



City of Homer

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MEMORANDUM 10-76

TO: WALT WREDE & HOMER CITY COUNCIL

FROM: BRYAN HAWKINS, PORT DIRECTOR/HARBORMASTER

SUBJECT: LEASE POLICY AMENDMENTS AS PROPOSED BY THE ECONOMIC DEVELOPMENT ADVISORY COMMISSION

DATE: MAY 21, 2010

Background

Economic Development Advisory Commission proposed amendments to the Lease Policy at the City Council May 10, 2010 Worksession under Business Item 4. The following are recommendations for some *housekeeping changes* and response to the EDC:

Table of Contents

Chapter 19 – still in table of contents but no information

Appendix A referenced in Chapter 15B – found in 1995 copy of policies

Chapter 1: Lease Policies/Goals, Purpose & Responsibility

1.1.D: GOALS AND PURPOSE

EDC is suggesting that the City remove restrictions of use. It is not in the public's best interest to lease properties on the Spit for the purpose of subleasing or speculation. If so why would we be endeavoring to use planning tools like the Spit Comprehensive plan? Do we want the lessee to direct the use or do we want the public to have control through the committee and council process?

1.2: RESPONSIBILITY

This removes the City Manager from the Lease Process. Who will do the work? The day-to-day business of upland leases cannot be managed by committee.

1.2A Add "purposes" to be consistent with 2.2.B (second bullet)

Chapter 2: Lease Committee

2.2: PROCEDURES

Outsourcing: What would be the cost? Is the EDC proposing that there would not be a Lease Committee? Would it strictly be managed by a contractor? What about new lease negotiations? Who would handle these? Where is the public process? Would the Council then be the board that carefully reviews the final lease documents prior to approval?

Currently we have the lease committee and the City Manager for that task.

Where are the fail safes?

2.2A Add member of the Port and Harbor Advisory Commission as member of the Lease Committee

Chapter 3: Properties Available for Lease

3.2.E: PROCEDURES

EDC is proposing we remove these restrictions, calling them micro-managing. They felt that “ Zoning will determine what is appropriate for the lands being leased” An example of why this section should not be deleted is the Chip Pad. It is used for staging and support of the Deep Water Dock. Because we hold this facility aside for this use business comes to the Port for staging, shipping, and receiving goods. This benefit’s the enterprise by way of wharfage, dockage, and uplands rent. Another good example of this is Fish Dock Rd. The City by way of the Port Commission, Lease Committee, Land allocation Committee and finely the Council has restricted the use of these lots for fish processing and fisheries related uses only. We all know the value of our commercial fisheries and the trade they bring to the Homer region. All this commerce is centered on Fish Dock Rd. Would we be considered good stewards if we removed these restrictions and allowed non commercial fisheries related businesses to choke out this vital enterprise. This is not to say that we shouldn’t look at all offers for a long term lease, but we must always keep the big picture in mind for all our uplands on the Spit. The goal should not be just to lease out all properties, but to lease out properties for good solid uses that will be the most beneficial to the public. Of course we want the rental revenue but that is the smallest benefit that the public should expect from a lease on the Spit.

3B. New verbiage “After Land Allocation Plan is established for the year, an RFP is advertised for available lots. If there is no interest during this RFP, but interest later in the year, lots would not need to be RFP’d again. If there is interest in a lot not listed as available for lease in the LAP, then proposal must be reviewed by Port & Harbor Advisory Commission, recommended by the Lease Committee, an RFP advertised for this lot, proposals reviewed by P&H and Lease Committee and then successful proposal presented to the City Council through a Resolution to begin negotiations for a new lease.”

F. New verbiage “After approval to begin negotiations for a new lease by City Council, the new lease must be completed within 2 years.”

Chapter 4: Request for Proposals

No changes recommended

4.1A second sentence refers reader to 10.2E for information on exceptions to the City sending a property out to RFP. It should read Chapter 11.2 E and F.

Chapter 5: Lease Application Process

5.2A 1. For consistency, the RFP asks for a “transmittal letter” and information on: qualifications, ability to finance, familiarity with the Spit, rental rate offer, term, amount of investment, and management ability.

5.2.A.7: PROCEDURES

EDC stated that agency approvals, permits, and fees are usually done during the construction phase. As land owners, we need to know what the future lessee is planning to do with the public’s land and to confirm if it is permissible or not. We would most certainly not want to sign a lease with an individual whose plan was not approved or one they could not acquire permits for.

If we don't find out the answers to these questions during the application process then we are just putting it off until we are in negotiations for a lease.
How does that make us more business friendly?

Chapter 6: Application/Proposal Evaluation Process

6.2.D: Add a two year deadline for lease negotiations.

Chapter 7: Lease Rental Rates

Chapter title should be all caps

7.2: PROCEDURES

This is a big change. For your information, the City let out a contract for all leases that had expired or were overdue for appraisals last year, which resulted in lowering the costs to the Lessee for the appraisals from \$1,500 to \$500 each. Worksheets will show inconsistencies in Borough assessors' estimates. Bottom line is, the Port and Harbor enterprise fund would lose over \$50,000 the first year on leases. Would you sell your house for the amount the Borough assessed it to be worth? Should the public's property be leased at a rate set by this standard?

Possibly a good compromise for this issue may be for the City to have all its properties appraised every five years at no cost to the lessee. It seems logical that since the land belongs to the public and the public is in the business of being landlords that the cost for maintaining this management tool should go to the landlord.

