Introduced by: Mayor
Date: Apr. 19, 1983
Hearing: May 17, 1983
Vote:
Action: Referred to Lands Comm & P..(4-21)

KENAI PENINSULA BOROUGH

Defeated June 19, 1983

ORDINANCE 83-29

PROVIDING FOR RECODIFICATION OF TITLE 17 BOROUGH LANDS AND FOR ANNUAL BOROUGH LAND DISPOSAL PLANS PURSUANT TO FORMAL UNIFORM LAND DISPOSAL CONDITIONS AND FOR SAND AND GRAVEL AND OTHER PERMITS AND CODIFYING AND AMENDING ORDINANCE 82-23 (AMENDED) CONCERNING NEGOTIATED SALE OF ISOLATED TRACTS AND AMENDING EXISTING BOROUGH REAL PROPERTY DISPOSAL ORDINANCES CONSISTENT WITH STATE LAWS.

WHEREAS, AS 29.48.180 requires codification of ordinances; and

WHEREAS, in the past ordinances dealing with land sales have not consistently been prepared for codification and incorporation in KPB 17 entitled "Borough Lands"; and

WHEREAS, because of this failure a search of the Borough Code of Ordinances does not reveal the ordinances which are controlling in the sale of such lands; and

WHEREAS, AS 29.48.260(c) provides that no ordinance for sale, lease, or disposition of real property valued at $25,000 or more is valid "unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted"; and

WHEREAS, AS 29.48.260(d) provides that the provisions of (c) of that statute do not apply where the Assembly has by ordinance established a formal procedure for acquisition of lands from the State and disposal thereof; and

WHEREAS, the Supreme Court in Gilman v. Martin, (Alaska 1983), recognized the requirements of AS 29.48.260(d) and struck down durational residency discounts and severely limited residency application requirements, and expanded the class of persons entitled to bring suit on land disposals; and

WHEREAS, the Ordinance 82-23 (Amended), providing for negotiated sales has not been codified; and

WHEREAS, the Assembly should set policy for the Borough by passage of formal uniform ordinances establishing procedures for the sale of lands, and the disposal by permit of interests in land;

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That Kenai Peninsula Borough Code of Ordinances Title 17, Borough Lands, be amended and recodified, and by adding a new Chapter 17.12, Land acquisition and classification, and recodifying formerly numbered sections, and adding new sections (without underlying) and shall read as follows:

17.12.010 Acquisition of borough lands. The Borough may acquire and hold real property or an interest in real property, whether vested or inchoate, in any manner permitted by law.

17.12.020 [17.04.010] Classification of borough lands -- Disposition. The assembly may by ordinance [RESOLUTION] classify any borough owned or selected lands for disposition. The mayor will present to the assembly, on an ongoing basis, a plan of disposition classification of all borough lands. The assembly shall classify borough lands for disposition as "public use lands," "retained lands," or disposal [SALE] lands." The assembly may reclassify any lands pending disposition, and may at any time make further classifications or subclassifications of borough lands.

17.12.030 Classification of borough lands--Land use. A. The Assembly may by ordinance classify or reclassify any Borough lands consistent with the land use classification system, the comprehensive plan, and applicable zoning, if any.

B. The land use classification system of the State of Alaska as contained in Title 11, Chapter 55, Alaska Administrative Code is adopted by reference as the lands use classification system applicable to all Borough lands. Nothing contained in this section shall limit or prohibit the Assembly from modifying or amending by ordinance said land use classification system for application to Borough lands.

17.12.040 Classification prior to disposal. Borough lands other than tax foreclosed lands, may not be sold, leased, exchanged, or otherwise disposed of until classified for land use and disposition as provided in this title.

17.12.050 Classification procedure. A. The Mayor shall transmit a copy of proposed classification or reclassification plans of Borough lands to the Planning Commission for review, publication, public hearing, and findings and recommendations as provided in Chapter 17.20.

B. The Planning Commission shall promptly review all new acquisitions of land by the Borough, including unredeemed tax foreclosure lands, and submit interim classification recommendations to the Mayor for inclusion in a classification plan.

C. After considering the Planning Commission's findings and recommendations, the Mayor shall submit a plan of classification to the Assembly.

