municipal Roadway Improvement Capital Project Fund; and,

WHEREAS, the administration is preparing projects which will be presented to Council for approved by resolution; and,

WHEREAS, appropriation of the funds will allow projects to be identified and awarded via resolution, thus shortening the time to begin work on projects.

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

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

Municipal Roadway Improvement Capital Project Fund:

Increase Estimated Revenues –	
Transfer from the General Fund	<u>\$200,000</u>

Increase Appropriations:	
Construction	<u>\$200,000</u>

**Section 2.** Identified projects will be presented to Council via resolution for approval prior to expending of funds.

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


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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of June, 2019.

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

ATTEST:

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

Approved by Finance: 

Introduced: June 5, 2019  
Enacted: June 19, 2019  
Effective: June 19, 2019



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Scott Curtin – Public Works Director  
**DATE:** May 30, 2019  
**SUBJECT:** **Ordinance No. 3069-2019**

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This memo recommends passage of Ordinance No. 3069-2019 appropriating FY2019 budgeted funds for Municipal Roadway Improvements into the Municipal Roadway Improvement Capital Project Fund for Future Roadway Projects.

The Public Works Department, in coordination with the Streets Department staff and the Administration, are actively prioritizing projects, which will be brought to council for approval by resolution in the weeks ahead. Approval of this Ordinance, coupled with the funds becoming available July 1<sup>st</sup> with the FY2020 budget will allow the Public Works Department to effectively address the street maintenance needs of the community.

Council's support and approval is respectfully requested. Thank you for your consideration.







Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3070-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING A BUDGET TRANSFER IN THE GENERAL FUND, DECREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE SENIOR CITIZEN SPECIAL REVENUE FUND AND APPROPRIATING FY2019 BUDGETED AMOUNTS IN THE SENIOR CENTER IMPROVEMENT CAPITAL PROJECT FUND FOR CARPET REPLACEMENT.

WHEREAS, the FY2019 General Fund Budget included a \$34,500 transfer to the Senior Citizen Special Revenue Fund for replacement of carpet in the Senior Center Dining Room; and,

WHEREAS, the carpet replacement project will not be awarded by June 30, 2019 as the Senior Center is awaiting grant approval; and,

WHEREAS, if the funds are not moved to the Senior Center Improvement Capital Project Fund prior to year-end it will lapse requiring supplemental appropriation in FY2020; and,

WHEREAS, moving the funds to the Senior Center Improvement Capital Project Fund will make the funds available until such time as the project is completed.

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

**Section 1.** The following budget transfer is authorized:

General Fund:

Transfer to Senior Citizen Special Revenue Fund	\$(34,500)
Transfer to Senior Center Improvement Capital Project Fund	<u>34,500</u>
	\$ _____

**Section 2.** Estimated revenues and appropriations in the Senior Citizen Special Revenue Fund be decreased as follows:

Revenues – Transfer from General Fund – Capital	\$( <u>34,500</u> )
Expenditures – Congregate Meals – Buildings	\$( <u>34,500</u> )

**Section 3.** Increasing estimated revenues and appropriations in the Senior Center Improvement Capital Project Fund for dining room carpet replacement as follows:

Increase estimated revenues – Transfer from General Fund	<u>\$34,500</u>
Increase expenditures – Construction	<u>\$34,500</u>

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of June, 2019.

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

ATTEST:

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

Approved by Finance: 

Introduced: June 5, 2019  
Enacted: June 19, 2019  
Effective: June 19, 2019



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Scott Curtin – Public Works Director  
**DATE:** May 30, 2019  
**SUBJECT:** **Ordinance No. 3070-2019**

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This memo recommends passage of Ordinance No. 3070-2019 transferring funds to the Senior Center Improvement Capital Project Fund. Public Works staff in coordination with the Senior Center, has competitively quoted the requested flooring replacements. The following quotes were received:

- Floor-Ever Inc. \$29,953.00
- Four D Carpet-One Inc. \$32,146.82
- Home Gallery \$34,550.00

Floor-Ever was determined as providing the lowest responsible quote.

Senior Center staff is moving forward with this information in an application for a Rasmussen Grant. Funds are being requested to roll into the Senior Center Capital Project Fund to allow time for a determination to be made on grant eligibility. In the event the Senior Center staff is successful in obtaining a grant a large portion of the costs associated with this work will be covered by the grant.

Council's support and approval is respectfully requested. Thank you for your consideration.





Sponsored by: Administration

## CITY OF KENAI

### ORDINANCE NO. 3071-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL, AIRPORT SPECIAL REVENUE, PERSONAL USE FISHERY SPECIAL REVENUE, AND SENIOR CITIZEN SPECIAL REVENUE FUNDS; AUTHORIZING THE BINDING OF INSURANCE COVERAGE FOR THE CITY FOR THE PERIOD OF JULY 1, 2019 THROUGH JUNE 30, 2020; AND AUTHORIZING EXECUTION OF A THREE-YEAR AGREEMENT FOR INSURANCE COVERAGE.

WHEREAS, with the assistance of its broker, the City solicited quotes for General Liability & Automobile, Property & Mobile Equipment, Airport Liability and Workers' Compensation from the two public entity risk pools operating in Alaska; and,

WHEREAS, Alaska Public Entity Insurance provided the lowest total quote for General Liability & Automobile, Property & Mobile Equipment, Airport Liability, and Workers' Compensation; and,

WHEREAS, after a coverage comparison, the City's broker has recommended binding of insurance with Alaska Public Entity Insurance for the policy year beginning July, 1, 2019 through June 30, 2020 and executing a three-year agreement for coverage to commence on July 1, 2019 and ending June 30, 2022; and,

WHEREAS, execution of a three-year agreement for coverage entitles the City to a discount of \$29,629 and allows the City to terminate the agreement at any time should the annual premium for coverage increase by more than 10% year over year, excluding changes in declared values; and,

WHEREAS, sufficient funds were not included in the FY2020 budget for the General, Airport Special Revenue, Personal Use Fishery Special Revenue, and Senior Citizen Special Revenue Funds to bind coverage requiring supplemental funding, and;

WHEREAS, pursuant to KMC 1.15.70(d) the City may introduce and finally pass on the same day, an ordinance making, repealing, transferring or otherwise changing an appropriation; and,

WHEREAS, maintaining quality and sufficient amounts of insurance coverage is in the best interest of the City and its residents.

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

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

General Fund:

Increase Estimated Revenues -	
Appropriation of Fund Balance	<u>\$14,498</u>
Increase Appropriations –	
Non-Departmental - Insurance	\$13,807
Non-Departmental - Transfer to Other Funds	<u>691</u>
	<u>\$14,498</u>

Airport Special Revenue Fund:

Increase Estimated Revenues -	
Appropriation of Fund Balance	<u>\$1,026</u>
Increase Appropriations –	
Airfield - Insurance	\$1,136
Airport Terminal – Insurance	(762)
Airport Administration - Insurance	<u>652</u>
	<u>\$1,026</u>

Personal Use Fishery Special Revenue Fund:

Increase Estimated Revenues -	
Appropriation of Fund Balance	<u>\$542</u>
Increase Appropriations –	
Public Safety - Insurance	\$95
Streets – Insurance	55
Parks, Recreation & Beautification - Insurance	274
Boating Facility - Insurance	<u>118</u>
	<u>\$542</u>

Senior Citizen Special Revenue Fund:

Increase Estimated Revenues -	
Transfer from General Fund	<u>\$691</u>
Increase Appropriations –	
Senior Citizen Access - Insurance	\$159
Congregate Meals – Insurance	166
Home Meals - Insurance	124
Transportation – Insurance	69
Choice Waiver - Insurance	<u>173</u>
	<u>\$691</u>

**Section 2.** That the City Manager is authorized bind the City's insurance coverages for the policy period of July 1, 2019 through June 30, 2020 with Alaska Public Entity Insurance.

**Section 3.** That the City Manager is authorized to execute a three-year agreement for insurance with Alaska Public Entity Insurance to for the period July 1, 2019 through June 30, 2022.

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of June, 2019.

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

ATTEST:

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

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

Introduced: June 19, 2019  
Enacted: June 19, 2019  
Effective: July 1, 2019



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Paul Ostrander, City Manager  
**DATE:** June 11, 2019  
**SUBJECT:** **Ordinance 3071-2019 – Recommendation to bind coverage with Alaska Public Entity Insurance.**

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The purpose of the memo is to recommend binding of General Liability & Automobile, Property & Mobile Equipment, Airport Liability and Workers' Compensation insurance with Alaska Public Entity Insurance (APEI) for the period July 1, 2019 through June 30, 2020 and to authorize the execution of a three-year agreement with APEI for these coverages.

Execution of a three-year agreement entitles the City to a discount of \$29,629. The City may terminate this agreement at any time should the annual premium for coverage increase by more than 10% year over year, excluding changes in declared values.

APEI is the City's current insurer, has provided the lowest renewal quote, and after review of the quotes and policies is being recommended by our broker. See attached broker analysis and recommendation.

Your support for Ordinance 3071-2019 is respectfully requested.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THRU:** Paul Ostrander, City Manager  
**FROM:** Terry Eubank, Finance Director  
**DATE:** June 11, 2019  
**SUBJECT:** Ordinance 3071-2019

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The purpose of the memo is to recommend introduction and adoption of Ordinance 3071-2019 at the June 19, 2019 meeting of the Kenai City Council and to request the below amendments prior to adoption.

### **Introduction and Adoption in a Single Meeting.**

Generally, Ordinances are introduced at one meeting and voted on at the subsequent meeting to provide public notice of the action at two separate meetings. KMC 1.15.070(d) as cited below, provides for introduction and passage of appropriating ordinances in a single meeting.

#### **KMC 1.15.070(d)**

No ordinance, except an emergency ordinance or an ordinance making, repealing, transferring, or otherwise changing appropriations, may be finally passed on the same day that it is introduced. By unanimous consent of all Council Members present, such ordinances may be read a second time and then, by the required vote, be passed, on the same day on which they are introduced. All persons present shall be given an opportunity to be heard before the vote on final passage.

In an effort to assure greater public notice this provision is rarely utilized, in fact has not been used during my 11-year tenure as your finance director. As a result of insurance costs for the upcoming fiscal year exceeding budget estimates and the timing of which quotes were received, I respectfully request utilization of the provision is KMC 1.15.070(d) for introduction and passage of Ordinance 3071-2019 at the June 19, 2019 meeting of the Kenai City Council to provide sufficient funds for binding of insurance coverages for FY2020.

### **Requested Amendments**

After the deadline for packet item titles had passed, I received a revised quote from Alaska Public Entity Insurance (APEI), the airport liability quote from the Alaska Municipal League Joint Insurance Arrangement (AMLJIA), and the City's broker policy comparison and recommendation. Using these final quoted amounts a supplemental appropriation is no longer required for the





Airport Special Revenue Fund. As such, the following amendments are respectfully requested prior to adoption:

1. Within the Ordinance title delete AIRPORT SPECIAL REVENUE,
2. Within Section 1 delete:

<u>Airport Special Revenue Fund:</u>	
Increase Estimated Revenues -	
Appropriation of Fund Balance	<u>\$1,026</u>
Increase Appropriations –	
Airfield - Insurance	\$1,136
Airport Terminal – Insurance	(762)
Airport Administration - Insurance	<u>652</u>
	<u>\$1,026</u>





=6/12/2019

City of Kenai  
210 Fidalgo Ave #200  
Kenai, AK 99611

RE: 2019/2020 Renewal

Dear Terry:

The following information provided is our submission time line, a coverage comparison between Alaska Public Entity and Alaska Municipal League Joint Insurance Association and our recommendation.

### AML Submission Time Line

5/7/19 – Submitted completed APEI renewal apps & schedule to Paul at AML  
5/14/19 – Sent Follow up to Paul at AML requesting quote status  
No response  
5/20/19 – Sent follow up to Paul at AML requesting quote status  
Paul responded requesting expiring premiums  
5/29/19 – Sent follow up to Paul at AML requesting quote status  
Paul responded stating “next week”  
6/4/19 – Phone call with Paul at AML stating he would try to get quotes to us by the end of the week  
6/7/19 – Sent Paul at AML additional info on airport liability  
6/10/19 – AML Program Quote Received  
6/11/19 – AML Airport Liability Quote Received

### APEI Submission Time Line

4/22/19 – Received completed renewal applications from Terry  
4/29/19 – Uploaded renewal applications to APEI website  
4/29/19 – Sent request to Terry for additional information  
5/3/19 – Received additional information from Terry & sent to APEI  
5/9/19 – Received APEI Program Renewal Quote  
5/29/19 – Received Airport Liability Quote

## Coverage Comparison

### General Liability

Both Plans are very similar in coverage.

#### APEI

Limit of Liability - \$15,500,000  
Volunteer Medical Coverage - \$50,000  
Employment Related Practices - \$15,500,000  
Deductible - \$10,000  
Defense Cost Share – 50%

#### AML-JIA

Limit of Liability - \$15,000,000  
Volunteer Medical Coverage - \$25,000  
Employment Related Practices - \$10,000,000  
Deductible - \$10,000  
Defense Cost Share – 50%

### Police Professional Liability

#### APEI

Premium is included in General Liability Premium  
\$10,000 Deductible

#### AML-JIA

Separate charge for coverage  
\$0 Deductible

### Workers Compensation

Both Plans are very similar in coverage.

#### APEI

Limit of Liability - \$3,000,000

#### AML-JIA

Limit of Liability - \$2,500,000

**Auto**

Deductibles are for comprehensive & collision coverage. Neither program has a deductible for Liability

APEI

Limit of Liability - \$15,500,000  
Mid-term changes are made

AML-JIA

Limit of Liability - \$15,000,000  
Does not do mid-term endorsements – The City is only charged for autos on the schedule at renewal. Coverage still extends to any auto acquired during the year.

**Property**

Basic Property Coverage is the same

APEI

Program limit for Earthquake & Flood is \$75,000,000  
\$100,000 Flat Deductible for Earthquake & Flood

AML-JIA

Program limit for Earthquake is \$50,000,000 & Flood is \$175,000,000  
2% Deductible with a minimum of \$100,000 for Earthquake & \$250,000 for Flood  
Fine Arts not quoted per request

**Mobile Equipment**

No Substantial Differences

**Crime**

APEI

\$1,000,000 Limit  
\$2,500 Deductible

AML-JIA

\$100,000 Limit  
\$1,000 Deductible

\*\*Can get coverage limit up to \$1,000,000 by going to another market. This could cost upwards of \$2,500 to \$10,000.



**Cyber Liability**

**APEI**

\$2,000,000 Limit per Member for each of the following:

- Media & Website Publishing Liability
- Security Breach Liability
- Programming Errors & Omissions Liability
- Replacement or Restoration of Electronic Data
- Extortion Threats
- Business Income & Extra Expense
- Public Relations Expense
- Security Breach Expense

\$2,500 Deductible

Retroactive Date – 1/1/2014

\$10,000,000 Program Aggregate

**AML-JIA**

\$2,000,000 Limit per Member for each of the following:

- Security & Privacy Liability
- Penalties for Regulatory Defense
- Website Media Content Liability
- Cyber Extortion Loss
- Data Protection Loss & Business Interruption Loss

\$500,000 Limit for Privacy Notification Costs

\$50,000 Retention

\$25,000,000 Program Aggregate

**TOTAL PREMIUM**

	APEI	AML-JIA
Municipality Program	\$562,951.97	\$575,949.00
Airport Liability	\$37,558.00	\$25,716.00
<b>TOTAL</b>	<b>\$600,509.97</b>	<b>\$601,665.00</b>

In previous years, City of Kenai has received approximately \$385,000 in dividends and longevity credits in addition to \$18,000 in safety grants through APEI's program.

It is our recommendation is that City of Kenai move forward with renewing coverage through Alaska Public Entity due to the long history and relationships made.

Sincerely,

Doug Brown



Sponsored by: Administration

**CITY OF KENAI**

**RESOLUTION NO. 2019 - 37**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AUTOMATED TELLER MACHINE (ATM) CONCESSION AGREEMENT FOR THE KENAI MUNICIPAL AIRPORT.

WHEREAS, on May 3, 2019 the City of Kenai requested bids for an Automated Teller Machine (ATM) Concession in the airport terminal for a period of five (5) years; and,

WHEREAS, one responsive bid was received on May 17, 2019 for the contract years July 1, 2019 through June 30, 2024; and,

WHEREAS, the bid amount received were as follows:

<u>Bidder</u>	<u>Per Month</u>
<b>Tyler Distributing</b>	<b>38% of gross receipts</b>

; and,

WHEREAS, Tyler Distributing, Inc. submitted the only responsible bid for the ATM concession at the Kenai Municipal Airport; and,

WHEREAS, the City Administration has determined this bid meets all requirements.

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

**Section 1:** That the City Manager is authorized to enter into an Automated Teller Machine (ATM) Concession Agreement with Tyler Distributing, Inc. for the Kenai Municipal Airport for the period July 1, 2019 through June 30, 2024.

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

ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of June, 2019.

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

ATTEST:

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



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** June 10, 2019  
**SUBJECT:** Resolution No. 2019-37 - Awarding ATM Concession Agreement

---

An Invitation to Bid for the Automated Teller Machine (ATM) Concession in the Terminal building was advertised on May 3, 2019 with a bid opening on May 17, 2019.

One bid was received and found responsive.

Per Month

Tyler Distributing      38% of gross receipts

The Airport has a current Certificate of Insurance on file and Tyler Distributing is current in all fees owed to the City.

Thank you for your consideration.





Sponsored by: Council Member Knackstedt

**CITY OF KENAI**

**RESOLUTION NO. 2019-38**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING CITY COUNCIL POLICY 2017-01, PROCEDURES FOR THE USE AND MANAGEMENT OF CITY ISSUED MOBILE DEVICES, TO PROVIDE PROCEDURES FOR PLANNING AND ZONING COMMISSION USE AND MAKE OTHER HOUSEKEEPING AMENDMENTS.

WHEREAS, the City Council implemented a policy in January 2017 to govern their use of mobile devices issued by the City; and,

WHEREAS, at the time the policy was implemented, there was no provision for a mobile device for Planning and Zoning Commission members; and,

WHEREAS, the City Council recognizes the need to establish criteria governing the use and management of a City issued mobile device for Planning and Zoning Commission members; and,

WHEREAS, City issued mobile devices are intended to replace the paper meeting packets that are produced for the Mayor, Council Members, Student Representative, Planning and Zoning Commission, and certain staff that support those bodies.

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

**Section 1.** That the City Council of Kenai adopts Resolution No. 2019-38 amending Policy No. 2017-01 (attached) that will govern the use and management of City issued mobile devices to Planning and Zoning Commission members.

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

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of June, 2019.

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

ATTEST:

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



## **POLICY NO. 2017-01: KENAI COUNCIL MOBILE DEVICE USE & MANAGEMENT**

### **A. Purpose**

The City of Kenai recognizes the benefits of utilizing digital communication and information, and supports the utilization of the mobile devices by the Mayor, ~~and City Council Members,~~ Planning and Zoning Commissioners, and certain support staff. Users of City issued mobile devices acknowledge, understand and agree to the underlying mobile device and internet usage philosophy that form the basis of this policy.

### **B. Receipt of Mobile Device**

The City Clerk's Office will issue and administer the use of City owned mobile devices that include appropriate applications for use relating to City business. The City owned mobile device will serve as ~~the sole~~ a source of meeting packets for City Council Members and Planning and Zoning Commissioners.

### **C. Care of Mobile Device**

Users are responsible for the general care of the City owned mobile device that they have been issued by the City. City owned ~~mobile~~ devices must remain free of any writing, drawing, stickers, or labels that are not the property of the City. Only a clean soft cloth should be used to clean the screen.

### **D. Security of the Mobile Device**

~~The City Council Member~~ Users shall maintain a secure PIN or other password protection to avoid access by unauthorized users. The PIN must be provided to the City Clerk and through the City Clerk's Office made accessible to the Information Technology (IT) Manager. The PIN may not be shared with any unauthorized users.

### **E. Personally Owned Devices**

Personal mobile devices are not managed by the Kenai City Clerk's Office. For this reason, a support need or issue related to a personal owned device is the responsibility of the device owner. Specifically, the user is responsible for:

1. Settling any service or billing disputes with the carrier;
2. Purchasing any required software not provided by the manufacturer or wireless carrier;
3. Device registration with vendor and/or service provider;
4. Maintaining necessary warranty information;
5. Battery replacement due to failure or loss of ability to hold a charge;
6. Backing up all data, settings, media, and applications;
7. Installation of operating system and software application updates.

### **F. Software on Mobile Device**

The software and applications installed by the City, or by request of the City, must remain on the mobile device in usable conditions and be readily accessible at all times. The user may not remove any software or applications installed by the City. From time to time, the City may add or upgrade software applications such that users may be required to check in their mobile devices

with the City Clerk for periodic installs, updates, and syncing. In the event it becomes necessary to restore a mobile device to its original condition, the City will not be held responsible for the loss of any software or documents or pictures deleted due to a re-format and re-imaging.

Files from sources that a user may have any reason to believe may be untrustworthy shall not be downloaded, nor shall files attached to email transmissions be opened and read unless the user has knowledge that they originate from a trustworthy source. Downloaded files and attachments may contain viruses or hostile applications that could damage the City's information systems. Users will be held accountable for any damage caused by files obtained for non-City business purposes.

**G. Life of the Mobile Device**

City issued mobile devices will be assessed annually and, if necessary, the City will purchase upgraded devices through the budgeting process.

**H. WARNING – NO PRIVACY**

Communications made via City issued devices may be subject to disclosure under the Kenai Municipal Code Chapter 10.40, Release of Public Records, the Alaska Public Records Act or for litigation purposes unless a privilege or exception exists that justifies withholding the information.

**I. Audits**

All City issued mobile devices are subject to audit by the City. Excessive data usage may be investigated, and any additional costs that cannot be justified for official City purposes may be passed on to the user of the device. If contacted, users have three business days to provide their mobile device to the City Clerk. They will be provided a "loaner" to use in the interim. Typically, the mobile device will be returned to the user within five business days.

**J. Representations**

While operating a City issued mobile device a user advocating, advancing or expressing any individual religious, political or personal views or opinions must clearly indicate that their views are personal and not those of the City. Users may not represent their statements as official City policy unless authorized to do so.

**K. Email Usage for City Business**

For the purposes of activity related to City business, the user shall conduct all email communication through their assigned City email account, if applicable. All emails on the City email account are archived and retained by the City. This account shall be synced to the mobile device as well, but all City related business must be conducted through the City email address or copied to the City email address if the user's personal email box is used. Where possible, the user's assigned City email account must be configured as the primary or default account on the mobile device.

**L. Acceptable Use**

The mobile device, Internet and email access provided are tools for conducting City business. Thus, City use of such tools will be primarily for City business related purposes; i.e., to review City

agenda materials and obtain useful information for City related business communications as appropriate. All of the City's computer systems, including the mobile device, are considered City property. Mobile device, Internet and email activities will be traceable to the City and will impact the reputation of the City. City issued mobile devices shall not be used to send or knowingly download any vulgar, discriminatory or pornographic content. Users shall refrain from making any false or defamatory statements, or from disclosing private facts without written authorization by the affected parties, in any Internet forum or from committing any other acts that could expose the City to liability.

City issued mobile devices are not to be used for operating a business for personal gain, sending chain letters or any other purpose that interferes with the normal City business activities. Users shall not use City issued mobile devices for any illegal activity.

Users will not store any protected City data (SSNs, Credit Card Numbers, Health information, etc.) on the mobile device.

Users shall not use the mobile device during or outside of a city council meeting in any way that violate the Open Meetings Act requirements of the State of Alaska and the City of Kenai.

Mobile device users are allowed to have music, photos, videos and install apps on their mobile device; however, the items downloaded and synced to the mobile device must be in compliance with Federal copyright laws and shall be acquired at the expense of the user. Any apps downloaded by the user must originate from official sources. Users are encouraged to limit photos and videos, as the amount of digital storage available on the mobile device is limited. If at any time user purchased content or application interfere with the proper operation of the mobile device, at the City's sole discretion, user purchased content and applications may be removed to ensure proper operation of the mobile device.

#### **M. User Responsibility**

It is the responsibility of the user to ensure the City provided mobile device is kept reasonably safe, protected from damage or theft. Mobile devices must remain free of any writing, drawing stickers or labels that are not the property of the City. Should a mobile device be accidentally lost, damaged or stolen, responsibility shall be as follows:

1. First time: City shall repair or replace at no cost to the user.
2. Second time: The City shall pay half the cost of repair or replacement and the user shall pay half the cost.
3. Third time: The user shall be entirely responsible for repair or replacement costs and shall replace the unit within two weeks of the equipment loss.

Mobile devices that are damaged or destroyed through intentional misuse must be repaired or replaced at the user's expense. Exceptions for situations that are due to extenuating circumstances may be authorized by the Mayor.

#### **N. Loss or Theft of the Mobile Device; Remote Wipe**

The user of the device must notify the Clerk's Office immediately or as soon as practicable upon loss, theft or suspected loss/theft of the device. ~~Where possible, the contents of the device will be remotely erased and the services associated with the device will be disabled.~~

## **O. Return of the Mobile Device**

### **1. City Council Members**

Upon completion of at least one full term of service, the City Council Member may retain their City issued mobile device for their personal use following the purge of all information and City software. The City Council Member shall therefore return their mobile device to the Clerk's Office when the individual member's term of service has ended. Upon completion of the Council Member's term(s) of service, which must include one full term, the mobile device will be wiped clean of any and all information at the end of the term of service. After it is wiped clean, the City Council Member will be given the option to retain the mobile device for personal use as a token of appreciation for their services.

In the event the City Council Member does not serve a full term, the mobile device will be returned to the City Clerk's Office. It will be the City Council Member's responsibility to remove any personal data from the device prior to returning the device to the City Clerk's Office where it will be purged of all information.

### **2. Planning and Zoning Commission Members and Support Staff**

When the individual's term and/or service as a Planning and Zoning Commissioner or employee has ended, the user shall return their mobile device to the City Clerk's Office. It will be the user's responsibility to remove any personal data from the device prior to returning the device to the City Clerk's Office. Upon return of the mobile device to the City, records and documents will be saved and stored according to the City's record retention schedule. Before issuing to another user, the mobile device will be wiped clean of any and all information.

## **P. Indemnification**

The City bears no responsibility whatsoever for any legal action threatened or commenced due to conduct and activities of City Council Members in accessing or using these resources. All City Council Members agree to indemnify and hold harmless the City against any and all claims of any kind or nature whatsoever for damages, including tangible and intangible damages, costs and expenses suffered by the City arising out of any unlawful or improper conduct and activity, and in respect of any action, settlement or compromise, or any statutory infringement.

Legal prosecution following a breach of these conditions may result independently from any action by the City.

## **Q. Student Representative**

The City Clerk's Office will issue and administer the use of a mobile device for the Student Representative to the City Council, which will include appropriate applications for use relating to City business conducted by the Student Representative. In addition to the policies listed herein, the student's device will be maintained in the Office of the City Clerk and provided to the Student Representative, loaded with any necessary meeting material, for all regular and special City Council meetings and all work sessions. The device will be returned to the City Clerk or the City Clerk's representative after each meeting or work session.

**R. Compliance with Policy**

The City reserves the right to inspect any and all files stored on mobile devices that are the property of the City in order to ensure compliance with this policy. Users do not have any personal privacy right in any matter created, received, store in or sent from any City issued mobile device, and the City Clerk is hereby authorized to institute appropriate practices and procedure to ensure compliance with the policy. Any violation of this policy may result in discipline pursuant to Council direction.

I hereby certify that I have received a written copy of the Electronic Device Policy. I have read and fully understand the terms of this policy and agree to abide by it.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name) Device Serial Number: \_\_\_\_\_

Effective Date: June 19, 2019

Approved by Resolution 2017-02  
Amended by Resolution 2018-67  
Amended by Resolution 2019-38



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Council Member Knackstedt  
**DATE:** June 6, 2019  
**SUBJECT:** **Resolution No. 2019-38 – Amending Mobile Device Policy**

---

At their May 8 Planning and Zoning Commission meeting a request was made that iPads be provided for the Planning and Zoning Commission members and during the budget process, funds were identified which fulfill that request. As such, the Mobile Device Policy should be amended to include provisions for the Planning and Zoning Commission members. The provisions I've proposed for the Planning and Zoning Commission members requires that the devices be returned after the individual's service has ended and the device be preserved and maintained for the use of a future Planning and Zoning Commission member. This policy to return the device at the end of the individual's service is consistent with the Kenai Peninsula Borough, City of Soldotna, City of Palmer, Ketchikan Gateway Borough, and City and Borough of Sitka.

Adoption of this resolution will make the Planning and Zoning Commission paperless, resulting in cost benefits and staff efficiencies. Paper copies of the Planning and Zoning packet will still be provided at the door for the public at the time of the meeting. The Airport Commission has been successfully paperless for several years, so this is a logical next step for our commissions and committees.

Your consideration is appreciated.





Sponsored by: Administration

**CITY OF KENAI**

**RESOLUTION NO. 2019-39**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING THE TRANSFER OF FUNDS FROM THE GENERAL FUND LIBRARY DEPARTMENT TO THE GENERAL FUND BUILDINGS DEPARTMENT; AND AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER IN THE AMOUNT OF \$16,795.00 FOR THE REPLACEMENT OF ADA AUTOMATIC DOOR OPERATORS AT THE LIBRARY.

WHEREAS, the ADA Accessible Door Operators at the Library are currently unusable and staff has been unable to repair them; and,

WHEREAS, the Building's Department Repair & Maintenance account does not have sufficient funds to complete the repairs; and,

WHEREAS, the Library Department has available remaining funds within their existing budget within their Repair & Maintenance and Postage accounts to contribute to the repairs; and,

WHEREAS, the Building's Department has received competitive quotes, with Doors & Windows, Inc. being the lowest responsive responsible bidder at a total installed cost of \$16,795.00; and,

WHEREAS, it is the recommendation of the Public Works Department, that completion of these repairs is in the best interest of the City.

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

**Section 1:** That the following budget transfer be made:

General Fund

From:		
	Library – Repairs & Maintenance	\$11,000.00
	Library – Postage	<u>\$2,000.00</u>
		<u>\$13,000.00</u>
To:		
	Buildings – Repairs & Maintenance	<u>\$13,000.00</u>

**Section 2:** That a Purchase Order in the amount of \$16,795.00 is authorized to Doors & Windows, Inc. Payable from Account #001-434-4538 Buildings – Repairs & Maintenance.


**Section 3.** That this Resolution takes effect immediately upon adoption.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of June, 2019.

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

ATTEST:

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

Approved by Finance: 





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## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Scott Curtin, Public Works Director

**DATE:** June 12, 2019

**SUBJECT:** **Resolution No. 2019–39 Replacement of Automatic Door Operators at the Library**

---

The Library has two main entrances, one on the north and one on the south sides of the building. Each of these entrances is equipped with handicap accessible ramps and automatic door operators. Over the last six months the automatic door operators have struggled to consistently work at both entrances. Building maintenance staff has been unable to make long term repairs to the equipment.

While this was not a planned project, Library staff in coordination with the Building Maintenance Department have located existing funds within the current budget that will allow for the timely completion of the repairs. The Library is a highly used asset of the City that does see individuals in need of these door operators. Departmental Staff and the Administration is in support of this project.

Council's support is respectfully requested.





Sponsored by: Administration

**CITY OF KENAI**

**RESOLUTION NO. 2019 - 40**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING A BUDGET TRANSFER IN THE GENERAL FUND – POLICE DEPARTMENT FOR THE PURCHASE OF A FORENSIC INVESTIGATION TOOL.

WHEREAS, the City Council approved Ordinance 3067-2019 accepting and appropriating asset sharing forfeiture funds totaling \$26,605.40; and,

WHEREAS, the funds were appropriated into the Police Small Tools Account and one of the purchases that is being made with those funds is required to be purchased from the Police Machinery and Equipment Account based on its cost; and,

WHEREAS, the appropriated funds are required to be used for a law enforcement purpose and this transfer of funds from one account to another facilitates that purchase.

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

**Section 1.** That the following budget amendment be approved:

General Fund

Decrease – Police Small Tools	(\$17,115)
Increase – Police Machinery & Equipment	\$17,115

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

ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of June, 2019.

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

ATTEST:

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

Approved by Finance: *J. Luk*



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## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** David Ross – Police Chief

**DATE:** June 10, 2019

**SUBJECT:** **Resolution No. 2019-40 – Resolution authorizing a budget transfer in the General Fund.**

---

The Kenai Police Department received \$26,605.40 in asset forfeiture sharing funds from the State of Alaska Department of Public Safety. Those funds were appropriated to the Police Small Tools account under Ordinance 3067-2019. One of the purchases to be made with those funds is a Cellebrite system for performing forensic device data extraction and examination, and that PO was approved in the "Purchase Orders Exceeding \$15,000" approvals at the June 5 Council Meeting.

This resolution corrects my error in requesting those funds be appropriated into the Police Small Tools Account rather than the Police Machinery and Equipment Account, based on the price of the purchase.

I am respectfully requesting consideration of the resolution authorizing the funds transfer.





Sponsored by: Administration

## CITY OF KENAI

### RESOLUTION NO. 2019 - 41

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AUTHORIZING A FACILITY MANAGEMENT AGREEMENT WITH THE BOYS & GIRLS CLUB OF THE KENAI PENINSULA, INC. FOR THE OPERATION AND MANAGEMENT OF THE KENAI RECREATION CENTER IN THE AMOUNT OF \$130,000 PER YEAR.

WHEREAS, the current contract extension for Facility Management Services at the Kenai Recreation Center with the Boys & Girls Club of the Kenai Peninsula is due to expire June 30, 2019; and,

WHEREAS, the term of this Agreement is for an initial period of three years beginning July 1, 2019, with an option for a two-year renewal based on the mutual agreement of the parties; and,

WHEREAS, the City of Kenai previously solicited competitive proposals from contractors for the management and operations of the City's recreation center to provide quality recreational programs and services for children, adults and seniors; and,

WHEREAS, the Boys & Girls Club of the Kenai Peninsula, Inc. has successfully managed the Kenai Recreation Center since 2003 and desires to continue providing recreational services to the community; and,

WHEREAS, the Boys & Girls Club of the Kenai Peninsula was the only responsible bidder; and,

WHEREAS, the current contract was extended through June 30, 2019 to allow administration time to discuss and implement needed operational changes.

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

**Section 1.** That the Kenai City Council approves the Facility Management Agreement with the Boys & Girls Club of the Kenai Peninsula, Inc.

**Section 2.** That the compensation for the Facility Management Services shall not exceed \$130,000. Sufficient funds have been budgeted.

**Section 3.** That this Resolution takes effect immediately upon adoption.

ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19 day of July, 2019.

---

BRIAN GABRIEL SR., MAYOR

ATTEST:

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Jamie Heinz, CMC, City Clerk

**AGREEMENT FOR FACILITY MANAGEMENT SERVICES  
AT THE KENAI RECREATIONAL CENTER FACILITY**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_ 2019, by and between the CITY OF KENAI (Owner), whose address is 210 Fidalgo Avenue, Kenai, AK 99611-7794, and \_\_\_\_\_ (Contractor), whose address is \_\_\_\_\_.

**RECITALS:**

Owner desires to retain the professional services of Contractor to manage the Kenai Recreational Center located at 227 Caviar Street in the City of Kenai.

Contractor is a professional in this area and specifically in the provision of recreational services to the public and has the experience, skill, knowledge, and competence to perform these services.

Owner wants to contract for the provision of these services by Contractor in order to obtain best financial arrangements for the City and provide affordable and quality experiences for its customer. Contractor agrees to perform its services under this Agreement with due diligence and due care and in a good and professional manner.

Owner and Contractor therefore agree as follows:

1. **Definitions.** For this Agreement, the following definitions apply:
  - A. "Manager" means the Kenai City Manager or their designee as agent for and on behalf of Kenai.
  - B. "Concession" means all sales or rentals of goods or services in the Facility, the parts of the Facility where those sales or rentals are made, and equipment or facilities in the Facility used for those sales or rentals.
  - C. "Contractor" shall mean \_\_\_\_\_.
  - D. "Council" means the Kenai City Council.
  - E. "Facility" means the Kenai Recreation Center located at 227 Caviar Street in Kenai, Alaska.
  - F. "Management" or "management services" means performing all work to operate and provide the services and reports required by this Agreement and all work necessary to support the Facility's provision of service to the public, including but not limited to, supervision of staff, supervision and control of participants using the Facility and accessing any programs at the Facility, providing appropriate recreational, education, and cultural programs for the general public, scheduling use of the Facility, maintenance

of the Facility, engaging in sales marketing of the activities and programs at the Facility, and the of recreational concessions at the Facility.

G. "Owner" or "City" means the City of Kenai.

**2. Term.** The term of this Agreement shall begin on \_\_\_\_\_ (date), and end on \_\_\_\_\_ (date). This Agreement may be extended for one additional two-year term upon mutual written consent of Owner and Contractor. Contractor shall notify Owner in writing no less than 180 days before the end of the remaining term of this Agreement if Contractor desires to extend the Agreement for any additional term. Neither party has any obligation to agree to extend the initial term of this Agreement.

**3. Compensation.**

A. Owner shall pay Contractor annual fee \$\_\_\_\_\_ per contract year (July 1 to June 30) for management of the Facility, including the provision of recreational, educational, cultural, and leisure services and activities at the Facility. Owner will pay the fee in 12 equal monthly installments, payable within 14 days after billing by Contractor. Any compensation due for portions of a month for which services are provided by Contractor will be pro-rated to a daily rate.

B. Subject to Appropriation. Contractor recognizes that compensation for its management services require the Council to annually appropriate funds for payment of the management services. The obligation of Owner to provide funding under this Agreement is subject to the availability of funds lawfully appropriated for that purpose by the Council. The termination of this Agreement due to fiscal necessity and/or non-appropriation of funds by Owner shall not constitute a breach or default of Owner. In the event of a non-appropriation of funds, Owner may terminate this Agreement under Section #16(B), below, however termination shall not be subject to 60 days' notice. Instead, Owner shall give reasonable advance notice of non-appropriation as soon as practicable but in no case shall notice be less than ten days in advance of the effective termination date.

C. Termination. If Contractor's services are terminated for whatever reason, Contractor's claim for compensation shall be limited to payments due based on a proportional number of days it operated the Facility. Contributions in kind are not eligible for reimbursement unless this contribution is directed toward approved, appraisable improvement to the Facility. Upon termination, any alteration or renovation to the Facility approved by Owner in writing, will be reimbursed at fair market value or actual cost as reported to Owner (whichever is less) unless the parties have previously otherwise agreed. If necessary, fair market value of such improvements will be determined by a professional appraiser. The appraiser will be selected jointly by the parties and the appraisal fee will be split equally.

**4. Independent Contractor; No Agency.** Contractor's relationship with

Owner shall be that of an independent contractor with the authority to control and direct the performance of the details of the management services that are the subject of this Agreement. Nothing contained in this Agreement shall be construed to create an agency, partnership, joint venture, or employee-employer relationship between Owner and Contractor. Contractor is not the agent of Owner and Contractor is not authorized to make any representation, contract, or commitment on behalf of Owner.

## **5. Scope of Services—General Obligations of Contractor.**

A. Yearly Operation. Facility management services shall be a year-round function of Contractor to carry out its Annual Operations Plan. Contractor shall perform the management work and all services on an as needed/scheduled basis as determined by Contractor (except where specifically identified below).

B. Services. Contractor shall provide recreational, educational, cultural, and leisure programs and services at the Facility for all age groups. Contractor agrees to make the Facility available to community user groups and/or organizations in order to serve the varied interests and needs of the community.

C. Concessions. Contractor will provide, at its own expense, other recreational, educational, cultural, or leisure services to the general public that are not inconsistent with this Agreement. Contractor shall have the exclusive right to operate concessions in the Facility. Contractor is responsible for defining said services and coordinating all aspects of service offerings, whether required under this Agreement or offered as an additional concession of Contractor.

D. Fees. Contractor shall charge a fee approved by the City for use of the Facility and/or for participation in any programs and/or services it provides unless otherwise specified in this Agreement. Any fees charged by Contractor for any purpose must not discourage public use of the Facility and should be consistent with fees charged for similar services at other municipal recreation centers.

E. Public Facility. The programs provided in the Facility must be generally available to the public. Contractor may not restrict appropriate public participation at the Facility and may not restrict public access for appropriate use of the Facility.

F. Employees. It is Contractor's duty to train Contractor's employees in order to provide the management services. The management services shall be performed by qualified, careful, and efficient employees in strict conformity with the best practices and highest applicable standards. The manner in which these services are performed shall be determined by Contractor. Contractor shall pay all salaries and expenses of, and pay all federal social security taxes, federal and state unemployment taxes, and any similar payroll taxes relating to, Contractor's employees.

