



City of Homer

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Memorandum Agenda Changes/Supplemental Packet

TO: PORT & HARBOR ADVISORY COMMISSION
FROM: HAYLEY SMITH, DEPUTY CITY CLERK
DATE: MARCH 28, 2018
SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

NEW BUSINESS

Ordinance 18-16, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 18.08, Codifying Certain Lease Policy and Procedures; Expanding Lease Review to include Recommendations by Appropriate City Commissions; Removing References to the Lease Committee; and Requiring Essential Lease Terms to be Approved by City Council. Erickson/Smith. Recommended dates: Introduction March 27, 2018, Refer to Port and Harbor Advisory Commission; Second Reading and Public Hearing May 14, 2018. **page 3**

Memorandum 18-035 from City Attorney as backup and red line comparison of existing code language and proposed language for HCC 18.08 **pages 19 & 29**

Memorandum from Harbormaster Hawkins as backup

Memorandum from the City Clerk as backup

page 49

**CITY OF HOMER
HOMER, ALASKA**

Smith/Erickson

ORDINANCE 18-16

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
REPEALING HOMER CITY CODE CHAPTER 18.08 AND THE HOMER
PROPERTY MANAGEMENT POLICIES AND PROCEDURES MANUAL
AND REENACTING CHAPTER 18.08 CODIFYING CERTAIN LEASE
POLICY AND PROCEDURES FROM THE POLICIES AND
PROCEDURES MANUAL, CLARIFYING THE LAND ALLOCATION
PROCESS, EXPANDING LEASE REVIEW TO INCLUDE
RECOMMENDATIONS BY APPROPRIATE CITY COMMISSIONS,
REMOVING REFERENCES TO THE LEASE COMMITTEE, REMOVING
THE REQUIREMENT THAT ALL LEASES MAY BE INCREASED TO
REFLECT INFLATION AS DETERMINED IN THE CONSUMER PRICE
INDEX, AND EXPANDING COUNCIL’S ROLE BY REQUIRING
COUNCIL APPROVAL PRIOR TO FINAL APPROVAL OF A LEASE,
TERMINATION OF A LEASE OR TERMINATION OF LEASE
NEGOTIATIONS.

WHEREAS, The City of Homer (“City”) currently has a complex leasing policy that
requires the City and applicants to comply with lengthy policies, procedures, and Homer City
Code provisions as well as the terms of the request for proposal specific to a specific parcel;
and

WHEREAS, It is in the City’s best interest and the interest of lease applicants to
streamline and simplify the leasing process by incorporating essential lease policy and
procedures currently in the City’s Property Management Policy and Procedures into the Homer
City Code, the City’s lease templates or specific lease agreements; and

WHEREAS, The City Council’s approval of the essential terms of new long-term leases
and not just the award of such leases increases Council’s input and oversight, public input and
transparency into the lease process; and

WHEREAS, The City Council’s approval of the termination of negotiations or early
termination of a lease for default also increases oversight, public input and transparency in the
lease process,

NOW THEREFORE, The City of Homer Ordains:

Section 1: Chapter 18.08 “City Property Leases” is repealed and reenacted to read as follows:

Chapter 18.08

CITY PROPERTY LEASES

Sections:

- 18.08.005 Purpose.
- 18.08.010 Definitions.
- 18.08.020 Land Allocation Plan - property available for lease.
- 18.08.030 Standardized leases.
- 18.08.040 Council approval of lease.
- 18.08.045 Lease applications.
- 18.08.050 Requests for proposals-competitive bidding process.
- 18.08.060 Criteria for evaluating and approving proposals.
- 18.08.065 Lease application and proposal documents.
- 18.08.070 Notice to award.
- 18.08.075 Lease rental rates.
- 18.08.080 Lease execution and final approval.
- 18.08.090 Development and use.
- 18.08.100 Appraisal.
- 18.08.110 Options to renew.
- 18.08.120 Improvements.
- 18.08.130 Lease renewal.
- 18.08.140 Sublease.
- 18.08.150 Early termination.
- 18.08.160 Assignments.
- 18.08.170 Insurance.
- 18.08.175 Exception – Leasing to government entities.
- 18.08.180 Assessments – Capital improvement projects.
- 18.08.190 Connection to utilities.
- 18.08.195 Processing and filing fees.

18.08.005 Purpose.

The purpose of this chapter is to ensure that the lease of City-owned property maximizes the value of City assets and that the City awards leases that provide the highest and best use of City-owned property. It is the policy of the City to lease its property in a fair and nondiscriminatory way.

18.08.010 Definitions.

For the purpose of this chapter, the following words and phrases are defined as set forth in this section:

“Applicant” means a person applying to lease or acquire an interest in City-owned real property and includes bidders and proposers.

“Appraisal” means a valuation or estimation of value of property by an Alaska Certified General Real Estate Appraiser or an otherwise qualified appraiser selected by the City Manager.

“Assignment” means a transfer of a leasehold interest or rights to a leasehold interest, in its entirety, in City-owned real property.

“City Manager” means the City of Homer Manager or his or her designee

“Fair market rent” means the rental income that a public or private property would most likely command in the open market, indicated by the current rents paid for comparable space as of the date of the appraisal

“Irregularities” means deviations from the request for proposal that are not substantive in nature and/or involve typographical or scrivener errors that do not impact the integrity or responsiveness of the proposal.

“Long-term lease” means a written agreement granting exclusive possession or use of City-owned real property for more than one year.

“Short-term lease” means a written agreement granting exclusive possession or use of City-owned real property for one year or less.

“Surveyor” means a registered professional land surveyor.

18.08.020 Land Allocation Plan-property available for lease.

- a. Unless dedicated or reserved to another purpose, all real property including tide, submerged or shorelands to which the City has a right, title and interest as owner or lessee, or to which the City may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any regulations or other ordinances or State law specifically governing the leasing of City tide and submerged lands, the latter shall prevail.

- b. The City administration shall maintain a list of all City-owned properties authorized for lease by Council. This list shall be adopted annually and contain the information required under this chapter. The list may be called the Land Allocation Plan and will be made available to the public at the City Clerk's office.
- c. Council shall adopt a Land Allocation Plan that identifies:
 - i. City-owned property available for lease;
 - ii. The property description, lease rate, preferred length of the lease term for each available parcel; and
 - iii. Any requirements, preferences or restrictions regarding use and/or development.
- d. Council may identify property in the Land Allocation Plan that is subject to competitive bidding. Property subject to competitive bidding in the Land Allocation Plan need only identify the property description in the Land Allocation Plan but all other terms required in subsection (c) of this section shall be identified in the request for proposal for such properties.
- e. Prior to the adoption of the Land Allocation Plan, Council shall hold a work session. Commission members and City staff may provide recommendations to Council during the work session regarding City-owned property available for lease and the terms of such leases.
- f. The City shall provide public notice of the adoption of the Land Allocation Plan and the City-owned real property available for lease no more than 60 days after its adoption.
- g. All uses and activities on City-owned real property available for lease are subject to all applicable local, state, and federal laws and regulations.
- h. The Council may restrict specific City-owned properties to certain uses or classes of use that serve the City's best interest.

18.08.030 Standardized leases.

- a. The City Manager shall develop a standardized ground lease that contains provisions generally applicable to the lease of City-owned property and a standardized building lease that contains provisions generally applicable to the lease of space in City-owned buildings. The standard lease documents shall be reviewed by the City Attorney and approved by Council.

- b. Lease terms may deviate from the standardized lease terms when the City Manager determines such deviations are reasonable and necessary to protect the City's best interests and Council approves the lease as required in HCC 18.08.040.

18.08.040 Council approval of leases.

- a. All long-term leases for more than five years shall be approved by Council via ordinance. All long-term leases for five years or less shall be approved by Council via resolution.
- b. The City Manager may execute short-term leases without Council approval when the City Manager determines that a short-term lease is in the best interest of the City and notifies the Council in writing of the short-term lease and its essential terms.
- c. Short-term leases are not required to go through the competitive bidding process unless the short-term lease would result in the lease of City-owned property to the same lessee for more than one consecutive year.
- d. Except as expressly provided in this chapter, property leased by the City from a third party that is available for sublease or the lease of space in City-owned buildings located on real property owned by a third party is exempt from this chapter.

18.08.045 Lease applications.

Except for property subject to competitive bidding under this chapter, persons interested in leasing City property may submit a lease application to the City Clerk. The City Manager shall consider all applications and determine if an application is complete and meets the criteria identified in the Land Allocation Plan. Applicants may be charged a fee for processing a lease application.

18.08.050 Requests for proposals-competitive bidding process.

- a. The City Manager may issue a request for proposals to lease specific property identified in the Land Allocation Plan at any time after posting the notice required in HCC 18.08.020(d).
- b. A request for proposal advertised by the City must identify the property description of the property available for lease, the time frame for the submission of requests for proposals, any preferred uses or industries, and the overall criteria the City intends to use to score and rank proposals.

- 207 c. The City Manager must obtain approval from the Council before requesting proposals
208 to lease property not identified in the Land Allocation Plan as property available for
209 lease.

210
211 18.08.060 Criteria for evaluating and approving proposals.

- 212 a. The Criteria for evaluating proposals shall include, but is not limited to, the following:
- 213 1. Compatibility with neighboring uses and consistency with applicable land use
214 regulations including the Comprehensive Plan.
 - 215 2. The development plan including all phases and timetables.
 - 216 3. The proposed capital investment.
 - 217 4. Experience of the applicant in the proposed business or venture.
 - 218 5. Financial capability or backing of the applicant including credit history, prior lease
219 history, assets that will be used to support the proposed development.
 - 220 6. The number of employees anticipated.
 - 221 7. The proposed rental rate.
 - 222 8. Other financial impacts such as tax revenues, stimulation of related or spin-off
223 economic development, or the value of improvements left behind upon
224 termination of the lease.
 - 225 9. Other long term social economic development.
 - 226 10. The residency or licensure of the applicant in the City, Kenai Peninsula Borough,
227 and/or the State of Alaska, as identified in the City's request for proposal and
228 permitted under state and federal law.

- 229 b. Determination of rent shall take into consideration the following factors:

- 230 1. Appraisal or tax assessed valuation;
- 231 2. Highest and best use of land;
- 232 3. Development (existing and planned);

249 4. Economic development objectives;

251 5. The location of the property; and

253 6. Alternative valuation methodologies as negotiated by both parties.

254
255 18.08.065 Lease application and proposal documents.

256
257 Upon request by the City Manager or as required in a request for proposal, an applicant shall
258 provide, at its sole expense, the following:

259
260 1. A Property Improvement Plan with information regarding planned improvements by
261 lessee, including schedule for commencement and completion of proposed
262 improvements.

263
264 2. A survey of the property subject to the proposed lease; and/or

265
266 3. If only a portion of a lot is to be leased, a subdivision plat.

267
268 18.08.070 Notice to award.

269
270 a. The City Manager shall consider all responses to the City's request for proposals that
271 are timely and responsive. Untimely submissions shall be returned to the applicant
272 without review and that applicant shall not be considered.

273
274 b. The City Manager may, in his or her sole discretion, and upon a determination that none
275 of the proposals are in the City's best interest, recommend rejection of all proposals.

276
277 c. Upon a determination that a proposal is the most advantageous to the City, the City
278 Manager shall recommend the proposal to Council for acceptance. If Council approves
279 the recommendation, the City Manager shall issue a Notice to Award the lease to the
280 successful applicant. The City Manager's recommendation shall be presented to
281 Council in a written memorandum identifying the recommended winning applicant,
282 the property description, the essential terms of the proposed lease, and the reasons the
283 City Manager recommended the award.

284
285 d. The City Manager shall submit any recommendation for approval of a proposal under
286 this chapter for property located on the Homer Spit or in the Marine Commercial or
287 Marine Industrial zoning districts to the Port and Harbor Advisory Commission for
288 review and comment prior to recommending a proposal to Council.

