

CITY OF HOMER
HOMER, ALASKA

ORDINANCE 92-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF HOMER REPEALING AND REENACTING CHAPTER 18.08 OF
THE CITY CODE RELATING TO CITY PROPERTY LEASES

WHEREAS, the need to revise the City of Homer property lease management code has become apparent; and

WHEREAS, the City of Homer Lease Negotiating Committee reviewed and revised Chapter 18.08 as follows; and

WHEREAS, the Homer Advisory Port and Harbor Commission reviewed the proposed ordinance on October 16 and December 18, 1991, and recommended approval as amended; and

WHEREAS, the public hearing before the Homer City Council on the proposed changes was held on February 10, 1992, as required by law.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Chapter 18.08 of the Homer City Code is hereby repealed and reenacted to read as follows:

Chapter 18.08

CITY PROPERTY LEASES

Sections:

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|-----------|---------------------------------|
| 18.08.010 | Definitions. |
| 18.08.020 | Lease negotiating committee. |
| 18.08.030 | Approval of lease. |
| 18.08.040 | Property available for leasing. |
| 18.08.050 | Qualification of applicants. |
| 18.08.060 | Application to lease. |
| 18.08.070 | Terms of lease. |
| 18.08.080 | Appraisal. |

18.08.090	Requirements of the lessee.
18.08.100	Improvements.
18.08.110	Lease Option.
18.08.120	Subleases
18.08.130	Lease assignment.
18.08.140	Competitive bidding.
18.08.150	Reconsideration.
18.08.160	Property management policy and procedures manual.
18.08.170	Exceptions--financing transactions.
18.08.175	Exception--leasing to the federal or state government.
18.08.180	Assessments; capital improvement projects.
18.08.190	Connection to utilities.
18.08.200	Fee schedule.

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

a. "Applicant" means a person applying to lease or use city property, and includes bidders and proposers.

b. "Appraisal" means a valuation or estimation of value of property by disinterested persons of suitable qualifications.

c. "Assignment" means a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein.

d. "Lease" means an agreement granting exclusive possession or use of city land and/or location for a specific period of time in accordance with specific terms.

e. "Sealed bid" or "sealed proposal" means a method of competitive bidding for a lease whereby each party interested in leasing city property submits a proposal in a sealed envelope and all such proposals are opened at the same time. The proposal most favorable to the city is selected for negotiation for a lease.

f. "Sublease" means a lease or rental executed by the lessee of an estate to a third person, conveying the same estate or a portion of it, for a term equal to or shorter than that for which the lessee holds it.

g. "Property Management Policy and Procedures Manual" means the manual adopted pursuant to Section 18.08.160.

18.08.020 Lease negotiating committee. The City Manager shall establish a lease negotiating committee, subject to the approval of the City Council, to negotiate terms and conditions of leases, permits, and agreements for use of city land and facilities for approval by the City Council. Generally, the committee shall include the city planner, port and harbor director, and director of finance or their designees, but its composition may be altered by the City Manager.

18.08.030 Approval of lease. a. No lease shall be executed until the City Council has approved, with or without modifications, the lease negotiating committee's recommendation.

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

18.08.040 Property available for leasing. 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 later shall prevail.

18.08.050 Qualification of applicants. An applicant for lease is qualified if the applicant is:

a. a natural person and is responsible, meaning 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 nineteen years of age; or

c. a group, association or corporation which is authorized to conduct business under the laws of 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.

18.08.070 Terms of lease. a. The terms of the lease shall be recommended by the lease negotiating committee.

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

1. the nature of the proposed use;
2. the type and cost of improvement to be placed upon the premises;
3. the period of time required to amortize the improvements;
4. the benefit to the city;
5. whether improvements are consistent with the comprehensive plan, Homer zoning ordinances and other city codes;
6. public needs and benefits; and
7. other factors deemed relevant by the lease negotiating committee; and
8. date of commencement and completion of improvements.

c. Determination of rent shall take into consideration the following factors:

1. appraisal or tax assessed valuation;
2. highest and best use of land;

3. development (existing and planned);
4. economic development objectives;
5. the location of the property;
6. alternative valuation methodologies as negotiated

by both parties.

d. All leases or memorandums of leases shall be recorded.

e. The lessee and the lease negotiating committee may negotiate all lease terms except those required by law.

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

b. The requirement of an appraisal may be waived at the discretion of the lease negotiating committee for leases of six months or less.

18.08.090 Requirements of the lessee. A proposed lessee shall provide at its sole expense the following, unless waived by the lease negotiating committee in its discretion:

a. Property improvement plan. The proposed lessee shall submit a property improvement plan that includes a schedule for commencement and completion of proposed improvements.

b. Survey. The LESSEE shall submit a survey of the land lease, after Homer City Council approval of the lease.

c. Plat. If only a portion of a lot is to be leased the LESSEE shall cause a subdivision plat to be filed, in accordance with Kenai Peninsula Borough subdivision requirements, within ninety (90) days after Homer City Council approval of the lease.