G. Permits, Licenses, and Certificates. Contractor shall obtain and maintain all necessary licenses and permits; comply with the requirements of all permits; pay all



taxes lawfully imposed on Contractor's business; and pay any other fee or charge assessed under any applicable public statute, regulation, or ordinance. Said licensing includes, but is not limited to, obtaining state and borough business licenses and tax certificates, and, where applicable to Contractor, paying all taxes and filing all documents necessary to maintain Contractor's status as a corporate entity in good standing in the State of Alaska.

H. Taxes and Assessments. Contractor shall pay all taxes lawfully imposed on its business, and pay any other fee or charge assessed under any applicable public statute, regulation, or ordinance. Contractor shall collect and pay any and all gross receipts, compensation, transaction, sales, use, payroll, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed or on the compensation paid to Contractor or to Contractor's employees or contractors under or arising out of this Agreement.

## **6. Scope of Services—Specific Performance Requirements.**

A. Specific Activities Required. Unless Owner (as approved by the Council) requests termination of a service, Contractor shall provide the following services at the Facility on a regularly-scheduled basis:

- i. teen center;
- ii. toddler time;
- iii. home school gym time;
- iv. senior exercise;
- v. wallyball and racquetball court use;
- vi. open gym time;
- vii. volleyball time;
- viii. weight room and sauna;
- ix. men's and women's adult basketball leagues;
- x. practice time for Kenai Middle School boys' and girls' basketball (free of charge);
- xi. practice time for Kenai Central High School boys' and girls' basketball "C" teams (free of charge); and,
- xii. after-prom and after-graduation activities for Kenai Central High School (free of charge and with no demand for deposit).

Contractor will provide Owner with a description of how Contractor intends to provide these services in its Annual Operations Plan.

B. Operating Hours; Calendar. Contractor will maintain daily, monthly and annual schedules of services and activities held at the Facility and shall provide public access to this schedule. Contractor shall operate the Facility according to this published schedule, which schedule must include providing services on Sundays.

C. City Wellness Program. Contractor agrees to support the City wellness

program provided as a general benefit to City employees, their spouses, and immediate family members. City will provide Contractor with a list of City employees and their spouses participating in the City's wellness program. Persons whose name appears on this list may use the Center and the fitness programs, equipment, and other facilities at no charge. Contractor may require proof of identification. City may periodically update this list.

D. Fee Schedule. Contractor shall develop and publish fee schedules for all services, events, and activities conducted at the Facility and for all charges made to the public for use of the Facility and its equipment. The fee schedule must be approved in advance by the City Manager and may be subject to change by the Council. The Fee Schedule attached as Exhibit A to this Agreement is approved.

E. Teen Center Membership. Contractor agrees to provide a discounted cost for membership to the Teen Center located in the Facility of \$25 per year, per child provided that Owner provides Contractor with a \$10,000 annual grant for this purpose. This grant is in addition to the compensation identified in Section 3, above.

F. Revenues. Contractor shall collect all revenues generated at the Facility and shall use generally-accepted accounting principles and appropriate internal controls for its accounting activities. Contractor agrees that Owner shall not be liable or responsible for funding any deficits or delinquencies owed to Contractor other than the payments required under Section #3 of this Agreement.

Contractor will collect and retain all fees and charges for programs, services and rentals. The compensation for services under this Agreement (Section #3) and grants received are not considered fees and charges. Contractor will retain fees and charges collected up to \$100,000 per calendar year. Fees and charges collected by Contractor for use of the Facility and for concessions and totaling over \$100,000, and that Contractor does not spend on providing concessions or programs at or for the Facility, will be divided equally (50/50) between the Contractor and Owner.

G. Repairs. Contractor bears the responsibility for the cost of repairs of the structure or its internal components and equipment due to any damage or breakage caused by the negligence or intentional act of the Contractor or of a client during operating hours of the Facility. Contractor is responsible for the maintenance and repair of the Center equipment, *i.e.*, weight room equipment, pool tables, vending machine.

H. Janitorial; Appearance. Contractor shall keep the Facility in a clean and sanitary condition. Contractor shall pay for and provide all janitorial services and supplies required to keep the Facility clean and presentable. Contractor shall not permit any garbage or other refuse to accumulate in the Facility or on the grounds surrounding the Facility.

I. Snow Removal. Contractor shall be responsible for snow removal of all sidewalks around the building or leading up to the Facility. Contractor must keep all ingress and egress points for the Facility (main entrance, fire exits, *etcetera*) clear of ice and snow so they may be used safely at all times.

J. Security. Contractor will take all reasonable precautions to prevent unauthorized entry into the Facility, including the placing of signs or other devices intended to deter or restrict such entry. Contractor shall develop and follow policies and procedures relating to issuing keys, handling cash and deposits, opening and closing, and dealing with difficult patrons.

K. City Use. The City may use the Facility for City sponsored events at no cost to the City. All City events shall be coordinated with Contractor so as not interfere with prior scheduled services.

## **7. Contractor's Reporting and Planning Requirements.**

A. Annual Operations Plan. No later than January 1 of each year, Contractor shall provide Owner with an Annual Operations Plan. Contractor shall work with the Manager to assure the Annual Operations Plan meets the requirements and expectations of Owner. The plan should contain, at a minimum, the following:

- i. a safety and security plan;
- ii. a facility use plan for the Facility that includes days of operation and hours open, and booking and scheduling procedures;
- iii. the proposed fee schedule;
- iv. a list of rules governing the public's use of the Facility;
- v. a program schedule;
- vi. a staffing plan;
- vii. opportunities for new services or activities; and
- viii. a prioritized list of recommended Capital Improvement Expenditures with justification.

B. Facility Annual Operating Budget. No later than January 1 of each year, the Contractor will submit to Owner its Annual Operating Budget. The budget should include all projected and the prior year's actual operating and capital costs for the Facility, including a projected income and expense statement and a projected year-end balance sheet. The budget must also include detailed projections of revenues by category and source; operating expenses by category; and administrative and general expenses to Contractor in managing the Facility.

C. Semi-Annual and Annual Reports. Contractor will submit to Owner a semi-annual report and an annual report identifying usage of the Facility by program (see Section #6 – Scope of Services, Paragraph A). These reports shall include categorization of usage by age group of user; a categorization of usage of the Facility by component of the Facility (for example, teen center, gym, toddler time, leagues); an updated inventory

of Owner's equipment and furnishings purchased; and, a detailed description, including costs, for equipment needing to be replaced. Contractor must submit the annual report on or before January 1 and July 1 of each year of this Agreement beginning \_\_\_\_\_ (date).

**8. Owner's Obligations.** Owner shall perform the following functions or provide the following materials related to the Facility:

A. Operations and Maintenance Costs. Owner is responsible for maintenance and repair of the Facility required by normal wear and tear. Owner will perform routine maintenance on all incorporated systems in the Facility including fire suppression and alarm systems, electrical systems, mechanical systems, plumbing systems, and HVAC. Contractor must notify the City's Parks and Recreation Director, Attention: Building Maintenance, for "Requests for Service of Repairs" on forms, or in a manner as requested by Owner. The City's Work Order Request Form, attached as Exhibit B is the form that Contractor should use to request maintenance. This duty of Owner does not extend to maintenance on a system required due to Contractor's failure to properly supervise and manage the Facility during business hours (for example, vandalism in the Facility during schedule working hours).

B. Utilities. Owner shall pay the following utility costs for the Facility: water, sewer, electrical, natural gas, telephone service (excluding long-distance, conference call, and other extraordinary phone charges).

C. Snow Removal. Owner is responsible for snow removal from the parking lot of the Facility.

D. Grounds Keeping. Owner shall maintain the grounds on the exterior of the Facility, subject to Contractor's obligation to keep the grounds of the Facility free of garbage and refuse.

E. Equipment Replacement. Owner is responsible for the replacement of Owner-owned equipment as necessary due to normal wear and tear of the equipment.

F. Insurance. Owner shall provide Broad-Form Property Damage Insurance for the Facility.

**9. Ownership of Equipment and Furnishings.**

A. Owner recognizes that Contractor will from time-to-time purchase equipment and furnishings to accomplish the work and provide the management services required and the concessions allowed under this Agreement. Equipment and furnishings purchased with Contractor funds shall be the sole property of Contractor. Equipment and furnishings donated to Contractor shall be the sole property of Contractor.

B. With the exception of pass-through grants administered by Owner, equipment and furnishings purchased with Owner funds or with any funds provided by grants from Owner shall be the sole property of Owner. Contractor will mark and inventory this Owner property and provide Owner with a copy of the inventory with its semi-annual and annual reports.

C. Prior to occupying the Facility, Contractor and Owner will conduct a walkthrough to investigate conditions of the Facility and equipment inside the Facility.

**10. Alterations and Renovations.** Contractor may not make any alterations or renovations to the Facility without the prior written consent of Owner. Contractor shall provide Owner with an actual cost report within ten days of completion of any alteration or renovation project.

**11. Signs.** Contractor may not place or erect poles, lights or devices on the exterior of the Facility or the curtilage or on adjacent property without the prior written consent of Owner.

**12. Fundraising.** Fundraising using the name of, or on behalf of, the City of Kenai or the Kenai Recreation Center must be approved in advance in writing by the City of Kenai.

**13. Insurance.**

A. Contractor shall, at Contractor's own expense, secure and maintain the following insurance:

- i. comprehensive general liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual coverage with a per occurrence limit of not less than \$1,000,000 combined single limit;
- ii. worker's compensation insurance with coverage for all employees engaged in work under this Agreement as required by AS 23.30.045 (Contractor is responsible for worker's compensation insurance for any subcontractor who directly or indirectly provides services under the Agreement); and,

- iii. comprehensive automobile liability insurance covering all owned, hired, and non-owned vehicles with coverage limits not less than \$1,000,000 combined single limit per occurrence.

Where specific limits are stated, the limits are the minimum acceptable limits. If Contractor's insurance policy contains higher limits, Owner is entitled to coverage to the extent of the higher limits.

B. All insurance required by this Section #13 shall meet the following additional requirements:

- i. for comprehensive general liability and automobile liability insurance, name the City of Kenai as an additional insured;
- ii. for worker's compensation insurance, general liability, and automobile liability insurance, where possible, include a waiver of subrogation so that the insurer waives all rights of subrogation against the City of Kenai for payments made under the policy;
- iii. provide Owner with at least 30 days' notice before any termination, cancellation, or material change in insurance coverage is effective; and,
- iv. be issued by a company/corporation currently rated "A-" or better by A.M. Best.

C. Contractor shall submit to Owner proof of insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf. The effective date of the insurance will be no later than the first day of the term of this Agreement.

D. The indemnification and insurance coverage requirements stated in this Section #13 and in Section #14 below do not relieve Contractor of any other obligation under this Agreement.

E. Owner may increase the amount or revise the type of required insurance upon written demand without requiring amendments to this Agreement. Owner will base any increase or revision upon reasonable and justifiable grounds. Within two weeks of the written demand, Contractor shall submit to Owner evidence of insurance coverage that meets the requirements of Owner.

**14. Indemnity, Defend, and Hold Harmless Agreement.** Contractor shall indemnify, defend, and hold harmless Owner and its agents, employees, and/or insurers from claim, loss, damage, liability, including injury and death or expense in any way related to any act or omission of Contractor or Contractor's employees, agents, or invitees arising out of Contractor's performance of services under this Agreement, except to the

extent any negligence of Owner or its employees or agents is a proximate cause of any injury or damage. If a third party asserts a claim against Contractor and Owner, Contractor and Owner shall seek in good faith to achieve Agreement to an apportionment of fault as between them without an independent of litigation. This provision shall survive expiration or termination of this Agreement.

**15. Notice of Accident, Injury, or Claims.**

A. Each party shall give to the other prompt and timely written notice of any claim made or suit instituted within its knowledge that in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party.

B. Contractor shall report all incidents of accident or injury promptly in writing to the City Manager for Kenai.

**16. Termination.**

A. For Cause. If either party fails to perform any of the terms, conditions, covenants, or obligations under this Agreement, the other party may terminate this Agreement. As a condition of the exercise of the right of termination, the terminating party must notify the other party in writing of its intent to terminate, stating with reasonable specificity the reasons for termination for cause. Upon receiving this written notice, the other party will have 30 calendar days to cure the default(s). If the other party fails to cure all defaults to the satisfaction of the other party within thirty 30 days, the party may declare the Agreement terminated.

B. Termination for Convenience of the City. Owner may terminate this Agreement at any time by giving written notice to Contractor of its intent to terminate. Owner shall provide contractor with at least 60 days' advance notice of its election to terminate for its convenience. All finished or unfinished documents, surveys, reports, and/or other material prepared by Contractor under this Agreement are the property of Owner and Contractor hereby agrees to peaceably return all such items to Owner by or upon the effective date of termination and as may be further instructed by Owner. Contractor shall be entitled to receive compensation for services rendered up to and through the date of termination.

**17. Duties Upon Termination.**

A. Upon termination of this Agreement under Section #16(A), Owner may take immediate possession of the Facility.

B. Upon termination of this Agreement under Section #16(B), including termination due to non-appropriation of funds by the Council, there shall be a transition period of not greater than 90 days with regard to the removal of Contractor's property from the Facility. If Contractor fails to vacate upon expiration of the transition period, the

City may remove and store the property at Contractor's expense or store the equipment at the Facility and charge Contractor a reasonable storage fee.

C. Contractor shall deliver to the Manager all documents, records, work products, materials and equipment of Owner and requested by the Manager.

**18. Records and Right to Audit.**

A. Contractor agrees to keep reliable accounting records and to prepare annual financial statements in accordance with generally accepted accounting principles.

B. Contractor shall make available to Owner for audit, examination, and copying, all of Contractor's records with respect to all matters covered by this Agreement continuing for a period ending six years after the date of expiration or termination. These records include, but are not limited to financial statements, ledgers, invoices, inventories, reports, employment Agreements and other contracts related to Contractor's provision of services under this Agreement. Contractor shall make available for examination all such records, and in such form as the City may reasonably require, at any time during Owner's normal business hours. Contractor shall make such records available to Owner upon ten business days' notice, except in the case of emergency where Contractor shall make such records available immediately.

C. In performing audits and investigations, Owner shall not unduly interfere with the ability of Contractor to perform its duties under this Agreement.

**19. Right of Entry.** Owner, its officers, employees, agents, and representatives may enter the Facility during operating hours to make inspection of the Facility and/or to perform maintenance activities. Owner will make reasonable attempts to notify Contractor if it requires emergency entry after operating hours.

**20. No Discrimination.** Contractor shall not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or State law. Contractor recognizes the right of Owner to take any action necessary to enforce this requirement.

**21. Administration of this Agreement.**

A. The Parks and Recreation Director is the representative of the City in administering this Agreement.

B. Contractor is responsible for the direct supervision of Contractor's personnel through Contractor's designated representative, and such representative shall in turn be available at all reasonable times to confer with the Owner's representative with respect to the services. The designated representative for Contractor is \_\_\_\_\_ . In the event that Contractor's representative is



unable to continue to serve as Contractor's representative, Contractor shall appoint a successor subject to a written approval of the Owner.

**22. Notices.** Any notice or communication required or permitted under this Agreement shall be in writing, addressed to the appropriate party at the address given below for the type of delivery, and given personally, by certified mail (return receipt requested), or by electronic mail. Notice by facsimile will NOT be accepted. All notices shall be effective upon the date of receipt, except if the notice or communication is received after 5:00 p.m. on a business day, or on a day that is not a business day of the receiving party, and then the notice or communication is deemed received at 8:00 a.m. on the next business day.

**Owner:** City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611  
Attn: City Manager  
Email: [postrander@kenai.city](mailto:postrander@kenai.city)

**Contractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_  
\_\_\_\_\_  
(physical address for hand delivery)  
\_\_\_\_\_  
(physical address for hand delivery)  
Email: \_\_\_\_\_

Either party may change its address for notice by giving notice as provided herein to the other party.

**23. Miscellaneous Provisions.**

A. No Lease. This Agreement does not lease, rent, or otherwise convey any land or interest in real property or in the Facility or personal property of Owner's and in the Facility to Contractor.

B. Compliance with Laws. In performing its obligations, Contractor will comply with all laws, ordinances, and regulations of duly-constituted public authorities now or later enacted.

C. Assignment and Subcontract. Contractor shall not assign, subcontract, and/or transfer any right, obligation, or part of the services or work to be performed under this Agreement without prior written approval of the Owner. Any such assignment or transfer or subcontracting of services without the consent of Owner shall constitute a default of Contractor.

D. Assumption of Risk. Contractor shall provide all proper safeguards and assume all risks incurred in performing the services.

E. No Waiver. If Owner does not insist in any one or more instances on the strict performance by Contractor of any requirement under this Agreement, it is not a waiver or relinquishment for the future, but the requirement will continue in full force. An Owner waiver of any provision or requirement in this Agreement cannot be enforced nor relied on unless the waiver is in writing and signed on behalf of Owner.

F. Integration and Modification. This Agreement contains the entire Agreement of the parties. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Agreement or the performance of either party, are merged and integrated into this Agreement. This Agreement may not be modified except in writing signed by both parties.

G. Applicable Law/Venue. In any dispute between the parties, the laws of the State of Alaska shall govern. If any such dispute results in a lawsuit, the parties will bring the lawsuit before the courts of the State of Alaska in the Third Judicial District at Kenai.

H. Attorney's Fees and Costs. In the event that either party is in default in the performance of any of its obligations under this Agreement and any legal proceeding including arbitration is brought, the defaulting party shall pay to the other all actual costs and all expenses incurred in the action, including actual, reasonable attorney's fees.

I. Remedies. No right or remedy here conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given, or now or later existing at law or in equity or by statute.

J. Rules of Interpretation. Headings of Sections are solely for convenience of reference and shall not affect meaning, construction, or effect of this Agreement. Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa. Unless the context otherwise indicates, the use of the neuter, masculine, or feminine gender shall include the others as well.

K. Computation of Time. If any due date for a report or notice required under this Agreement falls on a weekend or on a City of Kenai holiday, the report or notice will be timely if filed with Owner on the next regular business day.

L. Validity of Parts. If any term, condition, or provision of this Agreement is declared void or unenforceable, or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable.

M. Authority. Contractor represents that Contractor has read this Agreement and Contractor agrees to be bound by its terms and conditions and that the person signing this Agreement is duly authorized to bind Contractor.

N. Effective Date. This Agreement is effective upon the latter signature of all parties and approval by the Kenai City Council.

The parties have caused this Agreement to be executed in their respective names or by their duly authorized representatives.

**CITY OF KENAI**

**CONTRACTOR**

By: \_\_\_\_\_  
Paul Ostrander Date  
Its: City Manager

By: \_\_\_\_\_ Date  
Its: \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF ALASKA )  
) ss.  
THIRD JUDICIAL DISTRICT )

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

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

STATE OF ALASKA )  
)ss  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, \_\_\_\_\_ (Title) of \_\_\_\_\_ an \_\_\_\_\_ corporation, on behalf of the corporation.

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

ATTEST:

---

City Clerk

SEAL:

APPROVED AS TO FORM:

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Scott Bloom, City Attorney



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

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

## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Robert J. Frates, Parks & Recreation Director

**DATE:** June 11, 2019

**SUBJECT:** **Resolution No. 2019 – 41 – Facility Management Agreement for the Kenai Recreation Center**

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The purpose of this memorandum is to recommend to Council the approval of a Facility Management Agreement with the Boys & Girls Club of the Kenai Peninsula, Inc. for the operation and management of the Kenai Recreation Center.

Competitive bid proposals were previously solicited from contractors for management services and the Boys & Girls Club of the Kenai Peninsula was the only responsible bidder. The current contract extension expires June 30, 2019.

The Boys & Girls Club of the Kenai Peninsula has successfully managed the Kenai Recreation Center since 2003 and have been responsive to meeting the City's needs and the recreation needs of the community.

Thank you for your consideration.





Sponsored by: Administration

**CITY OF KENAI**

**RESOLUTION NO. 2019-42**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AWARDING AN AGREEMENT FOR PROVIDING AND SERVICING PORTABLE RESTROOMS AND DUMPSTERS ON THE NORTH AND SOUTH BEACHES, INCLUDING PORTABLE RESTROOMS AT THE CITY DOCK, DURING THE 2019 PERSONAL USE FISHERY.

WHEREAS, the City issued a formal Invitation to Bid on May 30, 2019 with the following Bids Received on June 12, 2019,

<b>Bidder</b>	<b>Schedule A</b>	<b>Schedule B</b>	<b>Schedule C</b>	<b>Schedule D</b>
Peninsula Pumping Inc.	\$30,185.90	\$19,675.50	n/a	\$49,094.49

; and,

WHEREAS, Peninsula Pumping, Inc. was found to be the only responsive bidder; and,

WHEREAS, the recommendation from City Administration is to award an Agreement to Peninsula Pumping, Inc. for \$84,691.90; and,

WHEREAS, services include mobilization and demobilization, daily servicing and provisions for additional servicing on the North and South Kenai beaches and City Dock, as needed; and,

WHEREAS, appropriated funds were not sufficient to award Schedules A, B, & D at the quantities bid so actual award will be for less making sufficient funds available.

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

**Section 1.** That the Agreement for the project entitled “Dipnet Dumpsters and Portable Toilets 2019” (Schedule A, B, D) be awarded to Peninsula Pumping, Inc. for the total approximate cost of \$84,691.90.

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


ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of June, 2019.

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

ATTEST:

---

Jamie Heinz, CMC, City Clerk

Approved by Finance: 



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 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
 www.kenai.city

## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Scott Curtin, Public Works Director

**DATE:** June 12, 2019

**SUBJECT:** **Resolutions No. 2019-42 & No. 2019-43 Dipnet Dumpsters and Portable Toilets 2019**

The purpose of this memorandum is to recommend awarding an Agreement to Peninsula Pumping, Inc., and to Alaska Waste – Kenai Division LLC, for portable restrooms and dumpster service during the 2019 Personal Use Fishery.

The City advertised for bids through the Anchorage Daily News, Peninsula Clarion and the City of Kenai Website. The following bids were opened on June 12, 2019:

BIDDERS	Schedule A	Schedule B	Schedule C	Schedule D
Peninsula Pumping, Inc.	\$30,185.90	\$19,675.50	n/a	\$49,094.49
Alaska Waste – Kenai Division LLC	n/a	n/a	\$3,228.00	n/a

The scope of work (Schedule A, B and D – Resolution No. 2019-42) includes mobilization and demobilization, daily servicing and provisions for additional servicing of the dumpsters and portable restrooms on the North and South Kenai Beaches, including portable restrooms at the Kenai City Dock. Appropriated funds are not sufficient to award Schedules A, B, & D at bid quantities requiring adjustment to the quantities for the total award of \$84,691.90.

The scope of work (Schedule C – Resolution No. 2019-43) includes mobilization and demobilization, daily servicing and provisions for additional servicing of the road accessible dumpsters at the end of South Spruce Street, Kenai Little League Parking lot and at the Kenai City Dock.

Council's approval is respectfully requested.







Sponsored by: Administration

**CITY OF KENAI**

**RESOLUTION NO. 2019-43**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AWARDING AN AGREEMENT FOR PROVIDING AND SERVICING ROAD ACCESSIBLE DUMPSTERS AT THE END OF SOUTH SPRUCE STREET, KENAI LITTLE LEAGUE PARKING LOT AND KENAI CITY DOCK, DURING THE 2019 PERSONAL USE FISHERY.

WHEREAS, the City issued a formal Invitation to Bid on May 30, 2019 with the following Bids Received on June 12, 2019,

<b>Bidder</b>	<b>Schedule A</b>	<b>Schedule B</b>	<b>Schedule C</b>	<b>Schedule D</b>
Alaska Waste – Kenai Division LLC	n/a	n/a	\$3,228.00	n/a

; and,

WHEREAS, Alaska Waste – Kenai Division LLC was found to be the only responsive bidder; and,

WHEREAS, the recommendation from City Administration is to award an Agreement to Alaska Waste – Kenai Division LLC for \$3,228.00; and,

WHEREAS, services include mobilization and demobilization, daily servicing and provisions for additional servicing of road accessible dumpsters located at the end of South Spruce Street, Kenai Little League Parking lot and the Kenai City Dock; and,

WHEREAS, sufficient monies are appropriated.

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

**Section 1.** That the Agreement for the project entitled “Dipnet Dumpsters and Portable Toilets 2019” (Schedule C) be awarded to Alaska Waste – Kenai Division LLC for the total approximate cost of \$3,228.00.

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

ADOPTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of June, 2019.

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

Resolution No. 2019 - 43

Page 2 of 2

ATTEST:

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

Approved by Finance: *J. Heinz*



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 Telephone: (907) 283-7535 | Fax: (907) 283-3014  
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## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Scott Curtin, Public Works Director

**DATE:** June 12, 2019

**SUBJECT:** **Resolutions No. 2019-42 & No. 2019-43 Dipnet Dumpsters and Portable Toilets 2019**

The purpose of this memorandum is to recommend awarding an Agreement to Peninsula Pumping, Inc., and to Alaska Waste – Kenai Division LLC, for portable restrooms and dumpster service during the 2019 Personal Use Fishery.

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BIDDERS	Schedule A	Schedule B	Schedule C	Schedule D
Peninsula Pumping, Inc.	\$30,185.90	\$19,675.50	n/a	\$49,094.49
Alaska Waste – Kenai Division LLC	n/a	n/a	\$3,228.00	n/a

The scope of work (Schedule A, B and D – Resolution No. 2019-42) includes mobilization and demobilization, daily servicing and provisions for additional servicing of the dumpsters and portable restrooms on the North and South Kenai Beaches, including portable restrooms at the Kenai City Dock. Appropriated funds are not sufficient to award Schedules A, B, & D at bid quantities requiring adjustment to the quantities for the total award of \$84,691.90.

The scope of work (Schedule C – Resolution No. 2019-43) includes mobilization and demobilization, daily servicing and provisions for additional servicing of the road accessible dumpsters at the end of South Spruce Street, Kenai Little League Parking lot and at the Kenai City Dock.

Council's approval is respectfully requested.





Sponsored by: Vice Mayor Navarre

## CITY OF KENAI

### RESOLUTION NO. 2019-44

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING KENAI PENINSULA BOROUGH ORDINANCE 2019-11, REPEALING KP.B 5.18.430(F) WHICH REQUIRES VOTER APPROVAL TO INCREASE THE SALES TAX CAP.

WHEREAS, the Kenai Peninsula Borough is considering Ordinance 2019-11 at its meeting of July 2, 2019; and,

WHEREAS, the borough sales tax cap of \$500 has been in effect since 1964; and,

WHEREAS, applying the Alaska Department of Labor Consumer Price Index, which measures inflation in Anchorage, the value of \$500 in 1964 is equivalent to \$3,222 in 2018; and,

WHEREAS, in 2005, the voters approved an initiative which, among other things, imposed a requirement that any increase in the maximum sales tax (sales tax cap) may not take effect until ratified by the voters at a regular borough election; and,

WHEREAS, pursuant to Alaska Statute 29.45.670, any new borough sales and use tax or an increase in the borough general sales tax percentage approved by ordinance does not take effect until ratified by a majority of the voters at a borough election; and,

WHEREAS, the inability of the Assembly to increase the sales tax cap without voter approval limits its ability to generate needed additional revenues without increasing the property tax mill rate; and,

WHEREAS, increases in the property tax mill rate place the burden of additional taxes entirely on borough property owners, including residents of the City of Kenai, creating the potential for an inequitable tax structure; and,

WHEREAS, an equitable tax system requires tax obligations fall evenly on a population; and,

WHEREAS, restricting the authority of the Assembly to modify the sales tax cap further limits its ability to create an equitable tax system.

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

**Section 1.** That the Council supports Kenai Peninsula Borough Ordinance 2019-11, Repealing KP.B 5.18.430(F) Which Requires Voter Approval to Increase the Sales Tax Cap.

**Section 2.** That a copy of this Resolution be transmitted to Mayor Charlie Pierce and Kenai Peninsula Borough Assembly Members.

**Section 3.** That this resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of June, 2019.

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

ATTEST:

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



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

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## MEMORANDUM

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

**FROM:** Tim Navarre, Vice Mayor

**DATE:** June 13, 2019

**SUBJECT:** **Resolution No. 2019-44 – Supporting Kenai Peninsula Borough Ordinance 2019-11, Repealing the Requirement for Voter Approval to Increase the Sales Tax Cap**

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The purpose of this memo is to provide the additional information in support of Resolution No. 2019-11, supporting Kenai Peninsula Borough Ordinance 2019-11.

The borough sales tax cap of \$500 has been in effect since 1964, and applying the Alaska Department of Labor Consumer Price Index, which measures inflation in Anchorage, the value of \$500 in 1964 is equivalent to \$3,222 in 2018. The Borough estimates the City of Kenai would receive an additional \$621,000 annually if the sales tax cap was increased from \$500 to \$1,000 per transaction with no other code changes.

In 2005, the voters approved an initiative which, among other things, imposed a requirement that any increase in the maximum sales tax (sales tax cap) may not take effect until ratified by the voters at a regular borough election. Additionally, pursuant to Alaska Statute 29.45.670, any new borough sales and use tax or an increase in the borough general sales tax percentage approved by ordinance does not take effect until ratified by a majority of the voters at a borough election.

The inability of the Assembly to increase the sales tax cap without voter approval limits its ability to generate needed additional revenues without increasing the property tax mill rate. This places the burden of additional taxes entirely on borough property owners, including residents of the City of Kenai, and makes it difficult to create an equitable tax system where tax obligations fall evenly on the population.

Your consideration is appreciated.



**KENAI CITY COUNCIL – REGULAR MEETING  
MAY 15, 2019 – 6:00 P.M.  
KENAI CITY COUNCIL CHAMBERS  
210 FIDALGO AVE., KENAI, AK 99611  
MAYOR BRIAN GABRIEL, PRESIDING**

**MINUTES**

**A. CALL TO ORDER**

A Regular Meeting of the Kenai City Council was held on May 15, 2019, in City Hall Council Chambers, Kenai, AK. Mayor Gabriel called the meeting to order at approximately 6:00 p.m.

**1. Pledge of Allegiance**

Mayor Gabriel led those assembled in the Pledge of Allegiance.

**2. Roll Call**

There were present:

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

A quorum was present.

Also in attendance were:

\*\*Tristan Summers, Student Representative  
Paul Ostrander, City Manager  
Scott Bloom, City Attorney  
Jamie Heinz, City Clerk

**3. Agenda Approval**

Mayor Gabriel noted the following revisions to the packet:

- |                  |   |
|------------------|---|
| Add to item D.1. | Ordinance No. 3063-2019 <ul style="list-style-type: none"><li>• Amendment Memo – Healthcare</li><li>• Amendment Memo – Kenai Watershed Forum</li><li>• Kenai Watershed Forum Public Comment</li></ul> |
| Add to item D.6. | Resolution No. 2019-30 <ul style="list-style-type: none"><li>• Amendment Memo</li><li>• Public Comment</li></ul>  |
| Add to item D.9. | Resolution No. 2019-33 <ul style="list-style-type: none"><li>• Amendment Memo</li></ul>   |

**MOTION:**

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

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

**4. Consent Agenda**

**MOTION:**

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

Mayor Gabriel opened the floor for public comment; there being no one wishing to be heard, the public comment period was closed.

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

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

**B. SCHEDULED PUBLIC COMMENTS** – None.

**C. UNSCHEDULED PUBLIC COMMENTS**

Marion Nelson extended an invitation to an upcoming Kenai Fine Arts Show - Historic Buildings of Kenai.

David Chesick thanked the City for putting the launch ramps in early this year. He also spoke in favor of finding a way to get at least one crane open in an affordable way this year to give the public an option for on and offloading fish and other materials.

Sherry Innes spoke in favor of Ordinance No. 3068-2019 citing death numbers in the nation due to marijuana use.

**D. PUBLIC HEARINGS**

- 1. Ordinance No. 3063-2019** – Adopting the Annual Budget for the Fiscal Year Commencing July 1, 2019 and Ending June 30, 2020 and Committing \$500,000 of General Fund, Fund Balance for Capital Improvements, Amending the Salary Schedule in Kenai Municipal Code Chapter 23.55- Pay Plan, Amending Employee Classifications in Kenai Municipal Code Chapter 23.50, and Amending Communication Department Uniform Allowance in Kenai Municipal Code Chapter 23.55. (Administration)

**MOTION:**



Council Member Knackstedt **MOVED** to enact Ordinance No. 3063-2019 and Council Member Molloy **SECONDED** the motion.

Mayor Gabriel opened for public hearing.

Branden Bornemann, Executive Director of Kenai Watershed Forum, spoke in favor of inclusion of the \$5,000 grant typically provided by the City. He noted the Forum had been involved with issues facing the river since 1997 including establishment of the water quality monitoring program which provided information beneficial for reacting to impairments before they became disasters; also helped ensure the river and habitat could support the fish. He added the City of Kenai was a major player in the Memorandum of Understanding (MOU) entered into in 2015 noting the management agencies which identify the River as integral to their existence were a part of the MOU.

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

**MOTION TO AMEND:**

Council Member Knackstedt **MOVED** to amend the document entitled "City of Kenai Fiscal Year 2020 Annual Budget," which is incorporated into Ordinance 3063-2019 by reference in section 1 by increasing Other Animal Shelter Fees by \$42,000 to \$43,000 within the General Fund, increase the Police Transportation expenditure budget by \$26,000 to \$52,650 within the General Fund, increase the Animal Control Operating Supplies expenditure budget by \$1,500 to \$13,090 within the General Fund, increase the Animal Control Professional Services expenditure budget by \$3,500 to \$36,500 within the general fund, decrease the Water Department's Professional Services expenditure budget by \$87,500 to \$10,000 and increase the Transfer to Other Funds by \$87,500 to \$253,600 within the Water and Sewer Fund, decrease the Water Department's Professional Services expenditure budget by \$87,500 to \$26,600 and increase the Transfer to Other Funds by \$87,500 to \$139,200 within the Water and Sewer fund, decrease the Sewer Department's Professional Services expenditure budget by \$87,500 to \$10,000 and increase the Transfer to Other Funds by \$87,500 to \$139,200 within the Water and Sewer Fund, decrease the Wastewater Treatment Plant Department's Professional Services expenditure budget by \$180,000 to \$56,700 and increase the Transfer to Other Funds by \$180,000 to \$944,700 within the Water and Sewer Fund, decrease the Participant Premium revenue amount by \$14, 796 to \$282,312 within the Employee Health Care Internal Service Fund, and decrease the Insurance expenditure account by 4134,825 to \$2,549,101 within the Employee Health Care Internal Service Fund. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

**MOTION TO AMEND:**

Council Member Knackstedt **MOVED** to amend Ordinance 3063-2019 by amending the General Fund appropriation amount in Section 2 to be \$16,551,301, amending the Water and Sewer Improvements Capital Project Fund appropriation amount in Section 2 to be \$250,000, amend the Wastewater Treatment Plant Improvements Capital Project Fund appropriation amount to be \$810,000, insert the words, "Total Capital Project Funds," after the Capital Project Fund Section, and amend \$1,132,800 to be \$1,487,800, amend the Employee Health Care Fund appropriation amount in Section 2 to be \$2,598,511 and the Total Internal Service Funds amount to be \$2,788,511, amend the Total All Funds appropriation amount in Section 2 to be #30,666,351, amend the Class Title of the Human Resource Director\* to delete the underline in Section k, and

amend the range of the Janitor from a Range 2.4 to a Range 2.3 in Section 5. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to amend the budget document and the ordinance by increasing Legislative - Grants to Other Agencies and the General Fund by \$5,000. Council Member Knackstedt **SECONDED** the motion.

It was noted that the City benefitted from the partnership with the Kenai Watershed Forum.

Clarification was provided that in-kind services could be provided and the City was willing to do so. It was suggested that Administration negotiate an MOU for the future.

**UNANIMOUS CONSENT** was requested.

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

Clarification was provided that a supplemental funding request would be forthcoming for the bike path project. It was noted that funds had been identified administratively for iPads for the Planning and Zoning Commission, and administration was thanked for the effort to create the improved budget document.

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

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

NAY:

\*\*Student Representative Summers: YEA

**MOTION PASSED UNANIMOUSLY.**

- 2. Ordinance No. 3064-2019** – Increasing Estimated Revenues and Appropriations by \$339.90 in the General Fund – Police Department for State Traffic Grant Overtime Expenditures. (Administration)

**MOTION:**

Council Member Molloy **MOVED** to enact Ordinance No. 3064-2019 and Council Member Knackstedt **SECONDED** the motion.

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

**VOTE:**

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

NAY:

\*\*Student Representative Summers: YEA

**MOTION PASSED UNANIMOUSLY.**

- 3. Ordinance No. 3065-2019** – Accepting and Appropriating a Volunteer Fire Assistance (VFA) Grant From the United States Department of Agriculture Forest Service Passed Through the State of Alaska Division of Forestry for the Purchase of Forestry Firefighting Equipment. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to enact Ordinance No. 3065-2019 and Vice Mayor Navarre **SECONDED** the motion.

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

**VOTE:**

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

NAY:

\*\*Student Representative Summers: YEA

**MOTION PASSED UNANIMOUSLY.**

- 4. Resolution No. 2019-28** – Authorizing a Budget Transfer within the Water and Sewer Fund for Appraisal Costs Related to the Purchase of Well Radius Property for the City's Public Water System. (Administration)

**MOTION:**

Vice Mayor Navarre **MOVED** to adopt Resolution No. 2019-28 and requested **UNANIMOUS CONSENT**. Council Member Pettey **SECONDED** the motion.

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

Clarification was provided that the state required an appraisal on the property to determine fair market value. It was noted the reversionary clause stating the property had to be used for public purpose was included in the document.

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

- 5. Resolution No. 2019-29** – Fixing the Rate of Levy of Property Tax for the Fiscal Year Commencing July 1, 2019 and Ending June 30, 2020. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-29 and requested **UNANIMOUS CONSENT**. Council Member Peterkin **SECONDED** the motion.

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

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

6. **Resolution No. 2019-30** – Supporting Kenai Peninsula Borough Ordinance 2019-09 Amending the Borough’s Sales Tax Code to Levy a 12 Percent Tax on Temporary Lodging, Exempt Temporary Lodging Rentals from the General Sales Tax, and Allow Cities that Levy a Similar Sales Tax on Temporary Lodging to Exempt Up to One-Half of the Borough’s Temporary Lodging Tax, Subject to Borough Voter Approval. (Administration)

**MOTION:**

Vice Mayor Navarre **MOVED** to adopt Resolution No. 2019-30 and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

Mayor Gabriel opened for public hearing.

Duane Bannock, on behalf of Uptown Motel, spoke against the resolution noting the taxing structure per seat, per bed, per night, essentially made the sales tax, a “bed tax.” He added that he was opposed even if the revenue were to be put toward tourism as it doubled current tax rate and because tourism customers also eat at local restaurants and rent cars providing additional tax revenue.

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

Clarification was provided that the City would gain approximately \$150,000 and where that money was to be allocated would be a Council decision.

It was suggested that the cities and the borough should meet jointly and discuss ideas, that a combination of taxes needed to be considered as there were infrastructure needs that couldn’t be ignored long term.

**MOTION TO POSTPONE:**

Vice Mayor Navarre **MOVED** to postpone with a request to the borough and cities to sit down and discuss parameters.

The motion died for lack of a second.

It was noted that several taxes were targeted to an industry including fish, gas, and oil and, when travelling, a bed tax, as resources were utilized by visitors to area.

It was suggested that RV Parks and campsites be included as well.

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to amend the title to read, a Resolution of the Council of the City of Kenai, supporting section 5 of Kenai Peninsula Borough Ordinance 2019-09, providing that a ballot proposition on amending the Borough’s sales tax code shall be placed before Borough voters at the regular election on October 1, 2019 and Council Member Knackstedt **SECONDED** the motion.

It was noted the intent was to support the issue of sales tax issue going to the voters and staying out of the minutia of the laws.

**VOTE ON THE AMENDMENT:**

YEA: Gabriel, Navarre, Pettey, Molloy

NAY: Knackstedt, Peterkin

\*\*Student Representative Summers: NAY

**MOTION PASSED.**

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to amend Section 1 to read, "That the Kenai City Council supports Section 5 of Kenai Peninsula Borough Ordinance 2019-09, providing that a ballot proposition on amending the Borough's Sales Tax Code shall be placed before borough voters at the regular election on October 1, 2019," and Council Member Knackstedt **SECONDED** the motion.

**VOTE ON THE AMENDMENT:**

YEA: Gabriel, Navarre, Pettey, Molloy, Knackstedt

NAY: Peterkin

\*\*Student Representative Summers: YEA

**MOTION PASSED.**

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to amend the fourth whereas clause to read, "WHEREAS, under the Borough Ordinance, a temporary lodging tax would be established and apply to "temporary lodging," to be defined in the ordinance; and," and add a fifth whereas clause to read, "WHEREAS, a temporary lodging tax should be inclusive of recreational vehicles sites and campsites that compete with hotels, lodges, motels, and bed and breakfasts, to level the playing field in the hospitality industry; and," and Council Member Knackstedt **SECONDED** the motion.

