

**KENAI HARBOR COMMISSION
REGULAR MEETING
MARCH 9, 2020 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611**

<http://www.kenai.city>

1. **CALL TO ORDER**
 - a. Pledge of Allegiance
 - b. Roll Call
 - c. Agenda Approval
2. **SCHEDULED PUBLIC COMMENTS** *(Public comment limited to ten (10) minutes per speaker)*
3. **UNSCHEDULED PUBLIC COMMENT** *(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)*
4. **APPROVAL OF MEETING SUMMARY**
 - a. February 10, 2020
5. **UNFINISHED BUSINESS**
6. **NEW BUSINESS**
 - a. **Recommendation** – Motion for Approval of Resolution No. HC20-01
 - b. **Discussion/Recommendation** – Contract to Use Cranes, Offices, and Operating Area at the Boating Facility 2020
7. **REPORTS**
 - a. Public Works Director
 - b. Commission Chair
 - c. City Council Liaison
8. **NEXT MEETING ATTENDANCE NOTIFICATION** – April 6, 2020
9. **COMMISSIONER COMMENTS AND QUESTIONS**
10. **ADDITIONAL PUBLIC COMMENT**
11. **INFORMATION ITEMS**
12. **ADJOURNMENT**

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| <p>PLEASE CONTACT US IF YOU WILL NOT BE ABLE TO ATTEND THE MEETING: JACQUELYN -- 283-8231 OR, KAYLA -- 283-8236</p> |
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**KENAI HARBOR COMMISSION
REGULAR MEETING
FEBRUARY 10, 2020 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
CHAIR MIKE DUNN, PRESIDING**

MEETING SUMMARY

1. CALL TO ORDER

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

a. Pledge of Allegiance

Chair Dunn led those assembled in the Pledge of Allegiance.

b. Roll Call

Roll was confirmed as follows:

Commissioners present: Chair M. Dunn, Vice-Chair C. Crandall, C. Hutchison, B. Peters, G. Greenberg, J. Desimone, B. Bornemann
Commissioners absent: N. Berga

Staff/Council Liaison present: Public Works Director S. Curtin, Public Works Assistant K. Feltman, Council Member R. Peterkin

A quorum was present.

c. Elections of the Chair and Vice-Chair

MOTION:

Commissioner Peters **MOVED** to re-appoint Commissioner Dunn as Chair; Commissioner Crandall **SECONDED** the motion. There were no objections; **SO ORDERED**.

MOTION:

Commissioner Crandall **MOVED** to appoint Commissioner Berga as Vice-Chair; Commissioner Peters **SECONDED** the motion. There were no objections; **SO ORDERED**.

d. Agenda Approval

MOTION:

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

2. SCHEDULED PUBLIC COMMENTS

- a. USCG Sector Anchorage, LTJG Scott Peters & CWO Thad Wagner – 2019 Kenai Dip Net Fishery**

USCG LTJG Scott Peters noted he was in Kenai working with the State Park Rangers during two of the busier weekends of the Dip Net Fishery and the focus while on the river was boating safety education. The State Park Rangers primary focus was to manage Kenai River waterways. He added that the 2019 Dipnet Fishery seemed orderly with the large amount of boats, noting the USCG most reasonable recommendation was to wear life jackets. The plan for 2020 would be the same as 2019 with the state fishery and USCG as the primary enforcement officers on the water.

3. UNSCHEDULED PUBLIC COMMENT

Jim Glendening commented on Title 11 concerns regarding management of the waterfront.

4. APPROVAL OF MEETING SUMMARY

- a. November 4, 2019

MOTION:

Commissioner Crandall **MOVED** to approve the meeting summary of November 4, 2019; and Commissioner Hutchison **SECONDED** the motion. There were no objections; **SO ORDERED**.

- b. November 25, 2019 (Joint Meeting)

MOTION:

Commissioner Crandall **MOVED** to approve the meeting summary of November 25, 2019; and Commissioner Hutchison **SECONDED** the motion. There were no objections; **SO ORDERED**.

- c. January 6, 2020

MOTION:

Commissioner Crandall **MOVED** to approve the meeting summary of January 6, 2020; and Commissioner Hutchison **SECONDED** the motion. There were no objections; **SO ORDERED**.

5. UNFINISHED BUSINESS – None.

6. NEW BUSINESS

- a. **Discussion/Recommendation** – Special Use Permit Fee for City Crane Access

The Public Works Director noted an invitation to bid for the use of the City Dock would be advertised later this week. The intent would be to continue with the special use permit for the private fishermen and citizens for some form of access. He clarified that the permit was \$1,000 that started at the end of June last year and he recommended starting earlier this year, noting raising the cost to \$1,500 or dependent on the user. He clarified there were three users last year, the Special Use Permit would be available in May, and Special Use Permit users had to have training before they could get the permit.

The Public Works Director noted the contract for bid was to use cranes, offices, and operating area at the boating facility for 2020, with the intent to negotiate fueling at the City Dock with this contract.

The Commission discussed having two fees for the Special Use Permit, Single Use Fisherman and Commercial Use with fees ranging from \$1,000 to \$5,000.

7. REPORTS

- a. **Public Works Director** – S. Curtin reported the following:
- Special Use Permit for the City Dock would be advertised for two weeks, also in April and May;
 - He executed the change order to Nelson Engineering for updating plans for the Dock Repair Project, would sign this week, then it would go out for bid;
 - Discussed dredging with the Army Corps of Engineers; working toward a study for City Dock dredging;
 - An update was provided on the Peninsula Avenue Bluff Erosion project and the overall Bluff project; and
 - There would be a City Council work session to hear about the new Capital Improvement Plan (CIP); noting two specific projects of interest to the Harbor Commission.
- b. **Commission Chair** – M. Dunn noted interest on the Bluff Erosion project and dredging at the City Dock.
- c. **City Council Liaison** – R. Peterkin reported on the actions of the February 5 Council Meeting. He added that if Commission members wanted specific items on a future Harbor Commission agenda, contact Chair Dunn and he would work with Administration; noting the agenda deadline was one week prior to the meetings.

8. NEXT MEETING ATTENDANCE NOTIFICATION – March 9, 2020

9. COMMISSIONER COMMENTS AND QUESTIONS

Commission members welcomed new commissioner, Branden Bornemann.

Commissioner Hutchison expressed appreciation for keeping the Commission informed on the Bluff Erosion project. She added she would contact the State Park Rangers and invite them to one of the Harbor Commission meetings.

Commissioner Crandall thanked the Public Works Director for the due diligence with the Army Corps of Engineers, and thanked all those that attended the Commission meeting.

Commissioner Bornemann expressed gratitude for the warm welcome and looked forward to working with the Commission.

Commissioner Desimone applauded the City's efforts for recognizing the Purple Heart, and urged the Army Corps of Engineers for their continued support.

Chair Dunn thanked everyone for their participation and attendance to the meeting, and expressed appreciation to the Public Works Director for the updates on the Bluff and City Dock.

10. ADDITIONAL PUBLIC COMMENT – None.

11. INFORMATION ITEMS – None.

12. **ADJOURNMENT**

MOTION:

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

There being no further business before the Commission, the meeting was adjourned at 7:55 p.m.

Meeting summary prepared and submitted by:

Jacquelyn LaPlante
Deputy City Clerk

DRAFT



Sponsored by: Harbor Commission

CITY OF KENAI

RESOLUTION NO. HC20-01

A RESOLUTION OF THE HARBOR COMMISSION OF THE CITY OF KENAI, ALASKA, RECOMMENDING THE KENAI CITY COUNCIL ENACT ORDINANCE NO. 3106-2020 AMENDING TITLE 11 – HARBOR AND HARBOR FACILITIES, TO REMOVE PROVISIONS THAT ARE NO LONGER HISTORICALLY RELEVANT, RECOGNIZE CHANGES TO OTHER CHAPTERS OF CITY CODE THAT NOW PROVIDE FOR LEASE AND SALE OF HARBOR LANDS AND PROVIDE THE HARBOR COMMISSION A PLATFORM TO MOVE FORWARD.

WHEREAS, the City's Harbor Commission has long recognized a need for clarification and focus in its duties and has undertaken several efforts to review and recommend revisions to Title 11; and,

WHEREAS, the most recent review of Title 11 by the Harbor Commission and its subcommittee formed for purposes of review, resulted in recommended revisions to Title 11 recognizing the expertise of other City bodies in land use and planning and a desire of the Harbor Commission to focus on regulation of the harbor and its associated activities; and,

WHEREAS, the Harbor Commission's also recommends removing provisions from Title 11 that are no longer necessary because of the temporal nature of the procedures addressed which have long since expired; and,

WHEREAS, the Harbor Commission recognizes that the City recently updated Title 22-City Owned Lands, which now encompasses the sale, lease and acquisition of harbor lands, negating the need for separate provisions for the same in Title-11; and,

WHEREAS, the elimination of many sections of Title 11 is intended to be the first step in allowing the Harbor Commission to focus on harbor related projects and activities and move forward with future potential recommended code changes relevant to such projects and activity; and,

WHEREAS, the Harbor Commission supports the revisions proposed to Title 11 by Ordinance No.3106-2020 which are based on its recommendations.

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

Section 1. That the Harbor Commission of Kenai Recommends the City Council Enact Ordinance No. 3106-2020 Amending Title 11 of the Kenai Municipal Code.

Section 2. That a copy of this Resolution be provided to the members of the Kenai City Council.

Section 3. That this Resolution takes effect immediately upon passage.

Resolution No. HC20-01

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PASSED BY THE HARBOR COMMISSION OF THE CITY OF KENAI, ALASKA, this 9th day of March, 2020.

MIKE DUNN, CHAIR

ATTEST:

Jamie Heinz, CMC, City Clerk



Sponsored by: Council Members Glendening and Peterkin

CITY OF KENAI

ORDINANCE NO. 3106-2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING TITLE 11 – HARBOR AND HARBOR FACILITIES, TO REMOVE PROVISIONS THAT ARE NO LONGER HISTORICALLY RELEVANT, RECOGNIZE CHANGES TO OTHER CHAPTERS OF CITY CODE THAT NOW PROVIDE FOR LEASE AND SALE OF HARBOR LANDS AND PROVIDE THE HARBOR COMMISSION A PLATFORM TO MOVE FORWARD.

WHEREAS, on January 6, 1977 the state conveyed certain tidelands and submerged lands to the City; and,

WHEREAS, with the conveyance came responsibilities for the City including surveying, platting and adjudication of commercial fisheries rights; and,

WHEREAS, many of these responsibilities, codified in Title 11-Harbor and Harbor Facilities, were required to be completed within a two-year period or less; and,

WHEREAS, there is no longer a need to maintain in City Code, ordinances pertaining to a process that expired over 30 years ago; and,

WHEREAS, the City recently updated Title 22-City Owned Lands, which now encompasses the sale, lease and acquisition of harbor lands, negating the need for separate provisions for the same in Title-11; and,

WHEREAS, the City's Harbor Commission has long recognized a need for clarification and focus in its duties; and,

WHEREAS, the most recent review of Title 11 by the Harbor Commission and its subcommittee in 2019, recommended many revisions to the Title recognizing the expertise of other City bodies in land use and planning and a desire to focus on regulation of the harbor and its associated activities; and,

WHEREAS, removing provisions from Title 11 that are no longer necessary is intended to be the first step in allowing the Harbor Commission to focus on harbor related projects and activities and move forward with future potential recommended code changes relevant to such projects and activity; and,

WHEREAS, the Harbor Commission at its meeting on _____ recommended _____ of this Ordinance.

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

Section 1. Amendment of Title 11 of the Kenai Municipal Code: That Kenai Municipal Code, Title 11 – Harbor and Harbor Facilities, is hereby amended as follows:

Title 11

HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master**
- 11.10 Harbor Commission**
- 11.15 Tidelands**
- 11.20 Leasing of Tidelands**

Chapter

11.05

HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.**
- 11.05.020 Harbor ~~[D]~~Defined.**
- 11.05.030 Harbor ~~[R]~~Regulations.**
- ~~[11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.~~**
- 11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.**
- 11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.**
- 11.05.070 FACILITY RATES AND CHARGES.]**
- 11.05.080 Leasing ~~[N]~~Not ~~[P]~~Prohibited.**
- 11.05.090 Use of ~~[L]~~Launch ~~[R]~~Ramp and ~~[F]~~Float.**
- 11.05.100 No ~~[W]~~Wake ~~[Z]~~Zones.**

11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law.

11.05.020 Harbor [D]Defined.

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor [R]Regulations.

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

[11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.

(A) ALL LESSEES, OWNERS, OR OCCUPANTS OF PROPERTY WITHIN THE HARBOR OR CONTIGUOUS TO IT WHO WISH TO CONSTRUCT OR OPERATE TERMINAL OR TRANSPORTATION FACILITIES OF ANY KIND THEREIN, INCLUDING, BUT NOT LIMITED TO, DOCKS AND WAREHOUSES, SHALL APPLY TO THE LANDSCAPING/SITE PLAN REVIEW BOARD FOR A PERMIT. APPLICATION THEREFOR SHALL BE MADE IN ACCORDANCE WITH REGULATIONS DESCRIBED IN KMC 14.25, ENTITLED "LANDSCAPING/SITE PLAN REGULATIONS," AND SHALL BE ACCOMPANIED BY A PLAN OF THE PROPOSED CONSTRUCTION, WHICH SHALL MEET ALL STANDARDS AND REQUIREMENTS WHICH MAY BE SET FORTH BY THE COUNCIL.

(B) THE APPLICANT SHALL REFER ALL PLANS OF THE TYPE OR LOCATION OF ANY PROPOSED CONSTRUCTION WHICH ARE OR MAY BE IN CONFLICT WITH THE GENERAL CITY PLAN TO THE HARBOR COMMISSION AND THE LANDSCAPING/SITE PLAN REVIEW BOARD TO DETERMINE WHETHER SUCH PROPOSED CONSTRUCTION IS IN KEEPING WITH THE OBJECTIVES OF THE GENERAL PLAN. THE DECISION OF THE LANDSCAPING/SITE PLAN REVIEW BOARD SHALL BE BINDING UNLESS APPEALED BY COUNCIL. THE BUILDING OFFICIAL MAY ISSUE PERMITS UPON SUCH TERMS AND CONDITIONS AND FOR SUCH DURATION AS IT MAY DEEM PROPER, AND NO CONSTRUCTION MAY BEGIN OR OPERATION CARRIED ON WITHOUT A PERMIT FROM THE BUILDING OFFICIAL.]

[11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.

IT SHALL BE A CONDITION OF ALL PERMITS GRANTED BY THE CITY COUNCIL THAT THE FACILITIES TO BE CON-STRUCTED AND THE SERVICES TO BE SUPPLIED IN CONNECTION WITH THEM SHALL BE MADE AVAILABLE TO ALL CARRIERS UPON EQUAL TERMS, AT EQUAL RATES, AND WITHOUT DISCRIMINATION OF ANY KIND.]

[11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.

THE CITY COUNCIL MAY INQUIRE INTO THE MANNER IN WHICH OBLIGATIONS UNDER THE PERMITS ISSUED BY IT ARE CARRIED OUT, AND INTO THE RATE SCHEDULES AND PRACTICES OF THE PERMIT HOLDERS FOR PURPOSES OF DETERMINING WHETHER THE PROVISIONS OF THE PERMITS ARE BEING COMPLIED WITH. IT SHALL HAVE ACCESS TO BOOKS AND RECORDS AND TO TERMINAL AND TRANSPORTATION FACILITIES AS MAY BE REASONABLY NECESSARY TO ENABLE IT TO MAKE SUCH A DETERMINATION. SHOULD THE COUNCIL AT ANY TIME FIND THE PERMIT HOLDER IS NOT COMPLYING WITH THE TERMS OF HIS OR HER PERMIT, IT MAY CANCEL THE PERMIT UPON SUCH NOTICE AND IN ACCORDANCE WITH SUCH PROCEDURE AS IT MAY, BY REGULATION, PRESCRIBE.]

[11.05.070 FACILITY RATES AND CHARGES.

THE CITY SHALL FIX THE RATES AND CHARGES FOR THE USE OF ANY AND ALL TERMINAL OR TRANSPORTATION FACILITIES CONSTRUCTED ON PROPERTY UNDER ITS JURISDICTION, INCLUDING CHARGES ASSESSED AGAINST VESSELS, THEIR OWNERS, AGENTS OR OPERATORS WHICH LOAD OR DISCHARGE CARGO AT ANY OF THE TERMINALS WITHIN THE HARBOR AREA; CHARGES FOR BERTHAGE WHILE LOADING OR DISCHARGING CARGO; CHARGES FOR ADMINISTRATIVE EXPENSES IN SERVING THE CARRIER'S CHARGES FOR FREIGHT HANDLING, LOADING, UNLOADING AND WHARF DEMURRAGE RATES. SUCH RATES AND CHARGES SHALL BE JUST AND REASONABLE. THE RATES AND CHARGES SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL.]

11.05.080 Leasing [N]Not [P]Prohibited.

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations.

11.05.090 Use of [L]Launch [R]Ramp and [F]Float.

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC 11.05 within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).
- (c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.

(d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC 13.05.010(b).

(e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties.

11.05.100 No [W]Wake [Z]Zones.

(a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.

(b) No wake zones may be established on a temporary or permanent basis.

(c) A “no wake zone” is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.

(d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.

(e) A violation of this section shall be punishable as provided in KMC 13.05.010.

Chapter

11.10

HARBOR COMMISSION

Sections:

11.10.010 Duties and [P]owers.

11.10.010 Duties and [P]Powers.

(a) The Harbor Commission shall be required to do the following:

(1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission’s recommendations for the development of the City Harbor facilities may include, among other things:

(i) development of the type, location, and sequence of all public harbor facilities;

(ii) the relocation, removal, extension, or change of use of existing harbor facilities;

(2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

(3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.

[(4) ACT IN THE CAPACITY AS DIRECTED AND AUTHORIZED BY A TIDELANDS ORDINANCE ADOPTED BY THE CITY.]

[(5)4] Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.

[(6)5] Make and prepare reports and plans for approval by the City Council.

[(7)6] Coordinate public efforts, individual and group, to the effectuation of approved plans.

[(8)7] Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council.

Chapter

11.15

TIDELANDS

Sections:

11.15.010 Short [T]Title.

[11.15.020 DEFINITIONS.]

11.15.030 Approval and [A]Acceptance of State [C]Conveyance.

11.15.040 Approval and [A]Adoption of [S]Subdivision [P]Plat.

[11.15.050 TIME AND PLACES OF POSTING PLAT.

11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.

11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.

11.15.080 PROCEDURE FOR FILING APPLICATIONS.

11.15.090 INITIAL REVIEW BY COMMISSION.

11.15.100 PRELIMINARY PLAT.

11.15.110 PRELIMINARY PLAT REQUIREMENTS.

11.15.120 SURVEY PROCEDURE.

11.15.130 PROCEDURE ON FINAL PLAT.

11.15.140 FINAL PLAT REQUIREMENTS.

11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.

11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.

11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.

11.15.180 APPRAISAL.

11.15.190 REVIEW BY CITY ENGINEER.

11.15.200 RECOMMENDED APPROVAL BY COMMISSION.

- 11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.**
- 11.15.220 DEEDS—PERMANENT REGISTER.**
- 11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.**
- 11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.**
- 11.15.250 DETERMINATION UPON STIPULATION OF FACTS.**
- 11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.**
- 11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.**
- 11.15.280 FORFEITURE OF PREFERENCE RIGHTS.**
- 11.15.290 FORMS.]**

11.15.010 Short [T]Title.

This ordinance shall be known as the “Kenai Tidelands Ordinance.”

[11.15.020 DEFINITIONS.

FOR THE PURPOSE OF THIS ORDINANCE, THE TERMS DEFINED HEREIN SHALL HAVE THE MEANING PROVIDED UNLESS THE CONTEXT REQUIRES OTHERWISE:

- (A) “ALASKA” MEANS THE STATE OF ALASKA.
- (B) “AGRICULTURAL LANDS” MEANS TIDELANDS CHIEFLY VALUABLE FOR AGRICULTURAL PURPOSES.
- (C) “ASSESSOR” MEANS THE ASSESSOR OF THE CITY OF KENAI, ALASKA, OR OTHER INDIVIDUAL DESIGNATED BY THE CITY MANAGER TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE ASSESSOR.
- (D) “CITY” MEANS THE CITY OF KENAI, ALASKA.
- (E) “CITY ENGINEER” MEANS THE CITY ENGINEER OF THE CITY, OR OTHER CITY OFFICIAL DESIGNATED TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE CITY ENGINEER.
- (F) “CLASS I PREFERENCE RIGHT” MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS SEAWARD OF A SURVEYED TOWNSITE ON AND PRIOR TO SEPTEMBER 7, 1957, AND WHO HAVE EXECUTED A WAIVER TO THE CITY AND STATE OF ALL RIGHTS SUCH OCCUPANT MAY HAVE HAD PURSUANT TO PUBLIC LAW 85-303. UPON EXECUTION OF THE WAIVER, SUCH PERSONS OR THEIR SUCCESSORS IN INTEREST, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FROM THE CITY FOR CONSIDERATION OF THE COSTS OF SURVEY, AND TRANSFERRING AND CONVEYING THE TITLE.
- (G) “CLASS II PREFERENCE RIGHT” MEANS THE RIGHT EXTENDED TO CLASS I PREFERENCE RIGHT CLAIMANTS WHO REFUSE TO EXECUTE A WAIVER TO THE CITY OF ANY RIGHTS SUCH OCCUPANTS MAY HAVE ACQUIRED PURSUANT TO

PUBLIC LAW 85-303. IT SHALL BE MANDATORY FOR THE CITY TO EXPEDITIOUSLY HONOR THE APPLICATION FROM THE OCCUPANT AFTER THE SECRETARY OF THE ARMY HAS SUBMITTED TO THE SECRETARY OF THE INTERIOR AND GOVERNOR OF THE STATE MAPS SHOWING THE PIERHEAD LINE ESTABLISHED BY THE CORPS OF ENGINEERS WITH RESPECT TO THE TRACT SO GRANTED. THE MOST EXPEDITIOUS METHOD OF SECURING TITLE TO SUCH LANDS IS TO EXECUTE THE WAIVER OF CLASS II RIGHTS AND PROCEED TO APPLY FOR TITLE UNDER A CLASS I PREFERENCE RIGHT.

(I) "CLASS III PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS AFTER SEPTEMBER 7, 1957, AND WHO CONTINUED TO OCCUPY THE SAME ON JANUARY 3, 1959. SUCH PERSONS, OR THEIR SUCCESSORS, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FOR A CONSIDERATION NOT TO EXCEED THE COSTS OF APPRAISAL, AND THE ADMINISTERING AND TRANSFERRING, INCLUDING SURVEY, TOGETHER WITH THE APPRAISED FAIR MARKET VALUE THEREOF, EXCLUSIVE OF ANY VALUE OCCURRING FROM IMPROVEMENTS OR DEVELOPMENT, SUCH AS FILL MATERIAL, BUILDING, OR STRUCTURES THEREON.

(J) "CLERK" MEANS THE CLERK OF THE CITY.

(K) "COMMISSION" MEANS THE CITY OF KENAI ADVISORY HARBOR COMMISSION UNLESS NOTED OTHERWISE.

(L) "DIRECTOR" MEANS THE DIRECTOR OF LANDS, STATE OF ALASKA.

(M) "DIRECTOR'S LINE" MEANS A LINE SEAWARD OF THE CITY, APPROVED BY THE DIRECTOR, WITH THE CONCURRENCE OF THE COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA, SEAWARD OF ALL TIDE AND SUBMERGED LANDS OCCUPIED OR SUITABLE FOR OCCUPATION AND DEVELOPMENT WITHOUT UNREASONABLE INTERFERENCE WITH NAVIGATION.

(N) "FAIR MARKET VALUE" MEANS THE HIGHEST PRICE, DESCRIBED IN TERMS OF MONEY, WHICH THE PROPERTY WOULD BRING IF EXPOSED FOR SALE FOR A REASONABLE TIME IN THE OPEN MARKET, WITH A SELLER, WILLING BUT NOT FORCED TO SELL, AND A BUYER, WILLING BUT NOT FORCED TO BUY, BOTH BEING FULLY INFORMED OF ALL THE PURPOSES FOR WHICH THE PROPERTY IS BEST ADAPTED OR COULD BE USED.

(O) "FILL" SHALL MEAN EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS PLACED UPON TIDE OR CONTIGUOUS SUBMERGED LANDS TO A HEIGHT ABOVE THE HIGH WATER LINE FOR THE PURPOSE OF ELEVATING THE LANDS FOR A SPECIAL USEFUL PURPOSE. EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS, PLACED ON TIDE OR CONTIGUOUS SUBMERGED LAND SOLELY FOR THE PURPOSE OF SPOILS DISPOSAL SHALL NOT BE CONSIDERED FILL

UNLESS SUCH FILL WAS USED FOR USEFUL AND BENEFICIAL PURPOSE ON AND PRIOR TO JANUARY 3, 1959.

(P) "HEARINGS OFFICER" MEANS THAT CITY OFFICIAL EMPLOYED TO HEAR DISPUTES BETWEEN CLAIMANTS, SUMMARIZE THE TESTIMONY, ATTEMPT TO REACH STIPULATIONS OF FACT BETWEEN THE PARTIES, ASSEMBLE THE RECORD OF THE DISPUTE, AND SUBMIT THE SAME TO THE COUNCIL FOR DETERMINATION.

(Q) "IMPROVEMENTS" MEANS BUILDINGS, WHARVES, PIERS, DRY DOCKS, AND OTHER SIMILAR TYPES OF STRUCTURES PERMANENTLY FIXED TO THE TIDE OR CONTIGUOUS SUBMERGED LANDS THAT WERE CONSTRUCTED AND/OR MAINTAINED BY THE APPLICANT FOR BUSINESS, COMMERCIAL, RECREATION, RESIDENTIAL, OR OTHER BENEFICIAL USES OR PURPOSES. FLOATS SECURED BY GUIDE PILES USED AS FLOATING WHARVES, WHERE ACCESS IS PROVIDED TO THE SHORE, SHALL BE IMPROVEMENTS WITHIN THE MEANING OF THIS SECTION, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE OF MEAN HIGH TIDE OF JANUARY 3, 1959 AND ACTUALLY UTILIZED FOR BENEFICIAL PURPOSES ON JANUARY 3, 1959 BY THE APPLICANT SHALL BE CONSIDERED A PERMANENT IMPROVEMENT, BUT IN NO EVENT SHALL FILL BE CONSIDERED A PERMANENT IMPROVEMENT WHEN PLACED ON THE TIDELANDS SOLELY FOR THE PURPOSE OF DISPOSING OF WASTE OR SPOILS. FILL MATERIAL NOT UTILIZED FOR A BENEFICIAL PURPOSE ON AND PRIOR TO JANUARY 3, 1959, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE MEAN HIGH TIDE ON JANUARY 3, 1959 SHALL NOT BE THE BASIS FOR AN APPLICATION, NOR SHALL IT BE INCLUDED IN ANY APPLICATION, FOR THE EXERCISE OF PREFERENCE RIGHTS HEREUNDER.

(R) "INDUSTRIAL AND COMMERCIAL LANDS" MEANS TIDE LANDS CHIEFLY VALUABLE FOR INDUSTRIAL, MANUFACTURING, OR COMMERCIAL PURPOSES.

(S) "KENAI" MEANS THE CITY OF KENAI, ALASKA.

(T) "MANAGER" MEANS THE MANAGER OF THE CITY OF KENAI, ALASKA.

(U) "MEAN HIGH TIDE" AT ANY PLACE SUBJECT TO TIDAL INFLUENCE SHALL BE INTERPRETED AS THE TIDAL DATUM PLANE DERIVED FROM AVERAGING ALL THE HIGH WATERS OBSERVED AT THAT PLACE OVER A PERIOD OF NINETEEN (19) YEARS. MEAN HIGH WATER SHALL BE INTERPRETED TO BE AS THE INTERSECTION OF THE DATUM PLACE OF MEAN HIGH WATER WITH THE SHORE.

(V) "MEAN LOW TIDE" SHALL BE INTERPRETED TO BE MEAN LOWER LOW WATER WHICH IS THE MEAN OF THE LOWER OF THE TWO LOW WATERS OF EACH DAY FOR A TIDAL CYCLE OF NINETEEN (19) YEARS.

(W) "OCCUPANT" MEANS ANY PERSON AS DEFINED HEREIN, OR HIS SUCCESSOR IN INTEREST, WHO ACTUALLY OCCUPIED FOR ANY BUSINESS, RESIDENTIAL, OR OTHER BENEFICIAL PURPOSE, TIDE OR SUBMERGED LAND, WITHIN THE CONVEYANCE OF SUCH BY THE STATE TO THE CITY, ON OR PRIOR TO JANUARY 3,

1959, WITH SUBSTANTIAL PERMANENT IMPROVEMENTS. NO PERSON SHALL BE CONSIDERED AN OCCUPANT BY REASON OF HAVING:

- (1) PLACED A FISH TRAP IN POSITION FOR OPERATION OR STORAGE UPON THE TIDE, SHORE, OR SUBMERGED LAND;
- (2) PLACED A SET NET OR PILING THEREFOR OR ANY OTHER DEVICE OR FACILITY FOR TAKING OF FISH;
- (3) PLACED PILINGS OR DOLPHINS FOR LONG STORAGE OR OTHER MOORAGE;
- (4) PLACED TELEPHONE, POWER, OR OTHER TRANSMISSION FACILITIES, ROADS, TRAILS, OR OTHER CONTIGUOUS SUBMERGED LANDS; OR
- (5) CLAIMED THE LAND BY VIRTUE OF SOME FORM OF CONSTRUCTIVE OCCUPANCY. WHERE LAND IS OCCUPIED BY A PERSON OTHER THAN THE OWNER OF THE IMPROVEMENTS THEREON, THE OWNER OF THE IMPROVEMENTS SHALL, FOR THE PURPOSE OF THIS ORDINANCE, BE CONSIDERED THE OCCUPANT OF SUCH LANDS.

(X) "OCCUPIED OR DEVELOPED" MEANS THE ACTUAL USE, CONTROL, AND OCCUPANCY, BUT NOT NECESSARILY RESIDENCE, OF THE TIDE OR SUBMERGED LAND BY THE ESTABLISHMENT THEREON OF SUBSTANTIAL PERMANENT IMPROVEMENTS.

(Y) "ORDINANCE" MEANS THE KENAI TIDELANDS ORDINANCE.

(Z) "PARK AND RECREATION LANDS" MEANS TIDELANDS CHIEFLY VALUABLE FOR PUBLIC PARK AND RECREATION USE, INCLUDING SCENIC OVERLOOKS.

(AA) "PERSON" MEANS ANY PERSON, FIRM, CORPORATION, COOPERATIVE ASSOCIATION, PARTNERSHIP OR OTHER ENTITY LEGALLY CAPABLE OF OWNING LAND OR ANY INTEREST THEREIN.

(BB) "PIERHEAD LINE" IS A LINE FIXED BY THE CORPS OF ENGINEERS ROUGHLY PARALLEL TO THE EXISTING LINE OF MEAN LOW TIDE AT SUCH DISTANCE OFFSHORE THEREFROM THAT SAID PIERHEAD LINE SHALL ENCOMPASS LANDWARD ALL STATIONARY, MANMADE STRUCTURES UNDER THE AUTHORITY OF PUBLIC LAW 85-303.

(CC) "PREFERENCE RIGHT" SUBJECT TO THE CLASSIFICATIONS THEREOF HEREIN ESTABLISHED MEANS THE RIGHT OF AN OCCUPANT TO ACQUIRE BY GRANT, PURCHASE, OR OTHERWISE, AT THE ELECTION OF THE OCCUPANT, EXCEPT AS OTHERWISE LIMITED OR PRESCRIBED IN THIS ORDINANCE, ANY LOT, PIECE, PARCEL, OR TRACT OF TIDELAND OR SUBMERGED LAND OCCUPIED OR DEVELOPED BY SUCH OCCUPANT ON AND PRIOR TO JANUARY 3, 1959.

(DD) "STATE" MEANS THE STATE OF ALASKA.

(EE) "SUBMERGED LANDS" MEANS LAND COVERED BY TIDAL WATERS BETWEEN THE LINE OF MEAN LOW WATER AND SEAWARD TO A DISTANCE OF THREE (3)

GEOGRAPHICAL MILES, IN THEIR NATURAL STATE, WITHOUT BEING AFFECTED BY MANMADE STRUCTURES, FILL, AND SO FORTH.

(FF) "SUBSTANTIAL PERMANENT IMPROVEMENTS" SHALL FOR THE PURPOSES OF THE ORDINANCE HAVE THE SAME MEANING AS IMPROVEMENTS, AS HEREIN DEFINED.

(GG) "TIDELANDS" MEANS LANDS PERIODICALLY COVERED BY TIDAL WATERS BETWEEN THE ELEVATIONS OF MEAN HIGH TIDE AND MEAN LOW TIDES, WITHOUT REGARD TO ARTIFICIAL INTERFERENCE WITH TIDAL FLOWS CAUSED BY MANMADE STRUCTURES, BREAKWATERS, FILL, AND THE LIKE. WHEN USED IN THIS ORDINANCE, IT SHALL ALSO INCLUDE SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY.

(HH) "TIDELANDS SUBDIVISION PLAT" IS THAT CERTAIN PLAT OF SUBDIVISION OF TIDELANDS AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY MADE BY H.H. GALLIETT, JR., REGISTERED ENGINEER, DATED DECEMBER, 1968, KNOWN AS ALASKA TIDELANDS SURVEY NO. 272 AND FILED AS 76-179 IN THE KENAI RECORDING DISTRICT SHOWING ALL STRUCTURES AND IMPROVEMENTS THEREON AND THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED, TOGETHER WITH THE NAME OF THE OWNER OR CLAIMANT THEREOF, INCLUDING WITHIN THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED SUCH SURROUNDING TIDE AND SUBMERGED LANDS AS SHALL BE REASONABLY NECESSARY IN THE OPINION OF THE COUNCIL FOR THE USE AND ENJOYMENT OF THE STRUCTURES AND IMPROVEMENTS THEREON BY THE OWNER OR CLAIMANT, BUT SHALL NOT INCLUDE ANY TIDE OR SUBMERGED LANDS WHICH IF GRANTED TO SUCH OCCUPANT, WOULD UNJUSTLY DEPRIVE ANY OCCUPANT OF ADJOINING LANDS FROM HIS REASONABLE USE AND ENJOYMENT THEREOF.]

11.15.030 Approval and ~~A~~Acceptance of State ~~C~~Conveyance.

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City.

11.15.040 Approval and ~~A~~Adoption of ~~S~~Subdivision ~~P~~Plat.

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District.

[11.15.050 TIME AND PLACES OF POSTING PLAT.

SAID PLAT SHALL BE POSTED FOR A PERIOD OF NOT LESS THAN SIXTY (60) DAYS, COMMENCING WITH THE DATE FOLLOWING THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, IN THE OFFICE OF THE CLERK, CITY HALL BUILDING.

11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.

THE CLERK SHALL CAUSE TO BE ISSUED AND PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, COMMENCING THE DAY AFTER THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, A NOTICE OF THE POSTING OF SAID PLAT CONTAINING THE FOLLOWING STATEMENTS:

- (A) TIME AND PLACE OF POSTING.
- (B) THE DAY OF FINAL PASSAGE AND THE EFFECTIVE DATE OF THIS ORDINANCE WHICH ADOPTS THE PLAT AS THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE TIDE AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY ON JANUARY 6, 1977.
- (C) THAT ANY AND ALL PERSONS HAVING OR CLAIMING PREFERENCE RIGHTS PROVIDED BY LAW AND AS HEREIN DEFINED TO ANY PART OR PARTS OF THE SUBDIVIDED LAND EMBRACED WITHIN THE BOUNDARIES OF SAID PLAT, WHO FAIL TO APPLY TO EXERCISE SUCH RIGHTS UNDER THE PROVISIONS OF THIS ORDINANCE WITHIN TWO (2) YEARS FROM AND AFTER OCTOBER 6, 1979, WHICH IS HEREBY DECLARED TO BE THE DATE UPON WHICH APPLICATIONS THEREFOR WILL BE FIRST ACCEPTED BY THE CITY, SHALL HAVE FORFEITED THEIR PREFERENCE RIGHTS PROVIDED BY LAW AND THIS ORDINANCE.
- (D) THAT THIS ORDINANCE WAS ENACTED TO PROTECT OCCUPANTS HAVING PREFERENCE RIGHTS, TO AFFORD DUE PROCESS OF LAW, TO PROVIDE PROCEDURES FOR APPLYING FOR EXERCISE OF PREFERENCE RIGHTS, FOR HEARING AND ADJUDICATING ADVERSE CLAIMS, AND FOR CONVEYING TITLE TO OCCUPANTS HOLDING PREFERENCE RIGHTS DEFINED BY LAW AND THIS ORDINANCE.
- (E) THAT COPIES OF THIS ORDINANCE AND APPLICATION FORMS ARE AVAILABLE AT THE OFFICE OF THE CLERK OF THE CITY.

11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.

APPLICATION FORMS, IN SUBSTANTIALLY THE FORM SET FORTH IN KMC 11.15.290(A) WILL BE ACCEPTED FOR FILING ONE BUSINESS DAY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, AND ENDING TWO CALENDAR YEARS THEREAFTER AND AT THE

CLOSE OF BUSINESS AT 5:00 P.M., AFTER WHICH NO APPLICATION FORMS WILL BE FURNISHED AND AFTER WHICH NO APPLICATIONS WILL BE ACCEPTED FOR FILING.

11.15.080 PROCEDURE FOR FILING APPLICATIONS.

APPLICATIONS SHALL BE SUBMITTED, AND WILL BE RECEIVED FOR FILING, ONLY FOR THE PURPOSE OF CLAIMING PREFERENCE RIGHTS HEREIN DEFINED TO THE TIDELANDS CONVEYED TO THE CITY BY THE STATE.

(A) APPLICATION FORMS WILL BE PROVIDED BY THE CLERK WITHOUT CHARGE AT THE CITY CLERK'S OFFICE IN THE CITY HALL BUILDING.

(B) APPLICATIONS MUST BE SUBMITTED IN TRIPLICATE.

(C) APPLICATIONS NOT CLEARLY LEGIBLE NOR PROPERLY COMPLETED AND CERTIFIED BY THE APPLICANT WILL NOT BE ACCEPTED FOR FILING. SINCE THE FACT ALLEGED MAY BE USED IN HEARINGS OF DISPUTES THEIR TRUTH MUST BE CERTIFIED. THE FACTS ALLEGED WILL ALSO BE THE BASIS FOR THE CONVEYANCES OF VALUABLE PROPERTY. WILLFUL AND DELIBERATE MISSTATEMENTS OF FACT WILL BE EQUIVALENT TO ATTEMPTING TO OBTAIN VALUABLE PUBLIC PROPERTY BY MISREPRESENTATION AND MAY BE PROSECUTED AS OBTAINING PROPERTY UNDER FALSE PRETENSES.

(D) APPLICATIONS MAY BE MAILED TO THE CITY CLERK, [P.O. BOX 580] 210 FIDALGO AVENE, KENAI, ALASKA, 99611, WITH THE PROPER DEPOSIT COMPUTED ACCORDING TO THE NATURE OF THE APPLICATION MADE. APPLICATIONS PROPERLY COMPLETED ACCOMPANIED WITH THE PROPER DEPOSIT WILL BE STAMPED WITH THE TIME AND DATE OF FILING AND SIGNED BY THE PERSON ACCEPTING THE DEPOSIT. THE TRIPLICATE COPY WILL THEN BE DELIVERED TO THE APPLICANT, OR MAILED TO HIM IF A RETURN ENVELOPE WITH POSTAGE AFFIXED IS FURNISHED OR DELIVERED TO THE CITY CLERK, CITY ADMINISTRATION OFFICES, AIRPORT TERMINAL BUILDING, KENAI, ALASKA.

(E) ANY APPLICATION FOR A DEED BASED ON AN ASSERTED RIGHT OTHER THAN A PREFERENCE RIGHT SHALL BE REJECTED.

(F) ANY APPLICATIONS NOT WAIVING THE CLASS II PREFERENCE RIGHT SHALL BE FILED BY THE CLERK, TOGETHER WITH ALL OTHERS OF LIKE NATURE, TO AWAIT THE OFFICIAL PROMULGATION OF THE PIERHEAD LINE. THEREAFTER SUCH APPLICATIONS SHALL BE PROCESSED AS APPLICATIONS UNDER THE CLASS I RIGHTS.

(G) APPLICATIONS NOT ACCOMPANIED BY THE PROPER DEPOSIT FOR COSTS SHALL BE REJECTED.

11.15.090 INITIAL REVIEW BY PLANNING & ZONING COMMISSION.

AFTER INITIAL REVIEW OF THE APPLICATION BY THE COMMISSION, THE APPLICANT SHALL HAVE PREPARED AT HIS OWN COST A PRELIMINARY AND FINAL PLAT AS DESCRIBED IN THE FOLLOWING SECTION.

11.15.100 PRELIMINARY PLAT.

(A) THE APPLICANT SHALL PREPARE, OR HAVE PREPARED, A PRELIMINARY PLAT OF THE TIDE, SHORE, OR SUBMERGED LANDS WHICH HE CLAIMS. THIS PLAT SHALL COMPLY WITH THE REQUIREMENTS HEREINAFTER SET FORTH.

(B) THE PURPOSE OF A PRELIMINARY PLAT IS TO AFFORD THE OCCUPANT AN OPPORTUNITY OF RECEIVING PRELIMINARY REVIEW AND PREVENT THE UNNECESSARY EXPENDITURE OF MONEY AND TIME THAT WOULD BE NECESSITATED IF MAJOR CHANGES WERE REQUIRED.

