



**CITY OF KENAI
ORDINANCE NO. 3403-2024**

AN ORDINANCE AMENDING SECTIONS OF KENAI MUNICIPAL CODE CHAPTERS 21.10- LEASING AND ACQUISITION OF AIRPORT RESERVE LANDS, AND 22.05-DISPOSITION OF CITY LANDS, TO EXTEND THE TIME ALLOWED FOR PRIVATE DEVELOPMENT ON CITY LEASED LOTS AND REQUIRING CERTAIN FINANCIAL ASSURANCES PRIOR TO LEASE EXECUTION.

WHEREAS, Ordinance 2998-2018, and 3072-2019(Substitute) respectively amended the City's land leasing program for Airport Reserve and Non-Airport Reserve lands owned by the City; and,

WHEREAS, since these two ordinances became effective the local and national economies have undergone significant change; and,

WHEREAS, additionally the City's leasing policies expressed in these Ordinances have been tested by the market; and,

WHEREAS, due to economic changes and the City's recent experience with developments on leased parcels it is in the best interest of the City to extend the initial term for development of improvements from 2 years to 3 years with the opportunity for two additional one-year extensions if certain conditions are met; and,

WHEREAS, similarly it is in the best interest of the City to require prospective lessee's provide reasonable evidence to the City that they have the financial capabilities to complete the improvements proposed on respective lease lots; and,

WHEREAS, at its regular meeting on March 14, 2024 the Airport Commission recommended the City Council approve this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Amendment of Section 21.10.040 of Kenai Municipal Code: That Kenai Municipal Code, Section 21.10.040-Initial lease application, is hereby amended as follows:

21.10.040 Initial lease application.

- (a) All applications for lease of lands must be submitted to the City on an approved application form provided by the City. Applications will be dated on receipt and payment of the nonrefundable application fee as set forth in the City's schedule of fees adopted by the City Council.
- (b) The application form must include the following information:
 - (1) The purpose of the proposed lease;
 - (2) The use, nature, type and estimated cost of improvements to be constructed;
 - (3) The dates construction is estimated to commence and be completed (ordinarily a maximum of [TWO (2)] three years); and
 - (4) A comprehensive description of the proposed business or activity intended.

(5) Evidence showing the applicant has financial resources to complete the proposed improvement, such as a liquidity verification letter or other document from a financial institution. This information may be provided separately from other application material and will be kept confidentially by City administration as allowed by law.

- (c) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to any new appraisal, engineering services, surveying and consulting costs, unless in the sole discretion of the City Council, the City Council determines that the subdivision serves other airport purposes. If the Council determines that other airport purposes are served by the subdivision, the City Council may choose in its sole discretion that the City will share in the subdivision costs with the applicant in whatever amount the City Council determines is reasonable given the benefit to the airport.
- (d) Anytime during the processing of a lease application, the City may request, and the applicant must supply, any clarification or additional information that the City reasonably determines is necessary for the City to make a final decision on the application.

Section 2. Amendment of Section 21.10.060 of Kenai Municipal Code: That Kenai Municipal Code, Section 21.10.060-Lease Application review, is hereby amended as follows:

21.10.060 Lease application review.

- (a) Applications shall be reviewed by City staff for:
 - (1) Application completeness;
 - (2) Conformance with municipal ordinances;
 - (3) Conformance with the airport layout plan, airport master plan, Federal Aviation Administration regulations applicable to the airport, airport improvement projects, airport sponsor grant assurances to the Federal Aviation Administration, and airport regulations and operations; and
 - (4) Conformance with the comprehensive plan.
- (b) Based on the initial review and staff recommendation for action, if the City Manager determines the application is complete and the applicant has financial means to complete the proposed improvements, the application shall be referred to the Airport Commission and the Planning and Zoning Commission for review and comment, together with the City Manager's recommendation for approval or rejection. For protection of private financial information, documentation showing the applicant has financial resources to complete the proposed improvement will be redacted or withheld from the application when published and provided to the Airport, Planning Commission and City Council.
- (c) Notice of applications for new leases, renewals or extensions must be published in a newspaper of general circulation within the City. The notice must contain the name of the applicant, a brief description of the land and the date upon which any competing applications must be submitted (thirty (30) days from the date of publication).
- (d) The recommendations of the City Manager, Airport Commission and Planning and Zoning Commission shall be brought to the City Council. The decision whether or not to lease land or authorize a lease extension or renewal rests in the sole discretion of the City Council.
- (e) The City Council may waive provisions of this chapter to lease property or interests in real property with the United States, the state of Alaska or an Alaska political subdivision when in the judgment of the City Council it is advantageous to the City to do so.