- e. If the Council adopts the City Manager's recommendation, the City Manager shall negotiate with the winning applicant and present a final lease to the Council for approval. A Notice to Award is conditional upon the City Manager's successful negotiation of a final written lease consistent with the terms upon which the award was based.
- f. The City Manager may, with Council approval, rescind a Notice to Award. A Notice to Award becomes void on the date the City Manager provides written notice to the applicant that the award has been rescinded.
- g. The City Manager may rescind a Notice to Award at any time prior to the execution of a lease if an applicant can no longer meet the terms of the proposal.
- h. If the City Manager rescinds a Notice to Award, the City Manager may negotiate with the next most responsive bidder and submit a new recommendation for award to Council and Council may approve the award of the proposal to that recommended bidder. If negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected and a new request for proposal may be issued.
- i. The Council may approve other bidding or proposal procedures or exceptions to these procedures via resolution.

18.08.075 Lease rental rates.

- a. Except as otherwise provided in this section, all property shall be leased at no less than "fair market rent."
- b. Payments of a higher than fair market rent resulting from an applicant's proposal is generally in the public interest and will help to establish fair market rent using current market forces.
- c. The Council may establish a minimum rent or "asking price." It may set a minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.
- d. Except as provided in HCC 18.08.175, Council may approve a lease of City land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

- e. The lease shall provide for payment of interest or a late fee for rent past due, and provide for recovery by the City of attorneys' fees and costs to the maximum extent allowed by law in the event the city is required to enforce the lease in court, and such additional provisions pertaining to defaults and remedies as the City Manager may determine to be in the City's interest.

18.08.080 Lease execution and final approval.

- a. After a notice to award a lease is approved by Council or a lease application is approved by the City Manager, the City Manager is responsible for finalizing and executing the lease agreement with the successful applicant. After Council's approval of the Notice to Award but before Council approval under HCC 18.08.040, the City Manager may negotiate non-essential long-term lease terms and make changes necessary to clarify the terms of the long-term lease or correct clerical errors.
- b. The City Manager has authority to negotiate all terms of short-term leases subject to the provisions of this chapter.
- c. After a lease is executed by both parties, the City Manager shall draft and the City Clerk shall record a memorandum of lease. The Lessee is responsible for the recording fees.

18.080.090 Development and use.

- a. All leases must require the lessee to comply with applicable zoning, parking, sign, flood, and other pertinent local ordinances and state and federal statutes and regulations.
- b. Except as provided otherwise in the lease agreement, an as-built survey including elevations performed by a surveyor shall be provided to the City within six months of completion of permitted or required development or requirements under a lease. Each additional structure or significant improvement shall require an additional or updated as-built. All surveys are to be provided by the lessee at their expense.
- c. Except as provided otherwise in the lease agreement, at the time each as-built is submitted, a statement of value including leaseholds and all improvements shall be provided. The Statement of Value shall be either a letter of opinion or appraisal completed by an appraiser.
- d. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification shall be cause for the lease to be terminated. Failure to enforce the terms of the lease shall not constitute waiver of any such term.

- 374
375 e. The City may require a lease of City-owned property to be secured by any means that
376 meet the City's best interest, including without limitation, a security deposit, surety
377 bond or guaranty.

378
379 18.08.100 Appraisal.

- 380
381 a. An appraisal of the fair market rent of the property will be required before the final
382 approval of a lease and at the time of review and renewal.
383
384 b. The requirement of an appraisal may be waived at the discretion of the City Manager
385 for short-term leases.
386
387 c. All leased properties shall be appraised every five years from the effective date of the
388 lease.
389
390 d. Except as otherwise provided under this section or in a specific lease, lease rates shall
391 be increased on the anniversary of the lease effective date to reflect property appraisal
392 values. A lessee shall be notified of any increase in the appraised value of the property
393 at least 30 days before the increased rental rate becomes effective.
394
395 e. In the event an appraisal reports a decrease in fair market rent, a lessee may petition
396 or the City Manager may recommend to the Council a reduction in the lease rate. The
397 Council may approve a reduction if it determines via resolution that such reduction
398 corresponds with the appraised fair market rent and the reduction is in the City's best
399 interest.
400
401 f. Each year, the City will select and retain an appraiser to appraise all leased parcels due
402 for appraisals in that year. The City will have sole discretion to select the appraiser and
403 shall bear the cost of the appraisal.
404

405 18.08.110 Options to renew.

- 406
407 a. Leases may contain no more than two options for renewal and each option must be
408 for less than 25% of the length of the initial lease term.
409
410 b. A lessee may not exercise an option to renew unless the City Manager determines that
411 the lessee is in full compliance with the terms of the lease at the time of renewal.
412
413 c. A lessee whose initial lease and all options have expired shall have no automatic right
414 of further renewal or extensions.
415

18.08.120 Improvements.

- a. Except as otherwise provided in the lease agreement, construction of improvements shall take place only after review and approval of the construction plans by the City Manager and only after all applicable permits and legal requirements are secured.
- b. Any improvements not consistent with the lease agreement must be approved by Council via resolution and shall only be considered upon recommendation by the City Manager and after review by the Port and Harbor Commission, the Planning Commission, and any other advisory commission determined to be appropriate by the City Manager. Inconsistent improvements may be approved if the changes to the improvements promotes serves the City's best interest and/or when changes are necessary due to industry changes or a change in economic conditions within the city.
- c. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease agreement or agreed to by the parties in writing.
- d. Lessee shall be responsible for all municipal property taxes on the leasehold interest in the real property and improvements and sales taxes on the rent payments.

18.08.130 Lease renewal.

- a. The Council, after reviewing a recommendation from the City Manager, may approve the renewal of a lease without requiring competitive bidding based upon the City Manager's recommendation and when Council finds that it is in the best interest of the City to enter into a new lease agreement with the current lessee without submitting the lease renewal to competitive bidding.
- b. If the current lessee is interested in entering into a new lease agreement under this section, the lessee must issue a request for a new lease in writing to the City Manager at least 12 months prior to the expiration of the lease and submit a formal lease application for evaluation by the City Manager. The City Manager shall notify Council of new lease requests under this section. The City will review the application but is under no obligation to enter into a new lease.
- c. If the Council approves the new lease without a competitive process, it must do so by resolution within six months of the date the lease application is filed with the City.
- d. Council shall consider the following factors when determining whether to exempt a lease from competitive bidding under this subsection:

1. The lessee's past capital investment and binding commitment to future capital investment;
2. The lessee's financial condition and prior lease history;
3. The number of persons employed and the prospect for future employment;
4. Tax revenues and other financial benefits to the City anticipated in the future if the lease is renewed;
5. Consistency of the past use and intended future use with all applicable land use codes and regulations, the Comprehensive Plan, and Overall Economic Development Plan;
6. Other opportunities for use of the property that may provide greater benefit to the City; and,
7. Other social, policy, and economic considerations as determined by the Council.

18.08.140 Sublease.

- a. City property may be subleased if expressly permitted in the lease agreement and approved in writing by Council.
- b. Except as provided otherwise in the lease agreement, all subleases must be in writing and executed by the parties, and approved by Council after a recommendation is provided by the City Manager.
- c. Approval must be granted prior to occupancy of the leased premises by the sub-tenant.
- e. A lessee shall be assessed additional rent, equal to at least 10 percent of the current rent for the subleased area, upon approval of a sublease.
- f. Subleasing shall not be used as a method to accomplish the transfer of interest in the entire leasehold.
- g. All subleases must comply with all relevant federal, state, and local laws.

18.08.150 Early termination.

Except as provided otherwise in the lease agreement, Council shall approve the termination of a lease for failure to comply with the lease terms. The City Attorney shall be consulted prior to the termination of a long-term lease. The City Manager shall seek approval of termination from Council in executive session. The name of lessee and description of the leased property shall not be included in any public notices or documents circulated unless and until Council approves termination of the lease under this section. The City Manager shall notify a lessee in writing that Council will be considering termination of the lease in executive session and provide the date, time, and place of the executive session. Lessee may waive the right to confidentiality under this section and request that Council hold its discussion in public. This section shall not prevent the City from sending lessee or other parties with an interest in the lease notifications or correspondence related to the lease or lessee's compliance with its terms.

18.08.160 Assignment.

- a. Except as provided in the lease agreement, Council must approve the assignment of a lease to another party.
- b. Except as otherwise provided in this subsection and subject to the terms of the lease agreement, the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective. The City Manager may enter into an agreement with an assignor or an assignee consenting to assignment conditional upon payment of any outstanding amount due under the lease no more than 90 after assignment.
- c. Except as otherwise provided in a lease agreement, if the lessee is in good standing and eligible to assign the lease, the following procedures apply:
 1. The lessee shall file a written request for assignment and a new lease application to the City Manager;
 2. The City Manager shall review the request and assignment document(s) and determine whether the proposed assignee is qualified under this chapter and the assignment is in the City's best interests;
 3. The City Manager shall make a recommendation on the assignment to Council for final action; and
 4. The Council shall approve or deny the request for assignment via resolution.
 5. Assignment of long-term leases on the Homer Spit or within the Marine Commercial or Marine Industrial zoning districts shall be reviewed by the Port and

Harbor Advisory Commission prior to submission to Council for approval. Except as otherwise provided in a specific lease agreement, assignment of all other long-term leases shall be reviewed by the Homer Advisory Planning Commission for recommendations prior to Council approval.

d. The Council may approve assignment of a lease to a bank or other financial institutions for financing or other reasons if it determines the assignment is in the best interest of the City and upon recommendation by the City Manager.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the lease lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase.

18.08.170 Insurance.

a. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than \$1 Million coverage per occurrence for bodily injury, including death, and property damage. The City shall be named as an additional insured.

b. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than \$2 Million in Environmental Impact insurance and/or Environmental Clean-up Policy, or the equivalent subject to review and approval by the City Manager. The City shall be named as an additional insured. The City will determine on a case-by-case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.

c. Certificates of Insurance showing the required insurance is in effect and identifying the City as an additional insured shall be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.

d. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

e. A lease agreement may require insurance requirements that exceed those required in this section.

18.08.175 Exception-leasing to government entities.

- 583
- 584 a. Except as otherwise prohibited by law, leases to federal or state government entities or
- 585 political subdivisions or agencies of the State of Alaska or the United States may be,
- 586 upon a finding by Council that it is in the best interest to do so, exempted from the
- 587 requirements of this chapter.
- 588
- 589 b. The City may lease real property to the United States, the State of Alaska, a political
- 590 subdivision of the State, or an agency of any of these entities, for consideration agreed
- 591 upon between the parties for less than fair market rent if the Council determines that
- 592 the lease or license is in the City's best interest.
- 593

594 18.08.180 Assessments – Capital improvement projects.

595

- 596 a. A lessee of City property shall pay all real property special assessments levied and
- 597 assessed against the property to the full extent of installments billed during the term of
- 598 the lease.
- 599
- 600 b. In the event the City completes a capital improvement project which directly benefits
- 601 the leasehold property and no local improvement district is formed to pay the cost
- 602 thereof, the City may, in its sole discretion, impose, and the lessee shall pay as
- 603 additional rent, the leasehold property's proportionate share of the cost of the
- 604 improvement. The amount of additional rent imposed annually by the City under this
- 605 subsection shall not exceed the amount which would have been payable annually by
- 606 the lessee if a local improvement district had been formed which provided for
- 607 installment payments on a schedule and bearing interest at rates typical of other local
- 608 improvement districts of the City for that type of capital improvement.
- 609

610 18.08.190 Connection to utilities.

611

612 A lessee of City real property shall connect to City utilities and bear all costs of connections and

613 adhere to all applicable local, State and Federal regulations. Connections to newly installed

614 City utilities shall be made as soon as possible after completion.

615

616 18.08.195 Processing and filing fees.

617

618 Fees for lease applications, lease fees, sublease and assignment fees, and other related fees

619 shall be established by Council by resolution. Failure to pay fees owed may result in the

620 rejection of a lease application or denial of renewal, assignment or sublease.

621

622 Section 2: This ordinance is of a permanent and general character and shall be included

623 in the Homer City Code.