**VOTE ON THE AMENDMENT:**

YEA: Gabriel, Navarre, Pettey, Molloy, Knackstedt

NAY: Peterkin

\*\*Student Representative Summers: NAY

**MOTION PASSED.**

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to add a new section 2 to read, "that the Kenai City Council requests the Kenai Peninsula Borough Assembly include in the definition that the temporary lodging tax apply to recreational vehicles and camp sites in the same way as other forms of lodging," and Council Member Knackstedt **SECONDED** the motion.

**VOTE ON THE AMENDMENT:**

YEA: Gabriel, Navarre, Molloy, Knackstedt

NAY: Peterkin, Pettey

\*\*Student Representative Summers: YEA

**MOTION PASSED.**

**MOTION TO AMEND:**

Council Member Molloy **MOVED** to add a new section 3 to read, “that the Kenai City Council recommends that the Kenai Peninsula Borough convene a joint work session of municipalities to discuss the ordinance on amending the Borough Sales Tax Code to levy a tax on temporary lodging before adoption of the ordinance on temporary lodging,” and Vice Mayor Navarre **SECONDED** the motion.

**VOTE ON THE AMENDMENT:**

YEA: Gabriel, Navarre, Molloy, Knackstedt, Pettey

NAY: Peterkin

\*\*Student Representative Summers: YEA

**MOTION PASSED.**

**MOTION TO AMEND:**

Vice Mayor Navarre **MOVED** to amend what is now section 4 to read, “that a copy of this resolution be transmitted to Mayor Charlie Pierce, Kenai Peninsula Borough Assembly Members, and City Managers, Mayors, and City Councils of the other cities in the Borough,” and Council Member Molloy **SECONDED** the motion.

**VOTE ON THE AMENDMENT:**

YEA: Gabriel, Navarre, Molloy, Knackstedt, Pettey

NAY: Peterkin

\*\*Student Representative Summers: YEA

**MOTION PASSED.**

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

YEA: Knackstedt, Gabriel, Molloy, Navarre

NAY: Pettey, Peterkin

\*\*Student Representative Summers: NAY

**MOTION PASSED.**

- 7. Resolution No. 2019-31** – Awarding a Concession Agreement for Management and Administrative Services to Provide Summer Ice Activities at the City of Kenai Multi-Purpose Facility. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-31. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

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

- 8. Resolution No. 2019-32** – Authorizing an Amendment to the Airport Advertising Concession Agreement for the Kenai Municipal Airport. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-32 and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

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

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

- 9. Resolution No. 2019-33** – Authorizing Contracts for Employee Health Care and Other Benefits Effective July 1, 2019. (Administration)

**MOTION:**

Council Member Molloy **MOVED** to adopt Resolution No. 2019-33. Vice Mayor Navarre **SECONDED** the motion.

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

**MOTION TO AMEND:**

Vice Mayor Navarre **MOVED** to amend the third whereas clause to replace X.XX% with 3.13%, amend the fifth whereas clause to fill in the first blank with "UNUM" and fill in the second blank with "no change," amend the sixth whereas clause to replace \$X,XXX with \$20,784, amend section 1 to replace \$X,XXX,XXX with \$2,368,161, and amend section 3 by filling in the blank with "UNUM," and replacing \$XX,XXX with \$20,784 and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

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

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

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

**E. MINUTES**

1. \*Regular Meeting of May 1, 2019

Approved by the consent agenda.

**F. UNFINISHED BUSINESS – None.**

**G. NEW BUSINESS**

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

Approved by the consent agenda.

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

Approved by the consent agenda.

3. \***Action/Approval** – Non-Objection to the Issuance of a New Liquor License for Griffin Golf, LLC. (City Clerk)

Approved by the consent agenda.

4. \***Ordinance No. 3066-2019** – Accepting and Appropriating a Grant from the Federal Aviation Administration for the 2019 Airfield Marking, Crack Sealing, and Minor Pavement Repair Project and Awarding a Construction Contract to Complete the Work. (Administration)

Introduced by the consent agenda and public hearing set for June 5.

5. \***Ordinance No. 3067-2019** – Accepting and Appropriating \$26,605.40 in Asset Forfeiture Sharing Funds and Appropriating Those Funds Into the Police Small Tools Account for the Purpose of Purchasing Law Enforcement Equipment. (Administration)

Introduced by the consent agenda and public hearing set for June 5.

6. \***Ordinance No. 3068-2019** – Amending Kenai Municipal Code 14.20.320- Definitions and 14.20.330- Standards for Commercial Marijuana Establishments to Prohibit Onsite Consumption of Marijuana at Retail Marijuana Stores Requiring an Onsite Consumption Endorsement. (Council Members Pettey and Glendening)

**MOTION:**

Council Member Pettey **MOVED** to introduce Ordinance No. 3068-2019 and refer it to the Planning and Zoning Commission for a recommendation and set a public hearing for June 5, 2019 and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

There was objection to unanimous consent.

**VOTE:**



YEA: Knackstedt, Gabriel, Pettey, Molloy, Navarre  
NAY: Peterkin  
\*\*Student Representative Summers: YEA

**MOTION PASSED UNANIMOUSLY.**

7. \***Ordinance No. 3062-2019** – Increasing FY2019 General Fund Estimated Revenues and Appropriations by \$20,859 and FY2020 General Fund Estimated Revenues and Appropriations by \$35,418 in the General Fund Parks, Recreation and Beautification Department for the Receipt of a Grant from the United States Environmental Protection Agency Passed Through the State of Alaska Department of Environmental Conservation for Bacteria Level Monitoring on the City’s Beaches from May to September During 2019 and 2020. (Administration)  
*[Clerk’s Note: This ordinance was enacted at the 5/1/19 meeting. Notice has been received by the granting agency that the amounts of the grant have changed. A motion to amend something previously adopted is in order and as such, appearance on this agenda serves as notice.]*

**MOTION TO AMEND SOMETHING PREVIOUSLY ADOPTED:**

Council Member Molloy **MOVED** in accordance with the notice given in the call of the meeting, to amend Ordinance No. 3062-2019 by replacing \$20,859 with \$25,359 in the title and replacing \$20,859 with \$25,359 in Estimated Revenues, Federal Grants – Other, and Appropriations, Parks, Recreation, and Beautification – Professional Services in Section 1 and Council Member Knackstedt **SECONDED** the motion.

**VOTE:**

YEA: Knackstedt, Gabriel, Pettey, Molloy, Peterkin, Navarre  
NAY:  
\*\*Student Representative Summers: YEA

**MOTION PASSED UNANIMOUSLY.**

8. **Action/Approval** – Application for Extension of Lease Application Expiration Date for the Undeveloped Portion of Tract A, General Aviation Apron No. 2. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to approve SOAR’s application for extension of lease application expiration date for the undeveloped portion of Tract A, General Aviation Apron No. 2 and Vice Mayor Navarre **SECONDED** the motion.

It was noted that subdividing the property was a low bar to have accomplished within the timeframe and was the only requirement.

**VOTE:**

YEA:  
NAY: Knackstedt, Gabriel, Pettey, Molloy, Peterkin, Navarre  
\*\*Student Representative Summers: NAY

**MOTION FAILED.**

9. **Action/Approval** – Consenting to the Assignment of Lease to Don Moffis for Lot 5, Block 1, Gusty Subdivision, Addition No. 1, Amended. (Administration)

**MOTION:**

Vice Mayor Navarre **MOVED** to approve consenting to the assignment of lease to Don Moffis for Lot 5, Block 1, Gusty Subdivision, Addition No. 1, Amended. Council Member Knackstedt **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

10. **Action/Approval** – Awarding an Employment Agreement between the City of Kenai and City Attorney, Scott Bloom. (Mayor Gabriel) *[Clerk’s Note: Council May Convene into Executive Session to Discuss this Agenda Item which Pursuant to AS 44.62.310(C)(2) May be a Subject that Tends to Prejudice the Reputation and Character of the Applicant and per AS 44.62.310(c)(1) is a Matter of which the Immediate Knowledge may have an Adverse Effect Upon the Finances of the City.]*

**MOTION:**

Council Member Molloy **MOVED** to approve the award of an employment agreement between the City of Kenai and City Attorney, Scott Bloom and Council Member Peterkin **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

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

11. **Action/Approval** – Amending an Employment Agreement between the City of Kenai and City Attorney, Scott Bloom. (Mayor Gabriel)

**MOTION:**

Vice Mayor Navarre **MOVED** to amend the City Attorney’s employment agreement for FY2020 by increasing the compensation for FY20 by \$4,000 over his FY19 salary and requested **UNANIMOUS CONSENT**. Council Member Peterkin **SECONDED** the motion.

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

12. **Action/Approval** – Amending an Employment Agreement between the City of Kenai and City Manager, Paul Ostrander. (Mayor Gabriel)

**MOTION:**

Vice Mayor Navarre **MOVED** to amend the City Manager’s employment agreement for FY2020 by increasing the compensation for FY20 by \$4,000 over his FY19 salary and requested **UNANIMOUS CONSENT**. Council Member Peterkin **SECONDED** the motion.

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

13. **Action/Approval** – Amending an Employment Agreement between the City of Kenai and City Clerk, Jamie Heinz. (Mayor Gabriel)

**MOTION:**

Vice Mayor Navarre **MOVED** to amend the City Clerk’s employment agreement for FY2020 by increasing the compensation for FY20 by \$8,000 over her FY19 salary and requested **UNANIMOUS CONSENT**. Council Member Peterkin **SECONDED** the motion.

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

14. **Discussion** – Schedule a Work Session to Review and Discuss City Land Sale and Leasing Policies and Practices. (Administration)

It was decided a work session would be held on June 11, 2019 at 6:00 p.m.

**H. COMMISSION/COMMITTEE REPORTS**

1. Council on Aging – No report; next meeting June 13.
2. Airport Commission – No report; next meeting June 13.
3. Harbor Commission – It was reported the Commission discussed results of the Harbor Facilities Survey, Dock Cranes, and future Capital Improvement Projects; next meeting June 10.
4. Parks and Recreation Commission – No report; next meeting June 6.
5. Planning and Zoning Commission – It was reported that at their May 8 meeting the Commission approved the transfer of a Conditional Use Permit for a gravel pit; next meeting May 22.
6. Beautification Committee – It was reported the Committee picked their volunteer plant date; next meeting September 10.
7. Mini-Grant Steering Committee – an overview of the coloring book project recently approved was provided.

**I. REPORT OF THE MAYOR**

Mayor Gabriel reported on the following:

- Noted upcoming Memorial Day events;
- Thanked Vice Mayor Navarre for delivering the Poppy Day Proclamation to the American Legion;
- Asked citizens to reflect for part of Memorial Day on what sacrifices were made for our freedom.

**J. ADMINISTRATION REPORTS**

1. City Manager – P. Ostrander reported on the following:
  - Met with Senator Sullivan’s staff regarding underlying issues with Wildwood Drive;

- Met with the representatives from the Kenai Peninsula Borough and cities within the borough to align local needs in advance of Alaska Municipal League sales tax meeting;
  - Provided an update on requests for proposals;
  - Noted the Bluff Erosion Project was making small progress;
  - Noted the Alaska Department of Transportation had announced that the proposed projects along Bridge Access Road had been approved and construction was anticipated for the next two years;
  - Airport Terminal Rehabilitation Project was on schedule; some lessees were moving into their new spaces.
2. City Attorney – No Report.
  3. City Clerk – J. Heinz reported on upcoming training.

**K. ADDITIONAL PUBLIC COMMENT**

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

Duane Bannock thanked the Mayor for the reminder of Memorial Day event. Also expressed gratitude for the debate on the bed tax subject, for listening to concerns, debating, and amending the resolution.

Sherry Innes thanked the Council for their dialogue, appreciated Mr. Bannock’s testimony and suggested that it made sense that RVs should be subject to the tax as well.

2. Council Comments

Vice Mayor Navarre noted he presented the Poppy Day proclamation on behalf of the Mayor and provided a reminder of the Memorial Day celebration at the cemetery and Leif Hanson Memorial Park. He also noted he sent information out so elected officials could prepare opinion editorials for the local news; reported on an opinion editorial regarding non-profit and private enterprises assisting in the State’s budget deficit; suggested Alaskans can solve the problem by working together.

Council Member Pettey thanked all the departments and administration for efficiencies in examining and preparing their budgets; thanked the public for input and their part in the decision making process for the City. She noted she attended the Chamber of Commerce dinner and auction which was well attended and also attended an air show in Anchorage. Finally, she offered kudos to the Airport Manager for the display and presentation at the event that was shared with the whole state showcasing Kenai and the Kenai Municipal Airport.

Council Member Peterkin echoed gratitude to staff for their work on the budget, thanked the City Clerk for attending the Harbor Commission meeting, and keep Kenai open for business.

Student Representative Summers noted recent musical events and graduation. He also noted the principal position opening at Kenai Central High School and added that Ms. Randle was supported by the population of the students to fill the principal position.

Council Member Molloy thanked those that spoke to Council, thanked Vice Mayor Navarre for the letters he provided and the work by Alaska Municipal League on budget issues, thanked Mayor Gabriel for signing a letter as well. He also noted the FY2020 budget was a great document.

Council Member Knackstedt expressed gratitude regarding the budget process noting fewer modifications in the end; he also noted appreciation for the expanded document this year. Finally, he provided a reminder of the upcoming Kenai Peninsula Air Fair.

L. **EXECUTIVE SESSION** – None.

M. **PENDING ITEMS** – None.

N. **ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 9:43 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of May 15, 2019.

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Jamie Heinz, CMC  
City Clerk

*\*\*The student representative may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast in the rotation of the official council vote and shall not affect the outcome of the official council vote. Advisory votes shall be recorded in the minutes. A student representative may not move or second items during a council meeting.*



**MOTION:**

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

Mayor Gabriel opened the floor for public comment; there being no one wishing to be heard, the public comment period was closed.

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

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

**B. SCHEDULED PUBLIC COMMENTS**

1. **LTJG Scott Peters** – U.S. Coast Guard Involvement in the Kenai River Dip Net Fishery.

Lieutenant Peters spoke about the U.S. Coast Guard being present in July for Dockside Vessel Safety Examinations by the auxiliary members July 12 & 13 and July 26 & 27 and recreational boating safety enforcement on the water July 20 & 21 and 26-28, working with Alaska State Parks. He noted the agencies would be enforcing state laws and federal laws for boating safety as they have for the past few years. He also noted the conflict between federal and state laws regarding marijuana and advised marijuana be left at home and not taken on the water.

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

**D. PUBLIC HEARINGS**

*[Clerk's Note: This item was moved to be considered first under public hearings at approval of the agenda.]*

6. **Resolution No. 2019-36** – Accepting a Donation from Kenai Senior Connections, Inc. for \$50,000 to the FY2019 Budget. (Administration)

**MOTION:**

Council Member Molloy **MOVED** to adopt Resolution No. 2019-36 and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion.

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

Gratitude was expressed to Kenai Senior Connections for their fundraising work to help deliver the needed funds to the seniors of the City.

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

1. **Ordinance No. 3066-2019** – Accepting and Appropriating a Grant from the Federal Aviation Administration for the 2019 Airfield Marking, Crack Sealing, and Minor Pavement Repair Project and Awarding a Construction Contract to Complete the Work. (Administration)
  - **Substitute Ordinance No. 3066-2019** – Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds, Accepting and Appropriating a Grant from the Federal Aviation Administration, and Awarding a Construction Contract for Completion of the 2019 Airfield Marking, Crack Sealing, and Minor Pavement Repair Project. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to enact Ordinance No. 3066-2019 and Vice Mayor Navarre **SECONDED** the motion.

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

**MOTION TO AMEND:**

Council Member Knackstedt **MOVED** to amend by substitute Ordinance No. 3066-2019. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

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

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

**MOTION PASSED UNANIMOUSLY.**

2. **Ordinance No. 3067-2019** – Accepting and Appropriating \$26,605.40 in Asset Forfeiture Sharing Funds and Appropriating Those Funds Into the Police Small Tools Account for the Purpose of Purchasing Law Enforcement Equipment. (Administration)

**MOTION:**

Council Member Molloy **MOVED** to enact Ordinance No. 3067-2019 and Council Member Knackstedt **SECONDED** the motion.

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

**VOTE:**

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

**MOTION PASSED UNANIMOUSLY.**



3. **Ordinance No. 3068-2019** – Amending Kenai Municipal Code 14.20.320- Definitions and 14.20.330- Standards for Commercial Marijuana Establishments to Prohibit Onsite Consumption of Marijuana at Retail Marijuana Stores Requiring an Onsite Consumption Endorsement. (Council Members Pettey and Glendening)

**MOTION:**

Council Member Glendening **MOVED** to enact Ordinance No. 3068-2019 and Council Member Pettey **SECONDED** the motion.

Mayor Gabriel opened for public hearing.

Sherry Innes spoke in favor of the ordinance citing the number of highway deaths of people who had marijuana in their systems, which continued to grow, and pointed out that the Colorado Department of Transportation considered the studies to be the most reliable indicator of impaired drivers. She added that the ability to test for marijuana impairment is lacking and suggested that prohibiting it was not about freedom, it was about safety.

Patricia Patterson spoke against the ordinance noting she understood the concern due to the bad situation with Green Rush Events in the beginning. She noted visitors don't have a place to do it, suggested it's a tasting bar given the amount that someone could legally consume on site, and that a retail store welcoming tourism in this way could be done quite nicely. She also noted that people living in a place where they can't smoke or live somewhere they want to keep their consumption separate was another need. Patricia added that her average retail store customer was over 45.

Lisa Coates, owner of a manufacturing facility, spoke against the ordinance by reason of elimination of the stigma of cannabis, noting cigarettes and alcohol were allowed in certain areas and by excluding public consumption of cannabis, a double standard was created. She added that public education regarding THC, terpenes, etc., and how the chemicals can help people with certain ailments should be provided along with public consumption to also help remove the stigma.

Al Weeks spoke in favor of the ordinance noting that he works with Love, Inc. and actively walks in the woods to find homeless. He added that when matters such as this come up, it was easy to think we were doing a good thing but noted that unintended consequences arise. Finally, he suggested the City didn't need another intoxicant around during an already busy month of July.

Buddy Crowder spoke against the ordinance noting everyone has rights to make good or bad choices and pointing out we all make both. He suggested there was so much involved in opening one up, they should be given a chance to do it in a way that worked for the community.

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

It was suggested that the ordinance was not against marijuana but against the state's imposition of onsite consumption. It was noted that previous action declined to accept regulations allowing it, none of the operators in the community indicated they wanted to do it, and it had been concluded the current needs of the community were being met.

Clarification was provided that if this ordinance failed, the Council needed to bring back something providing regulations.

Vice Mayor Navarre declared a potential conflict of interest noting his limited liability corporation leased space to a marijuana retail store in the city, and a cultivation facility outside the city. Municipal Code was reviewed and Vice Mayor Navarre clarified there was no direct financial tie in. It was noted there were still regulations, through another agency, to be complied with in obtaining an onsite consumption endorsement and the facility in question in the city was not freestanding so didn't comply with the state's licensing requirements. It was noted that there were ten shareholders, profits were diluted, the rent for that specific space was not substantial and, if vacant, the space could be leased out quickly. The Mayor ruled that Vice Mayor Navarre was allowed to vote and there was no objection from the body.

It was suggested a moratorium was a better vehicle; that prohibition sends the wrong message as a moratorium would clarify that Council was not opposed and willing to listen if someone came forward with a need and opportunity to do it safely and adequately. It was noted a moratorium protected the City and, if an operator chose to come forward, rules and regulations could then be set.

A brief history of the actions taken regarding onsite consumption was provided.

Clarification was provided regarding testing for impairment noting officers had drug recognition training and, if it was suspected someone was illegally impaired, certain impairment tests could be conducted and an arrest made. It was also noted that state regulations required video surveillance which could be obtained from the retailer.

It was pointed out that the ordinance could be repealed in the future and regulations put into place at that time if it was determined there was a need.

It was suggested that, despite knowing it wasn't difficult to change the law, the public often didn't know how to and the sponsors were asked to be open to postponement and consideration of a moratorium ordinance.

**MOTION TO AMEND:**

Vice Mayor Navarre **MOVED** to amend by entering the word, "enact" in the blank in the seventh whereas clause and requested **UNANIMOUS CONSENT**. Council Member Knackstedt **SECONDED** the motion and

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

**MOTION TO POSTPONE:**

Vice Mayor Navarre **MOVED** to postpone Ordinance No. 3068-2019 to the June 19 meeting and Council Member Molloy **SECONDED** the motion.

It was noted the postponement would allow the comparison between a prohibition versus a moratorium.

**VOTE ON POSTPONEMENT:**

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



Vice Mayor Navarre **MOVED** to suspend the rules and take up the Executive Session item at this point in the meeting and requested **UNANIMOUS CONSENT**. Council Member Molloy **SECONDED** the motion.

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

1. Discussion of Kenai Visitor Center Management and Potential Staffing Changes, a Matter of Which the Immediate Knowledge may have an Adverse Effect upon the Finances of the City [AS44.62.310(c)(1)] and a Subject that Tends to Prejudice the Reputation and Character of a Person or Persons Currently Employed by the City [AS44.62.310 (c)(2)]

**MOTION:**

Council Member Molloy **MOVED** to enter into executive session to discuss the Visitor Center Management and Potential Staffing Changes, a matter of which the immediate knowledge may have an adverse effect upon the Finances of the City [AS44.62.310(c)(1) and which may be a subject that tends to prejudice the reputation and character of a Person or Persons Currently Employed by the City [AS44.62.310(C)(2)]; requested the attendance of City Manager, City Attorney, Finance Director, and Human Resource Director, as needed. Council Member Peterkin **SECONDED** the motion.

**VOTE:**

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

NAY:

**MOTION PASSED UNANIMOUSLY.**

Council reconvened in open session, noted for the record that they had discussed the Kenai Visitor Center management and potential staff changes, and gave direction to City Administration for the negotiation with the Kenai Visitor Bureau organization.

5. **Resolution No. 2019-35** – Authorizing Budget Adjustments in the Airport Fund for Costs in Excess of Budgeted Amounts. (Administration)

**MOTION:**

Council Member Knackstedt **MOVED** to adopt Resolution No. 2019-35. Vice Mayor Navarre **SECONDED** the motion and requested **UNANIMOUS CONSENT**.

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

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

*[Clerk's Note: This item was moved to be considered first under public hearings at approval of the agenda.]*

6. **Resolution No. 2019-36** – Accepting a Donation from Kenai Senior Connections, Inc. for \$50,000 to the FY2019 Budget. (Administration)

E. **MINUTES** – None.

F. **UNFINISHED BUSINESS** – None.

G. **NEW BUSINESS**

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

Approved by the consent agenda.

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

Approved by the consent agenda.

3. \***Ordinance No. 3069-2019** – Appropriating FY2019 Budgeted Funds for Municipal Roadway Improvements in the Municipal Roadway Improvements Capital Project Fund for Future Roadway Projects. (Administration)

Introduced by the consent agenda and public hearing set for June 19.

4. \***Ordinance No. 3070-2019** – Authorizing a Budget Transfer in the General Fund, Decreasing Estimated Revenues and Appropriations in the Senior Citizen Special Revenue Fund and Appropriating FY2019 Budgeted Amounts in the Senior Center Improvement Capital Project Fund for Carpet Replacement. (Administration)

Introduced by the consent agenda and public hearing set for June 19.

5. **Action/Approval** – Second Amendment to Agreement for Janitorial Services for the City of Kenai City Hall, Airport, Community Library, and Police Department. (Administration)

**MOTION:**

Council Member Molloy **MOVED** to approve the second amendment to agreement for janitorial services for the City of Kenai City Hall, Airport, Community Library, and Police Department, and requested **UNANIMOUS CONSENT**. Vice Mayor Navarre **SECONDED** the motion.

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

6. **Action/Approval** – City Sponsorship of \$1,000 to Alaska Municipal League for the 2019 Summer Legislative Conference Being Held in Soldotna. (Vice Mayor Tim Navarre)

**MOTION:**

Vice Mayor Navarre **MOVED** to authorize a sponsorship in the amount of \$1,000 to Alaska Municipal League for the 2019 Summer Legislative Conference being held in Soldotna. Council Member Molloy **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

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

7. **Action/Approval** – City Donation of a Memorial Plaque Honoring Ron Malston to be Placed at Leif Hanson Memorial Park. (Vice Mayor Tim Navarre)

**MOTION:**

Vice Mayor Navarre **MOVED** to approve the donation of a memorial plaque and tree honoring Ron Malston to be placed at Leif Hanson Memorial Park, and requested **UNANIMOUS CONSENT**. Council Member Pettey **SECONDED** the motion.

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

**H. COMMISSION/COMMITTEE REPORTS**

1. Council on Aging – No report; next meeting June 13.
2. Airport Commission – No report; next meeting June 13.
3. Harbor Commission – No report; next meeting June 10.
4. Parks and Recreation Commission – No report; next meeting August 1.
5. Planning and Zoning Commission – It was reported that at their May 22 meeting the Commission recommended onsite consumption ordinance; next meeting June 12.
6. Beautification Committee – No report; next meeting September 10.
7. Mini-Grant Steering Committee – No report.

**I. REPORT OF THE MAYOR**

Mayor Gabriel reported on the following:

- Attended James Dye’s retirement party at the Kenai Fire Department;
- Attended Kenai Central High School graduation and the alternative high school graduation;
- Attended the Memorial Day Service;
- Asked that D-Day, and the sacrifices made that day were remembered as a significant event in our past;
- Attended Ron Malston’s Celebration of Life Service;
- Provided a reminder of the upcoming Kenai Peninsula Air Fair.

**J. ADMINISTRATION REPORTS**

1. Acting City Manager – T. Eubank reported on the following:
  - Noted he and the City Attorney were travelling to Anchorage to discuss and negotiate definitions for online sales tax hosted by Alaska Municipal League.
2. City Attorney – No Report.
3. City Clerk – J. Heinz reported upcoming training she would be attending and asked that those wishing to attend the Alaska Municipal League Summer Conference to contact her.

**K. ADDITIONAL PUBLIC COMMENT**

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

David Chessick spoke about the first day of fishing in the Cook Inlet noting he brought the fish up by hand; cranes nearby but not available for use. He added that Kenai was a fishing town and that fishing was part of its heritage and the City needed to work with those needing the dock and cranes. He also suggested a festival for the first fish of the season, similar to the festival in Cordova.

2. Council Comments

Vice Mayor Navarre spoke about a the need for a Capital Improvement Project fund to replace the capital funding that the state used to assist with, noted he attended the joint work session regarding taxing options the Kenai Peninsula Borough was considering, noted he attended Ron Malston's service, and noted that Pat Bird had passed away.

Council Member Pettey thanked the U.S. Coast Guard and the Harbor Commission for working on safety during the Dipnet Fishery; thanked the Senior Center for hosting the Anchorage Bowl Concert Group; provided reminders for upcoming events; thanked the Senior Connection for their generous donation; attended Ron Malston's service.

Council Member Glendening also noted he had attended Ron Malston's service and was heartened by all that Ron Malston had given to the City; also noted his grandson graduated high school, he had recently attended a family reunion and celebrated an aunt's 100th birthday.

Council Member Peterkin noted Skipper from the Friendship Mission passed away leaving the Friendship Mission in limbo as a special person was needed to take care of it; suggested a committee to change streetlights, to provide unique options for different neighborhoods; noted his daughter had recently graduated high school at Kenai Central High School.

Council Member Molloy noted the Celebration of Birds project that took place instead of the birding festival noting a series of events that brought people to the central peninsula and City of Kenai.

*[Clerk's Note: This item was considered after G.4. after a motion to suspend the rules passed.]*

**L. EXECUTIVE SESSION**

1. Discussion of Kenai Visitor Center Management and Potential Staffing Changes, a Matter of Which the Immediate Knowledge may have an Adverse Effect upon the Finances of the City [AS44.62.310(c)(1)] and a Subject that Tends to Prejudice the Reputation and Character of a Person or Persons Currently Employed by the City [AS44.62.310 (c)(2)]

**M. PENDING ITEMS – None.**

**N. ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 10:14 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of June 5, 2019.

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Jamie Heinz, CMC  
City Clerk





Sponsored by: Council Members Pettey and Glendening

## CITY OF KENAI

### ORDINANCE NO. 3068-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.320- DEFINITIONS AND 14.20.330- STANDARD FOR COMMERCIAL MARIJUANA ESTABLISHMENTS TO PROHIBIT ONSITE CONSUMPTION OF MARIJUANA AT RETAIL MARIJUANA STORES REQUIRING AN ONSITE CONSUMPTION ENDORSEMENT.

WHEREAS, on November 4, 2014, the Alaskan voters passed Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana; and,

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

WHEREAS, on March 12, 2019 Lieutenant Governor Kevin Meyer signed into law new regulations from the Marijuana Control Board allowing retail marijuana stores to allow onsite consumption of marijuana under certain conditions through a state issued onsite consumption endorsement to a retail marijuana store; and,

WHEREAS, 3 AAC 306.200 provides that a City Council by ordinance may prohibit onsite consumption endorsements to a retail marijuana store within its jurisdiction; and,

WHEREAS, after consideration by the Planning and Zoning Commission, the City Council failed to enact Ordinance 3061-2019, which would have allowed onsite consumption through the City's conditional use permit process; and,

WHEREAS, it is in the best interest for public safety and welfare for the City to prohibit onsite consumption of marijuana requiring an onsite consumption endorsement at retail marijuana stores; and,

WHEREAS, at its regular meeting of May 22, 2019 the Planning and Zoning Commission recommended the City Council enact this Ordinance.

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

**Section 1.** Amendment of Section 14.20.320 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.320 - Definitions, is hereby amended as follows:

#### **14.20.320 Definitions.**

(a) *General Interpretation.*

- (1) Words used in the present tense include the future tense.
- (2) The singular number includes the plural.
- (3) The word “person” includes a corporation as well as an individual.
- (4) The word “lot” includes the word “plot” or “parcel.”
- (5) The term “shall” is always mandatory.
- (6) The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended,” “arranged” or “designed to be used or occupied.”

(b) Specific Definitions.

**“Accessory Building”** means a detached building or structure, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot as the main building or use, except as allowed by a conditional use permit. An accessory building shall be considered to be a part of the main building when joined to the main building by a common wall or when any accessory building and the main building are connected by a breezeway.

**“Accessory Use”** means a use customarily incidental and subordinate to the principal use of the land, building, or structure and located on the same lot or parcel of land.

**“Administrative Official”** means the person charged with the administration and enforcement of this chapter.

**“Agricultural Building”** means a building or structure used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation and which is not used by the public.

**“Agriculture”** means the science, art, and business of cultivating soil, producing crops, and raising livestock; farming.

**“Airport”** means a location where aircraft such as fixed-wing aircraft, helicopters, and blimps take off and land. Aircraft may be stored or maintained at an airport. An airport consists of at least one (1) surface such as a paved or gravel runway, a helicopter touchdown and lift off (TLOF) area, helipad, or water runway for aircraft takeoffs and landings, and often includes buildings such as control towers, hangars and terminal buildings.

**“Airport Compatible Uses”** means uses which include, but are not limited to: Hangars, Fixed Base Operators, Aircraft Repair and Manufacturing, Aircraft Sales, and other uses

approved by the Ordinance of the City of Kenai, and the Federal Aviation Administration's regulations, and compatible with the current Airport Master Plan, the Airport Layout Plan and the Comprehensive Plan.

**"Alley"** means a public way designed and intended to provide only a secondary means of access to any property abutting thereon.

**"Alteration"** means any change, addition, or modification in construction, location, or use classification.

**"Animal Boarding"** means any building or structure and associated premises in which animals are fed, housed, and/or exercised for commercial gain.

**"Apartment House,"** see "Dwelling, multiple-family."

**"Area, Building"** means the total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of steps.

**"Assemblage"** means a large gathering of people for an event such as a concert, fair, or circus.

**"Assisted Living"** means a living arrangement in which people with special needs, especially seniors with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication.

**"Automobile Sales"** means the use of any building or structure and associated premises for the display and sale of new or used automobiles, panel trucks or vans, trailers, or recreation vehicles and including any warranty repair work and other repair service conducted as an accessory use.

**"Automobile Service Station"** means the use of any building or structure and associated premises or other space used primarily for the retail sale and dispensing of motor fuels, tires, batteries, and other small accessories; the installation and servicing of such lubricants, tires, batteries, and other small accessories; and such other services which do not customarily or usually require the services of a qualified automotive mechanic.

**"Automobile Wrecking"** means the dismantling of used motor vehicles or trailers or the storage or sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles.

**“Automotive Repair”** means the use of any building or structure and associated premises on which a business, service, or industry involving the maintenance, servicing, repair, or painting of vehicles is conducted or rendered.

**“Bank”** means any establishment or building or structure used for a financial institution that provides financial services for its clients or members. The term “bank” includes savings and loan.

**“Bed and Breakfast”** means a residential, owner-occupied dwelling in which rooms are rented to paying guests on an overnight basis with no more than one (1) meal served daily.

**“Boarding House”** means a dwelling where the principal use is a dwelling by the owner or keeper and where the owner or keeper provides lodging for three (3) or more persons who are not members of the owner’s or keeper’s family and the lodgers pay compensation to use one (1) or more rooms. The common parts of the building or structure are maintained by the owner or keeper who may also provide lodgers with some services, such as meals, laundry, and cleaning. Boarding houses are not motels or hotels and are not open to transient guests.

**“Building”** means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

**“Building Code”** means the building code and/or other building regulations applicable in the City.

**“Building, Existing”** means a building erected prior to the adoption of the ordinance codified in this chapter or one for which a legal building permit has been issued.

**“Building Height”** means the vertical distance from the “grade,” as defined herein, to the highest point of the roof.

**“Building, Principal or Main”** means a building or structure in which is conducted the principal or main use on the lot which said building is situated.

**“Business/Consumer Services”** means the provision of services to others on a fee or contract basis, such as advertising and mailing; building maintenance; employment service; management and consulting services; protective services; equipment rental and leasing; commercial research; development and testing; photo finishing; and personal supply services.

**“Cabin Rentals”** means the renting out of one (1) or more individual, detached dwelling units or buildings to provide overnight sleeping accommodations for a period of less than thirty (30) consecutive days.

“**Cemetery**” means any property used to inter the dead in buried graves or in columbarium, stacked vaults, or similar structures.

“**Centerline**” means the line which is in the center of a public right-of-way.

“**Church**” means a building or structure in which persons regularly assemble for worship, ceremonies, rituals, and education pertaining to a particular system of beliefs. The term “church” includes a synagogue or temple.

“**City**” means the City of Kenai, Alaska.

“**Clinic**” (or outpatient clinic or ambulatory care clinic) means a health care facility that is primarily devoted to the care of outpatients. Clinics can be privately operated or publicly managed and funded, and typically cover the primary health care needs of populations in local communities, in contrast to larger hospitals which offer specialized treatments and admit inpatients for overnight stays.

“**Collector Street**” means a street located and designed for the primary purpose of carrying through traffic and of connecting major areas of the City. Unless otherwise designated by the Commission, collector street shall be defined on the plan for streets and community facilities in the comprehensive development plan.

“**College**” means an educational institution providing postsecondary (after high school) education.

“**Commercial Kennel**” has the same meaning given in KMC [3.05.010](#).

“**Commercial Marijuana Establishment**” means any Retail Marijuana Store excluding onsite consumption endorsements, Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, and Marijuana Testing Facility.

“**Commercial Recreation**” means a recreation facility operated as a business and open to the public for a fee.

“**Commission**” means the Kenai Planning and Zoning Commission.

“**Communication Antenna**” has the same meaning given in KMC [14.20.255](#).

“**Communication Tower**” has the same meaning given in KMC [14.20.255](#).

“**Conditional Use**” means a use which is permitted under the terms of this chapter provided that under the specified procedures, the Commission finds that certain conditions, specified in this chapter are fulfilled. Conditional uses are listed in the Land Use Table.

**“Condominium”** means a common interest ownership dwelling in which:

- (1) Portions of the real estate are designated for separate ownership;
- (2) The remainder of the real estate is designated for common ownership solely by the owners of those portions;
- (3) The undivided interests in the common elements are vested in the unit owners. In the Land Use Table (KMC [14.22.010](#)), “condominiums” shall be treated as two (2) or more family dwellings. For example, a four (4) unit condominium building would be treated as a four (4) family dwelling.

**“Coverage”** means that percentage of the total lot area covered by the building area.

**“Crematory/Funeral Home”** means building or structure used for preparation of the deceased for display and/or interment and may also be used for ceremonies connected with interment. Preparation may include cremation, which is the process of reducing dead bodies to basic chemical compounds in the form of gases and bone fragments. This is accomplished through burning—high temperatures, vaporization, and oxidation.

**“Day Care Center”** means an establishment where child care is regularly provided for children for periods of less than twenty-four (24) hours, including the building housing the facility and adjoining areas, and where tuition, fees, or other compensation for the care of the children is charged.

**“Dormitory”** means a building, whether public or private, associated with a school, college or university and designed, used, and arranged for private sleeping, studying, and living accommodation for students.

**“Dwelling”** means a building or any portion thereof designed or used exclusively for residential occupancy including one-family, two-family and multiple-family dwellings, but not including any other building wherein human beings may be housed.

**“Dwelling, One-Family”** means any detached building containing only one (1) dwelling unit.

**“Dwelling, Two-Family”** means any building containing only two (2) dwelling units.

**“Dwelling, Multiple-Family”** means any building containing three (3) or more dwelling units.

**“Dwelling Unit”** means one (1) or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one (1) family for living or sleeping purposes.

**“Elementary School”** means any school usually consisting of grades pre-kindergarten through grade 6 or any combination of grades within this range.

**“Essential Service”** means the erection, construction, alteration, or maintenance by public utility companies or municipal departments or commissions, of underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply, or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. This definition shall not be interpreted to include public buildings.

**“Family”** means any number of individuals living together as a single housekeeping unit in a dwelling unit.

**“Farming”** means a tract of land cultivated for the purpose of commercial agricultural production.

**“Fence, Height”** means the vertical distance between the ground directly under the fence and the highest point of the fence.

**“Floor Area”** means the total of each floor of a building within the surrounding outer walls but excluding vent shafts and courts.

**“Fraternal Organization”** means a group of people formally organized for a common object, purpose, or interest (usually cultural, religious or entertainment) that conducts regular meetings and has written membership requirements.

**“Frontage”** means all the property fronting on one (1) side of a street between intersection streets.

**“Garage, Private”** means an accessory building or any portion of a main building used in connection with residential purposes for the storage of passenger motor vehicles.

**“Garage, Public”** means any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other vehicles.

**“Gas Manufacturer/Storage”** means the surface use of lands used in the production, the mechanical transformation, or the chemical transformation of hydrocarbon gas and includes uses for gas conditioning/compressor stations. “Storage” means surface uses necessary for storage of produced or non-native natural gas.

**“Governmental Building”** means a building or structure owned and operated by any department, commission, or agency of the United States or of a state or municipality and used to conduct official business of government.

**“Grade (Ground Level)”** means the average level of the finished ground at the center of all walls to a building. In case walls are parallel to and within five (5) feet of a public sidewalk, the ground level shall be measured at the sidewalk.

**“Greenhouse”** means a building or structure, usually a glassed or clear plastic enclosure, used for the cultivation and protection of plants.

**“Guest Room”** means any room in a hotel, dormitory, boarding, or lodging house used and maintained to provide sleeping accommodations for one (1) or more persons.

**“Guide Service”** means any activity on any premises used for collecting or returning persons from recreational trips when remuneration is provided for the service.

**“Gunsmith”** means a person who repairs, modifies, designs, or builds firearms.

**“High School”** means a secondary school usually consisting of grades 9 through 12 or any appropriate combination of grades within this range.

**“Home Occupation”** means an accessory use carried out for remuneration by a resident in the resident’s dwelling unit.

**“Hospital”** means an institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured.

**“Hotel”** means a building or group of buildings containing more than five (5) guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

**“Junkyard”** means any space one hundred (100) square feet or more of any lot or parcel of land used for the storage, keeping, or abandonment of junk or waste material, including scrap metals or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or any parts thereof.

**“Library”** means a collection of sources, resources, and services, and the structure in which it is housed; it is organized for use and maintained by a public body, an institution, or a private individual.

**“Licensed Premises For Commercial Marijuana Establishment”** means any and all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a Commercial Marijuana Establishment license is



issued, and used, controlled, or operated by the Commercial Marijuana Establishment to carry out the business for which it licensed.

**“Loading Space”** means an off-street space or berth on the same lot with a building or structure to be used for the temporary parking of commercial vehicles while loading or unloading merchandise or materials.

