



## Memorandum 20-197

TO: HOMER CITY COUNCIL  
THRU: ROB DUMOUNCHEL, CITY MANAGER  
FROM: PORT AND HARBOR ADVISORY COMMISSION  
DATE: NOVEMBER 10 2020  
SUBJECT: LEASE ASSIGNMENT TO SALMON SISTERS HOLDINGS LLC

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Alaska Growth Capital BIDCO (AGC) assumed the 2008 lease from Harbor Leasing LLC. As mortgagee, AGC has requested to transfer the lease to Salmon Sisters Holdings LLC with the approval of the transfer contingent upon their cure of the defaults associated with the lease currently held by AGC.

The submitted application from Salmon Sisters Holdings LLC, a draft lease based on the Council approved City Lease template, and a proposed Resolution of transfer were put before Council at their November 9 2020 meeting for review. During the testimony portion of the meeting one of the applicants stated they were not satisfied with the fair market lease rent listed and requested that Council postpone the resolution for their lease approval that the Council members were currently considering. Council honored the applicant's request to postpone their own lease application approval and set it aside until their next meeting to be held on November 23 2020.

On November 18<sup>th</sup> 2020 the Port and Harbor Advisory Commission met to review the submitted application from Salmon Sisters, the proposed lease transfer request from the city's current tenant of the property AGC, and the voiced requests of the applicant.

Staff requested the Port and Harbor Commission's comment, direction, and recommendation on the following questions:

- 1) Does the Commission approve of the proposed use of this property?
- 2) Does the Commission recommend support of the lease transfer from Alaska Growth Capital to Salmon Sisters Holdings LLC?
- 3) Does the commission support the request from Salmon Sisters Holdings LLC for council to agree to a lease rate reduction? And, if so, what statement for valuable public purpose or use would they suggest council consider?

The Port and Harbor Advisory Commission discussed the lease application, proposed transfer and questions posed and made the following points concluding with the making of the motion listed below in the following excerpts from their meeting minutes:

Chair Zimmerman opened the floor for questions. There was discussion between Commissioners, City Staff, and Mr. Laukitis noting the following:

- Applicant's Request for a Lower Base Rent: How City Code allows a lessee to request a lower base rent but only if the applicant makes a reasonable statement of justification, what the proposed base rent per square foot currently is, and how the City comes to that amount through the appraisal process laid out by City Code. The property has remained vacant for an extended time which could be used as justification.
- Agreement of Ordering New Appraisal: applicants request a lower amount, at least for now given the difficult business environment due to COVID. Commissioners mutually agreed to the City ordering another appraisal, either at the time of lease negotiations or have one in two years instead of the usual five years.
- Overall Support of Salmon Sisters' Proposed Use: Commission agreed to the value of having such a business in our community and how it helps keep younger generations here.
- Acknowledgement of Hardships and Issues: Interpretations by some commissioners that the Spit was very active this summer despite COVID. That was primarily charter/tourist businesses, while commercial fishing businesses had a harder time due to fishery issues. Both parties are working from different perspectives: the Laukitis family is working to start a business and need to make their own business decisions based on what they're comfortable with, while the PHC is there to represent the people of Homer and can't stray from Code.
- Reasoning for a Lease Transfer vs. New Lease: the agreement has to be a lease transfer. If the City issued a new lease then they would have to do a Request for Proposal for the entire property. Bank owns the building, City owns the land, so negotiations have to work in tandem.

CARROLL/ZEISET MOVED TO RECOMMEND TO CITY COUNCIL APPROVE THE PROPOSED USE OF THE PROPERTY, RECOMMEND SUPPORT OF THE LEASE TRANSFER FROM AGC, INC TO SALMON SISTERS HOLDINGS, LLC, AND SUPPORT THE REQUEST FROM SALMON SISTERS TO NEGOTIATE A LEASE RATE REDUCTION WITH THE CITY MANAGER, PUBLIC PURPOSE JUSTIFICATIONS BEING: 1) BRINGING THE PROPERTY OUT OF BANKRUPTCY AND MAKING IT PROFITABLE, AND 2) BRINGING A NEW BUSINESS ENTERPRISE TO HOMER THAT IS LOCALLY OWNED

Commissioner Ulmer would like to see the base rate stay at \$0.87/sf.

VOTE: YES: DONICH, ULMER, CARROLL, ZEISET, ZIMMERMAN

Motion carried.

In reference to the Port & Harbor Advisory Commission's point listed above for their desire to not stray from City Code, the requirements of City Code that dictate how property rent rates treated that is included in Chapter 18.08 City Property Leases have been attached, relevant sections for easy reference would be 18.08.100 Appraisal and 18.08.075 Lease rental rates (a) & (d).