(C) THE APPLICANT MUST FILE HIS APPLICATION ACCOMPANIED BY FOUR BLACK OR BLUE-LINED PLATS OF THE LAYOUT.

(D) THE PLANNING & ZONING COMMISSION SHALL FORWARD THE PRELIMINARY PLAT TO AN ENGINEER TO BE DESIGNATED BY THE PLANNING & ZONING COMMISSION, WHO SHALL REPORT TO THE PLANNING & ZONING COMMISSION HIS APPROVAL OR DISAPPROVAL OF THE PLAT FOR TECHNICAL OR ENGINEERING REASONS AND THE PLANNING & ZONING COMMISSION SHALL, WITHIN NINETY (90) DAYS AFTER SUBMISSION OF THE PRELIMINARY PLAT, NOTIFY THE APPLICANT OF THE TENTATIVE APPROVAL OR DISAPPROVAL OF THE PLAT AND HIS REASONS THEREFOR.

(E) CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT SHALL NOT CONSTITUTE APPROVAL OF THE FINAL PLAT. RATHER, IT SHALL BE DEEMED AN EXPRESSION OF APPROVAL AS A GUIDE TO PREPARATION OF THE FINAL PLAT.

11.15.110 PRELIMINARY PLAT REQUIREMENTS.

THE PRELIMINARY PLAT SHALL SHOW THE FOLLOWING INFORMATION:

(A) LEGAL DESCRIPTION OF LOCATION TO INCLUDE LATITUDE AND LONGITUDE TO THE NEAREST MINUTE AT ONE CORNER OF THE SURVEY AND THE TOTAL ACRES OF THE AREA OCCUPIED OR CLAIMED.

(B) NAME AND ADDRESS OF APPLICANT AND NAME OF LAND SURVEYOR, IF ANY, WHO PREPARED THE PRELIMINARY LAYOUT.

(C) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.

(D) DATE OF PREPARATION AND NORTH POINT.

- (E) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.
- (F) THE LOCATION OF ALL ROADS WITHIN 200' OF THE TRACT, FILL MATERIAL, EXISTING PERMANENT BUILDINGS, OR OTHER STRUCTURES WITHIN THE PARCEL, EXISTING UTILITY LINES, MEAN HIGH AND LOW TIDE LINES WITH REFERENCE TO PERMANENT STRUCTURES AND OTHER PERMANENT FEATURES SUCH AS SECTION LINES, AND SUCH OTHER INFORMATION AS MAY BE REQUESTED BY THE CITY.
- (G) SPACE FOR APPROVAL AND/OR COMMENT BY THE PLANNING & ZONING AND HARBOR COMMISSIONS.
- (H) THE NAMES OF ADJACENT OWNERS OR CLAIMANTS, IF ANY, OTHER THAN THE CITY.
- (I) ADJACENT U.S. SURVEYS, IF ANY, GIVING THE NUMBER OF THE SURVEY.
- (J) A VICINITY SKETCH OR KEY MAP SHOULD BE SHOWN ON THE PRELIMINARY LAYOUT. THE SCALE SHALL NOT BE LESS THAN ONE-HALF INCH TO THE MILE. THE RELATIVE LOCATION OF THE PARCEL BEING APPLIED FOR, THE PRINCIPAL ROAD SYSTEMS AND SECTION OR SPECIAL SURVEY LINES SHALL ALSO BE SHOWN.

11.15.120 SURVEY PROCEDURE.

WHEREVER FEASIBLE, DATA AS SET FORTH IN ATS 272, RECORDED IN THE KENAI RECORDING DISTRICT AS 76-179 SHALL BE USED. WHERE ADDITIONAL DATA IS REQUIRED THE FOLLOWING PROCEDURES SHALL GOVERN:

- (A) *DETERMINING THE LINE OF MEAN HIGH TIDE.*
 - (1) IN THE CASE OF U.S. SURVEY WHICH ABUTS THE TIDELANDS, SUCH U.S. SURVEY BEING MADE PRIOR TO THE DATE OF STATEHOOD, THE LINE OF MEAN HIGH TIDE SHALL BE CONSTRUED TO BE EITHER THE MEANDER LINES ESTABLISHED ON THE SEAWARD SIDE OF THE U.S. SURVEY OR THE LINE AS DEFINED UNDER SECTION 2(S) OF THESE REGULATIONS, WHICHEVER IS THE LOWER.
 - (2) FOR TIDELANDS SURVEYS ABUTTING ANY U.S. SURVEY MADE AFTER THE DATE OF STATEHOOD OR IN ANY LOCATION WHERE NO UPLANDS SURVEY EXISTS, THE LINE OF MEAN HIGH TIDE SHALL BE DETERMINED BY USING U.S.C. & G.S. BENCH MARKS (OR ANY OTHER BENCH MARKS WHICH HAVE BEEN ESTABLISHED FROM THAT SOURCE), AND TIDE TABLE DATUM. THE UPLAND BOUNDARY NEED NOT FOLLOW THIS LINE IN ITS ENTIRE EXACTNESS, BUT MAY FOLLOW IN A "MEANDER" OR "AVERAGE" LINE OF MEAN HIGH TIDE. EACH END OF THE BOUNDARY SHOULD BE ESTABLISHED ON THE ELEVATION OF MEAN HIGH TIDE. PROVIDED, HOWEVER, THAT WHERE THE TRUE LINE OF MEAN HIGH TIDE HAS BEEN ALTERED BY FILL OR ARTIFICIAL ACCRETION, THE LINE OF HIGH TIDE AS IT EXISTED PRIOR TO SUCH ALTERATION SHALL GOVERN.

(3) IN THE CASE THAT NO U.S.C. & G.S. BENCH MARK EXISTS WITHIN ONE MILE OF THE PROPERTY BEING SURVEYED, THE SURVEYOR MAY, BY USING THE TIDE TABLES FOR THE IMMEDIATE BODY OF WATER, AND APPLYING TIDAL READINGS HE HAS TAKEN, DETERMINE THE LINE OF MEAN HIGH TIDE AND USE IT IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SECTION. IN SOME CASES, SUCH AS SALT OR MUD FLAT AREAS WHERE THE AVERAGE GRADE OF THE BENCH IS TEN PERCENT (10%) OR LESS AND DETERMINING THE ELEVATION OF THE LINE OF MEAN HIGH TIDE COULD CREATE A LENGTHY HORIZONTAL DISTANCE, THE CITY COUNCIL MAY REQUIRE THAT THE TRUE LINE OF MEAN HIGH TIDE BE ESTABLISHED, REGARDLESS OF THE DISTANCE FROM A KNOWN BENCH MARK.

(B) *METHOD OF ESTABLISHING SIDE BOUNDARY LINES.*

(1) IN FIXING THE SIDE BOUNDARY LINES, THE GENERAL RULES OF EXTENDING RIPARIAN BOUNDARY LINES, AS OUTLINED BY SUCH AUTHORS AS RAYNER, CLARK OR BROWN, SHALL BE FOLLOWED. IN THE EVENT THAT ACTUAL OCCUPANCY DOES NOT MATCH THE RIPARIAN BOUNDARIES, THE SURVEY SHALL BE MADE TO INCLUDE THE OCCUPANT'S HOLDINGS AND NOT TO ENCROACH ON THE ADJOINING OCCUPANT.

11.15.130 PROCEDURE ON FINAL PLAT.

(A) THE FINAL PLAT SHALL CONFORM SUBSTANTIALLY TO THE PRELIMINARY LAYOUT AS APPROVED BY THE COMMISSION.

(B) THE FINAL PLAT SHALL BE SUBMITTED TO THE CITY CLERK ON GOOD QUALITY TRACING CLOTH, IN INK, OR MYLARS TOGETHER WITH FIVE PRINTS.

(C) THE FINAL PLAT SHALL BE DRAWN TO SCALE OF 1" EQUALS 100', WITH AN OPTION OF USING 1" EQUALS 20' OR 40', ON SHEETS OF ONE OF THREE SIZES: 18" X 24", 31 1/2" X 34", OR 22" X 36", UNLESS OTHERWISE APPROVED BY THE COMMISSION. WHEN MORE THAN ONE SHEET IS REQUIRED, AN INDEX SHALL BE FILED SHOWING THE ENTIRE PARCEL WITH THE SHEETS IN NUMERICAL ORDER, AND EACH SHEET SHOWING THE TOTAL NUMBER, I.E., SHEET 1 OF 3. WHEN MORE THAN ONE SHEET IS SUBMITTED, ONLY THE LAST MUST HAVE THE APPROVAL BLOCKS, BUT ALL SHEETS MUST BE THE SAME SIZE.

(D) WHEN THE FINAL PLAT HAS BEEN APPROVED BY THE PLANNING & ZONING COMMISSION, ONE COPY SHALL BE SENT, ALONG WITH THE DEED TO THE PROPERTY, TO THE MAGISTRATE OF THE RECORDING DISTRICT IN WHICH THE TRACT LIES FOR OFFICIAL RECORDING. SPECIAL INSTRUCTIONS SHALL BE SENT TO THE MAGISTRATE INSTRUCTING HIM TO SEND THE DEED TO THE OCCUPANT AFTER RECORDING. ONE COPY OF THE PLAT WILL BE RETURNED TO THE OCCUPANT. THE ORIGINAL TRACING CONTAINING THE CERTIFICATION BY THE

PLANNING & ZONING COMMISSION WILL BE RETAINED BY THE CITY. PRINTS OR DUPLICATE TRANSPARENCIES WILL BE FURNISHED AT COST OF REPRODUCTION.

11.15.140 FINAL PLAT REQUIREMENTS.

(A) THE FINAL PLAT SHALL INCLUDE ALL INFORMATION REQUIRED ON THE PRELIMINARY PLAT.

(B) THE FINAL PLAT MUST REPRESENT AN ACTUAL SURVEY MADE BY A PERSON WHO HAS BEEN QUALIFIED BY THE STATE OF ALASKA, BOARD OF ENGINEERS & ARCHITECTS EXAMINERS TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA.

(C) IN ADDITION THERETO, THE FOLLOWING INFORMATION SHALL BE SHOWN ON THE FINAL PLAT:

(1) BOUNDARY LINES OF THE PARCEL WITH LENGTH AND BEARINGS WHICH MUST CLOSE WITHIN THE LIMITS OF ONE TO 5,000. IF THE SEAWARD LIMITS OF THE SURVEY FALLS WITHIN THE LINE OF MEAN LOW TIDE, THE SEAWARD BOUNDARY MUST REPRESENT LINES ACTUALLY ESTABLISHED BY THE SURVEYOR.

(2) ALL EASEMENTS AS REQUIRED BY THE CITY.

(3) BASIS OF BEARINGS USED.

(4) A PROPERLY LABELED LEGEND SHOWING MONUMENTS AS FOUND OR ESTABLISHED.

(5) THE COURSE OF THE SHORELINE FOR AN ADDITIONAL 400' FROM EACH SIDE OF THE SURVEY.

(D) *MONUMENTS.*

(1) MINIMUM REQUIREMENTS: MONUMENTS SHALL CONSIST OF A 1 1/2" GALVANIZED IRON PIPE, 30 OR MORE INCHES LONG. THIS PIPE SHALL HAVE A FOUR-INCH FLANGE ACROSS THE BOTTOM AND SHALL BE FILLED WITH CONCRETE. FIRMLY EMPLACED IN THE CONCRETE AT THE TOP SHALL BE A BRASS OR BRONZE CAP. THE PIPE SHALL BE THOROUGHLY TAMPED WHEN SET.

(2) THE BRASS OR BRONZE CAP SHALL HAVE A MINIMUM OF TWO-INCH DIAMETER ACROSS THE TOP AND 3/4" BY 2 1/2" SHANK. EACH CAP SHALL BE MARKED IN ACCORDANCE WITH THE MANUAL OF SURVEYING INSTRUCTIONS AS COMPILED BY THE BUREAU OF LAND MANAGEMENT AND SHALL ALSO SHOW THE REGISTRATION NUMBER OF THE SURVEYOR.

(3) WHERE IMPRACTICABLE TO SET AN IRON PIPE MONUMENT, A TABLET CONTAINING A MINIMUM OF ONE THOUSAND (1,000) CUBIC INCHES OF CONCRETE AND A BRASS OR BRONZE CAP MARKING THE ACTUAL CORNER POINT MAY BE USED. SHOULD THE POINT FOR A CORNER BE IN A PLACE WHICH

WOULD BE IMPRACTICABLE TO MONUMENT, WITNESS CORNERS SHALL BE SET IN A SAFE PLACE ON THE SURVEY BOUNDARY LINE OR HAVE TWO (2) REFERENCE MONUMENTS SET. THE MONUMENTS ON THE UPLANDS SIDE OF THE SURVEY SHALL BE REFERENCED TO BEARING OBJECTS, SUCH AS TREES, ROCKS, PILING, BUILDINGS, ETC., OR HAVE TWO (2) REFERENCE MONUMENTS SET MARKING THE CORNER.

(E) THESE REFERENCES MAY BE SHOWN ON THE PLAT OF SURVEY OR MAY BE LISTED SEPARATELY ON A PLAT AS DESCRIBED UNDER KMC 11.15.130(C).

(1) UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL, EACH SURVEY SHALL HAVE AT LEAST FOUR (4) MONUMENTS, EACH FULLY DESCRIBED IN THE PLAT OF SURVEY. IT IS DESIRABLE BUT NOT MANDATORY THAT MONUMENTS BE SET AT ALL EXTERIOR ANGLE POINTS OF THE PARCEL. THE LINE OF SIGHT BETWEEN ADJACENT MONUMENTS SHALL BE UNOBSTRUCTED. THE DISTANCE BETWEEN ADJACENT MONUMENTS SHALL NOT EXCEED ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320'). NO PART OF THE PARCEL SHALL BE FARTHER THAN ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320') FROM A MONUMENT UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL.

(2) IF THE POINT FOR THE SEAWARD CORNER FALLS IN AN UNSAFE PLACE, A WITNESS CORNER SHALL BE ESTABLISHED ON THE SIDE BOUNDARY LINE.

(F) *RELATIONSHIP TO KNOWN MONUMENT.*

(1) BEARINGS OF ALL LINES SHALL BE REFERRED TO THE TRUE MERIDIAN. THE MAGNETIC NEEDLE MAY NOT BE USED FOR THIS PURPOSE. BEARINGS SHALL BE OBTAINED BY DEFLECTION FROM EXISTING OFFICIAL SURVEYS AT THE G.L.O., B.L.M., U.S.C., AND G.S., U.S.G.S., THE ALASKA DIVISION OF LANDS, OR MONUMENTS WITH PROPER IDENTIFICATION WHICH ARE DELINEATED ON RECORDED PLATS, UNLESS OTHERWISE PROVIDED FOR IN THESE REGULATIONS.

(2) TRUE BEARINGS AND DISTANCES TO THE NEAREST ESTABLISHED SURVEY LINES, SUCH AS THOSE LISTED PREVIOUSLY, WHICH SHALL BE ACCURATELY DESCRIBED ON THE PLAT, SHALL BE SHOWN.

11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.

THE APPLICATION FORM WILL ASSIST THE APPLICANT IN DETERMINING THE PROPER COSTS TO ADVANCE, WHICH WILL DEPEND UPON THE NATURE OF THE RIGHT CLAIMED. IN ALL CASES A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL SHALL BE REQUIRED. SURVEY COSTS DEPEND UPON THE AREA CLAIMED AT A PER FOOT RATE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES. IF THE AREA CLAIMED IS DIFFERENT FROM THE LOT AS IT APPEARS ON THE PLAT, THE APPLICANT SHALL SHOW THE MEASUREMENTS OF THE ADDITIONAL OR

LESSER AREA CLAIMED AND COMPUTE AND PAY THE DIFFERENT SURVEY COST ACCORDINGLY. TRANSFER COSTS WILL BE THE SAME IN ALL CASES. THEY COVER THE COST OF TIME ESTIMATED TO BE REQUIRED TO EXAMINE, PROCESS, AND APPROVE THE APPLICATION, AS WELL AS TO PREPARE AND EXECUTE THE DEED, PUBLISH NOTICE, GIVE NOTICE OF ADDITIONAL COSTS, IF ANY, AND GIVE NOTICE TO APPLICANT. IN ALL CASES, TRANSFER COSTS WILL BE IN AN AMOUNT AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL. DEPOSIT FOR APPRAISAL COSTS WILL BE REQUIRED IN ALL CASES OF CLASS III PREFERENCE RIGHTS, OR WHERE ANOTHER ASSERTED RIGHT IS DETERMINED BY THE COUNCIL TO BE A CLASS III RIGHT. APPRAISAL COSTS SHALL DEPEND UPON THE AREA INVOLVED AND THE COMPLEXITY OF THE APPRAISAL SOUGHT. WHERE REQUIRED AS A DEPOSIT, THE MINIMUM AND MAXIMUM DEPOSIT FOR THE APPRAISAL FEE SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES.

11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.

ASIDE FROM DEPOSITS REQUIRED AT THE TIME OF FILING APPLICATIONS, ADDITIONAL COSTS WILL BE REQUIRED TO BE PAID PRIOR TO HEARINGS WHERE DISPUTES REQUIRE HEARINGS, AND FOR COST OF LAND UNDER A CLASS III RIGHT AS WELL AS APPRAISAL THEREOF WHEN A PREFERENCE RIGHT SOUGHT TO BE EXERCISED IS DETERMINED TO BE A CLASS III RIGHT, AS FOLLOWS:

(A) WHEN THE AREA CLAIMED DOES NOT COMPLY WITH THE BOUNDARIES OF THE LOT SHOWN ON THE PLAT, IT IS NECESSARY TO HAVE A HEARING TO ESTABLISH THE VALIDITY OF THE RIGHT CLAIMED AND WHETHER IT IS NECESSARY FOR THE PLAT TO BE CHANGED TO COMPLY WITH THE APPLICATION. THIS MAY REQUIRE NOTICE TO BE GIVEN TO ADJACENT OCCUPANTS INTERESTED IN THE DIFFERENCE BETWEEN THE LANDS CLAIMED AND LAND AS SHOWN ON THE PLAT SO THAT ALL PARTIES IN INTEREST MAY BE HEARD AT THE HEARING.

(B) WHEN APPLICATIONS CONFLICT WITH THE SAME AREA OR PORTIONS THEREOF, IT SHALL BE NECESSARY TO CONDUCT A HEARING TO DETERMINE THE FACT AND THE ISSUE IN QUESTION. CONFLICTING CLAIMS WILL BE CAREFULLY SCRUTINIZED AND EACH DISPUTING PARTY WILL BEAR THE BURDEN OF PROVING FACTS SUFFICIENT TO ESTABLISH THE VALIDITY OF HIS OR HER CLAIM.

(C) THE PARTY FILING AN APPLICATION CONFLICTING WITH A CLAIM PREVIOUSLY FILED SHALL BE REQUIRED TO DEPOSIT HEARINGS COSTS IN THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00). IF THE CONFLICT IS NOT KNOWN AT THE TIME OF FILING, THE APPLICANT SHALL BE ADVISED OF THE CONFLICT AS SOON AS IT IS KNOWN AND OF THE NEED TO DEPOSIT THE HEARING COST DEPOSIT.

(D) THE APPLICANT WHO AFTER HEARING AND DETERMINATION BY THE COUNCIL IS DETERMINED TO HAVE CLAIMED THE LAND OF ANOTHER SHALL BE THE PARTY

TO BEAR THE COST OF THE HEARING. IF SUCH PARTY DID NOT DEPOSIT SUCH COSTS, NO DEED SHALL BE DELIVERED TO HIM OR HER UNTIL THE COST IS PAID. WHERE THE DEPOSITOR IS THE PREVAILING PARTY, THE HEARING COST DEPOSITED SHALL BE REFUNDED TO HIM OR HER BY THE CITY.

(E) WHEN TITLE BY CLASS III PREFERENCE RIGHT IS CLAIMED, THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE APPRAISED PURCHASE PRICE AFTER APPRAISAL HAS BEEN MADE AND THE PURCHASE PRICE HAS BEEN SO DETERMINED. THE SAME PROCEDURE WILL BE APPLIED WHEN NO APPLICATION UNDER ANOTHER CLASS OF RIGHT IS SOUGHT BUT IS DETERMINED THAT THE ONLY AVAILABLE RIGHT TO THE APPLICANT IS A CLASS III RIGHT.

(F) WHEN A PREFERENCE RIGHT IS SOUGHT TO BE EXERCISED OTHER THAN A CLASS III RIGHT AND SUCH RIGHT IS DETERMINED TO BE A CLASS RIGHT, THEN THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE ESTIMATED COST OF APPRAISING THE PROPERTY CLAIMED.

(G) THE APPLICANT WHO RECEIVES THE DEED FROM THE CITY SHALL AT HIS OR HER OWN COST BEAR THE COST OF RECORDING THE DEED.

11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.

THE CLERK SHALL CAUSE THE FOLLOWING PROCEDURES TO BE CARRIED OUT:

(A) ALL COPIES OF APPLICATIONS ACCEPTED FOR FILING SHALL BE STAMPED WITH TIME AND DATE OF FILING AND AN APPLICATION NUMBER IN CHRONOLOGICAL ORDER OF FILING.

(B) ALL ORIGINAL APPLICATIONS SHALL BE FILED IN A PERMANENT REGISTER AND THE NAMES OF THE APPLICANTS ENTERED IN AN ALPHABETICAL INDEX WHICH SHALL BE A PERMANENT PART OF SUCH REGISTER.

(C) THE APPLICATION REGISTER SHALL BE AVAILABLE FOR PUBLIC INSPECTION DURING OFFICE HOURS OF THE CLERK EXCEPT WHEN IN ACTUAL USE FOR FILING AND INDEXING.

(D) CERTIFIED COPIES OF ALL APPLICATIONS SHALL BE PREPARED FOR ALL PERSONS UPON REQUEST UPON THEIR PAYING TWO DOLLARS (\$2.00) PER PAGE FOR COPIES OF SAID APPLICATIONS AND ANY ATTACHMENTS FORMING A PART THEREOF.

(E) *PROCESSING OF DUPLICATE APPLICATIONS.* THE THIRD COPY OF THE APPLICATION WILL BE RETURNED TO THE APPLICANT AS HIS OR HER RECORD AND AS RECEIPT FOR DEPOSIT MADE, OR MAILED TO APPLICANT IF HE OR SHE HAS PROVIDED A RETURN ENVELOPE. THE SECOND COPY SHALL BE THE WORKING FILE COPY TO BE HANDLED AND PROCESSED AS FOLLOWS:

(1) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED AND WHICH APPLY FOR LANDS WHICH COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190. APPLICATIONS TO

EXERCISE CLASS I PREFERENCE RIGHTS WHICH DO NOT HAVE WAIVERS ATTACHED, IRRESPECTIVE OF WHETHER THE LANDS APPLIED FOR COMPLY WITH THE PLAT SHALL BE SEGREGATED FOR HANDLING IN THE SAME MANNER AS CLASS II PREFERENCE RIGHT APPLICATIONS.

(2) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED, AND WHICH CLAIM LANDS WHICH DO NOT COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190 AND FURTHER PROCESSING AS PROVIDED IN KMC 11.15.220.

(3) APPLICATIONS TO EXERCISE CLASS II PREFERENCE RIGHTS SHALL BE SEGREGATED AND KEPT WITH CLASS I PREFERENCE RIGHT APPLICATIONS NOT HAVING WAIVERS ATTACHED. ALL SUCH APPLICATIONS SHALL BE HELD IN ABEYANCE BY THE CITY UNTIL SUCH TIME AS THE PIERHEAD LINE IS ESTABLISHED BY THE CORPS OF ENGINEERS, WHEREUPON SUCH APPLICATIONS SHALL BE PROMPTLY HONORED AND PROCESSED IN THE MANNER HEREIN DESCRIBED FOR CLASS I PREFERENCE RIGHT APPLICATIONS, WHERE WAIVERS ARE ATTACHED.

(4) APPLICATIONS TO EXERCISE CLASS III PREFERENCE RIGHTS, AND ALL APPLICATIONS DETERMINED IN WHOLE OR IN PART TO BE CLASS III, SHALL BE TRANSMITTED TO THE ASSESSOR FOR APPRAISAL AS PROVIDED IN KMC 11.15.180.

(5) NO APPLICATIONS WHICH COMBINE CLASS I, CLASS II, AND CLASS III, OR ANY COMBINATION OF SUCH PREFERENCE RIGHTS, WILL BE ACCEPTED FOR FILING. ANY SUCH APPLICATION PRESENTED FOR FILING SHALL BE RETURNED TO THE APPLICANT FOR REVISION INTO TWO OR MORE APPLICATIONS, EACH OF WHICH WILL APPLY FOR LAND UNDER ONLY ONE TYPE OF PREFERENCE RIGHT.

(6) AN APPLICATION TO EXERCISE ONE CLASS OF PREFERENCE RIGHT WHICH IN PART COMPLIES WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, BUT DOES NOT WHOLLY COMPLY WITH THE PLAT IN SUCH RESPECTS, SHALL BE TREATED AS IF NO PART OF THE APPLICATION SO COMPLIES WITH THE PLAT AND SHALL BE PROCESSED FOR CONTEST HEARING.

11.15.180 APPRAISAL.

ALL APPLICATIONS FOR CLASS II PREFERENCE RIGHTS SHALL BE TRANSMITTED TO A PROFESSIONAL APPRAISER FOR APPRAISAL. HIS APPRAISAL SHALL BE MADE ON A FORM PREPARED IN DUPLICATE, THE ORIGINAL OF WHICH SHALL BE ATTACHED TO THE APPLICATION AND THE DUPLICATE OF WHICH SHALL BE RETAINED FOR HIS RECORDS. APPLICATIONS WHEN APPRAISED SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR FURTHER PROCESSING.

11.15.190 REVIEW BY CITY ENGINEER.

ALL APPLICATIONS BEING READY FOR PROCESSING SHALL BE REVIEWED BY THE CITY ENGINEER. UPON REVIEW AND COMPARISON WITH THE PLAT, HE SHALL MAKE HIS REQUEST TO THE HARBOR COMMISSION GIVING A COPY THEREOF TO THE APPLICANT AS TO WHETHER OR NOT THE APPLICATION SEEKS TO EXERCISE A PREFERENCE RIGHT TO LAND WHICH IS DESCRIBED ON THE PLAT, AND COMPLIES WITH IT IN RESPECT TO AREA AND BOUNDARY LOCATIONS.

11.15.200 RECOMMENDED APPROVAL BY COMMISSION.

THE CITY OF KENAI [ADVISORY HARBOR] PLANNING & ZONING COMMISSION SHALL REVIEW ALL APPLICATIONS FOR TIDELANDS UPON THE SUBMISSION OF THE CITY ENGINEER'S REPORT. THE PLANNING & ZONING COMMISSION MAY CONDUCT PUBLIC HEARINGS TO VERIFY THE VALIDITY OF THE APPLICANT'S CLAIM AND REQUEST ADDITIONAL EVIDENCE BY WAY OF AFFIDAVITS AND THE LIKE IN ORDER TO COME TO RECOMMEND SAID CLAIM FOR APPROVAL BY THE CITY COUNCIL NOTIFYING APPLICANT THEREOF BY MAIL SENT TO THE ADDRESS STATED ON HIS APPLICATION. THE PLANNING & ZONING COMMISSION MAY PROVIDE A CHECK-OFF LIST TO AID IT IN CONSIDERING APPLICATIONS. THE CITY COUNCIL SHALL CONSIDER FOR APPROVAL THE CLAIM OF THE APPLICANT WITHIN THE TIME LIMITATIONS AND WITH THE RIGHT OF APPEAL GIVEN PURSUANT TO KMC 11.15.240.

11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.

ALL APPLICATIONS RETURNED TO THE CLERK APPROVED BY THE CITY ENGINEER, AND APPRAISED BY THE ASSESSOR IF REQUIRED, SHALL BE PROCESSED BY THE CLERK IN THE FOLLOWING MANNER:

(A) THE CLERK SHALL ASCERTAIN IF THE DEPOSIT MADE BY THE APPLICANT IS SUFFICIENT TO PAY ALL KNOWN AND ESTIMATED COSTS OF SURVEY, APPRAISAL, TRANSFER, AND PURCHASE, IF OF CLASS III AND IF NOT, TO ADVISE THE APPLICANT THAT THE REMINDER DUE SHALL BE DEPOSITED WITH THE CLERK BEFORE FURTHER PROCESSING.

(B) IF OR WHEN THE DEPOSIT IS SUFFICIENT TO PAY ALL SUCH COSTS, THE CLERK SHALL CAUSE TO BE PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, THE FOLLOWING:

- (1) NOTICE OF THE NAMES OF THE APPLICANT(S), THE BLOCK AND LOT NUMBERS OF THE PROPERTY CLAIMED ACCORDING TO PLAT DESIGNATIONS;
- (2) THE PREFERENCE RIGHT CLAIMED;
- (3) THE IMPROVEMENTS MADE;

(4) THE LENGTH OF TIME (INCLUDING THE DATES) THE APPLICANT OCCUPIED THE LAND; AND

(C) IF CLASS III ITS APPRAISED VALUE, AND THAT THE CITY WILL ISSUE TO THE APPLICANT(S) ITS DEED THEREFOR WITHIN THIRTY (30) DAYS AFTER THE LAST DATE OF PUBLICATION, PROVIDED THAT BEFORE DATE OF LAST PUBLICATION NO ADVERSE APPLICATION OR CLAIM HAS BEEN FILED WITH THE CITY.

(D) DURING SAID PERIOD OF PUBLICATION, THE APPLICATIONS THEREOF SHALL BE RETURNED TO THE CITY ENGINEER WHO, AT THE END OF SAID PERIOD OF PUBLICATION, SHALL NOTE ON THE APPLICATION WHETHER OR NOT ANY ADVERSE CLAIMS HAVE BEEN FILED FOR THE LAND IN QUESTION.

(E) IF ADVERSE CLAIMS HAVE BEEN FILED, THE APPLICATIONS SHALL BE FURTHER PROCESSED FOR HEARING. IF NO ADVERSE CLAIMS HAVE BEEN FILED, THE RESPECTIVE APPLICATIONS SHALL BE RETURNED TO THE CLERK.

11.15.220 DEEDS—PERMANENT REGISTER.

THE CLERK SHALL THEN CAUSE TO BE PREPARED A QUIT-CLAIM DEED CONVEYING SUCH LAND TO THE APPLICANT(S) THAT THE CITY HAS AND TRANSMIT THE QUIT-CLAIM DEED TO THE MANAGER FOR EXECUTION. NOTICE SHALL THEN BE SENT TO THE APPLICANT TO TAKE DELIVERY OF SAID DEED AT THE OFFICE OF THE CLERK, WHO SHALL DELIVER THE SAME TO THE APPLICANT IF ALL REQUIREMENTS HAVE BEEN MET AND ALL COSTS, INCLUDING PURCHASE PRICE, IF REQUIRED, HAVE BEEN PAID. DUPLICATE ORIGINALS OF ALL EXECUTED DEEDS SHALL BE KEPT IN THE OFFICE OF THE CLERK IN A PERMANENT REGISTER ENTITLED "KENAI TIDELANDS DEEDS" WITH PERMANENT ALPHABETICAL INDEX OF GRANTEEES.

11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.

THE PLANNING & ZONING COMMISSION SHALL SIT AS A QUASI ADJUDICATORY BODY TO SET DISPUTES FOR HEARING AND HEAR THE EVIDENCE UNDER OATH OF THE PARTIES TO THE DISPUTES. PROCEEDINGS SHALL BE INFORMALLY CONDUCTED BUT TESTIMONY TAKEN UNDER OATH, AND NOTICE OF THE PROCEEDINGS SHALL BE GIVEN TO THE DISPUTING PARTIES. THEIR OBJECT SHALL BE TO DETERMINE WITHOUT DELAY THE RESPECTIVE BASIS OF THE CONFLICTING CLAIMS. UPON THE SUBMISSION OF EACH DISPUTE, THE PLANNING & ZONING COMMISSION SHALL PREPARE A SHORT SUMMARY ON THE CONFLICTING CLAIMS AND THE EVIDENCE SUBMITTED IN SUPPORT THEREOF, TOGETHER WITH THEIR WRITTEN FINDINGS OF FACT, AND CONCLUSIONS OF LAW.

11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.

UPON RECEIPT OF THE WORKING FILES IN ALL CASES OF DISPUTES, AND THE SUMMARY OF THE HEARINGS OFFICER, TOGETHER WITH COPIES OF NOTICES OF HEARINGS SERVED UPON OR MAILED TO ALL PARTIES TO THE DISPUTE, THE COUNCIL SHALL SET THE DISPUTE OF HEARING AND DETERMINATION, AND CAUSE NOTICE TO BE SERVED ON ALL PARTIES. UPON THE COUNCIL HAVING HEARD THE DISPUTE IT SHALL ENTER ITS RULING THEREON AS QUICKLY AS POSSIBLE, BUT NOT LATER THAN TEN (10) DAYS AFTER THE MATTER IS SUBMITTED. AGGRIEVED PERSONS SHALL HAVE THE RIGHT OF APPEAL TO THE SUPERIOR COURT, WITHIN THIRTY (30) DAYS AFTER THE RULING OF THE COUNCIL IS RENDERED.

11.15.250 DETERMINATION UPON STIPULATION OF FACTS.

WHEREVER POSSIBLE, TO REACH AGREEMENT OF THE PARTIES AT HEARINGS BEFORE THE PLANNING & ZONING COMMISSION, A STIPULATION OF FACTS SHALL BE PREPARED AND AGREED UPON BY THE PARTIES. WHERE THIS IS DONE, THE PLANNING & ZONING COMMISSION SHALL PREPARE AND ATTACH ITS CONCLUSIONS OF LAW AND SUBMIT THE FILE TO THE CITY ENGINEER TO DETERMINE IF THE CITY'S INTERESTS ARE AFFECTED BY THE STIPULATION, OR IF A BOUNDARY CHANGE IS REQUIRED AND NO THIRD PARTY OR CITY INTERESTS ARE AFFECTED ADVERSELY BY THE PROPOSED CHANGE IN BOUNDARIES OF LOTS SHOWN ON THE PLAT, UPON APPROVAL OF THE COUNCIL THE PLAT SHALL BE DIRECTED TO BE CHANGED. SHOULD IT BE DETERMINED BY THE CITY ENGINEER THAT THE STIPULATION ADVERSELY AFFECTS THE INTEREST OF THE CITY OR THOSE OF THIRD PARTIES, THE DISPUTE SHALL BE RETURNED TO THE PLANNING & ZONING COMMISSION FOR FURTHER PROCEEDINGS UPON NOTICE GIVEN.

11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.

NO OBJECTIONS WILL BE RECEIVED TO PROPOSED ISSUANCE BY DEED BY THE CITY ON PUBLICATION OF NOTICE THEREOF, NOR WILL ANY PERSON BE PERMITTED TO APPEAR AND BE HEARD AT ANY HEARING OF A DISPUTE BEFORE THE PLANNING & ZONING COMMISSION OR THE COUNCIL, UNLESS SUCH OBJECTOR OR PERSON IS AN APPLICANT FOR PREFERENCE RIGHTS OF CLASS I OR II AND HAS FILED AN APPLICATION WITH THE CLERK. THE FOREGOING SHALL NOT PREVENT THE APPEARANCES BEFORE THE PLANNING & ZONING COMMISSION OR COUNCIL OF WITNESSES APPEARING ON BEHALF OF THE PARTIES IN DISPUTE OR PERSONS CALLED BY THE PLANNING & ZONING COMMISSION OR COUNCIL WHO MAY HAVE PERSONAL KNOWLEDGE CONCERNING THE VERIFICATION OF CLAIMS.

11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.

(A) ALL FUNDS RECEIVED AS DEPOSITS WITH APPLICATIONS FOR COSTS OR PURCHASE PRICE FOR TIDELANDS SHALL BE DEPOSITED BY THE FINANCE DIRECTOR IN THE GENERAL FUND. SUCH DEPOSITS WILL BE CREDITED BY THE FINANCE DIRECTOR AS FOLLOWS:

- (1) SURVEY COSTS - AS A CREDIT TO DISBURSEMENTS MADE BY THE CITY FOR COSTS OF PREPARING THE TIDELANDS SUBDIVISION PLAT.
- (2) TRANSFER COSTS - TO ADMINISTRATIVE COSTS AS DEEDS ARE ISSUED.
- (3) APPRAISAL COSTS - TO ADMINISTRATIVE COSTS AS EARNED, OR AS CREDIT TO APPRAISAL COSTS INCURRED.

(B) PURCHASE COSTS OF CLASS II LANDS—SHALL BE CREDITED TO A SEPARATE ACCOUNT IN THE GENERAL FUND TO PAY FOR IMPROVEMENTS IN TIDELANDS AREAS CONSISTING OF FILL, STREET, SIDEWALK, AND SEWER IMPROVEMENTS.

11.15.280 FORFEITURE OF PREFERENCE RIGHTS.

ANY OCCUPANT, OWNER, OR HOLDER OF PREFERENCE RIGHTS AS HEREIN DEFINED, WHO HAS NOT APPLIED TO THE CITY FOR TITLE THERETO AS HEREIN PROVIDED, ON OR BEFORE TWO (2) YEARS AFTER THE DATE APPLICATIONS TO EXERCISE PREFERENCE RIGHTS WILL BE ACCEPTED FOR FILING BY THE CITY UNDER THIS ORDINANCE, BY A PROPERLY COMPLETED APPLICATION DULY FILED WITH THE CLERK AND ACCOMPANIED BY THE REQUIRED DEPOSIT, SHALL HAVE FORFEITED HIS RIGHT TO ASSERT THIS PREFERENCE RIGHTS AND ACQUIRE TITLE TO TIDELANDS SUBJECT THERETO FROM THE CITY; AND SUCH TIDELANDS AND CONTIGUOUS SUBMERGED LANDS SUBJECT TO SUCH UNUSED PREFERENCE RIGHTS SHALL THEREAFTER BE FREE AND CLEAR OF ALL CLAIMS TO PREFERENCE RIGHTS AND THE CITY SHALL HAVE NO OBLIGATION TO CONVEY THE SAME TO ANY PERSON OR PERSONS WHOSOEVER, AND SAID LAND SHALL THEN BE AND REMAIN THE PROPERTY OF THE CITY AND BE SUBJECT TO SUCH DISPOSITION AS PROVIDED FOR BY LAW OR ORDINANCE.

11.15.290 FORMS.

THE CLERK SHALL CAUSE TO BE PRINTED APPLICATION FORMS AND OTHER FORMS FOR USE IN PROCESSING THE SAME IN SUBSTANTIALLY THE FOLLOWING FORM:

(A)

APPLICATION FOR TIDELAND
PREFERENCE RIGHTS

NAME _____ APPLICATION NO. _____

HOME ADDRESS

POST OFFICE ADDRESS

MARK X TO DESIGNATE NATURE OF PREFERENCE RIGHT CLAIMED:

CLASS I _____

CLASS II _____

CLASS III _____

DOES THE TIDELAND PLAT 272 CORRECTLY SHOW THE LAND APPLIED FOR:

YES ____ NO ____

IF TIDELAND PLAT DOES NOT CORRECTLY SHOW LAND APPLIED FOR, DESCRIBE IT BY METES AND BOUNDS AND ATTACHED PLAT OF LAND APPLIED FOR (USE ATTACHMENT IF MORE SPACE IS REQUIRED).

ALL CLAIMED IMPROVEMENTS WERE FIRST CONSTRUCTED AND USED (1) BEFORE SEPTEMBER 7, 1957? (2) BEFORE SEPTEMBER 7, 1957 AND JANUARY 3, 1969? (3) AFTER JANUARY 3, 1959?

IS ANY PART OF YOUR CLAIM BASED ON IMPROVEMENTS AND/OR FILL CONSTRUCTED OR PLACED AFTER JANUARY 3, 1959?

YES _____,

NO _____. IF ANSWER IS "YES," DESCRIBE AREA IMPROVED AFTER JANUARY 3, 1959 (USE ATTACHMENT IF MORE SPACE IS NEEDED), AND STATE NATURE OF IMPROVEMENTS.

HAVE ANY OF THESE IMPROVEMENTS BEEN EXTENDED OR IMPROVED AFTER (1) SEPTEMBER 7, 1957? (2) JANUARY 3, 1959? DESCRIBE.

WAS THIS BENEFICIAL USE CONTINUED THROUGH JANUARY 3, 1959? DESCRIBE.

THE PLAT IS BASED ON APPARENT USE AND IMPROVEMENTS EXISTING ON JANUARY 3, 1959, RECOGNIZED BY THE ALASKA LAND ACT; STATE ANY REASON KNOWN TO YOU WHY YOUR CLAIM DOES NOT CORRESPOND WITH THE PLAT. (USE ATTACHMENT IF MORE SPACE IS REQUIRED.)

I OFFER CASH _____, MONEY ORDER _____, CASHIER'S CHECK _____, IN THE AMOUNT OF \$ _____ AS DEPOSIT FOR THE FOLLOWING COSTS:

| | USE BY CLERK | |
|---|--------------|----------|
| FILING FEE | \$ _____ | \$ _____ |
| SURVEY COSTS (AT RATE OF _____/SQ. FT.) | \$ _____ | \$ _____ |
| APPRAISAL COSTS (CLASS II APPLICATIONS) | \$ _____ | \$ _____ |

| | | |
|---|----------|----------|
| TRANSFER COSTS (\$ _____) | \$ _____ | \$ _____ |
| HEARING COSTS (IF CLAIM ADVERSE TO PRIOR APPLICATION A DEPOSIT OF \$ _____ FOR HEARING AND SERVICE NOTICE IS REQUIRED.) | \$ _____ | \$ _____ |
| TOTAL DEPOSIT (DOES NOT INCLUDE PURCHASE PRICE OF LAND IN CLASS II APPLICATIONS) | \$ _____ | \$ _____ |
| DEPOSIT RECEIVED BY CITY BY: | _____ | |
| DATE OF APPLICATION: | _____ | |
| DATE APPLICATION RECEIVED BY CITY: | _____ | |
| TIME FILED: | _____ | |

CERTIFICATION

I, _____, THE ABOVE-NAMED APPLICANT, OR ITS AGENT, HEREBY CERTIFIES THAT ALL OF THE STATEMENTS MADE IN THE APPLICATION AND INCORPORATED ATTACHMENTS, IF ANY, ARE TRUE AND CORRECT.