Chapter 9: Lease Implementation

No changes recommended

Chapter 10: Improvements

10.2.C: IMPLEMENTATION

This has been one of the main points of contention that we have heard from two of the lessees on Fish Dock Rd. The issue must be decided prior to the lease being finalized and that is why this sentence is in the policy.

10.2.D: IMPLEMENTATION

Does not seem unreasonable.

Chapter 11: Length of Leases/Options

This chapter of the policy was written to address the fairness issues concerning lease hold improvements and the possibility of a lessee losing equity in any improvements constructed on city leased land at the conclusion of a lease with the city.

Being public property the RFP process is what helps to protect the land from being locked up or privatized. But does it discourage business from entering into a lease with the city? Is the policy as fair as it can be to the lessee while still protecting the public's interests in the land?

11.2E states that "in general" it is the city's policy to go out to RFP. This gives the Lease committee and Council the option to extend a new lease and the guidelines under F detail what constitute an exception to the "General rule"

F also states that a current lessee must indicate in writing to the City Manager at least 12 months prior to the expiration of their lease their intention to seek another term lease with the City. On the other hand letter F does not give any time limit as to how long before the expiration of a lease that a lessee may seek a determination as to whether the City would extend a new lease to them. This is important because currently we have two leases that

are nearing the end of their terms. One ends in 2014 and the other 2016. If the lessee could get an earlier determination from the City it would be very helpful to them for planning purposes.

Question; What limit should the City put on letter F concerning how early a lessee may apply for a new term lease from the City with out going out for RFP?

11.2.H: This is not a bad compromise, but who pays for the appraisal? Of course this assumes that the buildings or improvements on the lease are of a value to the City.

11.2.I: PROCEDURE

I agree that there should be a performance probationary period, but this should be addressed in chapter 17 Performance Standards

11.3 This proposed change was struck in the EDC & P/C Worksession. The Port commission came out strongly against selling the public land on the Spit.

There were many proposed changes in chapter 11. They were written in the policy as guidance tools for the lease committee to use for grading new applicants length of terms for a new lease and for judging whether or not to grant the renewal of a lease that has expired. This language was written and adopted with great care and should only be taken out after we have received advice from the city's attorney.

If we have a lease that the city sees as an asset and a lessee who is requesting another term, council after hearing the lease committee's recommendation has the option in the current policy to extend a new lease to them with out going out to a RFP. Of course the council must state why doing so is in the public's best interest. If however we have a lease that is coming to an end and the lease committee and council determine that the venture has not been successful then council must have the power to require the past lessee to remove their personnel property from the public's land, or to take possession of the property.

Chapter 12: Lease Rate Adjustment

Recap shows that EDC recommends the City establish the rent rate at 8% of the borough's assessed evaluation of the property, as outlined in Chapter 7. Further, in Chapter 12, they are suggesting the City would not adjust the Lease Rate annually to follow the C.P.I.

Chapter 13: Sub-leases

The EDC has completely rewritten the City's policy on subleases to allow land to be leased for the purpose of speculation.

If a business comes to the City and proposes to rent a lot, they must state and show their intended use. Any change of use after the lease is signed would require an amendment to their lease with the City, is this unreasonable?

Should the City be allowed to adjust the rate higher for a lot that is being sublet to multiple businesses?

At what level should sub-leasing be allowed? Is there a percentage of the property that could be used for sub-leasing?

At some point the lessee becomes the land lord and their actual business is managing the sub-leases. Is that acceptable? If so, why should the City not be allowed to either have a percentage of the sub-lease revenues or adjust the lease rent to account for the use of the land? Why would the City not need to know how the lessee is planning to use this public land?

13.3 Procedures (under Subleases) should move to Chapter 14 Assignments

Chapter 13.2 > 14 procedures and assignments

This policy seems workable to me. The only change I would like to see is that the City makes assignments a part of the standard lease policy for all long term leases, rather than only including it if the potential lessee requests it in their new lease.

Chapter 15 Insurance

What we've learned about insurance so far is that this is really a case by case situation. The starting point is the proposed land use in the lease proposal package. While one lessee may only need a rider on their policy to cover them if their stove oil tank spills on the ground their next door neighbor will need a million dollars to cover with two million in aggregate in case of a chemical spill.

All uplands leases should be reviewed by the city's carrier AML while it is in the planning stage so the proper coverage can be detailed out in the lease document prior to signing.

Any change in land use (requiring an amendment) would have to include a new review of the insurance coverage.

City should have their insurance carrier review and update this chapter.

Chapter 17 Performance Standards

No changes recommended by EDC

The proposed probationary period recommended by EDC in 11.2 should be addressed in this chapter.

Chapter 18 Conclusion of Lease

The 11.3 proposal was struck in a joint work session by EDC and the Port Commission. This proposal change to 18.1 should also be struck.

18.2E Considering the fact that we are talking about the conclusion of what most likely would be 30 years of occupation by the lessee, an environmental inspection seems responsible. When the City removed the Manly Terminal building on lot 9 there was a large soil remediation project that went on for two years due to a fuel tank leak.

What are the actual costs for a phase I study?

Recommendations:

Please review my recommendations to these Lease Policy Amendments;

I would only offer one note of advice to council on the matter of any policy changes, move carefully when making changes, there is a cause and effect to any change made to the City's lease policy. In my opinion the current policy is not too bad. That's not to say that there isn't room for improvement but any and all changes must be carefully considered and implemented. The current policy has over the years been reviewed by legal council and I would hope that any revisions would also be done with the oversight of the City's attorneys.