

1
2 **CITY OF HOMER**
3 **HOMER, ALASKA**

4 City Manager/
5 City Clerk

6 **ORDINANCE 22-49**

7
8 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
9 AMENDING HOMER CITY CODE CHAPTER 18.08 CITY PROPERTY
10 LEASES TO CLARIFY GENERAL LEASE MANAGEMENT
11 PROCEDURES AND RELATED MATTERS.
12

13 WHEREAS, Staff in the City Manager's Office, City Clerk's Office, Port and Harbor, and
14 Economic Development have been meeting to internally restructure how City leases are
15 managed; and

16
17 WHEREAS, The amendments in this ordinance further clarify the lease management
18 process.

19
20 NOW THEREFORE THE CITY OF HOMER ORDAINS

21
22 Section 1. Homer City Code Chapter 18.08.020, entitled "Land allocation plan – Property
23 available for lease" is hereby amended as follows:

24
25 18.08.020 Land allocation plan – Property available for lease.

26
27 a. Unless dedicated or reserved to another purpose, all real property including tide, submerged
28 or shore lands to which the City has a right, title and interest as owner or lessee, or to which
29 the City may become entitled, may be leased as provided in this chapter. In the case of any
30 conflict between this chapter and any local, State or Federal law governing the leasing of City
31 tide and submerged lands, the law governing the leasing of City tide and submerged lands shall
32 prevail.
33

34 b. The City administration shall maintain a list of all City-owned properties authorized for lease
35 by Council. This list shall be adopted annually and contain the information required under this
36 chapter. The list may be called the land allocation plan and will be made available to the public
37 ~~at the City Clerk's office.~~

38
39 c. Council shall adopt a land allocation plan that identifies:

40
41 1. City-owned property available for lease;
42

- 43 2. The property description, lease rate, preferred length of the lease term for each available
44 parcel; and
45
46 3. Any requirements, preferences or restrictions regarding use and/or development.
47
48 d. Council may identify property in the land allocation plan that is subject to competitive
49 bidding. Property subject to competitive bidding in the land allocation plan need only identify
50 the property description in the land allocation plan but all other terms required in subsection
51 (c) of this section shall be identified in the request for proposal for such properties.
52
53 e. Prior to the adoption of the land allocation plan, Council shall hold a work session.
54 Commission members and City staff may provide recommendations to Council during the
55 work session regarding City-owned property available for lease and the terms of such leases.
56
57 f. The City shall provide public notice of the adoption of the land allocation plan and the City-
58 owned real property available for lease no more than 60 days after its adoption.
59
60 g. All uses and activities on City-owned real property available for lease are subject to all
61 applicable local, State, and Federal laws and regulations.
62
63 h. The Council may restrict specific City-owned properties to certain uses or classes of use that
64 serve the City's best interest.

65
66 Section 2. Homer City Code Chapter 18.08.045, entitled "Lease applications" is hereby
67 amended as follows:

68
69 18.08.045 Lease applications.
70

71 **a.** Except for property subject to competitive bidding under this chapter, persons interested in
72 leasing City property may submit a lease application to the City Clerk. The City Manager shall
73 consider all applications and determine if an application is complete and meets the criteria
74 identified in the land allocation plan **and in HCC 18.08.060.**

75
76 **b.** When the City receives more than one lease application for a parcel that meets the criteria
77 established for that parcel in the land allocation plan, the City Manager shall evaluate the
78 applications using the criteria in HCC 18.08.060 and award the lease most advantageous to the
79 City. If both applicants are equally advantageous to the City, the City Manager shall award the
80 lease to the applicant who submitted a completed application first.

81
82 **c.** Applicants may be charged a fee for processing a lease application **non-refundable Lease**
83 **Application Fee as set forth in the City of Homer Fee Schedule.**

84
85 Section 3. Homer City Code 18.08.050, entitled “Requests for proposals – Competitive
86 bidding process” is hereby amended as follows:

87
88 18.08.050 Requests for proposals – Competitive bidding process.