18.08.100 Improvements. a. Construction of improvements. Construction of improvements shall take place only after review and approval of the construction plans by the lease negotiating committee for consistency with the lease agreement and after all applicable permits and legal requirements are secured.

b. Construction of improvements not consistent with the lease agreement. Any improvements not consistent with the lease agreement shall be constructed only after having been reviewed and approved by the City Council after review and comment by the lease negotiating committee, the port and harbor commission, the planning commission, and any other advisory commission determined to be appropriate by the lease negotiating committee.

c. Removal of improvements upon termination. Unless otherwise provided in the lease, or agreed to by the parties, the lessee shall remove all improvements made on the property by lessee within sixty days after termination of the lease. Unless otherwise provided in the lease, or agreed to be the parties, the lessee shall restore the property to the same conditions it was in at the time the lease was executed by the lessee.

18.08.110 Lease option. The city may grant an option to lease property. The option shall contain the specific duration

and terms as set forth in a request for proposal or as negotiated by the lease negotiating committee and approved by the City Council. The city may charge a non-refundable fee for the option and said fee may be equal to the fair rental value.

18.08.120 Sublease. a. City property may be subleased only if the lease agreement so provides and only with the consent of the City Council.

b. A sublease of city property shall be subject to Homer City Council approval and shall be in writing and executed by the parties. Any amendments to a sublease shall also be in writing and subject to City Council approval prior to becoming effective. A lessee shall be assessed additional rent, as determined by the lease negotiating committee and approved by the City Council, upon approval of a sublease or amendments thereto.

18.08.130 Lease assignment. A lessee may assign a lease to another party, subject to approval by the City Council and the procedures set forth in the Property Management Policy and Procedures Manual.

18.08.140 Competitive bidding. The lease negotiating committee or the City Council may elect to require the submission of sealed bids to lease city property or facilities. The competitive bidding process shall be administered by the lease negotiating committee. The apparent successful bidder shall be selected to negotiate the terms of a lease, but shall have no

right to a lease or any other property right until a lease is successfully negotiated, approved by the City Council, and signed by the parties.

18.08.150 Reconsideration. A lessee may request reconsideration, by the Homer City Council, of the terms of the lease within fifteen days of City Council action on the lease. The reconsideration procedures set forth in the Property Management Policy and Procedures Manual shall be applied in the event of a reconsideration.

18.08.160 Property Management Policy and Procedures Manual.

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

b. The Property Management Policy and Procedures Manual may be revised by City Council resolution.

c. A copy of the Property Management Policy and Procedures Manual shall be available to the public during normal working hours at city hall.

18.08.170 Exceptions--financing transactions. The procedures set forth in this chapter do not apply to sales,

purchases or leases entered into by the city as a part of a financing transaction in which the city is acquiring or disposing of municipal property for municipal purposes through the use of lease/leaseback arrangements or the lease/purchase mechanisms. The formal procedure with respect to these financing leases and the related purchase and sale of land and interests in land shall be by an ordinance of the City Council authorizing the financing transaction.

18.08.175 Exception--leasing to the federal or state government. The City may license or lease any real property to the United States, the State of Alaska, a political subdivision of the state, or an agency of any of these entities, for consideration agreed upon between the parties without a competitive bidding process or otherwise complying with the provisions of HCC 18.08.140, if the City Council determines the transaction is advantageous to the City. Such a transaction may be for less than fair rental value and without an appraisal unless otherwise directed by the City Council. Respecting such a license or lease, the Homer City Council in it's discretion may waive any other requirements of Homer City Code, Chapter 18.08.

18.08.180 Assessments; capital improvement projects.

a. A lessee of city property shall pay all real property special assessments levied and assessed against the property to the full extent of installments falling due during the term of the lease.

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

18.08.190 Connection to utilities. A lessee of city property shall connect to city utilities and bear all costs of connections and adhere to all applicable local, state and federal regulations. Connections to newly installed city utilities shall be made as soon as possible after completion.

18.08.200 Fee schedule. The fees for lease applications, lease fees, and assignment fees shall be established by the City Council from time to time by means of a resolution.

Section 2. Section 1 of this ordinance is of a permanent and general character and shall be included in the City code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA,
this 24th day of February, 1992.

CITY OF HOMER

Harry E. Gregoire
HARRY E. GREGOIRE, MAYOR

ATTEST:

Mary L. Shannon
MARY L. SHANNON, CITY CLERK

AYES: 6
NOES: 0-
ABSTAIN: 0-
ABSENT: 0-

First Reading: 01/27/92
Public Hearing: 02/10/92
Second Reading: 02/24/92
Effective Date: 02/25/92

(City Seal)

Reviewed and approved as to form and content:

C. E. Swackhammer
C. E. SWACKHAMMER
CITY MANAGER

Gordon J. Tans
GORDON J. TANS
CITY ATTORNEY