PRINT NAME(S)

SIGNATURE(S)

(B)

ASSESSOR'S APPRAISAL

THE UNDERSIGNED APPRAISER(S) DO HEREBY CERTIFY THAT HE HAS DULY APPRAISED THE TIDE AND/OR SUBMERGED LAND DESCRIBED IN THE ATTACHED APPLICATION NO. _____ OF _____, WITHOUT INCLUDING IN THE HEREINAFTER STATED VALUE ANY VALUE FOR VALUABLE IMPROVEMENTS CONSTRUCTED OR PLACED HEREON PRIOR TO JANUARY 3, 1959, AT THE FAIR MARKET VALUE.

TIDELAND _____ SQ. FT. AT \$ _____ PER SQ. FT., \$ _____.

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19 ____.

SIGNED:

(C)

WAIVER OF CLASS II PREFERENCE RIGHTS (ATTACH TO EACH CLASS I APPLICATION)

I, _____, THE APPLICANT, OR HIS AUTHORIZED AGENT, IN THE APPLICATION FOR TIDELAND PREFERENCE RIGHTS, APPLICATION NO. _____, TO WHICH THIS WAIVER IS ATTACHED, DO HEREBY WAIVE ANY AND ALL PREFERENCE RIGHTS, TO ACQUIRE TIDE OR SUBMERGED AND LYING SEAWARD OF THE CITY OF KENAI, TO WHICH I AM NOW OR MAY HEREAFTER BECOME ENTITLED BY REASON OF THE PROVISIONS OF PUBLIC LAW 85-303.

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19 ____.

(PRINT NAME)

(SIGNATURE)

(D)

CITY OF KENAI, ALASKA
TIDELAND QUIT-CLAIM DEED

THIS DEED, MADE IN DUPLICATE THIS _____ DAY OF _____, 19 ____, BY AND BETWEEN THE CITY OF KENAI, ALASKA, GRANTOR, AND _____, GRANTEE(S).

W I T N E S S E T H:

THAT THE SAID GRANTOR, FOR AND IN CONSIDERATION OF THE SUM OF ONE AND NO 100/THS (\$1.00) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, TO IT IN HAND PAID BY THE SAID GRANTEE(S), PURSUANT TO THE PROVISIONS OF THE ALASKA LAND ACT (CHAPTER 169, SLA 1959) AND ORDINANCE NO. 455-78, ENACTED ON JANUARY 3, 1979, PURSUANT THERETO, DOES HEREBY CONVEYS, QUIT CLAIMS, AND CONFIRMS UNTO SAID GRANTEE(S) AS TENANTS BY THE ENTIRETY, WITH THE RIGHT OF SURVIVORSHIP (STRIKE IF GRANTEES ARE NOT HUSBAND AND WIFE), AND TO HIS (THEIR) HEIRS AND ASSIGNS (STRIKE IF GRANTEE A CORPORATION) AND TO ITS SUCCESSORS AND ASSIGNS (STRIKE IF GRANTEE NOT A CORPORATION), ALL SUCH INTEREST AS THE GRANTOR HAS, IF ANY, IN THE FOLLOWING DESCRIBED LOT, PIECE, PARCEL AND TRACT OF TIDELAND AND CONTIGUOUS SUBMERGED LAND SITUATED WITHIN THE CORPORATE LIMITS OF THE CITY OF KENAI, ALASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

ALL OF LOT _____, BLOCK _____, ACCORDING TO THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE CITY OF KENAI, ALASKA.

TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

TO HAVE AND TO HOLD THE SAME UNTO THE SAID GRANTEE(S), HIS OR THEIR HEIRS AND ASSIGNS, (OR) TO ITS SUCCESSORS AND ASSIGNS, FOREVER.

IN WITNESS WHEREOF, THE GRANTOR HAS CAUSED THIS DEED TO BE EXECUTED THE DAY AND YEAR HEREINABOVE FIRST WRITTEN.

CORPORATE SEAL

CITY OF KENAI, ALASKA

BY: (ITS MANAGER)

ATTEST:

CLERK

]

Chapter 11.20 LEASING OF TIDELANDS

Sections:

- [11.20.010 POLICY.]
- 11.20.020 Lands [A]Available for [L]Leasing.
- [11.20.030 QUALIFICATIONS OF APPLICANTS.
- 11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.
- 11.20.050 APPLICATIONS.
- 11.20.060 RIGHTS PRIOR TO LEASING.
- 11.20.070 PROCEDURE.
- 11.20.080 PUBLIC NOTICE—PUBLIC HEARING.
- 11.20.090 SELECTION OF APPLICANT.
- 11.20.100 APPEAL.
- 11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.
- 11.20.120 THE LEASE DOCUMENT—TERMS.
- 11.20.130 APPRAISAL.
- 11.20.140 REVIEW.
- 11.20.150 ANNUAL MINIMUM RENTAL.
- 11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.
- 11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.
- 11.20.180 LEASE UTILIZATION.
- 11.20.190 SUBLEASING.

- 11.20.200 ASSIGNMENTS.
- 11.20.210 MODIFICATION.
- 11.20.220 CANCELLATION—FORFEITURE.
- 11.20.230 DEFAULT—RIGHT OF ENTRY.
- 11.20.240 NOTICE OR DEMAND.
- 11.20.250 FINANCING—RIGHTS OF MORTGAGES OR LIENHOLDER.
- 11.20.260 ENTRY AND RE-ENTRY.
- 11.20.270 RE-LEASE.
- 11.20.280 FORFEITURE OF RENTAL.
- 11.20.290 RIGHT OF INSPECTION.
- 11.20.300 EASEMENT GRANTS RESERVED.
- 11.20.310 LEASE SUBORDINATE TO FINANCING REQUIREMENTS.
- 11.20.320 WRITTEN WAIVER.
- 11.20.330 SURRENDER ON TERMINATION.
- 11.20.340 SANITATION.
- 11.20.350 BUILDING AND ZONING CODES.
- 11.20.360 RULES.
- 11.20.370 AIRCRAFT OPERATIONS PROTECTED.
- 11.20.380 RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION.
- 11.20.390 LESSEE TO PAY TAXES.
- 11.20.400 NO PARTNERSHIP OR JOINT VENTURE CREATED.
- 11.20.410 DEFAULT BANKRUPTCY.
- 11.20.420 NONDISCRIMINATION.
- 11.20.430 PARTIAL INVALIDITY.
- 11.20.440 PAROLE MODIFICATIONS.
- 11.20.450 AMENDMENT OF LEASE.
- 11.20.460 COMPLIANCE WITH LAWS.
- 11.20.470 CARE OF PREMISES.
- 11.20.480 LESSEE’S OBLIGATION TO REMOVE LIENS.
- 11.20.490 CONDEMNATION.
- 11.20.500 PROTECTION OF SUBTENANTS.
- 11.20.510 SUCCESSORS IN INTEREST.
- 11.20.520 GOVERNING LAW.
- 11.20.530 NOTICES.
- 11.20.540 FIRE PROTECTION.
- 11.20.550 INSPECTION.
- 11.20.560 PERSONAL USE OF MATERIALS.
- 11.20.570 RESTRICTIONS AND RESERVATIONS.
- 11.20.580 WASTE AND INJURY TO LAND.

- 11.20.590 **WARRANTY.**
- 11.20.600 **APPROVAL OF OTHER AUTHORITIES.**
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[11.20.010 POLICY.

THE CITY, IN ORDER TO MAKE SITES AVAILABLE FOR BENEFICIAL INDUSTRIES, MAY LEASE CITY-OWNED TIDELANDS TO PERSONS WHO AGREE TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS THE COUNCIL CONSIDERS ADVANTAGEOUS TO THE CITY.]

11.20.020 Lands [A]Available for [L]Leasing.

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased [AS HEREINAFTER PROVIDED,] for surface use only, and under the condition that said lease is subject and inferior to preference right claims [THAT MAY BE MADE WITHIN A TWO (2) YEAR FILING PERIOD FOR PREFERENCE RIGHTS] and subject to the rights of existing set net site holders within the City limits.

[11.20.030 QUALIFICATIONS OF APPLICANTS.

AN APPLICANT FOR A LEASE IS QUALIFIED IF THE APPLICANT:

- (A) IS AN INDIVIDUAL AT LEAST NINETEEN (19) YEARS OF AGE OR OVER; OR

(B) IS A GROUP, ASSOCIATION, OR CORPORATION WHICH IS AUTHORIZED TO CONDUCT BUSINESS UNDER THE LAWS OF ALASKA.]

[11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.

BEFORE ACCEPTING APPLICATIONS TO LEASE TIDELANDS, THE AREA INVOLVED SHALL HAVE FIRST BEEN CLASSIFIED FOR LEASING BY THE CITY COUNCIL WITH THE APPROVAL OF THE PLANNING AND HARBOR COMMISSIONS, AND THEIR AVAILABILITY ADVERTISED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE TIME SET FOR THE CLOSING OF THE ACCEPTANCE OF APPLICATIONS, AND THAT ALL APPLICATIONS ARE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES.]

[11.20.050 APPLICATIONS.

(A) ALL APPLICATIONS FOR LEASE OF TIDELANDS SHALL BE FILED WITH THE CLERK ON FORMS PROVIDED BY HIM OR HER AND AVAILABLE AT CITY HALL WHICH SHALL UPON EXECUTION OF THE LEASE BECOME PART OF THE LEASE DOCUMENT. ONLY FORMS COMPLETED IN FULL AND ACCOMPANIED BY A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL WILL BE ACCEPTED FOR FILING. FILING FEES ARE NOT REFUNDABLE.

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

- (1) THE PURPOSE OF THE PROPOSED LEASE;
- (2) THE USE, VALUE, AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED;
- (3) THE TYPE OF CONSTRUCTION;
- (4) DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED;
- (5) WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY;
- (6) DESCRIBE BY REFERENCE TO THE PLAT THE AREA TO BE LEASED;
- (7) A DETAILED FINANCIAL PLAN SHOWING ABILITY TO CARRY THROUGH WITH THE DEVELOPMENT PLAN;
- (8) A PERFORMANCE BOND OF FIVE PERCENT (5%) OF THE PROJECT'S ESTIMATED COST (WHICH BOND SHALL NOT EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00)), PAYABLE TO THE CITY.

11.20.060 RIGHTS PRIOR TO LEASING.

NEITHER THE FILING OF AN APPLICATION FOR A LEASE NOR THE HOLDING OF A PUBLIC HEARING THEREON AS PROVIDED BELOW, SHALL GIVE THE APPLICANT A RIGHT TO A LEASE OR TO THE USE OF THE LAND APPLIED FOR. ANY USE NOT AUTHORIZED BY A LEASE SHALL CONSTITUTE A TRESPASS AGAINST THE CITY.

11.20.070 PROCEDURE.

(A) *PLANNING AND ZONING COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED FIRST BY THE CITY OF KENAI PLANNING AND ZONING COMMISSION TO DETERMINE WHETHER THE CONTEMPLATED USE FALLS WITHIN THAT PERMITTED UNDER THE ZONING ORDINANCE.

(B) *HARBOR COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED BY THE HARBOR COMMISSION. IF THE COMMISSION AFTER CONSIDERING THE LEASE APPLICATIONS DETERMINES AT A PUBLIC HEARING AS SET FORTH IN THE SECTION BELOW THAT ANY ONE LEASE WILL BE IN THE BEST INTERESTS OF THE CITY OF KENAI, THE COMMISSION MAY MAKE A RECOMMENDATION TO THE CITY COUNCIL OF APPLICANT ALONG WITH ANY MODIFICATIONS OR CONDITIONS RECOMMENDED BY THE COMMISSION.

(C) *CITY COUNCIL.* THE CITY COUNCIL SHALL MAKE THE FINAL DETERMINATION OF THE SELECTION OF THE APPLICANT BASED UPON THE COMMISSION'S RECOMMENDATION AND APPROVE OR REJECT THE CHOICE OF APPLICATION MADE.

11.20.080 PUBLIC NOTICE—PUBLIC HEARING.

NOTICE OF THE LEASE APPLICATION SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY NOT LESS THAN TEN (10) OR MORE THAN THIRTY (30) DAYS PRIOR TO THE DATE OF PUBLIC HEARING. THE NOTICE MUST CONTAIN THE NAME OF THE APPLICANT, A BRIEF DESCRIPTION OF THE LAND, PROPOSED USE, TERM, AND A DECLARATION THAT THE COMMISSION WILL CONSIDER THE LEASE TO THE APPLICANT ON THE BASIS OF THE APPLICANT'S AGREEMENT TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS AS SET FORTH IN ITS APPLICATION WHICH IS AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES. THE NOTICE SHALL STATE THE DATE UPON WHICH PUBLIC HEARING WILL BE HELD BEFORE THE COMMISSION FOR CONSIDERATION OF THE APPLICATION.

11.20.090 SELECTION OF APPLICANT.

AFTER THE HEARING PROVIDED IN KMC 11.20.080 ABOVE, THE COMMISSION MAY MAKE ITS RECOMMENDATION OF THE APPLICANT TO THE CITY COUNCIL IF IN THE

COMMISSION'S OPINION, ON THE BASIS OF ALL THE TESTIMONY PRESENTED, THE AWARD OF THE PROSPECTIVE LEASE WILL BE ADVANTAGEOUS TO THE CITY AND IN THE BEST INTERESTS OF THE PUBLIC WELFARE, HEALTH, AND SAFETY. IN THE ALTERNATIVE, THE COMMISSION MAY ELECT TO MAKE NO RECOMMENDATION FOR ANY APPLICANT GIVING ITS REASONS THEREFOR. THE COMMISSION MAY IMPOSE ADDITIONAL CONDITIONS UPON THE APPLICANT BEFORE MAKING ITS AWARD. THE DECISION OF THE COUNCIL SHALL BE POSTED ON THE CITY BULLETIN BOARD THE DAY AFTER THE HEARING AND REMAIN POSTED FOR TEN (10) DAYS.

11.20.100 APPEAL.

ANY PERSON DISAGREEING WITH THE DECISION OF THE COUNCIL MAY APPEAL THE DECISION BY FILING SUIT IN THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT AT KENAI, WITHIN TEN (10) DAYS FROM THE DATE OF THE POSTING OF COUNCIL'S DECISION.

11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.

THE APPLICANT WILL FURNISH A SURVEY AND APPRAISAL OF THE LAND IN QUESTION PRIOR TO LEASING. ANY RESURVEYING OR RE-PLATTING REQUIRED WILL BE THE APPLICANT'S RESPONSIBILITY AND EXPENSE.

11.20.120 THE LEASE DOCUMENT—TERMS.

LEASES MAY BE ISSUED FOR A TERM OF NOT LESS THAN TWO (2) YEARS NOR MORE THAN [NINETY-NINE (99)] FORTY-FIVE (45) YEARS. THE APPLICANT SHALL STATE IN HIS OR HER APPLICATION THE TERM DESIRED. IN DETERMINING WHETHER TO GRANT A LEASE FOR THE REQUESTED TERM, THE COUNCIL SHALL CONSIDER THE NATURE, EXTENT, AND COST OF THE IMPROVEMENTS WHICH THE APPLICANT AGREES TO CONSTRUCT THEREON AS A CONDITION OF THE LEASE THE TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT, THE VALUE OF THE APPLICANT'S PROPOSED USE TO THE ECONOMY OF THE CITY AND OTHER RELEVANT FACTORS. THE TERM OF THE LEASE MAY BE EXTENDED FOR A NUMBER OF SUCCESSIVE PERIODS FOR A SET NUMBER OF YEARS EACH AS LONG AS THE APPROPRIATE EXTENSIONS AND ORIGINAL TERM DO NOT EXCEED 99 YEARS.

11.20.130 APPRAISAL.

NO LAND SHALL BE LEASED, OR A RENEWAL LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A [SIX] TWELVE MONTH PERIOD PRIOR TO THE 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, ACCORDING

TO THE METHOD AS DESCRIBED IN SECTION 11.20.150 BELOW, EXCEPT TO STATE OR FEDERAL AGENCIES OR THEIR SUBDIVISIONS IF IT IS IN THE PUBLIC INTEREST TO DO SO. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION.

11.20.140 REVIEW.

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

11.20.150 ANNUAL MINIMUM RENTAL.

(A) ANNUAL MINIMUM RENTALS SHALL BE COMPUTED FROM THE APPROVED APPRAISED MARKET VALUE UTILIZING THE METHOD AS DESCRIBED IN KMC 11.20.160(A). ANNUAL MINIMUM RENTAL SHALL INCLUDE:

- (1) TAXES PERTAINING TO THE LEASEHOLD INTEREST OF THE LESSEE.
- (2) SALES TAX NOW ENFORCED OR LEVIED IN THE FUTURE COMPUTED UPON RENT PAYABLE IN MONTHLY INSTALLMENTS WHETHER RENT IS PAID ON A MONTHLY OR YEARLY BASIS.
- (3) ALL TAXES AND ASSESSMENTS LEVIED IN THE FUTURE BY THE CITY OF KENAI, AS IF LESSEE WAS CONSIDERED THE LEGAL OWNER OF RECORD OF THE LEASED PROPERTY.
- (4) INTEREST AT THE RATE OF EIGHT PERCENT (8%) PER ANNUM AND TEN PERCENT (10%) PENALTIES OF ANY AMOUNT OF MONEY OWED UNDER THIS LEASE WHICH IS NOT PAID ON OR BEFORE THE DATE IT BECOMES DUE.
- (5) ALL SALES TAXES DUE ON PAYMENTS UNDER THIS LEASE AND TO ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.
- (6) ALL SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS LEVIED BY THE CITY OF KENAI, AS IF LESSEE WERE CONSIDERED LEGAL OWNER OF LEASED PROPERTY.

(B) UPON EXECUTION OF THE LEASE THE LANDS DEMISED 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, THAT THE CITY AS PART OF THE CONSIDERATION OF RENTAL PAYMENTS DEPENDS AND RELIES UPON THE PAYMENT BY THE LESSEE OF SAID ASSESSMENTS AND TAXES AS IF HE WERE THE OWNER OF SAID DEMISED LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. SAID PAYMENTS SHALL BE PRORATED TO CONFORM WITH THE CITY OF KENAI'S FISCAL YEAR BEGINNING JULY 1 AND ENDING JUNE 30. IF THE EQUIVALENT MONTHLY PAYMENT EXCEEDS

\$200, THEN THE LESSEE SHALL HAVE THE OPTION OF MAKING PAYMENTS ON A MONTHLY OR QUARTERLY BASIS.

11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.

(A) TO INSURE 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 EACH LEASE, NORMALLY SET FOR THE FIRST OF JULY OF THAT FIFTH YEAR. IN PURSUING A FAIR RETURN, ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. THEREFORE, LEASE RATES SHALL BE BASED ON:

(1) 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 SPECIFIC LAND.

(2) THE ACTUAL RATE OF RETURN DETERMINED TO BE A FAIR RETURN TO THE CITY SHALL BE SET AT SIX PERCENT (6%) OF FAIR MARKET VALUE. THE APPRAISAL SHALL NOT INCLUDE STRUCTURAL IMPROVEMENTS MADE TO THE LAND OR IMPROVEMENTS MADE BY WAY OF GRAVEL OR OTHER APPROVED FILL PLACED ON THE LAND. (ORD. 1631-95)

(B) REALIZING THAT INVESTORS, DEVELOPERS, AND OTHER POTENTIAL LESSEES NEED A REASONABLE ASSURANCE OF STABILITY IN FUTURE LEASE RATES, THE REDETERMINATION CLAUSE OF ALL FUTURE LEASES SHALL INCLUDE THE FOLLOWING LANGUAGE:

AT EACH FIVE-YEAR INTERVAL, THE FAIR MARKET VALUE SHALL BE DETERMINED BY QUALIFIED, INDEPENDENT APPRAISERS. THE REDETERMINED LEASE RATE (ANNUAL RENT) UNDER THIS PROVISION, SHALL BE LIMITED TO A FIFTY PERCENT (50%) INCREASE IN THE PRIOR LEASE RATE UNTIL THE THIRTIETH-YEAR ANNIVERSARY OF THE LEASE AFTER WHICH THE FIFTY PERCENT (50%) CAP PROVISION SHALL NO LONGER APPLY AND THE LEASE RATE SHALL BE REDETERMINED EVERY FIVE YEARS ON THE BASIS OF FAIR MARKET EVALUATION AS DETERMINED IN KMC 11.20.080.

(C) CITY LEASES OF TIDELANDS EXISTING AT THE TIME OF THE ENACTMENT OF THIS CHAPTER SHALL HAVE A THIRTY-YEAR PERIOD DETERMINED FROM THE DATE FROM WHICH THE LEASE WAS ORIGINALLY ENTERED INTO.

(D) FAILURE BY THE CITY TO INSIST UPON RENEGOTIATION AT THE END OF ANY GIVEN FIVE-YEAR PERIOD SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF THE CITY TO INSIST UPON RENEGOTIATION IN ANY SUBSEQUENT YEAR, PROVIDED

THAT NEITHER THE CITY NOR THE LESSEE SHALL HAVE THE RIGHT TO INSIST UPON RENEGOTIATION UNTIL FIVE YEARS SHALL HAVE ELAPSED FROM THE DATE THE RENTAL WAS LAST ADJUSTED.

11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.

IT SHALL BE THE RESPONSIBILITY OF THE LESSEE TO PROPERLY LOCATE HIMSELF AND HIS IMPROVEMENTS ON THE LEASED LAND. IT SHALL BE UNLAWFUL TO ENCROACH ON OTHER LANDS OF THE CITY, OR ON LANDS OWNED OR LEASED BY ANOTHER.

11.20.180 LEASE UTILIZATION.

LEASED LANDS SHALL BE UTILIZED FOR PURPOSES WITHIN THE SCOPE OF THE APPLICATION, THE TERMS OF THE LEASE AND IN CONFORMITY WITH THE ORDINANCES OF THE CITY AND BOROUGH, AND IN SUBSTANTIAL CONFORMITY WITH THE COMPREHENSIVE PLAN. UTILIZATION OR DEVELOPMENT FOR OTHER THAN THE ALLOWED USES SHALL CONSTITUTE A VIOLATION OF THE LEASE AND SUBJECT THE LEASE TO CANCELLATION AT ANY TIME. FAILURE TO SUBSTANTIALLY COMPLETE THE DEVELOPMENT PLAN OF THE LAND WITHIN THE SPECIFIED TIME FROM THE DATE OF EXECUTION OF THE LEASE, CONSISTENT WITH THE PROPOSED USE AND TERMS OF THE LEASE, SHALL CONSTITUTE GROUNDS FOR CANCELLATION. THE LEASE SHALL SET FORTH IN DETAIL WITH APPROPRIATE PLANS AND SPECIFICATIONS THE IMPROVEMENTS TO BE MADE WITHIN THE TIME PERIOD DESCRIBED ABOVE.

11.20.190 SUBLEASING.

LEASES MAY PROVIDE FOR SUBLEASING A PORTION OF THE LEASED LAND WITHOUT PRIOR COUNCIL APPROVAL. SUBLEASES SHALL BE IN WRITING AND BE SUBJECT TO THE TERMS AND CONDITIONS OF THE ORIGINAL LEASE. NO APPROVAL OF THE CITY SHALL BE GIVEN TO THE SUBLEASE OF PROPERTY UNTIL THE LESSEE HAS SUBSTANTIALLY COMPLIED WITH THE DEVELOPMENT PLAN.

11.20.200 ASSIGNMENTS.

EXCEPT FOR ASSIGNMENTS FOR COLLATERAL PURPOSES, NO LESSEE MAY ASSIGN THE LANDS LEASED TO HIM WITHOUT PRIOR COUNCIL APPROVAL. THE ASSIGNEE SHALL BE SUBJECT TO ALL OF THE PROVISIONS OF THE LEASE. ANY ATTEMPTED ASSIGNMENT MADE IN VIOLATION OF THIS SECTION SHALL BE VOID. ANY ASSIGNMENT REQUIRING COUNCIL APPROVAL WILL NOT BE UNREASONABLY DENIED.

11.20.210 MODIFICATION.

NO LEASE MAY BE MODIFIED ORALLY OR IN ANY MANNER OTHER THAN BY AN AGREEMENT IN WRITING, SIGNED BY ALL PARTIES IN INTEREST OR THEIR SUCCESSORS IN INTEREST. ANY SUCH MODIFICATION SHALL REQUIRE COUNCIL APPROVAL.

11.20.220 CANCELLATION—FORFEITURE.

(A) LEASES IN GOOD STANDING MAY BE CANCELED IN WHOLE, OR IN PART, AT ANY TIME UPON MUTUAL WRITTEN AGREEMENT BY LESSEE AND THE CITY COUNCIL.

(B) ANY LEASE USED FOR AN UNLAWFUL PURPOSE MAY BE CANCELED.

(C) IF THE LESSEE SHALL DEFAULT IN THE PERFORMANCE OR OBSERVANCE OF ANY OF THE LEASE TERMS, COVENANTS, OR STIPULATIONS THERETO, OR OF THE REGULATIONS NOW OR HEREAFTER IN FORCE, AND SHOULD SAID DEFAULT CONTINUE FOR THIRTY (30) CALENDAR DAYS AFTER SERVICE OF WRITTEN NOTICE BY THE CITY WITHOUT REMEDY BY LESSEE OF THE CONDITIONS WARRANTING DEFAULT, THE CITY SHALL SUBJECT LESSEE TO APPROPRIATE LEGAL ACTION, INCLUDING, BUT NOT LIMITED TO, FORFEITURE OF THE LEASE. NO IMPROVEMENTS MAY BE REMOVED BY LESSEE OR OTHER PERSON DURING ANY TIME THE LESSEE IS IN DEFAULT. THIS PROVISION SHALL NOT BE CONSTRUED TO PROHIBIT THE CITY FROM TAKING ANY APPROPRIATE LEGAL ACTION, INCLUDING, BUT LIMITED TO, FORFEITURE OF THE LEASE, IMMEDIATELY UPON THE OCCURRENCE OF A DEFAULT.

11.20.230 DEFAULT—RIGHT OF ENTRY.

SHOULD DEFAULT BE MADE IN THE PAYMENT OF ANY PORTION OF THE RENT OR FEES WHEN DUE OR IN ANY OF THE COVENANTS OR CONDITIONS CONTAINED IN THE LEASE OR IN ANY REGULATIONS NOW OR HERINAFTER IN FORCE, THEN IN SUCH EVENT THE CITY SHALL GIVE LESSEE THIRTY DAYS AFTER SUCH WRITTEN NOTICE TO CURE SUCH DEFAULT OR DEFAULTS, AFTER WHICH IF THE DEFAULT IS NOT CURED, THE CITY MAY TERMINATE THE LEASE, RE-ENTER AND TAKE POSSESSION OF THE PREMISES, REMOVE ALL PERSONS THEREFROM.

11.20.240 NOTICE OR DEMAND.

ANY NOTICE OR DEMAND WHICH UNDER THE TERMS OF A LEASE OR UNDER ANY STATUTE MUST BE GIVEN OR MADE BY THE PARTIES THERETO, SHALL BE IN WRITING AND BE GIVEN OR MADE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO THE OTHER PARTY AT THE ADDRESS OF RECORD. HOWEVER, EITHER PARTY MAY

DESIGNATE IN WRITING SUCH NEW OR OTHER ADDRESS TO WHICH SUCH NOTICE OR DEMAND SHALL THEREAFTER BE SO GIVEN, MADE OR MAILED. A NOTICE GIVEN HEREUNDER SHALL BE DEEMED DELIVERED WHEN DEPOSITED IN A U.S. GENERAL OR BRANCH POST OFFICE, ENCLOSED IN A REGISTERED OR CERTIFIED MAIL ENVELOPE, ADDRESSED AS HEREINABOVE PROVIDED.

11.20.250 FINANCING—RIGHTS OF MORTGAGES OR LIENHOLDER.

(A) FOR THE PURPOSE OF INTERIM OR PERMANENT FINANCING OR REFINANCING FROM TIME TO TIME OF THE IMPROVEMENTS TO BE PLACED UPON THE LEASED PREMISES, AND FOR NO OTHER PURPOSE, A LESSEE, AFTER GIVING WRITTEN NOTICE THEREOF TO THE CITY, MAY ENCUMBER BY MORTGAGE, DEED OF TRUST, ASSIGNMENT, OR OTHER APPROPRIATE INSTRUMENT, THE LESSEE'S INTEREST IN THE LEASED PREMISES AND IN AND TO THE LEASE, PROVIDED SUCH ENCUMBRANCE PERTAINS ONLY TO SUCH LEASEHOLD INTEREST AND DOES NOT PERTAIN TO OR CREATE ANY INTEREST IN THE CITY'S TITLE TO THE LEASED PREMISES. IF SUCH MORTGAGE, DEED OF TRUST, OR ASSIGNMENT, SHALL BE HELD BY A BANK OR OTHER ESTABLISHED LENDING OR FINANCIAL INSTITUTION (WHICH TERMS SHALL INCLUDE AN ESTABLISHED INSURANCE COMPANY AND QUALIFIED PENSION OR PROFIT-SHARING TRUST), AND SUCH INSTITUTION SHALL ACQUIRE THE LESSEE'S INTEREST IN SUCH LEASE AS A RESULT OF A SALE UNDER SAID ENCUMBRANCE PURSUANT TO A FORECLOSURE OR OTHER REMEDY OF THE SECURED PARTY, OR THROUGH ANY TRANSFER IN LIEU OF FORECLOSURE, OR THROUGH SETTLEMENT OF OR ARISING OUT OF ANY PENDING OR CONTEMPLATED FORECLOSURE ACTION, SUCH LENDING INSTITUTION SHALL HAVE THE PRIVILEGE OF TRANSFERRING ITS INTEREST IN SUCH LEASE TO A NOMINEE OR A WHOLLY-OWNED SUBSIDIARY CORPORATION WITH THE PRIOR CONSENT OF THE CITY, PROVIDED, HOWEVER, SUCH TRANSFEREE SHALL ASSUME ALL OF THE COVENANTS AND CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE, WHEREUPON SUCH LENDING INSTITUTION SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH TRANSFER. SUCH LENDING INSTITUTE FOR THE NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION TO WHICH IT MAY HAVE TRANSFERRED SUCH LEASE, OR ANY OTHER LENDING INSTITUTION WHICH MAY AT ANY TIME ACQUIRE SUCH LEASE, SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER A TRANSFER OF SUCH LEASE.

(B) A LEASEHOLD MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, OR SECURITY ASSIGNEE, SHALL HAVE AND BE SUBROGATED TO ANY AND ALL RIGHTS OF THE LESSEE WITH RESPECT TO THE CURING OF ANY DEFAULT HEREUNDER BY LESSEE.

(C) IF THE HOLDER OF ANY SUCH MORTGAGE, BENEFICIARY OF ANY SUCH DEED OF TRUST, OR THE SECURITY ASSIGNEE SHALL GIVE THE CITY BEFORE ANY DEFAULT SHALL HAVE OCCURRED IN THE LEASE, A WRITTEN NOTICE CONTAINING THE NAME AND POST OFFICE ADDRESS OF SUCH HOLDER, THE CITY SHALL THEREAFTER GIVE TO SUCH HOLDER A COPY OF EACH NOTICE OF DEFAULT BY THE LESSEE AT THE SAME TIME AS ANY NOTICE OF DEFAULT SHALL BE GIVEN BY THE CITY TO THE LESSEE, AND THE CITY WILL NOT THEREAFTER ACCEPT ANY SURRENDER OR ENTER INTO ANY MODIFICATION OF THIS LEASE WITHOUT THE PRIOR WRITTEN CONSENT OF THE HOLDER OF ANY FIRST MORTGAGE, BENEFICIAL INTEREST UNDER A FIRST DEED OF TRUST, OR SECURITY ASSIGNEE, IN THIS LEASE.

(D) IF, BY REASON OF ANY DEFAULT OF THE LESSEE, EITHER THIS LEASE OR ANY EXTENSION THEREOF SHALL BE TERMINATED AT THE ELECTION OF THE CITY PRIOR TO THE STATED EXPIRATION THEREFOR, THE CITY WILL ENTER INTO A NEW LEASE WITH THE LEASEHOLD MORTGAGEE FOR THE REMAINDER OF THE TERM, EFFECTIVE AS OF THE DATE OF SUCH TERMINATION, AT THE RENT AND ADDITIONAL RENT, AND ON THE TERMS HEREIN CONTAINED, SUBJECT TO THE FOLLOWING CONDITIONS:

(1) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL MAKE WRITTEN REQUEST TO THE CITY FOR SUCH NEW LEASE WITHIN TWENTY DAYS AFTER THE DATE OF SUCH TERMINATION AND SUCH WRITTEN REQUEST SHALL BE ACCOMPANIED BY A PAYMENT TO THE CITY OF ALL SUMS THEN DUE TO THE CITY UNDER THE LEASE.

(2) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL PAY TO THE CITY, AT THE TIME OF THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, ANY AND ALL SUMS DUE THEREUNDER IN ADDITION TO THOSE WHICH WOULD AT THE TIME OF THE EXECUTION AND DELIVERY THEREOF BE DUE UNDER THIS LEASE; BUT FOR SUCH TERMINATION AND IN ADDITION THERETO, ANY REASONABLE EXPENSES, INCLUDING LEGAL AND ATTORNEY'S FEES, TO WHICH THE CITY SHALL HAVE BEEN SUBJECTED BY REASON OF SUCH DEFAULT.

(3) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE SHALL, ON OR BEFORE THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, PERFORM ALL THE OTHER CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE TO THE EXTENT THAT THE LESSEE SHALL HAVE FAILED TO PERFORM SUCH CONDITIONS.

(E) IF A LENDING INSTITUTION OR ITS NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION SHALL HOLD A MORTGAGE, DEED OF TRUST, OR SIMILAR SECURITY INTEREST IN AND TO THIS LEASE AND SHALL THEREAFTER ACQUIRE A LEASEHOLD

ESTATE, DERIVED EITHER FROM SUCH INSTRUMENTS OR FROM THE CITY, AND IF SUCH INSTITUTION, NOMINEE, OR CORPORATION SHALL DESIRE TO ASSIGN THIS LEASE OR ANY NEW LEASE OBTAINED FROM THE CITY (OTHER THAN TO A NOMINEE OR TO A WHOLLY-OWNED SUBSIDIARY CORPORATION AS PERMITTED BY THE ABOVE PROVISIONS) TO AN ASSIGNEE WHO WILL UNDERTAKE TO PERFORM AND OBSERVE THE CONDITIONS IN SUCH LEASE REQUIRED TO BE PERFORMED BY THE LESSEE, THE CITY SHALL NOT UNREASONABLY WITHHOLD ITS CONSENT TO SUCH ASSIGNMENT AND ASSUMPTION, AND ANY SUCH LENDING INSTITUTION, NOMINEE, OR SUBSIDIARY SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH ASSIGNMENT. IF THE PROPOSED ASSIGNOR SHALL ASSERT THAT THE CITY IN UNREASONABLY WITHHOLDING ITS CONSENT TO ANY SUCH PROPOSED ASSIGNMENT, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION.

11.20.260 ENTRY AND RE-ENTRY.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED AS HEREINBEFORE PROVIDED BY SUMMARY PROCEEDINGS OR OTHERWISE, OR IN THE EVENT THAT THE DEMISED LANDS OR ANY PART THEREOF SHOULD BE ABANDONED BY THE LESSEE DURING THE SAID TERM, THE LESSOR OR ITS AGENTS, SERVANTS, OR REPRESENTATIVES MAY, IMMEDIATELY OR ANY TIME THEREAFTER, RE-ENTER AND RESUME POSSESSION OF SAID LANDS OR SUCH PART THEREOF, AND REMOVE ALL PERSONS AND PROPERTY THEREFROM, EITHER SUMMARY PROCEEDINGS OR BY A SUITABLE ACTION OR PROCEEDING AT LAW WITHOUT BEING LIABLE FOR ANY DAMAGES THEREFOR. NO RE-ENTRY BY THE LESSOR SHALL BE DEEMED AN ACCEPTANCE OF A SURRENDER OF THE LEASE.

11.20.270 RE-LEASE.

IN THE EVEN THAT A LEASE SHOULD BE TERMINATED AS HEREIN PROVIDED, OR BY SUMMARY PROCEEDINGS, OR OTHERWISE, THE PLANNING & ZONING COMMISSION MAY OFFER SAID LANDS FOR LEASE OR OTHER APPROPRIATE DISPOSAL, PURSUANT TO THE PROVISIONS OF THIS ORDINANCE.

11.20.280 FORFEITURE OF RENTAL.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED BECAUSE OF ANY BREACH BY THE LESSEE AS HEREIN PROVIDED, THE ANNUAL RENTAL PAYMENT LAST MADE BY THE LESSEE SHALL BE FORFEITED AND RETAINED BY THE LESSOR AS PARTIAL OR TOTAL LIQUIDATED DAMAGES FOR SAID BREACH.

11.20.290 RIGHT OF INSPECTION.

CITY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO ENTER THE PREMISES, OR ANY PART THEREOF, FOR THE PURPOSES OF INSPECTION.

11.20.300 EASEMENT GRANTS RESERVED.

CITY RESERVES THE RIGHT TO GRANT AND CONTROL EASEMENTS IN, OR ABOVE THE LAND LEASED. NO SUCH GRANT OR EASEMENT WILL BE MADE THAT WILL UNREASONABLY INTERFERE WITH THE LESSEE'S USE OF THE LAND, AND LESSEE SHALL HAVE FREE ACCESS AND USE OF ANY AND ALL PARKING AND LOADING RIGHTS, RIGHTS OF INGRESS AND EGRESS NOW OR HEREAFTER APPERTAINING TO THE LEASED PREMISES.

11.20.310 LEASE SUBORDINATE TO FINANCING REQUIREMENTS.

LESSEE AGREES THAT CITY MAY MODIFY THE LEASE TO MEET REVISED REQUIREMENTS FOR FEDERAL OR STATE GRANTS, OR TO CONFORM TO THE REQUIREMENTS OF ANY REVENUE BOND COVENANT. HOWEVER, THE MODIFICATION SHALL NOT ACT TO REDUCE THE RIGHTS OR PRIVILEGES GRANTED THE LESSEE BY THIS LEASE, NOR ACT TO CAUSE THE LESSEE FINANCIAL LOSS.

11.20.320 WRITTEN WAIVER.

THE RECEIPT OF RENT BY THE LESSOR WITH KNOWLEDGE OF ANY BREACH OF THE LEASE BY THE LESSEE, OR ANY DEFAULT ON THE PART OF THE LESSEE IN OBSERVANCE OR PERFORMANCE OF ANY OF THE CONDITIONS OR COVENANTS OF THE LEASE, SHALL NOT BE DEEMED TO BE A WAIVER OF ANY PROVISIONS OF THE LEASE. NO FAILURE ON THE PART OF THE LESSOR TO ENFORCE ANY COVENANT OR PROVISION THEREIN CONTAINED, NOR ANY WAIVER OF ANY RIGHT THEREUNDER BY THE LESSOR, UNLESS IN WRITING, SHALL DISCHARGE OR INVALIDATE SUCH COVENANTS OR PROVISIONS, OR AFFECT THE RIGHT OF THE LESSOR TO ENFORCE THE SAME IN THE EVENT OF ANY SUBSEQUENT BREACH OR DEFAULT. THE RECEIPT, BY THE LESSOR, OF ANY RENT OR ANY OTHER SUM OF MONEY AFTER THE TERMINATION, IN ANY MANNER, OF THE TERM THEREIN DEMISED, OR AFTER THE GIVING BY THE LESSOR OF ANY NOTICE THEREUNDER TO EFFECT SUCH TERMINATION, SHALL NOT REINSTATE, CONTINUE, OR EXTEND THE RESULTANT TERM THEREIN DEMISED, DESTROY, OR IN ANY MANNER IMPAIR THE EFFICACY OF ANY SUCH NOTICE OR TERMINATION AS MAY HAVE BEEN GIVEN THEREUNDER BY THE LESSOR TO THE LESSEE PRIOR TO THE RECEIPT OF ANY SUCH SUM OF MONEY OR OTHER CONSIDERATION, UNLESS SO AGREED TO IN WRITING AND SIGNED BY THE LESSOR.

11.20.330 SURRENDER ON TERMINATION.

(A) LESSEE SHALL, ON THE LAST DAY OF THE TERM OF THIS LEASE OR UPON ANY EARLIER TERMINATION OF THIS LEASE, SURRENDER AND DELIVER UP THE PREMISES INTO THE POSSESSION AND USE OF CITY WITHOUT FRAUD OR DELAY IN GOOD ORDER, CONDITION, AND REPAIR, EXCEPT FOR REASONABLE WEAR AND TEAR SINCE THE LAST NECESSARY REPAIR, REPLACEMENT, RESTORATION, OR RENEWAL, FREE AND CLEAR OF ALL LETTINGS AND OCCUPANCIES UNLESS EXPRESSLY PERMITTED BY CITY IN WRITING, AND FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OTHER THAN THOSE CREATED BY CITY FOR LOANS TO THE CITY.