17.12.060 [17.04.190] Reclassification permitted when. Nothing in this chapter shall prevent, through mutual agreement, the reclassification of any lands subject to this chapter as provided in the classification regulations of the Division of Lands, state of Alaska.

Section 2. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended and recodified by adding a new Chapter 17.20, Disposal of borough lands--General provisions, and recodifying formerly numbered sections, and adding new sections (without underlying) and shall read as follows:

17.20.010 [17.04.070] Borough land disposal--Policy. This title [CHAPTER] is based upon a policy which favors the transfer of disposal lands to encourage systematic development and improvement of Borough land, and the expansion of the tax base to the maximum extent possible for the overall benefit of borough residents, and the procedure contained in this title [CHAPTER] for the disposal of borough lands to private parties is intended to meet the formal procedure requirements of AS 29.48.260(d) for the acquisition and disposal of lands or interests in lands acquired from the State, and to meet the requirement of Chapter 181, Section 1(b) of the Session Laws, Alaska 1978, to meet the needs of persons residing in the Borough, where applicable.

17.20.020 Borough land disposal--Procedure selection. Borough lands or interests in lands shall be disposed of only in the manner provided in this title:

A. Multiple tract sales of borough land grant entitlement or other selection lands as provided in Chapter 17.28 utilizing the sealed bid procedures provided in Chapter 17.36, the lottery procedures provided in Chapter 17.40, or the auction procedures provided in Chapter 17.44..

B. The negotiated sale of isolated parcels as provided in Chapter 17.32.

C. The exchange of lands as provided in Chapter 17.48.

D. Leases and permits as provided in Chapter 17.52.

E. Forest resources as provided in Chapter 17.60.

F. Agricultural lands as provided in Chapter 17.64.

G. Sand and gravel as provided in Chapter 17.68.

H. Public use as provided in Chapter 17.72.

I. Industrial lands as provided in Chapter 17.76.

J. Tax foreclosed properties as provided in Chapter 17.80 and Chapter 5.12 of this code.

K. Non "State acquired" lands as provided in Chapter 17.84.

L. Charitable and religious disposals as provided in Chapter 17.88.

17.20.030 [17.04.040] Annual disposal plan.[--TERMS AND CONDITIONS OF SALE] A. The Mayor shall at least annually transmit to the Planning Commission a copy of a proposed disposal plan for the sale, lease, or other disposal of Borough properties, including tax foreclosed properties, not needed for public use, for review, publication, public hearing, findings and recommendation as provided in Chapter 17.24 this title.

B. Upon receipt of the findings and recommendations of the Planning Commission, the Mayor shall submit the plan to the Assembly.

C. The disposal plan recommended to the Assembly shall include a listing of all parcels of land to be disposed, by a legal description, and shall include the land use classification, the disposal classification, and the assessed value of each parcel, together with the findings and recommendations of the Planning Commission [A STATEMENT OF THE TERMS AND CONDITIONS WHICH SHALL BE ATTACHED TO THE DISPOSAL OF EACH PARCEL,

THE METHOD OF DISPOSAL, AND THE MINIMUM ACCEPTABLE PRICE FOR EACH PARCEL].

D. The assembly may [SHALL] by resolution [ORDINANCE] accept, modify or reject any proposed disposal plan. If the Assembly accepts a disposal plan it shall also select and adopt by resolution the terms for such sale, or any portions thereof, from Chapter 17.20, and shall select the procedure for the sale as a lottery pursuant to Chapter 17.40; as a sealed bid pursuant to Chapter 17.36; or by public auction pursuant to Chapter 17.44.

E. Assembly adoption of a disposal plan shall authorize the mayor to carry out the land disposal plan and to execute all necessary documents in accordance with the adopted plan and this title.

17.20.040 Terms of disposal. The Assembly shall by resolution select and adopt the terms for sales or other disposals of Borough lands not otherwise provided in this title, including:

i) establishing the application fee or fees and the number of applications permitted per applicant for each parcel;

ii) establishing the disposal pricing method to be used for each parcel, considering the appraised value;

iii) establishing the terms and conditions of any discounts, other than the Disabled American Veteran discount;

iv) establishing the minimum down payment to be permitted.