89
90 a. The City Manager may issue a request for proposals to lease specific property identified in
91 the land allocation plan at any time after posting the notice required in HCC 18.08.020(f).

92
93 b. A request for proposal advertised by the City must identify the property description of the
94 property available for lease, the time frame for the submission of requests for proposals, any
95 preferred uses or industries, and the overall criteria the City intends to use to score and rank
96 proposals.

97
98 c. The City Manager must obtain approval from the Council before requesting proposals to
99 lease property not identified in the land allocation plan as property available for lease.

100
101 **d. The City Manager shall consider all responses to the City’s request for proposals that**
102 **are timely, responsible and responsive. Untimely submissions shall be rejected. The City**
103 **Manager reserves the right to reject any and all proposals in the City’s best interest.**

104
105 **e. The City Manager may rescind a notice to award at any time prior to the execution of a**
106 **lease if the proposer can no longer meet the terms of the proposal. If the City Manager**
107 **rescinds a notice to award, the City Manager may negotiate with the next most**
108 **responsive proposer and submit a new recommendation for award to Council under HCC**
109 **18.08.070 and Council may approve the award of the proposal to that recommended**
110 **proposer. If negotiations with the next most responsive bidder are unsuccessful, all bids**
111 **must be rejected and a new request for proposal may be issued.**

112
113 **f. The Council may approve other bidding or proposal procedures or exceptions to these**
114 **procedures via resolution.**

115
116 Section 4. Homer City Code 18.08.070, entitled “Notice to award” is hereby amended as
117 follows:

118
119 18.08.070 Notice to award.

120
121 ~~a. The City Manager shall consider all responses to the City’s request for proposals that are~~
122 ~~timely and responsive. Untimely submissions shall be returned to the proposer without review~~
123 ~~and that proposer shall not be considered.~~

124

125 ~~b. The City Manager may, in his or her sole discretion, and upon a determination that none of~~
126 ~~the proposals are in the City's best interest, recommend rejection of all proposals.~~

127
128 ~~a.e.~~ Upon a determination that a proposal **meets the criteria under HCC 18.08.060** ~~is the~~
129 ~~most advantageous to the City,~~ the City Manager shall recommend the proposal to Council for
130 acceptance. If Council approves the recommendation, the City Manager shall issue a notice to
131 award the lease to the successful proposer. The City Manager's recommendation shall be
132 presented to Council in a written memorandum identifying the recommended winning
133 proposer, the property description, the essential terms of the proposed lease, and the reasons
134 the City Manager recommended the award.

135
136 ~~b.d.~~ The City Manager shall submit any recommendation for approval of a proposal under this
137 chapter for property located on the Homer Spit ~~or in the Marine Commercial or Marine~~
138 ~~Industrial zoning districts~~ to the Port and Harbor Advisory Commission for review and
139 comment prior to recommending a proposal to Council.

140
141 ~~c.e.~~ If the Council adopts the City Manager's recommendation, the City Manager shall negotiate
142 with the ~~winning applicant~~ **selected proposer** and present a final lease to the Council for
143 approval. A notice to ~~award~~ **of tentative** award is conditional upon the City Manager's successful
144 negotiation of a final written lease consistent with the terms upon which the award was based.

145
146 ~~d.f.~~ The City Manager may, ~~with Council approval,~~ rescind a notice to award. A notice to award
147 becomes void on the date the City Manager provides written notice to the proposer that the
148 award has been rescinded.

149
150 ~~g.~~ The City Manager may rescind a notice to award at any time prior to the execution of a lease
151 if the proposer can no longer meet the terms of the proposal.

152
153 ~~h.~~ If the City Manager rescinds a notice to award, the City Manager may negotiate with the next
154 most responsive proposer and submit a new recommendation for award to Council and
155 Council may approve the award of the proposal to that recommended proposer. If
156 negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected
157 and a new request for proposal may be issued.