(B) UPON THE END OF THE TERM OF THIS LEASE OR ANY EARLIER TERMINATION THEREOF, TITLE TO THE BUILDINGS, IMPROVEMENTS, AND BUILDING EQUIPMENT SHALL AUTOMATICALLY VEST IN THE CITY WITHOUT REQUIREMENT OF ANY DEED, CONVEYANCE, OR BILL OF SALE DOCUMENT IN CONFIRMATION HEREOF, LESSEE SHALL EXECUTE, ACKNOWLEDGE, AND DELIVER THE SAME AND SHALL PAY ANY CHARGE, TAX, AND FEE ASSERTED OR IMPOSED BY ANY AND ALL GOVERNMENTAL UNITS IN CONNECTION THEREWITH.

11.20.340 SANITATION.

THE LESSEE SHALL COMPLY WITH ALL REGULATIONS OR ORDINANCES OF THE CITY WHICH ARE PROMULGATED FOR THE PROMOTION OF SANITATION. THE PREMISES OF THE LEASE SHALL BE KEPT IN A NEAT, CLEAN, AND SANITARY CONDITION, AND EVERY EFFORT SHALL BE MADE TO PREVENT THE POLLUTION OF WATER.

11.20.350 BUILDING AND ZONING CODES.

LEASED LANDS SHALL BE UTILIZED IN ACCORDANCE WITH THE BUILDING AND ZONING ORDINANCES AND RULES AND REGULATIONS OF SAID AUTHORITY. FAILURE TO DO SO SHALL CONSTITUTE A VIOLATION OF THE LEASE.

11.20.360 RULES.

(A) THE LESSEE SHALL OBSERVE, OBEY, AND COMPLY WITH ALL APPLICABLE RULES, ETC., OF THE STATE OR FEDERAL GOVERNMENTS.

(B) CITY RESERVES THE RIGHT TO ADOPT, AMEND, AND ENFORCE REASONABLE RULES AND REGULATIONS GOVERNING THE DEMISED PREMISES AND THE PUBLIC AREAS AND FACILITIES USED IN CONNECTION THEREWITH. EXCEPT IN CASES OF EMERGENCY, NO RULE OR REGULATION HEREAFTER ADOPTED OR AMENDED BY THE CITY SHALL BECOME APPLICABLE UNLESS IT HAS BEEN GIVEN THIRTY DAYS NOTICE OF ADOPTION OR AMENDMENT THEREOF.

(C) LESSEE, IN THE CONDUCT OF ITS OPERATIONS ON THE DEMISED PREMISES, SHALL OBSERVE, OBEY, AND COMPLY WITH ANY AND ALL APPLICABLE RULES, REGULATIONS, LAWS, ORDINANCES, OR ORDERS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, LAWFULLY EXERCISING AUTHORITY OVER LESSEE OR LESSEE'S CONDUCT OF ITS BUSINESS.

(D) CITY SHALL NOT BE LIABLE TO LESSEE FOR ANY DIMINUTION OR DEPRIVATION OF POSSESSION, OR OF ITS RIGHTS HEREUNDER, ON ACCOUNT OF THE EXERCISE OF ANY SUCH RIGHT OR AUTHORITY AS IN THIS SECTION PROVIDED, NOR SHALL LESSEE BE ENTITLED TO TERMINATE THE WHOLE OR ANY PORTION OF THE LEASEHOLD ESTATE HEREIN CREATED, BY REASON OF THE EXERCISE OF SUCH RIGHTS OR AUTHORITY, UNLESS THE EXERCISE THEREOF SHALL SO INTERFERE WITH LESSEE'S USE AND OCCUPANCY OF THE LEASEHOLD ESTATE AS TO CONSTITUTE A TERMINATION IN WHOLE OR IN PART OF THIS LEASE BY OPERATION OF LAW IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA AND OF THE UNITED STATES MADE APPLICABLE TO THE STATES.

11.20.370 AIRCRAFT OPERATIONS PROTECTED.

(A) THE CITY SHALL RESERVE TO ITSELF ITS SUCCESSORS AND ASSIGNS, FOR THE USE AND BENEFIT OF THE PUBLIC, A RIGHT OF FLIGHT FOR THE PASSAGE OF AIRCRAFT IN THE AIRSPACE ABOVE THE SURFACE AND ALL IMPROVEMENTS APPROVED BY THE CITY OF THE PREMISES CONVEYED, TOGETHER WITH THE RIGHT TO CAUSE IN SAID AIRSPACE SUCH NOISE AS MAY BE INHERENT IN THE OPERATION OF AIRCRAFT, NOW OR HEREAFTER USED FOR NAVIGATION OF OR FLIGHT IN THE AIR, USING SAID AIRSPACE OF LANDING AT, TAKING OFF FROM, OR OPERATING ON THE KENAI AIRPORT. (WHEN PLANS FOR IMPROVEMENTS ARE APPROVED BY THE CITY, THE CITY TO THE EXTENT OF THOSE IMPROVEMENTS RELEASES THE EASEMENTS HERE EXPRESSED.)

(B) THE LESSEE BY ACCEPTING CONVEYANCE EXPRESSLY AGREES FOR ITSELF, ITS REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, THAT IT WILL NOT ERECT NOR PERMIT THE ERECTION OF ANY STRUCTURE OR OBJECT, ON THE AND CONVEYED, WHICH WOULD BE AN AIRPORT OBSTRUCTION WITHIN THE STANDARDS ESTABLISHED UNDER THE FEDERAL AVIATION ADMINISTRATION REGULATIONS, PART 77, AS AMENDED. IN THE EVENT THE AFORESAID COVENANT IS BREACHED, THE CITY RESERVES THE RIGHT TO ENTER ON THE LAND CONVEYED HEREUNDER AND TO REMOVE THE OFFENDING STRUCTURE OR OBJECT, ALL OF WHICH SHALL BE AT THE EXPENSE OF THE LESSEE OR ITS HEIRS, SUCCESSORS, OR ASSIGNS.

11.20.380 RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION.

THE CITY SHALL AGREE AND COVENANT THAT THE LESSEE, UPON PAYING RENT AND PERFORMING OTHER COVENANTS, TERMS, AND CONDITIONS OF THIS LEASE, SHALL HAVE THE RIGHT TO QUIETLY AND PEACEFULLY HOLD, USE, OCCUPY, AND ENJOY THE SAID LEASED PREMISES, EXCEPT THAT ANY INCONVENIENCE CAUSED BY PUBLIC WORKS PROJECTS IN OR ABOUT THE LEASEHOLD PREMISES SHALL NOT BE CONSTRUED AS A DENIAL OF THE RIGHT OF QUIET OR PEACEABLE POSSESSION.

11.20.390 LESSEE TO PAY TAXES.

LESSEE SHALL PAY ALL LAWFUL TAXES AND ASSESSMENTS WHICH, DURING THE TERM THEREOF MAY BECOME A LIEN UPON OR WHICH MAY BE LEVIED BY THE STATE, BOROUGH, CITY, OR ANY OTHER TAX-LEVYING BODY, UPON ANY TAXABLE POSSESSORY RIGHT WHICH LESSEE MAY HAVE IN OR TO THE REASON OF ITS USE OR OCCUPANCY, PROVIDED, HOWEVER, THAT NOTHING HEREIN CONTAINED SHALL PREVENT LESSEE FROM CONTESTING AS ANY OTHER LAND OWNER ANY INCREASE IN SUCH TAX OR ASSESSMENT THROUGH PROCEDURES OUTLINED IN STATE STATUTES.

11.20.400 NO PARTNERSHIP OR JOINT VENTURE CREATED.

THE CITY SHALL NOT BE CONSTRUED OR HELD TO BE A PARTNER OR JOINT VENTURER OF LESSEE IN THE CONDUCT OF BUSINESS ON THE DEMISED PREMISES; AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE RELATIONSHIP BETWEEN THE PARTIES THERETO IS, AND SHALL AT ALL TIMES REMAIN THAT OF LANDLORD AND TENANT.

11.20.410 DEFAULT BANKRUPTCY.

IF THE LESSEE SHALL MAKE ANY ASSIGNMENT FOR THE BENEFIT OF CREDITORS OR SHALL BE ADJUDGED A BANKRUPT, OR IF A RECEIVER IS APPOINTED FOR THE LESSEE OR LESSEE'S ASSETS, OR ANY INTEREST UNDER THIS LEASE, AND IF THE APPOINTMENT OF THE RECEIVER IS NOT VACATED WITHIN THIRTY DAYS, OR IF A VOLUNTARY PETITION IS FILED UNDER SECTION 18(A) OF THE BANKRUPTCY ACT BY THE LESSEE, THEN AND IN ANY EVENT, THE CITY MAY, UPON GIVING THE LESSEE THIRTY DAYS' NOTICE, TERMINATE THIS LEASE.

11.20.420 NONDISCRIMINATION.

THE LESSEE, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST, AND ASSIGNS, AS A PART OF THE CONSIDERATION HEREOF, DOES HEREBY COVENANT AND AGREE AS A COVENANT RUNNING WITH THE LAND, THAT:

(A) NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION IN, DENIED THE BENEFITS OF, OR BE OTHERWISE SUBJECTED TO DISCRIMINATION IN THE USE OF SAID FACILITIES.

(B) IN THE CONSTRUCTION OF ANY IMPROVEMENTS ON, OVER, OR UNDER SUCH LAND AND THE FURNISHING OF SERVICES THEREON, NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION, DENIED THE BENEFITS OF, OR OTHERWISE BE SUBJECTED TO DISCRIMINATION.

(C) THE LESSEE SHALL USE THE PREMISES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED BY OR PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED.

(D) IN THE EVENT FACILITIES ARE CONSTRUCTED, MAINTAINED, OR OTHERWISE OPERATED ON THE SAID PROPERTY DESCRIBED IN THIS LEASE, FOR A PURPOSE INVOLVING THE PROVISION OF SIMILAR SERVICES OR BENEFITS, THE LESSEE SHALL MAINTAIN AND OPERATE SUCH FACILITIES AND SERVICES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED.

11.20.430 PARTIAL INVALIDITY.

IF ANY TERM, PROVISION, CONDITION, OR PART OF THE LEASE IS DECLARED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNCONSTITUTIONAL, THE REMAINING TERMS, PROVISIONS, CONDITIONS, OR PARTS SHALL CONTINUE IN FULL FORCE AND EFFECT AS THOUGH SUCH DECLARATION WAS NOT MADE.

11.20.440 PAROLE MODIFICATIONS.

IT SHALL BE MUTUALLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE AGREEMENT, AS WRITTEN, SHALL COVER ALL THE AGREEMENTS AND STIPULATIONS BETWEEN THE PARTIES; AND NO REPRESENTATIONS, ORAL OR WRITTEN, HAVE BEEN MODIFYING, ADDING TO, OR CHANGING THE TERMS THEREOF.

11.20.450 AMENDMENT OF LEASE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN ORDER TO AID THE LESSEE IN THE FINANCING OF THE IMPROVEMENTS TO BE SITUATED HEREIN, THE CITY SHALL AGREE THAT IN THE EVENT THE PROPOSED MORTGAGEE, BENEFICIARY OR SECURITY ASSIGNEE UNDER ANY INTERIM OR PERMANENT LOAN ON THE SECURITY OF THE LEASEHOLD INTEREST OF THE LESSEE AND THE IMPROVEMENTS TO BE SITUATED THEREON SO REQUIRES, THE CITY WILL MAKE A REASONABLE EFFORT TO AMEND THIS LEASE IN ORDER TO SATISFY SUCH REQUIREMENTS UPON THE EXPRESS CONDITION AND UNDERSTANDING, HOWEVER, THAT SUCH VARIANCE IN LANGUAGE WILL NOT MATERIALLY PREJUDICE THE CITY'S RIGHTS THEREUNDER NOR BE SUCH AS TO ALTER IN ANY WAY THE RENTAL OBLIGATIONS OF THE LESSEE HEREUNDER NOR ITS OBLIGATIONS TO COMPLY WITH ALL EXISTING LAWS AND REGULATIONS OF THE CITY RELATING TO THE LEASING OF AIRPORT LANDS, AND TO ALL APPLICABLE FEDERAL STATUTES, RULES, AND REGULATIONS, AND ALL COVENANTS AND CONDITIONS OF THE DEED BY WHICH THE CITY HOLDS TITLE TO THE LAND.

11.20.460 COMPLIANCE WITH LAWS.

(A) LESSEE SHALL COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, AND REGULATIONS OF PUBLIC AUTHORITIES NOW OR HEREAFTER IN ANY MANNER AFFECTING THE LEASED PREMISES OR THE SIDEWALKS, ALLEYS, STREETS, AND WAY ADJACENT THERETO OR ANY BUILDINGS, STRUCTURES, FIXTURES, AND IMPROVEMENTS OR THE USE THEREOF, WHETHER OR NOT ANY SUCH LAWS, ORDINANCES, AND REGULATIONS WHICH MAY BE HEREAFTER ENACTED INVOLVE A CHANGE OF POLICY ON THE PART OF THE GOVERNMENTAL BODY ENACTING THE SAME. LESSEE AGREES TO HOLD CITY FINANCIALLY HARMLESS FROM THE FOLLOWING:

- (1) FROM THE CONSEQUENCES OF ANY VIOLATION OF SUCH LAWS, ORDINANCES, AND/OR REGULATIONS.
- (2) FROM ALL CLAIMS FOR DAMAGES ON ACCOUNT OF INJURIES, DEATH, OR PROPERTY DAMAGE RESULTING FROM SUCH VIOLATION.

(B) LESSEE FURTHER AGREES IT WILL NOT PERMIT ANY UNLAWFUL OCCUPATION, BUSINESS, OR TRADE TO BE CONDUCTED ON SAID PREMISES OR ANY USE TO BE MADE THEREOF CONTRARY TO ANY LAW, ORDINANCE, OR REGULATION AS AFORESAID WITH RESPECT THERETO.

11.20.470 CARE OF PREMISES.

LESSEE, AT ITS OWN COST AND EXPENSE, SHALL KEEP THE LEASED PREMISES, ALL IMPROVEMENTS WHICH AT ANY TIME DURING THE TERM OF THIS LEASE MAY BE

SITUATED THEREON, AND ANY AND ALL APPURTENANCES THEREUNTO BELONGING, IN GOOD CONDITION AND REPAIR, DURING THE ENTIRE TERM OF THIS LEASE.

11.20.480 LESSEE'S OBLIGATION TO REMOVE LIENS.

LESSEE WILL NOT PERMIT ANY LIENS INCLUDING, BUT NOT LIMITED TO, MECHANICS', LABORERS', OR MATERIAL-MEN'S LIENS OBTAINABLE OR AVAILABLE UNDER THE THEN EXISTING LAWS, TO STAND AGAINST THE LEASED PREMISES OR IMPROVEMENTS FOR ANY LABOR OR MATERIAL FURNISHED TO LESSEE OR CLAIMED TO HAVE BEEN FURNISHED TO LESSEE OR TO LESSEE'S AGENTS, CONTRACTORS, OR SUBLESSEES, IN CONNECTION WITH WORK OF ANY CHARACTER PERFORMED OR CLAIMED TO HAVE BEEN PERFORMED ON SAID PREMISES OR IMPROVEMENTS BY OR AT THE DIRECTION OR SUFFERANCE OF LESSEE, PROVIDED, HOWEVER, LESSEE SHALL HAVE THE RIGHT TO PROVIDE A BOND AS CONTEMPLATED BY ALASKA LAW AND CONTEST THE VALIDITY OR AMOUNT OF ANY SUCH LIEN OR CLAIMED LIEN. ON FINAL DETERMINATION OF SUCH LIEN OR SUCH CLAIM FOR LIEN, LESSEE WILL IMMEDIATELY PAY ANY JUDGMENT RENDERED WITH ALL PROPER COSTS AND CHARGES AND SHALL HAVE SUCH LIEN RELEASED OR JUDGMENT SATISFIED AT LESSEE'S OWN EXPENSE.

11.20.490 CONDEMNATION.

IN THE EVENT THE LEASED PREMISES OR ANY PART THEREOF SHALL BE CONDEMNED AND TAKEN FOR A PUBLIC OR A QUASI-PUBLIC USE, THEN UPON PAYMENT OF ANY AWARD OR COMPENSATION ARISING FROM SUCH CONDEMNATION, THERE SHALL BE SUCH DIVISION OF THE PROCEEDS, SUCH ABATEMENT IN RENT PAYABLE DURING THE TERM OR ANY EXTENSION OF THE TERM HEREOF, AND SUCH OTHER ADJUSTMENTS AS THE PARTIES MAY AGREE UPON AS BEING JUST AND EQUITABLE UNDER ALL THE CIRCUMSTANCES. IF THE CITY AND LESSEE ARE UNABLE TO AGREE WITHIN THIRTY DAYS AFTER SUCH AN AWARD HAS BEEN PAID INTO COURT, UPON WHAT DIVISION, ANNUAL ABATEMENT IN RENT, AND OTHER ADJUSTMENTS ARE JUST AND EQUITABLE, THE DISPUTE SHALL BE DETERMINED BY ARBITRATION PROVIDED IN KMC 11.20.670 HEREOF.

11.20.500 PROTECTION OF SUBTENANTS.

TO PROTECT THE POSITION OF ANY SUBTENANT(S) HEREAFTER PROPERLY OBTAINING ANY INTERESTS IN THE LEASEHOLD ESTATE GRANTED LESSEE HEREUNDER, THE CITY AGREES THAT IN THE EVENT OF THE CANCELLATION, TERMINATION, EXPIRATION, OR SURRENDER OF THIS LEASE (THE GROUND LEASE), THE CITY WILL ACCEPT THE SUBTENANT, ITS SUCCESSORS AND ASSIGNS, AS ITS LESSEE FOR A PERIOD EQUAL TO THE FULL ELAPSED PORTION OF THE TERM OF THE

SUBLEASE, INCLUDING ANY EXTENSIONS OR RENEWALS THEREOF NOT EXCEEDING THE TERM OF THIS LEASE, UPON THE SAME COVENANTS AND CONDITIONS THEREIN CONTAINED, TO THE EXTENT THAT SAID COVENANTS AND CONDITIONS ARE NOT INCONSISTENT WITH ANY OF THE TERMS AND CONDITIONS OF THIS LEASE, PROVIDED SUCH SUBTENANT SHALL MAKE FULL AND COMPLETE ATTORNMENT TO THE CITY FOR THE BALANCE OF THE TERM OF SUCH SUBLEASE SO AS TO ESTABLISH DIRECT PRIVITY OF ESTATE AND CONTRACT BETWEEN THE CITY AND THE SUBTENANT WITH THE SAME FORCE AND EFFECT AS THOUGH SUCH SUBLEASE WAS ORIGINALLY MADE DIRECTLY BETWEEN THE CITY AND SUCH SUBTENANT; AND FURTHER PROVIDED SUCH SUBTENANT AGREES TO COMPLY WITH ALL THE PROVISIONS OF THE GROUND LEASE AND ALL THE TERMS OF ANY MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT TO WHICH SUCH LEASEHOLD ESTATE IS SUBJECT, EXCEPT THE PAYMENT OF RENT UNDER THE GROUND LEASE AND THE PAYMENT OF ANY DEBT SERVICE UNDER ANY SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT.

11.20.510 SUCCESSORS IN INTEREST.

THIS LEASE SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO, SUBJECT TO SUCH SPECIFIC LIMITATIONS OR ASSIGNMENT AS ARE PROVIDED FOR HEREIN.

11.20.520 GOVERNING LAW.

THE INDENTURE OF LEASE SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF ALASKA.

11.20.530 NOTICES.

(A) ANY NOTICES REQUIRED BY THE LEASE SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DULY GIVEN ONLY IF DELIVERED PERSONALLY OR MAILED BY CERTIFIED OR REGISTERED MAIL IN A PREPAID ENVELOPE ADDRESSED AS FOLLOWS:

TO CITY:CITY HALL—CITY OF KENAI
[P.O. BOX 580] 210 FIDALGO AVENUE
KENAI, ALASKA 99611

TO TENANT:

(B) THE CITY SHALL ALSO MAIL A COPY OF ANY NOTICE GIVEN TO THE LESSEE, BY REGISTERED OR CERTIFIED MAIL, TO ANY LEASEHOLD LENDER (MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, SECURITY ASSIGNEE) WHO SHALL HAVE GIVEN THE CITY NOTICE OF SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT.

(C) ANY SUCH ADDRESSES MAY BE CHANGED BY AN APPROPRIATE NOTICE IN WRITING TO ALL OTHER PARTIES AFFECTED PROVIDED SUCH CHANGE OF ADDRESS IS GIVEN TO THE OTHER PARTIES BY THE MEANS OUTLINED IN PARAGRAPH (A) ABOVE AT LEAST FIFTEEN DAYS PRIOR TO THE GIVING OF THE PARTICULAR NOTICE IN ISSUE.

11.20.540 FIRE PROTECTION.

THE LESSEE WILL TAKE ALL REASONABLE PRECAUTION TO PREVENT AND TAKE ALL NECESSARY ACTION TO SUPPRESS DESTRUCTIVE OR UNCONTROLLED GRASS, BRUSH, OR OTHER FIRES ON LEASED LANDS, AND COMPLY WITH ALL LAWS, REGULATIONS, AND RULES PROMULGATED AND ENFORCED BY THE CITY FOR FIRE PROTECTION WITHIN THE AREA WHEREIN THE LEASED PREMISES ARE LOCATED.

11.20.550 INSPECTION.

THE LESSEE SHALL ALLOW AUTHORIZED REPRESENTATIVES OF THE CITY TO ENTER THE LEASED LAND FOR INSPECTION AT ANY REASONABLE TIME.

11.20.560 PERSONAL USE OF MATERIALS.

ALL COAL, OIL, GAS, AND OTHER MINERALS AND ALL DEPOSITS OF STONE OR GRAVEL VALUABLE FOR EXTRACTION OR UTILIZATION AND ALL MATERIALS SUBJECT TO TITLE II, DIVISION I, CHAPTERS 4, 5, AND 6 OF THE ALASKA ADMINISTRATIVE CODE ARE EXCEPTED FROM THE OPERATION OF A SURFACE LEASE. SPECIFICALLY, THE LESSEE OF THE SURFACE RIGHTS SHALL NOT SELL OR REMOVE FOR USE ELSEWHERE ANY TIMBER, STONE, GRAVEL, PEAT MOSS, TOPSOIL, OR ANY OTHER MATERIAL VALUABLE FOR BUILDING OR COMMERCIAL PURPOSES; PROVIDED, HOWEVER, THAT MATERIAL REQUIRED FOR THE DEVELOPMENT OF THE LEASEHOLD MAY BE USED IF ITS USE IS FIRST APPROVED BY THE CITY.

11.20.570 RESTRICTIONS AND RESERVATIONS.

THE LEASE SHALL CONTAIN SUCH RESTRICTIONS AND RESERVATIONS AS ARE NECESSARY TO PROTECT THE PUBLIC INTEREST.

11.20.580 WASTE AND INJURY TO LAND.

IF ANY PERSON SHALL COMMIT WASTE, TRESPASS, OR OTHER INJURY UPON CITY LAND, THE PERSON SO OFFENDING, IN ADDITION TO BEING CIVILLY LIABLE FOR ANY DAMAGES CAUSED, SHALL BE DEEMED GUILTY OF A VIOLATION. (ORDS. 532, 1858-2000)

11.20.590 WARRANTY.

THE CITY DOES NOT WARRANT BY ITS CLASSIFICATION OR LEASING OF LAND THAT THE LAND IS IDEALLY SUITED FOR THE USE AUTHORIZED UNDER SAID CLASSIFICATION OR LEASE, AND NO GUARANTY IS GIVEN OR IMPLIED THAT IT SHALL BE PROFITABLE TO EMPLOY LAND TO SAID USE. CITY BEARS NO RESPONSIBILITY FOR ANY WATER EROSION OF LAND.

11.20.600 APPROVAL OF OTHER AUTHORITIES.

THE ISSUANCE BY THE CITY OF LEASES DOES NOT RELIEVE THE GRANTEE OR LESSEE OF RESPONSIBILITY OF OBTAINING LICENSES OR PERMITS AS MAY BE REQUIRED BY DULY AUTHORIZED BOROUGH, STATE, OR FEDERAL AGENCIES.

11.20.610 TITLE RESTRICTIONS.

ALL LEASES OR SALES OF PROPERTY SHALL BE MADE SUBJECT TO RESTRICTIONS AND RESERVATIONS IN THE PATENT, DEED, OR OTHER INSTRUMENT UNDER WHICH THE CITY HOLDS.

11.20.620 INSURANCE—HOLD HARMLESS.

LESSEE SHALL COVENANT TO SAVE THE CITY HARMLESS FROM ALL ACTIONS, SUITS, LIABILITIES, OR DAMAGES RESULTING FROM OR ARISING OUT OF ANY ACTS OF COMMISSION OR OMISSION BY THE LESSEE, HIS AGENTS, EMPLOYEES, CUSTOMERS, INVITEES, OR ARISING FROM OR OUT OF THE LESSEE'S OCCUPATION, OR USE OF THE PREMISES DEMISED, OR PRIVILEGES GRANTED, AND TO PAY ALL COSTS CONNECTED THEREWITH. IN THIS CONNECTION, THE LESSEE SHALL AGREE TO ARRANGE AND PAY FOR ALL THE FOLLOWING:

- (A) PUBLIC LIABILITY INSURANCE PROTECTING BOTH THE CITY AND/OR ITS AGENTS AND THE LESSEE, SUCH INSURANCE TO BE EVIDENCED BY A CERTIFICATE SHOWING THE INSURANCE IN FORCE. THE AMOUNT OF SUCH PUBLIC LIABILITY INSURANCE SHALL HAVE LIMITS NOT LESS THAN THOSE KNOWN AS \$250,000/\$500,000/\$100,000.
- (B) LIQUOR LIABILITY (WHERE APPLICABLE).
- (C) LESSEE AGREES TO CARRY EMPLOYER'S LIABILITY INSURANCE AND WORKMEN'S COMPENSATION INSURANCE, AND TO FURNISH A CERTIFICATE THEREOF TO THE CITY, IF APPLICABLE.
- (D) INSURANCE CONTRACTS PROVIDING LIABILITY INSURANCE AND WORKMEN'S COMPENSATION SHALL PROVIDE FOR NOT LESS THAN THIRTY DAYS WRITTEN NOTICE TO THE CITY OF CANCELLATION OR EXPIRATION OR SUBSTANTIAL CHANGE IN POLICY CONDITIONS AND COVERAGE.

(E) LESSEE AGREES THAT WAIVER OF SUBROGATION AGAINST THE CITY SHALL BE REQUESTED OF LESSEE'S INSURER, AND SHALL BE PROVIDED AT NO COST TO THE CITY.

(F) CROSS LIABILITY: IT IS UNDERSTOOD AND AGREED THAT THE INSURANCE AFFORDED BY THIS POLICY OR POLICIES FOR MORE THAN ONE NAMED INSURED, SHALL NOT OPERATE TO INCREASE THE LIMITS OF THE COMPANY'S LIABILITY, BUT OTHERWISE SHALL NOT OPERATE TO LIMIT OR VOID THE COVERAGE OF ANY ONE NAMED INSURED AS RESPECTS CLAIMS AGAINST THE SAME NAMED INSURED OR EMPLOYEES OF SUCH OTHER NAMED INSURED.

(G) THE INSURANCE PROCURED BY THE LESSEE AS HEREIN REQUIRED SHALL BE ISSUED IN THE NAME OF THE LESSEE AND THE CITY BY A COMPANY LICENSED TO DO BUSINESS IN THE STATE OF ALASKA, AND SHALL CONTAIN ENDORSEMENTS THAT:

(1) SUCH INSURANCE MAY NOT BE CANCELED OR AMENDED WITH RESPECT TO THE CITY WITHOUT THIRTY DAYS WRITTEN NOTICE BY REGISTERED OR CERTIFIED MAIL TO THE CITY BY THE INSURANCE COMPANY.

(2) LESSEE SHALL BE SOLELY RESPONSIBLE FOR PAYMENT OF PREMIUMS AND THAT CITY SHALL NOT BE REQUIRED TO PAY ANY PREMIUMS FOR SUCH INSURANCE.

(H) THE AMOUNT OF INSURANCE COVERAGE REQUIRED ABOVE MAY BE SUBJECT TO REVIEW FOR INCREASE AT EACH FIVE-YEAR RENEGOTIATION OF THE LEASE.

(I) UPON REVIEW BY THE COMMISSION, THE LESSEE MAY BE REQUIRED TO OBTAIN SUCH OTHER INSURANCE PROTECTING THE CITY AND LESSEE THAT MAY BE NECESSARILY REQUIRED OR ADVISABLE OWING TO THE PARTICULARITIES OF THE HARBOR-RELATED ACTIVITIES ON THE LEASE-HOLD INTEREST.

11.20.630 INSURANCE OF USERS—SUBTENANTS.

LESSEE, FOR ITS OWN PROTECTION, MAY REQUIRE BONA FIDE PUBLIC USERS AND SUBTENANTS TO EXECUTE AGREEMENTS HOLDING LESSEE HARMLESS FROM ACTIONS ARISING OUT OF USER'S OPERATIONS AND MAY REQUIRE SUCH BONA FIDE PUBLIC USERS AND SUBTENANTS TO SHOW PROOF OF PUBLIC LIABILITY INSURANCE COVERING THEIR OPERATIONS ON THE DEMISED PREMISES IN SUCH AMOUNTS AS WILL ADEQUATELY PROTECT THEM.

11.20.640 ANNUAL REPORT.

THE LESSEE MAY BE REQUIRED TO SUBMIT TO THE CITY EACH YEAR ON OR ABOUT MARCH 15, AN ANNUAL REPORT ON ITS OPERATIONS, PARTICULARLY THOSE SERVICES AND FACILITIES OFFERED TO THE PUBLIC, WHETHER ON A FEE OR NON-FEE BASIS].

11.20.650 Tidelands [C]Claims.

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.[3]820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any.

11.20.660 Subjection to [H]Harbor [O]Ordinance.

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part.

[11.20.670 ARBITRATION.

IN THE EVENT THE CITY AND LESSEE SHALL BE UNABLE TO AGREE AS TO ANY MATTER PROVIDED FOR IN THE LEASE EXCEPT AS TO THE AMOUNT OF THE FIVE-YEAR RENT REDETERMINATION AMOUNT WHICH IS HANDLED PURSUANT TO KMC 11.20.160, SUCH DISPUTE SHALL BE DETERMINED BY THREE DISINTERESTED ARBITRATORS (UNLESS THE PARTIES CAN AGREE ON ONE ARBITRATOR). SUCH ARBITRATION SHALL BE CONDUCTED UPON REQUEST OF EITHER THE CITY OR THE LESSEE, BEFORE THREE ARBITRATORS (UNLESS THE CITY OR THE LESSEE AGREE TO ONE ARBITRATOR) DESIGNATED BY THE AMERICAN ARBITRATION ASSOCIATION AND IN ACCORDANCE WITH THE RULES OF SUCH ASSOCIATION. THE ARBITRATORS DESIGNATED AND ACTING UNDER THIS LEASE SHALL HAVE NO POWER TO DEPART FROM OR CHANGE ANY OF THE PROVISIONS THEREOF. THE EXPENSE OF ARBITRATION PROCEEDINGS CONDUCTED HEREUNDER SHALL BE BORNE EQUALLY BY THE PARTIES. THE PROCEEDINGS SHALL TAKE PLACE IN KENAI, ALASKA UNLESS OTHERWISE AGREED UPON BY THE PARTIES.]

11.20.680 Provisions [R]Regulating [P]Public [U]Use [P]Purpose.

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates.

11.20.690 Provision to be [I]Included in [P]Public [U]Use [L]Lease.

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses.

11.20.700 Public [U]Use: [D]Defined.

(a) Public use shall mean a use limited in part or in whole to the following:

(1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:

- (i) Public dock facilities.
- (ii) Maritime commerce.
- (iii) Transportation.
- (iv) Fishing.
- (v) Boat harbor.
- (vi) Port and waterfront development purposes.

(b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City.

11.20.710 Controlled [A]Access.

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan.

11.20.720 Use [C]Charges.

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities. [IT IS EXPRESSLY RECOGNIZED THAT LESSEE IS ENTITLED TO A MARGIN OF PROFIT, WHICH SHOULD BE FAIR, REASONABLE, AND COMPETITIVE, AND THAT CITY WILL COOPERATE TO THIS END IN CONSIDERING RATES AND FEES. THE COMMISSION SHALL REVIEW ALL RATE STRUCTURES ANNUALLY. THE LEASE SHALL CONTAIN AN ARBITRATION PROVISION AS SET FORTH IN KMC 11.20.670 TO RESOLVE DISPUTES ARISING HEREUNDER.]

[11.20.730 MAINTENANCE OF DOCK.

LESSEE COVENANTS THAT IT WILL MAINTAIN THE DOCK FACILITY IN A SAFE CONDITION AND IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL STANDARDS.]

[11.20.740 MODIFICATIONS OF EXISTING LEASES.

LEASES SHALL ONLY BE MODIFIED TO THAT EXTENT DEEMED TO BE NECESSARY TO PROTECT THE PUBLIC'S INTEREST.

11.20.750 UNAUTHORIZED REMOVAL OF MATERIAL PROHIBITED.

ANY PERSON, FIRM, OR CORPORATION WHO WITHOUT WRITTEN AUTHORITY FROM THE CITY REMOVES ROCK, GRAVEL, OR OTHER MATERIAL FROM THE LANDS OWNED BY THE CITY WITHOUT THE EXPRESS CONSENT OF THE CITY SHALL BE DEEMED GUILTY OF A VIOLATION. ANY CRIMINAL ACTION TAKEN AGAINST SUCH PERSON SHALL NOT PRECLUDE THE INSTITUTION OF CIVIL PROCEEDINGS BY THE CITY.

11.20.760 REMOVAL NOT AUTHORIZED BY LEASE.

NO DEED OR LEASE GRANTED BY THE CITY TO ANY PERSON SHALL CONTAIN TERMS OR BE CONSTRUED AS GRANTING ANY RIGHT TO REMOVE MATERIAL FROM CITY LANDS.]

[11.20.770 DISPOSITION OF RIGHTS BY COUNCIL.

IN RECOGNITION THAT CONDITIONS MAY EXIST FROM TIME TO TIME WHEREBY USE OF SUCH LANDS AND THE MATERIAL COMPRISING THE SAME MAY BE BENEFICIAL TO THE PUBLIC INTEREST AND PROMOTE THE PROGRESS AND DEVELOPMENT OF THE CITY, APPLICATIONS FOR THE USE THEREOF MAY BE RECEIVED AND CONSIDERED BY THE COMMISSION, PROVIDING SUCH APPLICATIONS FULLY DISCLOSE TO THE CITY ALL MATERIAL FACTS AND PLANS FOR THE PROPOSED USE. SUCH APPLICATIONS SHALL BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY AND REFERRED TO THE CITY PLANNING COMMISSION FOR ITS RECOMMENDATIONS. DISPOSITION OF SUCH APPLICATIONS SHALL BE MADE BY THE COUNCIL AFTER RECOMMENDATION FROM THE COMMISSION.]

11.20.780 Penalties.

(a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC 13.05.010. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC 13.05.010 per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.

(c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC 11.20.220 and KMC 11.20.240 hereof.

11.20.790 Tideland [L]Leases for [S]Shore [F]Fisheries.

(a) Notwithstanding other provisions of the City's Code of Ordinances [T]the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should the State of Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska. [ANY MONEY OWED PURSUANT TO KMC 11.20.150] SHALL BE IN ADDITION TO THE ANNUAL MINIMUM SET FORTH ABOVE.

(B) NEITHER KMC 11.20.160 NOR KMC 11.20.620(A) SHALL APPLY TO TIDELAND LEASES FOR SHORE FISHERIES.

(C) THE PROVISIONS OF KMC 11.20.110 AND KMC 11.20.130 REQUIRING APPRAISALS OF TIDELAND PROPERTY SHALL NOT APPLY TO LEASES OF TIDELANDS FOR SHORE FISHERIES. HOWEVER, THE SURVEY PROVISIONS OF KMC 11.20.110 ARE APPLICABLE TO SHORE FISHERY LEASES.]

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

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

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this * day of *, 2020.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: February 19, 2020
Enacted: *, 2020
Effective: *, 2020



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Council Members Jim Glendening and Robert Peterkin
DATE: February 10, 2020
SUBJECT: **Ordinance No. 3106-2020 – Amending Title 11 – Harbor and Harbor Facilities**

The Harbor Commission, and a subcommittee, has been reviewing Title 11 of the Kenai Municipal Code to recommend changes that more appropriately reflect the Harbor Commissions current functions, relationship with other commissions, and desires moving forward. This process is especially relevant now, with the enactment of Ordinance No. 3072-2019 (Substitute) which repealed and re-enacted the City's approach to the managing City lands. Part of this approach was to bring certain harbor lands, along with airport lands outside the airport reserve into the City's general fund land sales and leasing process to establish a consistent Citywide approach. Additionally relevant to revisions of Title 11, many procedures and processes described in the Title are no longer applicable because they address the transfer of certain tidelands from the State of Alaska to the City on January 6, 1977 and the adjudication of preference rights or commercial fishermen, much of which had to be accomplished by October 6, 1981.

It appears that when the Harbor Code was originally enacted, the City had a vision for a harbor that did not come to fruition. Further, many current code provisions address specific conveyance restrictions on specific parcels of land that do not broadly apply to all harbor lands. These specific restrictions are carried forward in the City's land management plan and do not need to remain codified. Rather than retain old code provisions that are no longer applicable or applied, we recommend removing the old language and addressing changes or new plans for the harbor on a go forward basis. The proposed changes will not limit the City's ability to move forward with any new plans or projects, however new code provisions may be appropriate to address any significant changes in harbor usage.

The Harbor Commission and a subcommittee formed especially to review Title 11 have put considerable time and effort into revising the code and strategizing a path forward so the Commission can be of greatest service to the City. The code revisions in this Ordinance incorporate the recommended revisions from the Harbor Commission and its subcommittee,



along with other proposed changes based on the enactment of Ordinance No. 3072-2019 (Substitute) and continued relevance of other sections of code recommended by the City Attorney.

We ask that this Ordinance be referred to the Harbor Commission upon introduction. Your consideration is appreciated.



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MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Scott Bloom, City Attorney
DATE: February 10, 2020
SUBJECT: **Ordinance No. 3106-2020 – Amending Title 11 – Harbor and Harbor Facilities**

Below is a sectional analysis of the code changes recommended in Ordinance 3106-2020. Comments are provided in red. In general, many of the provisions are recommended to be deleted for three main reasons: 1) because they address specific tasks that were temporal in nature and were completed over three decades ago; 2) they provide a process for leasing lands that are already described in Chapter 22.05-Disposition of City Lands; or 3) they contain lease provisions that are now contained in the City's standard lease form approved by Council. With regard to the first reason, I don't think the City's municipal code should contain provisions that are only relevant for a relatively short periods of time. Removing these items will reduce clutter within the code, improve readability and clarity. A record will be kept and is available should any of these removed issues become relevant again. As to the second reason, the City Council recently approved significant amendments to the City's Lands Code, including its leasing provisions which now apply to harbor lands. The lease provisions in Title 11 should be removed as they are inconsistent with Chapter 22 and recent practices of the City. Finally, as to the third reason, maintaining fairly specific contract language in code, in this case specific lease provisions, makes the City inflexible as a business partner and makes it difficult to address unique situations in a timely and efficient manner. I support the removal of these provisions from Title 11.



Title 11

HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master
- 11.10 Harbor Commission
- 11.15 Tidelands
- 11.20 Leasing of Tidelands

Chapter

11.05

HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.
- 11.05.020 Harbor [D]Defined.
- 11.05.030 Harbor [R]Regulations.
- [11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.
- 11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.
- 11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.
- 11.05.070 FACILITY RATES AND CHARGES.]
- 11.05.080 Leasing [N]Not [P]Prohibited.
- 11.05.090 Use of [L]Launch [R]Ramp and [F]Float.
- 11.05.100 No [W]Wake [Z]Zones.

11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law. **No Changes**

11.05.020 Harbor [D]Defined. (House Keeping)

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor [R]Regulations. (House Keeping)

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

[11.05.040 PERMIT FOR TERMINAL OR TRANSPORTATION FACILITIES.

(A) ALL LESSEES, OWNERS, OR OCCUPANTS OF PROPERTY WITHIN THE HARBOR OR CONTIGUOUS TO IT WHO WISH TO CONSTRUCT OR OPERATE TERMINAL OR TRANSPORTATION FACILITIES OF ANY KIND THEREIN, INCLUDING, BUT NOT LIMITED TO, DOCKS AND WAREHOUSES, SHALL _APPLY TO THE LANDSCAPING/SITE PLAN REVIEW BOARD FOR A PERMIT]. APPLICATION THEREFOR SHALL BE MADE IN ACCORDANCE WITH REGULATIONS DESCRIBED IN KMC 14.25, ENTITLED "LANDSCAPING/SITE PLAN REGULATIONS," AND SHALL BE ACCOMPANIED BY A PLAN OF THE PROPOSED CONSTRUCTION, WHICH SHALL MEET ALL STANDARDS AND REQUIREMENTS WHICH MAY BE SET FORTH BY THE COUNCIL.

