

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

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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

<p>HCC 18.08.010</p> <p>Includes Definitions:</p> <p>Lease Property Manual, Sealed bid, and sublease.</p> <p>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.</p>	<p>PHCC 18.08.010 Adds definitions:</p> <p>“appraiser” requiring an AK certified appraiser or other qualified professional selected by the City at the cost of the City.</p> <p>“fair market rent” definition added</p> <p>“City Manager” definition added to permit City Manager to delegate authority.</p> <p>“Irregularities” definition added to clarify RFP process and responsiveness.</p> <p>Removes Lease Property Manual, Sealed bid, and sublease definitions.</p>
<p>HCC 18.08.020 “Lease Committee”</p>	<p>Removed.</p>
<p>HCC 18.08.030 “Approval of Lease”</p>	<p>PHCC 18.08.030 “Standardized Leases” codifies lease template requirement and the requirement that the template is reviewed by Council.</p> <p>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.</p>
<p>HCC 18.08.040 (Property available for leasing)</p>	<p>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.</p>
<p>No lease application section currently in HCC 18.08</p>	<p>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.</p>

<p>HCC 18.08.050 “Qualification of Applicants”</p>	<p>Removed. These requirements better suited for lease template and individual leases.</p>
<p>HCC 18.08.060 “Application to Lease”</p>	<p>Removed; Any such requirement is best included in an RFP or by policy. Fee schedule still affords application fee payment.</p> <p>PHCC 18.08.060 “Criteria for evaluating and approving proposals” added and incorporates criteria from Lease Policy Manual.</p>
<p>18.08.070 “Terms of Lease”</p>	<p>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.</p> <p>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.</p>
<p>HCC 18.08.080 “Appraisal”</p> <p>Requires appraisal when lease approved or renewed by a certified appraisal and permits “Lease Committee” to waive appraisal for short-term leases.</p>	<p>Moved to PHCC 18.08.100. Incorporates 5 yr. appraisal requirements from Lease Policy Manual.</p> <p>PHCC 18.08.080 “Lease execution and final approval” includes express final approval process for leases.</p>
<p>HCC 18.08.090 “Requirements of lease”</p> <p>Required plats and as-built surveys unless the Lease Committee waived the requirement.</p>	<p>PHCC 18.08.090 “Development and use”</p> <p>Incorporates as-built and survey requirements unless the specific lease agreement provides otherwise.</p>
<p>HCC 18.08.100 “Improvements”</p>	<p>Moved to PHCC 18.08.120 and incorporates obligations provided in the Lease Policy Manual. Language clarified.</p>
<p>HCC 18.08.110 “Lease Option”</p>	<p>Incorporated “option” requirements from Lease Policy Manual.</p>

<p>HCC 18.08.120 “Sublease”</p>	<p>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.</p>
<p>HCC 18.08.130 “Assignment”</p>	<p>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.</p>
<p>HCC 18.08.140 “Competitive Bidding”</p>	<p>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.</p>
<p>HCC 18.08.150 “Reconsideration”</p>	<p>Removed. Additional Council oversight during the process makes this provision burdensome.</p>
<p>HCC 18.08.160 “Property Management Policy and Procedures Manual”</p>	<p>Removed. No more manual.</p>
<p>HCC 18.08.170 Exceptions-Financial transactions.</p>	<p>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.</p>
<p>HCC 18.08.175 “Exception-Leasing to the Federal or State government”</p>	<p>Moved to PHCC 18.08.175 “Exception-Leasing to government entities” clarifies the language but retains the exemption.</p>

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	<p>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.)</p> <p>The CPI requirement imposed upon lessees was removed.</p>

<p>Chapter 13: Subleasing</p>	<p>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.)</p> <p>Other more specific sublease terms more appropriate in Council approved lease template and individual RFPs and resulting leases.</p>
<p>Chapter 14: Assignment</p>	<p>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.)</p> <p>Additionally, assignment terms are more appropriately included in the Council approved lease template.</p>
<p>Chapter 15: Insurance</p>	<p>HCC 18.08.170 (more specific requirements are more appropriately included in the leases and in Council approved lease templates.)</p>
<p>Chapter 16: Hazardous Materials</p>	<p>Removed. Hazardous materials provisions are generally included in leases themselves as the terms depend heavily on the nature of the use.</p>
<p>Chapter 17: Performance Standards</p>	<p>HCC 18.08.090 (recognizes strict enforcement of performance standards in lease)</p> <p>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.</p>
<p>Chapter 18: Conclusion of Lease</p>	<p>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.)</p>

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.