Currently, the lease application from Salmon Sisters Holdings LLC ,as submitted, doesn't contain written information, supporting documentation, or justification from the applicant to provide to council for consideration of a "valuable purpose or use" reduction of rent. Nor does it contain any requested changes to the current draft lease in writing of what terms/base rent below fair market value they are asking for. All applicant requests have been verbal in nature.

### **Recommendation**

The Port and Harbor Advisory Commission move to recommend that City Council approve the proposed use of the property, recommend support of the lease transfer from AGC, Inc to Salmon Sisters Holdings, LLC, and support the request from salmon sisters to negotiate a lease rent reduction with the City Manager, public purpose justifications being: 1) Bringing the property out of bankruptcy default and making it profitable, and 2) bringing a new business enterprise to Homer that is locally owned.

Attached 2020 Lot C12 Appraisal Comparable Sheet  
City Code Chapter 18.08 City Property Leases

**Comparable Adjustment Table**

PARCEL 1 - Alaska Growth Capital - City of Homer 2020 Homer Spit Revaluations							
	Subject	Comparable 1	Comparable 2	Comparable 3	Comparable 4	Comparable 5	Comparable 6
Legal Description	L12C, Port Industrial S/D #4	Lot 12-A1, Por. 12-B Port Industrial #3	L32, Homer Spit Amended	L88-2, Homer Spit #2 Amended	L13B, Homer Port Industrial #2	Por. GLO 20, Sec. 1 T7S, R13W	Tract 1-C, The Fishin' Hole #2
Lessee	(AK Growth Capital)	(Alaskan Fish Factory)	(Shogun Restaurant)	(Yourkowski)	(Copper River Seafoods)	(US Coast Guard)	(Sportsman Supply)
KPB Parcel No.	181-034-52	181-034-21LH01 & 51	181-034-32LH01	181-034-42LH01	181-034-25LH01	181-034-45	181-031-19
Annual Rent	\$26,343	\$27,553	\$20,982	\$12,398	\$14,128	\$13,822	\$12,206
Rent/square foot (unadjusted)	\$0.77	\$0.88	\$0.85	\$0.94	\$0.92	\$0.91	\$0.97
Lease Term (CPI adjustment)	CPI Adj.	CPI Adj.	CPI Adj.	CPI Adj.	CPI Adj.	CPI Adj.	CPI Adj.
Market Conditions (last rent revaluation)	Mar-15	Apr-14	Apr-19	Apr-19	Apr-19	Apr-18	Sep-17
(** CPI adj. applied each Jan. since last revaluation)	**	**	**	**	**	**	**
Size [Sq. Ft.]	34,236	31,295	24,639	13,135	15,300	15,246	12,528
Size Adjusted Rent/sq. ft.	\$0.77	\$0.88	\$0.85	\$0.85	\$0.83	\$0.82	\$0.88
Other Characteristics							
Street Frontage/Access adjustment	Spit, Ice, Fish Dock Rds	Spit/Fish Dock Rds.	Homer Spit Rd.	Homer Spit Rd.	Homer Spit Rd.	Homer Spit Rd.	Freight Dock Rd.
Location/commercial exposure adjustment	Excellent	Similar	Similar	Similar	Similar	Similar	Inferior
Bay or Harbor Frontage adjustment	Fish Dock across street	Similar	S. side of harbor	S. side of harbor	S. of K. Bay	S. of K. Bay	Similar
Topography adjustment	Level, gravelly soils	Similar	Similar	Similar	Similar-No beach	Similar-No beach	Similar
Utilities Available adjustment	E, T, W/S, G	Same	Same	Same	Same	Same	Same
Zoning/Easements adjustment	M/Typical	M/Similar	MC/Util/Ped. Esmts.	MC/Similar	MI/None known	MI/None known	MC/Similar
Shape adjustment	Rectangular	Rectangular	Rectangular	Rectangular	Rectangular	Rectangular	Rectangular
Compound Adjustment % (street frontage - shape)		0%	0%	0%	0%	0%	0%
Indicated Rent of Subject (\$/sq. ft.)		\$0.88	\$0.85	\$0.85	\$0.83	\$0.82	\$0.88
Qualitative adjustment (+/-/=)			+				+
Comparable weighting ~ cumulative = 100%		30%	20%	20%	10%	10%	10%
<b>Measures of Central Tendency (excluding Qualitative adjustments)</b>							
Mean (unweighted)	\$0.84						
Mean (weighted)	\$0.86						
Median	\$0.85						
<b>Concluded Market Rent</b>							
Site size - sq. ft.	34,236	Rent ~ \$/sq. ft.	\$0.87	= Indicated rent	\$29,785	Annual Market Rent (R)	\$29,800