624

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS __ DAY OF _____, 2018.

CITY OF HOMER

BRYAN ZAK, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and approved as to form:

Mary K. Koester, City Manager

Holly Wells, City Attorney

Date:_____

Date:_____

MEMORANDUM 18-035

**TO: HOMER CITY COUNCIL
CITY MANAGER KATIE KOESTER**

FROM: HOLLY C. WELLS

RE: LEASE POLICY ORDINANCE

CLIENT: CITY OF HOMER

FILE NO.: 506742.24

DATE: MARCH 23, 2018

Introduction

City Council Member Smith and City Council Member Erickson recently requested revisions to the Homer City Code and review of the Homer Lease Policy and Procedures Manual ("Lease Policy Manual") in an effort to ensure that leases between the City of Homer ("City") and other entities were executed in a streamlined manner that was advantageous to the City and incentivized development. To this end, this memorandum provides a summary of the substantial changes proposed in Ordinance No. 18-08 (the "Ordinance") and the reasons underlying these changes.

Introduction

The City's overarching approach to the lease of City land has been a complex process, requiring City staff, potential lessees, and the City Council to navigate the lengthy Lease Policy Manual, the relevant Code provisions, and the request for proposal published by the City regarding the specific property at issue. In many cases, this labyrinth of governing principles and criteria made the lease negotiation and award process confusing and convoluted. The Ordinance proposes a lease process that is more individualized but also requires greater Council oversight and involvement.

Under the Ordinance, Council will approve the lease at two separate stages in the process, at the very least. To this end, Council approves the Notice to Award *and* the lease in its final form. Further, long-term leases for over five years must be approved via ordinance, which ensures a public hearing and two readings on the lease's approval. Council will be able to discuss terms in executive session and thus can be actively engaged in each individual lease, with the exception of leases for six months or less.

Council is also required to approve the lease templates, which is unchanged from the previous lease ordinances and policies.

With Council approval required before and after negotiations, each lease will have a level of oversight equivalent to that of an outside committee, except it will be Council weighing in. Another notable difference is that while the current policy manual provides many of the required provisions, these provisions will now be included only in the lease template and thus Council and the administration will have a greater ability to be flexible with individual lease terms to ensure that they are actually as advantageous to the City and its goals as possible.

Understanding the Proposed Changes

While the above provides a brief summary of the most substantial changes in the Ordinance, the following tables provide a much more detailed summary of the differences between the governing law in this area and the Code provisions proposed in the Ordinance. The first table shows the differences between existing Chapter 18.08 and the Ordinance. The second table shows the ways in which the Lease Policy Manual has been codified and identifies the policies and procedures that have been removed. For ease of reference, the current code is referred as HCC in Table 1 and proposed sections are identified as PHCC. In Table 2, the proposed Code is referred to as HCC since the comparison is between the Lease Policy Manual and the Ordinance. In addition to these tables, a redline comparison of existing HCC 18.08 with the Ordinance accompanies this memorandum.

Table 1

Current HCC Chapter 18.08	The Ordinance
No “Purpose” section	Add PHCC 18.08.005 “Purpose” This section incorporates statements of purpose in the Lease Policy Manual

HCC 18.08.010 Includes Definitions: Lease Property Manual, Sealed bid, and sublease. Sealed bid definition removed because RFP process is negotiation-based and so may need flexibility in process. Lease Property Manual rescinded so definition was unnecessary. Sublease definition unnecessary.	PHCC 18.08.010 Adds definitions: “appraiser” requiring an AK certified appraiser or other qualified professional selected by the City at the cost of the City. “fair market rent” definition added “City Manager” definition added to permit City Manager to delegate authority. “Irregularities” definition added to clarify RFP process and responsiveness. Removes Lease Property Manual, Sealed bid, and sublease definitions.
HCC 18.08.020 “Lease Committee”	Removed.
HCC 18.08.030 “Approval of Lease”	PHCC 18.08.030 “Standardized Leases” codifies lease template requirement and the requirement that the template is reviewed by Council. HCC 18.08.030 moved to PHCC 18.08.040 “Council Approval of Lease”, which now expressly requires Council to approve long-term leases for 5 yrs. or more via ordinance & long-term leases under 5 yrs. via resolution. PHCC 18.08.070 requires Council approval of the Notice to Award and after negotiations as reiterated in PHCC 18.08.080.
HCC 18.08.040 (Property available for leasing)	Moved to PHCC 18.08.020 “Property available for leasing” to reorganize the Code to reflect the order of the leasing process. The Land Allocation Plan requirements from the Lease Policy Manual were incorporated into this section. Land Allocation process clarified to make clear that leases identified in Land Allocation Plan are leased by the completion of a lease application unless a competitive bidding process is expressly required by Council or used by the City Manager.
No lease application section currently in HCC 18.08	PHCC 18.08.045 “Lease application” codifies requirement that a lease application be completed to be eligible to lease City property identified in the Land Allocation Plan.

HCC 18.08.050 “Qualification of Applicants”	Removed. These requirements better suited for lease template and individual leases.
HCC 18.08.060 “Application to Lease”	Removed; Any such requirement is best included in an RFP or by policy. Fee schedule still affords application fee payment. PHCC 18.08.060 “Criteria for evaluating and approving proposals” added and incorporates criteria from Lease Policy Manual.
18.08.070 “Terms of Lease”	Removed. City Manager will negotiate terms of the lease at and as a result of the RFP tailored to the property at issue and subject to Council approval. PHCC 18.08.070(d) “Notice to award” provides the details of the Notice to award process and expands Council’s role in this process. Provides City Manager to rescind a notice to award where an applicant is unable to meet the terms of its proposal but otherwise now requires the City Manager to receive Council approval before rescinding an award.
HCC 18.08.080 “Appraisal” Requires appraisal when lease approved or renewed by a certified appraisal and permits “Lease Committee” to waive appraisal for short-term leases.	Moved to PHCC 18.08.100. Incorporates 5 yr. appraisal requirements from Lease Policy Manual. PHCC 18.08.080 “Lease execution and final approval” includes express final approval process for leases.
HCC 18.08.090 “Requirements of lease” Required plats and as-built surveys unless the Lease Committee waived the requirement.	PHCC 18.08.090 “Development and use” Incorporates as-built and survey requirements unless the specific lease agreement provides otherwise.
HCC 18.08.100 “Improvements”	Moved to PHCC 18.08.120 and incorporates obligations provided in the Lease Policy Manual. Language clarified.
HCC 18.08.110 “Lease Option”	Incorporated “option” requirements from Lease Policy Manual.

HCC 18.08.120 “Sublease”	Moved to PHCC 18.08.140. Lease Policy Manual incorporated into section and sublease process subject to terms of lease given the nature of some leases in the City, which involve routine subleases. Changed 10% sublease payment requirement to “no less than 10%” to provide the City flexibility.
HCC 18.08.130 “Assignment”	Moved to PHCC 18.08.160. Assignment permitted with Council approval but also as provided in a specific lease. Incorporated Lease Policy Manual requirements and the specific process for applying for an assignment. Now requires Commission recommendations regarding an assignment.
HCC 18.08.140 “Competitive Bidding”	Moved to PHCC 18.08.050. The new section permits the City Manager to issue RFPs regarding land identified by Council as available for lease in the Land Allocation Plan and incorporates relevant requirements from the Lease Policy Manual. Statements of the right to reject bids and others have been incorporated in PHCC 18.08.070 “Notice to Award.” This section also differentiates between the leases identified in the Land Allocation Plan for lease and the terms of lease that don’t require a separate RFP and recognizes Council’s authority to identify these properties and set the terms of lease during the Land Allocation process.
HCC 18.08.150 “Reconsideration”	Removed. Additional Council oversight during the process makes this provision burdensome.
HCC 18.08.160 “Property Management Policy and Procedures Manual”	Removed. No more manual.
HCC 18.08.170 Exceptions-Financial transactions.	Removed. This is unnecessary as the chapter permits Council to exempt a lease from the bidding process and the City Manager has to secure Council approval for leases not on the Lease Allocation Plan.
HCC 18.08.175 “Exception-Leasing to the Federal or State government”	Moved to PHCC 18.08.175 “Exception-Leasing to government entities” clarifies the language but retains the exemption.

HCC 18.08.180 “Assessments-Capital Improvement Projects”	Remains substantially unchanged.
HCC 18.08.190 “Connection to utilities”	Remains substantially unchanged.
HCC 18.08.200 “Fee Schedule”	Moved to PHCC 18.08.195 “Processing and filing fees” incorporates potential for denial of application or approval of lease due to unpaid fees.
HCC 18.08 Does not have a provision requiring Council approval for termination.	PHCC 18.08.050 ‘Early termination’ requires the City Manager to notify the City Council at least 90 days before terminating a lease prior to the expiration of the lease term unless the lease provides otherwise.

Table 2

Lease Policy Manual	The Ordinance
Chapter 1 “Lease Policies/Goals, Purpose, and Responsibility”	General purpose statement located in proposed HCC 18.08.005. Responsibilities re: review and Council approval in HCC 18.08.040; 18.08.150 18.08.070(c)(f); and 18.08.080.
Chapter 2: Lease Committee	The Lease Committee was comprised of City Staff. Replaced references to Lease Committee with references to the City Manager and additional layers of Council oversight.
Chapter 3: Properties Available for Lease	Land Allocation Plan process codified at HCC 18.08.020.
Chapter 4: RFP Process/Competitive Bidding	HCC 18.08.050.

Chapter 5: Lease Application Process	Removed. A responsive lease proposal will be responsive based upon the RFP and not the lease application so this chapter is misleading. The City need not codify the existence or use of an application. The creation of an “application” process separate from the RFP, assignment or renewal process is confusing.
Chapter 6: Application/Proposal Evaluation Process	Application process has been removed. City may require lease application in the RFP requirements or, as applied to short term leases, as a matter of policy. The fees associated with the processing of an application is permitted in HCC 18.08.195.
Chapter 7: Lease Rental Rates	HCC 18.08.075; HCC 18.08.060
Chapter 8: Reconsideration	Removed. The lease process now involves Council approval when a Notice to Award is issued <i>and</i> prior to final approval of the lease itself. Council also approves the rescission of an award. These additional levels of review by Council negate the need for yet another point of review, which would make the lease process unduly burdensome for both City officials and applicants.
Chapter 9: Lease Implementation	HCC 18.08.030 (lease templates approved by Council); HCC 18.08.090 (As-built and development requirements); and 18.08.050-070 (RFP process and negotiations)
Chapter 10: Improvements	HCC 18.08.120
Chapter 11: Length of Leases/Options	HCC 18.08.110
Chapter Lease Rate Adjustments	HCC 18.08.100 (appraisal process still required but generalized requirements to afford City flexibility in retaining the appraiser. Qualifications of appraiser moved to definitions.) The CPI requirement imposed upon lessees was removed.

Chapter 13: Subleasing	HCC 18.08.140 (subleasing requirements retained payment requirement of 10% but added flexibility for City to charge more; Council approval retained but flexibility to exempt a sublease from such approval in the lease added.) Other more specific sublease terms more appropriate in Council approved lease template and individual RFPs and resulting leases.
Chapter 14: Assignment	HCC 18.08.060 (assignment still requires Council approval but flexibility codified that permits the City to deviate from the Code requirements in specific lease agreements. This change is justified by the additional layer of Council oversight added.) Additionally, assignment terms are more appropriately included in the Council approved lease template.
Chapter 15: Insurance	HCC 18.08.170 (more specific requirements are more appropriately included in the leases and in Council approved lease templates.)
Chapter 16: Hazardous Materials	Removed. Hazardous materials provisions are generally included in leases themselves as the terms depend heavily on the nature of the use.
Chapter 17: Performance Standards	HCC 18.08.090 (recognizes strict enforcement of performance standards in lease) Removed. Performance standards are generally included in leases themselves as the terms depend heavily on the nature of the use and performance negotiated. Also, these standards are incorporated into Council approved lease template.
Chapter 18: Conclusion of Lease	HCC 18.08.120 (codifies improvements become property of the City unless otherwise specified in writing but other specific requirements regarding improvements have been removed. Such provisions are more appropriate in specific leases and lease template.)