- (f) If the applicant is in default of any charges, fees, rents, taxes, or other sums due and payable to the City or the applicant is in default of a requirement of any lease or contract with the City a lease shall not be entered into until the deficiencies are cured.

Section 3. Amendment of Section 21.10.070 of Kenai Municipal Code: That Kenai Municipal Code, Section 21.10.070-Application for lease amendment, extension or renewal, is hereby amended as follows:

21.10.070 Application for lease amendment, extension or renewal.

- (a) A request from an existing lessee for a lease amendment, extension or renewal of the lease must be submitted to the City on an application form provided by the City. Applications must be complete and dated on receipt and payment of the nonrefundable application fee as set forth in the City's schedule of fees adopted by the City Council. All applications proposing new improvements must include evidence showing the applicant has financial resources to complete the proposed improvement, such as a liquidity verification letter or other document from a financial institution. This information may be provided separately from other application material and will be kept confidentially by City administration as allowed by law.
- (b) An application for an amendment must include the following information:
- (1) The purpose of the proposed amendment;
 - (2) The proposed change in use or activity; and
 - (3) A comprehensive description of the proposed business, if applicable.
- (c) An application for a lease extension must include the following information:
- (1) The use, nature, type and estimated cost of additional improvements to be constructed;
 - (2) The dates new construction is estimated to commence and be completed (ordinarily a maximum of [TWO (2)] three years).
- (d) An application for a lease renewal must include the following information:
- (1) For a lease renewal of an existing lease:
 - (i) The use, nature, type and estimated cost of additional improvements to be constructed;
 - (ii) The dates new construction is estimated to commence and be completed (ordinarily a maximum of [TWO (2)] three years).
 - (2) For a lease renewal of an expiring lease:
 - (i) A professional estimate of the remaining useful life of the principal improvement on the property, paid for by the applicant; or
 - (ii) A market value appraisal of the principal improvement on the property, paid for by the applicant; or
 - (iii) The purchase price of improvements, as certified by the current lessee and the proposed purchaser, to be in the bill of sale, to be executed at closing of the transaction; and
 - (iv) The use, nature, type and estimated cost of additional improvements to be constructed, if applicable.
 - (v) The dates new construction is estimated to commence and be completed (ordinarily a maximum of [TWO (2)] three years) if applicable.

- (e) Applications for amendment, extension or renewal shall be processed in accordance with the lease application review provisions of this chapter. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City.

Section 4. Amendment of Section 21.10.070 of Kenai Municipal Code: That Kenai Municipal Code, Section 21.10.070-Application for lease amendment, extension or renewal, is hereby amended as follows:

21.10.080 Length of lease term.

- (a) The length of term for an initial lease shall be based on the amount of investment the applicant proposes to make in the construction of new permanent improvements on the premises as provided in the application. The City Council may offer a shorter lease term, if the City Council makes specific findings that a shorter lease term is in the best interest of the City.
- (b) The maximum term of an initial lease shall be determined according to the following term table:

Term Table

Applicant's Investment/Value	Maximum Term of Years
\$7,500	5
15,000	6
22,500	7
30,000	8
37,500	9
45,000	10
52,500	11
60,000	12
67,500	13
75,000	14
82,500	15
90,000	16
97,500	17
105,000	18
112,500	19