158
159 ~~i.~~ The Council may ~~approve other bidding or proposal procedures or exceptions to these~~
160 ~~procedures via resolution.~~

161
162 Section 5. Homer City Code 18.08.080, entitled "Lease execution and final approval" is
163 hereby amended as follows:

164
165 18.08.080 Lease execution and final approval.

166
167 a. After a notice to award a lease is approved by Council or a lease application is approved by
168 the City Manager, the City Manager is responsible for finalizing and executing the lease
169 agreement with the successful applicant or proposer. After Council's approval of the notice to
170 award but before Council approval under HCC 18.08.040, the City Manager may negotiate
171 nonessential long-term lease terms and make changes necessary to clarify the terms of the
172 long-term lease or correct clerical errors.

173
174 b. The City Manager has authority to negotiate all terms of short-term leases subject to the
175 provisions of this chapter.

176
177 c. After a lease is executed by both parties, the City Manager shall draft and the City Clerk shall
178 record a memorandum of lease. ~~Lessee is responsible for the recording fees.~~

179
180 Section 6. Homer City Code 18.08.130, entitled "Lease renewal" is hereby amended as
181 follows:

182
183 18.08.130 Lease renewal.

184
185 a. Council, upon written recommendation by the City Manager, may exempt the renewal of a
186 lease from competitive bidding if Council finds such exemption serves the City's best interests.

187
188 b. A lessee seeking to enter into a new lease with the City exempted from competitive bidding
189 under this section must submit a lease application and a written request for a new lease to the
190 City Manager at least 12 months but no more than 18 months prior to the expiration of the
191 existing lease. The City Manager shall notify Council of new lease requests under this section.
192 The City will review the application but is under no obligation to enter into a new lease.

193
194 c. If Council approves the new lease without a competitive process, it must do so by resolution
195 within six months prior to the date of lease termination.

196
197 d. Council shall consider the following factors when determining whether to exempt a lease
198 from competitive bidding under this section:

199
200 1. Lessee's past capital investment and binding commitment to future capital investment;

201
202 2. Lessee's financial condition and prior lease history;

203
204 3. The number of persons employed and the prospect for future employment;

205

206 4. Tax revenues and other financial benefits to the City anticipated in the future if the lease
207 is renewed;

208
209 5. Consistency of past use and intended future use with all applicable laws, including land
210 use codes and regulations, the Comprehensive Plan, and overall economic development
211 plan;

212
213 6. Other opportunities for use of the property that may provide greater benefit to the City;
214 and

215
216 7. Other social, policy, and economic considerations as determined by Council.

217
218 Section 7. Homer City Code 18.08.140, entitled "Sublease" is hereby amended as
219 follows:

220
221 18.08.140 Sublease.

222
223 a. City property may be subleased if expressly permitted in the lease agreement and approved
224 ~~in writing~~ by Council.

225
226 b. Except as provided otherwise in the lease agreement, all subleases must be in writing,
227 executed by the parties, and approved by the City Manager or their designee.

228
229 c. Approval must be granted prior to occupancy of the leased premises by a subtenant.

230
231 d. Subleasing shall not be used to transfer substantially all of a leasehold interest.

232
233 e. All subleases must comply with all applicable Federal, State, and local laws.

234
235 Section 8. Homer City Code 18.08.160, entitled "Assignment" is hereby amended as
236 follows:

237
238 18.08.160 Assignment.

239
240 a. Except as provided in the lease agreement, Council must approve the assignment of a lease
241 to another party.

242
243 b. Except as otherwise provided in this section or the lease agreement, the City Manager must
244 make a determination that a lessee is in full compliance with a lease before an assignment will
245 be effective. The City Manager may, in his or her sole discretion, consent to assignment of a
246 lease where lessee is in full compliance with the lease terms except for payments owed so long

247 as assignor and/or assignee agree in writing to pay the full amount owed within 90 days of the
248 assignment. An assignment shall not be effective and shall constitute default by lessee if full
249 payment is not received within 90 days of the assignment.