Conclusion

While this memorandum attempts to identify the changes between the existing Lease Policy and the proposed Lease Policy, the Ordinance presents significant changes to the structure of the City's process that is not easily capsulated in a memo. For this reason, I have also attached a redline version comparing current HCC Chapter 18.08 with the Ordinance. The redline document along with the above tables should provide the level of detail necessary to fully understand the Ordinance.

**REDLINE COMPARISON OF EXISTING HCC 18.08 WITH
PROPOSED HCC 18.08 IN ORDINANCE 18-16**

Note to Readers: It is worth noting that, as a byproduct of redline comparisons, it often appears that entire sections have been repealed when the sections have only been renumbered or relocated. For this reason, I recommend reviewing the entire reenactment contemporaneously with the tables included in Memorandum 18-035.

Chapter 18.08

CITY PROPERTY LEASES

Sections:

18.08.005 Purpose.
18.08.010- Definitions.
18.08.020 Land Allocation Plan - property available for lease.
18.08.030 Standardized leases.
18.08.040 Council approval of lease.
18.08.045 Lease applications.
18.08.050 Requests for proposals-competitive bidding process.
18.08.060 Criteria for evaluating and approving proposals.
18.08.065 Lease application and proposal documents.
18.08.070 Notice to award.
18.08.075 Lease rental rates.
18.08.080 Lease execution and final approval.
18.08.090 Development and use.
18.08.100 Appraisal.
18.08.110 Options to renew.
18.08.120 Improvements.
18.08.130 Lease renewal.
18.08.140 Sublease.
18.08.150 Early termination.
18.08.160 Assignments.
18.08.170 Insurance.
18.08.175 Exception – Leasing to government entities.
18.08.180 Assessments – Capital improvement projects.
18.08.190 Connection to utilities.
18.08.195 Processing and filing fees.

18.08.005 Purpose.

The purpose of this chapter is to ensure that the lease of City-owned property maximizes the value of City assets and that the City awards leases that provide the highest and best use of City-owned property. It is the policy of the City to lease its property in a fair and nondiscriminatory way.

1
2 18.08.010 Definitions.
3

4 For the purpose of ~~the~~this chapter, the following words and phrases are defined as
5 set forth in this section:
6

7 “Applicant” means a person applying to lease or ~~use~~acquire an interest in City-
8 owned real property and includes bidders and proposers.
9

10 “Appraisal” means a valuation or estimation of value of property by ~~disinterested~~
11 ~~persons of suitable qualifications~~an Alaska Certified General Real Estate Appraiser
12 or an otherwise qualified appraiser selected by the City Manager.
13

14 “Assignment” means a transfer of a leasehold interest or ~~making overrights~~ to
15 ~~another of the whole of any a~~ leasehold interest, in its entirety, in City-owned real
16 property, ~~real,~~
17

18 “City Manager” means the City of Homer Manager or ~~personal, in possession~~his or
19 ~~in action, her~~ designee
20

21 “Fair market rent” means the rental income that a public or private property would
22 most likely command in the open market, indicated by the current rents paid for
23 comparable space as ~~of any estate or right therein.~~the date of the appraisal
24

25 “Lease” means an

26 “Irregularities” means deviations from the request for proposal that are not
27 substantive in nature and/or involve typographical or scrivener errors that do not
28 impact the integrity or responsiveness of the proposal.
29

30 “Long-term lease” means a written agreement granting exclusive possession or use of City-
31 owned real property for more than one year.
32

33 “Short-term lease” means a written agreement granting exclusive possession or use
34 of City-owned real property for one year or less.
35

36 “Surveyor” means a registered professional land ~~and/or location for a specific~~
37 ~~period of time in accordance with specific terms~~surveyor.
38

39 “Property Management Policy and Procedures Manual” means the manual adopted pursuant to
40 HCC.
41

42 “Sealed bid” or “sealed proposal” means a method of competitive bidding for a lease whereby

1 ~~each party interested in leasing City property submits a proposal in a sealed envelope and all~~
2 ~~such proposals are opened at the same time. The proposal most favorable to the City is selected~~
3 ~~for negotiation for a lease.~~

4
5 ~~“Sublease” means a lease or rental executed by the lessee of an estate to a third person, conveying~~
6 ~~the same estate or a portion of it, for a term equal to or shorter than that for which the lessee~~
7 ~~holds it.~~

8
9 **~~18.08.020 Lease Committee.~~**

10 ~~The City Council shall establish the formation of the Lease Committee and its duties by~~
11 ~~resolution as reflected in the Property Management Policy and Procedures Manual.~~

12
13 **~~18.08.030 Approval of lease.~~**

14 ~~a. No lease shall be executed until the City Council has approved, with or without~~
15 ~~modifications, the Lease Committee’s recommendation.~~

16
17 ~~b. Except as provided in HCC 18.08.175, the City Council may approve a lease of City land~~
18 ~~for less than fair rental value only if the motion approving the lease contains a finding that the~~
19 ~~lease is for a compelling public purpose or use, and a statement of facts upon which the finding~~
20 ~~is based.~~

21
22 ~~c. The City Council gives the City Manager the authority to execute short term leases of~~
23 ~~six months or less pursuant to the Property Management Policy and Procedures Manual.~~

24
25 **~~18.08.040 Property Land Allocation Plan-property~~ available for ~~leasing~~lease.**

26
27 a. Unless dedicated or reserved to another purpose, all real property including
28 tide, submerged or shorelands to which the City has a right, title and interest
29 as owner or lessee, or to which the City may become entitled, may be leased
30 as provided in this chapter. In the case of any conflict between this chapter
31 and any regulations or other ordinances or State law specifically governing
32 the leasing of City tide and submerged lands, the latter shall prevail.

33
34 b. The City administration shall maintain a list of all City-owned properties
35 authorized for lease by Council. This list shall be adopted annually and
36 contain the information required under this chapter. The list may be called

1 the Land Allocation Plan and will be made available to the public at the City
2 Clerk's office.

3
4 c. Council shall adopt a Land Allocation Plan that identifies:

5
6 i. City-owned property available for lease;

7 ii. The property description, lease rate, preferred length of the lease term
8 for each available parcel; and

9 iii. Any requirements, preferences or restrictions regarding use and/or
10 development.

11
12 d. Council may identify property in the Land Allocation Plan that is subject to
13 competitive bidding. Property subject to competitive bidding in the Land
14 Allocation Plan need only identify the property description in the Land
15 Allocation Plan but all other terms required in subsection (c) of this section
16 shall be identified in the request for proposal for such properties.

17
18 e. Prior to the adoption of the Land Allocation Plan, Council shall hold a work
19 session. Commission members and City staff may provide
20 recommendations to Council during the work session regarding City-owned
21 property available for lease and the terms of such leases.

22
23 f. The City shall provide public notice of the adoption of the Land Allocation
24 Plan and the City-owned real property available for lease no more than 60
25 days after its adoption.

26
27 g. All uses and activities on City-owned real property available for lease are
28 subject to all applicable local, state, and federal laws and regulations.

29
30 h. The Council may restrict specific City-owned properties to certain uses or
31 classes of use that serve the City's best interest.

32
33 18.08.030 Standardized leases.

34
35 a. The City Manager shall develop a standardized ground lease that contains
36 provisions generally applicable to the lease of City-owned property and a
37 standardized building lease that contains provisions generally applicable to
38 the lease of space in City-owned buildings. The standard lease documents
39 shall be reviewed by the City Attorney and approved by Council.

40
41 b. Lease terms may deviate from the standardized lease terms when the City
42 Manager determines such deviations are reasonable and necessary to protect
43 the City's best interests and Council approves the lease as required in HCC
44 18.08.040.

45
46 18.08.040 Council approval of leases.

- 1
- 2 a. All long-term leases for more than five years shall be approved by Council
- 3 via ordinance. All long-term leases for five years or less shall be approved
- 4 by Council via resolution.
- 5
- 6 b. The City Manager may execute short-term leases without Council approval
- 7 when the City Manager determines that a short-term lease is in the best
- 8 interest of the City and notifies the Council in writing of the short-term lease
- 9 and its essential terms.
- 10
- 11 c. Short-term leases are not required to go through the competitive bidding
- 12 process unless the short-term lease would result in the lease of City-owned
- 13 property to the same lessee for more than one consecutive year.
- 14
- 15 d. Except as expressly provided in this chapter, property leased by the City
- 16 from a third party that is available for sublease or the lease of space in City-
- 17 owned buildings located on real property owned by a third party is exempt
- 18 from this chapter.
- 19

20 18.08.045 Lease applications.

21

22 Except for property subject to competitive bidding under this chapter, persons

23 interested in leasing City property may submit a lease application to the City Clerk.

24 The City Manager shall consider all applications and determine if an application is

25 complete and meets the criteria identified in the Land Allocation Plan. Applicants

26 may be charged a fee for processing a lease application.

27

28 18.08.050 ~~Qualification of applicants~~Requests for proposals-competitive bidding

29 process.

30

30 An

- 31 a. The City Manager may issue a request for proposals to lease specific
- 32 property identified in the Land Allocation Plan at any time after posting the
- 33 notice required in HCC 18.08.020(d).
- 34
- 35 b. A request for proposal advertised by the City must identify the property
- 36 description of the property available for lease, the time frame for the
- 37 submission of requests for proposals, any preferred uses or industries, and
- 38 the overall criteria the City intends to use to score and rank proposals.
- 39
- 40 c. The City Manager must obtain approval from the Council before requesting
- 41 proposals to lease property not identified in the Land Allocation Plan as
- 42 property available for lease.
- 43

44 18.08.060 Criteria for evaluating and approving proposals.

45

a. The Criteria for evaluating proposals shall include, but is not limited to, the following:

1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan.

2. The development plan including all phases and timetables.

3. The proposed capital investment.

4. Experience of the applicant ~~for lease is qualified if in the proposed~~ business or venture.

~~4.5.~~Financial capability or backing of the applicant ~~is including credit history, prior lease history, assets that will be used to support the proposed development.~~

~~6. A natural person and is responsible, meaning~~The number of employees anticipated.

7. The proposed rental rate.

8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease.

9. Other long term social economic development.

~~a. —The residency or licensure of the applicant has sufficient skill, experience and financial capability to perform all the obligations of the lessee under the proposed lease; and~~

~~b. A person who is at least 19 years of age; or~~

~~c. —A group, association or corporation which is authorized to conduct business under the laws of the in the City, Kenai Peninsula Borough, and/or the State of Alaska.~~

~~18.08.060 Application to lease.~~

~~All prospective applicants for lease of City property shall file an application to lease with the City Clerk on a form available at the City Hall during regular business hours. No person may submit a bid or proposal on a City lease without having properly filed an application for lease in accordance with the guidelines incorporated in the Property Management Policy and Procedures Manual and paid all applicable fees.~~

1
2 ~~18.08.070 Terms of lease.~~

3 ~~a. The terms of a lease shall be recommended by the Lease Committee.~~

4
5 ~~b. Terms of leases shall be negotiated taking into consideration the following factors:~~

6 ~~1. Nature of the proposed use;~~

7
8 ~~2. Type and cost of improvement to be placed upon the premises;~~

9
10 ~~3. Period of time required to amortize the improvements;~~

11
12 ~~4. Benefit to the City;~~

13
14 ~~5. Whether improvements are consistent with the Comprehensive Plan, Homer~~
15 ~~zoning ordinances and other City codes;~~

16
17 ~~6. Public needs and benefits;~~

18
19 ~~7. Other factors deemed relevant by the Lease Committee; and~~

20
21 ~~2.10. Date of commencement and completion of improvements, as~~
22 ~~identified in the City's request for proposal and permitted under state~~
23 ~~and federal law.~~

24
25 ~~a.b.~~ Determination of rent shall take into consideration the following factors:

26
27 1. Appraisal or tax assessed valuation;

28
29 2. Highest and best use of land;

30
31 3. Development (existing and planned);

32
33 4. Economic development objectives;

34
35 5. The location of the property; and

36
37 6. Alternative valuation methodologies as negotiated by both parties.