Applicant's Investment/Value	Maximum Term of Years
120,000	20
127,500	21
135,000	22
142,500	23
150,000	24
157,500	25
165,000	26
172,500	27
180,000	28
187,500	29
195,000	30
202,500	31
210,000	32
217,500	33
225,000	34
232,500	35
240,000	36
247,500	37
255,000	38
262,500	39
270,000	40
277,500	41
285,000	42
292,000	43

Applicant's Investment/Value	Maximum Term of Years
300,000	44
307,500	45

- (c) The length of term for a lease extension shall be determined according to the term table and based on the total amount of the investment provided in the initial lease application and the estimated cost of additional permanent improvements as provided in the application for lease extension and provided no extension shall extend a lease term past forty-five (45) years.
- (d) The length of term for a lease renewal of an existing lease shall be determined according to the term table and based on the total amount of the investment provided in the initial lease application and the estimated cost of additional permanent improvements as provided in the application. The renewal term of an existing lease pursuant to a transaction between the current lessee and a new buyer and prospective lessee will be determined by the purchase price of permanent improvements, as certified by the current lessee and the proposed purchaser, to be in the bill of sale, to be executed at closing of the transaction, and the proposed additional permanent improvements, if any. The term for renewal of an existing lease cannot exceed forty-five (45) years.
- (e) The length of term for a lease renewal of an expiring lease shall be determined according to a professional estimate of the remaining useful life of the principal improvement on the property, paid for by the applicant or the term table and based on the following:
 - (1) The purchase price of real property improvements, as certified by the current lessee and the proposed purchaser, to be in the bill of sale, to be executed at closing of the transaction; or
 - (2) A market value appraisal of the principal improvement on the property, paid for by the applicant; and
 - (3) The estimated cost of any additional investment the applicant proposes to make in the construction of permanent improvements on the premises as provided in the application.
 - (4) The term for renewal of an expiring lease cannot exceed forty-five (45) years.
- (f) Before the City approves or extends the term of a lease, permit, concession, or other interest for any use of a premises that the City has determined in writing will be needed for airport development in the future, the City will first estimate when the premises will likely be needed for airport development. A term or a term extension for use of those premises may not run beyond the time that the City estimates the premises will become needed for airport development and is subject to further extension only to the extent that need does not arise or is otherwise satisfied or deferred by the City.
- (g) If the initial lease, term extension, or lease renewal granted to the applicant requires construction of permanent improvements, the lease or term extension shall be subject to the following conditions:
 - (1) The lessee to complete the proposed permanent improvements within a reasonable period of time set by the City, considering the cost and nature of the improvements; provided, however, that the time allowed shall not [ORDINARILY] exceed [TWENTY-FOUR (24)] 36 months after the effective date of the lease, renewal, or extension unless additional time is approved as provided in subsection 5 below.
 - (2) The lessee to provide a performance bond, deposit, personal guarantee, or other security if the City Council determines security is necessary or prudent to ensure the applicant's

completion of the permanent improvements required in the lease, renewal, or extension. The City Council shall determine the form and amount of the security according to the best interest of the City, after a recommendation by the City Manager considering the nature and scope of the proposed improvements and the financial responsibility of the applicant.

