



# City of Homer

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## Memorandum 18-075

TO: MAYOR ZAK AND HOMER CITY COUNCIL  
FROM: PORT & HARBOR ADVISORY COMMISSION  
THROUGH: RENEE KRAUSE, CMC, DEPUTY CITY CLERK  
DATE: JUNE 5, 2018  
SUBJECT: AMENDMENTS TO ORDINANCE 18-16

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The Commission reviewed the draft Ordinance 18-16 and 18-16(S) at the regular meetings on April 25, 2018 and May 23, 2018 they proposed several amendments that were included in Memorandum 18-059 at the April meeting and approved additional amendments at their May meeting as follows:

Line 424, Section 18.08.100 (a) Insert “new” before the word “lease”  
Insert the phrase, “or the transfer of a lease” after the word “lease”  
Delete “one year” and insert “two years” after the word “within”

Line 425, Section 18.08.100 (a) – Insert the phrase “the renewal of a lease” after the words “prior to” and delete the word “renewal”

Line 430, Section 18.08.100 (c) – Amend the word “Leased” to “Leases”  
Line 431 Insert after the word “lease.” The city may choose to have the property appraised sooner than the first five year anniversary of a new lease in order to clump properties together for group rate savings on appraisal costs.

Line 454, Section 18.08.110 (a) delete the words “for less than” and insert “not to exceed” before 25%.

Following is the excerpt of the minutes of the May 23, 2018 regular meeting regarding the Commissions proposed amendments to Ordinance 18-16(S).

### Recommendations

Approve the amendments proposed by the Port and Harbor Advisory Commission

**MAY 23, 2018 REGULAR MEETING**

**UNAPPROVED MINUTES**

**PENDING BUSINESS**

A. Memorandum from Deputy City Clerk re: Ordinance 18-16(S), Repealing and Re-enacting Homer City Code Chapter 18.08

*Chair Ulmer read the title into the record. She requested clarification on the role of the Commission with regard to review of leases.*

*Harbormaster Hawkins responded that this will actually keep the review process by the Commission but define the processes and provide City Council with more approval responsibility.*

*Commissioner Zimmerman requested clarification on page 23, Line 182, Section 18.08.040 (a) requested clarification on the difference between requiring approval via ordinance or resolution.*

*Harbormaster Hawkins responded that ordinance requires two public meetings by Council and resolutions require only one.*

*Chair Ulmer noted ordinance is for leases over 5 years and resolutions were for leases 5 years and under.*

*Harbormaster Hawkins provided a lay down on the amendments to Ordinance 18-16 from the April meeting and made the following recommendations:*

*Amend title of the ordinance to delete “removing the requirement that all leases may be increased to reflect inflation as determined in the consumer price index”*

*Commissioner Zimmerman inquired if there were any different CPI and Harbormaster Hawkins reported that there is currently only one in the state, Anchorage and in fact there are only 26 total in the United States.*

*Harbormaster Hawkins continued to review the following amendments proposed at the April meeting:*

*Page 27, Line 371, Section 18.08.075 – Amend Ordinance 18-16 by Adding (f) Lease amount to be adjusted annually based on the Anchorage Consumer Price Index.*

*Harbormaster Hawkins additionally proposed the following amendments to Ordinance 18-16:*

*Page 29, Line 424, Section 18.08.100 (a) Insert “new” before the word “lease”*

*Insert the phrase, “or the transfer of a lease” after the word “lease”*

*Delete “one year” and insert “two years” after the word “within”*

*Page 29, Line 425, Section 18.08.100 (a) – Insert the phrase “the renewal of a lease” after the words “prior to” and delete the word “renewal”*

*Page 29, Line 430, Section 18.08.100 (c) – Amend the word “Leased” to “Leases”*

*Line 431 Insert after the word "lease." The city may choose to have the property appraised sooner than the first five year anniversary of a new lease in order to clump properties together for group rate savings on appraisal costs.*

*Harbormaster Hawkins explained that he added a few additional words, and he wanted to provide an option to not do an appraisal if one has been conducted within the space of two years and he wants to be able to group appraisals together to take advantage of discounts that are offered since the city covers all those costs.*

*Commissioner Zimmerman questioned if that would affect the leases in raised rates earlier than 5 years.*

*Harbormaster Hawkins stated that it could raise the rates at that time but provided an example using the transfer of lease that was within the two years of having an appraisal done and did not get their rates increased.*

*Commissioner Zimmerman expressed concerns with the process of raising a lease rate prior to the 5 year stated period since this does not provide the certainty for the lessee that the lease may increase in 5 years but could increase in 3 years. He agreed with the management aspect to get all leases on the same appraisal time period, and he acknowledged the savings would be beneficial but questioned the fairness to the lessees in implementing that process if it does not offer fairness to lessees.*

*Commissioner Donich inquired if someone new is wanting to lease do the banks require an appraisal and cited an example within his own experience.*

*Harbormaster Hawkins responded that the banks probably do and it would also be required if it was a property that has not been offered for lease before.*

*Commissioner Stockburger requested adding terminology at the end of that paragraph that an appraisal will happen every five years for renewals.*

*Commissioner Zeiset questioned how the application of appraisals every five years, if an appraisal is perform before the 5 years has expired such as 3 or 4 years, from what point will the new appraisal term start at the original 5 year mark or at the 3 year mark.*

*Commissioner Stockburger added that it may cause issues with the lending institutions.*

*Commissioner Zimmerman acknowledged Heath Smith in the audience and invited him to come forward and comment on the discussion.*

*Mr. Smith suggested stretching the time to accommodate instead of truncating the appraisal period. He also stated that the lessee pays the property taxes and an increase in the property value will increase those costs for lessee. They need to honor the contracts and consider the implications to them.*