**“Lodge”** means a building or group of buildings containing five (5) or fewer guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

**“Lot”** means a parcel of land occupied or to be occupied by a principal use and having frontage on a public street.

**“Lot, Corner”** means a lot situated at the junction of, and bordering on, two (2) intersecting streets, two (2) platted rights-of-way, two (2) government easements, or any combination thereof.

**“Lot Coverage”** means that portion of the lot covered by buildings or structures that require a building permit.

**“Lot Depth”** means the horizontal distance separating the front and rear lot lines of a lot and at right angles to its width.

**“Lot Line, Front-Corner Lot”** means the shortest street line of a corner lot.

**“Lot Line, Front-Interior Lot”** means a line separating the lot from the street.

**“Lot Line, Rear”** means a line that is opposite and most distant from the front lot line, and in the case of irregular, triangular, or gore shaped lot, a line not less than ten feet (10') in length, within a lot, parallel to and at the maximum distance from the front lot line.

**“Lot Line, Side”** means any lot boundary line not a front lot line or a rear lot line.

**“Lot Width”** means the mean horizontal distance separating the side lot lines of a lot and at right angles to its depth.

**“Manufactured Housing”** means a dwelling unit that meets Department of Housing and Urban Development Standards for manufactured housing and is wider than sixteen feet (16'), has a roof pitch of 4:12 or greater with roofing and siding common to standard residential construction and is transported to the site and placed on a permanent foundation.

**“Manufacturing/Fabricating/Assembly”** means the mechanical or chemical transformation of materials or substances into new products including assembling of components parts, the

manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

**“Marijuana”** means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. The term does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

**“Marijuana Concentrate”** means resin, oil, wax, or any other substance derived from the marijuana plant by any method which isolates the Tetrahydrocannabinol (THC)-bearing resins of the plant.

**“Marijuana Cultivation Facility”** means any entity with a state license registered to cultivate, prepare, and package marijuana and to sell marijuana to Marijuana Retail Facilities, Marijuana Products Manufacturing Facilities, Marijuana Testing Facilities, but not to consumers.

**“Marijuana Cultivation Facility, Standard”** means an entity registered to cultivate in an area greater than 500 square feet under cultivation, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

**“Marijuana Cultivation Facility, Limited”** means an entity registered to cultivate in an area of 500 square feet or less of cultivation, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

**“Marijuana Products”** means concentrated marijuana and marijuana products that are comprised of Marijuana and other ingredients and are intended for use or consumption, such as, but not limited to edible products, ointments, and tinctures.

**“Marijuana Product Manufacturing Facility”** means a state licensed fully enclosed secure indoor facility registered to purchase marijuana, manufacture, prepare and package marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

**“Marijuana Testing Facility”** means a state licensed commercial marijuana testing facility that is registered to analyze and certify the safety and potency of Marijuana and Marijuana Products.

**“Mini-Storage Facility”** means a completely enclosed structure containing three (3) or more areas or rooms available for lease or rent for the purpose of the general storage of household goods, vehicles or personal property; where the lessee of the unit is provided direct access to deposit or store items and where vehicles do not fill the majority of the allowed storage space.

**“Mobile Home”** means a structure, which is built on a permanent chassis in accordance with Department of Housing and Urban Development Standards and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home is subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

**“Mobile Home Park”** means a site with required improvements and utilities for the long-term parking of mobile homes which may include services and facilities for the residents.

**“Modular Home”** means a dwelling constructed in modules or sections at a place other than the building site, built to conform to Title [4](#) of the Kenai Municipal Code, is transported to the site and then assembled and placed on a permanent foundation.

**“Motel”** means a group of one (1) or more detached or semi-detached buildings containing two (2) or more individual dwelling units and/or guest rooms designed for, or used temporarily by, automobile tourists or transients, with a garage attached or parking space conveniently located to each unit, including groups designated as auto courts, motor lodges, or tourist courts.

**“Museum”** means a building or structure that houses and cares for a collection of artifacts and other objects of scientific, artistic, or historical importance and makes them available for public viewing through exhibits that may be permanent or temporary.

**“Necessary Aviation Facilities”** means any air navigation facility, airport visual approach aid, airfield lighting and signage, meteorological device or any type of device approved by the Federal Aviation Administration (FAA), the location and height of which is fixed by its functional purpose.

**“Nonconforming Lot”** means a lot lawfully existing at the time this chapter became effective, which by reason of area or dimensions, does not meet the development requirements for the zone in which it is located.

**“Nonconforming Structure”** means a structure or portion thereof, lawfully existing at the time this chapter became effective, which by reason of its yards, coverage, height, or other aspects of design, does not meet the development requirements of this zone.

**“Nonconforming Use”** means a use of a structure of land, or of a structure and land in combination, lawfully existing at the time this chapter became effective, or established on the premises of a previous nonconforming use as specified in this chapter, which is not in conformity with the uses permitted in the zone in which it exists.

**“Nursing, Convalescent or Rest Home”** means a building or structure used as a residence for people who require constant nursing care and/or have significant deficiencies with activities of daily living.

**“Office”** means a room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

**“Onsite Consumption Endorsement”** means the state regulated consumption of certain marijuana products at or adjacent to a retail marijuana store by patrons of the commercial marijuana establishment.

**“Park”** means a tract of land, designated by a public entity for the enjoyment of the public and generally used for active and passive recreational activities.

**“Parking, Public Lots”** means a parking area available to the public, whether or not a fee for use is charged.

**“Parking Space, Private”** means any automobile parking space, excluding garages, not less than nine feet (9') wide and one hundred eighty (180) square feet in total area.

**“Parking Space, Public”** means an area of not less than one hundred eighty (180) square feet exclusive of drives or aisles giving access thereto in area accessible from streets and alleys for the storage of passenger motor vehicles operated by individual drivers.

**“Person”** means a natural person, his or her heirs, executors, administrators, or assigns, and also including firm, partnership, or corporation, or their successors and/or assigns or the agent of any of the aforesaid.

**“Personal Services”** mean establishments engaged in providing services involving the care of a person or his or her apparel.

**“Planned Unit Residential Development”** means an alternative method of development of a residential neighborhood under more flexible conditions than otherwise required in a specific zoning district.

**“Principal Use”** means the major or predominant use of a lot or parcel of land.

**“Profession”** means an occupation or calling requiring the practice of a learned art through specialized knowledge based on a degree issued by an institution of high learning, e.g., Doctor of Medicine.

**“Property Owner”** means the owner shown on the latest tax assessment roll.

**“Public”** means a place to which the public or a substantial group or persons has access and includes highway, rivers, lakes, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, hallways, lobbies and other parts of apartments houses and hotels not constituting rooms or apartments designed for actual residence.

**“Recreation”** means leisure activities sometimes requiring equipment and taking place at prescribed places, sites, parks, or fields. It can include active recreation, such as structured individual or team activities requiring the use of special facilities, courses, fields or equipment or passive recreation, such as activities that do not require prepared facilities such as wildlife and bird viewing, observing and photographing nature, picnicking, and walking.

**“Recreational Vehicle”** means a vehicular-type unit, primarily designed as temporary living quarters for recreational camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. Recreational vehicles include, but are not limited to, travel trailers, camping trailers, truck campers, and motor homes.

**“Recreational Vehicle Park”** means an area established by a conditional use permit for the parking of two (2) or more recreational vehicles on a temporary basis.

**“Recreation or Youth Center”** means a building, structure, athletic playing field, or playground, run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under 21 years of age.

**“Restaurant”** means an establishment where food and drink is prepared, served, and consumed primarily within the principal building.

**“Retail Business”** means establishments engaged in selling goods or merchandise to the general public for business or personal/household consumption and rendering services incidental to the sale of such goods.

**“Retail Marijuana Store”** means a state licensed entity registered to purchase marijuana from a marijuana cultivation facility, to purchase marijuana and marijuana products from a marijuana manufacturing facility, and sell marijuana and marijuana products to consumers.

**“Secondary Use”** means a use allowed on a lot or parcel of land only if there is also an allowed principal use on the property.

**“Sign”** means any words, letters, parts of letters, figures, numerals, phrases, sentences, emblems, devices, trade names, or trademarks by which anything is made known, such as are used to designate an individual, firm, association, corporation, profession, business, or a commodity or product, which are visible from any public street or highway and used to attract attention.

**“Square Feet Under Cultivation”** means an area of the licensed premises of a standard or limited cultivation facility that is used for growing marijuana, measured on the perimeter of the floor or growing space for marijuana “Square Feet Under Cultivation” does not include hallways, equipment storage areas, or other areas within the licensed premises that are not used for growing marijuana such as an office, or a processing or storage area.

**“State Highway”** means a right-of-way classified by the State of Alaska as a primary or secondary highway.

**“Storage Yard”** means a lot used primarily for the storage of operational vehicles, construction equipment, construction materials or other tangible materials and equipment.

**“Street”** means a public right-of-way used as a thoroughfare and which is designed and intended to provide the primary means of access to property abutting thereon.

**“Structure”** means that which is built or constructed, an edifice or a building of any kind, composed of parts joined together in some definite manner.

**“Subsurface Extraction of Natural Resources”** means removing valuable minerals or other geological materials from the earth, from an ore body, vein or (coal) seam. Materials recovered could include gas, oil, base metals, precious metals, iron, uranium, coal, diamonds, limestone, oil shale, rock salt and potash.

**“Surface Extraction of Natural Resources”** means removal of material, usually soil, gravel, or sand for use at another location.

“**Taxidermy**” means the act of mounting or reproducing dead animals, fish, and/or birds for display.

“**Theater**” means a building or structure, or part thereof, devoted to the indoor exhibition of motion pictures and/or of live dramatic, speaking, musical, or other presentations.

“**Townhouse**” means single-family dwelling units constructed in a series or group of two (2) or more units separated from an adjoining unit by an approved party wall or walls, extending from the basement of either floor to the roof along the linking lot line.

“**Tree Nursery**” means a place where trees/plants are propagated and grown to usable size.

“**Use**” means the purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied or maintained.

“**Variance**” means the relaxation of the development requirements of this chapter to provide relief when the literal enforcement would deprive a property owner of the reasonable use of his or her real property.

“**Warehouse**” means a building or structure used for the storage of goods, wares and merchandise that will be processed, sold or otherwise disposed of off of the premises.

“**Wholesale Business**” means business conducted primarily for the purpose of selling wares or merchandise in wholesale lots to retail merchants for resale.

“**Yard**” means an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the same lot on which a building is situated.

“**Yard, Front**” means a yard extending across the full width of the lot between the front lot line of the lot and the nearest exterior wall of the building which is the nearest to the front lot line.

“**Yard, Rear**” means a yard extending across the full width of the lot between the most rear main building and the rear lot line.

“**Yard, Side**” means a yard on each side of a main building and extending from the front lot line to the rear lot line. The width of the required side yard shall be measured horizontally from the nearest point of a side lot line to the nearest part of the main building.

“**Zoning Change**” means the alteration or moving of a zone boundary; the reclassification of a lot, or parcel of land, from one zone to another; and the change of any of the regulations contained in this chapter.

“**Zoning Ordinance or Ordinances**” mean the zoning ordinance of the City of Kenai and Kenai Municipal Code Chapter [14](#).

**Section 2.** Amendment of Section 14.20.330 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, is hereby amended as follows:

**14.20.330 Standards for [C]Commercial [M]Marijuana [E]Establishments.**

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

(a) Commercial marijuana establishments may be permitted or allowed with a conditional use permit under KMC [14.20.150](#), as provided in the City of Kenai’s land use table, KMC [14.22.010](#), and the provisions of this section. Onsite Consumption Endorsements may not be approved by conditional use permit or otherwise and are not permitted within the City.

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

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

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

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

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

- (1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth



centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and

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

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

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

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

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19<sup>th</sup> day of June, 2019.

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

ATTEST:

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

Introduced: May 15, 2019  
Public Hearing: June 5, 2019  
Enacted: June 19, 2019  
Effective: July 19, 2019



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

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Council Members Glenese Pettey and Jim Glendingen  
**DATE:** March 12, 2019  
**SUBJECT:** **Ordinance No. 3068 – 2019**

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This Ordinance would prohibit onsite consumption of marijuana and marijuana products at retail stores requiring an onsite consumption endorsement. We feel this ordinance is necessary to protect public safety and welfare. Because this Ordinance requires a change to the City's zoning code, requires a recommendation from the Planning and Zoning Commission. We request it be pulled from the consent agenda and be referred to the Planning and Zoning Commission for consideration at their May 22, 2019 meeting, and be brought back to Council for a public hearing at the first meeting in June.

Your consideration is appreciated.





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www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Scott Bloom, City Attorney  
**DATE:** May 30, 2019  
**SUBJECT:** **Ordinance No. 3068 – 2019**

---

On May 22, 2019 the Planning and Zoning Commission held a public hearing and recommended that the City Council enact Ordinance 3068-2019. A copy of the Planning and Zoning Commission's Resolution is attached.

It is recommended that the following amendment be moved:

Amend the last Whereas Clause to read:

WHEREAS, at its regular meeting of May 22, 2019 the Planning and Zoning Commission recommended the City Council **Enact** this Ordinance.

Your consideration is appreciated.





**CITY OF KENAI  
PLANNING AND ZONING COMMISSION  
RESOLUTION NO. PZ2019 – 16**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI ENACT ORDINANCE 3068-2019 AMENDING KENAI MUNICIPAL CODE 14.20.320 – DEFINITIONS AND 14.20.330 - STANDARDS FOR COMMERCIAL MARIJUANA ESTABLISHMENTS, TO PROHIBIT ONSITE CONSUMPTION OF MARIJUANA AT RETAIL MARIJUANA STORES REQUIRING AN ONSITE CONSUMPTION ENDORSEMENT.

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

WHEREAS, at their meeting on May 1, 2019, after reviewing recommendations and input from the Kenai Planning and Zoning Commission as part of their decision process, the Kenai City Council failed to enact Ordinance 3061-2019, which would have allowed onsite consumption through the City's conditional use process; and,

WHEREAS, 3 AAC 306.200 provides that a City Council by ordinance may prohibit onsite consumption endorsements to a retail marijuana store within its jurisdiction and the Kenai City Council referred Ordinance 3068-2019 prohibiting marijuana consumption at retail marijuana stores to the Kenai Planning and Zoning Commission for a recommendation at their meeting on May 15, 2019; and,

WHEREAS, public health, safety, and welfare would be protected by prohibiting onsite marijuana consumption at retail marijuana stores; and,

WHEREAS, quality of life, a stated goal in the 2016 Imagine Kenai 2030 Comprehensive Plan, is supported by prohibiting onsite marijuana consumption at retail marijuana stores; and,

WHEREAS, the City may reexamine onsite consumption at marijuana retail stores if additional evidence and information would support this use at a future date.

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

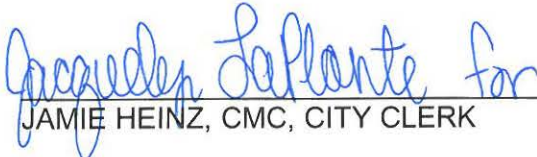
**Section 1.** That the Kenai City Council enact Ordinance 3068-2019.

**Section 2.** That a copy of Resolution PZ2019-16 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA,  
this 22nd day of May, 2019.

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

ATTEST:

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



May 30, 2019

Daniel & Teresa Sterchi  
36525 Kalifornsky Beach Road  
Kenai, Alaska 99611  
Phone 907-283-3878  
sterchiconstruction@hotmail.com

Mayor Brian Gabriel & Kenai City Council  
210 Fidalgo Ave  
Kenai, Alaska 99611  
Phone 907-283-7535  
[www.kenai.city](http://www.kenai.city)


SUBJECT: Ordinance No. 3068-2019

This letter is in support of Ordinance No. 3068-2019.  
We have property on Evergreen; which is family friendly.  
Please keep our residential neighborhood quiet & peaceful; for the families living there now.  
Thank you for this ordinance.

Sincerely:  
Daniel Sterchi



Teresa Sterchi



**From:** [dollynda Phelps](#)  
**To:** [City Clerk](#)  
**Subject:** Driving while impaired  
**Date:** Friday, June 7, 2019 6:29:18 PM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please read this information pertaining to driving impairment while under the influence of marijuana...there is research and data included in the report.

[Report: THC Limits Not Correlated To Driving Impairment - NORML - Working to Reform Marijuana Laws](#)



**Report: THC Limits Not Correlated To Driving Impairment - NORML - Working to Reform Marijuana Laws**

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## [Report: THC Limits Not Correlated To Driving Impairment \(/news/2019/04/11/report-thc-limits-not-correlated-to-driving-impairment\)](#)

Thursday, 11 April 2019



**Lansing, MI:** The presence of THC in blood is not correlated with driving performance and is not a reliable indicator of psychomotor impairment, according to [recommendations \(https://www.wilx.com/content/news/New-report-says-Michigan-shouldnt-set-driving-limit-for-marijuana-507658461.html\)](https://www.wilx.com/content/news/New-report-says-Michigan-shouldnt-set-driving-limit-for-marijuana-507658461.html) made by a state-appointed traffic safety task force.

#### A report

[http://media.graytvinc.com/documents/Michigan+Impaired\\_Driver\\_Report\\_1553554601148\\_79160282\\_v](http://media.graytvinc.com/documents/Michigan+Impaired_Driver_Report_1553554601148_79160282_v) issued by the Michigan Impaired Driving Safety Commission finds that peak THC blood levels are not associated with maximal behavioral impairment and further finds that the compound's influence upon driving performance varies significantly among individual consumers. As a result, "The Commission recommends against the establishment of a threshold of delta-9-THC bodily content for determining driving impairment and instead recommends the use of roadside sobriety tests to determine whether a driver is impaired."

The Commission's recommendations are [similar to those \(https://norml.org/marijuana/fact-sheets/item/marijuana-and-psychomotor-impairment\)](https://norml.org/marijuana/fact-sheets/item/marijuana-and-psychomotor-impairment) previously issued by the American Automobile Association, the National Highway Traffic Safety Administration, and other traffic safety experts who have similarly opined against the imposition of *per se* thresholds for the presence of THC. NORML [similarly argues \(https://norml.org/pdf\\_files/per\\_se\\_limits\\_for\\_cannabis.pdf\)](https://norml.org/pdf_files/per_se_limits_for_cannabis.pdf) that the identification of THC in blood is a poor predictor of either recent cannabis exposure or impaired performance.

The Commission's report further opines that subjects influenced by cannabis "typically drive slower, keep greater following distances, and take fewer risks than when sober." They add, "While there is some uncertainty as to the crash risk associated with cannabis impairment alone, the research is clear that the risk is lower than that of alcohol impairment."

Five states -- Montana, Nevada, Ohio, Pennsylvania, and Washington -- [impose \(https://norml.org/legal/drugged-driving\)](https://norml.org/legal/drugged-driving) various *per se* limits for the detection of specific amounts of THC in blood while eleven states (Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Michigan, Oklahoma, Rhode Island, Utah, and Wisconsin) impose zero tolerant *per se* standards. In those states, it is a criminal violation of the traffic safety laws to operate a motor vehicle with detectable levels of THC in blood. Colorado law infers driver impairment in instances where THC is detected in blood at levels of 5ng/ml or higher.

*For more information, contact [Paul Armentano \(mailto:paul@norml.org\)](mailto:paul@norml.org), NORML Deputy Director. Additional information is available from the NORML fact-sheet, "[Marijuana and Psychomotor Performance \(https://norml.org/marijuana/fact-sheets/item/marijuana-and-psychomotor-impairment\)](https://norml.org/marijuana/fact-sheets/item/marijuana-and-psychomotor-impairment)."*



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## CITY OF KENAI

### ORDINANCE NO. 3068-2019 (SUBSTITUTE)

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.320- DEFINITIONS, AND IMPLEMENTING A MORATORIUM PROHIBITING ONSITE CONSUMPTION OF MARIJUANA AT RETAIL MARIJUANA STORES REQUIRING AN ONSITE CONSUMPTION ENDORSEMENT UNTIL JULY 1, 2021.

WHEREAS, on November 4, 2014, the Alaskan voters passed Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana; and,

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

WHEREAS, on March 12, 2019 Lieutenant Governor Kevin Meyer signed into law new regulations from the Marijuana Control Board allowing retail marijuana stores to allow onsite consumption of marijuana under certain conditions through a state issued onsite consumption endorsement to a retail marijuana store; and,

WHEREAS, 3 AAC 306.200 provides that a City Council by ordinance may prohibit onsite consumption endorsements to a retail marijuana store within its jurisdiction; and,

WHEREAS, after consideration by the Planning and Zoning Commission, the City Council failed to enact Ordinance 3061-2019, which would have allowed onsite consumption through the City's conditional use permit process; and,

WHEREAS, it is in the best interest for public safety and welfare for the City to observe how the new state regulations addressing onsite consumption are implemented and what community needs are before the City Council decides whether onsite consumption should be further regulated or prohibited in the City; and,

WHEREAS, at it regular meeting of May 22, 2019 the Planning and Zoning Commission recommended the City Council enact a prohibition on onsite consumption and reexamine the issue at a future date.

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

**Section 1.** Amendment of Section 14.20.320 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.320 - Definitions, is hereby amended as follows:

**14.20.320 Definitions.**

(a) *General Interpretation.*

- (1) Words used in the present tense include the future tense.
- (2) The singular number includes the plural.
- (3) The word “person” includes a corporation as well as an individual.
- (4) The word “lot” includes the word “plot” or “parcel.”
- (5) The term “shall” is always mandatory.
- (6) The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended,” “arranged” or “designed to be used or occupied.”

(b) *Specific Definitions.*

**“Accessory Building”** means a detached building or structure, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot as the main building or use, except as allowed by a conditional use permit. An accessory building shall be considered to be a part of the main building when joined to the main building by a common wall or when any accessory building and the main building are connected by a breezeway.

**“Accessory Use”** means a use customarily incidental and subordinate to the principal use of the land, building, or structure and located on the same lot or parcel of land.

**“Administrative Official”** means the person charged with the administration and enforcement of this chapter.

**“Agricultural Building”** means a building or structure used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation and which is not used by the public.

**“Agriculture”** means the science, art, and business of cultivating soil, producing crops, and raising livestock; farming.

**“Airport”** means a location where aircraft such as fixed-wing aircraft, helicopters, and blimps take off and land. Aircraft may be stored or maintained at an airport. An airport consists of at least one (1) surface such as a paved or gravel runway, a helicopter touchdown and lift off

(TLOF) area, helipad, or water runway for aircraft takeoffs and landings, and often includes buildings such as control towers, hangars and terminal buildings.

**“Airport Compatible Uses”** means uses which include, but are not limited to: Hangars, Fixed Base Operators, Aircraft Repair and Manufacturing, Aircraft Sales, and other uses approved by the Ordinance of the City of Kenai, and the Federal Aviation Administration’s regulations, and compatible with the current Airport Master Plan, the Airport Layout Plan and the Comprehensive Plan.

**“Alley”** means a public way designed and intended to provide only a secondary means of access to any property abutting thereon.

**“Alteration”** means any change, addition, or modification in construction, location, or use classification.

**“Animal Boarding”** means any building or structure and associated premises in which animals are fed, housed, and/or exercised for commercial gain.

**“Apartment House,”** see “Dwelling, multiple-family.”

**“Area, Building”** means the total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of steps.

**“Assemblage”** means a large gathering of people for an event such as a concert, fair, or circus.

**“Assisted Living”** means a living arrangement in which people with special needs, especially seniors with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication.

**“Automobile Sales”** means the use of any building or structure and associated premises for the display and sale of new or used automobiles, panel trucks or vans, trailers, or recreation vehicles and including any warranty repair work and other repair service conducted as an accessory use.

**“Automobile Service Station”** means the use of any building or structure and associated premises or other space used primarily for the retail sale and dispensing of motor fuels, tires, batteries, and other small accessories; the installation and servicing of such lubricants, tires, batteries, and other small accessories; and such other services which do not customarily or usually require the services of a qualified automotive mechanic.

**“Automobile Wrecking”** means the dismantling of used motor vehicles or trailers or the storage or sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles.

**“Automotive Repair”** means the use of any building or structure and associated premises on which a business, service, or industry involving the maintenance, servicing, repair, or painting of vehicles is conducted or rendered.

**“Bank”** means any establishment or building or structure used for a financial institution that provides financial services for its clients or members. The term “bank” includes savings and loan.

**“Bed and Breakfast”** means a residential, owner-occupied dwelling in which rooms are rented to paying guests on an overnight basis with no more than one (1) meal served daily.

**“Boarding House”** means a dwelling where the principal use is a dwelling by the owner or keeper and where the owner or keeper provides lodging for three (3) or more persons who are not members of the owner’s or keeper’s family and the lodgers pay compensation to use one (1) or more rooms. The common parts of the building or structure are maintained by the owner or keeper who may also provide lodgers with some services, such as meals, laundry, and cleaning. Boarding houses are not motels or hotels and are not open to transient guests.

**“Building”** means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

**“Building Code”** means the building code and/or other building regulations applicable in the City.

**“Building, Existing”** means a building erected prior to the adoption of the ordinance codified in this chapter or one for which a legal building permit has been issued.

**“Building Height”** means the vertical distance from the “grade,” as defined herein, to the highest point of the roof.

**“Building, Principal or Main”** means a building or structure in which is conducted the principal or main use on the lot which said building is situated.

**“Business/Consumer Services”** means the provision of services to others on a fee or contract basis, such as advertising and mailing; building maintenance; employment service; management and consulting services; protective services; equipment rental and leasing; commercial research; development and testing; photo finishing; and personal supply services.

“**Cabin Rentals**” means the renting out of one (1) or more individual, detached dwelling units or buildings to provide overnight sleeping accommodations for a period of less than thirty (30) consecutive days.

“**Cemetery**” means any property used to inter the dead in buried graves or in columbarium, stacked vaults, or similar structures.

“**Centerline**” means the line which is in the center of a public right-of-way.

“**Church**” means a building or structure in which persons regularly assemble for worship, ceremonies, rituals, and education pertaining to a particular system of beliefs. The term “church” includes a synagogue or temple.

“**City**” means the City of Kenai, Alaska.

“**Clinic**” (or outpatient clinic or ambulatory care clinic) means a health care facility that is primarily devoted to the care of outpatients. Clinics can be privately operated or publicly managed and funded, and typically cover the primary health care needs of populations in local communities, in contrast to larger hospitals which offer specialized treatments and admit inpatients for overnight stays.

“**Collector Street**” means a street located and designed for the primary purpose of carrying through traffic and of connecting major areas of the City. Unless otherwise designated by the Commission, collector street shall be defined on the plan for streets and community facilities in the comprehensive development plan.

“**College**” means an educational institution providing postsecondary (after high school) education.

“**Commercial Kennel**” has the same meaning given in KMC [3.05.010](#).

“**Commercial Marijuana Establishment**” means any Retail Marijuana Store excluding onsite consumption edorsements, Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, and Marijuana Testing Facility.

“**Commercial Recreation**” means a recreation facility operated as a business and open to the public for a fee.

“**Commission**” means the Kenai Planning and Zoning Commission.

“**Communication Antenna**” has the same meaning given in KMC [14.20.255](#).

“**Communication Tower**” has the same meaning given in KMC [14.20.255](#).

**“Conditional Use”** means a use which is permitted under the terms of this chapter provided that under the specified procedures, the Commission finds that certain conditions, specified in this chapter are fulfilled. Conditional uses are listed in the Land Use Table.

**“Condominium”** means a common interest ownership dwelling in which:

- (1) Portions of the real estate are designated for separate ownership;
- (2) The remainder of the real estate is designated for common ownership solely by the owners of those portions;
- (3) The undivided interests in the common elements are vested in the unit owners. In the Land Use Table (KMC [14.22.010](#)), “condominiums” shall be treated as two (2) or more family dwellings. For example, a four (4) unit condominium building would be treated as a four (4) family dwelling.

**“Coverage”** means that percentage of the total lot area covered by the building area.

**“Crematory/Funeral Home”** means building or structure used for preparation of the deceased for display and/or interment and may also be used for ceremonies connected with interment. Preparation may include cremation, which is the process of reducing dead bodies to basic chemical compounds in the form of gases and bone fragments. This is accomplished through burning—high temperatures, vaporization, and oxidation.

**“Day Care Center”** means an establishment where child care is regularly provided for children for periods of less than twenty-four (24) hours, including the building housing the facility and adjoining areas, and where tuition, fees, or other compensation for the care of the children is charged.

**“Dormitory”** means a building, whether public or private, associated with a school, college or university and designed, used, and arranged for private sleeping, studying, and living accommodation for students.

**“Dwelling”** means a building or any portion thereof designed or used exclusively for residential occupancy including one-family, two-family and multiple-family dwellings, but not including any other building wherein human beings may be housed.

**“Dwelling, One-Family”** means any detached building containing only one (1) dwelling unit.

**“Dwelling, Two-Family”** means any building containing only two (2) dwelling units.

**“Dwelling, Multiple-Family”** means any building containing three (3) or more dwelling units.



**“Dwelling Unit”** means one (1) or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one (1) family for living or sleeping purposes.

**“Elementary School”** means any school usually consisting of grades pre-kindergarten through grade 6 or any combination of grades within this range.

**“Essential Service”** means the erection, construction, alteration, or maintenance by public utility companies or municipal departments or commissions, of underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply, or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. This definition shall not be interpreted to include public buildings.

**“Family”** means any number of individuals living together as a single housekeeping unit in a dwelling unit.

**“Farming”** means a tract of land cultivated for the purpose of commercial agricultural production.

**“Fence, Height”** means the vertical distance between the ground directly under the fence and the highest point of the fence.

**“Floor Area”** means the total of each floor of a building within the surrounding outer walls but excluding vent shafts and courts.

**“Fraternal Organization”** means a group of people formally organized for a common object, purpose, or interest (usually cultural, religious or entertainment) that conducts regular meetings and has written membership requirements.

**“Frontage”** means all the property fronting on one (1) side of a street between intersection streets.

**“Garage, Private”** means an accessory building or any portion of a main building used in connection with residential purposes for the storage of passenger motor vehicles.

**“Garage, Public”** means any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other vehicles.

**“Gas Manufacturer/Storage”** means the surface use of lands used in the production, the mechanical transformation, or the chemical transformation of hydrocarbon gas and includes

uses for gas conditioning/compressor stations. “Storage” means surface uses necessary for storage of produced or non-native natural gas.

“**Governmental Building**” means a building or structure owned and operated by any department, commission, or agency of the United States or of a state or municipality and used to conduct official business of government.

“**Grade (Ground Level)**” means the average level of the finished ground at the center of all walls to a building. In case walls are parallel to and within five (5) feet of a public sidewalk, the ground level shall be measured at the sidewalk.

“**Greenhouse**” means a building or structure, usually a glassed or clear plastic enclosure, used for the cultivation and protection of plants.

“**Guest Room**” means any room in a hotel, dormitory, boarding, or lodging house used and maintained to provide sleeping accommodations for one (1) or more persons.

“**Guide Service**” means any activity on any premises used for collecting or returning persons from recreational trips when remuneration is provided for the service.

“**Gunsmith**” means a person who repairs, modifies, designs, or builds firearms.

“**High School**” means a secondary school usually consisting of grades 9 through 12 or any appropriate combination of grades within this range.

“**Home Occupation**” means an accessory use carried out for remuneration by a resident in the resident’s dwelling unit.

“**Hospital**” means an institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured.

“**Hotel**” means a building or group of buildings containing more than five (5) guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

“**Junkyard**” means any space one hundred (100) square feet or more of any lot or parcel of land used for the storage, keeping, or abandonment of junk or waste material, including scrap metals or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or any parts thereof.

“**Library**” means a collection of sources, resources, and services, and the structure in which it is housed; it is organized for use and maintained by a public body, an institution, or a private individual.

**“Licensed Premises For Commercial Marijuana Establishment”** means any and all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a Commercial Marijuana Establishment license is issued, and used, controlled, or operated by the Commercial Marijuana Establishment to carry out the business for which it licensed.

**“Loading Space”** means an off-street space or berth on the same lot with a building or structure to be used for the temporary parking of commercial vehicles while loading or unloading merchandise or materials.

**“Lodge”** means a building or group of buildings containing five (5) or fewer guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

**“Lot”** means a parcel of land occupied or to be occupied by a principal use and having frontage on a public street.

**“Lot, Corner”** means a lot situated at the junction of, and bordering on, two (2) intersecting streets, two (2) platted rights-of-way, two (2) government easements, or any combination thereof.

**“Lot Coverage”** means that portion of the lot covered by buildings or structures that require a building permit.

**“Lot Depth”** means the horizontal distance separating the front and rear lot lines of a lot and at right angles to its width.

**“Lot Line, Front-Corner Lot”** means the shortest street line of a corner lot.

**“Lot Line, Front-Interior Lot”** means a line separating the lot from the street.

**“Lot Line, Rear”** means a line that is opposite and most distant from the front lot line, and in the case of irregular, triangular, or gore shaped lot, a line not less than ten feet (10') in length, within a lot, parallel to and at the maximum distance from the front lot line.

**“Lot Line, Side”** means any lot boundary line not a front lot line or a rear lot line.

**“Lot Width”** means the mean horizontal distance separating the side lot lines of a lot and at right angles to its depth.

**“Manufactured Housing”** means a dwelling unit that meets Department of Housing and Urban Development Standards for manufactured housing and is wider than sixteen feet (16'), has a roof pitch of 4:12 or greater with roofing and siding common to standard residential construction and is transported to the site and placed on a permanent foundation.

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

**“Marijuana”** means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. The term does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

**“Marijuana Concentrate”** means resin, oil, wax, or any other substance derived from the marijuana plant by any method which isolates the Tetrahydrocannabinol (THC)-bearing resins of the plant.

**“Marijuana Cultivation Facility”** means any entity with a state license registered to cultivate, prepare, and package marijuana and to sell marijuana to Marijuana Retail Facilities, Marijuana Products Manufacturing Facilities, Marijuana Testing Facilities, but not to consumers.

**“Marijuana Cultivation Facility, Standard”** means an entity registered to cultivate in an area greater than 500 square feet under cultivation, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

**“Marijuana Cultivation Facility, Limited”** means an entity registered to cultivate in an area of 500 square feet or less of cultivation, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

**“Marijuana Products”** means concentrated marijuana and marijuana products that are comprised of Marijuana and other ingredients and are intended for use or consumption, such as, but not limited to edible products, ointments, and tinctures.

**“Marijuana Product Manufacturing Facility”** means a state licensed fully enclosed secure indoor facility registered to purchase marijuana, manufacture, prepare and package marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

**“Marijuana Testing Facility”** means a state licensed commercial marijuana testing facility that is registered to analyze and certify the safety and potency of Marijuana and Marijuana Products.

**“Mini-Storage Facility”** means a completely enclosed structure containing three (3) or more areas or rooms available for lease or rent for the purpose of the general storage of household goods, vehicles or personal property; where the lessee of the unit is provided direct access to deposit or store items and where vehicles do not fill the majority of the allowed storage space.

**“Mobile Home”** means a structure, which is built on a permanent chassis in accordance with Department of Housing and Urban Development Standards and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home is subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

**“Mobile Home Park”** means a site with required improvements and utilities for the long-term parking of mobile homes which may include services and facilities for the residents.

**“Modular Home”** means a dwelling constructed in modules or sections at a place other than the building site, built to conform to Title [4](#) of the Kenai Municipal Code, is transported to the site and then assembled and placed on a permanent foundation.

**“Motel”** means a group of one (1) or more detached or semi-detached buildings containing two (2) or more individual dwelling units and/or guest rooms designed for, or used temporarily by, automobile tourists or transients, with a garage attached or parking space conveniently located to each unit, including groups designated as auto courts, motor lodges, or tourist courts.

**“Museum”** means a building or structure that houses and cares for a collection of artifacts and other objects of scientific, artistic, or historical importance and makes them available for public viewing through exhibits that may be permanent or temporary.

**“Necessary Aviation Facilities”** means any air navigation facility, airport visual approach aid, airfield lighting and signage, meteorological device or any type of device approved by the Federal Aviation Administration (FAA), the location and height of which is fixed by its functional purpose.

**“Nonconforming Lot”** means a lot lawfully existing at the time this chapter became effective, which by reason of area or dimensions, does not meet the development requirements for the zone in which it is located.

**“Nonconforming Structure”** means a structure or portion thereof, lawfully existing at the time this chapter became effective, which by reason of its yards, coverage, height, or other aspects of design, does not meet the development requirements of this zone.

**“Nonconforming Use”** means a use of a structure of land, or of a structure and land in combination, lawfully existing at the time this chapter became effective, or established on the premises of a previous nonconforming use as specified in this chapter, which is not in conformity with the uses permitted in the zone in which it exists.

**“Nursing, Convalescent or Rest Home”** means a building or structure used as a residence for people who require constant nursing care and/or have significant deficiencies with activities of daily living.

**“Office”** means a room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

**“Onsite Consumption Endorsement”** means the state regulated consumption of certain marijuana products at or adjacent to a retail marijuana store by patrons of the commercial marijuana establishment.

**“Park”** means a tract of land, designated by a public entity for the enjoyment of the public and generally used for active and passive recreational activities.

**“Parking, Public Lots”** means a parking area available to the public, whether or not a fee for use is charged.

**“Parking Space, Private”** means any automobile parking space, excluding garages, not less than nine feet (9') wide and one hundred eighty (180) square feet in total area.

**“Parking Space, Public”** means an area of not less than one hundred eighty (180) square feet exclusive of drives or aisles giving access thereto in area accessible from streets and alleys for the storage of passenger motor vehicles operated by individual drivers.

**“Person”** means a natural person, his or her heirs, executors, administrators, or assigns, and also including firm, partnership, or corporation, or their successors and/or assigns or the agent of any of the aforesaid.

**“Personal Services”** mean establishments engaged in providing services involving the care of a person or his or her apparel.

**“Planned Unit Residential Development”** means an alternative method of development of a residential neighborhood under more flexible conditions than otherwise required in a specific zoning district.

**“Principal Use”** means the major or predominant use of a lot or parcel of land.

**“Profession”** means an occupation or calling requiring the practice of a learned art through specialized knowledge based on a degree issued by an institution of high learning, e.g., Doctor of Medicine.

**“Property Owner”** means the owner shown on the latest tax assessment roll.

**“Public”** means a place to which the public or a substantial group or persons has access and includes highway, rivers, lakes, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, hallways, lobbies and other parts of apartments houses and hotels not constituting rooms or apartments designed for actual residence.

**“Recreation”** means leisure activities sometimes requiring equipment and taking place at prescribed places, sites, parks, or fields. It can include active recreation, such as structured individual or team activities requiring the use of special facilities, courses, fields or equipment or passive recreation, such as activities that do not require prepared facilities such as wildlife and bird viewing, observing and photographing nature, picnicking, and walking.

**“Recreational Vehicle”** means a vehicular-type unit, primarily designed as temporary living quarters for recreational camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. Recreational vehicles include, but are not limited to, travel trailers, camping trailers, truck campers, and motor homes.

**“Recreational Vehicle Park”** means an area established by a conditional use permit for the parking of two (2) or more recreational vehicles on a temporary basis.

**“Recreation or Youth Center”** means a building, structure, athletic playing field, or playground, run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under 21 years of age.

**“Restaurant”** means an establishment where food and drink is prepared, served, and consumed primarily within the principal building.

**“Retail Business”** means establishments engaged in selling goods or merchandise to the general public for business or personal/household consumption and rendering services incidental to the sale of such goods.

**“Retail Marijuana Store”** means a state licensed entity registered to purchase marijuana from a marijuana cultivation facility, to purchase marijuana and marijuana products from a marijuana manufacturing facility, and sell marijuana and marijuana products to consumers.

**“Secondary Use”** means a use allowed on a lot or parcel of land only if there is also an allowed principal use on the property.

**“Sign”** means any words, letters, parts of letters, figures, numerals, phrases, sentences, emblems, devices, trade names, or trademarks by which anything is made known, such as are used to designate an individual, firm, association, corporation, profession, business, or a commodity or product, which are visible from any public street or highway and used to attract attention.

**“Square Feet Under Cultivation”** means an area of the licensed premises of a standard or limited cultivation facility that is used for growing marijuana, measured on the perimeter of the floor or growing space for marijuana “Square Feet Under Cultivation” does not include hallways, equipment storage areas, or other areas within the licensed premises that are not used for growing marijuana such as an office, or a processing or storage area.

**“State Highway”** means a right-of-way classified by the State of Alaska as a primary or secondary highway.

**“Storage Yard”** means a lot used primarily for the storage of operational vehicles, construction equipment, construction materials or other tangible materials and equipment.

**“Street”** means a public right-of-way used as a thoroughfare and which is designed and intended to provide the primary means of access to property abutting thereon.

**“Structure”** means that which is built or constructed, an edifice or a building of any kind, composed of parts joined together in some definite manner.