17.20.050 General conditions and procedures for sale of Borough lands. Unless otherwise provided by law or ordinance, all sales of Borough lands pursuant to this title, shall be subject to the general conditions and procedures contained in Sections 17.20.060 through 17.20.100.

17.20.060 Application--Minimum qualifications. Except for applications for parcels to be disposed of in multiple tract sales pursuant to Chapter 17.28, or as otherwise limited in this title, any person or entity competent and authorized by law to purchase and hold title to real property may make application for any land or interest in land or interest therefrom disposed of pursuant to this title.

17.20.070 Closing procedure. A. Within 30 days following any sale, the eligible purchaser or alternate, as the case may be, shall close the sale of any parcel by either tendering the payment for the purchase price and costs in full or by tendering the required down payment for that sale together with costs and signing a promissory note for the outstanding balance together with interest payable in installments pursuant to the provisions of this title, together with the deed of trust prepared on the forms approved by the Mayor.

B. The Borough shall execute the warranty deed subject to reservations and exceptions provided in this title and shall record the deed and any deed of trust at the expense of the purchaser.

C. The Mayor may provide for payments pursuant to a promissory note to be made through a contract collection agent at the expense of the purchaser, in which event the promissory note, request for reconveyance and deed of reconveyance shall be deposited with said escrow agent.

D. The Borough Mayor may also provide for all sale closings to be accomplished through an escrow agent.

17.20.080 Deeds and deeds of trust. A. Conveyance of title for sales of all Borough lands other than tax foreclosed lands, unless otherwise provided by ordinance, shall be by warranty deed subject to: 1) rights and reservations of record; and 2) conditions of the site and the extent of any easements, encroachments, alterations, infringements or other pre-existing rights either of record or ascertainable by physical inspection.

B. At the time of closing the sale, unless the full amount is paid down, the purchaser shall execute a standard form deed of trust which includes additional provisions prohibiting the resubdivision of any parcel or the utilization or removal of any timber or gravel resources for any commercial purpose until the balance due is paid in full, and providing for trustees sale upon default in payment or upon condition broken.

17.20.090 Interest. A. Unless otherwise established by the Assembly the rate of interest on promissory notes for balances remaining unpaid for any Borough lands sold pursuant to Title 17 shall be the legal rate established by AS 45.45.010(a) in effect at the time of approval of the disposal plan by the Assembly.

17.20.100 Installment payments. A. Promissory notes for balances remaining unpaid for any Borough lands sold pursuant to Title 17 shall provide for monthly installment payments of principal together with interest, according to the following schedule:

1. In 120 equal monthly installments of principal and interest for all balances of less than $30,000 remaining after the down payment; or

2. In 180 equal monthly installments of principal and interest for all balances of $30,000 or more but less than $50,000 remaining after the down payment; or

3. In 240 equal monthly installments of principal and interest for all balances of $50,000 or more remaining after the down payment.

B. Nothing contained herein shall prevent the prepayment of principal amounts with interest to date of payment, however, no prepayment shall extend any future installment until the entire balance of principal together with interest is paid in full, notwithstanding the provisions of any promissory to the contrary.

Section 3. That the Kenai Peninsula Borough Code of Ordinances, Chapter 1.25 and Title 17 be amended by recodifying 1.25.010 and 1.25.020 as 17.20.110 and 17.20.120.

Section 4. That the Kenai Peninsula Borough Code of Ordinances Title 17, Borough Lands be amended and recodified by adding a new Chapter 17.24, Planning Commission Procedures, and recodifying and amending Section 17.04.030, and shall read as follows:

17.24.010 [17.04.030] Planning commission--Hearing--Recommendations. [A.] The mayor shall transmit to the planning commission a copy of each classification or reclassification plan, and shall transmit a copy of the proposed disposal plan[,] including the classifications adopted for each borough land parcel, for review, publication, [COMMENT AND] public hearing, and findings and recommendations.

17.24.020 Public hearing. The planning commission shall hold one public hearing on the proposed [DISPOSAL] plan after 10 days' notice to the public in a newspaper of general circulation in the borough.