(B) THE APPLICANT SHALL REFER ALL PLANS OF THE TYPE OR LOCATION OF ANY PROPOSED CONSTRUCTION WHICH ARE OR MAY BE IN CONFLICT WITH THE GENERAL CITY PLAN TO THE HARBOR COMMISSION AND THE LANDSCAPING/SITE PLAN REVIEW BOARD TO DETERMINE WHETHER SUCH PROPOSED CONSTRUCTION IS IN KEEPING WITH THE OBJECTIVES OF THE GENERAL PLAN. THE DECISION OF THE LANDSCAPING/SITE PLAN REVIEW BOARD SHALL BE BINDING UNLESS APPEALED BY COUNCIL. THE BUILDING OFFICIAL MAY ISSUE PERMITS UPON SUCH TERMS AND CONDITIONS AND FOR SUCH DURATION AS IT MAY DEEM PROPER, AND NO CONSTRUCTION MAY BEGIN OR OPERATION CARRIED ON WITHOUT A PERMIT FROM THE BUILDING OFFICIAL.] **This section last amended in 1990 is no longer current with the applicable procedures for landscape site plan review. There is no landscape site plan review board, nor is there a general plan for the City. We do however have a comprehensive plan. All qualifying improvements within the City are required to go through an applicable administrative site plan review process and building permit process pursuant to provision in the Planning and Zoning code. Removing this section in Title will not affect those requirements.**

[11.05.050 CONDITION AS TO EQUAL SERVICES AND RATES.

IT SHALL BE A CONDITION OF ALL PERMITS GRANTED BY THE CITY COUNCIL THAT THE FACILITIES TO BE CON-STRUCTED AND THE SERVICES TO BE SUPPLIED IN CONNECTION WITH THEM SHALL BE MADE AVAILABLE TO ALL CARRIERS UPON EQUAL TERMS, AT EQUAL RATES, AND WITHOUT DISCRIMINATION OF ANY KIND.] **The City Council no longer grants permits of this nature, I am unable to confirm if they ever have. The City**

can restrict property use and services provided through any deed or grant restrictions if applicable through lease requirements, grant requirements, or permits, such as 'special use' permits. I am uncertain of other regulatory authority imposed by the City in this regard. Through the City's administrative process and the land management plan, any conditions necessary to be imposed on a property or activities on such property based on third party regulatory authority or title restrictions should be carried forward.

[11.05.060 INVESTIGATION OF HOLDER—CANCELLATION.

THE CITY COUNCIL MAY INQUIRE INTO THE MANNER IN WHICH OBLIGATIONS UNDER THE PERMITS ISSUED BY IT ARE CARRIED OUT, AND INTO THE RATE SCHEDULES AND PRACTICES OF THE PERMIT HOLDERS FOR PURPOSES OF DETERMINING WHETHER THE PROVISIONS OF THE PERMITS ARE BEING COMPLIED WITH. IT SHALL HAVE ACCESS TO BOOKS AND RECORDS AND TO TERMINAL AND TRANSPORTATION FACILITIES AS MAY BE REASONABLY NECESSARY TO ENABLE IT TO MAKE SUCH A DETERMINATION. SHOULD THE COUNCIL AT ANY TIME FIND THE PERMIT HOLDER IS NOT COMPLYING WITH THE TERMS OF HIS OR HER PERMIT, IT MAY CANCEL THE PERMIT UPON SUCH NOTICE AND IN ACCORDANCE WITH SUCH PROCEDURE AS IT MAY, BY REGULATION, PRESCRIBE.] Similar to the proceeding section, the City Council does not issue permits in this regard, nor have regulations been enacted to provide for these activities.

[11.05.070 FACILITY RATES AND CHARGES.

THE CITY SHALL FIX THE RATES AND CHARGES FOR THE USE OF ANY AND ALL TERMINAL OR TRANSPORTATION FACILITIES CONSTRUCTED ON PROPERTY UNDER ITS JURISDICTION, INCLUDING CHARGES ASSESSED AGAINST VESSELS, THEIR OWNERS, AGENTS OR OPERATORS WHICH LOAD OR DISCHARGE CARGO AT ANY OF THE TERMINALS WITHIN THE HARBOR AREA; CHARGES FOR BERTHAGE WHILE LOADING OR DISCHARGING CARGO; CHARGES FOR ADMINISTRATIVE EXPENSES IN SERVING THE CARRIER'S CHARGES FOR FREIGHT HANDLING, LOADING, UNLOADING AND WHARF DEMURRAGE RATES. SUCH RATES AND CHARGES SHALL BE JUST AND REASONABLE. THE RATES AND CHARGES SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL.] The City does not fix these rates and has not regulated the contemplated industries in such a manner. The City only regulates the rates for use of its own dock facility.

11.05.080 Leasing [N]Not [P]Prohibited. (House Keeping)

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations. While this language is arguably not necessary, it is not harmful and I recommend it be kept.

11.05.090 Use of [L]Launch [R]Ramp and [F]Float. (House Keeping)

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC 11.05 within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).
- (c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.
- (d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC 13.05.010(b).
- (e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties. **I recommend this section be left in for now, however the Harbor Commission may want to address these provisions moving forward. For example, I would recommend imposing a fine for blocking the ramp that can be imposed as a minor offense as opposed to a civil penalty, which is much more difficult and costly to enforce administratively.**

11.05.100 No [W]Wake [Z]Zones. (House Keeping)

- (a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.
- (b) No wake zones may be established on a temporary or permanent basis.
- (c) A "no wake zone" is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.
- (d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.
- (e) A violation of this section shall be punishable as provided in KMC 13.05.010.
I recommend this section be left in as is. This may be an area the Harbor Commission wants to revisit moving forward to ensure it is adequately addressing concerns.

Chapter

11.10

HARBOR COMMISSION

Sections:

11.10.010 Duties and [P]owers.

11.10.010 Duties and [P]Powers. (House Keeping)

- (a) The Harbor Commission shall be required to do the following:
- (1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission's recommendations for the development of the City Harbor facilities may include, among other things:
 - (i) development of the type, location, and sequence of all public harbor facilities;
 - (ii) the relocation, removal, extension, or change of use of existing harbor facilities;
 - (2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.
 - (3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.
 - [4] ACT IN THE CAPACITY AS DIRECTED AND AUTHORIZED BY A TIDELANDS ORDINANCE ADOPTED BY THE CITY.]
 - [5]4 Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.
 - [6]5 Make and prepare reports and plans for approval by the City Council.
 - [7]6 Coordinate public efforts, individual and group, to the effectuation of approved plans.
 - [8]7 Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council. **These are primarily housekeeping changes. The reference to the Tidelands Ordinance is removed as provisions in the Tidelands Ordinance related to duties of the commission are proposed to be removed as provided below, New duties may added moving forward.**

Chapter

11.15

TIDELANDS

Sections:

11.15.010 Short [T]Title.

[11.15.020 DEFINITIONS.]

11.15.030 Approval and [A]Acceptance of State [C]Conveyance.

- 11.15.040 Approval and [A]Adoption of [S]Subdivision [P]Plat.**
- 11.15.050 TIME AND PLACES OF POSTING PLAT.**
- 11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.**
- 11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.**
- 11.15.080 PROCEDURE FOR FILING APPLICATIONS.**
- 11.15.090 INITIAL REVIEW BY COMMISSION.**
- 11.15.100 PRELIMINARY PLAT.**
- 11.15.110 PRELIMINARY PLAT REQUIREMENTS.**
- 11.15.120 SURVEY PROCEDURE.**
- 11.15.130 PROCEDURE ON FINAL PLAT.**
- 11.15.140 FINAL PLAT REQUIREMENTS.**
- 11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.**
- 11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.**
- 11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.**
- 11.15.180 APPRAISAL.**
- 11.15.190 REVIEW BY CITY ENGINEER.**
- 11.15.200 RECOMMENDED APPROVAL BY COMMISSION.**
- 11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.**
- 11.15.220 DEEDS—PERMANENT REGISTER.**
- 11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.**
- 11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.**
- 11.15.250 DETERMINATION UPON STIPULATION OF FACTS.**
- 11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.**
- 11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.**
- 11.15.280 FORFEITURE OF PREFERENCE RIGHTS.**
- 11.15.290 FORMS.]**

11.15.010 Short [T]Title.

This ordinance shall be known as the “Kenai Tidelands Ordinance.” **No change recommended.**

[11.15.020 DEFINITIONS.

FOR THE PURPOSE OF THIS ORDINANCE, THE TERMS DEFINED HEREIN SHALL HAVE THE MEANING PROVIDED UNLESS THE CONTEXT REQUIRES OTHERWISE:

- (A) “ALASKA” MEANS THE STATE OF ALASKA.
- (B) “AGRICULTURAL LANDS” MEANS TIDELANDS CHIEFLY VALUABLE FOR AGRICULTURAL PURPOSES.

(C) "ASSESSOR" MEANS THE ASSESSOR OF THE CITY OF KENAI, ALASKA, OR OTHER INDIVIDUAL DESIGNATED BY THE CITY MANAGER TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE ASSESSOR.

(D) "CITY" MEANS THE CITY OF KENAI, ALASKA.

(E) "CITY ENGINEER" MEANS THE CITY ENGINEER OF THE CITY, OR OTHER CITY OFFICIAL DESIGNATED TO PERFORM THE FUNCTIONS HEREIN ASSIGNED TO THE CITY ENGINEER.

(F) "CLASS I PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS SEAWARD OF A SURVEYED TOWNSITE ON AND PRIOR TO SEPTEMBER 7, 1957, AND WHO HAVE EXECUTED A WAIVER TO THE CITY AND STATE OF ALL RIGHTS SUCH OCCUPANT MAY HAVE HAD PURSUANT TO PUBLIC LAW 85-303. UPON EXECUTION OF THE WAIVER, SUCH PERSONS OR THEIR SUCCESSORS IN INTEREST, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FROM THE CITY FOR CONSIDERATION OF THE COSTS OF SURVEY, AND TRANSFERRING AND CONVEYING THE TITLE.

(G) "CLASS II PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO CLASS I PREFERENCE RIGHT CLAIMANTS WHO REFUSE TO EXECUTE A WAIVER TO THE CITY OF ANY RIGHTS SUCH OCCUPANTS MAY HAVE ACQUIRED PURSUANT TO PUBLIC LAW 85-303. IT SHALL BE MANDATORY FOR THE CITY TO EXPEDITIOUSLY HONOR THE APPLICATION FROM THE OCCUPANT AFTER THE SECRETARY OF THE ARMY HAS SUBMITTED TO THE SECRETARY OF THE INTERIOR AND GOVERNOR OF THE STATE MAPS SHOWING THE PIERHEAD LINE ESTABLISHED BY THE CORPS OF ENGINEERS WITH RESPECT TO THE TRACT SO GRANTED. THE MOST EXPEDITIOUS METHOD OF SECURING TITLE TO SUCH LANDS IS TO EXECUTE THE WAIVER OF CLASS II RIGHTS AND PROCEED TO APPLY FOR TITLE UNDER A CLASS I PREFERENCE RIGHT.

(I) "CLASS III PREFERENCE RIGHT" MEANS THE RIGHT EXTENDED TO PERSONS WHO OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS AFTER SEPTEMBER 7, 1957, AND WHO CONTINUED TO OCCUPY THE SAME ON JANUARY 3, 1959. SUCH PERSONS, OR THEIR SUCCESSORS, HAVE THE RIGHT TO ACQUIRE SUCH OCCUPIED OR DEVELOPED TIDE OR SUBMERGED LANDS FOR A CONSIDERATION NOT TO EXCEED THE COSTS OF APPRAISAL, AND THE ADMINISTERING AND TRANSFERRING, INCLUDING SURVEY, TOGETHER WITH THE APPRAISED FAIR MARKET VALUE THEREOF, EXCLUSIVE OF ANY VALUE OCCURRING FROM IMPROVEMENTS OR DEVELOPMENT, SUCH AS FILL MATERIAL, BUILDING, OR STRUCTURES THEREON.

(J) "CLERK" MEANS THE CLERK OF THE CITY.

(K) "COMMISSION" MEANS THE CITY OF KENAI ADVISORY HARBOR COMMISSION UNLESS NOTED OTHERWISE.

(L) "DIRECTOR" MEANS THE DIRECTOR OF LANDS, STATE OF ALASKA.

(M) "DIRECTOR'S LINE" MEANS A LINE SEAWARD OF THE CITY, APPROVED BY THE DIRECTOR, WITH THE CONCURRENCE OF THE COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA, SEAWARD OF ALL TIDE AND SUBMERGED LANDS OCCUPIED OR SUITABLE FOR OCCUPATION AND DEVELOPMENT WITHOUT UNREASONABLE INTERFERENCE WITH NAVIGATION.

(N) "FAIR MARKET VALUE" MEANS THE HIGHEST PRICE, DESCRIBED IN TERMS OF MONEY, WHICH THE PROPERTY WOULD BRING IF EXPOSED FOR SALE FOR A REASONABLE TIME IN THE OPEN MARKET, WITH A SELLER, WILLING BUT NOT FORCED TO SELL, AND A BUYER, WILLING BUT NOT FORCED TO BUY, BOTH BEING FULLY INFORMED OF ALL THE PURPOSES FOR WHICH THE PROPERTY IS BEST ADAPTED OR COULD BE USED.

(O) "FILL" SHALL MEAN EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS PLACED UPON TIDE OR CONTIGUOUS SUBMERGED LANDS TO A HEIGHT ABOVE THE HIGH WATER LINE FOR THE PURPOSE OF ELEVATING THE LANDS FOR A SPECIAL USEFUL PURPOSE. EARTH, GRAVEL, ROCK, SAND, OR OTHER SIMILAR MATERIALS, PLACED ON TIDE OR CONTIGUOUS SUBMERGED LAND SOLELY FOR THE PURPOSE OF SPOILS DISPOSAL SHALL NOT BE CONSIDERED FILL UNLESS SUCH FILL WAS USED FOR USEFUL AND BENEFICIAL PURPOSE ON AND PRIOR TO JANUARY 3, 1959.

(P) "HEARINGS OFFICER" MEANS THAT CITY OFFICIAL EMPLOYED TO HEAR DISPUTES BETWEEN CLAIMANTS, SUMMARIZE THE TESTIMONY, ATTEMPT TO REACH STIPULATIONS OF FACT BETWEEN THE PARTIES, ASSEMBLE THE RECORD OF THE DISPUTE, AND SUBMIT THE SAME TO THE COUNCIL FOR DETERMINATION.

(Q) "IMPROVEMENTS" MEANS BUILDINGS, WHARVES, PIERS, DRY DOCKS, AND OTHER SIMILAR TYPES OF STRUCTURES PERMANENTLY FIXED TO THE TIDE OR CONTIGUOUS SUBMERGED LANDS THAT WERE CONSTRUCTED AND/OR MAINTAINED BY THE APPLICANT FOR BUSINESS, COMMERCIAL, RECREATION, RESIDENTIAL, OR OTHER BENEFICIAL USES OR PURPOSES. FLOATS SECURED BY GUIDE PILES USED AS FLOATING WHARVES, WHERE ACCESS IS PROVIDED TO THE SHORE, SHALL BE IMPROVEMENTS WITHIN THE MEANING OF THIS SECTION, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE OF MEAN HIGH TIDE OF JANUARY 3, 1959 AND ACTUALLY UTILIZED FOR BENEFICIAL PURPOSES ON JANUARY 3, 1959 BY THE APPLICANT SHALL BE CONSIDERED A PERMANENT IMPROVEMENT, BUT IN NO EVENT SHALL FILL BE CONSIDERED A PERMANENT IMPROVEMENT WHEN PLACED ON THE TIDELANDS SOLELY FOR THE PURPOSE OF DISPOSING OF WASTE OR SPOILS. FILL MATERIAL NOT UTILIZED FOR A BENEFICIAL

PURPOSE ON AND PRIOR TO JANUARY 3, 1959, AND FILL MATERIAL NOT ACTUALLY IN PLACE TO ABOVE THE LINE MEAN HIGH TIDE ON JANUARY 3, 1959 SHALL NOT BE THE BASIS FOR AN APPLICATION, NOR SHALL IT BE INCLUDED IN ANY APPLICATION, FOR THE EXERCISE OF PREFERENCE RIGHTS HEREUNDER.

(R) "INDUSTRIAL AND COMMERCIAL LANDS" MEANS TIDE LANDS CHIEFLY VALUABLE FOR INDUSTRIAL, MANUFACTURING, OR COMMERCIAL PURPOSES.

(S) "KENAI" MEANS THE CITY OF KENAI, ALASKA.

(T) "MANAGER" MEANS THE MANAGER OF THE CITY OF KENAI, ALASKA.

(U) "MEAN HIGH TIDE" AT ANY PLACE SUBJECT TO TIDAL INFLUENCE SHALL BE INTERPRETED AS THE TIDAL DATUM PLANE DERIVED FROM AVERAGING ALL THE HIGH WATERS OBSERVED AT THAT PLACE OVER A PERIOD OF NINETEEN (19) YEARS. MEAN HIGH WATER SHALL BE INTERPRETED TO BE AS THE INTERSECTION OF THE DATUM PLACE OF MEAN HIGH WATER WITH THE SHORE.

(V) "MEAN LOW TIDE" SHALL BE INTERPRETED TO BE MEAN LOWER LOW WATER WHICH IS THE MEAN OF THE LOWER OF THE TWO LOW WATERS OF EACH DAY FOR A TIDAL CYCLE OF NINETEEN (19) YEARS.

(W) "OCCUPANT" MEANS ANY PERSON AS DEFINED HEREIN, OR HIS SUCCESSOR IN INTEREST, WHO ACTUALLY OCCUPIED FOR ANY BUSINESS, RESIDENTIAL, OR OTHER BENEFICIAL PURPOSE, TIDE OR SUBMERGED LAND, WITHIN THE CONVEYANCE OF SUCH BY THE STATE TO THE CITY, ON OR PRIOR TO JANUARY 3, 1959, WITH SUBSTANTIAL PERMANENT IMPROVEMENTS. NO PERSON SHALL BE CONSIDERED AN OCCUPANT BY REASON OF HAVING:

(1) PLACED A FISH TRAP IN POSITION FOR OPERATION OR STORAGE UPON THE TIDE, SHORE, OR SUBMERGED LAND;

(2) PLACED A SET NET OR PILING THEREFOR OR ANY OTHER DEVICE OR FACILITY FOR TAKING OF FISH;

(3) PLACED PILINGS OR DOLPHINS FOR LONG STORAGE OR OTHER MOORAGE;

(4) PLACED TELEPHONE, POWER, OR OTHER TRANSMISSION FACILITIES, ROADS, TRAILS, OR OTHER CONTIGUOUS SUBMERGED LANDS; OR

(5) CLAIMED THE LAND BY VIRTUE OF SOME FORM OF CONSTRUCTIVE OCCUPANCY. WHERE LAND IS OCCUPIED BY A PERSON OTHER THAN THE OWNER OF THE IMPROVEMENTS THEREON, THE OWNER OF THE IMPROVEMENTS SHALL, FOR THE PURPOSE OF THIS ORDINANCE, BE CONSIDERED THE OCCUPANT OF SUCH LANDS.

(X) "OCCUPIED OR DEVELOPED" MEANS THE ACTUAL USE, CONTROL, AND OCCUPANCY, BUT NOT NECESSARILY RESIDENCE, OF THE TIDE OR SUBMERGED LAND BY THE ESTABLISHMENT THEREON OF SUBSTANTIAL PERMANENT IMPROVEMENTS.

(Y) "ORDINANCE" MEANS THE KENAI TIDELANDS ORDINANCE.

(Z) "PARK AND RECREATION LANDS" MEANS TIDELANDS CHIEFLY VALUABLE FOR PUBLIC PARK AND RECREATION USE, INCLUDING SCENIC OVERLOOKS.

(AA) "PERSON" MEANS ANY PERSON, FIRM, CORPORATION, COOPERATIVE ASSOCIATION, PARTNERSHIP OR OTHER ENTITY LEGALLY CAPABLE OF OWNING LAND OR ANY INTEREST THEREIN.

(BB) "PIERHEAD LINE" IS A LINE FIXED BY THE CORPS OF ENGINEERS ROUGHLY PARALLEL TO THE EXISTING LINE OF MEAN LOW TIDE AT SUCH DISTANCE OFFSHORE THEREFROM THAT SAID PIERHEAD LINE SHALL ENCOMPASS LANDWARD ALL STATIONARY, MANMADE STRUCTURES UNDER THE AUTHORITY OF PUBLIC LAW 85-303.

(CC) "PREFERENCE RIGHT" SUBJECT TO THE CLASSIFICATIONS THEREOF HEREIN ESTABLISHED MEANS THE RIGHT OF AN OCCUPANT TO ACQUIRE BY GRANT, PURCHASE, OR OTHERWISE, AT THE ELECTION OF THE OCCUPANT, EXCEPT AS OTHERWISE LIMITED OR PRESCRIBED IN THIS ORDINANCE, ANY LOT, PIECE, PARCEL, OR TRACT OF TIDELAND OR SUBMERGED LAND OCCUPIED OR DEVELOPED BY SUCH OCCUPANT ON AND PRIOR TO JANUARY 3, 1959.

(DD) "STATE" MEANS THE STATE OF ALASKA.

(EE) "SUBMERGED LANDS" MEANS LAND COVERED BY TIDAL WATERS BETWEEN THE LINE OF MEAN LOW WATER AND SEAWARD TO A DISTANCE OF THREE (3) GEOGRAPHICAL MILES, IN THEIR NATURAL STATE, WITHOUT BEING AFFECTED BY MANMADE STRUCTURES, FILL, AND SO FORTH.

(FF) "SUBSTANTIAL PERMANENT IMPROVEMENTS" SHALL FOR THE PURPOSES OF THE ORDINANCE HAVE THE SAME MEANING AS IMPROVEMENTS, AS HEREIN DEFINED.

(GG) "TIDELANDS" MEANS LANDS PERIODICALLY COVERED BY TIDAL WATERS BETWEEN THE ELEVATIONS OF MEAN HIGH TIDE AND MEAN LOW TIDES, WITHOUT REGARD TO ARTIFICIAL INTERFERENCE WITH TIDAL FLOWS CAUSED BY MANMADE STRUCTURES, BREAKWATERS, FILL, AND THE LIKE. WHEN USED IN THIS ORDINANCE, IT SHALL ALSO INCLUDE SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY.

(HH) "TIDELANDS SUBDIVISION PLAT" IS THAT CERTAIN PLAT OF SUBDIVISION OF TIDELANDS AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY MADE BY H.H. GALLIETT, JR., REGISTERED ENGINEER, DATED DECEMBER, 1968, KNOWN AS ALASKA TIDELANDS SURVEY NO. 272 AND FILED AS 76-179 IN THE KENAI RECORDING DISTRICT SHOWING ALL STRUCTURES AND IMPROVEMENTS THEREON AND THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED, TOGETHER WITH THE NAME OF THE OWNER OR CLAIMANT THEREOF, INCLUDING WITHIN THE BOUNDARIES OF EACH TRACT OCCUPIED OR DEVELOPED SUCH

SURROUNDING TIDE AND SUBMERGED LANDS AS SHALL BE REASONABLY NECESSARY IN THE OPINION OF THE COUNCIL FOR THE USE AND ENJOYMENT OF THE STRUCTURES AND IMPROVEMENTS THEREON BY THE OWNER OR CLAIMANT, BUT SHALL NOT INCLUDE ANY TIDE OR SUBMERGED LANDS WHICH IF GRANTED TO SUCH OCCUPANT, WOULD UNJUSTLY DEPRIVE ANY OCCUPANT OF ADJOINING LANDS FROM HIS REASONABLE USE AND ENJOYMENT THEREOF.] **These definitions are not relevant nor needed based on removal of code sections below. For example, section 11.15.040 contains sufficient information to identify the plat in question without need of the definition immediately preceding (HH).**

11.15.030 Approval and [A]Acceptance of State [C]Conveyance. (House Keeping)

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City. **This has historical significance that should be maintained.**

11.15.040 Approval and [A]Adoption of [S]Subdivision [P]Plat. (House Keeping)

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District. **This has historical significance that should be maintained.**

Sections 11.15.050 through 11.15.290 below are all proposed to be deleted because they describe a process that expired over 30 years ago.

[11.15.050 TIME AND PLACES OF POSTING PLAT.

SAID PLAT SHALL BE POSTED FOR A PERIOD OF NOT LESS THAN SIXTY (60) DAYS, COMMENCING WITH THE DATE FOLLOWING THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, IN THE OFFICE OF THE CLERK, CITY HALL BUILDING. **This posting has already been completed.**

11.15.060 PUBLICATION OF NOTICE OF POSTING PLAT AND PLAT AND PASSAGE OF ORDINANCE.

THE CLERK SHALL CAUSE TO BE ISSUED AND PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, COMMENCING THE

DAY AFTER THE DATE OF FINAL PASSAGE OF THIS ORDINANCE, A NOTICE OF THE POSTING OF SAID PLAT CONTAINING THE FOLLOWING STATEMENTS:

- (A) TIME AND PLACE OF POSTING.
- (B) THE DAY OF FINAL PASSAGE AND THE EFFECTIVE DATE OF THIS ORDINANCE WHICH ADOPTS THE PLAT AS THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE TIDE AND SUBMERGED LANDS CONVEYED BY THE STATE TO THE CITY ON JANUARY 6, 1977.
- (C) THAT ANY AND ALL PERSONS HAVING OR CLAIMING PREFERENCE RIGHTS PROVIDED BY LAW AND AS HEREIN DEFINED TO ANY PART OR PARTS OF THE SUBDIVIDED LAND EMBRACED WITHIN THE BOUNDARIES OF SAID PLAT, WHO FAIL TO APPLY TO EXERCISE SUCH RIGHTS UNDER THE PROVISIONS OF THIS ORDINANCE WITHIN TWO (2) YEARS FROM AND AFTER OCTOBER 6, 1979, WHICH IS HEREBY DECLARED TO BE THE DATE UPON WHICH APPLICATIONS THEREFOR WILL BE FIRST ACCEPTED BY THE CITY, SHALL HAVE FORFEITED THEIR PREFERENCE RIGHTS PROVIDED BY LAW AND THIS ORDINANCE.
- (D) THAT THIS ORDINANCE WAS ENACTED TO PROTECT OCCUPANTS HAVING PREFERENCE RIGHTS, TO AFFORD DUE PROCESS OF LAW, TO PROVIDE PROCEDURES FOR APPLYING FOR EXERCISE OF PREFERENCE RIGHTS, FOR HEARING AND ADJUDICATING ADVERSE CLAIMS, AND FOR CONVEYING TITLE TO OCCUPANTS HOLDING PREFERENCE RIGHTS DEFINED BY LAW AND THIS ORDINANCE.
- (E) THAT COPIES OF THIS ORDINANCE AND APPLICATION FORMS ARE AVAILABLE AT THE OFFICE OF THE CLERK OF THE CITY. **This publication has already been completed.**

11.15.070 TIME IN WHICH APPLICATIONS WILL BE ACCEPTED FOR FILING.

APPLICATION FORMS, IN SUBSTANTIALLY THE FORM SET FORTH IN KMC 11.15.290(A) WILL BE ACCEPTED FOR FILING ONE BUSINESS DAY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, AND ENDING TWO CALENDAR YEARS THEREAFTER AND AT THE CLOSE OF BUSINESS AT 5:00 P.M., AFTER WHICH NO APPLICATION FORMS WILL BE FURNISHED AND AFTER WHICH NO APPLICATIONS WILL BE ACCEPTED FOR FILING. **This timeline has long expired.**

11.15.080 PROCEDURE FOR FILING APPLICATIONS.

APPLICATIONS SHALL BE SUBMITTED, AND WILL BE RECEIVED FOR FILING, ONLY FOR THE PURPOSE OF CLAIMING PREFERENCE RIGHTS HEREIN DEFINED TO THE TIDELANDS CONVEYED TO THE CITY BY THE STATE.

- (A) APPLICATION FORMS WILL BE PROVIDED BY THE CLERK WITHOUT CHARGE AT THE CITY CLERK'S OFFICE IN THE CITY HALL BUILDING.
- (B) APPLICATIONS MUST BE SUBMITTED IN TRIPPLICATE.
- (C) APPLICATIONS NOT CLEARLY LEGIBLE NOR PROPERLY COMPLETED AND CERTIFIED BY THE APPLICANT WILL NOT BE ACCEPTED FOR FILING. SINCE THE FACT ALLEGED MAY BE USED IN HEARINGS OF DISPUTES THEIR TRUTH MUST BE CERTIFIED. THE FACTS ALLEGED WILL ALSO BE THE BASIS FOR THE CONVEYANCES OF VALUABLE PROPERTY. WILLFUL AND DELIBERATE MISSTATEMENTS OF FACT WILL BE EQUIVALENT TO ATTEMPTING TO OBTAIN VALUABLE PUBLIC PROPERTY BY MISREPRESENTATION AND MAY BE PROSECUTED AS OBTAINING PROPERTY UNDER FALSE PRETENSES.
- (D) APPLICATIONS MAY BE MAILED TO THE CITY CLERK, [P.O. BOX 580] 210 FIDALGO AVENUE, KENAI, ALASKA, 99611, WITH THE PROPER DEPOSIT COMPUTED ACCORDING TO THE NATURE OF THE APPLICATION MADE. APPLICATIONS PROPERLY COMPLETED ACCOMPANIED WITH THE PROPER DEPOSIT WILL BE STAMPED WITH THE TIME AND DATE OF FILING AND SIGNED BY THE PERSON ACCEPTING THE DEPOSIT. THE TRIPPLICATE COPY WILL THEN BE DELIVERED TO THE APPLICANT, OR MAILED TO HIM IF A RETURN ENVELOPE WITH POSTAGE AFFIXED IS FURNISHED OR DELIVERED TO THE CITY CLERK, CITY ADMINISTRATION OFFICES, AIRPORT TERMINAL BUILDING, KENAI, ALASKA.
- (E) ANY APPLICATION FOR A DEED BASED ON AN ASSERTED RIGHT OTHER THAN A PREFERENCE RIGHT SHALL BE REJECTED.
- (F) ANY APPLICATIONS NOT WAIVING THE CLASS II PREFERENCE RIGHT SHALL BE FILED BY THE CLERK, TOGETHER WITH ALL OTHERS OF LIKE NATURE, TO AWAIT THE OFFICIAL PROMULGATION OF THE PIERHEAD LINE. THEREAFTER SUCH APPLICATIONS SHALL BE PROCESSED AS APPLICATIONS UNDER THE CLASS I RIGHTS.
- (G) APPLICATIONS NOT ACCOMPANIED BY THE PROPER DEPOSIT FOR COSTS SHALL BE REJECTED. **These application are no longer accepted.**

11.15.090 INITIAL REVIEW BY PLANNING & ZONING COMMISSION.

AFTER INITIAL REVIEW OF THE APPLICATION BY THE COMMISSION, THE APPLICANT SHALL HAVE PREPARED AT HIS OWN COST A PRELIMINARY AND FINAL PLAT AS DESCRIBED IN THE FOLLOWING SECTION. **There are no new applications to review.**

11.15.100 PRELIMINARY PLAT.

- (A) THE APPLICANT SHALL PREPARE, OR HAVE PREPARED, A PRELIMINARY PLAT OF THE TIDE, SHORE, OR SUBMERGED LANDS WHICH HE CLAIMS. THIS PLAT SHALL COMPLY WITH THE REQUIREMENTS HEREINAFTER SET FORTH.

(B) THE PURPOSE OF A PRELIMINARY PLAT IS TO AFFORD THE OCCUPANT AN OPPORTUNITY OF RECEIVING PRELIMINARY REVIEW AND PREVENT THE UNNECESSARY EXPENDITURE OF MONEY AND TIME THAT WOULD BE NECESSITATED IF MAJOR CHANGES WERE REQUIRED.

(C) THE APPLICANT MUST FILE HIS APPLICATION ACCOMPANIED BY FOUR BLACK OR BLUE-LINED PLATS OF THE LAYOUT.

(D) THE PLANNING & ZONING COMMISSION SHALL FORWARD THE PRELIMINARY PLAT TO AN ENGINEER TO BE DESIGNATED BY THE PLANNING & ZONING COMMISSION, WHO SHALL REPORT TO THE PLANNING & ZONING COMMISSION HIS APPROVAL OR DISAPPROVAL OF THE PLAT FOR TECHNICAL OR ENGINEERING REASONS AND THE PLANNING & ZONING COMMISSION SHALL, WITHIN NINETY (90) DAYS AFTER SUBMISSION OF THE PRELIMINARY PLAT, NOTIFY THE APPLICANT OF THE TENTATIVE APPROVAL OR DISAPPROVAL OF THE PLAT AND HIS REASONS THEREFOR.

(E) CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT SHALL NOT CONSTITUTE APPROVAL OF THE FINAL PLAT. RATHER, IT SHALL BE DEEMED AN EXPRESSION OF APPROVAL AS A GUIDE TO PREPARATION OF THE FINAL PLAT. **There are no new plats of this nature to review.**

11.15.110 PRELIMINARY PLAT REQUIREMENTS.

THE PRELIMINARY PLAT SHALL SHOW THE FOLLOWING INFORMATION:

(A) LEGAL DESCRIPTION OF LOCATION TO INCLUDE LATITUDE AND LONGITUDE TO THE NEAREST MINUTE AT ONE CORNER OF THE SURVEY AND THE TOTAL ACRES OF THE AREA OCCUPIED OR CLAIMED.

(B) NAME AND ADDRESS OF APPLICANT AND NAME OF LAND SURVEYOR, IF ANY, WHO PREPARED THE PRELIMINARY LAYOUT.

(C) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.

(D) DATE OF PREPARATION AND NORTH POINT.

(E) THE HORIZONTAL SCALE SHALL BE 100' TO THE INCH UNLESS OTHERWISE APPROVED BY THE PLANNING & ZONING COMMISSION.

(F) THE LOCATION OF ALL ROADS WITHIN 200' OF THE TRACT, FILL MATERIAL, EXISTING PERMANENT BUILDINGS, OR OTHER STRUCTURES WITHIN THE PARCEL, EXISTING UTILITY LINES, MEAN HIGH AND LOW TIDE LINES WITH REFERENCE TO PERMANENT STRUCTURES AND OTHER PERMANENT FEATURES SUCH AS SECTION LINES, AND SUCH OTHER INFORMATION AS MAY BE REQUESTED BY THE CITY.

(G) SPACE FOR APPROVAL AND/OR COMMENT BY THE PLANNING & ZONING AND HARBOR COMMISSIONS.

- (H) THE NAMES OF ADJACENT OWNERS OR CLAIMANTS, IF ANY, OTHER THAN THE CITY.
- (I) ADJACENT U.S. SURVEYS, IF ANY, GIVING THE NUMBER OF THE SURVEY.
- (J) A VICINITY SKETCH OR KEY MAP SHOULD BE SHOWN ON THE PRELIMINARY LAYOUT. THE SCALE SHALL NOT BE LESS THAN ONE-HALF INCH TO THE MILE. THE RELATIVE LOCATION OF THE PARCEL BEING APPLIED FOR, THE PRINCIPAL ROAD SYSTEMS AND SECTION OR SPECIAL SURVEY LINES SHALL ALSO BE SHOWN. **There are no new related plats to review and the city and borough have requirements for other plats.**

11.15.120 SURVEY PROCEDURE.

WHEREVER FEASIBLE, DATA AS SET FORTH IN ATS 272, RECORDED IN THE KENAI RECORDING DISTRICT AS 76-179 SHALL BE USED. WHERE ADDITIONAL DATA IS REQUIRED THE FOLLOWING PROCEDURES SHALL GOVERN:

(A) *DETERMINING THE LINE OF MEAN HIGH TIDE.*

(1) IN THE CASE OF U.S. SURVEY WHICH ABUTS THE TIDELANDS, SUCH U.S. SURVEY BEING MADE PRIOR TO THE DATE OF STATEHOOD, THE LINE OF MEAN HIGH TIDE SHALL BE CONSTRUED TO BE EITHER THE MEANDER LINES ESTABLISHED ON THE SEAWARD SIDE OF THE U.S. SURVEY OR THE LINE AS DEFINED UNDER SECTION 2(S) OF THESE REGULATIONS, WHICHEVER IS THE LOWER.

(2) FOR TIDELANDS SURVEYS ABUTTING ANY U.S. SURVEY MADE AFTER THE DATE OF STATEHOOD OR IN ANY LOCATION WHERE NO UPLANDS SURVEY EXISTS, THE LINE OF MEAN HIGH TIDE SHALL BE DETERMINED BY USING U.S.C. & G.S. BENCH MARKS (OR ANY OTHER BENCH MARKS WHICH HAVE BEEN ESTABLISHED FROM THAT SOURCE), AND TIDE TABLE DATUM. THE UPLAND BOUNDARY NEED NOT FOLLOW THIS LINE IN ITS ENTIRE EXACTNESS, BUT MAY FOLLOW IN A "MEANDER" OR "AVERAGE" LINE OF MEAN HIGH TIDE. EACH END OF THE BOUNDARY SHOULD BE ESTABLISHED ON THE ELEVATION OF MEAN HIGH TIDE. PROVIDED, HOWEVER, THAT WHERE THE TRUE LINE OF MEAN HIGH TIDE HAS BEEN ALTERED BY FILL OR ARTIFICIAL ACCRETION, THE LINE OF HIGH TIDE AS IT EXISTED PRIOR TO SUCH ALTERATION SHALL GOVERN.

(3) IN THE CASE THAT NO U.S.C. & G.S. BENCH MARK EXISTS WITHIN ONE MILE OF THE PROPERTY BEING SURVEYED, THE SURVEYOR MAY, BY USING THE TIDE TABLES FOR THE IMMEDIATE BODY OF WATER, AND APPLYING TIDAL READINGS HE HAS TAKEN, DETERMINE THE LINE OF MEAN HIGH TIDE AND USE IT IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SECTION. IN SOME CASES, SUCH AS SALT OR MUD FLAT AREAS WHERE THE AVERAGE GRADE OF THE BENCH IS TEN PERCENT (10%) OR LESS AND DETERMINING THE ELEVATION OF THE LINE OF MEAN HIGH TIDE COULD CREATE A LENGTHY HORIZONTAL

DISTANCE, THE CITY COUNCIL MAY REQUIRE THAT THE TRUE LINE OF MEAN HIGH TIDE BE ESTABLISHED, REGARDLESS OF THE DISTANCE FROM A KNOWN BENCH MARK.

(B) *METHOD OF ESTABLISHING SIDE BOUNDARY LINES.*

(1) IN FIXING THE SIDE BOUNDARY LINES, THE GENERAL RULES OF EXTENDING RIPARIAN BOUNDARY LINES, AS OUTLINED BY SUCH AUTHORS AS RAYNER, CLARK OR BROWN, SHALL BE FOLLOWED. IN THE EVENT THAT ACTUAL OCCUPANCY DOES NOT MATCH THE RIPARIAN BOUNDARIES, THE SURVEY SHALL BE MADE TO INCLUDE THE OCCUPANT'S HOLDINGS AND NOT TO ENCROACH ON THE ADJOINING OCCUPANT. **This section applies to specific plats which are no longer reviewed.**

11.15.130 PROCEDURE ON FINAL PLAT.

(A) THE FINAL PLAT SHALL CONFORM SUBSTANTIALLY TO THE PRELIMINARY LAYOUT AS APPROVED BY THE COMMISSION.

(B) THE FINAL PLAT SHALL BE SUBMITTED TO THE CITY CLERK ON GOOD QUALITY TRACING CLOTH, IN INK, OR MYLARS TOGETHER WITH FIVE PRINTS.

(C) THE FINAL PLAT SHALL BE DRAWN TO SCALE OF 1" EQUALS 100', WITH AN OPTION OF USING 1" EQUALS 20' OR 40', ON SHEETS OF ONE OF THREE SIZES: 18" X 24", 31 1/2" X 34", OR 22" X 36", UNLESS OTHERWISE APPROVED BY THE COMMISSION. WHEN MORE THAN ONE SHEET IS REQUIRED, AN INDEX SHALL BE FILED SHOWING THE ENTIRE PARCEL WITH THE SHEETS IN NUMERICAL ORDER, AND EACH SHEET SHOWING THE TOTAL NUMBER, I.E., SHEET 1 OF 3. WHEN MORE THAN ONE SHEET IS SUBMITTED, ONLY THE LAST MUST HAVE THE APPROVAL BLOCKS, BUT ALL SHEETS MUST BE THE SAME SIZE.

(D) WHEN THE FINAL PLAT HAS BEEN APPROVED BY THE PLANNING & ZONING COMMISSION, ONE COPY SHALL BE SENT, ALONG WITH THE DEED TO THE PROPERTY, TO THE MAGISTRATE OF THE RECORDING DISTRICT IN WHICH THE TRACT LIES FOR OFFICIAL RECORDING. SPECIAL INSTRUCTIONS SHALL BE SENT TO THE MAGISTRATE INSTRUCTING HIM TO SEND THE DEED TO THE OCCUPANT AFTER RECORDING. ONE COPY OF THE PLAT WILL BE RETURNED TO THE OCCUPANT. THE ORIGINAL TRACING CONTAINING THE CERTIFICATION BY THE PLANNING & ZONING COMMISSION WILL BE RETAINED BY THE CITY. PRINTS OR DUPLICATE TRANSPARENCIES WILL BE FURNISHED AT COST OF REPRODUCTION.

This provision applies to plats that are no longer processed.

11.15.140 FINAL PLAT REQUIREMENTS.

(A) THE FINAL PLAT SHALL INCLUDE ALL INFORMATION REQUIRED ON THE PRELIMINARY PLAT.

(B) THE FINAL PLAT MUST REPRESENT AN ACTUAL SURVEY MADE BY A PERSON WHO HAS BEEN QUALIFIED BY THE STATE OF ALASKA, BOARD OF ENGINEERS & ARCHITECTS EXAMINERS TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA.

(C) IN ADDITION THERETO, THE FOLLOWING INFORMATION SHALL BE SHOWN ON THE FINAL PLAT:

(1) BOUNDARY LINES OF THE PARCEL WITH LENGTH AND BEARINGS WHICH MUST CLOSE WITHIN THE LIMITS OF ONE TO 5,000. IF THE SEAWARD LIMITS OF THE SURVEY FALLS WITHIN THE LINE OF MEAN LOW TIDE, THE SEAWARD BOUNDARY MUST REPRESENT LINES ACTUALLY ESTABLISHED BY THE SURVEYOR.