**“Subsurface Extraction of Natural Resources”** means removing valuable minerals or other geological materials from the earth, from an ore body, vein or (coal) seam. Materials recovered could include gas, oil, base metals, precious metals, iron, uranium, coal, diamonds, limestone, oil shale, rock salt and potash.

**“Surface Extraction of Natural Resources”** means removal of material, usually soil, gravel, or sand for use at another location.



“**Taxidermy**” means the act of mounting or reproducing dead animals, fish, and/or birds for display.

“**Theater**” means a building or structure, or part thereof, devoted to the indoor exhibition of motion pictures and/or of live dramatic, speaking, musical, or other presentations.

“**Townhouse**” means single-family dwelling units constructed in a series or group of two (2) or more units separated from an adjoining unit by an approved party wall or walls, extending from the basement of either floor to the roof along the linking lot line.

“**Tree Nursery**” means a place where trees/plants are propagated and grown to usable size.

“**Use**” means the purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied or maintained.

“**Variance**” means the relaxation of the development requirements of this chapter to provide relief when the literal enforcement would deprive a property owner of the reasonable use of his or her real property.

“**Warehouse**” means a building or structure used for the storage of goods, wares and merchandise that will be processed, sold or otherwise disposed of off of the premises.

“**Wholesale Business**” means business conducted primarily for the purpose of selling wares or merchandise in wholesale lots to retail merchants for resale.

“**Yard**” means an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the same lot on which a building is situated.

“**Yard, Front**” means a yard extending across the full width of the lot between the front lot line of the lot and the nearest exterior wall of the building which is the nearest to the front lot line.

“**Yard, Rear**” means a yard extending across the full width of the lot between the most rear main building and the rear lot line.

“**Yard, Side**” means a yard on each side of a main building and extending from the front lot line to the rear lot line. The width of the required side yard shall be measured horizontally from the nearest point of a side lot line to the nearest part of the main building.

“**Zoning Change**” means the alteration or moving of a zone boundary; the reclassification of a lot, or parcel of land, from one zone to another; and the change of any of the regulations contained in this chapter.

“**Zoning Ordinance or Ordinances**” mean the zoning ordinance of the City of Kenai and Kenai Municipal Code Chapter 14.

**Section 2.** Moratorium: That the Kenai City Council hereby declares a moratorium prohibiting operation of Onsite Consumption Endorsements by conditional use permit or otherwise, until July 1, 2021. It is the intent of this moratorium that the City observe and study further the implementation of state regulations regulating onsite consumption, the effects of onsite consumption on community health and welfare, and the needs of Kenai residents, business owners and visitors. It is further intended that prior to the expiration of this moratorium that the Kenai City Council take further action either prohibiting or otherwise regulating onsite consumption or extending this moratorium.

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this \* day of \*, 2019.

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

ATTEST:

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

Introduced: May 15, 2019  
Public Hearing: June 5, 2019  
Enacted: June 19, 2019  
Effective: July 19, 2019



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Telephone: (907) 283-7535 | Fax: (907) 283-3014  
www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Council Members Glenese Pettey and Jim Glendingen  
**DATE:** June 7, 2019  
**SUBJECT:** **Ordinance No. 3068 – 2019 (Substitute)**

---

Ordinance 3068-2019 (Substitute) imposes a moratorium until July 1, 2021 on the local licensing of retail marijuana establishments allowing for onsite consumption of marijuana and marijuana products. This is similar to Ordinance 2868-2015 enacted by Council in January 2016, which imposed a moratorium for one year on the consumption of marijuana and marijuana products in retail marijuana establishments and clubs. At that time there was not a regulatory scheme for onsite consumption as there is now. The current regulations allowing for onsite consumption are new this year and there are not any operators operating in the state yet. Prohibiting the activity for two years will allow the City to further evaluate whether it is activity that can be regulated safely for consumers and the community, whether there is a need for the activity by business, residents and visitors, and whether public safety concerns can be addressed. It is intended that prior to the expiration of this moratorium, the Kenai City Council will be ready to move forward with either regulations addressing onsite consumption, an ordinance prohibiting it, or an extension of the moratorium. This moratorium can only be repealed by Ordinance.

The Substitute Ordinance, similar to the initial Ordinance postponed on June 5, 2019, provides a definition for onsite consumption in the City's Code. Your consideration is appreciated.



**PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION  
COUNCIL MEETING OF: JUNE 19, 2019**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPARTMENT</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
PERS	PERS	VARIOUS	LIABILITY	93,368.40
INTEGRITY JANITORIAL	MAY SERVICE AT CITY HALL	NON-DEPARTMENTAL	REPAIR & MAINTENANCE	1,389.00
PRECIOUS JANITORIAL	MAY SERVICE AT LIBRARY	LIBRARY	REPAIR & MAINTENANCE	2,795.00
PRECIOUS JANITORIAL	MAY SERVICE AT TERMINAL	AIRPORT	REPAIR & MAINTENANCE	4,495.00
PRECIOUS JANITORIAL	MAY SERVICE AT POLICE	POLICE	REPAIR & MAINTENANCE	978.00
PRECIOUS JANITORIAL	MAY SERVICE AT VISITOR CENTER	VISITOR CENTER	REPAIR & MAINTENANCE	928.00
HOMER ELECTRIC	ELECTRICITY USAGE	VARIOUS	UTILITIES	115,181.80

**INVESTMENTS**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>MATURITY DATE</b>	<b>AMOUNT</b>	<b>Effect. Int.</b>
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## FISCAL YEAR 2020

PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL

COUNCIL MEETING OF: JUNE 19, 2019

<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>DEPT.</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
CASELLE	FY20 SOFTWARE SUPPORT	FINANCE	SOFTWARE	25,228.00
SADLER PROPERTY MANAGEMENT	CONTRACTOR'S FEE 7/1/19-10/1/19	VINTAGE POINTE	PROF. SERVICES	15,315.00
KENAI PENINSULA BOROUGH	FY20 SLUDGE DISPOSAL	WWTP	PROF. SERVICES	35,000.00
NALCO	FY20 POLYMER	WATER	OPERATING SUPPLIES	45,000.00
CROWLEY FUEL	FY20 DIESEL	AIRPORT	OPERATING SUPPLIES	52,000.00
GUARDIAN SECURITY	FY20 SECURITY SERVICES	AIRPORT	REPAIR & MAINTENCE	60,000.00



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant – Airport Manager  
**DATE:** June 7, 2019  
**SUBJECT:** **Kenai Airport FY20 Purchase Orders Over \$15,000**

---

The purpose of this memo is to define the fiscal year 2020 purchase orders for the Airport:

- |          |   |                                    |
|----------|---|------------------------------------|
| \$52,000 | Crowley Fuel                                      | contract term 7/01/2018-06/30/2021 |
|          | • Equipment, ARFF vehicle, and generator fuel     |                                    |
| \$60,000 | Guardian Security                                 | contract term 3//2019-2/28/2020    |
|          | • Security services 5 hours a day – 7 days a week |                                    |

Please contact me if you have any questions.

Thank you for your consideration.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THRU:** Paul Ostrander, City Manager  
**FROM:** Terry Eubank, Finance Director  
**DATE:** June 11, 2019  
**SUBJECT:** **Caselle Inc. Purchase Order in Excess of \$15,000**

---

The purpose of the memo is to recommend approval of a purchase order to Caselle, Inc. in the amount of \$25,228. Caselle, Inc. is the parent company of the City's accounting software provider and is the only vendor able to perform maintenance and support for this product. This annual amount entitles the City to unlimited product updates and technical support. It is a contract vital to operating and maintaining the City's financial records and your support is respectfully requested.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Kathy Romain, Senior Center Director  
**DATE:** June 10, 2019  
**SUBJECT:** Purchase Order to Sadler Property Management

---

This MEMO is to request approval of the purchase order to Sadler Property Management (Contractor) for July, August and September of 2019. The Contract for the Property Management for Vintage Pointe Manor expires on October 1, 2019. This purchase order will cover the remaining months of the contract.

Thank you for your consideration.







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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Scott Curtin, Public Works Director  
**DATE:** June 12, 2019  
**SUBJECT:** Purchase Orders over \$15K

---

The purpose of this memo is to request approval for several purchase orders over \$15K for FY20.

Account 010 465 2022 Water Department Operating  
Purchase Order to Nalco for \$45,000.00  
Nalco supplies a proprietary polymer which aids in the water treatment process

Account 010 467 4531 Waste Water Treatment Plant Professional Services  
Purchase Order to Kenai Peninsula Borough for \$35,000.00  
The WWTP hauls sludge to the KPB Landfill. This PO will cover those costs / fees.

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

Council's approval is respectfully requested.





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



## **MEMORANDUM**

TO: Mayor and City Council Members  
FROM: Jamie Heinz, City Clerk  
DATE: June 7, 2019  
RE: **Retail Marijuana Store License Renewal**

---

The Alcoholic & Marijuana Control Office has sent notification that the following applicant has requested to renew their Retail Marijuana Store License:

Applicant: Cook Inlet Cannabis Company  
Owners: Ryan Tunseth  
D/B/A: East Rip

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

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

Your consideration is appreciated.

Attachments



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



## MEMORANDUM

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

FROM: Jamie Heinz, City Clerk

DATE: May 30, 2019

RE: Retail Marijuana Store License Renewal

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

Applicant: Cook Inlet Cannabis Co.  
Owners: Ryan Tunseth  
D/B/A: East Rip

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

Please review records maintained by your department (i.e. water and sewer billings, lease/property payment history, citations, etc.) by the above reference applicant and advise if obligations have been met. Mark the appropriate box below. If obligations have not been met, attach information to this memorandum indicating what obligations are outstanding and how the obligations can be cured.

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

1. Police Department DR initials

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

2. Finance TE initials

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

3. Legal SA initials

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

4. Lands Management WEA initials

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

5. Planning and Zoning EA initials

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

Returned to Clerk's office: 6/7/19



May 23, 2019

**City of Kenai**

Attn: Jamie Heinz

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

**Kenai Peninsula Borough**

Attn: Borough Clerk

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

<b>License Number:</b>	13382
<b>License Type:</b>	Retail Marijuana Store
<b>Licensee:</b>	Cook Inlet Cannabis Co.
<b>Doing Business As:</b>	EAST RIP
<b>Physical Address:</b>	10767 KENAI SPUR HWY SUITE D KENAI, AK 99611
<b>Designated Licensee:</b>	Ryan Tunseth
<b>Phone Number:</b>	907-398-1233
<b>Email Address:</b>	bruce483@hotmail.com

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Erika McConnell".

Erika McConnell  
Director



Alaska Marijuana Control Board

**Form MJ-20: Renewal Application Certifications**

**What is this form?**

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

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

**Section 1 – Establishment Information**

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

Licensee:	Cook Inlet Cannabis Co.	License Number:	13382		
License Type:	Retail Marijuana Store				
Doing Business As:	East Rip				
Premises Address:	10767 Kenai Spur Hwy, Suite D				
City:	Kenai	State:	Alaska	ZIP:	99611

**Section 2 – Individual Information**

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

Name:	Ryan Tunseth
Title:	Director, President, Secretary, Shareholder, Treasurer

**Section 3 – Violations & Charges**

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

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

Initials

--

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

--

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

--

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

Initials

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

--

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# Form MJ-20: Renewal Application Certifications

## Section 4 – Certifications

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

Initials

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



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



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



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



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



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



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



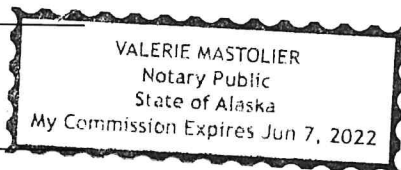
As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide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

*Ryan Tunseth*

Signature of licensee

Ryan Tunseth

Printed name of licensee



*Valerie Mastolier*

Notary Public in and for the State of Alaska

My commission expires:

*4/7/22*

Subscribed and sworn to before me this 10 day of May, 2019.

# Alcohol & Marijuana Control Office

**License Number:** 13382

**License Status:** Active-Operating

**License Type:** Retail Marijuana Store

**Doing Business As:** EAST RIP

**Business License Number:** 1054904

**Designated Licensee:** Ryan Tunseth

**Email Address:** bruce483@hotmail.com

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

**Community Council:**

**Latitude, Longitude:** 60.332200, -151.143100

**Physical Address:** 10767 KENAI SPUR HWY  
SUITE D  
KENAI, AK 99611  
UNITED STATES

## Licensee #1

**Type:** Entity

**Alaska Entity Number:** 10059983

**Alaska Entity Name:** Cook Inlet Cannabis Co.

**Phone Number:** 907-398-1233

**Email Address:** bruce483@hotmail.com

**Mailing Address:** PO Box 1922  
Kenai, AK 99611  
UNITED STATES

## Entity Official #1

**Type:** Individual

**Name:** Ryan Tunseth

**SSN:** [REDACTED]

**Date of Birth:** [REDACTED]

**Phone Number:** 907-398-1233

**Email Address:** bruce483@hotmail.com

**Mailing Address:** PO Box 1922  
Kenai, AK 99611  
UNITED STATES

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





## Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

May 28, 2019

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

City of Kenai  
Kenai City Hall

RE: Renewal Application for Retail Marijuana Store

Business Name : East Rip  
License Location : Kenai/10767 Kenai Spur Hwy, Suite D  
License No. : 13382

Dear Ms. Heinz,

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

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

Sincerely,

Johni Blankenship, MMC  
Borough Clerk

JB/TS

Encl.

cc: [bruce483@hotmail.com](mailto:bruce483@hotmail.com)



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**MEMORANDUM**

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** June 14, 2019  
**SUBJECT:** **Action/Approval – Special Use Permit to Alaska Air Fuel, Inc.**

Alaska Air Fuel, Inc. is requesting renewal of a Special Use Permit effective July 1, 2019 through June 30, 2020.

The Permit is for aircraft loading and parking on approximately 15,000 square of the apron.

The rate is based on the table below passed by City Council at the May 18, 2016 Council meeting.

<b>Apron Rate Increases to Arrive at Market in 6 years</b>		
Apron Lease Rate FY15 \$1.80s.f. x .08		\$ 0.144
FY2016		\$ 0.357
FY2017		\$ 0.528
FY2018		\$ 0.699
FY2019		\$ 0.870
FY2020		\$ 1.041
FY2021		\$ 1.210

Alaska Air Fuel, Inc. is current on all fees owed and we have a current Certificate of Insurance.

Airport Commission reviewed the request at the June 13, 2019 Commission meeting and recommends Council approval.

Thank you for your consideration.

Attachment



## SPECIAL USE PERMIT – 2019

The CITY OF KENAI (City) grants to ALASKA AIR FUEL, INC. (Permittee), whose address is P.O. Box 360, Palmer, AK 99645, a Special Use Permit to conduct aeronautical and/or aviation-related activities at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. **Premises.** Permittee shall have the non-exclusive right to use 15,000 square feet as described in the attached Exhibit A for the uses identified in this Permit.

2. **Term.** The term of this Permit shall be for 1 year commencing on July 1, 2019 and ending on June 30, 2020. Regardless of the date of signature, this Permit shall be effective as of July 1, 2019.

3. **Permit Fees.** Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:

A. **Permit:** Permittee shall pay a monthly fee of \$1,301.25 plus applicable sales tax.

B. **Proximity Card for Gate Access:** In addition to the general permit fee, Permittee shall pay a deposit of One Hundred Dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.

C. **Other Fees:** City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of 10% per annum, and penalty of 10% shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination)

4. **Use.** City authorizes Permittee's non-exclusive use of the Premises for the following purpose(s):

Aircraft Parking. NOTE: This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee's use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

**5. Airport Operations.** Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.

**6. Inspection.** The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

7. **Coordination with Airport Management.** Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

8. **Radio Transmitting Equipment.** Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

9. **Insurance.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

A. Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

B. Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
- iii. Permittee shall request a waiver of subrogation against City from

Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.

- iv. Provide the City with notification at least 30 days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by July 1, 2019. The effective date of the insurance shall be no later than July 1, 2019.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

**10. Assumption of Risk.** Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

**11. Indemnity, Defend, and Hold Harmless Agreement.** Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee's activities on or use of the Premises, Permittee's access to the Kenai Municipal Airport, and/or Permittee's exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

**12. Fuel Spill Prevention and Response Plan.** Areas of the Apron have been seal coated to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for any damage caused by and costs associated with any spill, the cleanup of any spill, or the

discharge of petroleum products or hazardous materials due to Permittee's use of the Apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within 50' of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

**13. Hazardous Substances and Materials.** Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

**14. No Discrimination.** Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly

discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

**15. Licenses and Permits.** Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

**16. Compliance with Law/Grant Assurances.** This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

**17. No Exclusivity.** The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

**18. Assignment.** The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

**19. No Joint Venture.** City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

**20. No Waiver.** Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

**21. Personalty.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or of its customers.

**22. Termination; Default.** This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety or due





ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

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

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by John Sliwinski, Vice President, Alaska Air Fuel, Inc., on behalf of the State of Alaska.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

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

SEAL:

APPROVED AS TO FORM:

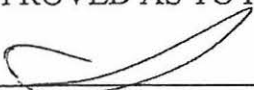
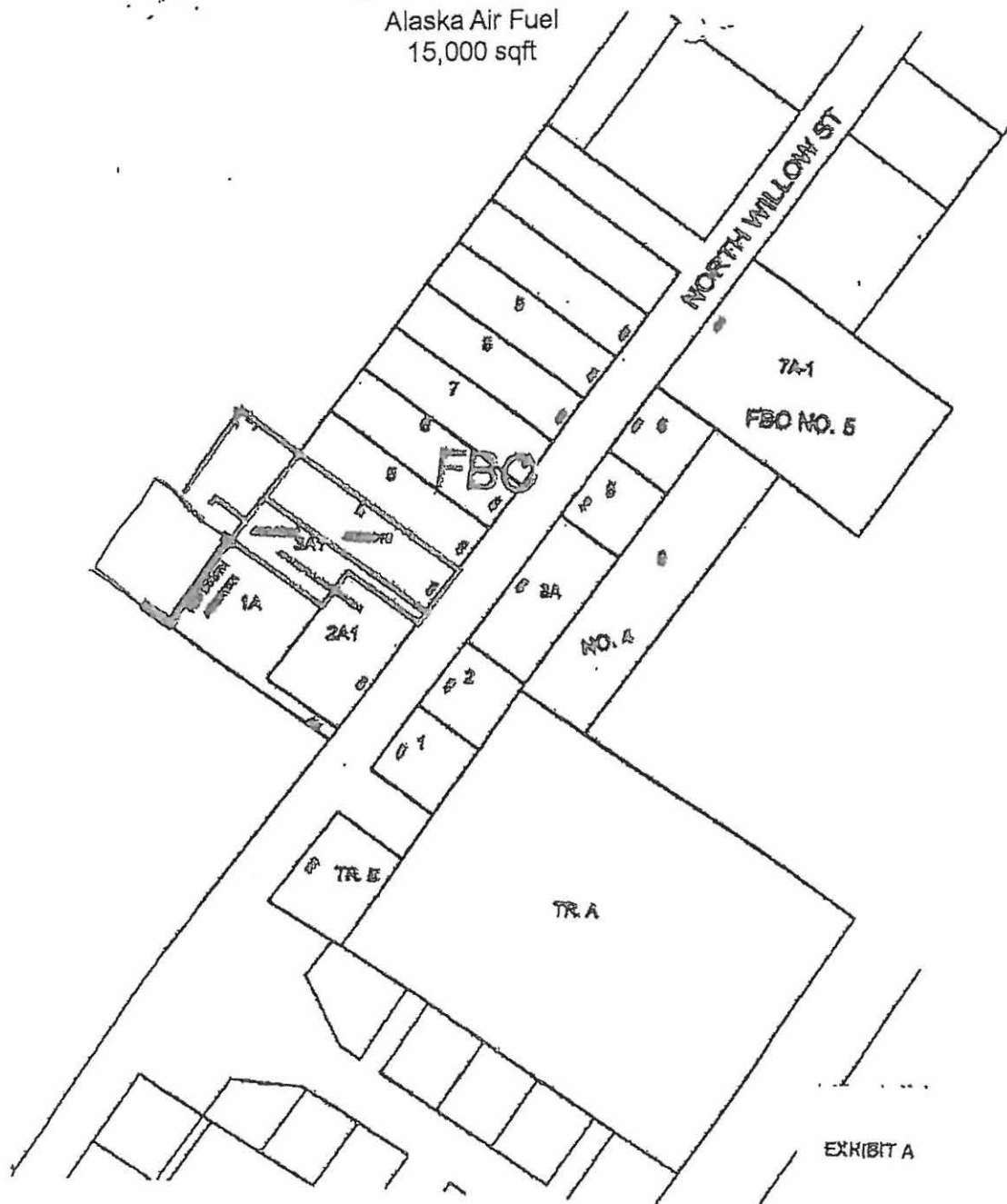
  
\_\_\_\_\_  
Scott M. Bloom, City Attorney

Exhibit A





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

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** June 14, 2019  
**SUBJECT:** Action/Approval – Special Use Permit to Crowley Fuels LLC

Crowley Fuels LLC is requesting renewal of a Special Use Permit effective July 1, 2019 through June 30, 2020.

The Permit is for aircraft loading and parking on approximately 35,000 square feet for aviation fueling on apron fueling area.

The rate is based on the table below passed by City Council at the May 18, 2016 Council meeting.

<b>Apron Rate Increases to Arrive at Market in 6 years</b>		
Apron Lease Rate FY15 \$1.80s.f. x .08		\$ 0.144
FY2016		\$ 0.357
FY2017		\$ 0.528
FY2018		\$ 0.699
FY2019		\$ 0.870
FY2020		\$ 1.041
FY2021		\$ 1.210

Crowley Fuels LLC is current on all fees owed and we have a current Certificate of Insurance.

Airport Commission reviewed the request at the June 13, 2019 Commission meeting and recommends Council approval.

Thank you for your consideration.

Attachment



## SPECIAL USE PERMIT – 2019

The CITY OF KENAI (City) grants to CROWLEY FUELS LLC (Permittee), whose address is 201 Arctic Slope Ave., Anchorage, AK 99518, a Special Use Permit for the fueling area on the apron at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. **Premises.** Permittee shall have the non-exclusive right to use 35,000 square feet as described in the attached Exhibit A for the uses identified in this Permit.
2. **Term.** The term of this Permit shall be for 1 year commencing on July 1, 2019 and ending on June 30, 2020. Regardless of the date of signature, this Permit shall be effective as of July 1, 2019.
3. **Permit Fees.** Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:
  - A. **Permit:** Permittee shall pay a monthly fee of \$3,036.25 plus applicable sales tax.
  - B. **Proximity Card for Gate Access:** In addition to the general permit fee, Permittee shall pay a deposit of One Hundred Dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.
  - C. **Other Fees:** City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of 10% per annum, and penalty of 10% shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination)

4. **Use.** City authorizes Permittee's non-exclusive use of the Premises for the following purpose(s):

Aviation Fueling on Apron Fueling Area. NOTE: This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee's use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

**5. Airport Operations.** Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.

**6. Inspection.** The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

7. **Coordination with Airport Management.** Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

8. **Radio Transmitting Equipment.** Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

9. **Insurance.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

A. Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

B. Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.

- iii. Permittee shall request a waiver of subrogation against City from Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
- iv. Provide the City with notification at least thirty (30) days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by July 1, 2019. The effective date of the insurance shall be no later than July 1, 2019.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

**10. Assumption of Risk.** Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

**11. Indemnity, Defend, and Hold Harmless Agreement.** Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee's activities on or use of the Premises, Permittee's access to the Kenai Municipal Airport, and/or Permittee's exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

**12. Fuel Spill Prevention and Response Plan.** Areas of the Apron have been seal coated to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for



any damage caused by and costs associated with any spill, the cleanup of any spill, or the discharge of petroleum products or hazardous materials due to Permittee's use of the Apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within 50' of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

**13. Hazardous Substances and Materials.** Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

**14. No Discrimination.** Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly

discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

**15. Licenses and Permits.** Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

**16. Compliance with Law/Grant Assurances.** This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

**17. No Exclusivity.** The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

**18. Assignment.** The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

**19. No Joint Venture.** City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

**20. No Waiver.** Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

**21. Personalty.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or of its customers.

**22. Termination; Default.** This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety or due



ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

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

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by R. Desmond Mayo, Vice President, Crowley Fuels LLC, on behalf of the State of Alaska.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

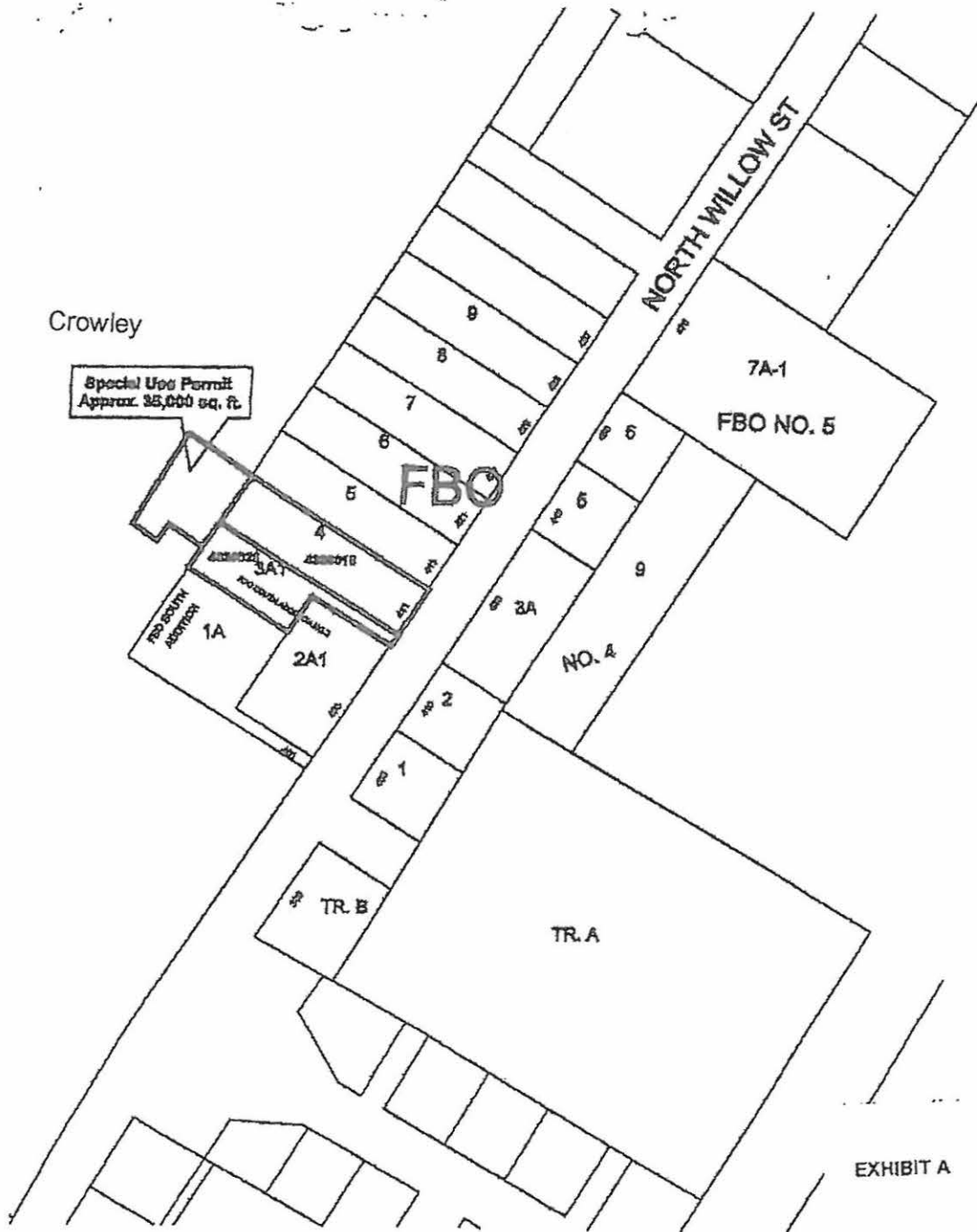
SEAL:

APPROVED AS TO FORM:



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

EXHIBIT A





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

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** June 14, 2019  
**SUBJECT:** **Action/Approval – Special Use Permit to Empire Airlines, Inc.**

Empire Airlines, Inc. is requesting renewal of a Special Use Permit effective July 1, 2019 through June 30, 2020.

The Permit is for aircraft parking on approximately 11,250 square feet of the apron.

The rate is based on the table below passed by City Council at the May 18, 2016 Council meeting.

<b>Apron Rate Increases to Arrive at Market in 6 years</b>	
Apron Lease Rate FY15 \$1.80s.f. x .08	\$ 0.144
FY2016	\$ 0.357
FY2017	\$ 0.528
FY2018	\$ 0.699
FY2019	\$ 0.870
FY2020	\$ 1.041
FY2021	\$ 1.210

Empire Airlines, Inc. is current on all fees owed and we have a current Certificate of Insurance.

Airport Commission reviewed the request at the June 13, 2019 Commission meeting and recommends Council approval.

Thank you for your consideration.

Attachment



## SPECIAL USE PERMIT- 2019

The CITY OF KENAI (City) grants to EMPIRE AIRLINES, INC. (Permittee), whose address is 11559 N. Atlas Road, Hayden, ID 83835, a Special Use Permit for the purpose of aircraft parking at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. **Premises.** Permittee shall have the non-exclusive right to use 11,250 square feet as described in the attached Exhibit A for the uses identified in this Permit.
2. **Term.** The term of this Permit shall be for 1 year commencing on July 1, 2019 and ending on June 30, 2020. Regardless of the date of signature, this Permit shall be effective as of July 1, 2019.
3. **Permit Fees.** Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:
  - A. **Permit:** Permittee shall pay a monthly fee of \$975.93 plus applicable sales tax.
  - B. **Proximity Card for Gate Access:** In addition to the general permit fee, Permittee shall pay a deposit of one hundred dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.
  - C. **Other Fees:** City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of ten percent (10%) per annum, and penalty of ten percent (10%) shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination)

4. **Use.** City authorizes Permittee's non-exclusive use of the Premises for the following purpose(s):

Aircraft Parking. NOTE: This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee's use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

5. **Airport Operations.** Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.



**6. Inspection.** The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

**7. Coordination with Airport Management.** Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

**8. Radio Transmitting Equipment.** Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

**9. Insurance.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

**A.** Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

**B.** Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

**C.** Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

**D.** All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements,

or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.

- iii. Permittee shall request a waiver of subrogation against City from Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
- iv. Provide the City with notification at least thirty (30) days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by July 1, 2019. The effective date of the insurance shall be no later than July 1, 2019.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

**10. Assumption of Risk.** Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

**11. Indemnity, Defend, and Hold Harmless Agreement.** Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee's activities on or use of the Premises, Permittee's access to the Kenai Municipal Airport, and/or Permittee's exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

**12. Fuel Spill Prevention and Response Plan.** Areas of the Apron have been seal coated to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for any damage caused by and costs associated with any spill, the cleanup of any spill, or the discharge of petroleum products or hazardous materials due to Permittee's use of the Apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within fifty feet (50') of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

**13. Hazardous Substances and Materials.** Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

**14. No Discrimination.** Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

**15. Licenses and Permits.** Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

**16. Compliance with Law/Grant Assurances.** This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

**17. No Exclusivity.** The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

**18. Assignment.** The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

**19. No Joint Venture.** City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

**20. No Waiver.** Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

**21. Personalty.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25.00 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or of its customers.

**22. Termination; Default.** This Permit may be terminated by either party hereto by giving thirty (30) days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than thirty (30) days, to protect public health and safety or due to a failure of Permittee to comply with condition or term of this Permit which failure remains uncured after notice by City to Permittee providing Permittee with a reasonable time period under the circumstances to correct the violation or breach.

**23. Landing Fees; Fee Schedule.** Timely payment of landing fees and other required Airport fees is a condition of this Permit and, as such, failure to timely pay landing and other airport fees is grounds for termination. Without limiting the foregoing, Permittee shall pay landing fees for aircraft landings as set out in the City's comprehensive schedule of rates, charges and fees. Permittee shall make payment within thirty (30) days following the end of each month and without demand or invoicing from City. Permittee shall also provide Airport Administration with monthly certified gross take-off weight reports within ten (10) days following the end of each month for landings for the preceding month. Airport landing fees shall be paid at the Airport Administration Building, 305 North Willow Street, Suite 200, Kenai, AK 99611.

**24. Impoundment.** At the discretion of the Airport Manager, City may impound any aircraft parked on the Premises after termination of this Permit. Impoundment may be accomplished by affixing a seal to the door of the aircraft or the moving of the aircraft for impoundment purposes. Inconvenience or damage that may result from such movement will be at the risk of Permittee. An impoundment fee plus a towage fee shall be charged on each aircraft impounded. In addition, a daily storage fee shall be charged for each day the aircraft remains impounded. Any impounded aircraft that is not redeemed within ninety (90) days after impoundment shall be considered abandoned and shall be subject to sale at public auction. Notice of any auction shall be published. Publication shall be in a newspaper of general circulation in that area for at least once during each of three (3) consecutive weeks not more than thirty (30) days nor less than seven (7) days before the time of the auction.

**25. Definitions.** As used in this Permit, "Permittee" means Empire Airlines, Inc. and where the context reasonably indicates, its officers, agents, and employees. "Airport" means the Kenai Municipal Airport.



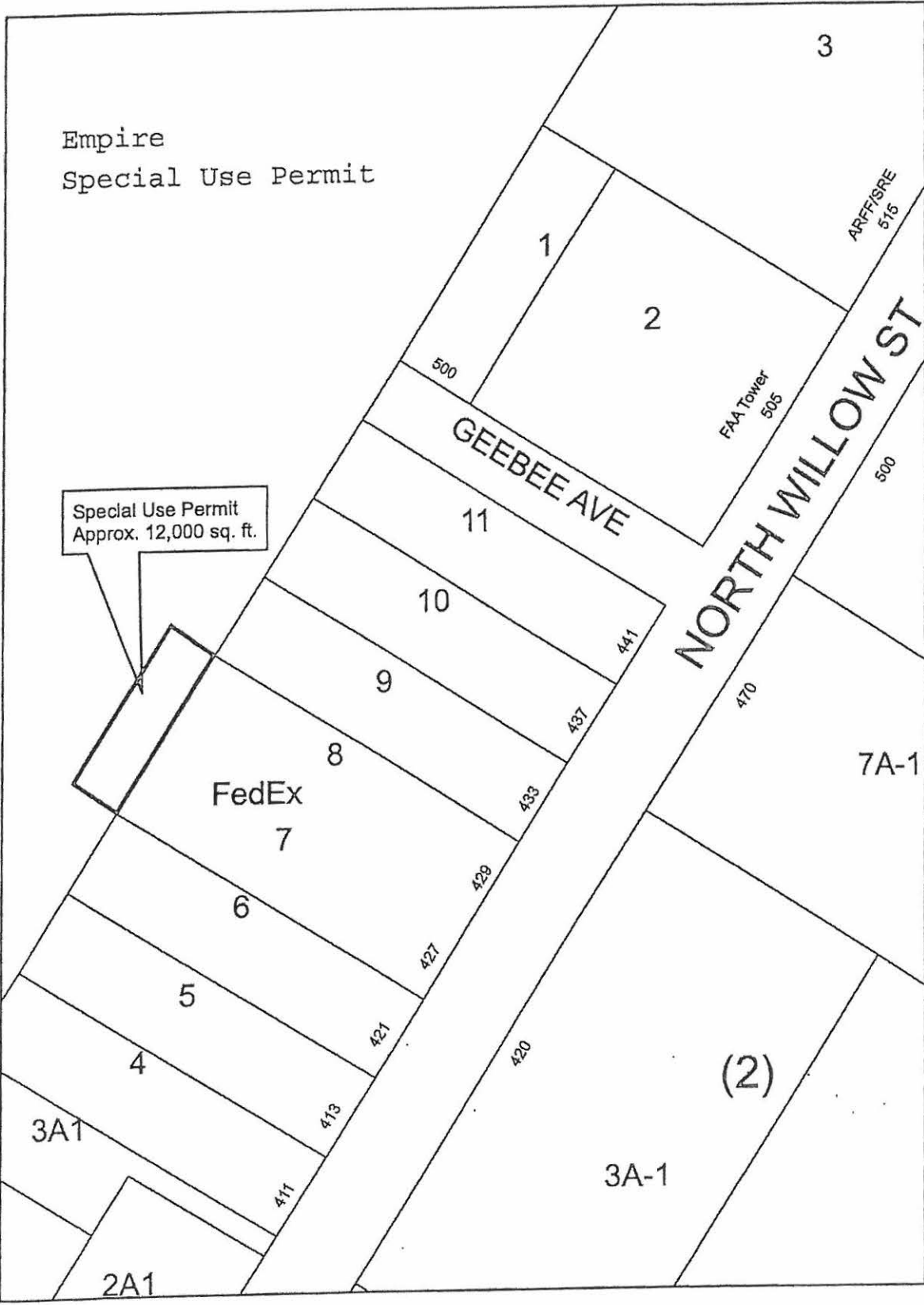


EXHIBIT A



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

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

**MEMORANDUM**

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** June 14, 2019  
**SUBJECT:** **Action/Approval – Special Use Permit to Everts Air Fuel, Inc.**

Everts Air Fuel, Inc. is requesting renewal of a Special Use Permit effective July 1, 2019 through June 30, 2020.

The Permit is for aircraft loading and parking on approximately 30,000 square feet on the apron.

The rate is based on the table below passed by City Council at the May 18, 2016 Council meeting.

<b>Apron Rate Increases to Arrive at Market in 6 years</b>		
Apron Lease Rate FY15 \$1.80s.f. x .08		\$ 0.144
FY2016		\$ 0.357
FY2017		\$ 0.528
FY2018		\$ 0.699
FY2019		\$ 0.870
FY2020		\$ 1.041
FY2021		\$ 1.210

Everts Air Fuel, Inc. is current on all fees owed and we have a current Certificate of Insurance.

Airport Commission reviewed the request at the June 13, 2019 Commission meeting and recommends Council approval.

Thank you for your consideration.

Attachment





## SPECIAL USE PERMIT – 2019

The CITY OF KENAI (City) grants to EVERTS AIR FUEL, INC. (Permittee), whose address is P.O. Box 60908, Fairbanks, AK 99706, a Special Use Permit to conduct aeronautical and/or aviation-related activities at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. **Premises.** Permittee shall have the non-exclusive right to use 30,000 square feet as described in the attached Exhibit A for the uses identified in this Permit.
2. **Term.** The term of this Permit shall be for 1 year commencing on July 1, 2019 and ending on June 30, 2020. Regardless of the date of signature, this Permit shall be effective as of July 1, 2019.
3. **Permit Fees.** Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:
  - A. **Permit:** Permittee shall pay a monthly fee of \$2,602.50 plus applicable sales tax.
  - B. **Proximity Card for Gate Access:** In addition to the general permit fee, Permittee shall pay a deposit of One Hundred Dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.
  - C. **Other Fees:** City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of 10% per annum, and penalty of 10% shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination)

4. **Use.** City authorizes Permittee's non-exclusive use of the Premises for the following purpose(s):

Aircraft Loading and Parking. NOTE: This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee's use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

**5. Airport Operations.** Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.

**6. Inspection.** The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

7. **Coordination with Airport Management.** Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

8. **Radio Transmitting Equipment.** Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

9. **Insurance.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

A. Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

B. Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
- iii. Permittee shall request a waiver of subrogation against City from

Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.