- (3) At no expense to the City, the lessee must obtain and keep in force during the term of the lease, insurance of the type and limits required by the City for the activities on the premises.
- (4) Within thirty (30) days after completion of the permanent improvements, the lessee shall submit to the City written documentation that the improvements have been completed as required. The City Manager shall make a report to the City Council of completion as soon as reasonably practical.
- (5) If the [APPLICANT] lessee shows good cause to the City Council, and evidence of progress towards completion of the proposed improvements, including but not limited to a building permit, invoices for site specific building materials, or third party contracts for construction, as well as updated financial information as required in KMC 21.10.040(b)(5) and the City Council determines the action is in the best interest of the City, the City Council may grant an extension of the time [ALLOWED] initially not to exceed 12 months to complete permanent improvements by resolution that is sufficient to allow for the completion of the permanent improvements or for submission of documentation that the permanent improvements have been completed. A final twelve month extension may be granted by separate resolution of Council if the lessee meets the same criteria for the first twelve month extension and provides a performance bond, deposit, personal guarantee or other security interest sufficient to satisfy the Council that the improvements will be completed and Council determines the final extension is in the best interest of the City. [NO EXTENSION OR COMBINATION OF EXTENSIONS GRANTED SHALL EXCEED TWELVE (12) MONTHS OR CAUSE THE TOTAL TIME ALLOWED TO COMPLETE PERMANENT IMPROVEMENTS TO EXCEED THIRTY-SIX (36) MONTHS.]
- (6) If, within the time required, the applicant fails to complete the required permanent improvements, the City shall:
 - (i) If the application is for a new lease or lease renewal, execute the forfeiture of the performance bond, deposit, personal guarantee, or other security posted by the applicant under subsection (g)(2) of this section to the extent necessary to reimburse the City for all costs and damages, including administrative and legal costs, arising from the applicant's failure to complete the required improvements, and initiate cancellation of the lease or reduce the term of the lease to a period consistent with the portion of the improvements substantially completed in a timely manner according to the best interests of the City.
 - (ii) If the application is for a lease extension, the City shall terminate the amendment extending the term of the lease or reduce the term of the extension at the City's sole discretion.

Section 5. Amendment of Section 22.05.025 of Kenai Municipal Code: That Kenai Municipal Code, Section 22.05.025-Initial lease application, is hereby amended as follows:

22.05.025 Initial lease application.

- (a) All applications for lease of lands must be submitted to the City Manager or designee on an application form provided by the City. Applications will be dated on receipt and must include payment of the nonrefundable application fee as set forth in the City's schedule of fees approved by the City Council.

- (b) The application form must include the following information:
- (1) The purpose of the proposed lease;
 - (2) The use, nature, type, and estimated cost of improvements to be constructed;
 - (3) The dates construction is estimated to commence and be completed. Construction must be completed within [TWO (2)] 3 years except in special circumstances that require a longer period of time and which must be approved by the City Council;
 - (4) Evidence showing the applicant has financial resources to complete the proposed improvement, such as a liquidity verification letter or other document from a financial institution. This information may be provided separately from other application material and will be kept confidentially by City administration as allowed by law.
- [[4]5] A comprehensive description of the proposed business or activity intended;
- [5]6] Whether the applicant requests a lease with an option to purchase; and
- [[6]7] How the proposed lease meets the intent of this chapter.
- (c) Applications which propose a subdivision shall require the applicant to be responsible for all costs associated with the subdivision, including but not limited to any new appraisal, engineering services, surveying and consulting costs unless, in the sole discretion of the City Council, it is determined that the subdivision serves other City purposes.
- (1) If the Council determines that other City purposes are served by the subdivision, the City Council may choose in its sole discretion to share in the subdivision costs with the applicant in an amount the City Council determines is reasonable given the benefit to the City.
 - (2) If the Council does not make a determination that other City purposes are served by the subdivision, the applicant must submit a deposit to cover the estimated costs associated with the subdivision.
 - (3) If the City enters into a lease with the applicant, any unused balance of the deposit made to cover costs associated with subdivision will apply to the rent payable under the lease.
 - (4) If the City's costs exceed the amount of any deposit made to cover costs associated with subdivision, the applicant must pay the shortage to the City as a condition of the lease.
 - (5) If the application is rejected or if the applicant withdraws the application or fails to sign a lease offered to the applicant, the City will return any unused deposit balance to the applicant.
- (d) Applications for lands which have not been appraised within one (1) year of the requested starting date of the lease require the applicant to be responsible for all costs associated with appraisal. The cost of the appraisal shall be credited or refunded to the lessee once development is completed as required by the lease, extension or renewal.
- (e) Applications which result in a lease agreement with the City require the lessee to be responsible for all recording costs and any other fees associated with execution of the lease including a preliminary commitment for title insurance and fifty percent (50%) of the required costs associated with a sale of leased land in which the lease contains an option to purchase once the minimum development requirements have been met.
- (f) Anytime during the processing of a lease application, the City may request, and the applicant must supply, any clarification or additional information that the City reasonably determines is necessary for the City to make a final decision on the application.