1
2 ~~c. All leases or memorandums of leases shall be recorded.~~
3

4 The lessee and the 18.08.065 Lease Committee may negotiate all lease terms except
5 those application and proposal documents.
6

7 ~~d. Upon request by the City Manager or as required by law.~~
8

9 18.08.080 Appraisal.

10 ~~a. An appraisal of the fair market value or fair rental value of the property will be required~~
11 ~~before the original approval of a lease and at the time of review and renewal. The appraisal can~~
12 ~~be made by an independent contractor or the Kenai Peninsula Borough Assessor as negotiated~~
13 ~~in the lease agreement.~~
14

15 ~~b. The requirement of an appraisal may be waived at the discretion of the Lease Committeea~~
16 ~~request for leases for six months or less.~~
17

18 18.08.090 Requirements of the lessee.

19 ~~A proposed lessee proposal, an applicant shall provide, at its sole expense, the~~
20 ~~following unless waived by the Lease Committee in its discretion:~~
21

22 ~~1. A Property Improvement Plan. The proposed lessee shall submit a~~
23 ~~property improvement plan that includes a with information regarding~~
24 ~~planned improvements by lessee, including schedule for~~
25 ~~commencement and completion of proposed improvements.~~
26

27 ~~Survey. The lessee shall submit a~~ 2. A survey of the landproperty subject to
28 the proposed lease after Homer City Council approval of the lease;
29 and/or
30

31 ~~Plat~~ 3. If only a portion of a lot is to be leased, the lessee shall cause a
32 subdivision plat to be filed in accordance with Kenai Peninsula Borough
33 subdivision requirements within 90 days after Homer.
34

35 18.08.070 Notice to award.

36
37 a. The City Council approval of the lease Manager shall consider all responses
38 to the City's request for proposals that are timely and responsive. Untimely
39 submissions shall be returned to the applicant without review and that
40 applicant shall not be considered.
41

- 1 b. The City Manager may, in his or her sole discretion, and upon a
2 determination that none of the proposals are in the City's best interest,
3 recommend rejection of all proposals.
4
5 c. Upon a determination that a proposal is the most advantageous to the City,
6 the City Manager shall recommend the proposal to Council for acceptance.
7 If Council approves the recommendation, the City Manager shall issue a
8 Notice to Award the lease to the successful applicant. The City Manager's
9 recommendation shall be presented to Council in a written memorandum
10 identifying the recommended winning applicant, the property description,
11 the essential terms of the proposed lease, and the reasons the City Manager
12 recommended the award.
13
14 d. The City Manager shall submit any recommendation for approval of a
15 proposal under this chapter for property located on the Homer Spit or in the
16 Marine Commercial or Marine Industrial zoning districts to the Port and
17 Harbor Advisory Commission for review and comment prior to
18 recommending a proposal to Council.
19
20 e. If the Council adopts the City Manager's recommendation, the City
21 Manager shall negotiate with the winning applicant and present a final lease
22 to the Council for approval. A Notice to Award is conditional upon the City
23 Manager's successful negotiation of a final written lease consistent with the
24 terms upon which the award was based.
25
26 f. The City Manager may, with Council approval, rescind a Notice to Award.
27 A Notice to Award becomes void on the date the City Manager provides
28 written notice to the applicant that the award has been rescinded.
29
30 g. The City Manager may rescind a Notice to Award at any time prior to the
31 execution of a lease if an applicant can no longer meet the terms of the
32 proposal.
33
34 h. If the City Manager rescinds a Notice to Award, the City Manager may
35 negotiate with the next most responsive bidder and submit a new
36 recommendation for award to Council and Council may approve the award
37 of the proposal to that recommended bidder. If negotiations with the next
38 most responsive bidder are unsuccessful, all bids must be rejected and a new
39 request for proposal may be issued.
40
41 i. The Council may approve other bidding or proposal procedures or
42 exceptions to these procedures via resolution.
43
44

45 18.08.075 Lease rental rates.
46

- 1 a. Except as otherwise provided in this section, all property shall be leased at
2 no less than “fair market rent.”
3
4 b. Payments of a higher than fair market rent resulting from an applicant’s
5 proposal is generally in the public interest and will help to establish fair
6 market rent using current market forces.
7
8 c. The Council may establish a minimum rent or “asking price.” It may set a
9 minimum rent at an amount equal to or higher than the estimated “fair
10 market rent” if it finds that it is in public interest to do so. It may set uniform
11 rental rates for a class of similar properties that remain available for leasing
12 after the conclusion of a competitive lease offering.
13
14 d. Except as provided in HCC 18.08.175, Council may approve a lease of City
15 land for less than fair market rent only if the motion approving the lease
16 contains a finding that the lease is for a valuable public purpose or use, and
17 a statement identifying such public purpose or use.
18
19 e. The lease shall provide for payment of interest or a late fee for rent past due,
20 and provide for recovery by the City of attorneys’ fees and costs to the
21 maximum extent allowed by law in the event the city is required to enforce
22 the lease in court, and such additional provisions pertaining to defaults and
23 remedies as the City Manager may determine to be in the City’s interest.
24

25 18.08.080 Lease execution and final approval.
26

- 27 a. After a notice to award a lease is approved by Council or a lease application
28 is approved by the City Manager, the City Manager is responsible for
29 finalizing and executing the lease agreement with the successful applicant.
30 After Council’s approval of the Notice to Award but before Council
31 approval under HCC 18.08.040, the City Manager may negotiate non-
32 essential long-term lease terms and make changes necessary to clarify the
33 terms of the long-term lease or correct clerical errors.
34
35 b. The City Manager has authority to negotiate all terms of short-term leases
36 subject to the provisions of this chapter.
37
38 c. After a lease is executed by both parties, the City Manager shall draft and
39 the City Clerk shall record a memorandum of lease. The Lessee is
40 responsible for the recording fees.
41

42 18.080.090 Development and use.
43

- 44 a. All leases must require the lessee to comply with applicable zoning,
45 parking, sign, flood, and other pertinent local ordinances and state and
46 federal statutes and regulations.

- 1
2 b. Except as provided otherwise in the lease agreement, an as-built survey
3 including elevations performed by a surveyor shall be provided to the City
4 within six months of completion of permitted or required development or
5 requirements under a lease. Each additional structure or significant
6 improvement shall require an additional or updated as-built. All surveys are
7 to be provided by the lessee at their expense.
8
9 c. Except as provided otherwise in the lease agreement, at the time each as-
10 built is submitted, a statement of value including leaseholds and all
11 improvements shall be provided. The Statement of Value shall be either a
12 letter of opinion or appraisal completed by an appraiser.
13
14 d. All development requirements and performance standards contained in the
15 lease shall be strictly enforced and if not complied with or negotiated for
16 modification shall be cause for the lease to be terminated. Failure to enforce
17 the terms of the lease shall not constitute waiver of any such term.
18
19 e. The City may require a lease of City-owned property to be secured by any
20 means that meet the City's best interest, including without limitation, a
21 security deposit, surety bond or guaranty.
22

23 18.08.100 Appraisal.
24

- 25 a. An appraisal of the fair market rent of the property will be required before
26 the final approval of a lease and at the time of review and renewal.
27
28 b. The requirement of an appraisal may be waived at the discretion of the City
29 Manager for short-term leases.
30
31 c. All leased properties shall be appraised every five years from the effective
32 date of the lease.
33
34 d. Except as otherwise provided under this section or in a specific lease, lease
35 rates shall be increased on the anniversary of the lease effective date to
36 reflect property appraisal values. A lessee shall be notified of any increase
37 in the appraised value of the property at least 30 days before the increased
38 rental rate becomes effective.
39
40 e. In the event an appraisal reports a decrease in fair market rent, a lessee may
41 petition or the City Manager may recommend to the Council a reduction in
42 the lease rate. The Council may approve a reduction if it determines via
43 resolution that such reduction corresponds with the appraised fair market
44 rent and the reduction is in the City's best interest.
45

- 1 f. Each year, the City will select and retain an appraiser to appraise all leased
2 parcels due for appraisals in that year. The City will have sole discretion to
3 select the appraiser and shall bear the cost of the appraisal.

4
5 18.08.110 Options to renew.

- 6
7 a. Leases may contain no more than two options for renewal and each option
8 must be for less than 25% of the length of the initial lease term.
9
10 b. A lessee may not exercise an option to renew unless the City Manager
11 determines that the lessee is in full compliance with the terms of the lease
12 at the time of renewal.
13
14 c. A lessee whose initial lease and all options have expired shall have no
15 automatic right of further renewal or extensions.

16
17 18.08.120 Improvements.

18 ~~Construction of Improvements. Construction~~

- 19 a. Except as otherwise provided in the lease agreement, construction of
20 improvements shall take place only after review and –approval of the
21 construction plans by the ~~Lease Committee for consistency with the lease~~
22 ~~agreement~~City Manager and only after all applicable permits and legal
23 requirements are secured.
24
25 b. ~~Construction of Improvements Not Consistent with the Lease Agreement.~~
26 Any improvements not consistent with the lease agreement ~~shall~~must be
27 ~~construed only after having been reviewed and~~ approved by Council via
28 resolution and shall only be considered upon recommendation by the City
29 ~~Council~~Manager and after review ~~and comment by the Lease Committee,~~by
30 the Port and Harbor Commission, the Planning Commission, and any other
31 advisory commission determined to be appropriate by the ~~Lease~~
32 ~~Committee.~~City Manager. Inconsistent improvements may be approved if
33 the changes to the improvements promotes serves the City’s best interest
34 and/or when changes are necessary due to industry changes or a change in
35 economic conditions within the city.

36
37 ~~a. — Removal of Improvements upon Termination. The City Council standards for removal of~~
38 ~~improvements are set by resolution, as reflected in the Property Management Policy and~~
39 ~~Procedures Manual.~~

40
41 ~~18.08.110 Lease option.~~

42 ~~The City may grant an option to lease property. The option shall contain the specific duration and~~
43 ~~terms as set forth in a request for proposal or as negotiated by the Lease Committee and approved~~
44 ~~by the City Council.~~

1 ~~The City may charge a nonrefundable fee for the option and said fee may be equal to the fair~~
2 ~~rental value.~~

3 c. All improvements constructed upon leased property become the property of
4 the City upon termination of the lease unless otherwise provided in the lease
5 agreement or agreed to by the parties in writing.

6
7 d. Lessee shall be responsible for all municipal property taxes on the leasehold
8 interest in the real property and improvements and sales taxes on the rent
9 payments.

10
11 18.08.130 Lease renewal.

12
13 a. The Council, after reviewing a recommendation from the City Manager,
14 may approve the renewal of a lease without requiring competitive bidding
15 based upon the City Manager's recommendation and when Council finds
16 that it is in the best interest of the City to enter into a new lease agreement
17 with the current lessee without submitting the lease renewal to competitive
18 bidding.

19
20 b. If the current lessee is interested in entering into a new lease agreement
21 under this section, the lessee must issue a request for a new lease in writing
22 to the City Manager at least 12 months prior to the expiration of the lease
23 and submit a formal lease application for evaluation by the City Manager.
24 The City Manager shall notify Council of new lease requests under this
25 section. The City will review the application but is under no obligation to
26 enter into a new lease.

27
28 c. If the Council approves the new lease without a competitive process, it must
29 do so by resolution within six months of the date the lease application is
30 filed with the City.

31
32 d. Council shall consider the following factors when determining whether to
33 exempt a lease from competitive bidding under this subsection:

34
35 1. The lessee's past capital investment and binding commitment to future
36 capital investment;

37
38 2. The lessee's financial condition and prior lease history;

39
40 3. The number of persons employed and the prospect for future
41 employment;

42
43 4. Tax revenues and other financial benefits to the City anticipated in the
44 future if the lease is renewed;
45

1 5. Consistency of the past use and intended future use with all applicable
2 land use codes and regulations, the Comprehensive Plan, and Overall
3 Economic Development Plan;

4
5 6. Other opportunities for use of the property that may provide greater
6 benefit to the City; and,

7
8 7. Other social, policy, and economic considerations as determined by the
9 Council.