(2) ALL EASEMENTS AS REQUIRED BY THE CITY.

(3) BASIS OF BEARINGS USED.

(4) A PROPERLY LABELED LEGEND SHOWING MONUMENTS AS FOUND OR ESTABLISHED.

(5) THE COURSE OF THE SHORELINE FOR AN ADDITIONAL 400' FROM EACH SIDE OF THE SURVEY.

(D) *MONUMENTS.*

(1) MINIMUM REQUIREMENTS: MONUMENTS SHALL CONSIST OF A 1 1/2" GALVANIZED IRON PIPE, 30 OR MORE INCHES LONG. THIS PIPE SHALL HAVE A FOUR-INCH FLANGE ACROSS THE BOTTOM AND SHALL BE FILLED WITH CONCRETE. FIRMLY EMPLACED IN THE CONCRETE AT THE TOP SHALL BE A BRASS OR BRONZE CAP. THE PIPE SHALL BE THOROUGHLY TAMPED WHEN SET.

(2) THE BRASS OR BRONZE CAP SHALL HAVE A MINIMUM OF TWO-INCH DIAMETER ACROSS THE TOP AND 3/4" BY 2 1/2" SHANK. EACH CAP SHALL BE MARKED IN ACCORDANCE WITH THE MANUAL OF SURVEYING INSTRUCTIONS AS COMPILED BY THE BUREAU OF LAND MANAGEMENT AND SHALL ALSO SHOW THE REGISTRATION NUMBER OF THE SURVEYOR.

(3) WHERE IMPRACTICABLE TO SET AN IRON PIPE MONUMENT, A TABLET CONTAINING A MINIMUM OF ONE THOUSAND (1,000) CUBIC INCHES OF CONCRETE AND A BRASS OR BRONZE CAP MARKING THE ACTUAL CORNER POINT MAY BE USED. SHOULD THE POINT FOR A CORNER BE IN A PLACE WHICH WOULD BE IMPRACTICABLE TO MONUMENT, WITNESS CORNERS SHALL BE SET IN A SAFE PLACE ON THE SURVEY BOUNDARY LINE OR HAVE TWO (2) REFERENCE MONUMENTS SET. THE MONUMENTS ON THE UPLANDS SIDE OF THE SURVEY SHALL BE REFERENCED TO BEARING OBJECTS, SUCH AS TREES, ROCKS, PILING, BUILDINGS, ETC., OR HAVE TWO (2) REFERENCE MONUMENTS SET MARKING THE CORNER.

(E) THESE REFERENCES MAY BE SHOWN ON THE PLAT OF SURVEY OR MAY BE LISTED SEPARATELY ON A PLAT AS DESCRIBED UNDER KMC 11.15.130(C).

(1) UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL, EACH SURVEY SHALL HAVE AT LEAST FOUR (4) MONUMENTS, EACH FULLY DESCRIBED IN THE PLAT OF SURVEY. IT IS DESIRABLE BUT NOT MANDATORY THAT MONUMENTS BE SET AT ALL EXTERIOR ANGLE POINTS OF THE PARCEL. THE LINE OF SIGHT BETWEEN ADJACENT MONUMENTS SHALL BE UNOBSTRUCTED. THE DISTANCE BETWEEN ADJACENT MONUMENTS SHALL NOT EXCEED ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320'). NO PART OF THE PARCEL SHALL BE FARTHER THAN ONE THOUSAND THREE HUNDRED TWENTY FEET (1,320') FROM A MONUMENT UNLESS OTHERWISE APPROVED BY THE CITY COUNCIL.

(2) IF THE POINT FOR THE SEAWARD CORNER FALLS IN AN UNSAFE PLACE, A WITNESS CORNER SHALL BE ESTABLISHED ON THE SIDE BOUNDARY LINE.

(F) *RELATIONSHIP TO KNOWN MONUMENT.*

(1) BEARINGS OF ALL LINES SHALL BE REFERRED TO THE TRUE MERIDIAN. THE MAGNETIC NEEDLE MAY NOT BE USED FOR THIS PURPOSE. BEARINGS SHALL BE OBTAINED BY DEFLECTION FROM EXISTING OFFICIAL SURVEYS AT THE G.L.O., B.L.M., U.S.C., AND G.S., U.S.G.S., THE ALASKA DIVISION OF LANDS, OR MONUMENTS WITH PROPER IDENTIFICATION WHICH ARE DELINEATED ON RECORDED PLATS, UNLESS OTHERWISE PROVIDED FOR IN THESE REGULATIONS.

(2) TRUE BEARINGS AND DISTANCES TO THE NEAREST ESTABLISHED SURVEY LINES, SUCH AS THOSE LISTED PREVIOUSLY, WHICH SHALL BE ACCURATELY DESCRIBED ON THE PLAT, SHALL BE SHOWN. **This provision applies to plats that are no longer processed.**

11.15.150 DEPOSITS FOR COSTS PREREQUISITE TO FILING.

THE APPLICATION FORM WILL ASSIST THE APPLICANT IN DETERMINING THE PROPER COSTS TO ADVANCE, WHICH WILL DEPEND UPON THE NATURE OF THE RIGHT CLAIMED. IN ALL CASES A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL SHALL BE REQUIRED. SURVEY COSTS DEPEND UPON THE AREA CLAIMED AT A PER FOOT RATE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES. IF THE AREA CLAIMED IS DIFFERENT FROM THE LOT AS IT APPEARS ON THE PLAT, THE APPLICANT SHALL SHOW THE MEASUREMENTS OF THE ADDITIONAL OR LESSER AREA CLAIMED AND COMPUTE AND PAY THE DIFFERENT SURVEY COST ACCORDINGLY. TRANSFER COSTS WILL BE THE SAME IN ALL CASES. THEY COVER THE COST OF TIME ESTIMATED TO BE REQUIRED TO EXAMINE, PROCESS, AND APPROVE THE APPLICATION, AS WELL AS TO PREPARE AND EXECUTE THE DEED, PUBLISH NOTICE, GIVE NOTICE OF

ADDITIONAL COSTS, IF ANY, AND GIVE NOTICE TO APPLICANT. IN ALL CASES, TRANSFER COSTS WILL BE IN AN AMOUNT AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL. DEPOSIT FOR APPRAISAL COSTS WILL BE REQUIRED IN ALL CASES OF CLASS III PREFERENCE RIGHTS, OR WHERE ANOTHER ASSERTED RIGHT IS DETERMINED BY THE COUNCIL TO BE A CLASS III RIGHT. APPRAISAL COSTS SHALL DEPEND UPON THE AREA INVOLVED AND THE COMPLEXITY OF THE APPRAISAL SOUGHT. WHERE REQUIRED AS A DEPOSIT, THE MINIMUM AND MAXIMUM DEPOSIT FOR THE APPRAISAL FEE SHALL BE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES. **This provision applies to plats that are no longer processed.**

11.15.160 ADDITIONAL COSTS IN CERTAIN CASES.

ASIDE FROM DEPOSITS REQUIRED AT THE TIME OF FILING APPLICATIONS, ADDITIONAL COSTS WILL BE REQUIRED TO BE PAID PRIOR TO HEARINGS WHERE DISPUTES REQUIRE HEARINGS, AND FOR COST OF LAND UNDER A CLASS III RIGHT AS WELL AS APPRAISAL THEREOF WHEN A PREFERENCE RIGHT SOUGHT TO BE EXERCISED IS DETERMINED TO BE A CLASS III RIGHT, AS FOLLOWS:

- (A) WHEN THE AREA CLAIMED DOES NOT COMPLY WITH THE BOUNDARIES OF THE LOT SHOWN ON THE PLAT, IT IS NECESSARY TO HAVE A HEARING TO ESTABLISH THE VALIDITY OF THE RIGHT CLAIMED AND WHETHER IT IS NECESSARY FOR THE PLAT TO BE CHANGED TO COMPLY WITH THE APPLICATION. THIS MAY REQUIRE NOTICE TO BE GIVEN TO ADJACENT OCCUPANTS INTERESTED IN THE DIFFERENCE BETWEEN THE LANDS CLAIMED AND LAND AS SHOWN ON THE PLAT SO THAT ALL PARTIES IN INTEREST MAY BE HEARD AT THE HEARING.
- (B) WHEN APPLICATIONS CONFLICT WITH THE SAME AREA OR PORTIONS THEREOF, IT SHALL BE NECESSARY TO CONDUCT A HEARING TO DETERMINE THE FACT AND THE ISSUE IN QUESTION. CONFLICTING CLAIMS WILL BE CAREFULLY SCRUTINIZED AND EACH DISPUTING PARTY WILL BEAR THE BURDEN OF PROVING FACTS SUFFICIENT TO ESTABLISH THE VALIDITY OF HIS OR HER CLAIM.
- (C) THE PARTY FILING AN APPLICATION CONFLICTING WITH A CLAIM PREVIOUSLY FILED SHALL BE REQUIRED TO DEPOSIT HEARINGS COSTS IN THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00). IF THE CONFLICT IS NOT KNOWN AT THE TIME OF FILING, THE APPLICANT SHALL BE ADVISED OF THE CONFLICT AS SOON AS IT IS KNOWN AND OF THE NEED TO DEPOSIT THE HEARING COST DEPOSIT.
- (D) THE APPLICANT WHO AFTER HEARING AND DETERMINATION BY THE COUNCIL IS DETERMINED TO HAVE CLAIMED THE LAND OF ANOTHER SHALL BE THE PARTY TO BEAR THE COST OF THE HEARING. IF SUCH PARTY DID NOT DEPOSIT SUCH COSTS, NO DEED SHALL BE DELIVERED TO HIM OR HER UNTIL THE COST IS PAID.

WHERE THE DEPOSITOR IS THE PREVAILING PARTY, THE HEARING COST DEPOSITED SHALL BE REFUNDED TO HIM OR HER BY THE CITY.

(E) WHEN TITLE BY CLASS III PREFERENCE RIGHT IS CLAIMED, THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE APPRAISED PURCHASE PRICE AFTER APPRAISAL HAS BEEN MADE AND THE PURCHASE PRICE HAS BEEN SO DETERMINED. THE SAME PROCEDURE WILL BE APPLIED WHEN NO APPLICATION UNDER ANOTHER CLASS OF RIGHT IS SOUGHT BUT IS DETERMINED THAT THE ONLY AVAILABLE RIGHT TO THE APPLICANT IS A CLASS III RIGHT.

(F) WHEN A PREFERENCE RIGHT IS SOUGHT TO BE EXERCISED OTHER THAN A CLASS III RIGHT AND SUCH RIGHT IS DETERMINED TO BE A CLASS RIGHT, THEN THE APPLICANT SHALL BE REQUIRED TO DEPOSIT THE ESTIMATED COST OF APPRAISING THE PROPERTY CLAIMED.

(G) THE APPLICANT WHO RECEIVES THE DEED FROM THE CITY SHALL AT HIS OR HER OWN COST BEAR THE COST OF RECORDING THE DEED. **This provision applies to plats that are no longer processed.**

11.15.170 PROCEDURES FOR PROCESSING FILED APPLICATIONS.

THE CLERK SHALL CAUSE THE FOLLOWING PROCEDURES TO BE CARRIED OUT:

(A) ALL COPIES OF APPLICATIONS ACCEPTED FOR FILING SHALL BE STAMPED WITH TIME AND DATE OF FILING AND AN APPLICATION NUMBER IN CHRONOLOGICAL ORDER OF FILING.

(B) ALL ORIGINAL APPLICATIONS SHALL BE FILED IN A PERMANENT REGISTER AND THE NAMES OF THE APPLICANTS ENTERED IN AN ALPHABETICAL INDEX WHICH SHALL BE A PERMANENT PART OF SUCH REGISTER.

(C) THE APPLICATION REGISTER SHALL BE AVAILABLE FOR PUBLIC INSPECTION DURING OFFICE HOURS OF THE CLERK EXCEPT WHEN IN ACTUAL USE FOR FILING AND INDEXING.

(D) CERTIFIED COPIES OF ALL APPLICATIONS SHALL BE PREPARED FOR ALL PERSONS UPON REQUEST UPON THEIR PAYING TWO DOLLARS (\$2.00) PER PAGE FOR COPIES OF SAID APPLICATIONS AND ANY ATTACHMENTS FORMING A PART THEREOF.

(E) *PROCESSING OF DUPLICATE APPLICATIONS.* THE THIRD COPY OF THE APPLICATION WILL BE RETURNED TO THE APPLICANT AS HIS OR HER RECORD AND AS RECEIPT FOR DEPOSIT MADE, OR MAILED TO APPLICANT IF HE OR SHE HAS PROVIDED A RETURN ENVELOPE. THE SECOND COPY SHALL BE THE WORKING FILE COPY TO BE HANDLED AND PROCESSED AS FOLLOWS:

(1) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED AND WHICH APPLY FOR LANDS WHICH COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS SHALL BE

TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190. APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS WHICH DO NOT HAVE WAIVERS ATTACHED, IRRESPECTIVE OF WHETHER THE LANDS APPLIED FOR COMPLY WITH THE PLAT SHALL BE SEGREGATED FOR HANDLING IN THE SAME MANNER AS CLASS II PREFERENCE RIGHT APPLICATIONS.

(2) APPLICATIONS TO EXERCISE CLASS I PREFERENCE RIGHTS HAVING WAIVERS ATTACHED, AND WHICH CLAIM LANDS WHICH DO NOT COMPLY WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR HANDLING AS PROVIDED IN KMC 11.15.190 AND FURTHER PROCESSING AS PROVIDED IN KMC 11.15.220.

(3) APPLICATIONS TO EXERCISE CLASS II PREFERENCE RIGHTS SHALL BE SEGREGATED AND KEPT WITH CLASS I PREFERENCE RIGHT APPLICATIONS NOT HAVING WAIVERS ATTACHED. ALL SUCH APPLICATIONS SHALL BE HELD IN ABEYANCE BY THE CITY UNTIL SUCH TIME AS THE PIERHEAD LINE IS ESTABLISHED BY THE CORPS OF ENGINEERS, WHEREUPON SUCH APPLICATIONS SHALL BE PROMPTLY HONORED AND PROCESSED IN THE MANNER HEREIN DESCRIBED FOR CLASS I PREFERENCE RIGHT APPLICATIONS, WHERE WAIVERS ARE ATTACHED.

(4) APPLICATIONS TO EXERCISE CLASS III PREFERENCE RIGHTS, AND ALL APPLICATIONS DETERMINED IN WHOLE OR IN PART TO BE CLASS III, SHALL BE TRANSMITTED TO THE ASSESSOR FOR APPRAISAL AS PROVIDED IN KMC 11.15.180.

(5) NO APPLICATIONS WHICH COMBINE CLASS I, CLASS II, AND CLASS III, OR ANY COMBINATION OF SUCH PREFERENCE RIGHTS, WILL BE ACCEPTED FOR FILING. ANY SUCH APPLICATION PRESENTED FOR FILING SHALL BE RETURNED TO THE APPLICANT FOR REVISION INTO TWO OR MORE APPLICATIONS, EACH OF WHICH WILL APPLY FOR LAND UNDER ONLY ONE TYPE OF PREFERENCE RIGHT.

(6) AN APPLICATION TO EXERCISE ONE CLASS OF PREFERENCE RIGHT WHICH IN PART COMPLIES WITH THE PLAT WITH RESPECT TO AREA AND BOUNDARY LOCATIONS, BUT DOES NOT WHOLLY COMPLY WITH THE PLAT IN SUCH RESPECTS, SHALL BE TREATED AS IF NO PART OF THE APPLICATION SO COMPLIES WITH THE PLAT AND SHALL BE PROCESSED FOR CONTEST HEARING. **These application are no longer accepted.**

11.15.180 APPRAISAL.

ALL APPLICATIONS FOR CLASS II PREFERENCE RIGHTS SHALL BE TRANSMITTED TO A PROFESSIONAL APPRAISER FOR APPRAISAL. HIS APPRAISAL SHALL BE MADE ON A FORM PREPARED IN DUPLICATE, THE ORIGINAL OF WHICH SHALL BE ATTACHED TO

THE APPLICATION AND THE DUPLICATE OF WHICH SHALL BE RETAINED FOR HIS RECORDS. APPLICATIONS WHEN APPRAISED SHALL BE TRANSMITTED TO THE CITY ENGINEER FOR FURTHER PROCESSING. **These application are no longer accepted.**

11.15.190 REVIEW BY CITY ENGINEER.

ALL APPLICATIONS BEING READY FOR PROCESSING SHALL BE REVIEWED BY THE CITY ENGINEER. UPON REVIEW AND COMPARISON WITH THE PLAT, HE SHALL MAKE HIS REQUEST TO THE HARBOR COMMISSION GIVING A COPY THEREOF TO THE APPLICANT AS TO WHETHER OR NOT THE APPLICATION SEEKS TO EXERCISE A PREFERENCE RIGHT TO LAND WHICH IS DESCRIBED ON THE PLAT, AND COMPLIES WITH IT IN RESPECT TO AREA AND BOUNDARY LOCATIONS. **These application are no longer accepted.**

11.15.200 RECOMMENDED APPROVAL BY COMMISSION.

THE CITY OF KENAI [ADVISORY HARBOR] PLANNING & ZONING COMMISSION SHALL REVIEW ALL APPLICATIONS FOR TIDELANDS UPON THE SUBMISSION OF THE CITY ENGINEER'S REPORT. THE PLANNING & ZONING COMMISSION MAY CONDUCT PUBLIC HEARINGS TO VERIFY THE VALIDITY OF THE APPLICANT'S CLAIM AND REQUEST ADDITIONAL EVIDENCE BY WAY OF AFFIDAVITS AND THE LIKE IN ORDER TO COME TO RECOMMEND SAID CLAIM FOR APPROVAL BY THE CITY COUNCIL NOTIFYING APPLICANT THEREOF BY MAIL SENT TO THE ADDRESS STATED ON HIS APPLICATION. THE PLANNING & ZONING COMMISSION MAY PROVIDE A CHECK-OFF LIST TO AID IT IN CONSIDERING APPLICATIONS. THE CITY COUNCIL SHALL CONSIDER FOR APPROVAL THE CLAIM OF THE APPLICANT WITHIN THE TIME LIMITATIONS AND WITH THE RIGHT OF APPEAL GIVEN PURSUANT TO KMC 11.15.240. **These application are no longer accepted.**

11.15.210 PROCESSING OF APPROVED APPLICATIONS BY CLERK AND NOTICE TO PUBLIC.

ALL APPLICATIONS RETURNED TO THE CLERK APPROVED BY THE CITY ENGINEER, AND APPRAISED BY THE ASSESSOR IF REQUIRED, SHALL BE PROCESSED BY THE CLERK IN THE FOLLOWING MANNER:

- (A) THE CLERK SHALL ASCERTAIN IF THE DEPOSIT MADE BY THE APPLICANT IS SUFFICIENT TO PAY ALL KNOWN AND ESTIMATED COSTS OF SURVEY, APPRAISAL, TRANSFER, AND PURCHASE, IF OF CLASS III AND IF NOT, TO ADVISE THE APPLICANT THAT THE REMINDER DUE SHALL BE DEPOSITED WITH THE CLERK BEFORE FURTHER PROCESSING.
- (B) IF OR WHEN THE DEPOSIT IS SUFFICIENT TO PAY ALL SUCH COSTS, THE CLERK SHALL CAUSE TO BE PUBLISHED ONCE A WEEK FOR FOUR WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY, THE FOLLOWING:

- (1) NOTICE OF THE NAMES OF THE APPLICANT(S), THE BLOCK AND LOT NUMBERS OF THE PROPERTY CLAIMED ACCORDING TO PLAT DESIGNATIONS;
- (2) THE PREFERENCE RIGHT CLAIMED;
- (3) THE IMPROVEMENTS MADE;
- (4) THE LENGTH OF TIME (INCLUDING THE DATES) THE APPLICANT OCCUPIED THE LAND; AND

(C) IF CLASS III ITS APPRAISED VALUE, AND THAT THE CITY WILL ISSUE TO THE APPLICANT(S) ITS DEED THEREFOR WITHIN THIRTY (30) DAYS AFTER THE LAST DATE OF PUBLICATION, PROVIDED THAT BEFORE DATE OF LAST PUBLICATION NO ADVERSE APPLICATION OR CLAIM HAS BEEN FILED WITH THE CITY.

(D) DURING SAID PERIOD OF PUBLICATION, THE APPLICATIONS THEREOF SHALL BE RETURNED TO THE CITY ENGINEER WHO, AT THE END OF SAID PERIOD OF PUBLICATION, SHALL NOTE ON THE APPLICATION WHETHER OR NOT ANY ADVERSE CLAIMS HAVE BEEN FILED FOR THE LAND IN QUESTION.

(E) IF ADVERSE CLAIMS HAVE BEEN FILED, THE APPLICATIONS SHALL BE FURTHER PROCESSED FOR HEARING. IF NO ADVERSE CLAIMS HAVE BEEN FILED, THE RESPECTIVE APPLICATIONS SHALL BE RETURNED TO THE CLERK. **These application are no longer accepted.**

11.15.220 DEEDS—PERMANENT REGISTER.

THE CLERK SHALL THEN CAUSE TO BE PREPARED A QUIT-CLAIM DEED CONVEYING SUCH LAND TO THE APPLICANT(S) THAT THE CITY HAS AND TRANSMIT THE QUIT-CLAIM DEED TO THE MANAGER FOR EXECUTION. NOTICE SHALL THEN BE SENT TO THE APPLICANT TO TAKE DELIVERY OF SAID DEED AT THE OFFICE OF THE CLERK, WHO SHALL DELIVER THE SAME TO THE APPLICANT IF ALL REQUIREMENTS HAVE BEEN MET AND ALL COSTS, INCLUDING PURCHASE PRICE, IF REQUIRED, HAVE BEEN PAID. DUPLICATE ORIGINALS OF ALL EXECUTED DEEDS SHALL BE KEPT IN THE OFFICE OF THE CLERK IN A PERMANENT REGISTER ENTITLED "KENAI TIDELANDS DEEDS" WITH PERMANENT ALPHABETICAL INDEX OF GRANTEES. **This process is no longer applicable.**

11.15.230 SPECIAL PROCEEDINGS FOR DISPUTED CLAIMS.

THE PLANNING & ZONING COMMISSION SHALL SIT AS A QUASI ADJUDICATORY BODY TO SET DISPUTES FOR HEARING AND HEAR THE EVIDENCE UNDER OATH OF THE PARTIES TO THE DISPUTES. PROCEEDINGS SHALL BE INFORMALLY CONDUCTED BUT TESTIMONY TAKEN UNDER OATH, AND NOTICE OF THE PROCEEDINGS SHALL BE GIVEN TO THE DISPUTING PARTIES. THEIR OBJECT SHALL BE TO DETERMINE WITHOUT DELAY THE RESPECTIVE BASIS OF THE CONFLICTING CLAIMS. UPON THE SUBMISSION OF EACH DISPUTE, THE PLANNING & ZONING COMMISSION SHALL PREPARE A SHORT SUMMARY ON THE CONFLICTING CLAIMS AND THE EVIDENCE SUBMITTED IN SUPPORT

THEREOF, TOGETHER WITH THEIR WRITTEN FINDINGS OF FACT, AND CONCLUSIONS OF LAW. **This process is no longer applicable.**

11.15.240 PROCEEDINGS FOR DETERMINATION BY COUNCIL OF ALL DISPUTES.

UPON RECEIPT OF THE WORKING FILES IN ALL CASES OF DISPUTES, AND THE SUMMARY OF THE HEARINGS OFFICER, TOGETHER WITH COPIES OF NOTICES OF HEARINGS SERVED UPON OR MAILED TO ALL PARTIES TO THE DISPUTE, THE COUNCIL SHALL SET THE DISPUTE OF HEARING AND DETERMINATION, AND CAUSE NOTICE TO BE SERVED ON ALL PARTIES. UPON THE COUNCIL HAVING HEARD THE DISPUTE IT SHALL ENTER ITS RULING THEREON AS QUICKLY AS POSSIBLE, BUT NOT LATER THAN TEN (10) DAYS AFTER THE MATTER IS SUBMITTED. AGGRIEVED PERSONS SHALL HAVE THE RIGHT OF APPEAL TO THE SUPERIOR COURT, WITHIN THIRTY (30) DAYS AFTER THE RULING OF THE COUNCIL IS RENDERED. **This process is no longer applicable.**

11.15.250 DETERMINATION UPON STIPULATION OF FACTS.

WHEREVER POSSIBLE, TO REACH AGREEMENT OF THE PARTIES AT HEARINGS BEFORE THE PLANNING & ZONING COMMISSION, A STIPULATION OF FACTS SHALL BE PREPARED AND AGREED UPON BY THE PARTIES. WHERE THIS IS DONE, THE PLANNING & ZONING COMMISSION SHALL PREPARE AND ATTACH ITS CONCLUSIONS OF LAW AND SUBMIT THE FILE TO THE CITY ENGINEER TO DETERMINE IF THE CITY'S INTERESTS ARE AFFECTED BY THE STIPULATION, OR IF A BOUNDARY CHANGE IS REQUIRED AND NO THIRD PARTY OR CITY INTERESTS ARE AFFECTED ADVERSELY BY THE PROPOSED CHANGE IN BOUNDARIES OF LOTS SHOWN ON THE PLAT, UPON APPROVAL OF THE COUNCIL THE PLAT SHALL BE DIRECTED TO BE CHANGED. SHOULD IT BE DETERMINED BY THE CITY ENGINEER THAT THE STIPULATION ADVERSELY AFFECTS THE INTEREST OF THE CITY OR THOSE OF THIRD PARTIES, THE DISPUTE SHALL BE RETURNED TO THE PLANNING & ZONING COMMISSION FOR FURTHER PROCEEDINGS UPON NOTICE GIVEN. **This process is no longer applicable.**

11.15.260 REJECTION OF PROTESTS OTHER THAN BY APPLICANT.

NO OBJECTIONS WILL BE RECEIVED TO PROPOSED ISSUANCE BY DEED BY THE CITY ON PUBLICATION OF NOTICE THEREOF, NOR WILL ANY PERSON BE PERMITTED TO APPEAR AND BE HEARD AT ANY HEARING OF A DISPUTE BEFORE THE PLANNING & ZONING COMMISSION OR THE COUNCIL, UNLESS SUCH OBJECTOR OR PERSON IS AN APPLICANT FOR PREFERENCE RIGHTS OF CLASS I OR II AND HAS FILED AN APPLICATION WITH THE CLERK. THE FOREGOING SHALL NOT PREVENT THE APPEARANCES BEFORE THE PLANNING & ZONING COMMISSION OR COUNCIL OF

WITNESSES APPEARING ON BEHALF OF THE PARTIES IN DISPUTE OR PERSONS CALLED BY THE PLANNING & ZONING COMMISSION OR COUNCIL WHO MAY HAVE PERSONAL KNOWLEDGE CONCERNING THE VERIFICATION OF CLAIMS. (ORD. 455-78)
this process is no longer applicable.

11.15.270 HANDLING OF DEPOSIT AND PURCHASE FUNDS.

(A) ALL FUNDS RECEIVED AS DEPOSITS WITH APPLICATIONS FOR COSTS OR PURCHASE PRICE FOR TIDELANDS SHALL BE DEPOSITED BY THE FINANCE DIRECTOR IN THE GENERAL FUND. SUCH DEPOSITS WILL BE CREDITED BY THE FINANCE DIRECTOR AS FOLLOWS:

- (1) SURVEY COSTS - AS A CREDIT TO DISBURSEMENTS MADE BY THE CITY FOR COSTS OF PREPARING THE TIDELANDS SUBDIVISION PLAT.
- (2) TRANSFER COSTS - TO ADMINISTRATIVE COSTS AS DEEDS ARE ISSUED.
- (3) APPRAISAL COSTS - TO ADMINISTRATIVE COSTS AS EARNED, OR AS CREDIT TO APPRAISAL COSTS INCURRED.

(B) PURCHASE COSTS OF CLASS II LANDS—SHALL BE CREDITED TO A SEPARATE ACCOUNT IN THE GENERAL FUND TO PAY FOR IMPROVEMENTS IN TIDELANDS AREAS CONSISTING OF FILL, STREET, SIDEWALK, AND SEWER IMPROVEMENTS.

This process is no longer applicable.

11.15.280 FORFEITURE OF PREFERENCE RIGHTS.

ANY OCCUPANT, OWNER, OR HOLDER OF PREFERENCE RIGHTS AS HEREIN DEFINED, WHO HAS NOT APPLIED TO THE CITY FOR TITLE THERETO AS HEREIN PROVIDED, ON OR BEFORE TWO (2) YEARS AFTER THE DATE APPLICATIONS TO EXERCISE PREFERENCE RIGHTS WILL BE ACCEPTED FOR FILING BY THE CITY UNDER THIS ORDINANCE, BY A PROPERLY COMPLETED APPLICATION DULY FILED WITH THE CLERK AND ACCOMPANIED BY THE REQUIRED DEPOSIT, SHALL HAVE FORFEITED HIS RIGHT TO ASSERT THIS PREFERENCE RIGHTS AND ACQUIRE TITLE TO TIDELANDS SUBJECT THERETO FROM THE CITY; AND SUCH TIDELANDS AND CONTIGUOUS SUBMERGED LANDS SUBJECT TO SUCH UNUSED PREFERENCE RIGHTS SHALL THEREAFTER BE FREE AND CLEAR OF ALL CLAIMS TO PREFERENCE RIGHTS AND THE CITY SHALL HAVE NO OBLIGATION TO CONVEY THE SAME TO ANY PERSON OR PERSONS WHOSOEVER, AND SAID LAND SHALL THEN BE AND REMAIN THE PROPERTY OF THE CITY AND BE SUBJECT TO SUCH DISPOSITION AS PROVIDED FOR BY LAW OR ORDINANCE. *This process is no longer applicable.*

11.15.290 FORMS.

THE CLERK SHALL CAUSE TO BE PRINTED APPLICATION FORMS AND OTHER FORMS FOR USE IN PROCESSING THE SAME IN SUBSTANTIALLY THE FOLLOWING FORM:

(A)

APPLICATION FOR TIDELAND
PREFERENCE RIGHTS

NAME _____ APPLICATION NO. _____

HOME ADDRESS

POST OFFICE ADDRESS

MARK X TO DESIGNATE NATURE OF PREFERENCE RIGHT CLAIMED:

CLASS I _____

CLASS II _____

CLASS III _____

DOES THE TIDELAND PLAT 272 CORRECTLY SHOW THE LAND APPLIED FOR:

YES ____ NO ____

IF TIDELAND PLAT DOES NOT CORRECTLY SHOW LAND APPLIED FOR, DESCRIBE IT BY METES AND BOUNDS AND ATTACHED PLAT OF LAND APPLIED FOR (USE ATTACHMENT IF MORE SPACE IS REQUIRED).

ALL CLAIMED IMPROVEMENTS WERE FIRST CONSTRUCTED AND USED (1) BEFORE SEPTEMBER 7, 1957? (2) BEFORE SEPTEMBER 7, 1957 AND JANUARY 3, 1969? (3) AFTER JANUARY 3, 1959?

IS ANY PART OF YOUR CLAIM BASED ON IMPROVEMENTS AND/OR FILL CONSTRUCTED OR PLACED AFTER JANUARY 3, 1959?

YES _____,

NO _____. IF ANSWER IS "YES," DESCRIBE AREA IMPROVED AFTER JANUARY 3, 1959 (USE ATTACHMENT IF MORE SPACE IS NEEDED), AND STATE NATURE OF IMPROVEMENTS.

HAVE ANY OF THESE IMPROVEMENTS BEEN EXTENDED OR IMPROVED AFTER (1) SEPTEMBER 7, 1957? (2) JANUARY 3, 1959? DESCRIBE.

WAS THIS BENEFICIAL USE CONTINUED THROUGH JANUARY 3, 1959? DESCRIBE.

THE PLAT IS BASED ON APPARENT USE AND IMPROVEMENTS EXISTING ON JANUARY 3, 1959, RECOGNIZED BY THE ALASKA LAND ACT; STATE ANY REASON KNOWN TO YOU WHY YOUR CLAIM DOES NOT CORRESPOND WITH THE PLAT. (USE ATTACHMENT IF MORE SPACE IS REQUIRED.)

I OFFER CASH _____, MONEY ORDER _____, CASHIER'S CHECK _____, IN THE AMOUNT OF \$ _____ AS DEPOSIT FOR THE FOLLOWING COSTS:

| | USE BY CLERK | |
|--|--------------|----------|
| FILING FEE | \$ _____ | \$ _____ |
| SURVEY COSTS (AT RATE OF _____/SQ. FT.) | \$ _____ | \$ _____ |
| APPRAISAL COSTS (CLASS II APPLICATIONS) | \$ _____ | \$ _____ |
| TRANSFER COSTS (\$ _____) | \$ _____ | \$ _____ |
| HEARING COSTS (IF CLAIM ADVERSE TO PRIOR APPLICATION A DEPOSIT OF \$ _____ FOR HEARING AND SERVICE NOTICE IS REQUIRED.) | \$ _____ | \$ _____ |
| TOTAL DEPOSIT (DOES NOT INCLUDE PURCHASE PRICE OF LAND IN CLASS II APPLICATIONS) | \$ _____ | \$ _____ |
| DEPOSIT RECEIVED BY CITY BY: | | |
| DATE OF APPLICATION: | | |
| DATE APPLICATION RECEIVED BY CITY: | | |
| TIME FILED: | | |

CERTIFICATION

I, _____, THE ABOVE-NAMED APPLICANT, OR ITS AGENT,
 HEREBY CERTIFIES THAT ALL OF THE STATEMENTS MADE IN THE
 APPLICATION AND INCORPORATED ATTACHMENTS, IF ANY, ARE TRUE
 AND CORRECT.

PRINT NAME(S)

SIGNATURE(S)

(B)

ASSESSOR'S APPRAISAL

THE UNDERSIGNED APPRAISER(S) DO HEREBY CERTIFY THAT HE HAS
 DULY APPRAISED THE TIDE AND/OR SUBMERGED LAND DESCRIBED IN
 THE ATTACHED APPLICATION NO. _____ OF _____,
 WITHOUT INCLUDING IN THE HEREINAFTER STATED VALUE ANY VALUE

FOR VALUABLE IMPROVEMENTS CONSTRUCTED OR PLACED HEREON
PRIOR TO JANUARY 3, 1959, AT THE FAIR MARKET VALUE.

TIDELAND _____ SQ. FT. AT \$ _____ PER SQ. FT., \$

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19 ____.

SIGNED:

(C)

WAIVER OF CLASS II PREFERENCE RIGHTS
(ATTACH TO EACH CLASS I APPLICATION)

I, _____, THE APPLICANT, OR HIS AUTHORIZED AGENT, IN THE
APPLICATION FOR TIDELAND PREFERENCE RIGHTS, APPLICATION NO.
_____, TO WHICH THIS WAIVER IS ATTACHED, DO HEREBY
WAIVE ANY AND ALL PREFERENCE RIGHTS, TO ACQUIRE TIDE OR
SUBMERGED AND LYING SEAWARD OF THE CITY OF KENAI, TO WHICH I
AM NOW OR MAY HEREAFTER BECOME ENTITLED BY REASON OF THE
PROVISIONS OF PUBLIC LAW 85-303.

DATED, AT KENAI, ALASKA, THIS _____ DAY OF _____, 19

_____.

(PRINT NAME)

(SIGNATURE)

(D)

CITY OF KENAI, ALASKA
TIDELAND QUIT-CLAIM DEED

THIS DEED, MADE IN DUPLICATE THIS _____ DAY OF _____,
19 ____, BY AND BETWEEN THE CITY OF KENAI, ALASKA, GRANTOR, AND
_____, GRANTEE(S).

W I T N E S S E T H:

THAT THE SAID GRANTOR, FOR AND IN CONSIDERATION OF THE SUM OF
ONE AND NO 100/THS (\$1.00) DOLLARS AND OTHER GOOD AND VALUABLE
CONSIDERATION, TO IT IN HAND PAID BY THE SAID GRANTEE(S),
PURSUANT TO THE PROVISIONS OF THE ALASKA LAND ACT (CHAPTER
169, SLA 1959) AND ORDINANCE NO. 455-78, ENACTED ON JANUARY 3,
1979, PURSUANT THERETO, DOES HEREBY CONVEYS, QUIT CLAIMS, AND
CONFIRMS UNTO SAID GRANTEE(S) AS TENANTS BY THE ENTIRETY, WITH
THE RIGHT OF SURVIVORSHIP (STRIKE IF GRANTEES ARE NOT HUSBAND
AND WIFE), AND TO HIS (THEIR) HEIRS AND ASSIGNS (STRIKE IF GRANTEE
A CORPORATION) AND TO ITS SUCCESSORS AND ASSIGNS (STRIKE IF
GRANTEE NOT A CORPORATION), ALL SUCH INTEREST AS THE GRANTOR
HAS, IF ANY, IN THE FOLLOWING DESCRIBED LOT, PIECE, PARCEL AND

TRACT OF TIDELAND AND CONTIGUOUS SUBMERGED LAND SITUATED WITHIN THE CORPORATE LIMITS OF THE CITY OF KENAI, ALASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:
ALL OF LOT _____, BLOCK _____, ACCORDING TO THE OFFICIAL TIDELANDS SUBDIVISION PLAT OF THE CITY OF KENAI, ALASKA.
TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.
TO HAVE AND TO HOLD THE SAME UNTO THE SAID GRANTEE(S), HIS OR THEIR HEIRS AND ASSIGNS, (OR) TO ITS SUCCESSORS AND ASSIGNS, FOREVER.
IN WITNESS WHEREOF, THE GRANTOR HAS CAUSED THIS DEED TO BE EXECUTED THE DAY AND YEAR HEREINABOVE FIRST WRITTEN.

CORPORATE SEAL

CITY OF KENAI, ALASKA

BY: (ITS MANAGER)

ATTEST:

CLERK

] **This process is no longer applicable.**

Chapter 11.20

LEASING OF TIDELANDS

Sections:

[11.20.010 POLICY.]

11.20.020 Lands [A]Available for [L]Leasing.

11.20.030 QUALIFICATIONS OF APPLICANTS.

11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.

11.20.050 APPLICATIONS.

11.20.060 RIGHTS PRIOR TO LEASING.

11.20.070 PROCEDURE.

11.20.080 PUBLIC NOTICE—PUBLIC HEARING.

11.20.090 SELECTION OF APPLICANT.

11.20.100 APPEAL.

11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.

- 11.20.120 THE LEASE DOCUMENT—TERMS.**
- 11.20.130 APPRAISAL.**
- 11.20.140 REVIEW.**
- 11.20.150 ANNUAL MINIMUM RENTAL.**
- 11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.**
- 11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.**
- 11.20.180 LEASE UTILIZATION.**
- 11.20.190 SUBLEASING.**
- 11.20.200 ASSIGNMENTS.**
- 11.20.210 MODIFICATION.**
- 11.20.220 CANCELLATION—FORFEITURE.**
- 11.20.230 DEFAULT—RIGHT OF ENTRY.**
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[11.20.010 POLICY.

THE CITY, IN ORDER TO MAKE SITES AVAILABLE FOR BENEFICIAL INDUSTRIES, MAY LEASE CITY-OWNED TIDELANDS TO PERSONS WHO AGREE TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS THE COUNCIL CONSIDERS ADVANTAGEOUS TO THE CITY.] **The new general fund land code provides that lands can be leased to encourage responsible growth and development to support a thriving business, residential, recreational and cultural community. The Policy statement above does not add anything different and should be removed. Additionally, specific parcels require specific industries**

per the conveyance documents to the City (i.e. public docking, maritime commerce, etc.) and these limitations are carried forward in the City's land management plan.

11.20.020 Lands ~~[A]~~Available for ~~[L]~~Leasing. (House Keeping)

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased ~~[AS HEREINAFTER PROVIDED,]~~ for surface use only, and under the condition that said lease is subject and inferior to preference right claims ~~[THAT MAY BE MADE WITHIN A TWO (2) YEAR FILING PERIOD FOR PREFERENCE RIGHTS]~~ and subject to the rights of existing set net site holders within the City limits. ~~This should stay in as amended for the benefit of preference right holders and set net site holders, as it is not retained elsewhere in code.~~

[11.20.030 QUALIFICATIONS OF APPLICANTS.

AN APPLICANT FOR A LEASE IS QUALIFIED IF THE APPLICANT:

- (A) IS AN INDIVIDUAL AT LEAST NINETEEN (19) YEARS OF AGE OR OVER; OR
- (B) IS A GROUP, ASSOCIATION, OR CORPORATION WHICH IS AUTHORIZED TO CONDUCT BUSINESS UNDER THE LAWS OF ALASKA.] ~~Qualifications for applicants for leases is provided in KMC 22.05.020.~~

[11.20.040 CLASSIFICATION PRIOR TO LEASE REQUIRED.

BEFORE ACCEPTING APPLICATIONS TO LEASE TIDELANDS, THE AREA INVOLVED SHALL HAVE FIRST BEEN CLASSIFIED FOR LEASING BY THE CITY COUNCIL WITH THE APPROVAL OF THE PLANNING AND HARBOR COMMISSIONS, AND THEIR AVAILABILITY ADVERTISED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA ONCE EACH WEEK FOR TWO (2) SUCCESSIVE WEEKS NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE TIME SET FOR THE CLOSING OF THE ACCEPTANCE OF APPLICATIONS, AND THAT ALL APPLICATIONS ARE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES.] ~~This is now covered in KMC 22.05.015 and 22.05.040 regarding classification and advertising.~~

[11.20.050 APPLICATIONS.