Section 6. Amendment of Section 22.05.040 of Kenai Municipal Code: That Kenai Municipal Code, Section 22.05.040-Lease application review, is hereby amended as follows:

22.05.040 Lease application review.

- (a) Applications shall be reviewed by City staff for application completeness and conformance with City ordinances.
- (b) Based on the initial review, if the City Manager determines the application is complete and the applicant has financial means to complete the proposed improvements, the application shall be referred to the Planning and Zoning Commission and any other applicable commissions for review and comment, together with the City Manager's recommendation for approval or rejection. The recommendation may include a recommendation for a subdivision to reduce or enlarge a parcel to meet the intended development or use. For protection of private financial information, documentation showing the applicant has financial resources to complete the proposed improvement will be redacted or withheld from the application when published and provided to the Planning Commission, other applicable commission and City Council.
- (c) Notice of complete applications for new leases, renewals or extensions shall be published in a newspaper of general circulation within the City and posted on the property. The notice must contain the name of the applicant, a brief description of the land, whether the applicant requests a lease with an option to purchase, and the date upon which any competing applications must be submitted (thirty (30) days from the date of publication).
- (d) The recommendations of the City Manager, Planning and Zoning Commission, and any other applicable commissions shall be provided to the City Council. The City Council shall determine whether the lease, renewal, amendment or extension is consistent with the intent of this chapter and in the best interest of the City. The decision whether or not to lease land or authorize a lease extension, renewal, amendment or assignment rests in the sole discretion of the City Council.
- (e) If the applicant is in default of any charges, fees, rents, taxes, or other sums due and payable to the City or the applicant is in default of a requirement of any lease or contract with the City a lease shall not be entered into until the deficiencies are remedied.

Section 7. Amendment of Section 22.05.045 of Kenai Municipal Code: That Kenai Municipal Code, Section 22.05.045-Application for lease amendment, assignment, extension or renewal, is hereby amended as follows:

22.05.045 Application for lease amendment, assignment, extension or renewal.

- (a) A request from an existing lessee for a lease amendment, assignment, extension or renewal of the lease must be submitted to the City Manager or designee on an application form provided by the City. Applications must be complete and dated on receipt and include payment of the nonrefundable application fee and applicable deposit as set forth in the City's schedule of fees adopted by the City Council. All applications proposing new improvements must include evidence showing the applicant has financial resources to complete the proposed improvement, such as a liquidity verification letter or other document from a financial institution. This information may be provided separately from other application material and will be kept confidentially by City administration as allowed by law. Construction must be completed within 3 years except in special circumstances that require a longer period of time and which must be approved by the City Council;
- (b) An application for an amendment must include the following information:
 - (1) The purpose of the proposed amendment;
 - (2) The proposed change in use or activity, if any;
 - (3) A comprehensive description of the proposed business or activity, if applicable; and
 - (4) How the proposed amendment meets the intent of this chapter.