10
11 18.08.~~120~~140 Sublease.

12
13 a. City property may be subleased ~~only~~ if expressly permitted in the lease
14 agreement ~~so provides~~ and ~~only with the consent of the City~~approved in
15 writing by Council.

16
17 b. ~~A sublease of City property shall be subject to Homer City Council approval~~
18 ~~and shall~~ Except as provided otherwise in the lease agreement, all subleases
19 must be in writing and executed by the parties. ~~Any amendments to a~~
20 ~~sublease shall also be in writing, and subject to City approved by~~ Council
21 ~~approval~~after a recommendation is provided by the City Manager.

22
23 ~~b.c.~~c. Approval must be granted prior to ~~becoming effective~~occupancy of the
24 leased premises by the sub-tenant.

25
26 ~~e.e.~~e. A lessee shall be assessed additional rent, equal to at least 10 percent of the
27 current rent for the subleased area, upon approval of a sublease.

28
29 ~~18.08.130 Lease assignment.~~

30 ~~A lessee may assign a lease to another party subject to approval by the City Council and the~~
31 ~~procedures set forth in the Property Management Policy and Procedures Manual.~~

32
33 ~~18.08.140 Competitive bidding.~~

34 ~~The Lease Committee or the City Council may elect to require the submission of sealed bids~~
35 ~~to lease City property or facilities. The competitive bidding process shall be administered by~~
36 ~~the Lease Committee. The apparent successful bidder shall be selected to negotiate the terms~~
37 ~~of a lease, but shall have no right to a lease or any other property right until a lease is~~
38 ~~successfully negotiated, approved by the City Council, and signed by the parties.~~

1 ~~18.08.150 Reconsideration.~~

2 ~~A lessee may request reconsideration by the Homer City Council of the terms of the lease within~~
3 ~~15 days of City Council action on the lease. The reconsideration procedures set forth in the~~
4 ~~Property Management Policy and Procedures Manual shall be applied in the event of a~~
5 ~~reconsideration. [Ord. 92-10, 1992].~~

6
7 ~~18.08.160 Property Management Policy and Procedures Manual.~~

8 ~~a. — The City Council shall adopt by resolution a Property Management Policy and Procedures~~
9 ~~Manual. Leasing and use permits of City land and facilities shall conform to the manual except~~
10 ~~to the extent it shall be in conflict with this code or any relevant ordinance later adopted, in which~~
11 ~~case the provisions of this code and later ordinances shall prevail over the provisions of the~~
12 ~~manual.~~

13
14 ~~b. — The Property Management Policy and Procedures Manual may be revised by City Council~~
15 ~~resolution.~~

16
17 ~~c. — A copy of the Property Management Policy and Procedures Manual shall be available to~~
18 ~~the public during normal working hours at City Hall.~~

19
20 ~~18.08.170 Exceptions — Financing transactions.~~

21 ~~The procedures set forth in this chapter do not apply to sales, purchases or leases entered into by~~
22 ~~the City as a part of a financing transaction in which the City is acquiring or disposing of~~
23 ~~municipal property for municipal purposes through the use of lease/leaseback arrangements or~~
24 ~~the lease/purchase mechanisms. The formal procedure with respect to these financing leases and~~
25 ~~the related purchase and sale of land and interests in land shall be by an ordinance of the City~~
26 ~~Council authorizing the financing transaction.~~

27
28 ~~f. 18.08.175 Exception — Leasing to the Federal or StateSubleasing shall~~
29 ~~not be used as a method to accomplish the transfer of interest in the entire~~
30 ~~leasehold.~~

31
32 ~~g. All subleases must comply with all relevant federal, state, and local laws.~~

33
34 ~~18.08.150 Early termination.~~

35
36 ~~Except as provided otherwise in the lease agreement, Council shall approve the~~
37 ~~termination of a lease for failure to comply with the lease terms. The City Attorney~~
38 ~~shall be consulted prior to the termination of a long-term lease. The City Manager~~
39 ~~shall seek approval of termination from Council in executive session. The name of~~

1 lessee and description of the leased property shall not be included in any public
2 notices or documents circulated unless and until Council approves termination of
3 the lease under this section. The City Manager shall notify a lessee in writing that
4 Council will be considering termination of the lease in executive session and
5 provide the date, time, and place of the executive session. Lessee may waive the
6 right to confidentiality under this section and request that Council hold its
7 discussion in public. This section shall not prevent the City from sending lessee or
8 other parties with an interest in the lease notifications or correspondence related to
9 the lease or lessee's compliance with its terms.

10
11 18.08.160 Assignment.
12

- 13 a. Except as provided in the lease agreement, Council must approve the
14 assignment of a lease to another party.
15
16 b. Except as otherwise provided in this subsection and subject to the terms of
17 the lease agreement, the City Manager must make a determination that a
18 lessee is in full compliance with a lease before an assignment will be
19 effective. The City Manager may enter into an agreement with an assignor
20 or an assignee consenting to assignment conditional upon payment of any
21 outstanding amount due under the lease no more than 90 after assignment.
22
23 c. Except as otherwise provided in a lease agreement, if the lessee is in good
24 standing and eligible to assign the lease, the following procedures apply:
25
26 1. The lessee shall file a written request for assignment and a new lease
27 application to the City Manager;
28
29 2. The City Manager shall review the request and assignment document(s)
30 and determine whether the proposed assignee is qualified under this
31 chapter and the assignment is in the City's best interests;
32
33 3. The City Manager shall make a recommendation on the assignment to
34 Council for final action; and
35
36 4. The Council shall approve or deny the request for assignment via
37 resolution.
38
39 5. Assignment of long-term leases on the Homer Spit or within the Marine
40 Commercial or Marine Industrial zoning districts shall be reviewed by
41 the Port and Harbor Advisory Commission prior to submission to
42 Council for approval. Except as otherwise provided in a specific lease
43 agreement, assignment of all other long-term leases shall be reviewed
44 by the Homer Advisory Planning Commission for recommendations
45 prior to Council approval.
46

1 d. The Council may approve assignment of a lease to a bank or other financial
2 institutions for financing or other reasons if it determines the assignment is
3 in the best interest of the City and upon recommendation by the City
4 Manager.

5
6 e. Where a lessee intends to assign the lease as part of a sale of the business
7 located on the lease lot, the person who intends to purchase the business
8 may apply to extend the lease term to allow the continuation of the business
9 and to secure financing for the purchase.

10
11 18.08.170 Insurance.

12
13 a. All lessees shall keep in force for the full term of the lease public liability
14 insurance in the amount of not less than \$1 Million coverage per occurrence
15 for bodily injury, including death, and property damage. The City shall be
16 named as an additional insured.

17
18 b. Lessees who intend to conduct activities which could potentially have
19 significant risk of environmental contamination shall also obtain not less
20 than \$2 Million in Environmental Impact insurance and/or Environmental
21 Clean-up Policy, or the equivalent subject to review and approval by the
22 City Manager. The City shall be named as an additional insured. The City
23 will determine on a case-by-case basis whether a lease of City property will
24 involve a significant risk of environmental contamination due to the use of
25 the property, the presence of hazardous materials, or the location of the
26 property.

27
28 c. Certificates of Insurance showing the required insurance is in effect and
29 identifying the City as an additional insured shall be provided to the City at
30 the time a lease becomes effective and annually thereafter, and upon every
31 change in insurance provider or insurance coverage.

32
33 d. All insurance policies must be in effect for the duration of the lease term, or
34 longer if stated in the lease, and the City must be notified of any changes to
35 policies.

36
37 e. A lease agreement may require insurance requirements that exceed those
38 required in this section.

39
40 18.08.175 Exception-leasing to government entities.

41 ~~The City~~

42 a. Except as otherwise prohibited by law, leases to federal or state government
43 entities or political subdivisions or agencies of the State of Alaska or the
44 United States may license or be, upon a finding by Council that it is in the
45 best interest to do so, exempted from the requirements of this chapter.
46

1 ~~a.b. The City may lease any~~ real property to the United States, the State of
2 Alaska, a political- subdivision of the State, or an agency of any of these
3 entities, for consideration agreed upon between the parties ~~without a~~
4 ~~competitive bidding process or otherwise complying with the provisions of~~
5 ~~HCC 18.08.140, if the City Council determines the transaction is~~
6 ~~advantageous to the City. Such a transaction may be for less than fair rental~~
7 ~~value and without an appraisal unless otherwise directed by the City~~
8 ~~Council. Respecting such a license or lease, the Homer City Council, in its~~
9 ~~discretion, may waive any other requirements of this chapter.~~for less than
10 fair market rent if the Council determines that the lease or license is in the
11 City's best interest.

12
13 18.08.180 Assessments – Capital improvement projects.

14
15 a. A lessee of City property shall pay all real property special assessments
16 levied and assessed against the property to the full extent of installments
17 ~~falling due~~billed during the term of the lease.

18
19 b. In the event the City completes a capital improvement project which directly
20 benefits the leasehold property and no local improvement district is formed
21 to pay the cost thereof, the City may, in its sole discretion, impose, and the
22 lessee shall pay as additional rent, the leasehold property's proportionate
23 share of the cost of the improvement. The amount of additional rent imposed
24 annually by the City under this subsection shall not exceed the amount
25 which would have been payable annually by the lessee if a local
26 improvement district had been formed which provided for installment
27 payments on a schedule and bearing interest at rates typical of other local
28 improvement districts of the City for that type of capital improvement.

29
30 18.08.190 Connection to utilities.

31
32 A lessee of City real property shall connect to City utilities and bear all costs of
33 connections and adhere to all applicable local, State and Federal regulations.
34 Connections to newly installed City utilities shall be made as soon as possible after
35 completion.

36
37 18.08.~~200 Fee schedule.~~

38 ~~The~~195 Processing and filing fees.

39
40 Fees for lease applications, lease fees, sublease and assignment fees, and other
41 related fees shall be established by ~~the City Council~~ from time to time by means of
42 ~~a resolution.~~ Failure to pay fees owed may result in the rejection of a lease
43 application or denial of renewal, assignment or sublease.
44

Section 2: This ordinance is of a permanent and general character and shall be included in the Homer City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS DAY OF
APRIL, 2018.

CITY OF HOMER

BRYAN ZAK, MAYOR

ATTEST:

MELISSA JACOBSON, MMC, CITY CLERK

AYES:

NOES:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and approved as to form:

Mary K. Koester, City Manager

Holly Wells, City Attorney

Date:

Date: _____



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

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Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

Memorandum

TO: CHAIR ULMER AND THE PORT & HARBOR ADVISORY COMMISSION
FROM: MELISSA JACOBSEN, CITY CLERK
DATE: MARCH 28, 2017
SUBJECT: CITY COUNCIL COMMENTS REGARDING ORDINANCE 18-16

At the March 27, 2018 the City Council introduced Ordinance 18-16 amending Homer City Code regarding lease policies and procedures.

While the Commission's input on the entire ordinance is requested, two Councilmembers highlighted areas they would like you to address in your discussion:

Councilmember Lord requested when the Port and Harbor Advisory Commission reviews the ordinance, they address the CPI requirement that is removed in this ordinance as there is a fiscal impact to the city. Her understanding is commercial leases generally have some sort of a CPI provision for working through inflation over time, and that's important as we have 15 and 20 year leases. The appraisals are valuable for fair market value and idea that we don't have any mark for inflation, over the course of a lease someone could potentially get hit with a really large increase if there's no CPI over time. It seems like a substantial thing to pull. She would like more feedback from the Commission regarding this.

Councilmember Venuti requested the Commission look at line 176 – 178 regarding the City Manager approving short term leases. She agrees with the change and would like the Commission's feedback. She also asked for their feedback regarding lines 550-553 regarding financing and extending lease terms. She thinks that has been an issue in the past.