- (A) ALL APPLICATIONS FOR LEASE OF TIDELANDS SHALL BE FILED WITH THE CLERK ON FORMS PROVIDED BY HIM OR HER AND AVAILABLE AT CITY HALL WHICH SHALL UPON EXECUTION OF THE LEASE BECOME PART OF THE LEASE DOCUMENT. ONLY FORMS COMPLETED IN FULL AND ACCOMPANIED BY A FILING FEE AS SET FORTH IN THE CITY'S SCHEDULE OF FEES ADOPTED BY THE CITY COUNCIL WILL BE ACCEPTED FOR FILING. FILING FEES ARE NOT REFUNDABLE.
- (B) WITH EVERY APPLICATION, THE APPLICANT SHALL SUBMIT A DEVELOPMENT PLAN SHOWING AND STATING:

- (1) THE PURPOSE OF THE PROPOSED LEASE;
- (2) THE USE, VALUE, AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED;
- (3) THE TYPE OF CONSTRUCTION;
- (4) DATES CONSTRUCTION IS ESTIMATED TO COMMENCE AND BE COMPLETED;
- (5) WHETHER INTENDED USE COMPLIES WITH THE ZONING ORDINANCE AND COMPREHENSIVE PLAN OF THE CITY;
- (6) DESCRIBE BY REFERENCE TO THE PLAT THE AREA TO BE LEASED;
- (7) A DETAILED FINANCIAL PLAN SHOWING ABILITY TO CARRY THROUGH WITH THE DEVELOPMENT PLAN;
- (8) A PERFORMANCE BOND OF FIVE PERCENT (5%) OF THE PROJECT'S ESTIMATED COST (WHICH BOND SHALL NOT EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00)), PAYABLE TO THE CITY. **Lease applications are now covered in 22.05.025.**

11.20.060 RIGHTS PRIOR TO LEASING.

NEITHER THE FILING OF AN APPLICATION FOR A LEASE NOR THE HOLDING OF A PUBLIC HEARING THEREON AS PROVIDED BELOW, SHALL GIVE THE APPLICANT A RIGHT TO A LEASE OR TO THE USE OF THE LAND APPLIED FOR. ANY USE NOT AUTHORIZED BY A LEASE SHALL CONSTITUTE A TRESPASS AGAINST THE CITY. **This is now provided for in 22.05.035.**

11.20.070 PROCEDURE.

(A) *PLANNING AND ZONING COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED FIRST BY THE CITY OF KENAI PLANNING AND ZONING COMMISSION TO DETERMINE WHETHER THE CONTEMPLATED USE FALLS WITHIN THAT PERMITTED UNDER THE ZONING ORDINANCE.

(B) *HARBOR COMMISSION.* ALL LEASE APPLICATIONS SHALL BE REVIEWED BY THE HARBOR COMMISSION. IF THE COMMISSION AFTER CONSIDERING THE LEASE APPLICATIONS DETERMINES AT A PUBLIC HEARING AS SET FORTH IN THE SECTION BELOW THAT ANY ONE LEASE WILL BE IN THE BEST INTERESTS OF THE CITY OF KENAI, THE COMMISSION MAY MAKE A RECOMMENDATION TO THE CITY COUNCIL OF APPLICANT ALONG WITH ANY MODIFICATIONS OR CONDITIONS RECOMMENDED BY THE COMMISSION.

(C) *CITY COUNCIL.* THE CITY COUNCIL SHALL MAKE THE FINAL DETERMINATION OF THE SELECTION OF THE APPLICANT BASED UPON THE COMMISSION'S RECOMMENDATION AND APPROVE OR REJECT THE CHOICE OF APPLICATION MADE. **This is now covered in 22.05.040.**

11.20.080 PUBLIC NOTICE—PUBLIC HEARING.

NOTICE OF THE LEASE APPLICATION SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY NOT LESS THAN TEN (10) OR MORE THAN THIRTY (30) DAYS PRIOR TO THE DATE OF PUBLIC HEARING. THE NOTICE MUST CONTAIN THE NAME OF THE APPLICANT, A BRIEF DESCRIPTION OF THE LAND, PROPOSED USE, TERM, AND A DECLARATION THAT THE COMMISSION WILL CONSIDER THE LEASE TO THE APPLICANT ON THE BASIS OF THE APPLICANT'S AGREEMENT TO OPERATE A BENEFICIAL INDUSTRY UPON THE TERMS AND CONDITIONS AS SET FORTH IN ITS APPLICATION WHICH IS AVAILABLE FOR PUBLIC INSPECTION AT THE CITY HALL OFFICES. THE NOTICE SHALL STATE THE DATE UPON WHICH PUBLIC HEARING WILL BE HELD BEFORE THE COMMISSION FOR CONSIDERATION OF THE APPLICATION. **The current process provides for review by relevant commissions and a public hearing before council which is publicly noticed. See 22.05.040.**

11.20.090 SELECTION OF APPLICANT.

AFTER THE HEARING PROVIDED IN KMC 11.20.080 ABOVE, THE COMMISSION MAY MAKE ITS RECOMMENDATION OF THE APPLICANT TO THE CITY COUNCIL IF IN THE COMMISSION'S OPINION, ON THE BASIS OF ALL THE TESTIMONY PRESENTED, THE AWARD OF THE PROSPECTIVE LEASE WILL BE ADVANTAGEOUS TO THE CITY AND IN THE BEST INTERESTS OF THE PUBLIC WELFARE, HEALTH, AND SAFETY. IN THE ALTERNATIVE, THE COMMISSION MAY ELECT TO MAKE NO RECOMMENDATION FOR ANY APPLICANT GIVING ITS REASONS THEREFOR. THE COMMISSION MAY IMPOSE ADDITIONAL CONDITIONS UPON THE APPLICANT BEFORE MAKING ITS AWARD. THE DECISION OF THE COUNCIL SHALL BE POSTED ON THE CITY BULLETIN BOARD THE DAY AFTER THE HEARING AND REMAIN POSTED FOR TEN (10) DAYS. **KMC 22.05.050 now addresses competing lease applications.**

11.20.100 APPEAL.

ANY PERSON DISAGREEING WITH THE DECISION OF THE COUNCIL MAY APPEAL THE DECISION BY FILING SUIT IN THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT AT KENAI, WITHIN TEN (10) DAYS FROM THE DATE OF THE POSTING OF COUNCIL'S DECISION. **This is not set up as an appealable decision in the new code provisions.**

11.20.110 APPRAISAL AND SURVEY OF LEASED LANDS.

THE APPLICANT WILL FURNISH A SURVEY AND APPRAISAL OF THE LAND IN QUESTION PRIOR TO LEASING. ANY RESURVEYING OR RE-PLATTING REQUIRED WILL BE THE APPLICANT'S RESPONSIBILITY AND EXPENSE. **Appraisals and surveys are provided for throughout title 22.**

11.20.120 THE LEASE DOCUMENT—TERMS.

LEASES MAY BE ISSUED FOR A TERM OF NOT LESS THAN TWO (2) YEARS NOR MORE THAN [NINETY-NINE (99)] FORTY-FIVE (45) YEARS. THE APPLICANT SHALL STATE IN HIS OR HER APPLICATION THE TERM DESIRED. IN DETERMINING WHETHER TO GRANT A LEASE FOR THE REQUESTED TERM, THE COUNCIL SHALL CONSIDER THE NATURE, EXTENT, AND COST OF THE IMPROVEMENTS WHICH THE APPLICANT AGREES TO CONSTRUCT THEREON AS A CONDITION OF THE LEASE THE TIME REQUIRED TO AMORTIZE THE PROPOSED INVESTMENT, THE VALUE OF THE APPLICANT'S PROPOSED USE TO THE ECONOMY OF THE CITY AND OTHER RELEVANT FACTORS. THE TERM OF THE LEASE MAY BE EXTENDED FOR A NUMBER OF SUCCESSIVE PERIODS FOR A SET NUMBER OF YEARS EACH AS LONG AS THE APPROPRIATE EXTENSIONS AND ORIGINAL TERM DO NOT EXCEED 99 YEARS. [Lease terms are now addressed in 22.05.055](#)

11.20.130 APPRAISAL.

NO LAND SHALL BE LEASED, OR A RENEWAL LEASE ISSUED, UNLESS THE SAME HAS BEEN APPRAISED WITHIN A [SIX] TWELVE MONTH PERIOD PRIOR TO THE 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, ACCORDING TO THE METHOD AS DESCRIBED IN SECTION [11.20.150](#) BELOW, EXCEPT TO STATE OR FEDERAL AGENCIES OR THEIR SUBDIVISIONS IF IT IS IN THE PUBLIC INTEREST TO DO SO. APPRAISALS SHALL REFLECT THE NUMBER AND VALUE OF CITY SERVICES RENDERED THE LAND IN QUESTION. [Appraisals are now addressed in 22.05.050.](#)

11.20.140 REVIEW.

NO LEASED LAND MAY BE CHANGED IN USE, NOR MAY ANY RENEWAL LEASE BE ISSUED UNTIL THE PROPOSED USE OR RENEWAL HAS BEEN REVIEWED BY THE PLANNING COMMISSION AND APPROVED BY THE COUNCIL. [This is now provided for in 22.05.040 and 22.05.045.](#)

11.20.150 ANNUAL MINIMUM RENTAL.

(A) ANNUAL MINIMUM RENTALS SHALL BE COMPUTED FROM THE APPROVED APPRAISED MARKET VALUE UTILIZING THE METHOD AS DESCRIBED IN KMC [11.20.160\(A\)](#). ANNUAL MINIMUM RENTAL SHALL INCLUDE:

- (1) TAXES PERTAINING TO THE LEASEHOLD INTEREST OF THE LESSEE.
- (2) SALES TAX NOW ENFORCED OR LEVIED IN THE FUTURE COMPUTED UPON RENT PAYABLE IN MONTHLY INSTALLMENTS WHETHER RENT IS PAID ON A MONTHLY OR YEARLY BASIS.

(3) ALL TAXES AND ASSESSMENTS LEVIED IN THE FUTURE BY THE CITY OF KENAI, AS IF LESSEE WAS CONSIDERED THE LEGAL OWNER OF RECORD OF THE LEASED PROPERTY.

(4) INTEREST AT THE RATE OF EIGHT PERCENT (8%) PER ANNUM AND TEN PERCENT (10%) PENALTIES OF ANY AMOUNT OF MONEY OWED UNDER THIS LEASE WHICH IS NOT PAID ON OR BEFORE THE DATE IT BECOMES DUE.

(5) ALL SALES TAXES DUE ON PAYMENTS UNDER THIS LEASE AND TO ALL SALES TAXES APPLICABLE TO ITS OPERATIONS.

(6) ALL SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS LEVIED BY THE CITY OF KENAI, AS IF LESSEE WERE CONSIDERED LEGAL OWNER OF LEASED PROPERTY.

(B) UPON EXECUTION OF THE LEASE THE LANDS DEMISED 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, THAT THE CITY AS PART OF THE CONSIDERATION OF RENTAL PAYMENTS DEPENDS AND RELIES UPON THE PAYMENT BY THE LESSEE OF SAID ASSESSMENTS AND TAXES AS IF HE WERE THE OWNER OF SAID DEMISED LAND.

(C) RENT SHALL BE PAID ANNUALLY IN ADVANCE. SAID PAYMENTS SHALL BE PRORATED TO CONFORM WITH THE CITY OF KENAI'S FISCAL YEAR BEGINNING JULY 1 AND ENDING JUNE 30. IF THE EQUIVALENT MONTHLY PAYMENT EXCEEDS \$200, THEN THE LESSEE SHALL HAVE THE OPTION OF MAKING PAYMENTS ON A MONTHLY OR QUARTERLY BASIS. **This is now covered in 22.05.060.**

11.20.160 PRINCIPLES AND POLICY OF LEASE RATES.

(A) TO INSURE 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 EACH LEASE, NORMALLY SET FOR THE FIRST OF JULY OF THAT FIFTH YEAR. IN PURSUING A FAIR RETURN, ALL LANDS FOR LEASE SHALL BE APPRAISED PRIOR TO LEASE AND AGAIN PRIOR TO REDETERMINATION. THEREFORE, LEASE RATES SHALL BE BASED ON:

(1) 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 SPECIFIC LAND.

(2) THE ACTUAL RATE OF RETURN DETERMINED TO BE A FAIR RETURN TO THE CITY SHALL BE SET AT SIX PERCENT (6%) OF FAIR MARKET VALUE. THE APPRAISAL SHALL NOT INCLUDE STRUCTURAL IMPROVEMENTS MADE TO THE

LAND OR IMPROVEMENTS MADE BY WAY OF GRAVEL OR OTHER APPROVED FILL PLACED ON THE LAND. (ORD. 1631-95)

(B) REALIZING THAT INVESTORS, DEVELOPERS, AND OTHER POTENTIAL LESSEES NEED A REASONABLE ASSURANCE OF STABILITY IN FUTURE LEASE RATES, THE REDETERMINATION CLAUSE OF ALL FUTURE LEASES SHALL INCLUDE THE FOLLOWING LANGUAGE:

AT EACH FIVE-YEAR INTERVAL, THE FAIR MARKET VALUE SHALL BE DETERMINED BY QUALIFIED, INDEPENDENT APPRAISERS. THE REDETERMINED LEASE RATE (ANNUAL RENT) UNDER THIS PROVISION, SHALL BE LIMITED TO A FIFTY PERCENT (50%) INCREASE IN THE PRIOR LEASE RATE UNTIL THE THIRTIETH-YEAR ANNIVERSARY OF THE LEASE AFTER WHICH THE FIFTY PERCENT (50%) CAP PROVISION SHALL NO LONGER APPLY AND THE LEASE RATE SHALL BE REDETERMINED EVERY FIVE YEARS ON THE BASIS OF FAIR MARKET EVALUATION AS DETERMINED IN KMC 11.20.080.

(C) CITY LEASES OF TIDELANDS EXISTING AT THE TIME OF THE ENACTMENT OF THIS CHAPTER SHALL HAVE A THIRTY-YEAR PERIOD DETERMINED FROM THE DATE FROM WHICH THE LEASE WAS ORIGINALLY ENTERED INTO.

(D) FAILURE BY THE CITY TO INSIST UPON RENEGOTIATION AT THE END OF ANY GIVEN FIVE-YEAR PERIOD SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF THE CITY TO INSIST UPON RENEGOTIATION IN ANY SUBSEQUENT YEAR, PROVIDED THAT NEITHER THE CITY NOR THE LESSEE SHALL HAVE THE RIGHT TO INSIST UPON RENEGOTIATION UNTIL FIVE YEARS SHALL HAVE ELAPSED FROM THE DATE THE RENTAL WAS LAST ADJUSTED. **This is now covered in 22.05.060.**

11.20.170 RESPONSIBILITY TO PROPERLY LOCATE.

IT SHALL BE THE RESPONSIBILITY OF THE LESSEE TO PROPERLY LOCATE HIMSELF AND HIS IMPROVEMENTS ON THE LEASED LAND. IT SHALL BE UNLAWFUL TO ENCROACH ON OTHER LANDS OF THE CITY, OR ON LANDS OWNED OR LEASED BY ANOTHER. **This provision is not something that needs to be stated in code.**

11.20.180 LEASE UTILIZATION.

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

EXECUTION OF THE LEASE, CONSISTENT WITH THE PROPOSED USE AND TERMS OF THE LEASE, SHALL CONSTITUTE GROUNDS FOR CANCELLATION. THE LEASE SHALL SET FORTH IN DETAIL WITH APPROPRIATE PLANS AND SPECIFICATIONS THE IMPROVEMENTS TO BE MADE WITHIN THE TIME PERIOD DESCRIBED ABOVE. **This is now provided for in 22.05.085**

11.20.190 SUBLEASING.

LEASES MAY PROVIDE FOR SUBLEASING A PORTION OF THE LEASED LAND WITHOUT PRIOR COUNCIL APPROVAL. SUBLEASES SHALL BE IN WRITING AND BE SUBJECT TO THE TERMS AND CONDITIONS OF THE ORIGINAL LEASE. NO APPROVAL OF THE CITY SHALL BE GIVEN TO THE SUBLEASE OF PROPERTY UNTIL THE LESSEE HAS SUBSTANTIALLY COMPLIED WITH THE DEVELOPMENT PLAN. **Subleasing is now covered in the lease form approved by council and requires council consent.**

11.20.200 ASSIGNMENTS.

EXCEPT FOR ASSIGNMENTS FOR COLLATERAL PURPOSES, NO LESSEE MAY ASSIGN THE LANDS LEASED TO HIM WITHOUT PRIOR COUNCIL APPROVAL. THE ASSIGNEE SHALL BE SUBJECT TO ALL OF THE PROVISIONS OF THE LEASE. ANY ATTEMPTED ASSIGNMENT MADE IN VIOLATION OF THIS SECTION SHALL BE VOID. ANY ASSIGNMENT REQUIRING COUNCIL APPROVAL WILL NOT BE UNREASONABLY DENIED. **This is also covered in the standard lease form approved by council.**

11.20.210 MODIFICATION.

NO LEASE MAY BE MODIFIED ORALLY OR IN ANY MANNER OTHER THAN BY AN AGREEMENT IN WRITING, SIGNED BY ALL PARTIES IN INTEREST OR THEIR SUCCESSORS IN INTEREST. ANY SUCH MODIFICATION SHALL REQUIRE COUNCIL APPROVAL. **This is also covered in the standard lease form approved by council.**

11.20.220 CANCELLATION—FORFEITURE.

- (A) LEASES IN GOOD STANDING MAY BE CANCELED IN WHOLE, OR IN PART, AT ANY TIME UPON MUTUAL WRITTEN AGREEMENT BY LESSEE AND THE CITY COUNCIL.
- (B) ANY LEASE USED FOR AN UNLAWFUL PURPOSE MAY BE CANCELED.
- (C) IF THE LESSEE SHALL DEFAULT IN THE PERFORMANCE OR OBSERVANCE OF ANY OF THE LEASE TERMS, COVENANTS, OR STIPULATIONS THERETO, OR OF THE REGULATIONS NOW OR HEREAFTER IN FORCE, AND SHOULD SAID DEFAULT CONTINUE FOR THIRTY (30) CALENDAR DAYS AFTER SERVICE OF WRITTEN NOTICE BY THE CITY WITHOUT REMEDY BY LESSEE OF THE CONDITIONS WARRANTING DEFAULT, THE CITY

SHALL SUBJECT LESSEE TO APPROPRIATE LEGAL ACTION, INCLUDING, BUT NOT LIMITED TO, FORFEITURE OF THE LEASE. NO IMPROVEMENTS MAY BE REMOVED BY LESSEE OR OTHER PERSON DURING ANY TIME THE LESSEE IS IN DEFAULT. THIS PROVISION SHALL NOT BE CONSTRUED TO PROHIBIT THE CITY FROM TAKING ANY APPROPRIATE LEGAL ACTION, INCLUDING, BUT LIMITED TO, FORFEITURE OF THE LEASE, IMMEDIATELY UPON THE OCCURRENCE OF A DEFAULT. **This is also covered in the standard lease form approved by council and disposition of improvements is in 22.05.075.**

11.20.230 DEFAULT—RIGHT OF ENTRY.

SHOULD DEFAULT BE MADE IN THE PAYMENT OF ANY PORTION OF THE RENT OR FEES WHEN DUE OR IN ANY OF THE COVENANTS OR CONDITIONS CONTAINED IN THE LEASE OR IN ANY REGULATIONS NOW OR HEREINAFTER IN FORCE, THEN IN SUCH EVENT THE CITY SHALL GIVE LESSEE THIRTY DAYS AFTER SUCH WRITTEN NOTICE TO CURE SUCH DEFAULT OR DEFAULTS, AFTER WHICH IF THE DEFAULT IS NOT CURED, THE CITY MAY TERMINATE THE LEASE, RE-ENTER AND TAKE POSSESSION OF THE PREMISES, REMOVE ALL PERSONS THEREFROM. **This is now covered in the standard lease form.**

11.20.240 NOTICE OR DEMAND.

ANY NOTICE OR DEMAND WHICH UNDER THE TERMS OF A LEASE OR UNDER ANY STATUTE MUST BE GIVEN OR MADE BY THE PARTIES THERETO, SHALL BE IN WRITING AND BE GIVEN OR MADE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO THE OTHER PARTY AT THE ADDRESS OF RECORD. HOWEVER, EITHER PARTY MAY DESIGNATE IN WRITING SUCH NEW OR OTHER ADDRESS TO WHICH SUCH NOTICE OR DEMAND SHALL THEREAFTER BE SO GIVEN, MADE OR MAILED. A NOTICE GIVEN HEREUNDER SHALL BE DEEMED DELIVERED WHEN DEPOSITED IN A U.S. GENERAL OR BRANCH POST OFFICE, ENCLOSED IN A REGISTERED OR CERTIFIED MAIL ENVELOPE, ADDRESSED AS HEREINABOVE PROVIDED. **This is now covered in the standard lease form.**

11.20.250 FINANCING—RIGHTS OF MORTGAGES OR LIENHOLDER.

(A) FOR THE PURPOSE OF INTERIM OR PERMANENT FINANCING OR REFINANCING FROM TIME TO TIME OF THE IMPROVEMENTS TO BE PLACED UPON THE LEASED PREMISES, AND FOR NO OTHER PURPOSE, A LESSEE, AFTER GIVING WRITTEN NOTICE THEREOF TO THE CITY, MAY ENCUMBER BY MORTGAGE, DEED OF TRUST, ASSIGNMENT, OR OTHER APPROPRIATE INSTRUMENT, THE LESSEE'S INTEREST IN THE LEASED PREMISES AND IN AND TO THE LEASE, PROVIDED SUCH ENCUMBRANCE PERTAINS ONLY TO SUCH LEASEHOLD INTEREST AND DOES NOT PERTAIN TO OR CREATE ANY INTEREST IN THE CITY'S TITLE TO THE LEASED PREMISES. IF SUCH MORTGAGE, DEED OF TRUST, OR ASSIGNMENT, SHALL BE HELD BY A BANK OR OTHER

ESTABLISHED LENDING OR FINANCIAL INSTITUTION (WHICH TERMS SHALL INCLUDE AN ESTABLISHED INSURANCE COMPANY AND QUALIFIED PENSION OR PROFIT-SHARING TRUST), AND SUCH INSTITUTION SHALL ACQUIRE THE LESSEE'S INTEREST IN SUCH LEASE AS A RESULT OF A SALE UNDER SAID ENCUMBRANCE PURSUANT TO A FORECLOSURE OR OTHER REMEDY OF THE SECURED PARTY, OR THROUGH ANY TRANSFER IN LIEU OF FORECLOSURE, OR THROUGH SETTLEMENT OF OR ARISING OUT OF ANY PENDING OR CONTEMPLATED FORECLOSURE ACTION, SUCH LENDING INSTITUTION SHALL HAVE THE PRIVILEGE OF TRANSFERRING ITS INTEREST IN SUCH LEASE TO A NOMINEE OR A WHOLLY-OWNED SUBSIDIARY CORPORATION WITH THE PRIOR CONSENT OF THE CITY, PROVIDED, HOWEVER, SUCH TRANSFEREE SHALL ASSUME ALL OF THE COVENANTS AND CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE, WHEREUPON SUCH LENDING INSTITUTION SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH TRANSFER. SUCH LENDING INSTITUTE FOR THE NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION TO WHICH IT MAY HAVE TRANSFERRED SUCH LEASE, OR ANY OTHER LENDING INSTITUTION WHICH MAY AT ANY TIME ACQUIRE SUCH LEASE, SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER A TRANSFER OF SUCH LEASE.

(B) A LEASEHOLD MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, OR SECURITY ASSIGNEE, SHALL HAVE AND BE SUBROGATED TO ANY AND ALL RIGHTS OF THE LESSEE WITH RESPECT TO THE CURING OF ANY DEFAULT HEREUNDER BY LESSEE.

(C) IF THE HOLDER OF ANY SUCH MORTGAGE, BENEFICIARY OF ANY SUCH DEED OF TRUST, OR THE SECURITY ASSIGNEE SHALL GIVE THE CITY BEFORE ANY DEFAULT SHALL HAVE OCCURRED IN THE LEASE, A WRITTEN NOTICE CONTAINING THE NAME AND POST OFFICE ADDRESS OF SUCH HOLDER, THE CITY SHALL THEREAFTER GIVE TO SUCH HOLDER A COPY OF EACH NOTICE OF DEFAULT BY THE LESSEE AT THE SAME TIME AS ANY NOTICE OF DEFAULT SHALL BE GIVEN BY THE CITY TO THE LESSEE, AND THE CITY WILL NOT THEREAFTER ACCEPT ANY SURRENDER OR ENTER INTO ANY MODIFICATION OF THIS LEASE WITHOUT THE PRIOR WRITTEN CONSENT OF THE HOLDER OF ANY FIRST MORTGAGE, BENEFICIAL INTEREST UNDER A FIRST DEED OF TRUST, OR SECURITY ASSIGNEE, IN THIS LEASE.

(D) IF, BY REASON OF ANY DEFAULT OF THE LESSEE, EITHER THIS LEASE OR ANY EXTENSION THEREOF SHALL BE TERMINATED AT THE ELECTION OF THE CITY PRIOR TO THE STATED EXPIRATION THEREFOR, THE CITY WILL ENTER INTO A NEW LEASE WITH THE LEASEHOLD MORTGAGEE FOR THE REMAINDER OF THE TERM, EFFECTIVE AS OF THE DATE OF SUCH TERMINATION, AT THE RENT AND

ADDITIONAL RENT, AND ON THE TERMS HEREIN CONTAINED, SUBJECT TO THE FOLLOWING CONDITIONS:

(1) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL MAKE WRITTEN REQUEST TO THE CITY FOR SUCH NEW LEASE WITHIN TWENTY DAYS AFTER THE DATE OF SUCH TERMINATION AND SUCH WRITTEN REQUEST SHALL BE ACCOMPANIED BY A PAYMENT TO THE CITY OF ALL SUMS THEN DUE TO THE CITY UNDER THE LEASE.

(2) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE, SHALL PAY TO THE CITY, AT THE TIME OF THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, ANY AND ALL SUMS DUE THEREUNDER IN ADDITION TO THOSE WHICH WOULD AT THE TIME OF THE EXECUTION AND DELIVERY THEREOF BE DUE UNDER THIS LEASE; BUT FOR SUCH TERMINATION AND IN ADDITION THERETO, ANY REASONABLE EXPENSES, INCLUDING LEGAL AND ATTORNEY'S FEES, TO WHICH THE CITY SHALL HAVE BEEN SUBJECTED BY REASON OF SUCH DEFAULT.

(3) SUCH MORTGAGEE, BENEFICIARY, OR SECURITY ASSIGNEE SHALL, ON OR BEFORE THE EXECUTION AND DELIVERY OF SUCH NEW LEASE, PERFORM ALL THE OTHER CONDITIONS REQUIRED TO BE PERFORMED BY THE LESSEE TO THE EXTENT THAT THE LESSEE SHALL HAVE FAILED TO PERFORM SUCH CONDITIONS.

(E) IF A LENDING INSTITUTION OR ITS NOMINEE OR WHOLLY-OWNED SUBSIDIARY CORPORATION SHALL HOLD A MORTGAGE, DEED OF TRUST, OR SIMILAR SECURITY INTEREST IN AND TO THIS LEASE AND SHALL THEREAFTER ACQUIRE A LEASEHOLD ESTATE, DERIVED EITHER FROM SUCH INSTRUMENTS OR FROM THE CITY, AND IF SUCH INSTITUTION, NOMINEE, OR CORPORATION SHALL DESIRE TO ASSIGN THIS LEASE OR ANY NEW LEASE OBTAINED FROM THE CITY (OTHER THAN TO A NOMINEE OR TO A WHOLLY-OWNED SUBSIDIARY CORPORATION AS PERMITTED BY THE ABOVE PROVISIONS) TO AN ASSIGNEE WHO WILL UNDERTAKE TO PERFORM AND OBSERVE THE CONDITIONS IN SUCH LEASE REQUIRED TO BE PERFORMED BY THE LESSEE, THE CITY SHALL NOT UNREASONABLY WITHHOLD ITS CONSENT TO SUCH ASSIGNMENT AND ASSUMPTION, AND ANY SUCH LENDING INSTITUTION, NOMINEE, OR SUBSIDIARY SHALL BE RELIEVED OF ANY FURTHER LIABILITY UNDER SUCH LEASE FROM AND AFTER SUCH ASSIGNMENT. IF THE PROPOSED ASSIGNOR SHALL ASSERT THAT THE CITY IS UNREASONABLY WITHHOLDING ITS CONSENT TO ANY SUCH PROPOSED ASSIGNMENT, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION. **This is now covered in the standard lease form.**

11.20.260 ENTRY AND RE-ENTRY.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED AS HEREINBEFORE PROVIDED BY SUMMARY PROCEEDINGS OR OTHERWISE, OR IN THE EVENT THAT THE DEMISED LANDS OR ANY PART THEREOF SHOULD BE ABANDONED BY THE LESSEE DURING THE SAID TERM, THE LESSOR OR ITS AGENTS, SERVANTS, OR REPRESENTATIVES MAY, IMMEDIATELY OR ANY TIME THEREAFTER, RE-ENTER AND RESUME POSSESSION OF SAID LANDS OR SUCH PART THEREOF, AND REMOVE ALL PERSONS AND PROPERTY THEREFROM, EITHER SUMMARY PROCEEDINGS OR BY A SUITABLE ACTION OR PROCEEDING AT LAW WITHOUT BEING LIABLE FOR ANY DAMAGES THEREFOR. NO RE-ENTRY BY THE LESSOR SHALL BE DEEMED AN ACCEPTANCE OF A SURRENDER OF THE LEASE. **This is now covered in the standard lease form.**

11.20.270 RE-LEASE.

IN THE EVEN THAT A LEASE SHOULD BE TERMINATED AS HEREIN PROVIDED, OR BY SUMMARY PROCEEDINGS, OR OTHERWISE, THE PLANNING & ZONING COMMISSION MAY OFFER SAID LANDS FOR LEASE OR OTHER APPROPRIATE DISPOSAL, PURSUANT TO THE PROVISIONS OF THIS ORDINANCE. **This provision does not need to be stated in code.**

11.20.280 FORFEITURE OF RENTAL.

IN THE EVENT THAT THE LEASE SHOULD BE TERMINATED BECAUSE OF ANY BREACH BY THE LESSEE AS HEREIN PROVIDED, THE ANNUAL RENTAL PAYMENT LAST MADE BY THE LESSEE SHALL BE FORFEITED AND RETAINED BY THE LESSOR AS PARTIAL OR TOTAL LIQUIDATED DAMAGES FOR SAID BREACH. **Termination provisions are now contained in the standard lease form.**

11.20.290 RIGHT OF INSPECTION.

CITY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO ENTER THE PREMISES, OR ANY PART THEREOF, FOR THE PURPOSES OF INSPECTION. **This is now covered in the standard lease form.**

11.20.300 EASEMENT GRANTS RESERVED.

CITY RESERVES THE RIGHT TO GRANT AND CONTROL EASEMENTS IN, OR ABOVE THE LAND LEASED. NO SUCH GRANT OR EASEMENT WILL BE MADE THAT WILL UNREASONABLY INTERFERE WITH THE LESSEE'S USE OF THE LAND, AND LESSEE SHALL HAVE FREE ACCESS AND USE OF ANY AND ALL PARKING AND LOADING RIGHTS, RIGHTS OF INGRESS AND EGRESS NOW OR HEREAFTER APPERTAINING TO THE LEASED PREMISES. **This provision does not need to be stated in code.**

11.20.310 LEASE SUBORDINATE TO FINANCING REQUIREMENTS.

LESSEE AGREES THAT CITY MAY MODIFY THE LEASE TO MEET REVISED REQUIREMENTS FOR FEDERAL OR STATE GRANTS, OR TO CONFORM TO THE REQUIREMENTS OF ANY REVENUE BOND COVENANT. HOWEVER, THE MODIFICATION SHALL NOT ACT TO REDUCE THE RIGHTS OR PRIVILEGES GRANTED THE LESSEE BY THIS LEASE, NOR ACT TO CAUSE THE LESSEE FINANCIAL LOSS. **This is now covered in the standard lease form.**

11.20.320 WRITTEN WAIVER.

THE RECEIPT OF RENT BY THE LESSOR WITH KNOWLEDGE OF ANY BREACH OF THE LEASE BY THE LESSEE, OR ANY DEFAULT ON THE PART OF THE LESSEE IN OBSERVANCE OR PERFORMANCE OF ANY OF THE CONDITIONS OR COVENANTS OF THE LEASE, SHALL NOT BE DEEMED TO BE A WAIVER OF ANY PROVISIONS OF THE LEASE. NO FAILURE ON THE PART OF THE LESSOR TO ENFORCE ANY COVENANT OR PROVISION THEREIN CONTAINED, NOR ANY WAIVER OF ANY RIGHT THEREUNDER BY THE LESSOR, UNLESS IN WRITING, SHALL DISCHARGE OR INVALIDATE SUCH COVENANTS OR PROVISIONS, OR AFFECT THE RIGHT OF THE LESSOR TO ENFORCE THE SAME IN THE EVENT OF ANY SUBSEQUENT BREACH OR DEFAULT. THE RECEIPT, BY THE LESSOR, OF ANY RENT OR ANY OTHER SUM OF MONEY AFTER THE TERMINATION, IN ANY MANNER, OF THE TERM THEREIN DEMISED, OR AFTER THE GIVING BY THE LESSOR OF ANY NOTICE THEREUNDER TO EFFECT SUCH TERMINATION, SHALL NOT REINSTATE, CONTINUE, OR EXTEND THE RESULTANT TERM THEREIN DEMISED, DESTROY, OR IN ANY MANNER IMPAIR THE EFFICACY OF ANY SUCH NOTICE OR TERMINATION AS MAY HAVE BEEN GIVEN THEREUNDER BY THE LESSOR TO THE LESSEE PRIOR TO THE RECEIPT OF ANY SUCH SUM OF MONEY OR OTHER CONSIDERATION, UNLESS SO AGREED TO IN WRITING AND SIGNED BY THE LESSOR. **This is now covered in the standard lease form.**

11.20.330 SURRENDER ON TERMINATION.

(A) LESSEE SHALL, ON THE LAST DAY OF THE TERM OF THIS LEASE OR UPON ANY EARLIER TERMINATION OF THIS LEASE, SURRENDER AND DELIVER UP THE PREMISES INTO THE POSSESSION AND USE OF CITY WITHOUT FRAUD OR DELAY IN GOOD ORDER, CONDITION, AND REPAIR, EXCEPT FOR REASONABLE WEAR AND TEAR SINCE THE LAST NECESSARY REPAIR, REPLACEMENT, RESTORATION, OR RENEWAL, FREE AND CLEAR OF ALL LETTINGS AND OCCUPANCIES UNLESS EXPRESSLY PERMITTED BY CITY IN WRITING, AND FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OTHER THAN THOSE CREATED BY CITY FOR LOANS TO THE CITY.

(B) UPON THE END OF THE TERM OF THIS LEASE OR ANY EARLIER TERMINATION THEREOF, TITLE TO THE BUILDINGS, IMPROVEMENTS, AND BUILDING EQUIPMENT SHALL AUTOMATICALLY VEST IN THE CITY WITHOUT REQUIREMENT OF ANY DEED, CONVEYANCE, OR BILL OF SALE DOCUMENT IN CONFIRMATION HEREOF, LESSEE SHALL EXECUTE, ACKNOWLEDGE, AND DELIVER THE SAME AND SHALL PAY ANY CHARGE, TAX, AND FEE ASSERTED OR IMPOSED BY ANY AND ALL GOVERNMENTAL UNITS IN CONNECTION THEREWITH. **This is now covered in the standard lease form.**

11.20.340 SANITATION.

THE LESSEE SHALL COMPLY WITH ALL REGULATIONS OR ORDINANCES OF THE CITY WHICH ARE PROMULGATED FOR THE PROMOTION OF SANITATION. THE PREMISES OF THE LEASE SHALL BE KEPT IN A NEAT, CLEAN, AND SANITARY CONDITION, AND EVERY EFFORT SHALL BE MADE TO PREVENT THE POLLUTION OF WATER. **This is now covered in the standard lease form.**

11.20.350 BUILDING AND ZONING CODES.

LEASED LANDS SHALL BE UTILIZED IN ACCORDANCE WITH THE BUILDING AND ZONING ORDINANCES AND RULES AND REGULATIONS OF SAID AUTHORITY. FAILURE TO DO SO SHALL CONSTITUTE A VIOLATION OF THE LEASE. **This does not need to be in this section of code as it is covered in the zoning code and standard lease form.**

11.20.360 RULES.

- (A) THE LESSEE SHALL OBSERVE, OBEY, AND COMPLY WITH ALL APPLICABLE RULES, ETC., OF THE STATE OR FEDERAL GOVERNMENTS.
- (B) CITY RESERVES THE RIGHT TO ADOPT, AMEND, AND ENFORCE REASONABLE RULES AND REGULATIONS GOVERNING THE DEMISED PREMISES AND THE PUBLIC AREAS AND FACILITIES USED IN CONNECTION THEREWITH. EXCEPT IN CASES OF EMERGENCY, NO RULE OR REGULATION HEREAFTER ADOPTED OR AMENDED BY THE CITY SHALL BECOME APPLICABLE UNLESS IT HAS BEEN GIVEN THIRTY DAYS NOTICE OF ADOPTION OR AMENDMENT THEREOF.
- (C) LESSEE, IN THE CONDUCT OF ITS OPERATIONS ON THE DEMISED PREMISES, SHALL OBSERVE, OBEY, AND COMPLY WITH ANY AND ALL APPLICABLE RULES, REGULATIONS, LAWS, ORDINANCES, OR ORDERS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, LAWFULLY EXERCISING AUTHORITY OVER LESSEE OR LESSEE'S CONDUCT OF ITS BUSINESS.
- (D) CITY SHALL NOT BE LIABLE TO LESSEE FOR ANY DIMINUTION OR DEPRIVATION OF POSSESSION, OR OF ITS RIGHTS HEREUNDER, ON ACCOUNT OF THE EXERCISE OF ANY SUCH RIGHT OR AUTHORITY AS IN THIS SECTION PROVIDED, NOR SHALL

LESSEE BE ENTITLED TO TERMINATE THE WHOLE OR ANY PORTION OF THE LEASEHOLD ESTATE HEREIN CREATED, BY REASON OF THE EXERCISE OF SUCH RIGHTS OR AUTHORITY, UNLESS THE EXERCISE THEREOF SHALL SO INTERFERE WITH LESSEE'S USE AND OCCUPANCY OF THE LEASEHOLD ESTATE AS TO CONSTITUTE A TERMINATION IN WHOLE OR IN PART OF THIS LEASE BY OPERATION OF LAW IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA AND OF THE UNITED STATES MADE APPLICABLE TO THE STATES. **This is now covered in the standard lease form.**

11.20.370 AIRCRAFT OPERATIONS PROTECTED.

(A) THE CITY SHALL RESERVE TO ITSELF ITS SUCCESSORS AND ASSIGNS, FOR THE USE AND BENEFIT OF THE PUBLIC, A RIGHT OF FLIGHT FOR THE PASSAGE OF AIRCRAFT IN THE AIRSPACE ABOVE THE SURFACE AND ALL IMPROVEMENTS APPROVED BY THE CITY OF THE PREMISES CONVEYED, TOGETHER WITH THE RIGHT TO CAUSE IN SAID AIRSPACE SUCH NOISE AS MAY BE INHERENT IN THE OPERATION OF AIRCRAFT, NOW OR HEREAFTER USED FOR NAVIGATION OF OR FLIGHT IN THE AIR, USING SAID AIRSPACE OF LANDING AT, TAKING OFF FROM, OR OPERATING ON THE KENAI AIRPORT. (WHEN PLANS FOR IMPROVEMENTS ARE APPROVED BY THE CITY, THE CITY TO THE EXTENT OF THOSE IMPROVEMENTS RELEASES THE EASEMENTS HERE EXPRESSED.)