- iv. Provide the City with notification at least 30 days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by July 1, 2019. The effective date of the insurance shall be no later than July 1, 2019.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

**10. Assumption of Risk.** Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

**11. Indemnity, Defend, and Hold Harmless Agreement.** Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee's activities on or use of the Premises, Permittee's access to the Kenai Municipal Airport, and/or Permittee's exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

**12. Fuel Spill Prevention and Response Plan.** Areas of the Apron have been seal coated to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for any damage caused by and costs associated with any spill, the cleanup of any spill, or the

discharge of petroleum products or hazardous materials due to Permittee's use of the Apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within 50' of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

**13. Hazardous Substances and Materials.** Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

**14. No Discrimination.** Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly

discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

**15. Licenses and Permits.** Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

**16. Compliance with Law/Grant Assurances.** This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

**17. No Exclusivity.** The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

**18. Assignment.** The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

**19. No Joint Venture.** City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

**20. No Waiver.** Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

**21. Personalty.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or of its customers.

**22. Termination; Default.** This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety or due



ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

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

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by Dave Miller, President, Everts Air Fuel, Inc., on behalf of the State of Alaska.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

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

SEAL:

APPROVED AS TO FORM:


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



EXHIBIT A

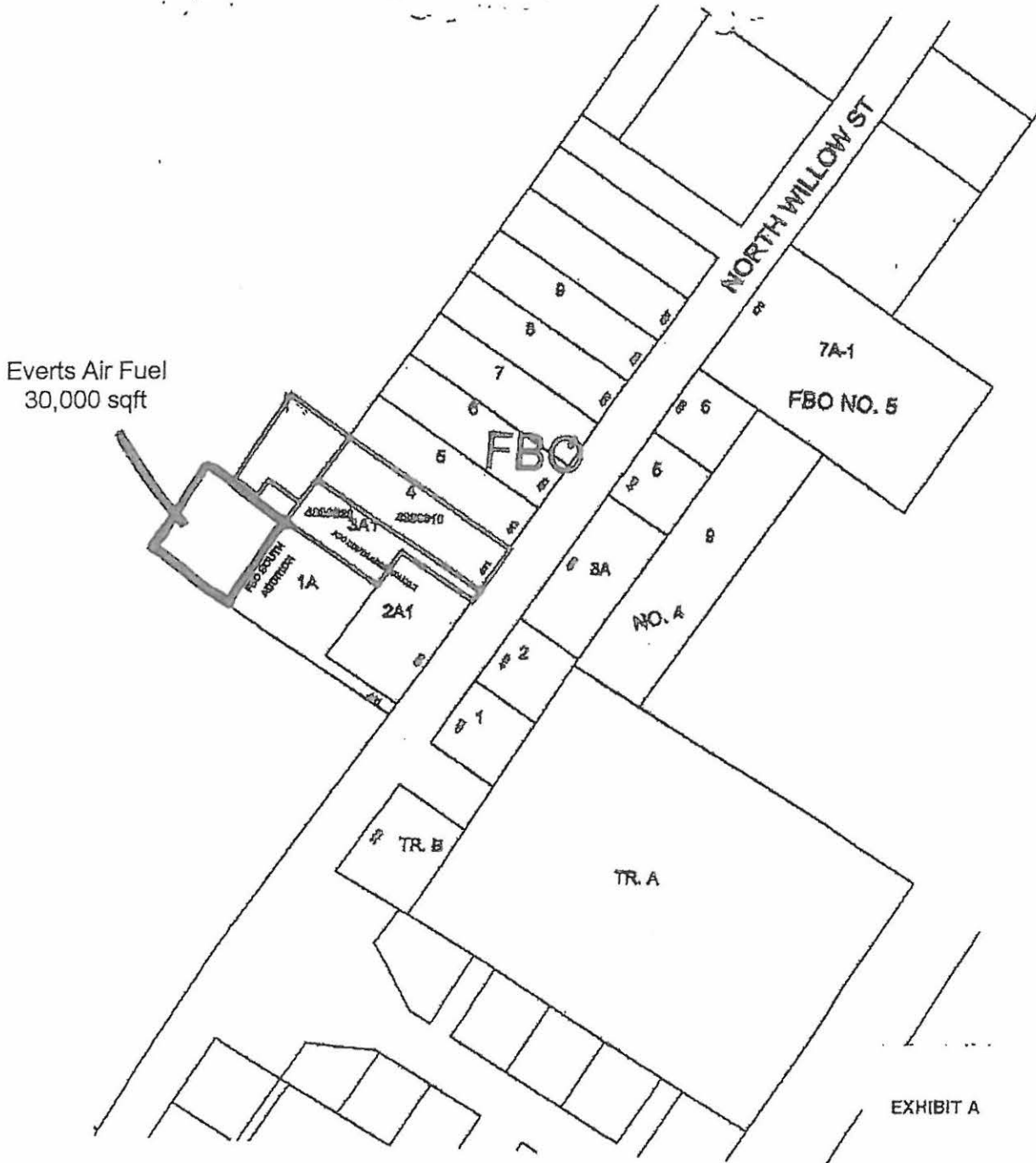


EXHIBIT A



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

210 Fidalgo Ave, Kenai, Alaska 99611-7794  
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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary L. Bondurant, Airport Manager  
**DATE:** June 14, 2019  
**SUBJECT:** **Action/Approval – Special Use Permit to UPSCO**

UPSCO United Parcel Service Co., Inc. is requesting renewal of a Special Use Permit effective July 1, 2019 through June 30, 2020.

The Permit is for aircraft loading and parking on approximately 4,000 square feet on the apron.

The rate is based on the table below passed by City Council at the May 18, 2016 Council meeting.

<b>Apron Rate Increases to Arrive at Market in 6 years</b>	
Apron Lease Rate FY15 \$1.80s.f. x .08	\$ 0.144
FY2016	\$ 0.357
FY2017	\$ 0.528
FY2018	\$ 0.699
FY2019	\$ 0.870
FY2020	\$ 1.041
FY2021	\$ 1.210

UPSCO United Parcel Service Co., Inc. is current on all fees owed and we have a current Certificate of Insurance.

Airport Commission reviewed the request at the June 13, 2019 Commission meeting and recommends Council approval.

Thank you for your consideration.

Attachment



## SPECIAL USE PERMIT 2019

The CITY OF KENAI (City) grants to UPSCO United Parcel Service Co., Inc. (Permittee), whose address is 6200 Lockheed Ave., Anchorage, AK 99502, a Special Use Permit to conduct aeronautical and/or aviation-related activities at the Kenai Municipal Airport subject to the requirements and the conditions set forth below.

1. **Premises.** Permittee shall have the non-exclusive right to use 4,000 square feet as described in the attached Exhibit A for the uses identified in this Permit.
2. **Term.** The term of this Permit shall be for 1 year commencing on July 1, 2019 and ending on June 30, 2020. Regardless of the date of signature, this Permit shall be effective as of July 1, 2019.
3. **Permit Fees.** Permittee shall pay the following fees for the privileges extended to Permittee under this Permit:
  - A. **Permit:** Permittee shall pay a monthly fee of \$347.00 plus applicable sales tax.
  - B. **Proximity Card for Gate Access:** In addition to the general permit fee, Permittee shall pay a deposit of one hundred dollars (\$100.00) for the use of each proximity card issued to Permittee by City to allow for gate access to the Airport to conduct the uses permitted hereunder. City shall refund this deposit to Permittee when the card is returned to City. City may exercise a right of offset to apply the deposit to any outstanding balance due to City from Permittee at the termination of this Permit.
  - C. **Other Fees:** City may assess additional fees for aviation or aviation support activities and uses not defined in this Permit. If a fee has not been established for those activities or services, a fee will be established by the Airport Manager.

Payment shall be directed to City of Kenai, ATTN: Finance Department, 210 Fidalgo Avenue, Kenai, AK 99611 and a courtesy notice of payment provided to Airport Administration at 305 North Willow Street, Suite 200, Kenai, AK 99611. All permit fees are payable in advance of each month unless otherwise provided. In the event of delinquency, interest at the rate of ten percent (10%) per annum, and penalty of ten percent (10%) shall also be due (KMC 1.75.010). Interest shall accrue from the date due until the date paid in full. Failure to timely make payments is grounds for termination of this Permit. (See ¶ 22, Termination)

4. **Use.** City authorizes Permittee's non-exclusive use of the Premises for the following purpose(s):

Aircraft Loading and Parking. NOTE: This permit does not guarantee the exclusive use of the area identified in Exhibit A. City reserves the right to re-assign Permittee, upon reasonable notice, to other areas as airport needs may require.

Permittee shall have the right of ingress and egress to the Airport using only designated gate access locations (which may require a proximity card) for the use of the Premises. This Permit, and any access rights allowed hereunder, are for Permittee's use only and may not be transferred or assigned.

Use of the Premises by Permittee is subject to the reasonable administrative actions of the City of Kenai for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities and is further subject to the following conditions:

Permittee acknowledges that the use granted herein is subject to the Kenai Municipal Code and municipal regulations governing the Kenai Municipal Airport and as those laws and regulations may be amended from time to time.

Solicitation of donations or operation of a business or other commercial enterprise not contemplated by this Permit is prohibited without the written consent of City.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager or designated representative. The Airport Manager or designated representative reserves the right to designate reasonable areas where aircraft owners may perform services on their own aircraft.

**5. Airport Operations.** Permittee shall ensure that the Permittee, its employees, and guests, and anyone else acting by, on behalf of, or under the authority of Permittee on the Airport, that perform any repairs or activities authorized under this Permit act in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport and any premises on the Airport. Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify City of any condition, problem, malfunction, or other occurrence that threatens the safety of the Airport, the safety of persons using the Airport, the public health or the environment, or the safety or integrity of any premises on the Airport.

**6. Inspection.** The Federal Aviation Administration (FAA) and/or City shall have the right and authority to inspect, at any time for any purpose whatsoever, the Premises as well as any and all equipment used by the Permittee under this Permit.

7. **Coordination with Airport Management.** Permittee shall coordinate all activities on the Airport with Airport Management, or a designated representative, and shall abide by all reasonable decisions and directives of the Airport Management regarding general use of the Airport by Permittee.

8. **Radio Transmitting Equipment.** Permittee shall discontinue the use of any machine or device which interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

9. **Insurance.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, City is entitled to coverage to the extent of the higher limits.

A. Commercial General Liability insurance, including premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must include an endorsement under which the insurer extends coverage to Permittee's fuel handling activities. The policy must name the City as an additional insured.

B. Worker's compensation insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide worker's compensation insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.

C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses on the Airport. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
- iii. Permittee shall request a waiver of subrogation against City from

Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.

- iv. Provide the City with notification at least thirty (30) days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by July 1, 2019. The effective date of the insurance shall be no later than July 1, 2019.

City may increase the amount or revise the type of required insurance on written demand without requiring amendments to this Permit. City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, Permittee shall submit to City evidence of insurance coverage that meets the requirements of the City.

**10. Assumption of Risk.** Permittee assumes full control and sole responsibility as between Permittee and City for the activities of Permittee, its personnel, employees, and persons acting on behalf of or under the authority of the Permittee anywhere on the Airport. Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on and access to the Kenai Municipal Airport and its exercise of the privileges granted in this Permit.

**11. Indemnity, Defend, and Hold Harmless Agreement.** Permittee agrees to fully indemnify, defend, and hold harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Permittee in connection with or arising from or out of Permittee's activities on or use of the Premises, Permittee's access to the Kenai Municipal Airport, and/or Permittee's exercise of the privileges granted in this Permit. This shall be a continuing obligation and shall remain in effect after termination of this Permit.

**12. Fuel Spill Prevention and Response Plan.** Areas of the Apron have been seal coated to protect asphalt from adverse effects of petroleum product spills. The City requires that Permittee provide adequate absorbent materials and tools available on the Premises and at the airport in order to maintain a fuel spill and response capability. Permittee shall be liable for any damage caused by and costs associated with any spill, the cleanup of any spill, or the

discharge of petroleum products or hazardous materials due to Permittee's use of the Apron and/or use of the Airport.

Permittee shall provide to City an acceptable fuel spill prevention and response plan and will maintain fuel spill and response capability. Permittee further agrees to have a copy of the fuel spill prevention and response plan located in the Permittee's fuel dispensing equipment at all times. Permittee must comply with the Airport's Storm Water Pollution Prevention Plan as appropriate to Permittee's activities.

Permittee shall not store any personal property, solid waste, petroleum products, Hazardous Material as defined by 14 CFR § 171.8, hazardous waste (ignitable, corrosive, reactive, or toxic) or any hazardous substance on any portion of the Airport. Permittee is aware that there are significant penalties for improperly disposing of the Hazardous Materials and other waste and for submitting false information regarding Hazardous Materials, including the possibility of fine and imprisonment for knowing violations.

Permittee shall immediately remove the material in the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to the pavement or surface in or on any area of the Airport.

Permittee may not construct or install any above-ground or underground fuel storage tanks or dispensing systems at the Airport.

No person shall smoke on an aircraft-parking ramp, inside an aircraft hangar, or within fifty feet (50') of any aircraft fuel facility or fuel truck.

Permittee is subject to FAA Advisory Circular 150/5230-4 Aircraft Fuel Storage, Handling, and Dispensing on Airports, the National Fire Protection Associations' "Standard for Aircraft Fueling Servicing" in NFPA 407 (1996 version), and the current version of the International Fire Codes. All inspections of fuel facilities, by City or other regulating entities to which Permittee is subject, shall be conducted to assure compliance with the fire safety practices listed in these referenced documents.

**13. Hazardous Substances and Materials.** Permittee shall conform and be subject to the requirements of 14 CFR § 139.321 regarding the handling and storage of hazardous substances and materials.

**14. No Discrimination.** Permittee shall not discriminate against any person because of the person's race, creed, color national origin, sex, age, or handicap. Permittee recognizes the right of City to take any action necessary to enforce this requirement of the Permit. Permittee will furnish services provided under this Permit on a reasonable, and not unjustly

discriminatory, basis to all users of the Airport and shall charge reasonable, and not unjustly discriminatory, prices for each product or service provided at the Airport.

**15. Licenses and Permits.** Permittee shall obtain and maintain all required federal, state, and local licenses, certificates, and other documents required for its operations under the Permit. Permittee shall provide proof of compliance to City upon request by the City.

**16. Compliance with Law/Grant Assurances.** This Permit, and Permittee's activities conducted under this Permit, is subject to all executive orders, policies and operational guidelines and all applicable requirements of federal, state, and City statutes, ordinances, and regulations in effect during the term of this Permit. Further, Permittee shall comply with all applicable requirements imposed on the Airport by federal law to ensure that the Airport's eligibility for federal money or for participation in federal aviation programs is not jeopardized. This Permit is subordinate to the City's grant assurances and federal obligations.

**17. No Exclusivity.** The privileges granted under this Permit are not exclusive to Permittee. City has the right to grant to others any right or privilege on the Airport.

**18. Assignment.** The privileges granted under this Permit are personal to Permittee and may not be assigned by Permittee.

**19. No Joint Venture.** City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises or elsewhere at the Kenai Municipal Airport.

**20. No Waiver.** Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.

**21. Personalty.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit (or any renewal thereof). Personal property placed or used upon the Premises will be removed and/or impounded by the City, if not removed upon termination of this Permit and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges of \$25.00 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or of its customers.

**22. Termination; Default.** This Permit may be terminated by either party hereto by giving thirty (30) days advance written notice to the other party. City may terminate the Permit immediately, or upon notice shorter than thirty (30) days, to protect public health





ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by PAUL OSTRANDER, City Manager, of the City of Kenai, an Alaska municipal corporation, on behalf of the City.


\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by Robert Vey, the Extended Centers Manager, on behalf of UPSCO, United Parcel Service Co., Inc.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
Scott Bloom  
City Attorney



4,000 sqft  
UPS

Exhibit A



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

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

## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Elizabeth Appleby, City Planner

**DATE:** June 11, 2019

**SUBJECT:** **Action Approval for Weaver Brothers Alaska, Inc. – Special Use Permit for Truck and Vehicle Storage**

---

Weaver Brothers, Inc. has requested to use three adjacent City-owned parcels along Coral Street for storage of trucks and semi-trailers for one-year from June 20, 2019 to June 20, 2020. This would be similar to the use of two parcels under a five-year lease from the City by Weaver Brothers for truck storage and would allow for a temporary expansion of their business. Exhibit A shows the location of the three adjacent parcels requested for a special use permit and the two parcels currently under lease with the City.

The three adjacent parcels total 67,083 square feet of City property. The Coral Street Airport Zone of the City was appraised at a rate of \$0.50 per square foot. The permit fee would be \$2,683.32 for all three lots based on \$0.50 per square foot, 67,083 total square feet to be used, and an eight percent (8%) annual rate. If City Council approves, City Administration would execute the special use permit attached to this memorandum.

Thank you for your consideration.



## SPECIAL USE PERMIT

The **CITY OF KENAI** (City), for the consideration, and pursuant to the conditions set out below, hereby grants to **JAMES H. DOYLE, INDIVIDUALLY, D/B/A WEAVER BROTHERS, INC.** (PERMITTEE), whose address is P.O. Box 582, Kenai Alaska 99611, the non-exclusive right to use 67,083 square feet of area as described below:

T5N R11W SEC 5 SEWARD MERIDIAN KN 0860076 GUSTY SUB NO 4 LOT 1 BLK 3;  
and,

T5N R11W SEC 5 SEWARD MERIDIAN KN 0860076 GUSTY SUB NO 4 LOT 2 BLK 3;  
and,

T5N R11W SEC 5 SEWARD MERIDIAN KN 0860076 GUSTY SUB NO 4 LOT 3 BLK 3;

and as further shown in the attached Exhibit A.

1. **TERM.** This special use permit shall be for 12 months from June 20, 2019 to June 20, 2020.
2. **CANCELLATION.** Pursuant to requirements of the Federal Aviation Administration, the City reserves the right to cancel this special use permit on 90-days' notice, either delivered in person to the Permittee or by mail. Any or all personal property shall be removed at Permittee's expense upon cancellation or termination of this agreement.
3. **PERMIT FEES.** The Permittee shall be charged a permit fee of \$2,683.32 plus applicable sales tax.

The Permittee shall not use the parcels until the paying the City the permit fee.

Checks, bank drafts, or postal money orders shall be made payable to the City of Kenai and delivered to the City Hall, 210 Fidalgo Avenue, Kenai, Alaska 99611.

In addition to the permit fee specified above, the Permittee agrees to pay to the appropriate parties all levies, assessments, and charges as hereinafter provided:

- A. Sales tax nor enforced, or levied in the future, computed upon the permit fee payable in monthly installments whether said fee is paid on a monthly or yearly basis;
- B. All necessary licenses and permits; all lawful taxes and assessments which, during the term hereof may become a lien upon or which may be levied by the State, Borough, City, or by any other tax levying body, upon any taxable possessory right which Permittee may have in or to the Premises by reason of its use or occupancy or by reason of the terms of this Permit, provided however, that nothing herein contained shall prevent Permittee from contesting any increase in such tax or assessment through procedures provided by law.

- C. Interest at the rate of eight percent (8%) per annum and penalties of ten percent (10%) of any amount of money owed under this Special Use Permit which are not paid on or before the due date.
  - D. Costs and expenses incident to this Special Use Permit, including but not limited to recording costs.
4. **USE.** The use by the Permittee of the Premises is limited to the purpose of Truck and Trailer Storage. This use is subject to City, Borough, and State laws and regulations and the reasonable administrative actions of the City for the protection and maintenance of the Premises and of adjacent and contiguous lands or facilities. Use of the Premises is subject to the following conditions:
- A. Permittee shall use the Premises only for truck and trailer storage.
  - B. Trucks and trailers must be stored in a manner that will not limit sight lines or create other unsafe driving conditions on adjacent right-of-ways.
  - C. The premises shall be returned to its current condition prior to the end of the term of this Special Use Permit. This shall include the removal of any trash or debris.
  - D. Trucks and trailers must be stored in a manner that will not impact any City snow clearing or moving activities.
  - E. Trucks and trailers shall be stored such that there will not be oil or other hazardous fluids leaking onto the premises.
  - F. The premises shall not be used to store junked vehicles or other salvaged vehicle or trailer parts.
5. **INSURANCE.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, the City is entitled to coverage to the extent of the higher limits.
- A. Garage Liability or Commercial General Liability Insurance, including Premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must name the City as an additional insured.
  - B. Worker's Compensation Insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide Worker's Compensation Insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.
  - C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned

motor vehicles the Permittee uses for snow moving and storage activities to, from, or on the Premises. The policy must name the City as an additional insured.

D. All insurance required must meet the following additional requirements:

- i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
- ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
- iii. Permittee shall request a waiver of subrogation against City from Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
- iv. Provide the City with notification at least 30 days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
- v. Evidence of insurance coverage must be submitted to City by January 17, 2019. The effective date of the insurance shall be no later than January 17, 2019.
- vi. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. This insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.

6. **INDEMNITY, DEFEND, AND HOLD HARMLESS AGREEMENT.** The Permittee shall fully indemnify, hold harmless, and defend the City of Kenai, its officers, agents, employees, and volunteers at its own expense from and against any and all actions, damages, costs, liability, claims, losses, judgments, penalties, including reasonable Attorney's fees of or for liability for any wrongful or negligent acts, errors, or omissions of the Permittee, its officers, agents or employees, or any subcontractor under this Permit. The Permittee shall not be required to defend or indemnify the City for any claims of or liability for any wrongful or negligent act, error, or omission solely due to the independent negligence of the City. If there is a claim of or liability for the joint negligence of the Permittee and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be established upon final determination of the percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "Permittee" and "City" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, for each party. The term "independent negligence of the City" is negligence other than in the City's selection, administration, monitoring, or controlling of the Permittee.

7. **PERMITTEE'S OBLIGATION TO PREVENT AND REMOVE LIENS.** Permittee will not permit any liens, including mechanic's, laborer's, construction, supplier's, mining, or any other liens obtainable or available under existing law, to stand against the Premises or improvements on the Premises for any labor or material furnished to Permittee or to any related entity or claimed entity. The Permittee shall have the right to provide a bond as contemplated by State of Alaska law and contest the validity or amount of any such lien or claimed lien. Upon the final determination of the lien or claim for lien, the Permittee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Permittee's own expense.
8. **PERSONALTY.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit. Personal property placed or used upon the Premises and not removed upon termination of this Permit will be removed and/or impounded by the City. Property removed or impounded by the City may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus a storage fee of \$25 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or its customers.
9. **FORBEARANCE.** Failure to insist upon a strict compliance with the terms, conditions, and/or any requirement herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.
10. **TERMINATION, DEFAULT.** This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. The City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety. The City may also terminate this Permit immediately, or upon notice shorter than 30 days, due to a failure of Permittee to comply with conditions and terms of this Permit, which failure remains uncured after notice by City to Permittee providing Permittee with a reasonable time period to correct the violation or breach.
11. **NO DISCRIMINATION.** Permittee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or State law. Permittee recognizes the right of the City to take any action necessary to enforce this requirement.
12. **ASSIGNMENT.** Permittee may not assign, by grant or implication, the whole any part of this Permit, the Premises, or any improvement on the Premises without the written consent of the City. Unless the City specifically releases the Permittee in writing, the City may hold the Permittee responsible for performing any obligation under this permit which an assignee fails to perform.
13. **ASSUMPTION OF RISK.** Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on the Premises and its exercise of the privileges granted in this Permit.



- 14. **NO JOINT VENTURE.** The City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises.
- 15. **SURVIVAL.** The obligations and duties of Permittee under paragraphs 5 and 6 of this Permit shall survive the cancellation, termination, or expiration of this Permit.
- 16. **AUTHORITY.** By signing this Permit, Permittee represents that is has read this agreements and consents to be bound by the terms and conditions herein and that the person signing this Permit is duly authorized by the business to bind the business hereunder.

**WEAVER BROTHERS, INC.**

**CITY OF KENAI**

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

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

James H. Doyle                      Date:  
 President

Paul Ostrander                      Date:  
 City Manager

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

James H. Doyle                      Date:  
 Individually

ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by Paul Ostrander, City Manager of the City of Kenai, Alaska, an Alaska home rule municipality, on behalf of the City.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by James H. Doyle, President of Weaver Brothers, Inc., an Alaska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by James H. Doyle.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

---

Jamie Heinz, CMC, City Clerk

SEAL:

APPROVED AS TO FORM:



---

Scott M. Bloom, City Attorney

# Weaver Brothers, Inc. Special Use Permit Map Exhibit A



## Legend

-  Existing Lease
-  Requested for Special Use Permit



90'  
1 inch equals 104 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: 6/11/2019 204





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

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

## MEMORANDUM

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

**THROUGH:** Paul Ostrander, City Manager

**FROM:** Elizabeth Appleby, City Planner

**DATE:** June 11, 2019

**SUBJECT:** **Action Approval for Alaska Salmon Fertilizer, LLC – Special Use Permit for Fillet Services to Collect Fish Cleaning Waste**

---

Alaska Salmon Fertilizer has requested to use approximately 300 square-feet of City-owned property near the bathrooms off of Kenai Avenue on North Beach as shown in the attached Exhibit A. Customers would pay for their fish to be filleted and Alaska Salmon Fertilizer would collect the fish waste. Alaska Salmon Fertilizer would collect all fish waste and would not dump any waste or water on site.

The fee for their special use permit is proposed to be pro-rated to the exact number of days Alaska Salmon Fertilizer uses the space in July 2019 following the rates charged for overnight parking on North Beach. This would be \$55 for the first day and \$45 for each subsequent day for overnight use and \$20 per day for day use (not leaving equipment overnight). Alaska Salmon Fertilizer expects to use the space for a total of nine days broken into three time periods of three-days each during July 2019, but the permit would allow for a pro-rated rate to give some flexibility in the exact number of days the space would be used. If City Council approves, City Administration would execute the special use permit attached to this memorandum. Thank you for your consideration.



## SPECIAL USE PERMIT

The **CITY OF KENAI** (City), for the consideration, and pursuant to the conditions set out below, hereby grants to **ALASKA SALMON FERTILIZER, LLC** (PERMITTEE) the non-exclusive right to use 300 square feet of area as described below:

T 5N R 11W SEC 5 SEWARD MERIDIAN KN 0002970 ORIGINAL TOWNSITE OF KENAI  
LOT 3 BLK 13

and as further shown in the attached Exhibit A.

1. **TERM.** This special use permit shall be for the month of July 2019.
2. **PERMIT FEES.** The Permittee shall be charged a pro-rated rate to follow the structure for parking at North Beach, plus applicable sales tax. Those rates are \$55 for the first day of overnight use, \$45 for subsequent days of overnight use, and \$20 for day use (5:00 a.m. - midnight) per calendar day.

Checks, bank drafts, or postal money orders shall be made payable to the City of Kenai and delivered to the City Hall, 210 Fidalgo Avenue, Kenai, Alaska 99611.

In addition to the permit fee specified above, the Permittee agrees to pay to the appropriate parties all levies, assessments, and charges as hereinafter provided:

- A. Sales tax not enforced, or levied in the future, computed upon the permit fee payable in monthly installments whether said fee is paid on a monthly or yearly basis;
  - B. All necessary licenses and permits; all lawful taxes and assessments which, during the term hereof may become a lien upon or which may be levied by the State, Borough, City, or by any other tax levying body, upon any taxable possessory right which Permittee may have in or to the Premises by reason of its use or occupancy or by reason of the terms of this Permit, provided however, that nothing herein contained shall prevent Permittee from contesting any increase in such tax or assessment through procedures provided by law.
  - C. Interest at the rate of eight percent (8%) per annum and penalties of ten percent (10%) of any amount of money owed under this Special Use Permit which are not paid on or before the due date.
  - D. Costs and expenses incident to this Special Use Permit, including but not limited to recording costs.
3. **USE.** The use by the Permittee of the Premises is limited to the purpose of Fillet Services to Collect Fish Cleaning Waste. This use is subject to City, Borough, and State laws and regulations and the reasonable administrative actions of the City for the protection and

maintenance of the Premises and of adjacent and contiguous lands or facilities. Use of the Premises is subject to the following conditions:

- A. Permittee shall use the Premises only for fillet services to collect fish cleaning waste.
  - B. Permittee is responsible for the logistics of getting private vehicles of staff to the area.
  - C. The premises shall be returned to its current condition prior to the end of the term of this Special Use Permit. This shall include the removal of any trash or debris.
  - D. Permittee will not dump fish waste on-site.
  - E. Permittee will stay off adjacent sensitive dune and stream habitat areas.
4. **INSURANCE.** Permittee shall secure and keep in force adequate insurance, as stated below, to protect City and Permittee. Where specific limits are stated, the limits are the minimum acceptable limits. If Permittee's insurance policy contains higher limits, the City is entitled to coverage to the extent of the higher limits.
- A. Garage Liability or Commercial General Liability Insurance, including Premises, all operations, property damage, personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. The policy must name the City as an additional insured.
  - B. Worker's Compensation Insurance with coverage for all employees engaged in work under this Permit or at the Premises as required by AS 23.30.045. Permittee is further responsible to provide Worker's Compensation Insurance for any subcontractor who directly or indirectly provides services to Permittee under this Permit.
  - C. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles the Permittee uses for snow moving and storage activities to, from, or on the Premises. The policy must name the City as an additional insured.
  - D. All insurance required must meet the following additional requirements:
    - i. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.
    - ii. Permittee shall submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.

- iii. Permittee shall request a waiver of subrogation against City from Permittee's insurer and the waiver of subrogation, where possible, shall be provided at no cost to City.
  - iv. Provide the City with notification at least 30 days before any termination, cancellation, or material change in insurance coverage of any policy required hereunder.
  - v. Evidence of insurance coverage must be submitted to City by January 17, 2019. The effective date of the insurance shall be no later than January 17, 2019.
  - vi. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. This insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.
5. **INDEMNITY, DEFEND, AND HOLD HARMLESS AGREEMENT.** The Permittee shall fully indemnify, hold harmless, and defend the City of Kenai, its officers, agents, employees, and volunteers at its own expense from and against any and all actions, damages, costs, liability, claims, losses, judgments, penalties, including reasonable Attorney's fees of or for liability for any wrongful or negligent acts, errors, or omissions of the Permittee, its officers, agents or employees, or any subcontractor under this Permit. The Permittee shall not be required to defend or indemnify the City for any claims of or liability for any wrongful or negligent act, error, or omission solely due to the independent negligence of the City. If there is a claim of or liability for the joint negligence of the Permittee and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be established upon final determination of the percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "Permittee" and "City" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, for each party. The term "independent negligence of the City" is negligence other than in the City's selection, administration, monitoring, or controlling of the Permittee.
6. **PERMITTEE'S OBLIGATION TO PREVENT AND REMOVE LIENS.** Permittee will not permit any liens, including mechanic's, laborer's, construction, supplier's, mining, or any other liens obtainable or available under existing law, to stand against the Premises or improvements on the Premises for any labor or material furnished to Permittee or to any related entity or claimed entity. The Permittee shall have the right to provide a bond as contemplated by State of Alaska law and contest the validity or amount of any such lien or claimed lien. Upon the final determination of the lien or claim for lien, the Permittee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Permittee's own expense.
7. **PERSONALTY.** Permittee shall remove any and all personal property, including all vehicles, from the Premises at the termination of this Permit. Personal property placed or



used upon the Premises and not removed upon termination of this Permit will be removed and/or impounded by the City. Property removed or impounded by the City may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus a storage fee of \$25 per day. The City of Kenai is not responsible for any damage to or theft of any personalty of Permittee or its customers.

8. **FORBEARANCE.** Failure to insist upon a strict compliance with the terms, conditions, and/or any requirement herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.
9. **TERMINATION, DEFAULT.** This Permit may be terminated by either party hereto by giving 30 days advance written notice to the other party. The City may terminate the Permit immediately, or upon notice shorter than 30 days, to protect public health and safety. The City may also terminate this Permit immediately, or upon notice shorter than 30 days, due to a failure of Permittee to comply with conditions and terms of this Permit, which failure remains uncured after notice by City to Permittee providing Permittee with a reasonable time period to correct the violation or breach.
10. **NO DISCRIMINATION.** Permittee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or State law. Permittee recognizes the right of the City to take any action necessary to enforce this requirement.
11. **ASSIGNMENT.** Permittee may not assign, by grant or implication, the whole any part of this Permit, the Premises, or any improvement on the Premises without the written consent of the City. Unless the City specifically releases the Permittee in writing, the City may hold the Permittee responsible for performing any obligation under this permit which an assignee fails to perform.
12. **ASSUMPTION OF RISK.** Permittee shall provide all proper safeguards and shall assume all risks incurred in its activities on the Premises and its exercise of the privileges granted in this Permit.
13. **NO JOINT VENTURE.** The City shall not be construed or held to be a partner or joint venturer of Permittee in the conduct of its business or activities on the Premises.
14. **SURVIVAL.** The obligations and duties of Permittee under paragraphs 5 and 6 of this Permit shall survive the cancellation, termination, or expiration of this Permit.
15. **AUTHORITY.** By signing this Permit, Permittee represents that is has read this agreements and consents to be bound by the terms and conditions herein and that the person signing this Permit is duly authorized by the business to bind the business hereunder.

**CITY OF KENAI**

**ALASKA SALMON FERTILIZER, LLC**

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

Paul Ostrander  
City Manager

Date:

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

Ryan Bacon  
Owner

Date:

ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by Paul Ostrander, City Manager of the City of Kenai, Alaska, an Alaska home rule municipality, on behalf of the City.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, the foregoing instrument was acknowledged before me by Ryan Bacon, Alaska Salmon Fertilizer, LLC, an Alaska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

ATTEST:

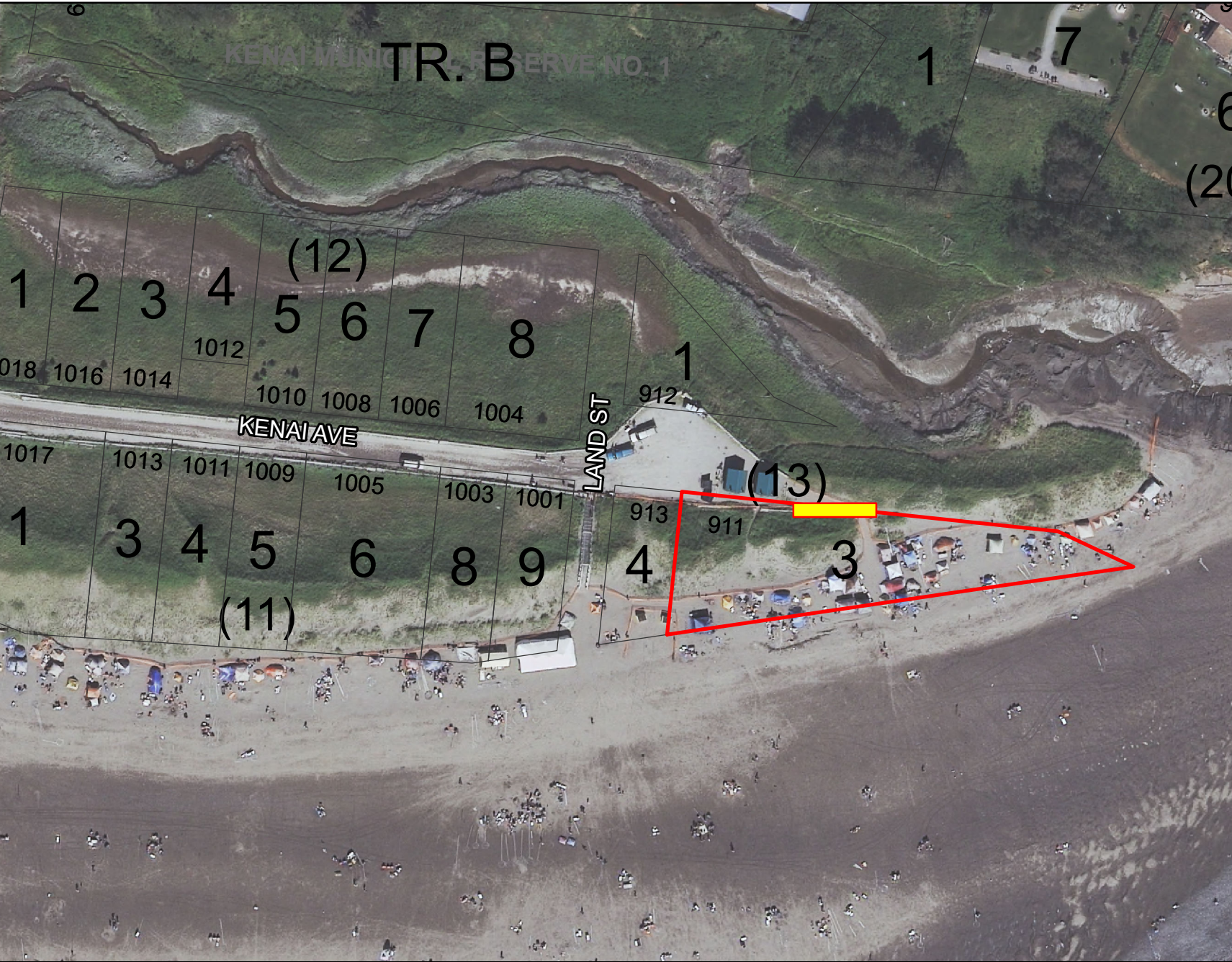
\_\_\_\_\_  
Jamie Heinz, CMC, City Clerk

SEAL:

APPROVED AS TO FORM:

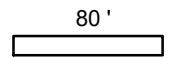
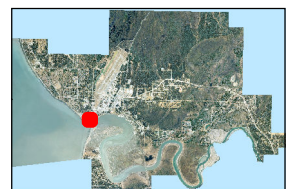
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Scott M. Bloom, City Attorney



**Alaska Salmon  
Fertilizer SUP**

**Exhibit A**



1 inch equals 103 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.



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

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / Fax: 907-283-3014  
www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Jamie Heinz, City Clerk  
**DATE:** June 14, 2019  
**SUBJECT:** **Borough Planning Commission Recommendation**

---

Ms. Diane Fikes has represented the City of Kenai on the Kenai Peninsula Borough Planning Commission since June 2017 and her term expires on July 31, 2019.

It is appropriate to provide a recommendation to the Borough Mayor from the City Council to be considered for appointment. We have received an application expressing interest for recommendation to the Borough from Diane Fikes.

One or more candidates may be nominated and confirmed to be included in the list of recommendations to be submitted to Mayor Pierce for appointment to the Borough Planning Commission.

Your consideration is appreciated.

Attachments

**Sandra Modigh**

---

**From:** info@ci.kenai.ak.us  
**Sent:** Monday, May 01, 2017 6:54 PM  
**To:** City Clerk  
**Subject:** Form submission from: Commission/Committee Application

Submitted on Monday, May 1, 2017 - 6:54pm Submitted by anonymous user: 192 189 187 102 Submitted values are:

Date: Mon, 05/01/2017

Name: Diane Fikes

Resident of City of Kenai? Yes

If resident, how long? 6 1/2 years

Residence Address: 307 Linwood Ln.

Mailing Address: 307 Linwood Ln.

Home Telephone: 907-440-8730

Home Fax:

Business Telephone:

Business Fax:

Email address: dmfikes@yahoo.com

May we include your contact information on our website? Yes If not all, what may we include?

Employer: Fedex

Job Title: Feeder Agent

Name of Spouse:

Current Membership in Organization: Kenai City Planning and zoning Past organizational memberships:

Committees or commissions in which you are interested. Kenai Borough Planning zoning for the city of Kenai Why do you want to be involved with this commission or committee?

I am a life long Alaskan born in Anchorage and have served the city of Kenai as commissioner on the planning and zoning board for 2 terms now. I have traveled to Anchorage for commissioner training twice now and have been elected vice chair. I would like to take my current experience and skill set as a commissioner and property owner in Kenai and serve the city of Kenai at the borough level I willing to travel to attend meetings in other areas on the peninsula and am willing to listen and research all issues to make informed decisions I enjoy being involved in the community I live in.

What background, experience, or credentials do you possess to bring the board, commission, or committee membership? Currently serve the city of Kenai as planning and zoning commissioner. This has given me an opportunity to hear from folks in our town speak to the issues that effect all of us on the Kenai. I have learned how to better listen and acknowledge everyone who comes forward to be heard regardless of my own personal views I have participated in town hall meetings and various work sessions to assist the city with our Comp plan as well as airport land issues.

The results of this submission may be viewed at  
<http://www.kenai.city/node/146/submission/567>





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www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**FROM:** Paul Ostrander, City Manager  
**DATE:** June 13, 2019  
**SUBJECT:** Discussion Item – Land Sale and Leasing Policies and Practices

---

The purpose of this memo is to provide the attached information related to the City's Land Sale and Leasing Policies and Practices.

At the City Council Work Session on June 11, Administration provided a presentation on recommendations from a working group of City staff involved in land management as it relates to the lease and sale of General Fund Lands and Airport Land Outside of the Airport Reserve as well as an update on the City's Land Management Plan.

As part of the presentation, Administration provided a proposed timeline for draft revisions to Title 22 and 21.15, which included review by the Airport Commission and Planning and Zoning Commission.

Your consideration is appreciated.





# LAND SALE AND LEASING

POLICIES AND  
PRACTICES

Land Sale and Leasing  
Policies and Practices  
Working Group:

City Manager Paul Ostrander  
Assistant to City Manager Christine Cunningham  
Finance Director Terry Eubank  
Airport Manager Mary Bondurant  
City Planner Elizabeth Appleby  
City Attorney Scott Bloom

June 11, 2019

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Draft Land Management Plan  
Draft KMC Revisions Title 22

## INTRODUCTION

One of the City's greatest assets is its land inventory. Utilizing City lands to spur economic growth and improve the quality of life for Kenai residents is key to the long-term viability of the City. Major initiatives for the upcoming year include creating an environment to attract businesses and industries that are necessary to maintain and grow the local economy and continuing work towards a Land Management Plan, which includes an inventory of all City-owned lands.

A working group of City staff involved in land management met over the past two years to evaluate and develop recommendations related to City-owned lands. In 2018, the group focused on proposals to simplify and streamline the City's lease program on the Airport to encourage growth, development, and a thriving business community through reasonable and responsible land policies and practices. The initial recommendations included a City-wide Land Management Plan, Kenai Municipal Code revisions for Airport Reserve properties, updates to forms and procedures, and affirmative marketing of Airport Lands.