PORT AND HARBOR ADVISORY COMMISSION



Winter King Tournament

**Regular Meeting
March 28, 2018, Wednesday
5:00 p.m.**

City Hall Cowles Council Chambers



491 E. Pioneer Avenue

Homer, Alaska 99603

Produced and Distributed by City Clerk's Office – 3/22/2018 - hs

REGULAR MEETING AGENDA

- 1. CALL TO ORDER**
- 2. APPROVAL OF THE AGENDA** p.3
- 3. PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA**
- 4. RECONSIDERATION**
- 5. APPROVAL OF MINUTES**
- A. January 24, 2018 Regular Meeting Minutes p.5
- 6. VISITORS/PRESENTATIONS**
- 7. STAFF & COUNCIL REPORT/COMMITTEE REPORTS/ BOROUGH REPORTS**
- A. Port and Harbor Director's Report for March 2018 p.9
- 8. PUBLIC HEARING**
- 9. PENDING BUSINESS**
- 10. NEW BUSINESS**
- A. Draft Ordinance 18-xx Repealing Homer City Code 18.08/ Codification of Certain Lease Policies
 1. Memo to Port & Harbor Advisory Commission from City Attorney through the City Manager (laydown)
 2. Memo to Port & Harbor Advisory Commission from Harbormaster Hawkins p.11
 3. Draft Ordinance 18-xx (laydown)
- 11. INFORMATIONAL ITEMS**
- A. Port & Harbor Monthly Statistical Report for February 2018 p.13
- B. Water/Sewer Bills Report for February 2018 p.15
- C. Crane and Ice Report p.17
- D. Deep Water Dock Report p.19
- E. Pioneer Dock Report p.21
- F. Dock Water Report p.23
- 12. COMMENTS OF THE AUDIENCE**
- 13. COMMENTS OF THE CITY STAFF**
- 14. COMMENTS OF THE COUNCILMEMBER *(If one is assigned)***
- 15. COMMENTS OF THE CHAIR**
- 16. COMMENTS OF THE COMMISSION**
- 17. ADJOURNMENT/NEXT REGULAR MEETING IS SCHEDULED FOR WEDNESDAY, APRIL 25, 2018 at 5:00 p.m. in the City Hall Cowles Council Chambers located at 491 E. Pioneer Ave, Homer, Alaska**

Session 18-02, a Regular Meeting of the Port and Harbor Advisory Commission was called to order by Chair Ulmer at 5:03 p.m. on February 28, 2018 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONER ULMER, ZIMMERMAN, CARROLL, DONICH, ZEISET, STOCKBURGER

ABSENT: COMMISSIONER HARTLEY

STAFF: PORT DIRECTOR/ HARBORMASTER HAWKINS
DEPUTY CITY CLERK SMITH

APPROVAL OF THE AGENDA

STOCKBURGER/CARROLL-MOVED TO APPROVE THE AGENDA AS WRITTEN

There was no discussion

VOTE. NON OBJECTION. UNANIMOUS CONSENT

Motion carried.

RECONSIDERATION

APPROVAL OF MINUTES

A. January 24, 2018 Regular Meeting Minutes

CARROLL/ZEISET-MOVED TO APPROVE THE MEETING MINUTES

There was no discussion

VOTE. NON OBJECTION. UNANIMOUS CONSENT

Motion carried.

VISITORS/PRESENTATIONS (10 minute time limit)

STAFF & COUNCIL REPORT/COMMITTEE REPORTS/ BOROUGH REPORTS

- A. Port and Harbor Director's Report for February 2018
1. Memo to Port & Harbor Advisory Commission on AAHPA Fly-in Board Meeting and Anchorage Boat Show
 2. Laydowns given to Legislators on AAHPA and Derelict Vessels
 3. Report Card for Alaska's Infrastructure 2017- American Society of Civil Engineers

Harbormaster Hawkins reviewed and discussed the following items:

- The Cathodic Protection Project was awarded to Global Diving, who came in under the engineers estimate.
- The Harbormaster Building Emergency Generator Project was awarded to Liberty Electric, who came in under the engineers estimate.
- Attended the Seattle Boat Show
- Talked with Kate Mitchel on a Historical Homer Project in conjunction with KBBI and Homer Marine Trades Association
- Attended the Anchorage Boat Show and worked with the Homer Marine Trades Association on their combined booths
- Tsunami Warning and evacuation of the Homer Spit happened on 1/23/18. It was later downgraded to a tsunami watch. The facility was inspected for damage.
- Harbormaster Hawkins presented at the Kenai Peninsula Borough Assembly and learned that he needs to send out a newsletter to familiarize the Assembly with ongoing projects.
- The Ice Plant will open on March 17th.
- AAHPA Board and Harbormaster Hawkins went to Juneau to advocate the States Port and Harbor's Agenda with Alaska's Legislators.

PUBLIC HEARING

PENDING BUSINESS

NEW BUSINESS

A. Overslope Development of the Small Boat Harbor Overlay District

Harbormaster Hawkins reviewed the Request for Proposals for the Overslope Development of the Small Boat Harbor Overlay District, which closes on April 27th, 2018.

Commissioner Carroll stated that he liked the overhead pictures that were provided and suggested a project to build a dock and buying station on Lot 1.

B. Distribution of Parking Citation Funds

Commissioner Zimmerman believes that the City should be allocating a percentage of the parking revenue back into the Enterprise Budget. The Port & Harbor maintains the parking and pays the employees necessary to write parking citations. All of the Parking Citation Revenue is currently going directly into the City's General Fund, so Commissioner Zimmerman proposes to ask council for 10% of the revenue be allocated back to the Port & Harbor Enterprise Budget.

Harbormaster Hawkins stated that there were 960 man hours involved in parking enforcement and 700 citations written that were \$25 dollars apiece. He explained that they do not know how many citations have been paid. City Hall has sent out three different notices for everyone that still needed to pay their citations and those who have not paid have been sent to collections.

ZIMMERMAN/ZEISET- MOVED TO ASK CITY COUNCIL TO ALLOCATE 10% OF REVENUE FROM PARKING CITATIONS ON THE SPIT TO BE PUT BACK INTO THE OPERATING BUDGET OF THE PORT & HARBOR ENTERPRISE.

There was a brief discussion.

VOTE. YES. NON OBJECTION. UNANIMOUS CONSENT

Motion carried.

INFORMATIONAL ITEMS

- A. Ordinance 18-04 RV's on the Spit
- B. Resolution 18-016(S) Harbormaster Building Emergency Generator
- C. Resolution 18-017(S) Fish Grinder RFP Award
- D. Port & Harbor Monthly Statistical Report for January 2018
- E. Water/Sewer Bills Report for January 2018
- F. Crane and Ice Report
- G. Deep Water Dock Report
- H. Pioneer Dock Report
- I. Dock Water Report
- J. Commissioner Attendance at City Council Meetings 2018

The Commission briefly discussed the informational items.

Commissioner Zimmerman will be attending the next City Council Meeting.

COMMENTS OF THE AUDIENCE

Morgan Barrowcliff, city resident, commented that he has the English Bay Barge Basin on the Spit and is here to learn more about the Port & Harbor. He explained that they retook over management in November when North Star left and stated that they plan to fill up their lot with boats and other storage.

COMMENTS OF CITY STAFF

Harbormaster Hawkins shared his experiences in Anchorage while attending the Boat Show and thanked the Commission for everything they do.

COMMENTS OF THE COUNCILMEMBER *(If one is assigned)*

COMMENTS OF THE CHAIR

Chair Ulmer thanked Harbormaster Hawkins for everything he does. She stated that it's not easy traveling as much as he has been lately, and that she appreciates all of the hard work he does.

COMMENTS OF THE COMMISSION

Commissioner Zeiset agreed with Chair Ulmer's comment. He appreciates everything Harbormaster Hawkins does for the Port & Harbor.

Commissioner Stockburger shared his experiences in Savannah, Georgia. He visited the Thunderbird Marine Repair Facility, which had a spray booth that was approximately 200ft long, 80 ft. wide, and

PORT AND HARBOR ADVISORY COMMISSION
REGULAR MEETING
FEBRUARY 28, 2018

100ft tall. While he was there, they had 150ft. Sailboat being prepped to be painted on a large platform that drops down into the water. He was pretty impressed with their system.

ADJOURN

There being no further business to come before the Commission the meeting adjourned at 7:10 p.m. The next regular meeting is scheduled for Wednesday, March 28, 2018 at 5:00 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

HAYLEY SMITH, DEPUTY CITY CLERK

Approved: _____



MARCH 2018 PORT & HARBOR STAFF REPORT

1. Administration

Staff met with:

- Critical Habitat Plan Review Committee – dredged materials
- Matt Hakala- Info on SB92 for North Pacific Fisheries Association(NPFA) meeting
- Lane Chesley, Puffin Electric- dredged materials
- The Alaska House of Representatives Fisheries Committee (teleconference)- public testimony on HB386 Derelict Vessels
- Joselyn Biloon, Planner III Alaska Dept. of Transportation- Statewide Transportation Improvement Program (STIP) update
- Annette Kord- new management software

2. Operations

The months of February and March have brought about the transition from winter to spring with increased daylight, warmer temperatures, and the absence of ice congestion in the small boat harbor. Homer's seiners participating in the Sitka Sound herring fishery departed around the 15th of March. The longline fleet began to mobilize with the opening of commercial halibut and sablefish later this month. Sport fishing recreational vessels began to trickle into the harbor with the anticipation of the winter king salmon tournament scheduled for Saturday, March 24th.

Operations staff collaborated with Kord Information Systems and the City's I.T. department to simulate the harbor moorage inventory system.

The following vessels conducted landings at the deep water dock and pioneer dock: Tustumena, Perseverance, Crystal Amaranto, Pacific Wolf & DBL55, Bob Franco, and Polar Bear.

The following vessels are currently utilizing the marine repair facility, Unalaq, Dangerous Cape, and Bruin Bay.

Other notable events:

- On 2/20, harbor officers extinguished a smoldering fire in a 50 gallon trash barrel.
- On 2/21, operations staff assisted port maintenance with the repair of the F float firefighting water supply line.
- On 2/25 and 2/26, storm force winds buffeted the Homer Spit with gusts as strong as 84 knots. There was scattered minor damage to vessels, ranging from broken mooring lines and tattered sails and canvasses.

- On 3/5, harbor officers assisted a 70' tender depart the small boat harbor enroute to the marine repair facility.
- On 3/6, harbor officers used the harbor tug to assist two 110' crabber tenders switch mooring locations.
- On 3/8 & 3/9, Harbor officers responded to two separate EMS calls at the L&L ramp for patients aboard water taxis originating from Seldovia as weather conditions were prohibiting air traffic between Homer and Seldovia.
- On 3/9, harbor officers used the harbor tug to assist a 100' tug and 100' support vessel depart their berth during adverse wind conditions.
- On 3/15, a damaged timber/bent was reported on the wood grid. Repairs were conducted on 3/20 & 3/21.

3. Ice Plant

The spring startup went smoothly and we are now open for business. Our current hours are 8:00am until 4:00pm seven days per week. Chris Maurer will rejoin our team for the summer season on April 16th, just in time for the annual crane maintenance program. Notable events as we transitioned from maintenance to operations included

- Replaced bearings in spare condenser fan motor
- Bin door maintenance
- Researched speed switch wiring in order to update ladder diagrams
- Collaborated with ATS to diagnose card reader glitch—and added rebooting procedures to our startup SOPs
- Collaborated on issuing a second waterline Request For Proposals
- Finished compressor room cleanup/painting

4. Port Maintenance

In addition to routine Periodic Maintenance, Port Maintenance:

- Attended an ENSTAR Safety Meeting at City Hall
- Plowed snow and sanded facilities
- Started refurbishing a fire cart
- Replaced two wind socks
- Cleaned up and repaired minor damage caused by extreme winds
- Patched concrete
- Assisted Operations and I.T. with the boom lift
- Replaced Steel Grid deck timber
- Assisted Operations with 2 EMS calls

In April, we will be bringing Walt Swearingen back for the summer Maintenance Tech position. Also, Aaron will be attending a Pacific Coast Congress of Harbor Masters conference in Coos Bay, Oregon.