(B) THE LESSEE BY ACCEPTING CONVEYANCE EXPRESSLY AGREES FOR ITSELF, ITS REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, THAT IT WILL NOT ERECT NOR PERMIT THE ERECTION OF ANY STRUCTURE OR OBJECT, ON THE AND CONVEYED, WHICH WOULD BE AN AIRPORT OBSTRUCTION WITHIN THE STANDARDS ESTABLISHED UNDER THE FEDERAL AVIATION ADMINISTRATION REGULATIONS, PART 77, AS AMENDED. IN THE EVENT THE AFORESAID COVENANT IS BREACHED, THE CITY RESERVES THE RIGHT TO ENTER ON THE LAND CONVEYED HEREUNDER AND TO REMOVE THE OFFENDING STRUCTURE OR OBJECT, ALL OF WHICH SHALL BE AT THE EXPENSE OF THE LESSEE OR ITS HEIRS, SUCCESSORS, OR ASSIGNS. **This is covered in the standard lease form when necessary pursuant to deed restrictions or airport requirements.**

11.20.380 RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION.

THE CITY SHALL AGREE AND COVENANT THAT THE LESSEE, UPON PAYING RENT AND PERFORMING OTHER COVENANTS, TERMS, AND CONDITIONS OF THIS LEASE, SHALL HAVE THE RIGHT TO QUIETLY AND PEACEFULLY HOLD, USE, OCCUPY, AND ENJOY THE SAID LEASED PREMISES, EXCEPT THAT ANY INCONVENIENCE CAUSED BY PUBLIC WORKS PROJECTS IN OR ABOUT THE LEASEHOLD PREMISES SHALL NOT BE

CONSTRUED AS A DENIAL OF THE RIGHT OF QUIET OR PEACEABLE POSSESSION. **This is now covered in the standard lease form.**

11.20.390 LESSEE TO PAY TAXES.

LESSEE SHALL PAY ALL LAWFUL TAXES AND ASSESSMENTS WHICH, DURING THE TERM THEREOF MAY BECOME A LIEN UPON OR WHICH MAY BE LEVIED BY THE STATE, BOROUGH, CITY, OR ANY OTHER TAX-LEVYING BODY, UPON ANY TAXABLE POSSESSORY RIGHT WHICH LESSEE MAY HAVE IN OR TO THE REASON OF ITS USE OR OCCUPANCY, PROVIDED, HOWEVER, THAT NOTHING HEREIN CONTAINED SHALL PREVENT LESSEE FROM CONTESTING AS ANY OTHER LAND OWNER ANY INCREASE IN SUCH TAX OR ASSESSMENT THROUGH PROCEDURES OUTLINED IN STATE STATUTES. **This is now covered in the standard lease form.**

11.20.400 NO PARTNERSHIP OR JOINT VENTURE CREATED.

THE CITY SHALL NOT BE CONSTRUED OR HELD TO BE A PARTNER OR JOINT VENTURER OF LESSEE IN THE CONDUCT OF BUSINESS ON THE DEMISED PREMISES; AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE RELATIONSHIP BETWEEN THE PARTIES THERETO IS, AND SHALL AT ALL TIMES REMAIN THAT OF LANDLORD AND TENANT. **This is now covered in the standard lease form.**

11.20.410 DEFAULT BANKRUPTCY.

IF THE LESSEE SHALL MAKE ANY ASSIGNMENT FOR THE BENEFIT OF CREDITORS OR SHALL BE ADJUDGED A BANKRUPT, OR IF A RECEIVER IS APPOINTED FOR THE LESSEE OR LESSEE'S ASSETS, OR ANY INTEREST UNDER THIS LEASE, AND IF THE APPOINTMENT OF THE RECEIVER IS NOT VACATED WITHIN THIRTY DAYS, OR IF A VOLUNTARY PETITION IS FILED UNDER SECTION 18(A) OF THE BANKRUPTCY ACT BY THE LESSEE, THEN AND IN ANY EVENT, THE CITY MAY, UPON GIVING THE LESSEE THIRTY DAYS' NOTICE, TERMINATE THIS LEASE. **This is now covered in the standard lease form.**

11.20.420 NONDISCRIMINATION.

THE LESSEE, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST, AND ASSIGNS, AS A PART OF THE CONSIDERATION HEREOF, DOES HEREBY COVENANT AND AGREE AS A COVENANT RUNNING WITH THE LAND, THAT:

- (A) NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION IN, DENIED THE BENEFITS OF, OR BE OTHERWISE SUBJECTED TO DISCRIMINATION IN THE USE OF SAID FACILITIES.

(B) IN THE CONSTRUCTION OF ANY IMPROVEMENTS ON, OVER, OR UNDER SUCH LAND AND THE FURNISHING OF SERVICES THEREON, NO PERSON ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN SHALL BE EXCLUDED FROM PARTICIPATION, DENIED THE BENEFITS OF, OR OTHERWISE BE SUBJECTED TO DISCRIMINATION.

(C) THE LESSEE SHALL USE THE PREMISES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED BY OR PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED.

(D) IN THE EVENT FACILITIES ARE CONSTRUCTED, MAINTAINED, OR OTHERWISE OPERATED ON THE SAID PROPERTY DESCRIBED IN THIS LEASE, FOR A PURPOSE INVOLVING THE PROVISION OF SIMILAR SERVICES OR BENEFITS, THE LESSEE SHALL MAINTAIN AND OPERATE SUCH FACILITIES AND SERVICES IN COMPLIANCE WITH ALL OTHER REQUIREMENTS IMPOSED PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND AS SAID REGULATIONS MAY BE AMENDED. **This is covered in the standard lease form when necessary pursuant to deed restrictions or other applicable law.**

11.20.430 PARTIAL INVALIDITY.

IF ANY TERM, PROVISION, CONDITION, OR PART OF THE LEASE IS DECLARED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNCONSTITUTIONAL, THE REMAINING TERMS, PROVISIONS, CONDITIONS, OR PARTS SHALL CONTINUE IN FULL FORCE AND EFFECT AS THOUGH SUCH DECLARATION WAS NOT MADE. **This is now covered in the standard lease form.**

11.20.440 PAROLE MODIFICATIONS.

IT SHALL BE MUTUALLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE AGREEMENT, AS WRITTEN, SHALL COVER ALL THE AGREEMENTS AND STIPULATIONS BETWEEN THE PARTIES; AND NO REPRESENTATIONS, ORAL OR WRITTEN, HAVE BEEN MODIFYING, ADDING TO, OR CHANGING THE TERMS THEREOF. **This is now covered in the standard lease form.**

11.20.450 AMENDMENT OF LEASE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN ORDER TO AID THE LESSEE IN THE FINANCING OF THE IMPROVEMENTS TO BE SITUATED HEREIN, THE CITY SHALL AGREE THAT IN THE EVENT THE PROPOSED MORTGAGEE, BENEFICIARY OR SECURITY ASSIGNEE UNDER ANY INTERIM OR PERMANENT LOAN ON THE SECURITY OF THE LEASEHOLD INTEREST OF THE LESSEE AND THE IMPROVEMENTS TO BE SITUATED THEREON SO REQUIRES, THE CITY WILL MAKE A REASONABLE EFFORT TO AMEND THIS LEASE IN ORDER TO SATISFY SUCH REQUIREMENTS UPON THE EXPRESS CONDITION AND UNDERSTANDING, HOWEVER, THAT SUCH VARIANCE IN LANGUAGE WILL NOT MATERIALLY PREJUDICE THE CITY'S RIGHTS THEREUNDER NOR BE SUCH AS TO ALTER IN ANY WAY THE RENTAL OBLIGATIONS OF THE LESSEE HEREUNDER NOR ITS OBLIGATIONS TO COMPLY WITH ALL EXISTING LAWS AND REGULATIONS OF THE CITY RELATING TO THE LEASING OF AIRPORT LANDS, AND TO ALL APPLICABLE FEDERAL STATUTES, RULES, AND REGULATIONS, AND ALL COVENANTS AND CONDITIONS OF THE DEED BY WHICH THE CITY HOLDS TITLE TO THE LAND. **This is now covered in the standard lease form.**

11.20.460 COMPLIANCE WITH LAWS.

(A) LESSEE SHALL COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, AND REGULATIONS OF PUBLIC AUTHORITIES NOW OR HEREAFTER IN ANY MANNER AFFECTING THE LEASED PREMISES OR THE SIDEWALKS, ALLEYS, STREETS, AND WAY ADJACENT THERETO OR ANY BUILDINGS, STRUCTURES, FIXTURES, AND IMPROVEMENTS OR THE USE THEREOF, WHETHER OR NOT ANY SUCH LAWS, ORDINANCES, AND REGULATIONS WHICH MAY BE HEREAFTER ENACTED INVOLVE A CHANGE OF POLICY ON THE PART OF THE GOVERNMENTAL BODY ENACTING THE SAME. LESSEE AGREES TO HOLD CITY FINANCIALLY HARMLESS FROM THE FOLLOWING:

- (1) FROM THE CONSEQUENCES OF ANY VIOLATION OF SUCH LAWS, ORDINANCES, AND/OR REGULATIONS.
- (2) FROM ALL CLAIMS FOR DAMAGES ON ACCOUNT OF INJURIES, DEATH, OR PROPERTY DAMAGE RESULTING FROM SUCH VIOLATION.

(B) LESSEE FURTHER AGREES IT WILL NOT PERMIT ANY UNLAWFUL OCCUPATION, BUSINESS, OR TRADE TO BE CONDUCTED ON SAID PREMISES OR ANY USE TO BE MADE THEREOF CONTRARY TO ANY LAW, ORDINANCE, OR REGULATION AS AFORESAID WITH RESPECT THERETO. **This is now covered in the standard lease form.**

11.20.470 CARE OF PREMISES.

LESSEE, AT ITS OWN COST AND EXPENSE, SHALL KEEP THE LEASED PREMISES, ALL IMPROVEMENTS WHICH AT ANY TIME DURING THE TERM OF THIS LEASE MAY BE SITUATED THEREON, AND ANY AND ALL APPURTENANCES THEREUNTO BELONGING, IN GOOD CONDITION AND REPAIR, DURING THE ENTIRE TERM OF THIS LEASE. **This is now covered in the standard lease form.**

11.20.480 LESSEE'S OBLIGATION TO REMOVE LIENS.

LESSEE WILL NOT PERMIT ANY LIENS INCLUDING, BUT NOT LIMITED TO, MECHANICS', LABORERS', OR MATERIAL-MEN'S LIENS OBTAINABLE OR AVAILABLE UNDER THE THEN EXISTING LAWS, TO STAND AGAINST THE LEASED PREMISES OR IMPROVEMENTS FOR ANY LABOR OR MATERIAL FURNISHED TO LESSEE OR CLAIMED TO HAVE BEEN FURNISHED TO LESSEE OR TO LESSEE'S AGENTS, CONTRACTORS, OR SUBLESSEES, IN CONNECTION WITH WORK OF ANY CHARACTER PERFORMED OR CLAIMED TO HAVE BEEN PERFORMED ON SAID PREMISES OR IMPROVEMENTS BY OR AT THE DIRECTION OR SUFFERANCE OF LESSEE, PROVIDED, HOWEVER, LESSEE SHALL HAVE THE RIGHT TO PROVIDE A BOND AS CONTEMPLATED BY ALASKA LAW AND CONTEST THE VALIDITY OR AMOUNT OF ANY SUCH LIEN OR CLAIMED LIEN. ON FINAL DETERMINATION OF SUCH LIEN OR SUCH CLAIM FOR LIEN, LESSEE WILL IMMEDIATELY PAY ANY JUDGMENT RENDERED WITH ALL PROPER COSTS AND CHARGES AND SHALL HAVE SUCH LIEN RELEASED OR JUDGMENT SATISFIED AT LESSEE'S OWN EXPENSE. **This is now covered in the standard lease form.**

11.20.490 CONDEMNATION.

IN THE EVENT THE LEASED PREMISES OR ANY PART THEREOF SHALL BE CONDEMNED AND TAKEN FOR A PUBLIC OR A QUASI-PUBLIC USE, THEN UPON PAYMENT OF ANY AWARD OR COMPENSATION ARISING FROM SUCH CONDEMNATION, THERE SHALL BE SUCH DIVISION OF THE PROCEEDS, SUCH ABATEMENT IN RENT PAYABLE DURING THE TERM OR ANY EXTENSION OF THE TERM HEREOF, AND SUCH OTHER ADJUSTMENTS AS THE PARTIES MAY AGREE UPON AS BEING JUST AND EQUITABLE UNDER ALL THE CIRCUMSTANCES. IF THE CITY AND LESSEE ARE UNABLE TO AGREE WITHIN THIRTY DAYS AFTER SUCH AN AWARD HAS BEEN PAID INTO COURT, UPON WHAT DIVISION, ANNUAL ABATEMENT IN RENT, AND OTHER ADJUSTMENTS ARE JUST AND EQUITABLE, THE DISPUTE SHALL BE DETERMINED BY ARBITRATION PROVIDED IN KMC 11.20.670 HEREOF. **This is now covered in the standard lease form.**

11.20.500 PROTECTION OF SUBTENANTS.

TO PROTECT THE POSITION OF ANY SUBTENANT(S) HEREAFTER PROPERLY OBTAINING ANY INTERESTS IN THE LEASEHOLD ESTATE GRANTED LESSEE HEREUNDER, THE CITY AGREES THAT IN THE EVENT OF THE CANCELLATION, TERMINATION, EXPIRATION, OR SURRENDER OF THIS LEASE (THE GROUND LEASE), THE CITY WILL ACCEPT THE SUBTENANT, ITS SUCCESSORS AND ASSIGNS, AS ITS LESSEE FOR A PERIOD EQUAL TO THE FULL ELAPSED PORTION OF THE TERM OF THE SUBLEASE, INCLUDING ANY EXTENSIONS OR RENEWALS THEREOF NOT EXCEEDING THE TERM OF THIS LEASE, UPON THE SAME COVENANTS AND CONDITIONS THEREIN CONTAINED, TO THE EXTENT THAT SAID COVENANTS AND CONDITIONS ARE NOT INCONSISTENT WITH ANY OF THE TERMS AND CONDITIONS OF THIS LEASE, PROVIDED SUCH SUBTENANT SHALL MAKE FULL AND COMPLETE ATTORNMENT TO THE CITY FOR THE BALANCE OF THE TERM OF SUCH SUBLEASE SO AS TO ESTABLISH DIRECT PRIVITY OF ESTATE AND CONTRACT BETWEEN THE CITY AND THE SUBTENANT WITH THE SAME FORCE AND EFFECT AS THOUGH SUCH SUBLEASE WAS ORIGINALLY MADE DIRECTLY BETWEEN THE CITY AND SUCH SUBTENANT; AND FURTHER PROVIDED SUCH SUBTENANT AGREES TO COMPLY WITH ALL THE PROVISIONS OF THE GROUND LEASE AND ALL THE TERMS OF ANY MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT TO WHICH SUCH LEASEHOLD ESTATE IS SUBJECT, EXCEPT THE PAYMENT OF RENT UNDER THE GROUND LEASE AND THE PAYMENT OF ANY DEBT SERVICE UNDER ANY SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT. **This is now covered in the standard lease form.**

11.20.510 SUCCESSORS IN INTEREST.

THIS LEASE SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO, SUBJECT TO SUCH SPECIFIC LIMITATIONS OR ASSIGNMENT AS ARE PROVIDED FOR HEREIN. **This is now covered in the standard lease form.**

11.20.520 GOVERNING LAW.

THE INDENTURE OF LEASE SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF ALASKA. **This is now covered in the standard lease form.**

11.20.530 NOTICES.

(A) ANY NOTICES REQUIRED BY THE LEASE SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DULY GIVEN ONLY IF DELIVERED PERSONALLY OR MAILED BY CERTIFIED OR REGISTERED MAIL IN A PREPAID ENVELOPE ADDRESSED AS FOLLOWS:

TO CITY:CITY HALL—CITY OF KENAI
[P.O. BOX 580] 210 FIDALGO AVENUE
KENAI, ALASKA 99611

TO TENANT:

(B) THE CITY SHALL ALSO MAIL A COPY OF ANY NOTICE GIVEN TO THE LESSEE, BY REGISTERED OR CERTIFIED MAIL, TO ANY LEASEHOLD LENDER (MORTGAGEE, BENEFICIARY OF A DEED OF TRUST, SECURITY ASSIGNEE) WHO SHALL HAVE GIVEN THE CITY NOTICE OF SUCH MORTGAGE, DEED OF TRUST, OR SECURITY ASSIGNMENT.

(C) ANY SUCH ADDRESSES MAY BE CHANGED BY AN APPROPRIATE NOTICE IN WRITING TO ALL OTHER PARTIES AFFECTED PROVIDED SUCH CHANGE OF ADDRESS IS GIVEN TO THE OTHER PARTIES BY THE MEANS OUTLINED IN PARAGRAPH (A) ABOVE AT LEAST FIFTEEN DAYS PRIOR TO THE GIVING OF THE PARTICULAR NOTICE IN ISSUE. **This is now covered in the standard lease form.**

11.20.540 FIRE PROTECTION.

THE LESSEE WILL TAKE ALL REASONABLE PRECAUTION TO PREVENT AND TAKE ALL NECESSARY ACTION TO SUPPRESS DESTRUCTIVE OR UNCONTROLLED GRASS, BRUSH, OR OTHER FIRES ON LEASED LANDS, AND COMPLY WITH ALL LAWS, REGULATIONS, AND RULES PROMULGATED AND ENFORCED BY THE CITY FOR FIRE PROTECTION WITHIN THE AREA WHEREIN THE LEASED PREMISES ARE LOCATED. **This does not need to be in this code section.**

11.20.550 INSPECTION.

THE LESSEE SHALL ALLOW AUTHORIZED REPRESENTATIVES OF THE CITY TO ENTER THE LEASED LAND FOR INSPECTION AT ANY REASONABLE TIME. **This is now covered in the standard lease form.**

11.20.560 PERSONAL USE OF MATERIALS.

ALL COAL, OIL, GAS, AND OTHER MINERALS AND ALL DEPOSITS OF STONE OR GRAVEL VALUABLE FOR EXTRACTION OR UTILIZATION AND ALL MATERIALS SUBJECT TO TITLE II, DIVISION I, CHAPTERS 4, 5, AND 6 OF THE ALASKA ADMINISTRATIVE CODE ARE EXCEPTED FROM THE OPERATION OF A SURFACE LEASE. SPECIFICALLY, THE LESSEE OF THE SURFACE RIGHTS SHALL NOT SELL OR REMOVE FOR USE ELSEWHERE ANY TIMBER, STONE, GRAVEL, PEAT MOSS, TOPSOIL, OR ANY OTHER MATERIAL VALUABLE FOR BUILDING OR COMMERCIAL PURPOSES; PROVIDED, HOWEVER, THAT MATERIAL REQUIRED FOR THE DEVELOPMENT OF THE LEASEHOLD MAY BE USED IF ITS USE IS FIRST APPROVED BY THE CITY. **This is now covered in the standard lease form.**

11.20.570 RESTRICTIONS AND RESERVATIONS.

THE LEASE SHALL CONTAIN SUCH RESTRICTIONS AND RESERVATIONS AS ARE NECESSARY TO PROTECT THE PUBLIC INTEREST. *This is not necessary to have in this code section and is covered elsewhere in code to an extent and in the lease form.*

11.20.580 WASTE AND INJURY TO LAND.

IF ANY PERSON SHALL COMMIT WASTE, TRESPASS, OR OTHER INJURY UPON CITY LAND, THE PERSON SO OFFENDING, IN ADDITION TO BEING CIVILLY LIABLE FOR ANY DAMAGES CAUSED, SHALL BE DEEMED GUILTY OF A VIOLATION. *This is provided for in the lease form.*

11.20.590 WARRANTY.

THE CITY DOES NOT WARRANT BY ITS CLASSIFICATION OR LEASING OF LAND THAT THE LAND IS IDEALLY SUITED FOR THE USE AUTHORIZED UNDER SAID CLASSIFICATION OR LEASE, AND NO GUARANTY IS GIVEN OR IMPLIED THAT IT SHALL BE PROFITABLE TO EMPLOY LAND TO SAID USE. CITY BEARS NO RESPONSIBILITY FOR ANY WATER EROSION OF LAND. *This is provided for in the lease form.*

11.20.600 APPROVAL OF OTHER AUTHORITIES.

THE ISSUANCE BY THE CITY OF LEASES DOES NOT RELIEVE THE GRANTEE OR LESSEE OF RESPONSIBILITY OF OBTAINING LICENSES OR PERMITS AS MAY BE REQUIRED BY DULY AUTHORIZED BOROUGH, STATE, OR FEDERAL AGENCIES. *This does not need to be in this code section and is provided for in the lease form.*

11.20.610 TITLE RESTRICTIONS.

ALL LEASES OR SALES OF PROPERTY SHALL BE MADE SUBJECT TO RESTRICTIONS AND RESERVATIONS IN THE PATENT, DEED, OR OTHER INSTRUMENT UNDER WHICH THE CITY HOLDS. *This does not need to be in this code section as it is a legal requirement.*

11.20.620 INSURANCE—HOLD HARMLESS.

LESSEE SHALL COVENANT TO SAVE THE CITY HARMLESS FROM ALL ACTIONS, SUITS, LIABILITIES, OR DAMAGES RESULTING FROM OR ARISING OUT OF ANY ACTS OF COMMISSION OR OMISSION BY THE LESSEE, HIS AGENTS, EMPLOYEES, CUSTOMERS, INVITEES, OR ARISING FROM OR OUT OF THE LESSEE'S OCCUPATION, OR USE OF THE PREMISES DEMISED, OR PRIVILEGES GRANTED, AND TO PAY ALL COSTS CONNECTED THEREWITH. IN THIS CONNECTION, THE LESSEE SHALL AGREE TO ARRANGE AND PAY FOR ALL THE FOLLOWING:

(A) PUBLIC LIABILITY INSURANCE PROTECTING BOTH THE CITY AND/OR ITS AGENTS AND THE LESSEE, SUCH INSURANCE TO BE EVIDENCED BY A CERTIFICATE SHOWING THE INSURANCE IN FORCE. THE AMOUNT OF SUCH PUBLIC LIABILITY INSURANCE SHALL HAVE LIMITS NOT LESS THAN THOSE KNOWN AS \$250,000/\$500,000/\$100,000.

(B) LIQUOR LIABILITY (WHERE APPLICABLE).

(C) LESSEE AGREES TO CARRY EMPLOYER'S LIABILITY INSURANCE AND WORKMEN'S COMPENSATION INSURANCE, AND TO FURNISH A CERTIFICATE THEREOF TO THE CITY, IF APPLICABLE.

(D) INSURANCE CONTRACTS PROVIDING LIABILITY INSURANCE AND WORKMEN'S COMPENSATION SHALL PROVIDE FOR NOT LESS THAN THIRTY DAYS WRITTEN NOTICE TO THE CITY OF CANCELLATION OR EXPIRATION OR SUBSTANTIAL CHANGE IN POLICY CONDITIONS AND COVERAGE.

(E) LESSEE AGREES THAT WAIVER OF SUBROGATION AGAINST THE CITY SHALL BE REQUESTED OF LESSEE'S INSURER, AND SHALL BE PROVIDED AT NO COST TO THE CITY.

(F) CROSS LIABILITY: IT IS UNDERSTOOD AND AGREED THAT THE INSURANCE AFFORDED BY THIS POLICY OR POLICIES FOR MORE THAN ONE NAMED INSURED, SHALL NOT OPERATE TO INCREASE THE LIMITS OF THE COMPANY'S LIABILITY, BUT OTHERWISE SHALL NOT OPERATE TO LIMIT OR VOID THE COVERAGE OF ANY ONE NAMED INSURED AS RESPECTS CLAIMS AGAINST THE SAME NAMED INSURED OR EMPLOYEES OF SUCH OTHER NAMED INSURED.

(G) THE INSURANCE PROCURED BY THE LESSEE AS HEREIN REQUIRED SHALL BE ISSUED IN THE NAME OF THE LESSEE AND THE CITY BY A COMPANY LICENSED TO DO BUSINESS IN THE STATE OF ALASKA, AND SHALL CONTAIN ENDORSEMENTS THAT:

(1) SUCH INSURANCE MAY NOT BE CANCELED OR AMENDED WITH RESPECT TO THE CITY WITHOUT THIRTY DAYS WRITTEN NOTICE BY REGISTERED OR CERTIFIED MAIL TO THE CITY BY THE INSURANCE COMPANY.

(2) LESSEE SHALL BE SOLELY RESPONSIBLE FOR PAYMENT OF PREMIUMS AND THAT CITY SHALL NOT BE REQUIRED TO PAY ANY PREMIUMS FOR SUCH INSURANCE.

(H) THE AMOUNT OF INSURANCE COVERAGE REQUIRED ABOVE MAY BE SUBJECT TO REVIEW FOR INCREASE AT EACH FIVE-YEAR RENEGOTIATION OF THE LEASE.

(I) UPON REVIEW BY THE COMMISSION, THE LESSEE MAY BE REQUIRED TO OBTAIN SUCH OTHER INSURANCE PROTECTING THE CITY AND LESSEE THAT MAY BE NECESSARILY REQUIRED OR ADVISABLE OWING TO THE PARTICULARITIES OF THE HARBOR-RELATED ACTIVITIES ON THE LEASE-HOLD INTEREST. **This is provided for in the lease form.**

11.20.630 INSURANCE OF USERS—SUBTENANTS.

LESSEE, FOR ITS OWN PROTECTION, MAY REQUIRE BONA FIDE PUBLIC USERS AND SUBTENANTS TO EXECUTE AGREEMENTS HOLDING LESSEE HARMLESS FROM ACTIONS ARISING OUT OF USER'S OPERATIONS AND MAY REQUIRE SUCH BONA FIDE PUBLIC USERS AND SUBTENANTS TO SHOW PROOF OF PUBLIC LIABILITY INSURANCE COVERING THEIR OPERATIONS ON THE DEMISED PREMISES IN SUCH AMOUNTS AS WILL ADEQUATELY PROTECT THEM. *This does not need to be in this code section as it is provided in the lease form.*

11.20.640 ANNUAL REPORT.

THE LESSEE MAY BE REQUIRED TO SUBMIT TO THE CITY EACH YEAR ON OR ABOUT MARCH 15, AN ANNUAL REPORT ON ITS OPERATIONS, PARTICULARLY THOSE SERVICES AND FACILITIES OFFERED TO THE PUBLIC, WHETHER ON A FEE OR NON-FEE BASIS]. *This does not need to be in this code section as it is covered in the planning and zoning code related to conditional use permits and can be included in a specific lease if necessary.*

11.20.650 Tidelands [C]Claims. (House Keeping)

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.[3]820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any. *This is a unique provision that should remain. The proposed changes reflect a statutory change to state law renumbering the state statute number.*

11.20.660 Subjection to [H]Harbor [O]Ordinance. (House Keeping)

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part. *This is relevant and should be reiterated in the lease document itself.*

[11.20.670 ARBITRATION.

IN THE EVENT THE CITY AND LESSEE SHALL BE UNABLE TO AGREE AS TO ANY MATTER PROVIDED FOR IN THE LEASE EXCEPT AS TO THE AMOUNT OF THE FIVE-YEAR RENT REDETERMINATION AMOUNT WHICH IS HANDLED PURSUANT TO KMC 11.20.160, SUCH DISPUTE SHALL BE DETERMINED BY THREE DISINTERESTED ARBITRATORS (UNLESS THE PARTIES CAN AGREE ON ONE ARBITRATOR). SUCH ARBITRATION SHALL BE CONDUCTED UPON REQUEST OF EITHER THE CITY OR THE LESSEE, BEFORE THREE ARBITRATORS (UNLESS THE CITY OR THE LESSEE AGREE TO ONE ARBITRATOR) DESIGNATED BY THE AMERICAN ARBITRATION ASSOCIATION AND IN ACCORDANCE

WITH THE RULES OF SUCH ASSOCIATION. THE ARBITRATORS DESIGNATED AND ACTING UNDER THIS LEASE SHALL HAVE NO POWER TO DEPART FROM OR CHANGE ANY OF THE PROVISIONS THEREOF. THE EXPENSE OF ARBITRATION PROCEEDINGS CONDUCTED HEREUNDER SHALL BE BORNE EQUALLY BY THE PARTIES. THE PROCEEDINGS SHALL TAKE PLACE IN KENAI, ALASKA UNLESS OTHERWISE AGREED UPON BY THE PARTIES.] **Appeal rights for lease rates are provided in Title 22 addressing city lands. In the general the City has moved away from arbitration clauses.**

11.20.680 Provisions ~~[R]~~Regulating ~~[P]~~Public ~~[U]~~Use ~~[P]~~Purpose. (House Keeping)

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates. **This is a provision unique to Title 11 that should be maintained.**

11.20.690 Provision to be ~~[I]~~Included in ~~[P]~~Public ~~[U]~~Use ~~[L]~~Lease. (House Keeping)

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses. **This is a provision unique to Title 11 that should be maintained.**

11.20.700 Public ~~[U]~~Use: ~~[D]~~Defined. (House Keeping)

- (a) Public use shall mean a use limited in part or in whole to the following:
 - (1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:
 - (i) Public dock facilities.
 - (ii) Maritime commerce.
 - (iii) Transportation.
 - (iv) Fishing.
 - (v) Boat harbor.
 - (vi) Port and waterfront development purposes.
- (b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City. **This is a provision unique to Title 11 that should be maintained, however I would recommend the**

Harbor Commission revisit this to ensure it allows for sufficient flexibility in development, for example, it should not be interpreted to prohibit retail, restaurant, or boat storage, even perhaps some limited residential as part of a broader harbor development plan.

11.20.710 Controlled [A]Access. (House Keeping)

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan. This is a provision unique to Title 11 that should be maintained.

11.20.720 Use [C]Charges. (House Keeping)

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities. [IT IS EXPRESSLY RECOGNIZED THAT LESSEE IS ENTITLED TO A MARGIN OF PROFIT, WHICH SHOULD BE FAIR, REASONABLE, AND COMPETITIVE, AND THAT CITY WILL COOPERATE TO THIS END IN CONSIDERING RATES AND FEES. THE COMMISSION SHALL REVIEW ALL RATE STRUCTURES ANNUALLY. THE LEASE SHALL CONTAIN AN ARBITRATION PROVISION AS SET FORTH IN KMC 11.20.670 TO RESOLVE DISPUTES ARISING HEREUNDER.] As a general policy this is ok, but the City currently does not monitor rates charged by businesses.

[11.20.730 MAINTENANCE OF DOCK.

LESSEE COVENANTS THAT IT WILL MAINTAIN THE DOCK FACILITY IN A SAFE CONDITION AND IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL STANDARDS.] I recommend removal of this because it is unclear what dock is being referred to and is covered in other provisions and lease terms.

[11.20.740 MODIFICATIONS OF EXISTING LEASES.

LEASES SHALL ONLY BE MODIFIED TO THAT EXTENT DEEMED TO BE NECESSARY TO PROTECT THE PUBLIC'S INTEREST. This is provided for in the lease form.

11.20.750 UNAUTHORIZED REMOVAL OF MATERIAL PROHIBITED.

ANY PERSON, FIRM, OR CORPORATION WHO WITHOUT WRITTEN AUTHORITY FROM THE CITY REMOVES ROCK, GRAVEL, OR OTHER MATERIAL FROM THE LANDS OWNED BY THE CITY WITHOUT THE EXPRESS CONSENT OF THE CITY SHALL BE DEEMED GUILTY OF A VIOLATION. ANY CRIMINAL ACTION TAKEN AGAINST SUCH PERSON SHALL

NOT PRECLUDE THE INSTITUTION OF CIVIL PROCEEDINGS BY THE CITY. **This is provided for in the lease form.**

11.20.760 REMOVAL NOT AUTHORIZED BY LEASE.

NO DEED OR LEASE GRANTED BY THE CITY TO ANY PERSON SHALL CONTAIN TERMS OR BE CONSTRUED AS GRANTING ANY RIGHT TO REMOVE MATERIAL FROM CITY LANDS.] **This is provided for in the lease form.**

[11.20.770 DISPOSITION OF RIGHTS BY COUNCIL.

IN RECOGNITION THAT CONDITIONS MAY EXIST FROM TIME TO TIME WHEREBY USE OF SUCH LANDS AND THE MATERIAL COMPRISING THE SAME MAY BE BENEFICIAL TO THE PUBLIC INTEREST AND PROMOTE THE PROGRESS AND DEVELOPMENT OF THE CITY, APPLICATIONS FOR THE USE THEREOF MAY BE RECEIVED AND CONSIDERED BY THE COMMISSION, PROVIDING SUCH APPLICATIONS FULLY DISCLOSE TO THE CITY ALL MATERIAL FACTS AND PLANS FOR THE PROPOSED USE. SUCH APPLICATIONS SHALL BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY AND REFERRED TO THE CITY PLANNING COMMISSION FOR ITS RECOMMENDATIONS. DISPOSITION OF SUCH APPLICATIONS SHALL BE MADE BY THE COUNCIL AFTER RECOMMENDATION FROM THE COMMISSION.] **This is covered in the City's material site ordinances.**

11.20.780 Penalties.

- (a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC 13.05.010. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
- (b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC 13.05.010 per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.
- (c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC 11.20.220 and KMC 11.20.240 hereof. **This penalty section is appropriate to remain in code.**

11.20.790 Tideland [L]Leases for [S]Shore [F]Fisheries. (House Keeping)

- (a) Notwithstanding other provisions of the City's Code of Ordinances [T]the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should

the State of Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska. [ANY MONEY OWED PURSUANT TO KMC 11.20.150] SHALL BE IN ADDITION TO THE ANNUAL MINIMUM SET FORTH ABOVE.

(B) NEITHER KMC 11.20.160 NOR KMC 11.20.620(A) SHALL APPLY TO TIDELAND LEASES FOR SHORE FISHERIES.

(C) THE PROVISIONS OF KMC 11.20.110 AND KMC 11.20.130 REQUIRING APPRAISALS OF TIDELAND PROPERTY SHALL NOT APPLY TO LEASES OF TIDELANDS FOR SHORE FISHERIES. HOWEVER, THE SURVEY PROVISIONS OF KMC 11.20.110 ARE APPLICABLE TO SHORE FISHERY LEASES.] *Shore fisheries lease are unique and this section should be maintained. The amendments address the proposed removal of prior code sections.*



"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: Harbor Commission
FROM: Scott Bloom, City Attorney
DATE: February 11, 2020
SUBJECT: Ordinance 3106-2020 - Amending Title 11 – Harbor and Harbor Facilities

Below is a clean copy of what Title 11 would look like if all the changes proposed in Ordinance 3106 - 2020 were enacted.

Title 11 HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master**
- 11.10 Harbor Commission**
- 11.15 Tidelands**
- 11.20 Leasing of Tidelands**

Chapter 11.05 HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.**
- 11.05.020 Harbor defined.**
- 11.05.030 Harbor regulations.**

- 11.05.080 Leasing not prohibited.**
- 11.05.090 Use of launch ramp and float.**
- 11.05.100 No wake zones.**



11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law.

11.05.020 Harbor Defined.

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor Regulations.

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

11.05.080 Leasing Not Prohibited.

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations.

11.05.090 Use of Launch Ramp and Float.

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC 11.05 within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).
- (c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.
- (d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC 13.05.010(b).
- (e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties.

11.05.100 No Wake Zones.

- (a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.
- (b) No wake zones may be established on a temporary or permanent basis.
- (c) A “no wake zone” is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.
- (d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.
- (e) A violation of this section shall be punishable as provided in KMC 13.05.010.

**Chapter 11.10
HARBOR COMMISSION**

Sections:

11.10.010 Duties and powers.

11.10.010 Duties and Powers.

- (a) The Harbor Commission shall be required to do the following:
 - (1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission’s recommendations for the development of the City Harbor facilities may include, among other things:
 - (i) development of the type, location, and sequence of all public harbor facilities;
 - (ii) the relocation, removal, extension, or change of use of existing harbor facilities;
 - (2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.
 - (3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.
 - (4) Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.
 - (5) Make and prepare reports and plans for approval by the City Council.

- (6) Coordinate public efforts, individual and group, to the effectuation of approved plans.
- (7) Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council.

Chapter 11.15

TIDELANDS

Sections:

- 11.15.010 Short title.**
- 11.15.030 Approval and acceptance of State conveyance.**
- 11.15.040 Approval and adoption of subdivision plat.**

11.15.010 Short Title.

This ordinance shall be known as the "Kenai Tidelands Ordinance."

11.15.030 Approval and Acceptance of State Conveyance.

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City.

11.15.040 Approval and Adoption of Subdivision Plat.

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District.

Chapter 11.20

LEASING OF TIDELANDS

Sections:

- 11.20.020 Lands available for leasing.**
- 11.20.650 Tidelands claims.**
- 11.20.660 Subjection to harbor ordinance.**
- 11.20.680 Provisions regulating public use purpose.**
- 11.20.690 Provision to be included in public use lease.**
- 11.20.700 Public use: defined.**
- 11.20.710 Controlled access.**
- 11.20.720 Use charges.**
- 11.20.730 Maintenance of dock.**

11.20.780 Penalties.

11.20.790 Tideland leases for shore fisheries.

11.20.020 Lands Available for Leasing.

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased for surface use only, and under the condition that said lease is subject and inferior to preference right claims and subject to the rights of existing set net site holders within the City limits.

11.20.650 Tidelands Claims.

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any.

11.20.660 Subjection to Harbor Ordinance

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part.

11.20.680 Provisions Regulating Public Use Purpose.

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates.

11.20.690 Provision to be Included in Public Use Lease.

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses.

11.20.700 Public Use: Defined.

- (a) Public use shall mean a use limited in part or in whole to the following:
 - (1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:
 - (i) Public dock facilities.

- (ii) Maritime commerce.
- (iii) Transportation.
- (iv) Fishing.
- (v) Boat harbor.
- (vi) Port and waterfront development purposes.

(b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City.

11.20.710 Controlled Access.

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan.

11.20.720 Use Charges.

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities.

11.20.780 Penalties.

- (a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC 13.05.010. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
- (b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC 13.05.010 per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.
- (c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC 11.20.220 and KMC 11.20.240 hereof.

11.20.790 Tideland Leases for Shore Fisheries.

- (a) Notwithstanding other provisions of the City's Code of Ordinances the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should the State of

Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska.



Kenai City Council - Regular Meeting

February 19, 2020 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

ACTION AGENDA

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. **Women's Voting Rights Day Proclamation**
5. Consent Agenda (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

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

B. SCHEDULED PUBLIC COMMENTS

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

1. **Tim Dillon, Kenai Peninsula Economic Development District - Kenai Peninsula Economic Development District (KPEDD) Update.**

C. UNSCHEDULED PUBLIC COMMENTS

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

D. PUBLIC HEARINGS

1. **ENACTED UNANIMOUSLY. Ordinance No. 3103-2020** - Accepting and Appropriating a Grant from the Alaska State Library for Employee Travel and Training. (Administration)
2. **ENACTED UNANIMOUSLY. Ordinance No. 3104-2020** - Accepting and Appropriating a Federal Grant from the Institute of Museum and Library Services Passed Through the Alaska State Library for Employee Travel and Training. (Administration)

3. **ENACTED UNANIMOUSLY. Ordinance No. 3105-2020** - Accepting and Appropriating Two Donations From the Totem Tracers and the Friends of the Kenai Community Library for the Upgrade of Library Equipment. (Administration)
4. **ADOPTED UNANIMOUSLY. Resolution No. 2020-08** - Requesting the State of Alaska Provide Necessary Funding to the Alaska Wing Civil Air Patrol at a Minimum of \$184,300 to Provide Support for Utility Costs, Insurance Premiums and Emergency Roof Repair. (Council Member Knackstedt)
5. **ADOPTED UNANIMOUSLY. Resolution No. 2020-09** - Supporting the Collection of Sales Tax from Remote Sellers by the Kenai Peninsula Borough and Other Municipalities within the Borough, Authorizing the Remote Seller Sales Tax Commission to Implement, Administer, and Enforce Provisions of the Uniform Remote Seller Sales Tax Code on the City's Behalf and Affirming the City's Adoption by Reference of the Kenai Peninsula Borough's Uniform Remote Seller Sales Tax Code. (Legal)
6. **ADOPTED UNANIMOUSLY. Resolution No. 2020-10** - Authorizing a Budget Transfer in the General Fund Buildings and Non-Departmental Departments for Building Repairs in Excess of Budgeted Amounts. (Administration)

E. MINUTES

1. **APPROVED BY THE CONSENT AGENDA.** *Regular Meeting of February 5, 2020 (City Clerk)

F. UNFINISHED BUSINESS

G. NEW BUSINESS

1. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval - Bills to be Ratified. (Administration)
2. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval - Purchase Orders Over \$15,000. (Administration)
3. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval - Non-Objection to the Renewal of Liquor Licenses for New Peking Restaurant and Fraternal Order of Eagles. (City Clerk)
4. **INTRODUCED BY THE CONSENT AGENDA/PUBLIC HEARING SET FOR 03/04/2020.** *Ordinance No. 3107-2020 - Increasing Estimated Revenues and Appropriations in the Congregate Housing Funds for Costs in Excess of Budgeted Amounts. (Administration)
5. **INTRODUCED BY THE CONSENT AGENDA/PUBLIC HEARING SET FOR 03/04/2020.** *Ordinance No. 3108-2020 - Increasing Estimated Revenues and Appropriations in the General Land Sale Permanent Fund to Transfer Earnings in Excess of Budgeted Amounts to the City's General Fund. (Administration)

6. **INTRODUCED BY THE CONSENT AGENDA/PUBLIC HEARING SET FOR 03/04/2020. *Ordinance No. 3109-2020** - Authorizing the City Manager to Reimburse Annual Leave Used by Firefighter Scott Summers for Attending a Paramedic Internship Program. (Administration)
7. **INTRODUCED/ REFERRED TO THE HARBOR COMMISSION /PUBLIC HEARING SET FOR 03/18/2020. Ordinance No. 3106-2020** - Amending Title 11 - Harbor and Harbor Facilities, to Remove Provisions that are No Longer Historically Relevant, Recognize Changes to Other Chapters of City Code That Now Provide for Lease and Sale of Harbor Lands and Provide the Harbor Commission a Platform to Move Forward. (Council Members Peterkin and Glendening)
8. **APPROVED UNANIMOUSLY. Action/Approval** – Second Amendment to Agreement for Guardian Security Systems, Inc. (Administration)

H. COMMISSION / COMMITTEE REPORTS

1. Council on Aging
2. Airport Commission
3. Harbor Commission
4. Parks and Recreation Commission
5. Planning and Zoning Commission
6. Beautification Committee
7. Mini-Grant Steering Committee

I. REPORT OF THE MAYOR

J. ADMINISTRATION REPORTS

1. City Manager
2. City Attorney
3. City Clerk

K. ADDITIONAL PUBLIC COMMENT

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

L. EXECUTIVE SESSION

1. To Discuss a Request to Purchase Properties Located at 11823 Kenai Spur Highway, Kenai, Alaska, Also Known as “Anchor Camp Ground,” Pursuant to AS

44.62.310(c)(1)(3) is a Matter of which the Immediate Knowledge may have an Adverse Effect Upon the Finances of the City, and a Matter by which Law, Municipal Charter, or Ordinance are required to be Confidential.

M. PENDING ITEMS

N. ADJOURNMENT

O. INFORMATION ITEMS

1. Purchase Orders Between \$2,500 and \$15,000.
2. Kenai Historical Society - January 2020 Newsletter

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