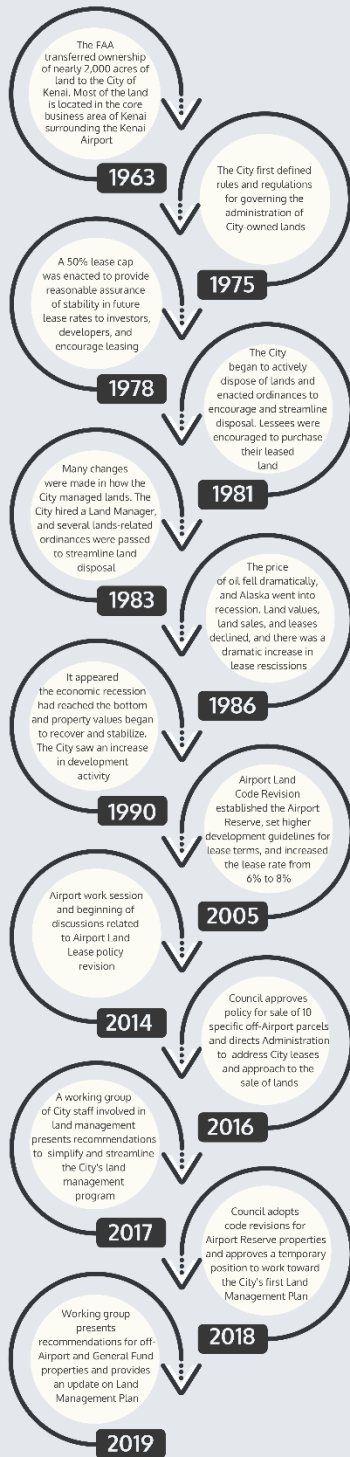
The following recommendations expand on the previous Airport Reserve recommendations to include all City-owned properties both on and off the Airport as part of the City's Land Management Plan.



# CITY OF KENAI LAND LEASING AND SALES



How has the City of Kenai restructured its land leasing and sales policies over the years?



Today, the City is experiencing a renewed interest in City-owned lands and has taken a City-wide approach to land management. Recommendations provide land policies and practices that encourage responsible growth and development to support a thriving business, residential, recreational and cultural community.

## BACKGROUND

In 1963, the FAA transferred ownership of nearly 2,000 acres of land to the City of Kenai. Most of the property is located in the core business area of Kenai surrounding the Kenai Airport, and the sale of some of these lands formed the basis for economic development in Kenai. The 1963 deed requires the land be managed for airport activities and support of the Airport and requires the written consent of the FAA to sell or lease land for non-airport activities. Subsequent deeds of release have been obtained, allowing some properties to be leased or sold.

The City has also received title to lands over the years from the State of Alaska and Bureau of Land Management as well as through Kenai Peninsula Borough foreclosures or private donations. Many of the conveyance documents contain restrictions, reversionary clauses, or are otherwise restricted by ordinances setting the land aside for a public purpose. However, the land deeded to the City by the FAA has been the focus of most of the City's lands policy decisions.

In 1975, the City first defined rules and regulations governing the administration of City-owned lands. In 1978, a provision for a 50% lease cap was enacted to provide reasonable assurance of stability in future lease rates to investors, and developers, which would encourage leasing.

In 1981, the City began to actively dispose of lands and enacted ordinances to encourage and streamline disposal. When applicable, lessees were encouraged to purchase their leased land. With the City entering into a program of land sales, use of the lease rate cap, which required increasing transfers from the General Fund to the Airport Fund, had outlived its usefulness and was restricted to property used for aeronautical purposes.

In 1983, the City made many changes to land management policies. The City hired a Land Manager, and several lands-related ordinances were passed to streamline land disposal. However, the price of the oil fell dramatically in 1986 and Alaska went into recession. This was a year of decline in land values, land sales, and leases. As property values continued to drop in 1987, there was a dramatic increase in lease rescissions. By 1990, it appeared that the economic recession had reached the bottom and was taking a gradual upturn.

In 2006, the Airport land sale and leasing code sections were repealed and reenacted as a result of recommendations in the Supplemental Airport Master Plan. The new code established the Airport Reserve, prohibited land sales within the Reserve, amended guidelines for setting the length of the lease terms with higher investment requirements and a maximum 35-year

term. The revised policy added additional requirements for lease applicants, eliminated the ability of new lessees to have the right to purchase once a development plan had been completed, increased the capitalization rate used to calculate rental rates from 6% to 8%, and established a new method of setting and adjusting land rents based on an airport-wide zone-based appraisal.

The City deviated from the new code provisions through non-code Ordinances to enter into each new lease between 2007 and 2018 as well as to facilitate negotiated sales of land. In 2015, Administration conducted an economic analysis of income (revenue) to the Airport, which compared leasing versus sale of two unsolicited offers to purchase properties assuming a 50-year period. It was determined that the Airport would lose revenue in a sale, and the City declined the offers.

In 2016, the City updated zoning within the Airport Reserve and relocated the Airport Reserve boundary. That same year, the City Council approved a policy for the sale of ten specific Airport leased lands with substantial constructed leasehold improvements. The policy is in effect for five years (expires in July of 2021) and, recognizing the value of a lease with a guaranteed revenue stream, approves a sale at 125% of fair market raw land appraisal with the lessee paying for appraisal costs.

Although the City's land leasing and sale program has been restructured over the years, the approach has been to manage land as situations arise and without an active management plan or strategy. In 2018, City Council approved recommended revisions to the leasing program in the Airport Reserve, amended the sale policy for ten specific Airport Fund properties to provide alternatives to encourage investment, and approved a City-wide approach to land management through the development of the City's first Land Management Plan.



The City of Kenai  
is experiencing  
renewed interest in  
City-owned lands  
and is taking a City-wide  
approach to land  
management.

## WHERE WE ARE

The City is unique in its ownership of a large and diverse amount of public land, owning a total of 356 subdivided parcels of which 233 are designated General Fund, and 126 are designated Airport Fund. Nineteen (19%) of City-owned parcels are currently under lease, generating an annual revenue of approximately \$653,356.

The City of Kenai is unique in its ownership of a large and diverse amount of public land.

Many vacant parcels are suitable for a variety of business, commercial, industrial, residential, recreational and cultural purposes:

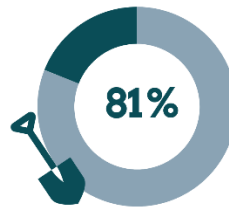
- Retail, Service and Office Space
- Transportation, Aviation and Marine-related Services
- Tourism, Art and Culture
- Warehouse, Production and Manufacturing Facilities
- Youth Sports and Outdoor Recreation
- Single and Multi-Family Housing
- Community Events and Festivals

Inside the Airport Reserve, 27 parcels are currently under lease and approximately 20 subdivided parcels are available for lease. Outside the Airport Reserve, approximately 14 Airport Fund parcels are currently under lease, of which ten specific properties have been approved for sale, and approximately 30 parcels remain available for lease. The General Fund has 22 parcels currently under lease and an undetermined number of lands available for lease or sale. Approximately 30% of City leases are in the latter half of the lease (not including Shorefishery leases renewed in 2016), and another approximately 12% have lease terms with over 80 years remaining and no incentive to maintain or improve the permanent improvements on the premises.

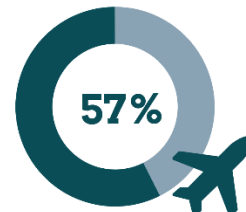
The City received **\$653,356**  
in Annual Lease Revenue in 2018



General Fund Parcels Under Lease



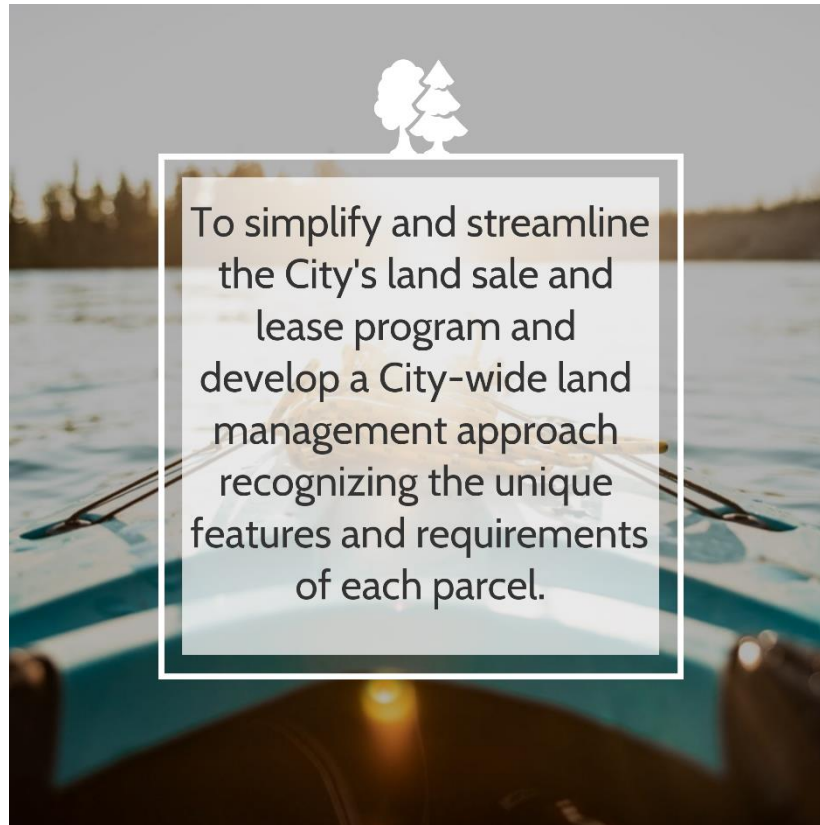
City-wide Unleased Parcels



Airport Fund Parcels Under Lease

## OBJECTIVES

Utilizing the 2018 revisions to the leasing program for the Airport Reserve as a starting point, the working group took a City-wide approach to land management that looked at both General Fund and Airport Fund properties outside the Airport Reserve. The goal of the working group was to follow similar changes made for the Airport Reserve properties with regard to lease and expand the objectives to simplify and streamline the City's land management program to provide a uniform approach for both lease and sale.



The working group defined the following objectives to help achieve this goal:

- City-wide Approach to Land Management
- Business-friendly Rules
- Policy Predictability
- Uniform Application of Policies
- Prevent Land Speculation
- Promote Economic Development

The following recommendations apply to all City-owned lands with the exception of on-Airport property and tidelands.

# RECOMMENDATIONS

## 1. LAND MANAGEMENT PLAN

A City-wide Land Management Plan is an active approach that requires an inventory of the City's land holdings. An analysis is needed for each parcel in terms of any conveyance, legislative restrictions or need for public use as well as the potential economic and other benefits to the City.

The Land Management Plan provides a comprehensive evaluation and characterization of each City-owned parcel to guide the decision-making process to include the following elements:

- Property Description (e.g. physical characteristics, zoning, land use)
- Facilities (e.g. parks, trails, structures, rights-of-way, utilities)
- Status (e.g. public use, under active lease, available for lease or sale)
- Recommended highest and best use



In addition to development of the plan itself, Administration would develop procedures and standards for management of City lands with a focus on business-friendly practices and customer service. The advantages of an active approach are improved policy predictability and uniform application of policies as well as the opportunity for increased return from public land assets for the greatest benefit to the residents of Kenai. This active approach gives the City the ability to determine which properties are best suited for a public purpose, lease, sale, devotion, or which properties may be eligible for grants or economic incentives for

development. It also provides a mechanism to evaluate properties on an ongoing basis.

The City began work on the Land Management Plan by hiring a Temporary Land Technician who began researching City parcels and entering information into a new City Lands Database in 2018. To date, the baseline information has been entered into the system for approximately 85% of City-owned lands. When this task has been completed, City staff will review the information and finalize the first draft of the City's Land Management Plan for City Council consideration.

Once approved, the information in the database can be used to develop land use strategies to implement a forward-looking approach to community growth and development. The City will have the information necessary to make informed management decisions about City-owned lands. The public will be able to view parcel-specific data included in the Plan utilizing the City's interactive online mapping.



The Plan will require an ongoing review of current holdings and summary of changes, proposed changes, market research, upcoming events (land sales, lease expirations or leases requiring action) as well as further development of procedure manuals, forms, and databases to ensure efficient and consistent work.

## 2. KENAI MUNICIPAL CODE (KMC) REVISIONS

The City’s policies and procedures for land leasing and sale for General Fund and Airport Fund property outside the Airport Reserve are in the City’s land code (KMC 22 and 21.15). The working group reviewed the current code and legislative history, the City’s available land data, and the 2018 revisions for on-Airport property, which came about after consultation with real estate appraisers, bankers, surveyors, aviation consultants, and other land professionals. The group also reviewed existing leases to consider the needs of existing leaseholders and the business community to manage land for the greatest benefit of the residents of Kenai.

The following recommended revisions simplify and streamline the City’s land sale and lease program to encourage growth, development, and a thriving business, residential, recreational, and cultural community.

### Applicant-Friendly Rules



### Applicant-Friendly Rules

Current Process	Recommendations
<ul style="list-style-type: none"> <li>• Applicants must inquire with the City as to which lands are available for lease or sale</li> <li>• Information on lease and sale process available by request or by researching City Code</li> <li>• Applicants must request application form</li> <li>• \$100 application fee for initial lease but no fee for extension, renewal, amendment or assignment</li> <li>• \$4,800 up-front cost-recovery deposit for lease</li> <li>• Applicants must submit business plan, site plan, development plan and KPB compliance certificate with application</li> <li>• Publication notice required for sale only</li> <li>• Negotiated sale at not less than FMV by ordinance or after competitive process, outcry auction, or sealed bid</li> <li>• No appraisal prior to purchase agreement</li> <li>• If applicant for sale is not high bidder, deposit refunded after closing of sale</li> </ul>	<ul style="list-style-type: none"> <li>• \$100 application fee</li> <li>• Standard application form</li> <li>• All forms and FAQs available online and at City Hall</li> <li>• Interactive land listing available online and lands brochure available at City Hall</li> <li>• Public notice and posting required for lease and sale</li> <li>• Deposit based on actual cost of appraisal/subdivision (if applicable)</li> <li>• Appraisal costs credited or refunded to applicant once development is complete</li> <li>• Lease with option to purchase available</li> <li>• Over-the-counter sale available after competitive public process</li> <li>• Development incentives available</li> </ul>

“Applicant friendly” rules balance the interests of the City with those of the applicant, do not place excessive burdens on the applicant, provide a predictable process for application approval, attract new lessees to vacant land and retain existing leaseholders.

The City currently requires a lease applicant to submit a deposit up-front with a lease application to ensure performance, which is not required by other similarly situated municipalities and increases an applicant’s

upfront costs. Other procedures place unnecessary burdens on the applicant by requesting nonessential information at the application stage and do not provide a predictable process for approval.

The above recommendations provide an online resource for lease information and forms, remove the requirement for up front application deposits, remove the requirement for additional documents to be submitted with applications, provide for public notice and a predictable processing procedure, and maintain Kenai’s application fees as some of the lowest in the State. The recommendations also allow for lease applicants to indicate if they are interested in an option to purchase the property once development is completed. This provides a new avenue for competitive land sales that ensure development on the property.

## Uniform Conditions for Determining Initial Length Lease Term



### Initial Lease Term

Current Process	Recommendations
<ul style="list-style-type: none"> <li>Lease term depends 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</li> <li>Value of improvements provided by applicant</li> <li>No limit on length of lease term</li> </ul>	<ul style="list-style-type: none"> <li>Length of term based on amount of investment applicant proposes to make in the construction of new permanent improvements</li> <li>Maximum length of lease term of 45 years</li> </ul>

The City currently sets the initial term of a lease based on 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. There is not a methodology in place similar to the term table contained in the code section for on-Airport properties that provides an applicant a guideline for how the City sets the lease term, which reduces predictability for applicants.

Amending the term table to set the five-year term investment/value at \$7,500, allowing for small investment increments, and allows a lease applicant to compare their planned investment to the term table to determine the term length they are likely to receive. This method also generally satisfies the requirements of financial institutions that provide funding for lessee improvements and provides greater predictability for business owners to locate and invest in Kenai’s economy. (See Appendix: Draft KMC 22 revisions for recommended term table)

## Predetermined Conditions for Lease Extension and Renewal

As more of the City’s leases reach the later part of the lease term, current conditions for lease extension and renewal discourage the lessee to invest in maintenance or further development as well as potentially restricting the lessee’s ability to sell their leasehold interest. For instance, a lessee with five years remaining in the lease and no right in the lease to renewal will have difficulty finding a buyer or new investor without being granted an extension or renewal of the lease.



## Extension & Renewal

Current Process	
<ul style="list-style-type: none"> <li>No Application Form</li> <li>No Application Fee</li> <li>Extension Not Defined</li> <li>No Development Required</li> <li>No Competition</li> <li>Not Eligible for Development Incentives</li> <li>Unpredictable Length of Extension</li> <li>No Term Limit</li> </ul>	<ul style="list-style-type: none"> <li>No Application Form</li> <li>No Application Fee</li> <li>Renewal Not Defined</li> <li>No Competition</li> <li>Requires Expensive Appraisal</li> <li>No Development Incentives</li> <li>Unpredictable Lease Term</li> </ul> <p><small>Title 22 and 21.15 do not contain definitions or conditions for lease extension or renewal</small></p>
Recommendations	
<ul style="list-style-type: none"> <li>\$100 Application Fee</li> <li>Standard Application Form</li> <li>Extension Defined as Extending Lease Term</li> <li>Allow for Competition</li> <li>Requires New Development</li> <li>Length of Extension Based on Term Table (Max. 45 Years)</li> <li>Eligible for Development Incentives</li> </ul>	<ul style="list-style-type: none"> <li>\$100 Application Fee</li> <li>Standard Application Form</li> <li>Renewal Defined as New Lease</li> <li>Allow Renewal by New Buyer</li> <li>Allow for Competition</li> <li>Term Based on New Development, Remaining Useful Life of Improvements, or Sale Price</li> <li>Eligible for Development Incentives</li> </ul>

The City currently does not have a methodology for how to determine the term for an extension or renewal for lands outside the Airport Reserve. Because renewal and extension are not defined, the terms are used interchangeably with extensions of older leases being granted rather than updated to a new standard lease form. A renewal requires an appraisal of the land at the expense of the lessee, which can be costly and does not address the improvements or the condition of the improvements on the

property. Additionally, the process does not provide any assurance to the lessee that a renewal will be granted to justify the cost of an appraisal.

The above recommendations as well as setting the lease term for renewal and extension using the same term table as is used in setting the term for initial leases gives a lessee a predictable method to renew or extend the lease. This provides for a lower cost and risk to the lessee and greater advantage to the City, as the renewal or extension term length is more accurately based on the condition of the principal improvement or investment and provides motivation for the lessee to maintain buildings in good condition.

### Protect Lessees from Excessive Rent Increases



## Rent Adjustments

Current Process	Recommendations
<ul style="list-style-type: none"> <li>Initial annual rent based on 8% of Fair Market Value appraisal paid for by the applicant</li> <li>Rent adjustment every five years based on a Fair Market Value appraisal paid for by the City</li> </ul>	<ul style="list-style-type: none"> <li>Initial annual rent based on 8% of Fair Market Value appraisal paid for by the applicant with cost of appraisal to be credited or refunded once development is completed</li> <li>Annual rent adjustment based on the consumer price index (CPI)</li> <li>A land market analysis will be performed once every ten years</li> </ul>

The City's existing policy for setting lease rates consists of an initial appraisal paid for by the lessee and renegotiation appraisals every five years paid for by the City and subsequent rates based on 8% of the fair market value as determined by the appraisals.

A change from the current five-year appraisal cycle to a 10-year “Market Analysis” (defined in the draft code revisions to KMC 22 contained in the Appendix) with an annual CPI adjustment provides less expense for the City in appraisal costs and greater predictability in rent for lessees. Annual rent would be computed by multiplying the CPI adjusted fair market value of the land by the lease rate percentage for each parcel (currently 8%).

For the City to realize the full benefit of an amendment to the policy for setting lease rates, existing lessees would need to convert to the new method. Allowing current lessees to convert their leases to the new form would allow lessees to take advantage of these protections from unexpected rent increases as well as any other conditions available in the new lease form, such as the predetermined conditions for lease extension and renewal and favorable provisions for the disposition of improvements.

### Provide Favorable Provisions for the Disposition of Improvements



## Disposition of Improvements

Current Process	Recommendations
<ul style="list-style-type: none"> <li>• City Code does not address disposition of improvements</li> <li>• Most City leases require lessee to remove improvements or they revert to the City at end of lease</li> </ul>	<p>At the end of a lease, departing lessee has the following options:</p> <ol style="list-style-type: none"> <li>1. Remove lessee-owned improvements and restore premises</li> <li>2. Sell lessee-owned improvements to succeeding lessee</li> <li>3. Purchase the property in which the lease contains an option to purchase once minimum development requirements have been met</li> </ol>

Under the new land leasing program on the Airport, at the end of a lease when the lessee does not continue in occupancy under a new lease or extension, the lessee has the option of removing improvements and restoring the premises or selling improvements to a succeeding lessee of the premises.

Most of the City’s current leases require the lessee to remove improvements or they will revert to the City. With the City taking title to the improvements, it limits the lessee’s incentive for taking good care of the buildings on the property as the end of the lease term approaches. The City runs the risk of “inheriting” a building in poor condition and with the expense and/or liability of repairing and maintaining the inherited building until a new lessee can be found. By contrast, the methods for disposition of improvements approved for on-Airport leases provide lessees with an incentive to maintain their facilities in good condition and do not leave the City with the burden of an increasing inventory of older buildings needing maintenance and repair.

The City’s current practice for disposition of improvements for Airport Reserve properties provides attractive options to lessees related to the improvements they constructed on the property. These options incentivize better maintenance and, along with other development incentives, encourage new investment, as well as increase predictability and uniformity for potential lessees.

## Offer Development Incentives

**Development Incentives**

How do development incentives work?

- A credit toward rent for a maximum of five years.
- The credit may only include the value of site preparation work on leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, crushed aggregate base course, and utility extensions.
- An estimate of the value of the work must be provided to the City and accepted prior to work being performed.
- For the credit to be applied, the approved scope of work must be completed.

**81%**  
of businesses  
cite state and local incentives as a preferred  
feature in selecting a location\*

\*Businesses's Preferred Amenities Source: Area Development Magazine (annual survey)

One way the City has encouraged investment and leasing of undeveloped properties on the Airport is to offer development incentives. These incentives apply a credit toward rent for a maximum of five years. The credit only includes the value of site preparation work on the leased premises which provide economic benefit to the City and potentially increase the value of the property for future sale.

An estimate of the value of the work, including a scope of work, prepared by a professional engineer must be provided to the City and accepted prior to work being performed and the credit would not be applied until the approved scope of work was completed.

### Provide a Methodology for Sale of Leasehold Properties

The City's ordinances allow for sale of some leasehold properties at Fair Market Value if development had been completed as required by the lease or if substantial development has been completed as determined by the City Manager. However, beginning in 2009, the City has declined requests by lessees who wish to purchase except for those included in the temporary policy for ten specific "off Airport" leased lands with substantial constructed leasehold improvements.

The policy is in effect for a period of five years (expires in July of 2021) and approves a sale at 125% of the Fair Market Value of the land or, as an alternative to a sale at 125%, the lessee must either meet new investment requirements or demonstrate the existing lessee-constructed improvements exceed the net present value of leasing the land by quantifying the economic value of the investment to the City. The policy does not address the sale of other or future properties.

In order to allow for a competitive sale of leasehold property, the option to purchase would need to be part of the initial lease application approval process, which includes a public posting

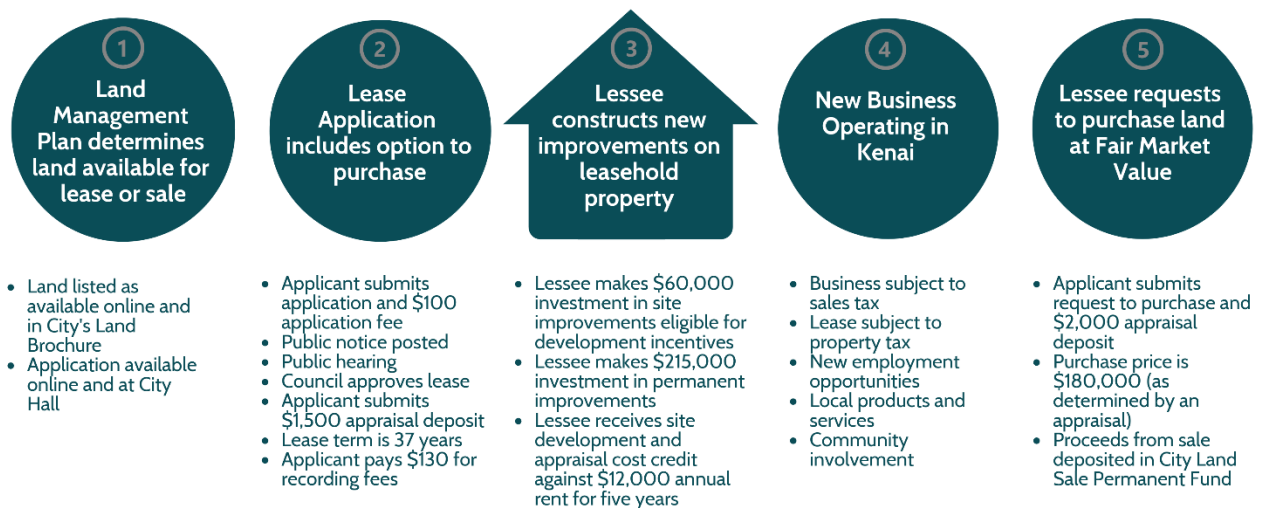
requirement and public hearing. The option to purchase could be exercised by the lessee at such time as the development requirements in the lease were met. This option would give the lessee the ability to enter into a lease with lower up-front costs as well operate a business at a location before committing to purchase the property. Providing a methodology for sale of leasehold properties will improve the City’s ability to attract specific businesses and industries that are necessary to maintain and grow the local economy.

For example, a new business could apply for a lease of City property, which has been pre-determined as available for lease or sale, with an option to purchase. The applicant would be responsible for the application fee and a deposit to cover the cost of an appraisal (the cost of the appraisal would be credited or refunded once minimum development in the form of permanent improvements on the property was completed). The lessee may also request a credit toward rent for a maximum of five years for the value of site preparation work on the leased premises, which potentially increases the value of the property for future sale. After two years – or five years, if the lessee prefers to exhaust the development credits, the lessee would be able to request to purchase the land at Fair Market Value based on a new appraisal.



## Lease with Option to Purchase:

\*Based on \$275,000 in lessee-constructed improvements on land appraised at \$150,000



This process would not be available for existing leasehold properties as it would not meet the City’s requirement for a competitive sale process.

## Provide a Methodology for Sale of Vacant Properties

The City's ordinances currently allow for sale of land outside the Airport Reserve not under lease at Fair Market Value by outcry auction, competitive sealed bids or negotiated sale to encourage a new commercial or industrial enterprise beneficial to the City. There is not a methodology in place to determine in advance which parcels of land are best suited for sale or guidance on what conditions justify negotiated transactions which may be in the City's best interests.

As part of an overall Land Management Plan, City staff would review the City's land inventory and consult with City departments to determine which properties are no longer needed for a public purpose and those which would provide a greater public benefit if offered for lease or sale. Property would become available for sale if it meets a set criteria, including: the property is not currently used by a City department or does not support a City function or foreseeable use by the City; the City is not obligated to use the property for the purpose in which it was conveyed or circumstances have changed such that the purpose is no longer needed; the property is a non-performing or under-performing asset and greater value can be generated by its sale; or, significant economic development opportunities can be generated by selling the property.

Based on an analysis of the individual parcel as provided in the Land Management Plan, it may be in the best interests of the City to sell parcels after significant development has been completed. Based on the City's policy not to allow for speculation on City-owned lands, a lease or sale would require development and a sale would be at not less than Fair Market Value with a required minimum investment in permanent improvements.



### Methodology for Sale

Current Process	Recommendations
<p><b>NEGOTIATED, OUTCRY OR SEALED BID</b></p> <ul style="list-style-type: none"> <li>• Applicant executes Agreement for Purchase and deposit for cost of appraisal</li> <li>• City Manager obtains appraisal to determine minimum price</li> <li>• Public notice of sale and posting</li> <li>• If another bidder is successful, upon closing, the deposit will be refunded to the applicant</li> <li>• If no bids are submitted that meet the minimum price (or appraised value), the City Manager may negotiate a sale at less than fair market value for General Fund Land</li> </ul> <p><b>LEASED LAND</b></p> <ul style="list-style-type: none"> <li>• Lessee may request a sale at not less than fair market value after development has been completed to the satisfaction of the City Manager</li> </ul> <p>Conveyance to Encourage New Enterprise Property Exchanges Property Sale to Adjacent Owners (Small Parcel), Grant or Devotion (to Non-Profit)</p>	<p><b>COMPETITIVE</b></p> <ul style="list-style-type: none"> <li>• Standard application form</li> <li>• City obtains appraisal</li> <li>• Public notice of sale and posting</li> <li>• Over-the-counter sale available after competitive public process</li> <li>• Leased land may be sold to lessee if lease was subject to competition through the lease application process and included an option to purchase</li> </ul> <p><b>NON-COMPETITIVE</b></p> <ul style="list-style-type: none"> <li>• Conveyance to Encourage New Enterprise</li> <li>• Property Sale to Adjacent Owners (Small Parcel)</li> <li>• Grant or Devotion (to Non-Profit)</li> <li>• Conveyance to Resolve a Land Use Conflict</li> </ul> <p><b>PROPERTY EXCHANGE</b></p>

Lands not restricted from sale by deed which the Council has determined are not required for a public purpose may be listed for sale by the City Manager, except leased lands unless the lessee has made a written request for sale

Land Management Plan approved by Council determines if land is available for lease or sale

## Update Special Use Permit Process



### Special Use Permit

Requirements:	Current Process		Recommendations	
	Lease	SUP	Lease	SUP
Application Form	✓		✓	✓
Application Fee	✓		✓	✓
Appraisal or Standard Fee	✓		✓	✓
Option to Purchase			✓	
Publication/ Posting			✓	
Maximum Term (Years)	No Maximum	5	45	1

The City does not currently have an application, application fee, or set fee schedule for Special Use Permits, which allow for temporary use of City property for up to five years without an appraisal or competitive process. Some permittees have utilized Special Use Permits instead of the lease process for cumulative terms that exceed many leases. A change to a one-year maximum term for Special Use Permits and a standard application, application fee, and fee schedule provides a uniform approach that does not allow a Special Use Permit to be used inappropriately in place of a lease.

### 3. UPDATE FORMS AND PROCEDURES

The following recommendations are for City fees, forms, and procedures that create a uniform approach and process for City lands management.

#### Update Lease Forms and Procedures

The above recommendations would require material changes in the standard lease forms currently used for City General Fund and Airport Fund lands located outside the Airport Reserve. These amendments might include definitions, rent adjustments, construction of improvements, and other changes consistent with any Code revisions. Any changes would require a Resolution approving the new standard lease form.

Additionally, updated application forms would be required and be made available both online and at City Hall.

#### Update City Procedures and Processes

Updates to the City's internal procedures and processes would also be necessary and would improve the processing of lease applications and sale procedures for a business-friendly approach. This would include creating FAQ's, examples of timelines, and flow charts available to potential lessees and parties interested in investing in development on City-owned lands.



## Update Administrative Fees for Land Management



### Land Management Fees

Fee Description	Current Fee Schedule		Proposed Fee Schedule	
	On-Airport	Off-Airport	On-Airport	Off-Airport
Lease Application	\$100	\$100	\$100	\$100
Lease Amendment	\$100	\$0	\$100	\$100
Lease Extension/ Renewal	\$100	\$0	\$100	\$100
Lease Assignment	\$100	\$0	\$100	\$100
Special Use Permit	\$0	\$0	\$50	\$50
Request to Purchase	N/A	\$0	N/A	\$100

NOTE: Fees are non-refundable

The City requires a \$100 non-refundable fee to be submitted with lease applications City-wide, however the only other administrative fees for lands are on the Airport, updated in 2018. Land-related administrative fees are a fairly common practice and prevent filing of frivolous applications as well as recover a portion of the administrative processing costs. Application and forms fees in other Alaska local governments range in amount and type with some areas charging between \$0 - \$500 for a lease application and additional fees when entering into lease or to cover the cost of recording.

#### 4. AFFIRMATIVE MARKETING PLAN

As a result of the 2018 recommendations, the City created its first Kenai Municipal Airport Available Lease Lands brochure available in print and online. An affirmative marketing plan for City-wide properties available for lease will ensure the continued success of the City's land leasing and sale programs.

The plan will promote the City of Kenai as business-friendly by providing a "one stop shop" of information on the City's website as well as in information brochures. A party interested in the possibility of leasing or purchasing City land to locate a business in Kenai can go to the website or review the brochure to find all essential leasing or sale information presented in simple terms. The information includes the advantages of living and doing business in Kenai, property available for lease or sale, the applicable application form, a sample lease, current rental rates (if available), the term investment table, the disposition of improvements, FAQs, a summary of the application processing steps and typical timetable.

The lease information package or brochure can be distributed as part of an active marketing strategy in which the City provides the information to targeted groups at trade shows, networking events, or one-on-one visits with business owners. Information on properties available for sale would be marketed to receive the widest possible exposure to prospective lessees and buyers. This would be accomplished through direct marketing techniques, such as requests for proposals (RFPs), advertising, posting the property on the multiple listing service (MLS) or any other appropriate method.

## TIMELINE

The purpose of presenting the recommendations of the working group is to provide a starting place for discussions regarding recommended changes to the City's land sale and leasing policies and procedures. The timeline for finalizing and implementing any approved changes will depend on City Council action. The next City Council meeting is scheduled for June 19, 2019, and the land sale and leasing policy and procedures recommendations will be included as a Discussion Item.

The proposed changes to the land leasing program for the Kenai Municipal Airport followed a timeline similar to the following timeline:

City Council Work Session:	June 11, 2019
City Council Discussion Item:	June 19, 2019
Airport Commission:	July 11, 2019
Planning and Zoning Commission:	July 10, 2019
Ordinance Introduction:	August 7, 2019
Public Hearing on Ordinance:	August 24, 2019
Resolution Amending Fee Schedule:	August 24, 2019
Resolution Adopting Lease Form:	August 24, 2019
Implementation and Forms Update:	Late August – Early September

Depending on approval of any recommendations or revisions, implementation of recommendations would take place in phases, with completion of code revisions and forms occurring over subsequent months. Continued work on the City's first Land Management Plan will occur over the next year.

Comments may be submitted to the City Manager or via email to the Assistant to the City Manager at [ccunningham@kenai.city](mailto:ccunningham@kenai.city)

## APPENDIX

Draft Land Management Plan  
Draft KMC 22 Revisions

**Title 22**

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

**Chapter 22.05**

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

**22.05.050 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 as described in KMC 11.20.

(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. 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 applicant shall post the property subject to the application with notice of complete applications for new leases, renewals or extension at least ten (10) days before the date of the



required public hearing. Such notices shall be placed so as to be visible from each improved street adjacent to the property, to the extent possible.

[(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. 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 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.

**22.10.087 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. The appraisal must be within a one (1) year period prior to the date of 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.

(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. The appraisal must be within a one (1) year period prior to the sale.

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

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

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

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

(b) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to engineering services.

surveying and consulting costs, unless in the sole discretion of the City Council it is determined the subdivision serves other City purposes.

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

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

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

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

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

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

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

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

(2)](d) If at any time during the process of preparing for sale, the applicant [GIVES NOTICE TO THE CITY MANAGER OF WITHDRAWAL OF ]withdraws the [REQUEST]application for sale, the City [MANAGER ]shall stop all procedures, [SHALL ]pay expenses incurred prior to [TERMINATION OF SALE PROCEDURES ]withdrawal of the application for sale, and [SHALL ]reimburse applicant for any [GOOD FAITH ]deposit advanced in excess of

[ALL]expenses incurred. [( )]However, if another party desires the sale to proceed, files an application [FOR SALE ]for sale, executes and files an agreement to purchase, and [ADVANCES ]deposits sufficient funds[ THEREFOR], then the prior applicant will be reimbursed for expenses [CHARGES ]which can be attributed to the subsequent applicant.[]

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

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

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

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

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

[(D)i) [IF THE TRACT OF LAND PROPOSED TO BE SOLD IS NOT LEASED LAND, OR IS LEASED LAND WITHOUT SUBSTANTIAL IMPROVEMENTS, THEN THE TRACT OF LAND MAY ONLY BE SOLD BY OUTCRY AUCTION OR BY COMPETITIVE SEALED BIDS.] If the [TRACT] land is to be [PUT UP FOR SUCH ]sold through a competitive [AUCTION OR SEALED BID SALE ]process, notice of sale and the manner in which the land



is to be sold [SHALL BE] must be posted to the extent possible to be visible from each improved street adjacent to the property and published in a newspaper of general circulation within the City [ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE DATE OF SALE; SUCH NOTICE SHALL ALSO BE POSTED IN AT LEAST THREE (3) PUBLIC PLACES WITHIN THE CITY AT LEAST THIRTY (30) DAYS PRIOR TO THE DATE OF SALE, AND SUCH OTHER NOTICE MAY BE GIVEN BY SUCH OTHER MEANS AS MAY BE CONSIDERED ADVISABLE BY THE CITY MANAGER. SUCH]. The published notice must contain:

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

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

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

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

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

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

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

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

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

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

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

**22.05.105 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.

DRAFT

# CITY OF KENAI LAND MANAGEMENT PLAN

Draft: June 2019





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# EXECUTIVE SUMMARY

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PLACEHOLDER

## ACKNOWLEDGEMENTS

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### **City Council**

Name

Name

Name

Name

Name

Name

Name

### **Planning and Zoning Commission**

Name

Name

Name

Name

Name

Name

Name

### **City Staff**

Name

Name

Name

Name

Name

Name

Name

### **Special Thank you**

Name

Name

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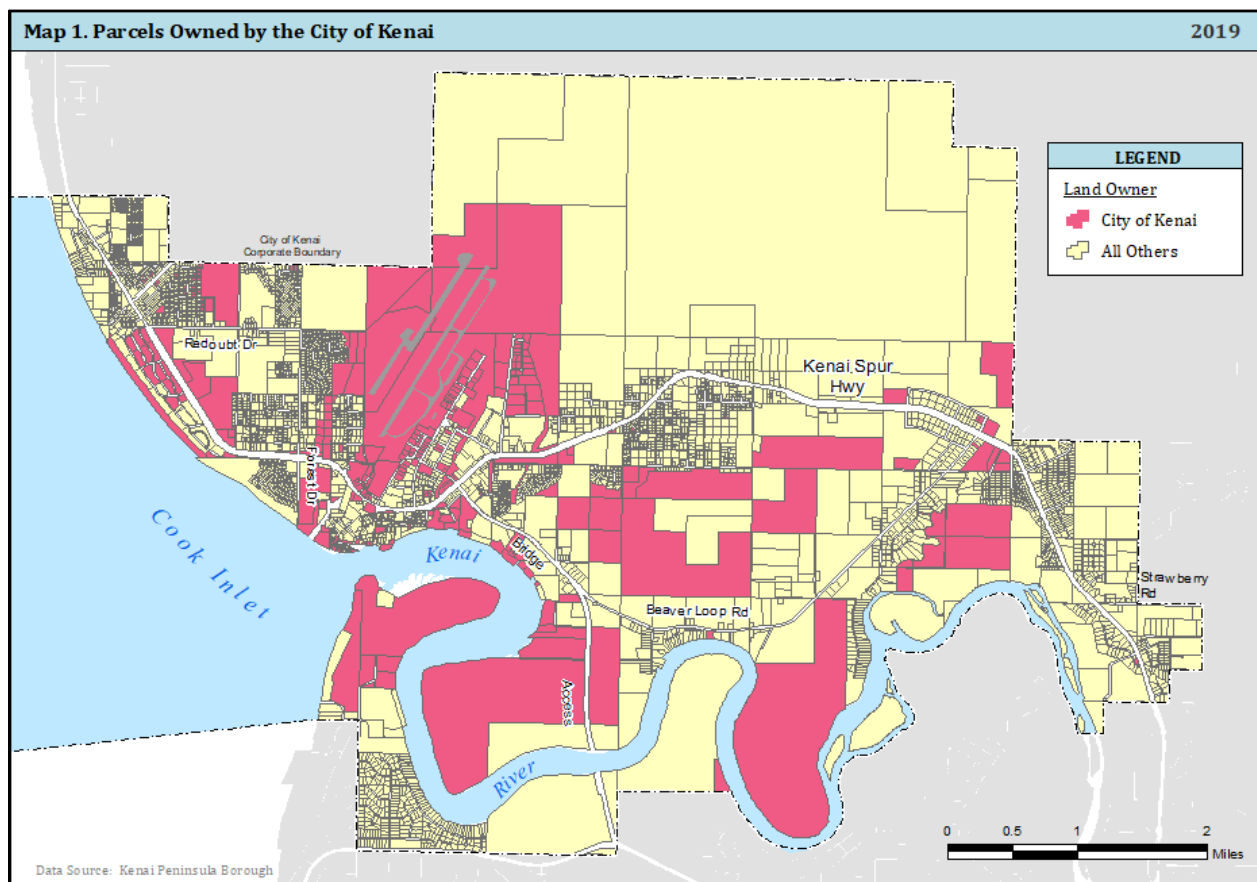
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## INTRODUCTION AND BACKGROUND INFORMATION

This land management plan describes current conditions of City-owned property and actions to retain, improve, or dispose of property. The plan provides a lands inventory, description, and recommendations for each parcel that was developed through a public process to allow for valuable input into the disposition of City-owned lands.