City of Homer

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Port and Harbor

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Memorandum

TO: PORT AND HARBOR ADVISORY COMMISSION
FROM: BRYAN HAWKINS, PORT DIRECTOR / HARBORMASTER
DATE: MARCH 21, 2018
SUBJECT: PROPOSED ORDINANCE 18-XX REPEALING HCC CHAPTER 18.08

Council persons Smith and Erickson have been hard at work with our city attorney to sponsor an ordinance that will codify the cities lease policies into city code. I have met with the city manager and our attorney to discuss the changes and have made comments and suggestions to this work in progress legislation. As you can see it is a complete re-work of our existing policies turning them into code, and it takes time to compare the document to our existing policy and code in order to understand what it is that is trying to be accomplished.

As the commission is named as a review board for any lease located on the Homer Spit, your comments on this work are needed and valued. I suggest that it may take more than one meeting to work through this complex document before you may be ready to share your comments/wishes in a motion to council. However, your first read comments would be welcome and the clerk will be happy to record them so that we are sure to address them in the next meeting.

I will be out of the office until April 4th. Once I return I will be available to meet with you individually to help answer your questions on this or any other Port/Harbor related topic.

Thank you

Port & Harbor Monthly Statistical & Performance Report

For the Month of: **February 2018**

<u>Moorage Sales</u>			<u>Stall Wait List</u>		
	<u>2018</u>	<u>2017</u>		<u>2018</u>	<u>2017</u>
Daily Transient	30	42	No. on list at Month's End		
Monthly Transient	42	51	20' Stall	22	23
Semi-Annual Transient	1	3	24' Stall	39	21
Annual Transient	6	5	32' Stall	64	60
Annual Reserved	0	2	40' Stall	31	33
			50' Stall	26	22
			60' Stall	5	3
			75' Stall	3	3
<u>Grid Usage</u>			Total:	190	165
1 Unit = 1 Grid Tide Use	<u>2018</u>	<u>2017</u>			
Wood Grid	3	6			
Steel Grid	0	2			
<u>Services & Incidents</u>			<u>Docking & Beach/Barge Use</u>		
	<u>2018</u>	<u>2017</u>	1 Unit = 1 or 1/2 Day Use	<u>2018</u>	<u>2017</u>
Vessels Towed	0	0	Deep Water Dock	13	23
Vessels Moved	1	4	Pioneer Dock	27	26
Vessels Pumped	1	2	Beach Landings	1	9
Vessels Sunk	0	0	Barge Ramp	7	4
Vessel Accidents	0	0			
Vessel Impounds	0	0	<u>Marine Repair Facility</u>		
Equipment Impounds	0	0		<u>2018</u>	<u>2017</u>
Vehicle Impounds	0	0	Vessels Hauled-Out	0	0
Property Damage	2	0	Year to Date Total	1	0
Pollution Incident	0	1			
Fires Reported/Assists	0	0	<u>Wharfage (in short tons)</u>		
EMT Assists	0	0	In Tons, Converted from Lb./Gal.	<u>2018</u>	<u>2017</u>
Police Assists	0	1	Seafood	0	254
Public Assists	11	6	Cargo/Other	351	120
Thefts Reported	0	1	Fuel	18,700	9,831
<u>Parking Passes</u>			<u>Ice Sales</u>		
	<u>2018</u>	<u>2017</u>		<u>2017</u>	<u>2016</u>
Long-term Pass	6	4	For the Month of February	*	*
Monthly Long-term Pass	0	0	*Shut Down for Maintenance		
Seasonal Pass	0	0	Year to Date Total	0	0
<u>Crane Hours</u>			<u>Difference between</u>		
	<u>2018</u>	<u>2017</u>	<u>2017 YTD and 2018 YTD:</u>	<u>0 tons</u>	
	88.9	117.6			

Port & Harbor Water/Sewer Bills									
Service Period: February , 2018					Meter Reading Period: 1/23/18-2/28/18				
Meter Address - Location	Acct. #	Meter ID	Service/ Customer Charge	Water Charges	Sewer Charges	Total Charges	Previous Reading	Current Reading	Total Usage (gal)
810 FISH DOCK ROAD - Fish Grinder	1.0277.01	84810129	\$9.50	\$233.26	\$0.00	\$242.76	17,700	-	21,400
4244 HOMER SPIT RD - SBH & Ramp 2	1.0290.01	84872363	\$19.00	\$0.00	\$0.00	\$19.00	12,978,100	12,978,100	-
4166X HOMER SPIT RD - SBH & Ramp 4	1.0345.01	70291488	\$19.00	\$0.00	\$0.00	\$19.00	23,957,000	23,957,000	-
4166 HOMER SPIT RD- SBH Restrooms	1.0346.01		\$19.00	\$27.25	\$58.00	\$104.25	175,300	-	2,500
4171 FREIGHT DOCK RD - SBH & Ramp 6	1.0361.01	71145966	\$19.00	\$0.00	\$0.00	\$19.00	1,832,200	1,832,200	-
4690C HOMER SPIT RD - Pioneer Dock	1.0262.01	70315360	\$19.00	\$259.42	\$0.00	\$278.42	33,090	3,332,800	23,800
4690A HOMER SPIT RD - Pioneer Dock	1.0261.01	70315362	\$19.00	\$0.00	\$0.00	\$19.00	515,200	515,200	-
4666 FREIGHT DOCK RD - Deep Water Dock	1.0357.01	70564043	\$19.00	\$468.70	\$0.00	\$487.70	9,175,000	9,218,000	43,000
4448 HOMER SPIT RD - Steel Grid	1.0230.01	80394966	\$9.50	\$0.00	\$0.00	\$9.50	-	-	-
795 FISH DOCK ROAD - Fish Dock/Ice Plant	1.0180.01	70291512	\$19.00	\$191.84	\$20.88	\$231.72	868,054,700	868,072,300	17,600
4147 FREIGHT DOCK RD - SBH & Ramp 6 Restroom	1.4550.01	70315668	\$19.00	\$78.48	\$167.04	\$230.36	104,800	-	7,200
4147X FREIGHT DOCK RD - Ramp 6 Fish Cleaning	1.0457.01	80856895	\$9.50	\$0.00	\$0.00	\$9.50	184,000	184,000	-
4001 FREIGHT DOCK RD - L&L Ramp Restrooms	10.4550.01	70364713	\$19.00	\$17.44	\$37.12	\$73.56	102,800	-	1,600
4667 HOMER SPIT RD L - Port Maintenance	1.0109.01	70257255	\$19.00	\$16.35	\$34.80	\$70.15	10,200	-	1,500
4667 HOMER SPIT RD - Bldg Near Water Tank	1.0100.02	70315820	\$9.50	\$0.00	\$0.00	\$9.50	320,400	320,400	-
4667 FREIGHT DOCK RD - DWD Restroom	1.0495.01	84920900	\$19.00	\$11.99	\$25.52	\$56.51	24,600	-	1,100
4311 FREIGHT DOCK RD - Port & Harbor Office	5.1020.01	83912984	\$19.00	\$26.16	\$37.68	\$82.84	74,200	76,600	2,400
4000 HOMER SPIT RD - Ramp 5 Restroom	5.1250.01	86083228	\$19.00	\$175.49	\$252.77	\$447.26	219,300	-	16,100
4425 FREIGHT DOCK RD - Sys 5 & Ramp 8	5.1050.01	86094861	\$19.00	\$71.94	\$0.00	\$90.94	667,000	673,600	6,600
Overall Charges:						\$2,500.97	Overall Water Usage:		144,800

Water/Sewer Monthly Comparison CY 2013 to 2017										
	2014		2015		2016		2017		2018	
January	\$3,545.49	288,500	\$2,526.35	183,700	\$1,216.22	68,800	\$2,142.85	122,300	\$1,458.89	83,400
February	\$4,042.38	322,400	\$2,015.14	140,800	\$1,891.14	122,500	\$1,287.76	59,600	\$2,500.97	144,800
March	\$3,968.26	320,400	\$3,339.49	253,700	\$2,341.13	162,300	\$4,076.62	292,100		
April	\$5,792.92	452,200	\$4,997.38	467,700	\$3,532.78	256,700	\$1,726.84	113,100		
May	\$12,019.73	973,600	\$6,982.27	541,900	\$9,770.89	709,300	\$7,807.49	413,000		
June	\$13,396.30	1,106,200	\$14,116.19	1,134,100	\$21,628.74	1,800,700	\$14,594.69	1,282,900		
July	\$16,516.50	1,348,000	\$12,038.01	919,900	\$19,490.97	1,583,400	\$15,450.93	1,152,500		
August	\$15,883.21	1,279,500	\$15,033.97	1,197,000	\$22,468.25	2,189,100	\$12,947.70	1,060,600		
September	\$13,105.89	1,073,100	\$15,661.07	1,307,300	\$19,710.24	1,651,300	\$11,419.68	968,000		
October	\$3,874.68	266,000	\$5,445.90	406,300	\$8,887.32	708,200	\$8,631.96	591,490		
November	\$3,658.86	283,400	\$1,917.85	106,100	\$2,582.53	167,600	\$1,852.34	176,000		
December	\$1,748.09	111,900	\$1,284.30	30,100	\$1,154.76	44,900	\$1,053.70	68,600		
YTD Total	\$97,552.31	7,825,200	\$85,357.92	6,688,600	\$114,674.97	9,464,800	\$82,992.56	6,300,190	\$3,959.86	228,200

2018 Ice & Crane Report						
Date To	Crane Weekly	Crane Month	YTD Crane	Ice Weekly	Ice Month	YTD Ice
1/7/2018	17			shut down for maintenance		
1/14/2018	14.3			shut down for maintenance		
1/21/2018	18.2			shut down for maintenance		
1/28/2018	8.5			shut down for maintenance		
Jan Total		58	58		0	0
2/4/2018	17.8			shut down for maintenance		
2/11/2018	21.7			shut down for maintenance		
2/18/2018	42.6			shut down for maintenance		
2/25/2018	6.8			shut down for maintenance		
Feb Total		88.9	146.9		0	0
3/4/2018		18.7		shut down for maintenance		
3/11/2018		19.9		shut down for maintenance		
3/18/2018		11.2		0	0	
3/25/2018						
4/1/2018						
Mar Total		0	196.7		0	0
4/8/2018						
4/15/2018						
4/22/2018						
4/29/2018						
Apr Total		0	196.7		0	0
5/6/2018						
5/13/2018						
5/20/2018						
5/27/2018						
May Total		0	196.7		0	0
6/3/2018						
6/10/2018						
6/17/2018						
6/24/2018						
7/1/2018						
Jun Total		0	196.7		0	0
7/8/2018						
7/15/2018						
7/22/2018						
7/29/2018						
Jul Total		0	196.7		0	0
8/5/2018						
8/12/2018						
8/19/2018						
8/26/2018						
Aug Total		0	196.7		0	0
9/2/2018						
9/9/2018						
9/16/2018						
9/23/2018						
9/30/2018						
Sep Total		0	196.7		0	0
10/7/2018						
10/14/2018						
10/21/2018						
10/28/2018						
Oct Total		0	196.7		0	0
11/4/2018						
11/11/2018						
11/18/2018				shut down for maintenance		
11/25/2018				shut down for maintenance		
12/2/2018				shut down for maintenance		
Nov Total		0	196.7		0	0
12/9/2018				shut down for maintenance		
12/16/2018				shut down for maintenance		
12/23/2018				shut down for maintenance		
12/31/2018				shut down for maintenance		
Dec Total		0	196.7			

Deep Water Dock 2018

[illegible]

21

[illegible]

03/22/18				Year to Date Totals:	\$5,043.00	\$260.00
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Ferry Landings 2018

	Pioneer Dock	Deep Water Dock
January	20	0
February	23	0
March		0
April		0
May		0
June		0
July		0
August		0
September		
October		
November		
December		