250
251 c. Except as otherwise provided in the lease agreement, if the lessee is in good standing and
252 eligible to assign the lease, the following procedures apply:

253
254 1. The lessee shall file a written request for assignment and a complete new lease
255 application to the City Manager;

256
257 2. The City Manager shall review the request and new lease application and determine
258 whether the proposed assignee **can fulfill the terms of the lease and the requirements**
259 **of this chapter** ~~is qualified under this chapter and the assignment~~ is in the City's best
260 interests;

261
262 3. The City Manager shall make a recommendation on the assignment to Council for final
263 action; and

264
265 4. Council shall approve or deny the request for assignment via resolution.

266
267 5. Assignment of long-term leases on the Homer Spit ~~or within the Marine Commercial or~~
268 ~~Marine Industrial zoning districts~~ shall be reviewed by the Port and Harbor Advisory
269 Commission prior to submission to Council for approval. ~~Except as otherwise provided in~~
270 ~~the lease agreement, assignment of all other long term leases shall be reviewed by the~~
271 ~~Homer Advisory Planning Commission prior to Council approval.~~

272
273 d. Council may approve assignment of a lease to a bank or other financial institution if it
274 determines the assignment is in the best interest of the City and the City Manager recommends
275 approval.

276
277 e. Where a lessee intends to assign the lease as part of a sale of the business located on the
278 leased lot, the person who intends to purchase the business may apply to extend the lease
279 term to allow the continuation of the business and to secure financing for the purchase of that
280 business. Any significant changes in the terms (use) of the existing lease must be reviewed by
281 the Port and Harbor Commission and approved by City Council by resolution as an amendment
282 to the lease.

283
284 Section 9. Homer City Code 18.08.195, entitled "Processing and filing fees" is hereby
285 amended as follows:

286
287 18.08.195 Processing and filing fees.

288 Fees for lease applications, lease, subleases and assignments, and other related fees shall be
289 established by Council by resolution **are contained in the City of Homer Fee Schedule.**
290 Failure to pay **required** owed fees may result in the rejection of a lease application or denial of
291 lease renewal, assignment, or sublease.

292
293 Section 10. Homer City Code 18.08.200, entitled "Time is of the essence - Lease
294 applications, proposals, and negotiations" is hereby enacted to read as follows:

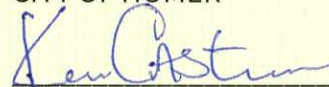
295
296 **18.08.200 Time is of the essence - Lease applications, proposals, and negotiations.**

297
298 **The City Manager may consider all City lease applications and proposals that are**
299 **responsive, responsible, in compliance with the provisions of this chapter and in the**
300 **City's best interest. If the City, in its sole discretion, determines that it will be unable to**
301 **reach an acceptable agreement with a proposer within a reasonable period of time, the**
302 **City reserves the right to terminate negotiations with any proposer should it be in the**
303 **City's best interest.**

304
305 Section 11. This Ordinance is of a permanent and general character and shall be
306 included in the City Code.

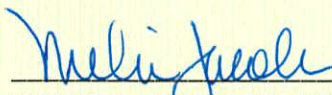
307
308 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 12th day of September, 2022.

309
310 CITY OF HOMER

311 

312 _____
313 KEN CASTNER, MAYOR

314 ATTEST:

315 

316 _____
317 MELISSA JACOBSEN, MMC, CITY CLERK

318
319 YES: 6

320 NO: 0

321 ABSTAIN: 0

322 ABSENT: 0

323
324 First Reading: 8.22.22

325 Public Hearing: 9.12.22

326 Second Reading: 9.12.22

327 Effective Date: 9.13.22