### CITY-OWNED PARCELS

The City of Kenai owns a total of 358 subdivided parcels of land which have been obtained from the Federal Government of the United States, State of Alaska, Kenai Peninsula Borough, and private donations.



### FUNDS

Approximately 65 percent of the parcels owned by the City of Kenai are tied to the General Fund. The approximately 35 percent remaining parcels are tied to the Airport Fund.

## KENAI MUNICIPAL CODE

### KENAI COMPREHENSIVE PLAN AND LAND USE PLAN

The *2016 Imagine Kenai 2030 City of Kenai Comprehensive Plan* contains the Land Use Plan. This plan describes land management specific to City-owned parcels, and the Land Use Plan describes a generalized pattern of existing and desirable land use for all lands within the City.

### LEASES

About 13 percent of City-owned parcels are under an active lease.

## LANDS INVENTORY

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This section contains a comprehensive list of all parcels owned by the City of Kenai and data about each parcel. The inventory will provide the input for land management decisions by the City. The following fields have been populated for each parcel when they are applicable and the data is available:

- Parcel Number: The assigned to the parcel by the Kenai Peninsula Borough
- Address: If available, the physical address of the parcel
- Fund: Denotes whether the parcel is within the City's Airport Fund or General Fund
- Facility: If applicable, lists any existing City facilities on the parcel
- Map Thumbnail: Small map showing the aerial imagery for the parcel
- Legal Description: Land description location of the written words delineating real property
- Township/Range/Section: Refers to terms used in the Public Lands Survey System
- Size: Given in acres and square feet
- KPB Assessed Value: Kenai Peninsula Borough assessed value for current year taxes
- Zoning District: Gives the City of Kenai zoning district for the parcel
- Land Use Plan Classification: City of Kenai land use plan classification category for the parcel
- Summary Recommendation: This field gives the staff recommendation for the parcel and is the categorical basis for sorting parcels in the report
- Detailed Description: In-depth description of the parcels, including its physical features and development considerations
- Detailed Recommendation: In-depth analysis and consideration of the best use for the parcel

Parcels have been placed into the following categories based on the Summary Recommendation:

- **Retain - Existing Public Facilities**: A parcel with a public facility, typically a park or building
- **Retain - Public Purpose**: A vacant parcel to be retained for a public purpose
- **Available for Lease or Sale**: Parcel available for lease or to be purchased from the City
- **Available for Lease**: Parcels available for lease from the City
- **Unavailable – Under Active Lease**: Parcels with lessees in active lease agreements with the City
- **Tidelands**: Parcels with leases of tidelands for shore fisheries
- **Parcels for Further Study**: Parcels where further research or action is needed before a decision to retain or dispose of the parcel may be made

RETAIN - EXISTING PUBLIC FACILITIES

SAMPLE ONLY

**Parcel Number:**  
**04701008**

200 Spruce Street South  
General Fund

**Facility: Kenai Municipal Park, Little League Fields**

**Legal Description:** Govt Lots 41-43, 60, 62-66, 83-90, 105-112, 124-126, 133-135, 149-151, 159-161, 164-166 Excl that portion described as: S 0 deg 13 min E 77.88 ft & S 86 deg 5 min E 35.09 ft from N 1/4 corner Section 6 T5N R11W

**Township/Range/Section:** 6N, 12W, Section 25

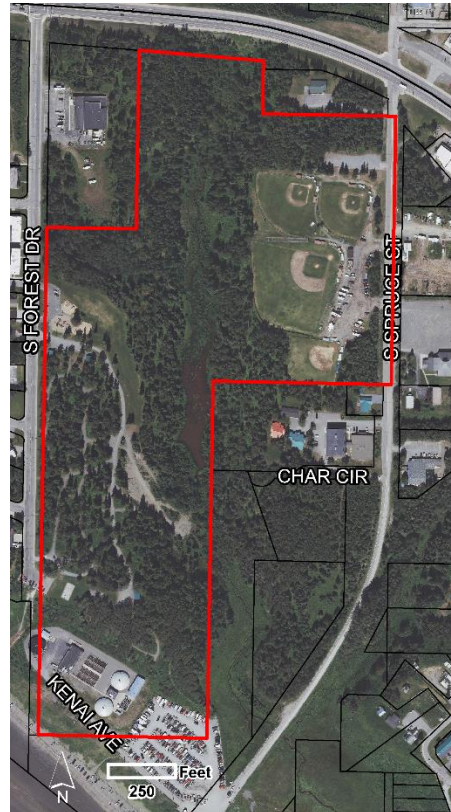
**Size:** 72.21 acres (3,145,468 square feet)

**2018 KPB Assessed Value:** \$7,980,500

**Zoning District:** Conservation (C)

**Land Use Plan Classification:** Parks, Recreation, & Open Space, Institutional

**Summary Recommendation:**  
Retain for a Public Purpose



**Detailed Description:** 33 separate Government Lots with portions of 7 additional lots make up this 45+ acre parcel. A large swale is located in the center and lower east side of the parcel, with steep high bluffs on each side. The drainage running through this swale (Richka Creek) drains from a large wetland complex to the north and empties into Cook Inlet. The city wastewater treatment plant and its parking area is partially located on Government Lots 164-166 of this parcel. The little league fields are substantially located on Government Lots 64, 84-89, 106-111, 125, 126. The community park facilities appear to span the upland portions of the remaining lots. A small portion of the little league field development appears to encroach onto parcel 04701028, owned by KPCCC Group Inc. The wastewater treatment plant encroaches into the 35-foot wide public ROW along the west boundary. This ROW was dedicated to the public by document from the City in 1968 (Misc 30/154). It may also encroach onto parcel 04701027, owned by Vern Lofstedt. The parking area extends into Government Lots 168, 169, 170, 171 in parcel 04701025, also city owned. Portions of Government Lots 43, 60, 66, 83 and 90 were deeded to the State of Alaska Military Dept by the city in 1968, the location of the National Guard Armory.

SAMPLE ONLY

**Parcel Number:  
04701008**

**Detail Recommendation:** The Government Lots have been combined under one parcel number for ease of assessing, although the government lots remain separate lots until they are replatted. This may be of use at some point in a lease description or development of the property or if the city needs or wants to obtain new parcel numbers. Three separate developments are located on the parcel and separation of the parcel into new parcels with the individual government lots that contain those facilities, with the assignment of new separate parcel numbers, would make inventory and management of the lands easier. The facilities on the parcel are managed by two different city departments. Retention of the land contained in the multi-lot parcel is recommended to control and maintain the drainage and to support the existing city development on the parcel. An as-built of all development is also recommended, and vacation of the portion of S Forest Drive ROW containing the encroachment should be pursued. This portion of the ROW would not support construction of a road for vehicular traffic due to steep terrain. If the as-built shows encroachments into any surrounding private parcels, those should be resolved with easements or other means. It should be verified that all uses of the parcel comply with the zoning.



RETAIN - PUBLIC PURPOSE

AVAILABLE FOR LEASE OR SALE

AVAILABLE FOR LEASE ONLY

<b>SAMPLE ONLY</b>	<b>Parcel Number:</b> <b>04322008</b> 235 Trading Bay Road Airport Fund
	<b>Legal Description:</b> Lot 8, Block 2, Cook Inlet Industrial AirPark Subd
	<b>Township/Range/Section:</b> 6N, 11W, Section 32
	<b>Size:</b> 1.21 acres (52,708 square feet)
	<b>2018 KPB Assessed Value:</b> \$128,900
	<b>Zoning District:</b> Central Mixed Use (CMU)
	<b>Land Use Plan Classification:</b> Central Commercial
<b>Summary Recommendation:</b> Available for Lease Only	
	
<b>Detailed Description:</b> This is a 1.21 acre parcel created by a 1966 subdivision. A deed of release was recorded in 1973, allowing the lease or sale of the lots for other than airport purposes. The parcel is now located in the Airport Reserve, and is available for lease, not sale. Improvements to the infrastructure in the subdivision (water, sewer, pavement, sidewalks, etc) were funded by the US Department of Commerce in 1973, with a requirement that the city retain ownership of the improvements for 30 years. Funds generated by lease go to the airport fund. The parcel is surrounded by privately owned lands, most of which are developed. The parcel was one of three that were leased to Sea-Land Freight Service, Inc in 1975 for one year; the amended purpose was for 'terminal facilities, warehousing, storage and other related activities inherent in the operation of a transportation facility'. It appears that the parcel was never developed. In 1978, a 99-year lease was issued for the same three lots (6, 7, 8 Block 2) to Gerald Browning and Glen Henry for 'diesel and automotive repair and parts sales'. The required development proved to be economically unfeasible and at the request of the lessees, the lease was rescinded in 1980. A 99 year lease for Lot 8 Block 2 was granted to Julie Latta in 2002 to be developed to 'provide additional lodging facilities for the proposed Kenai Airport Lodge'. Two amendments were granted to extend the completion date for required construction; the parcel was not developed and a mutual rescission of the lease was recorded in 2007.	

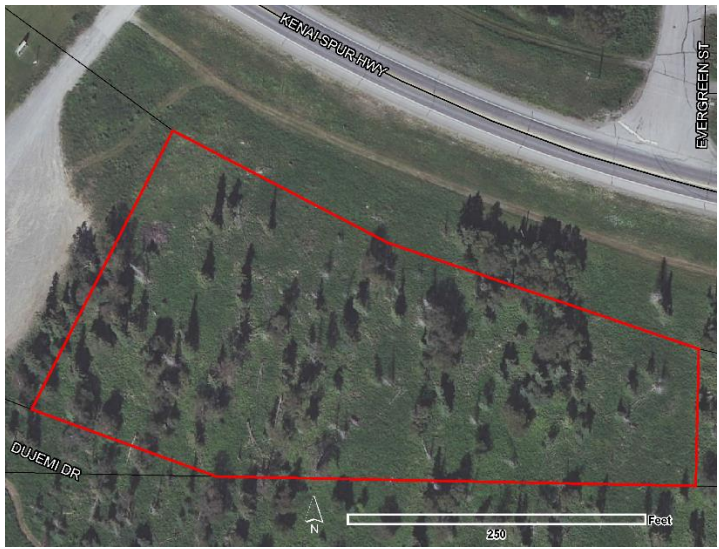
**Detailed Recommendation:** This parcel's central location, along with the city services and the close proximity to the airport, make it attractive for lease. Costs for development of the lot should be fairly reasonable - it is level with no wetlands and is easily accessible. If any site development was undertaken in association with the previous leases, that could further enhance the lot's attraction. City services and paved access are already in place.

UNAVAILABLE - UNDER ACTIVE LEASE

TIDELANDS

PARCELS FOR FURTHER STUDY

SAMPLE ONLY

<p><b>Parcel Number:</b> <b>04301102</b> 12751 Kenai Spur Highway General Fund</p>	
<p><b>Legal Description:</b> Tract F, Dena'ina Point Estates Subdivision</p>	
<p><b>Township/Range/Section:</b> 6N, 12W, Section 36</p>	
<p><b>Size:</b> 2.24 acres (97,574 square feet)</p>	
<p><b>2018 KPB Assessed Value:</b> \$48,800</p>	
<p><b>Zoning District:</b> Suburban Residential (SR)</p>	
<p><b>Land Use Plan Classification:</b> Mixed Use</p>	
<p><b>Summary Recommendation:</b> Future Determination for Use</p>	
<p><b>Detailed Description:</b> This 2.24 acre tract fronts on the Kenai Spur Highway. There is a 52 acre private parcel between this tract and the Inlet. The tract has no bluff frontage and is located approximately 140 feet from the edge of the bluff. This subdivision of city owned land was contracted by the city in 1984 and created 29 larger acreage tracts, most of which were intended for resubdivision and development. The city still owns 14 tracts in the subdivision. Water and sewer service extends along the Kenai Spur Hwy, with two stubouts to the boundary of the subdivision. The roads in the subdivision are not constructed. None of the lots have been developed, with the exception of Tract A-5 which was resubdivided, along with adjoining property, into the Augustine Addition.</p>	

**Detailed Recommendation:** A 1984 ordinance retained this tract for public purpose; that restriction was reversed by a 1987 ordinance which designated the tract suitable for sale. The city owns the long narrow tract to the east, for a total highway frontage of over 1700 feet. The 52 acre privately owned parcel to the south has no highway frontage. There is substantial residential development to the east of the adjoining 52 acre private parcel. It may be beneficial to retain Tract F until the 52 acre private parcel is considered for development - the highway frontage provided by the city owned lands could be beneficial to an adjoining developer in providing alternate ingress/egress for any future development. Development of the large private parcel could also affect development options for the subject parcel. The subject parcel is suitable for sale and development at this time; retention of the long narrow highway frontage lot for access to the large private parcel could protect future access issues. The RS zoning may limit or influence development potential, with most commercial development requiring a conditional use permit.

**SAMPLE ONLY**

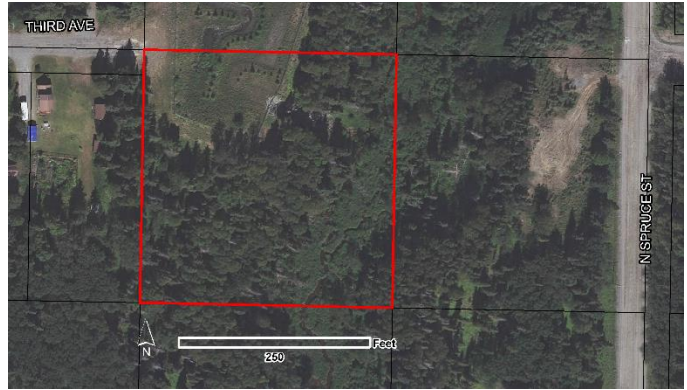
**Parcel Number:**

**04312003**

1397 Kenai Spur Highway

General Fund

<b>Legal Description:</b> Tract A, Five Iron Highs Subdivision
<b>Township/Range/Section:</b> 6N, 11W, Section 31
<b>Size:</b> 2.5 acres (108,900 square feet)
<b>2018 KPBA Assessed Value:</b> \$83,800
<b>Zoning District:</b> Conservation (C)
<b>Land Use Plan Classification:</b> Parks, Recreation, & Open Space
<b>Summary Recommendation:</b> Retain for a Public Purpose



**Detailed Description:** This is a 2.5 acre government lot. The large cleared area on Lot 73 adjacent to the north boundary extends onto this lot. Scott Curtin provided the information that this is one of the city's storm water detention ponds, serving Forest Avenue and Woodlands Subdivision areas. The pond allows silt and debris to settle before the water drains into Richka Creek and eventually flows into the Inlet. The settling area is located at the top of the steep bank that drops off to Richka Creek to the east. A clearing project to remove accumulated growth is scheduled as maintenance for 2019. Access to the northwest corner of this lot is from Third Avenue, a half dedication. A steep bank cuts through the middle of the parcel and extends down to Richka Creek in the easterly portion of the parcel.

**Detailed Recommendation:** It is recommended that the city retain the entire lot for creek protection and maintenance. Although the majority of the settling pond is currently located on the lot to the north, expansion or maintenance of the pond may require additional use of the subject lot. The creek provides drainage from the large wetland complex to the north. The steep slope down to the creek, along with the creek and its corridor, occupy approximately 2/3 of the eastern portion of the lot and limit its development potential. If the city decides to connect the dedications of Cheryl Street and Third Avenue (see Lot 73: 04308008), a portion of the dedication at the intersection will need to come from this lot.

**SAMPLE ONLY**

**Parcel Number:**  
**04938215**  
 1100 Lawton Drive  
 General Fund

<b>Legal Description:</b> Tract A, Five Iron Highs Subdivision
<b>Township/Range/Section:</b> 5N, 11W, Section 3
<b>Size:</b> 15.48 acres (674,309 square feet)
<b>2018 KPBA Assessed Value:</b> \$183,900
<b>Zoning District:</b> Recreation (R)
<b>Land Use Plan Classification:</b> Parks, Recreation, & Open Space
<b>Summary Recommendation:</b> Retain for a Public Purpose



**Detailed Description:** This is a 15.5 acre tract resulting from subdivision of portions of 4 government lots. There is a steep bluff in the southerly portion of the parcel, dropping off to almost 5 acres which is classified freshwater forested/shrub wetland on the NWI. Use or transfer of the parcel is restricted under a federal grant (LWCF 02-00119). The parcel is located between the Oilers Ballfield and the golf course, fronting on Lawton Drive (constructed) and S Tinker Lane (not constructed adjacent to this parcel).

**Detailed Recommendation:** Retention of the land by the city, or transfer to another public entity with the recreational use restriction attached, is required by the LWCF funding. It does not appear that this tract was excluded from that LWCF project area. This restriction should be verified. There may be recreational lease opportunities for the lot, including winter use associated with the ski trails on the golf course property or summer use associated with golf course expansion and amenities. With the nearby schools and residential areas, public park development would also be an option.

## IMPLEMENTATION STRATEGY

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Short Term (1 Year)

Middle Term (1-3 Years)

Long Term (3+ Years)

## REFERENCES

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*2016 Imagine Kenai 2030 City of Kenai Comprehensive Plan*

## APPENDIX A. INDEX

Parcel Number	City Facility	Category	Inventory Page Number
03901065			
03902243			
03903421			
03905203			
03905204			
03905205			
03905322			
03905323			
03905324			
03905325			
03905327			
03905328			
03905329			
03905330			
03905331			
03906141			
03906309			
03906310			
03906311			
03907009			
03910107			
03910109			
03910111			
03910112			
03910208			
03910209			
03910211			
03910304			
03910308			
03910309			
03910310			
03910311			
03910312			
03910321			
03910322			
03910323			
03910324			
03911003			



Parcel Number	City Facility	Category	Inventory Page Number
03911009			
03911010			
03911011			
03911012			
03911013			
03911014			
03911015			
03911016			
03913112			
03913113			
03913114			
03913115			
03913117			
03913118			
03913202			
04101004			
04101013			
04101021			
04101022			
04101111			
04101112			
04101113			
04101114			
04101115			
04103009			
04103019			
04103034			
04103040			
04103047			
04103051			
04103059			
04106201			
04106202			
04108003			
04108013			
04108016			
04108018			
04108019			
04301029			
04301033			

<b>Parcel Number</b>	<b>City Facility</b>	<b>Category</b>	<b>Inventory Page Number</b>
04301034			
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04301039			
04301040			
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04310039			
04312003			
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04312008			
04314009			
04314010			
04314103			
04314104			
04315011			
04315012			

Parcel Number	City Facility	Category	Inventory Page Number
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04316006			
04316008			
04316017			
04317003			
04317037			
04317038			
04318043			
04318044			
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04322021			
04322023			
04323013			
04323014			
04323017			
04323031			
04324002			
04324003			
04324004			
04324005			
04324006			
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04324017			
04324018			
04324019			
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04324027			
04324028			
04327010			
04327014			
04327015			

<b>Parcel Number</b>	<b>City Facility</b>	<b>Category</b>	<b>Inventory Page Number</b>
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04331022			
04331036			
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04333006			
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04333008			
04333009			
04333010			
04335001			
04336001			
04336002			
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04336039			
04336040			
04336043			

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04501003			
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04501036			
04501037			
04501038			
04501039			
04501040			
04501041			
04501042			
04501043			
04501044			
04501045			
04501046			
04501047			
04501048			

Parcel Number	City Facility	Category	Inventory Page Number
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04501051			
04501052			
04501053			
04501054			
04501055			
04501056			
04501057			
04506006			
04506008			
04513025			
04521047			
04701008	Kenai Municipal Park, Little League Fields	Retain - Public Facilities	
04701018			
04701019			
04701024			
04701025			
04705101			
04705205			
04705215			
04705216			
04705501			
04705506			
04705510			
04705602			
04705701			
04705805			
04705806			
04705807			
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04707405			
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04708104			
04708106			

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04708504			
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04709301			
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04711903			
04711907			
04716001			
04716002			
04716005			
04901016			

Parcel Number	City Facility	Category	Inventory Page Number
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04901062			
04901121			
04901124			
04901125			
04901130			
04901131			
04901132			
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04910053			
04910054			
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04910106			
04910107			
04910108			
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04912065			
04916017			
04926125			
04926126			
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04926216			
04935006			
04937002			
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04938215			
04938216			
04938217			
04945002			
04945003			
04945004			
04945005			



<b>Parcel Number</b>	<b>City Facility</b>	<b>Category</b>	<b>Inventory Page Number</b>
04945009			
06361018			

## APPENDIX B. TABLES AND FIGURES

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## APPENDIX C. PUBLIC MEETINGS

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Documentation of public outreach

## APPENDIX D. MAPS

Appendix of maps in 11x17 sizes.



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

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Jeff Tucker, Fire Chief  
**DATE:** June 10, 2019  
**SUBJECT:** **Fire Department Mid-Month Report - May**

---

In May the department responded to 134 call for service as compared to 140 calls in May 2018. This is a 7.4% increase calls for service as compared to the same year to date time frame in 2018.

After almost 24 years of service to the City and the Kenai Fire Department, Captain James Dye retired from the department. A promotional process to fill his position will take place later in June.

At the pre-build conference for our new fire engine in April. Engineer Sam Satathite, Shop Foreman Randy Parrish and Fire Chief Jeff Tucker met with factory representatives at the Pierce factory in Bradenton, Florida, to review the design of the new engine. Some modifications to the design including deletions and additions were reviewed and made. A change order in the amount of \$12,431.00 was made to the engine. We are looking for to many years of service with this engine. Delivery at this time is planned for mid-November.

All shifts participated in walk-throughs of the fish processing plants in Kenai as the plants ramp-up operations for the summer. This allows newer firefighters to see the layout of the plants and for senior firefighters to note any changes in operation.

On May 31<sup>st</sup> members of the Kenai and Nikiski Fire Departments participated in a large scale table-top drill with members of the State of Alaska Division of Forestry at the Kenai Fire Station. The participants ran through a mock scenario of a small fire that develops into a major wildland fire. Key factors that were looked at were communications, capabilities, strategies and tactics. It was a great training activity that all participants are looking forward to repeating in the future.

Fire Chief Jeff Tucker attended the Western Fire Chiefs Association Board of Directors meeting and Presidents Forum in Sisters, Oregon.





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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**

---

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  
**THROUGH:** Dave Ross, Police Chief  
**FROM:** Jessica "JJ" Hendrickson, Animal Control Chief  
**DATE:** June 10, 2019  
**SUBJECT:** **May 2019 Monthly Report**

This month the Kenai Animal Shelter took in **115** animals. Animal intake and disposition:

DOGS:				
	INTAKE	<b>34</b>	DISPOSITION	<b>31</b>
	Waiver	11	Adopted	17
	Stray	14	Euthanized	1
	Impound	3	Claimed	11
	Protective Custody	1	Field Release	0
	Quarantine	0	Transferred to Rescue	2
	Other Intakes	5	Other Dispositions	0
CATS:				
	INTAKE	<b>79</b>	DISPOSITION	<b>60</b>
	Waiver	69	Adopted	23
	Stray	9	Euthanized	3
	Impound	0	Claimed	1
	Protective Custody	1	Field Release	0
	Quarantine	0	Transferred to Rescue	33
	Other Intakes	0	Other Dispositions	0
OTHER ANIMALS:				
	INTAKE	<b>2</b>	DISPOSITION	<b>2</b>
	Bird	2	Bird	2
	DOA:	<b>2</b>	OTHER STATISTICS:	
	Dog	2	Licenses (City of Kenai Dog Licenses)	12
	Cat	0	Microchips (Dog and Cat)	10



<b>1</b>	Citations
<b>3</b>	Animal dropped with After Hours (days we are closed but cleaning and with KPD)
<b>13.45</b>	Volunteer Hours Logged
<b>55</b>	Animals are <i>known</i> borough animals
<b>21</b>	Field Investigations & patrols

Statistical Data:

<b>324</b>	2017 YTD Intakes
<b>298</b>	2018 YTD Intakes
<b>361</b>	2019 YTD Intakes







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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Terry Eubank, Finance Director  
**DATE:** June 11, 2019  
**SUBJECT:** Finance Department, June 2019 Mid-month Report

---

With the passage of the FY20 Budget at the May 15<sup>th</sup> Council Meeting, the department has been making changes and compiling the document for printing. The document is expected to be available for distribution next week. The Department's focus will now be switching to closing FY19 and completion of the City's Comprehensive Annual Financial Report. This process includes closing of the FY19 financial records, fiscal year end grant reporting and finally financial statement preparation. The annual audit is scheduled for the week of October 7<sup>th</sup>.

The 2019 Personal Use Fishery is quickly approaching and we will be working with the Park's Department to train our seasonal help to work in the dipnet shacks. We have been working closely with our software programmer to update the shack attendant software and to update the dipnet app.

The department, working with Stormy in Human Resources, is completing open enrollment for employee benefits. This process included meetings with employees, staff, and the City's broker, USI Insurance.

Quotes for property, liability, airport, marine and workers compensation insurance have been received and the process of binding of coverage for FY2020 is underway. Included in binding this coverage is the issuance of municipal official bonds for myself, the City Manager, and the City Clerk. Bonding for these three positions remains at the same level previously established by Council, \$40,000 for the Finance Director, \$2,000 for the City Manager, and \$10,000 for the City Clerk. In addition to these amounts, the City's general liability policy carries \$1,000,000 of employee dishonesty coverage for all City employees. If Council wishes to change the bonding amounts for any position just let me know and I will obtain prices and facilitate the change.





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## MEMORANDUM

**TO:** Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Mary Jo Joiner  
**DATE:** June 7, 2019  
**SUBJECT:** Library Mid-Month Report

### May Circulation Figures

Adult Fiction	1,329	Internet Access	718
Adult Non-Fiction	970	iPad use	160
Young Adult Fiction	200	Games	6
Periodicals	108	Room Booking	126
Juvenile Fiction	367	Music	40
Juvenile Non-Fiction	307	DVDs	1,896
Easy Fiction	641	Audio books	76
Easy Non-Fiction	172	Miscellaneous	56
Interlibrary Loan	1	Computer Programs	
Books – Consortium	424	Media – Consortium	142
<b>Total Print</b>	<b>4,519</b>	<b>Total Non-Print</b>	<b>3,220</b>

	<b>Total Circulation 5/19</b>	<b>7,739</b>	<b>Downloadable Audio</b>	<b>764</b>
	<b>Total Circulation 5/18</b>	<b>8216</b>	<b>Downloadable EBooks</b>	<b>594</b>
	<b>% change</b>	<b>-6%</b>	<b>% change in downloadable</b>	<b>+26%</b>
	<b>In-House circulation</b>	<b>402</b>		



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**Library Door Count..... 7,598**

**Income**

Fines	\$ 310.75
Xerox	0
Lost/Damaged	0
Test Proctoring Fee	20.00
Printing	196.50
<u>Other</u>	<u>.00</u>
<b>Total income</b>	<b>\$ 527.25</b>



<b>Library Cards Issued</b>	<b>May</b>
Kasilof	2
Kenai	33
Nikiski	13
Non-Resident	3
Other Peninsula	0
Soldotna	3
<u>Sterling</u>	<u>1</u>
<b>Total</b>	<b>55</b>

## Programs

In May 9 volunteers worked about 48 hours. There were 15 children's programs with 295 total in attendance, and 21 adult and family programs with 101 attendees. James offered tours to school groups with a total of 620 children coming through the building. James also addressed an assembly of 400 children at K-Beach elementary to talk about our summer reading program. In May we ordered 2 interlibrary loan items not available through the consortium and received 2 items, we returned 0 items and loaned 9 items to other libraries who are out of state or not in the consortium.



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

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

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Elizabeth Appleby, City Planner  
**DATE:** June 11, 2019  
**SUBJECT:** **Planning and Zoning May 2019 Report**

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Below are a summary of activity in May 2019 for the Planning and Zoning Department.

### Planning and Zoning Commission Agenda Items and Resolutions

The Planning and Zoning Commission approved of a transfer of conditional use permit for surface extraction of natural resources and recommended approval one change to Kenai Municipal Code:

- Resolution PZ2019-12 – Application for Transfer of Conditional Use Permit PZ15-10 for the Operation of a Gravel Pit for Extraction of Natural Resources, from Michael S. Brown, Transferor, to BMBC, LLC, Transferee, located at 601 Childs Avenue, Kenai, Alaska 99611; further described as Tract 3, Jaynes Subdivision Big Mikes Addition
- Resolution PZ2019-16 – Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.320 - Definitions, and 14.20.330 – Standards for Commercial Marijuana Establishments to Prohibit Onsite Consumption of Marijuana at Retail Marijuana Stores Requiring an Onsite Consumption Endorsement

### Lands, Economic Development, and Outreach

The City Planner attended a board meeting for the Kenai Peninsula Economic Development District.

The City Planner attended a meeting of the 2020 U.S. Census Complete Count Committee.

The City Planner attend a board meeting for the Alaska Chapter of the American Planning Association.



The temporary lands staff-person is making progress researching City-owned lands, which will be used to create a Land Management Plan. The City Planner created an initial layout for the Land Management Plan.

The first TRASHercise lunch walk of the summer was held on May 22, 2019.

#### Plans and Reports

The City Planner attended a meeting to review goals for the Kenai Peninsula Coordinated Public Transit-Human Services Transportation Plan.

#### Code Enforcement

3 cases were opened in May 2019:

- 2 – Junked or Abandoned Vehicles
- 1 – Garbage



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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Robert J. Frates, Parks & Recreation Director  
**DATE:** June 11, 2019  
**SUBJECT:** **Mid-month Report – June 2019**

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Our summer crew members began June 3<sup>rd</sup>. Training included one day of class time and a full day of field training. Everyone is settling into their role and increasing their familiarization with areas maintained. I am really pleased with the team assembled to date.

Most of the larger flower beds were planted on June 1<sup>st</sup> during the volunteer plant day. The gardener is wrapping up planting of remaining beds.

Alaska Department of Fish & Game will be providing the City with two more interpretive display signs. The signs were designed for the Kenai River Flats Boardwalk along Bridge Access Road.

The Kenai Little League and Kenai Softball Association are both up and running. American Legion will be using our large field on a limited bases this season and possibly during the Bill Miller Tournament, if needed. The 4<sup>th</sup> July Firecracker Tournament will be starting on July 5 this season and playing through Sunday. Local soccer programs are in full swing as well.

Staff posted new signs at the south end of Municipal Park encouraging folks to respect neighborhood by keeping noise to a minimum. The volleyball court and basketball court has seen increased use and with that some noise complaints.

The Kenai Wildwood inmates along with staff member Ed Brusven, cleaned up a few more debris piles throughout town. Areas tackled were Millennium Square, woods behind Olga's Jewelry, behind Weaver Brothers (near adult softball fields), along Kenai Spur Highway and end of Float Plan Road. A total of 1.65 tons were collected and hauled to the landfill.

The Wildflower Garden off Lawton Dr. was hydro-seeded June 6<sup>th</sup>.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** David Ross, Police Chief  
**DATE:** June 10, 2019  
**SUBJECT:** **Police & Communications Department Activity – May 2019**

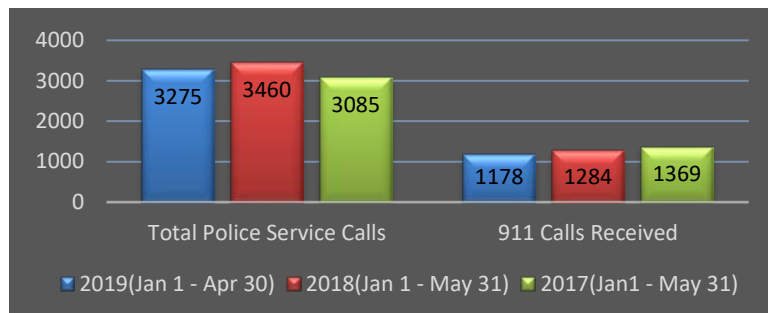
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Police handled 773 calls for service in May. Dispatch received 265 9-1-1 calls. Officers made 75 arrests. Traffic enforcement resulted in 241 traffic contacts and 101 traffic citations. There were 3 DUI arrests. Officers investigated 7 motor vehicle crashes. There were no collisions involving moose. There were no collisions involving drugs or alcohol.

May training included: The KPD officer on the SERT team started two weeks of training. One officer attended a two week homicide and death investigation class in North Pole. One supervisor attended a week long police supervision course in Oregon.

The police department is taking a number of steps to continue handling high call volumes with ongoing staffing vacancies: The capability for online reporting was initiated through the City website, the KPD officer was withdrawn from the regional drug task force, and the department is anticipating not being able to sustain a school resource officer for the 2019-2020 school year.

In addition to handling police calls in various schools, the School Resource Officer taught alcohol education classes at KCHS. The SRO also participated in Bike Rodeos at both Mountainview Elementary and Kaleidoscope Elementary Schools.





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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council  
**THROUGH:** Paul Ostrander, City Manager  
**FROM:** Kathy Romain, Senior Center Director  
**DATE:** June 10, 2019  
**SUBJECT:** **May 2019 Monthly Report**

Congregate Meals Served (Dining Room)	1291
Home Delivered Meals	1562
Volunteer Hours	(36 individuals) 561
Unassisted Transportation Rides	333
Assisted Transportation Rides	158
Social Security Video Service	47 individuals
Senior Center Rentals	2
Total Events Sign Ins (through MySeniorCenter)	2595
Total Unduplicated Participants (through MySeniorCenter)	285

May activities highlights included:

- No Host Dinner to Golden International Chinese Restaurant. This was attended by 25 seniors for wonderful food and great fellowship.
- The Mother's Day Luncheon on Friday, May 10 also included a Country Store to help raise funds for our Craft Room. Beautiful items were made and donated by our quilters and crafters! The graduating class from Mount Carmel Christian School in Luray, Virginia served lunch and provided entertainment during the noon hour.
- Aurora Borealis' First Graders brought their lunches and read books to seniors during the noon hour.
- The VFW and the American Legion Posts honored us with a color guard and Memorial tributes for a pre-Memorial Day Celebration.
- The Annual Walker/Roller and Health Fair was a great success with 23 participants, ages 60-95 for the walk. We had 11 vendors from around the area for the Health Information Fair.





**PURCHASE ORDERS BETWEEN \$2,500.00 AND \$15,000.00 FOR COUNCIL REVIEW**

**COUNCIL MEETING OF: JUNE 19, 2019**

<b>VENDOR</b>	<b>DESCRIPTION</b>	<b>DEPT.</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
SATORI GROUP	ASBESTOS TESTING	SAFETY, WWTP	PROF. SERVICES	5,190.00
MOORE'S LANDSCAPING	WILDFLOWER HYRO-SEEDING	RECREATION	REPAIR & MAINT.	2,500.00
LN CURTIS & SONS	FIREFIGHTER GEAR	FIRE	OPERATING SUPPLIES	7,310.20
SUPERIOR ELECTRIC MOTOR	FLYGT PUMP REPAIR	SEWER	REPAIR & MAINT.	3,859.40
NORTHERN SECURITY SUPPLY	BEAN BAG LAUNCHER	POLICE	SMALL TOOLS	5,000.00
SAELIG COMPANY	FORENSIC ENCLOSURE	POLICE	SMALL TOOLS	3,230.55
KENAI NEON SIGN CO.	FIELD OF FLOWERS SIGN	AIRPORT	OPERATING SUPPLIES	2,505.81

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Trans-foreland Pipeline Company, LLC

Docket No. CP19-118-000

NOTICE OF INTENT TO PREPARE AN  
ENVIRONMENTAL ASSESSMENT FOR THE PROPOSED  
**KENAI LNG COOL DOWN PROJECT**  
AND REQUEST FOR COMMENTS ON ENVIRONMENTAL ISSUES

(May 13, 2019)

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Kenai LNG Cool Down Project involving construction and operation of facilities by Trans-foreland Pipeline Company, LLC (Trans-foreland) near Nikiski in the Kenai Peninsula Borough, Alaska. The Commission will use this EA in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of an authorization. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 pm Eastern Time on June 12, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission **before** the opening of this docket on March 29, 2019, you will need to file those comments in Docket No. CP19-118-000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Trans-foreland provided landowners with a fact sheet prepared by FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website ([www.ferc.gov](http://www.ferc.gov)) at <https://www.ferc.gov/resources/guides/gas/gas.pdf>.

### **Public Participation**

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov). Please carefully follow these instructions so that your comments are properly recorded.

- 1) You can file your comments electronically using the eComment feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. Using eComment is an easy method for submitting brief, text-only comments on a project;
- 2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

- 3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19-118-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

### **Summary of the Proposed Project**

Trans-foreland proposes to install, construct, and operate a new 1,000 horsepower electric-driven boil-off-gas (BOG) booster compressor unit, trim vaporizers, ancillary facilities, additional liquefied natural gas (LNG) transfer system valves, and equipment to manage the existing BOG facilities (collectively referred to as the BOG Management System) to facilitate the import of LNG to cool down the existing LNG storage tanks and associated LNG facilities. The installation of the BOG Management System and cool down of the existing LNG facilities and LNG storage tanks would allow the Kenai LNG Plant to provide up to 7.0 million standard cubic feet per day of natural gas to Trans-foreland's affiliated Kenai Refinery adjacent to the Kenai LNG Plant. The general location of the project is shown in appendix 1.<sup>1</sup>

### **Land Requirements for Construction**

Construction of the proposed project would disturb about 18.3 acres of land, all of which consist of existing gravel cover. Following construction, Trans-foreland would maintain less than about 0.1 acre for permanent operation of the project; it would restore the remaining acreage to former uses. The project would be constructed within the existing property boundary of the Kenai LNG Plant terminal site and no vegetation would be cleared or converted as a result of construction or operation.

### **The EA Process**

The EA will discuss impacts that could occur as a result of the proposed project under these general headings:

- geological resources;
- water resources;
- wildlife;
- cultural resources;

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<sup>1</sup> The appendices referenced in this notice will not appear in the Federal Register. Copies of appendices were sent to all those receiving this notice in the mail and are available at [www.ferc.gov](http://www.ferc.gov) using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

- land use;
- air quality and noise;
- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas as applicable.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary<sup>2</sup> and the Commission's website (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.<sup>3</sup> Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

### **Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.<sup>4</sup> The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

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<sup>2</sup> For instructions on connecting to eLibrary, refer to page 5 of this notice.

<sup>3</sup> The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

<sup>4</sup> The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

### Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes or is within certain distances of proposed aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website ([www.ferc.gov](http://www.ferc.gov)). **If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached "Mailing List Update Form" (appendix 2).**

### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at **(866) 208-FERC**, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (i.e., CP19-118). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at [www.Ferc.gov/EventCalendar/EventsList.aspx](http://www.Ferc.gov/EventCalendar/EventsList.aspx) along with other related information.

Kimberly D. Bose,  
Secretary.

# **Appendix 1**



**Legend**

- - - Fence Line (operating area of ~78 acres)
- ▭ Approximate Property Boundary (area of 161.1 acres)
- ▭ Existing Liquefaction Area
- - - Underground Piping
- ▭ Kenai Refinery

**Proposed New Facilities**

- 1- Ball-of-Valve (BOV) Booster Compressor Unit & Building
- 2- Trim Vaporizer Assembly
- 3- Electrical and Control Building

**Project Map**  
 Kenai LNG Cool Down Project  
 Trans-Foreland Pipeline Company LLC  
 Kenai Peninsula Borough, Alaska  
 (Aerial Map)

andover Marathon Petroleum Corporation

Source: "West of Kodiak" - "West of Kodiak" Map - "West of Kodiak" Map - "West of Kodiak" Map - "West of Kodiak" Map - "West of Kodiak" Map



## **Appendix 2**

**MAILING LIST UPDATE FORM**  
**KENAI LNG COOL DOWN PROJECT**

Name \_\_\_\_\_

Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

- Please update the mailing list
  
- Please remove my name from the mailing list

---

**FROM** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTN: OEP - Gas 1, PJ-11.1  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426**

Docket No. CP19-118-000, Kenai LNG Cool Down Project

**Staple or Tape Here**