## 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 leases.
- [18.08.045](#) Lease applications.
- [18.08.050](#) Requests for proposals – Competitive bidding process.
- [18.08.060](#) Criteria for evaluating and approving proposals and competing lease applications.
- [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](#) Assignment.
- [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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

### **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 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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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 shore lands 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 local, State or Federal law governing the leasing of City tide and submerged lands, the law governing the leasing of City tide and submerged lands 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:

1. City-owned property available for lease;
2. The property description, lease rate, preferred length of the lease term for each available parcel; and
3. 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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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](#). [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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. When the City receives more than one lease application for a parcel that meets the criteria established for that parcel in the land allocation plan, the City Manager shall evaluate the applications using the criteria in HCC [18.08.060](#) and award the lease most advantageous to the City. If both applicants are equally advantageous to the City, the City Manager shall award the lease to the applicant who submitted a completed application first. Applicants may be charged a fee for processing a lease application. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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\(f\)](#).
- 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.
- c. The City Manager must obtain approval from the Council before requesting proposals to lease property not identified in the land allocation plan as property available for lease. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.060 Criteria for evaluating and approving proposals and competing lease applications.**

- a. The criteria for evaluating proposals shall include, but are 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 in the proposed business or venture;
  5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development;
  6. 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; and
  10. The residency or licensure of the applicant in the City, Kenai Peninsula Borough, and/or the State of Alaska, as identified in the City's request for proposal and permitted under State and Federal law.
- b. 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; and
  6. Alternative valuation methodologies as negotiated by both parties. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.065 Lease application and proposal documents.**

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Upon request by the City Manager or as required in a request for proposal or the lease allocation plan, an applicant or proposer shall provide, at its sole expense, the following:

- a. A property improvement plan with information regarding planned improvements by lessee, including schedule for commencement and completion of proposed improvements;
- b. A survey of the property subject to the proposed lease; and/or
- c. If only a portion of a lot is to be leased, a subdivision plat. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.070 Notice to award.**

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- a. The City Manager shall consider all responses to the City's request for proposals that are timely and responsive. Untimely submissions shall be returned to the proposer without review and that proposer shall not be considered.
- b. The City Manager may, in his or her sole discretion, and upon a determination that none of the proposals are in the City's best interest, recommend rejection of all proposals.



- c. Upon a determination that a proposal is the most advantageous to the City, the City Manager shall recommend the proposal to Council for acceptance. If Council approves the recommendation, the City Manager shall issue a notice to award the lease to the successful proposer. The City Manager's recommendation shall be presented to Council in a written memorandum identifying the recommended winning proposer, the property description, the essential terms of the proposed lease, and the reasons the City Manager recommended the award.
- d. The City Manager shall submit any recommendation for approval of a proposal under this chapter for property located on the Homer Spit or in the Marine Commercial or Marine Industrial zoning districts to the Port and Harbor Advisory Commission for 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 proposer 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 the proposer 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 proposer and submit a new recommendation for award to Council and Council may approve the award of the proposal to that recommended proposer. 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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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 a proposal or lease application 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 otherwise provided in this chapter, 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.
- f. Lease amount to be adjusted annually based on the Anchorage Consumer Price Index. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

**18.08.080 Lease execution and final approval.**

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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 or proposer. After Council's approval of the notice to award but before Council approval under HCC [18.08.040](#), the City Manager may negotiate nonessential 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. Lessee is responsible for the recording fees. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

**18.08.090 Development and use.**

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a. All leases must require the lessee to comply with all applicable local, State, and Federal laws.

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 development on the leased property. Each additional structure or significant improvement shall require an updated as-built survey. All surveys are to be provided by lessees at their expense.

c. Except as provided otherwise in the lease agreement, at the time each as-built survey 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.

e. The City may require a lease of City-owned property to be secured by any means that meet the City's best interest, including, without limitation, a security deposit, surety bond or guaranty. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

**18.08.100 Appraisal.**

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a. An appraisal of the fair market rent of the property will be required before final approval of a new lease or the transfer of a lease and within two years prior to the renewal of a lease.

b. The requirement of an appraisal may be waived at the discretion of the City Manager for short-term leases.

c. All leased properties shall be appraised every five years from the effective date of the lease. The City may choose to have the property appraised at less than five-year intervals in order to appraise multiple properties at one time. An increase in rental rates resulting from appraisals occurring in less than five years from the last appraisal shall not be applied prior to date of appraisal permitted under this section or the effective date of the transfer or renewal of a lease.

d. Except as otherwise provided under this section or in a specific lease, lease rates shall be increased on the anniversary of the lease effective date to reflect property appraisal values. A lessee shall be notified of any increase in the appraised value of the property at least 30 days before the increased rental rate becomes effective.