- (c) An application for a lease assignment must include the following:
 - (1) The name of the individual or legal entity to which the lessee requests to assign the lease.
- (d) An application for a lease extension must include the following information:
 - (1) The use, nature, type and estimated cost of additional improvements to be constructed;
 - (2) The dates new construction is estimated to commence and be completed; and
 - (3) How the proposed lease extension meets the intent of this chapter.
- (e) An application for a lease renewal must include the following information:
 - (1) For a lease renewal of an existing lease:
 - (i) The use, nature, type and estimated cost of additional investment in the construction of new permanent improvements;
 - (ii) The dates new construction is estimated to commence and be completed;
 - (iii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of real property improvements on the premises as certified by the current lessee and proposed purchaser in a bill of sale or purchase agreement dated within one (1) year of the requested starting date of the renewal; and
 - (iv) How the proposed lease renewal meets the intent of this chapter.
 - (2) For a lease renewal of an expiring lease:
 - (i) A fair market value appraisal of the existing principal improvement on the property, paid for by the applicant, and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;
 - (ii) If the renewal is pursuant to a transaction between the current lessee and a new buyer and prospective lessee, the estimated purchase price of existing real property improvements, as certified by the current lessee and the proposed purchaser in a bill of sale or purchase agreement dated within one (1) year of the requested starting date of the renewal, and the estimated cost of any additional investment in the construction of permanent improvements on the premises, if applicable;
 - (iii) If the renewal is based on a professional estimate of the remaining useful life of the real property improvements on the premises, the estimated value dated within one (1) year of the requested starting date of the renewal and how it was determined;
 - (iv) The use, nature, type and estimated cost of any additional improvements to be constructed, if applicable;
 - (v) The dates any new construction is estimated to commence and be completed; and
 - (vi) How the proposed lease meets the intent of this chapter.
- (f) Applications for amendment, assignment, extension or renewal shall be processed in accordance with the lease application review provisions of this chapter, except that applications for assignment shall not be referred to the Planning and Zoning Commission. The City has no obligation to amend, assign, renew or extend a lease and may decline to do so upon making specific findings as to why a lease amendment, assignment, renewal, or extension is not in the best interest of the City.

Section 8. Amendment of Section 22.05.055 of Kenai Municipal Code: That Kenai Municipal Code, Section 22.05.055-Length of lease term, is hereby amended as follows:

22.05.055 Length of lease term.

- (a) The length of term for an initial lease shall be based on the amount of investment the applicant proposes to make in the construction of new permanent improvements on the premises as provided in the application. The City Council may offer a shorter lease term, if the City Council makes specific findings that a shorter lease term is in the best interest of the City.
- (b) The maximum term of a lease shall be determined according to the following term table and cannot exceed forty-five (45) years:

Term Table

APPLICANT'S INVESTMENT/VALUE	MAXIMUM TERM OF YEARS
\$7,500	5
15,000	6
22,500	7
30,000	8
37,500	9
45,000	10
52,500	11
60,000	12
67,500	13
75,000	14
82,500	15
90,000	16
97,500	17
105,000	18
112,500	19
120,000	20
127,500	21
135,000	22
142,500	23

APPLICANT'S INVESTMENT/VALUE	MAXIMUM TERM OF YEARS
150,000	24
157,500	25
165,000	26
172,500	27
180,000	28
187,500	29
195,000	30
202,500	31
210,000	32
217,500	33
225,000	34
232,500	35
240,000	36
247,500	37
255,000	38
262,500	39
270,000	40
277,500	41
285,000	42
292,500	43
300,000	44
307,500	45

(c) *Lease Extension.* The length of term for a lease extension shall be determined based on the remaining term of the initial lease and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table and provided no extension shall extend a lease term past forty-five (45) years.