*Harbormaster Hawkins acknowledged that they will then have the task of explaining to the leaseholder.*

*Commissioner Zimmerman suggested having a declaration that appraisals will be conducted every five years and let the lessee know that the first appraisal will be conducted during this time and then every five years to keep it simple.*

*Commissioner Stockburger asked how much of a savings did this present to the city on average grouping the appraisals.*

*Harbormaster Hawkins reported that it is approximately a \$200-\$300 savings per appraisal.*

*Commissioner Stockburger then commented that it could then add that same amount to the lease and did not believe it would be worth the trouble.*

*Harbormaster Hawkins reviewed the last proposed amendment to Section 18.08.160 (e) Page 34, Line 637, Section 18.08.160 (e) – Insert the phrase, “Only within the terms of the lease” after the word “purchase” this was made Commissioner Hartley last month.*

*Commissioner Zimmerman requested the commission to review page 29, Section 18.08.110 Line 454, he questioned the less than 25%.*

*There was a brief discussion on how the statement reads.*

*Commissioner Zimmerman requested they amend line 454 to delete the words “for less than” and insert “not to exceed” before 25%.*

*Commissioner Zimmerman then brought to the commission’s attention Page 30, Line 484, item c, he questioned what happens if the city doesn’t want the improvements.*

*Harbormaster Hawkins noted that typically the lease contains a clause that the lessee must remove all improvements. This clause would be applied if there was an improvement that would benefit or provide added value to the property.*

*Deputy City Clerk Krause read motion on the floor from the April 25, 2018 meeting:*

*HARTLEY/DONICH - MOVED TO APPROVE ORDINANCE 18-16 WITH THE NECESSARY AMENDMENTS.*

*Mr. Smith requested to speak to the Commission again.*

*Deputy City Clerk Krause stated that the Commission would need to request a motion to suspend the rules to allow comment from the public at this time.*

*Deputy City Clerk Krause provided clarification to Chair Ulmer on the process of approving the amendments was completed at the April meeting and this was the main motion that was on the floor when a motion to postpone was made.*

*ZIMMERMAN/HARTLEY MOVED TO SUSPEND THE RULES TO ALLOW PUBLIC COMMENT AT THIS TIME.*

*There was no discussion.*

*VOTE. NON-OBJECTION. UNANIMOUS CONSENT.*

*Motion carried.*

*Mr. Smith stated that the entire intent was to improve the process and add a layer of review by City Council for when things get sticky there are a few more heads to figure things out. Mr. Smith continue by stating the he has been educated and in his research found that it is a standard to use the CPI but also found that there is in use a graduated rent system that is set at an agreed percentage increase per year which allows the parties involved to know the amount of increase on an annual basis. He added that if the CPI was reviewed the increase has been on average 2% per year over the last several years, noting anecdotally that in the late 1990's an increase was 6 percent. Mr. Smith reported that one of the benefits on a percentage increase is that it is dependable and forecastable. It alleviates the juggling needed to adjust for spikes in the CPI. He also believes a graduated approach it will make the lease process more business friendly.*

*Commissioner Donich requested clarification on a previous action by the Commission on Stall rates based on a percentage increase.*

*Harbormaster Hawkins reviewed the past action of the commission that inflation proofed the budget in that way that Commissioner Donich referred to and stated that what Mr. Smith was referring to was an escalation percentage built into the lease which accounts for inflation.*

*Commissioner Stockburger commented that the CPI reflects the economy however some years it can hurts worse than others and there is a difference between Homer and up the road. He believed that if the number was low it probably would not be too harmful.*

*Mr. Smith commented that he preferred 2% increase over a couple of years than a jump of 4% in one year. He added that it would always be a moving target compared to a known increase.*

*Commissioner Hartley commented on his recollection of double digit inflation rates in the 1980's and they have to be prepared for such an occurrence.*

*Harbormaster Hawkins pointed out that a contract is binding and that if there is no CPI adjustment allowance in the existing contract they will not be bringing back all lessees to the table to adjust their contract. This would be applied to all new contracts.*

*Commissioner Zeiset commented that as a leaseholder he preferred a known increase than the unknown but he acknowledge is lack of knowledge on application and use of the CPI.*

*The commission discussed at length on applying the CPI over a set period such as reviewing the CPI as an average over a set span of time and then apply that amount as a percentage for a set period time; further amendments would have to be done by ordinance; clarification on how the CPI is used to value a lease; the appraisal reflecting the increase in the economic value; not including a percentage since they do use the*

*appraisal approach; city being the landowner and the land changing ownership rarely which is the value of using the CPI on an annual basis they would see very little change in the market value per square foot; they draw comparison from other cities which may make appraisals very difficult; applying the CPI annually could mean a lesser impact when an appraisal is conducted; how the appraiser conducts the appraisal may result in a higher impact to the lessee such as double increases, which have not been seen to date since the appraisers have access to all the records that the city has and have recommended leaving the CPI.*

*Chair Ulmer asked if the commission was ready to on the ordinance.*

*STOCKBURGER/HARTLEY MOVED TO APPROVE THE AMENDMENTS AS PROPOSED TO SECTION 18.08.100 AND SECTION 18.08.110*

*There was a brief clarification on leaving in the CPI.*

*VOTE. YES. STOCKBURGER, ZEISET, HARTLEY, YES, DONICH, CARROLL, ULMER  
Motion carried.*

*STOCKBURGER/HARTLEY MOVED TO APPROVE ORDINANCE 18-16 AS AMENDED.*

*There was no further discussion.*

*VOTE. YES. ULMER, CARROLL, DONICH, ZIMMERMAN, HARTLEY, ZEISET, STOCKBURGER*

*Motion carried.*