e. In the event an appraisal reports a decrease in fair market rent, a lessee may petition or the City Manager may recommend to Council a reduction in the lease rate. Council may approve a reduction if it determines via

resolution that such reduction corresponds with the appraised fair market rent and is in the City's best interest.

f. Each year, the City will select and retain an appraiser to appraise all leased City-owned property due for appraisals in that year. The City will have sole discretion to select the appraiser and bears the cost of the appraisal. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.110 Options to renew.**

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a. Leases may contain no more than two options to renew and each option must not exceed 25 percent of the length of the initial lease term.

b. A lessee may not exercise an option to renew unless the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

c. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extensions. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.120 Improvements.**

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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 have been secured and legal requirements met.

b. Improvements not included in the lease agreement or improvements that are inconsistent with or deviate from those permitted in the lease agreement must be approved by Council via resolution. Council shall only approve such improvements upon recommendation by the City Manager and after review by the Port and Harbor Commission, the Homer Advisory Planning Commission, and any other commission determined to be appropriate by the City Manager. Inconsistent improvements may be approved if the proposed changes to the improvements serve the City's best interest and/or when changes are necessary due to relevant changes in industry or the local economy.

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 taxes, including property taxes on the leasehold interest in the real property and improvements and any sales tax on rent payments. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.130 Lease renewal.**

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a. Council, upon written recommendation by the City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such exemption serves the City's best interests.

b. A lessee seeking to enter into a new lease with the City exempted from competitive bidding under this section must submit a lease application and a written request for a new lease to the City Manager at least 12 months but no more than 18 months prior to the expiration of the existing lease. 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 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 section:

1. Lessee's past capital investment and binding commitment to future capital investment;

2. 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 past use and intended future use with all applicable laws, including 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 Council. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.140 Sublease.**

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- 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, 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 a sub-tenant.
- d. 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.
- e. Subleasing shall not be used to transfer substantially all of a leasehold interest.
- f. All subleases must comply with all applicable Federal, State, and local laws. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.150 Early termination.**

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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 termination of a long-term lease for failure to comply with lease terms. The City Manager may only terminate a lease for failure to comply with the lease terms after receiving Council approval to do so. The City Manager shall seek approval to terminate under this section in executive session. The name of lessee and description of the leased property shall not be included in any public notices or documents circulated by the City 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 and provide the date, time, and place of the meeting at which Council will consider such termination. Lessee may waive the right to confidentiality under this section and request Council hold its discussion of termination in public. This section shall not prevent the City from sending lessee, or other parties with an interest in the lease, notifications and/or correspondence related to the lease or lessee's compliance with its terms. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.160 Assignment.**

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- 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 section or 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, in his or her sole discretion, consent to assignment of a lease where lessee is in full compliance with the lease terms except for payments owed so long as assignor and/or assignee agree in writing to pay the full amount owed within 90 days of the assignment. An assignment shall not be effective and shall constitute default by lessee if full payment is not received within 90 days of the assignment.



c. Except as otherwise provided in the 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 complete new lease application to the City Manager;
2. The City Manager shall review the request and new lease application 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. 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 the lease agreement, assignment of all other long-term leases shall be reviewed by the Homer Advisory Planning Commission prior to Council approval.

d. Council may approve assignment of a lease to a bank or other financial institution if it determines the assignment is in the best interest of the City and the City Manager recommends approval.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the leased 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 of that business. Any significant changes in the terms (use) of the existing lease must be reviewed by the Port and Harbor Commission and approved by City Council by resolution as an amendment to the lease. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **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 \$1,000,000 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 \$2,000,000 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. Insurance requirements that exceed those required in this section may be imposed in the terms of a lease agreement. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.175 Exception – Leasing to government entities.**

a. Except as otherwise prohibited by law, leases to Federal or State government entities or political subdivisions or agencies of the State of Alaska or the United States may be exempted from this chapter upon a finding by



Council that it is in the City's best interest to do so.

b. The City may lease 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 less than fair market rent if Council determines it is in the City's best interest to do so. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.180 Assessments – Capital improvement projects.**

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a. Lessees of City property shall pay all real property special assessments levied and assessed against the property to the full extent of installments billed during the lease term.

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 of that project, 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 project. 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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.190 Connection to utilities.**

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Lessees of City real 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. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

#### **18.08.195 Processing and filing fees.**

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Fees for lease applications, lease, subleases and assignments, and other related fees shall be established by Council by resolution. Failure to pay fees owed may result in the rejection of a lease application or denial of lease renewal, assignment or sublease. [Ord. [18-16\(S\)\(A\)](#) § 1, 2018].

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**The Homer City Code is current through Ordinance 18-47,  
passed November 26, 2018.**

Disclaimer: The City Clerk's Office has the official version of the Homer City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.