- (d) *Lease Renewal for an Existing Lease.* A renewal for an existing lease requires the construction of new permanent improvements, and the length of term for a lease renewal for an existing lease shall be determined as follows:
- (1) Based on the remaining term of the initial lease according to the term table and the estimated cost of new investment the applicant proposes to make in the construction of new permanent improvements on the premises according to the term table; or
 - (2) Pursuant to a transaction between the current lessee and a new buyer and prospective lessee and based on the purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale or purchase agreement, to be executed at closing of the transaction and the estimated cost of new investment in the construction of new permanent improvements on the premises according to the term table.
 - (3) The term for renewal of an existing lease cannot exceed forty-five (45) years.
- (e) *Lease Renewal for an Expiring Lease.* The length of term for a lease renewal of an expiring lease shall be determined as follows:
- (1) The purchase price of existing real property improvements on the premises, as certified by the current lessee and the proposed purchaser in the bill of sale or purchase agreement, to be executed at closing of the transaction and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table; or
 - (2) A professional estimate of the remaining useful life of the real property improvements on the premises, paid for by the applicant, and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table; or
 - (3) A fair market value appraisal of the existing real property improvements on the premises, paid for by the applicant, and the estimated cost of any new investment in the construction of new permanent improvements on the premises according to the term table.
 - (4) The term for renewal of an existing lease cannot exceed forty-five (45) years.
- (f) If the initial lease, term extension, or lease renewal granted to the applicant requires construction of new permanent improvements, the lease or term extension shall be subject to the following conditions:
- (1) The lessee to complete the proposed permanent improvements within [TWO (2)] 3 years except in special circumstances that require a longer period of time and which must be approved by the City Council[,] in the initial lease or unless additional time is approved after the lease is executed as provided in subsection 5 below.
 - (2) The lessee to provide a performance bond, deposit, personal guarantee, or other security if the City Council determines security is necessary or prudent to ensure the applicant's completion of the permanent improvements required in the lease, renewal, or extension. The City Council shall determine the form and amount of the security according to the best interest of the City, after a recommendation by the City Manager considering the nature and scope of the proposed improvements and the financial responsibility of the applicant.
 - (3) At no expense to the City, the lessee must obtain and keep in force, during the term of the lease, insurance of the type and limits required by the City for the activities on the premises.
 - (4) Within thirty (30) days after completion of the permanent improvements, the lessee shall submit to the City written documentation that the improvements have been completed as required. The City Manager shall make a report to the City Council of completion as soon as reasonably practical.

- (5) If the [APPLICANT] lessee shows good cause and evidence of progress towards completion of the proposed improvements, including but not limited to building permits, invoices for site specific building materials, or third party contracts for construction, as well as updated financial information as required in KMC 22.05.25(b)(4) and the City Council determines the action is in the best interest of the City, the City Council may grant an extension of the time initially not to exceed 12 months [ALLOWED] to complete permanent improvements by resolution that is sufficient to allow for the completion of the permanent improvements or for submission of documentation that the permanent improvements have been completed. A final twelve-month extension may be granted by separate resolution of Council if the lessee meets the same criteria for the first twelve-month extension and provides a performance bond, deposit, personal guarantee or other security interest sufficient to satisfy the Council that the improvements will be completed and Council determines the final extension is in the best interest of the City.
- (6) If, within the time required, the applicant fails to complete the required permanent improvements, the City shall:
 - (i) If the application is for a new lease or lease renewal, execute the forfeiture of the performance bond, deposit, personal guarantee, or other security posted by the applicant under subsection (f)(2) of this section to the extent necessary to reimburse the City for all costs and damages, including administrative and legal costs, arising from the applicant's failure to complete the required improvements, and/or initiate cancellation of the lease or reduce the term of the lease to a period consistent with the portion of the improvements substantially completed in a timely manner according to the best interest of the City.
 - (ii) If the application is for a lease extension, the City shall terminate the amendment extending the term of the lease or reduce the term of the extension at the City's sole discretion.

Section 9. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

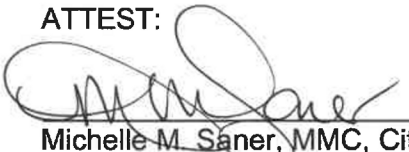
Section 10. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 20TH DAY OF MARCH, 2024.



Brian Gabriel Sr., Mayor

ATTEST:



Michelle M. Sauer, MMC, City Clerk

Introduced: March 6, 2024
Enacted: March 20, 2024
Effective: April 19, 2024



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Terry Eubank, City Manager
DATE: February 29, 2024
SUBJECT: Ordinance 3403-2024 – Amending Leasing of Lands

The City Council adopted Ordinance 2998-2018 and 3072-2019 (Substitute), amending the City's land leasing program for Airport Reserve and Non-Airport Reserve lands owned by the City.

These two ordinances included substantial changes to the City's leasing program, including simplifying the application process and standardizing the lease process and forms to encourage growth, development, and a thriving business and aviation community. Since these changes have become effective, the City has seen an increase in lease applications and new leases of Airport Reserve lands. However, the local and national economies have undergone significant change, and the City has also seen an increase in requests for extensions for the completion of construction required under a lease.

Due to economic changes and the City's recent experience with developments on leased parcels, it is in the best interest of the City to extend the initial term for the development of improvements from two years to three years with the opportunity for two additional one-year extensions if certain conditions are met. These conditions would require lease applicants to provide reasonable evidence to the City that they have the financial capabilities to complete proposed improvements and require the lessee to show evidence of progress towards completion of the proposed improvements, including but not limited to a building permit, invoices for site-specific building materials, or third-party contracts for construction.

This amendment has been discussed with existing leaseholders who have received an extension of time for good cause for the completion of permanent improvements required by the Lease, and a copy of the Ordinance has been scheduled for the March 14 meeting of the Airport Commission for recommendation.

Thank you for your consideration.



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MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Scott Bloom
DATE: February 29, 2024
SUBJECT: Airport Lands Sectional Analysis

This memo provides a sectional analysis for the code changes in Ordinance 3403-2024.

Section 1. The changes to 21.10.040, which lays out what information is required in lease applications for airport reserve lands, include a change to subsection (b)(3) indicating construction of improvements on leased property ordinarily must be completed in 3 years or less, instead of 2 years or less. Additionally, a new subsection (b) (5) is added to require that evidence of the lessee's financial ability to complete the project must be provided to administration as part of the lease application package, and that this financial information will be kept confidential as allowed by relevant law.

Section 2. This section amends 21.10.060, which describes the process for reviewing lease applications for lands on the airport reserve, subsection (b), to describe the process for reviewing the financial capability of the proposed lessee to complete the proposed projects. The amendment also provides that this financial information will not be shared publicly. The changes provide that the financial resources of the lessee will be checked administratively by the City Manager, and will not be a part of the decision-making process of applicable advisory bodies or the City Council, in order to protect the lessee's financial information. Essentially in order for an application to be deemed complete by administration and forwarded to the advisory bodies and Council, the City Manager will need to determine that financial information provided is sufficient.

Section 3. This section amends 21.10.070(a) (c) and (d), applying the same financial resources check, and improvement construction timeline of 3 years, instead of 2 years, to lease extensions and renewals on airport reserve lands, similar to new lease applications.

Section 4. This section amends 21.20.080(g)(1) and (5) to again state that construction must ordinarily be completed in 3 years (36 months) but that two, one-year extensions can be granted by the Council, for a total of five years to complete construction on airport reserve lands. The first one-year extension requires the lessee to show good cause and progress, such as a building permit, proof of purchase of materials, or construction contracts with a third party, and evidence that they still have the financial capability to complete the project. The second one-year extension can be granted by Council if the same criteria of the first extension are met, and the lessee provides a financial guarantee to complete the project.

Section 5. This section amends 22.05.025(b), making the same amendments to the initial lease application requirements for lands outside the airport reserve, as within the airport reserve, regarding financial resources of the lessee to complete the project and changing the timeline to complete construction from 2 years to 3.

Section 6. This section amends 22.05.040(b) regarding lands outside the airport in the same respects as lands on the reserve for the lease review process by administration, advisory bodies and Council.

Section 7. This section amends 22.05.045, which guides the process for lease extensions and renewals outside the airport reserve, to include similar language regarding financial resources of the lessee to complete the project and describing that new improvements must be ordinarily completed in 3 years.

Section 8. This section amends 22.05.055(f) to again change the ordinary timeline for completion of construction of improvements on a leased lot outside the airport reserve from 2 to 3 years, and provide the same opportunity for two, one-year extensions as described above for leases on the airport reserve as in Section 4.





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MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Terry Eubank, City Manager
FROM: Derek Ables, Airport Manager
DATE: March 15, 2024
SUBJECT: Ordinance 3403-2024 Requested Amendment

This memo requests an amendment to fill in the blank within the Ordinance.

The following amendment is respectfully requested.

Motion

Amend the sixth whereas clause by inserting the recommendation of the commission, to read:

- "WHEREAS, at its regular meeting on March 14, 2024 the Airport Commission recommended the City Council approve this Ordinance."

Thank you for your consideration.