17.24.030 Consideration. The planning commission shall take into account the requirements for orderly

and desirable community development in particular areas, known geophysical hazards which might render particular parcels unsuitable for certain types of development, the availability of access and essential community services, the needs and desires of borough residents regarding the location, type and size of real property parcels, the form of disposal contemplated, the comprehensive plan, the land use and disposition classification system, and the effect of the proposed disposal or classification upon borough tax revenues and upon general real property values in the borough, and such other factors which the planning commission deems necessary and appropriate.

17.24.040 Recommendations. [B.] The planning commission, within 30 [15] days after the date of hearing, shall recommend to the mayor that the proposed classification or disposal plan be adopted, modified, or not adopted. [AFTER CONSIDERING THE PLANNING COMMISSION'S RECOMMENDATIONS, THE MAYOR SHALL RECOMMEND A PLAN OF DISPOSAL TO THE ASSEMBLY.]

17.24.050 Fact finding. [C.] The planning commission is authorized to undertake any required fact-finding inquiries, or to hold any required public hearings by committees which are comprised of less than a committee of the whole planning commission or of a quorum of the planning commission, when designated and appointed by the chairman of the planning commission; provided, however, that these findings and recommendations and required public hearings may only be considered or accomplished or acted upon at a regular public meeting before a duly constituted quorum of the planning commission, or before the planning commission sitting as a committee of the whole.

Section 5. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.28, Disposal of Borough land grant entitlement or other selected lands--Multiple tract sales, and shall read as follows:

17.28.010 Multiple tract disposal policy. The Mayor shall present to the Assembly annually, to determine by resolution, the question of whether to hold a multiple tract disposal sale of borough land grant entitlement or other selected lands not needed for public use.

17.28.020 Planning Commission recommendations. If the Assembly authorizes a multiple tract disposal, the Mayor shall transmit to the Planning Commission a copy of a proposed disposal plan for review,

publication, public hearing, and findings and recommendation as provided in Chapter 17.24.

17.28.030 Plan approval--Selection of procedure. A. The Mayor shall submit the disposal plan showing the proposed subdivision descriptions, land classification and assessed valuation of all parcels together with the findings and recommendations of the Planning Commission to the Assembly to select and adopt by resolution the terms for such sale from Chapter 17.20, and to select and adopt by resolution the procedure for sale as:

1. Lottery pursuant to Chapter 17.40; or

2. Sealed bid pursuant to Chapter 17.36; or

3. Public auction pursuant to Chapter 17.44.

B. Assembly selection and adoption of the terms and the procedure for the annual sale shall authorize the Mayor to carry out the disposal plan and to execute all necessary documents in accordance with the adopted plan.

C. The general conditions and procedures for sales of Borough lands contained in Chapter 17.20 shall apply to all sales or other disposals under this chapter.

17.28.040 Survey--Rights-of-way--Platting. Upon adoption of the disposal plan by the Assembly the Mayor shall cause the survey and marking of the parcels and the survey, marking and clearing of rights-of-way, and provide for the recording of the disposal plan plat.

17.28.050 Notice of sale--Publication. A. At least 30 days before the date of sale the Mayor shall cause a notice of the sale which includes the terms, conditions and procedures for sale to be published in a newspaper of general circulation within the Borough. The Mayor may at his discretion provide that a copy of the Notice of Sale be posted in each city and municipal office, and each post office within the Borough.

B. The Mayor may cause such other advertisements, brochures, or notices to be printed and circulated as he deems necessary to provide effective dissemination of the information throughout the Borough, provided that no advertisements, brochures, notices or applications shall be mailed to individuals.

17.28.060 Eligibility--Application. A. Any resident of this state 18 years of age or older is

eligible to participate in a land disposal under this chapter.

B. Each applicant under this chapter must personally sign the application(s). Application by power of attorney will be accepted only upon affidavit establishing that the applicant is unavailable because of active duty in the military; attending school as a full time student outside of the State; illness or injury; or temporary work assignment for less than three months outside of the State or at a remote location within the State.

Section 6. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.32, Negotiated sale procedure, and by codifying and amending former Ordinance 82-23 (Amended), and shall read as follows:

17.32.010 Application of chapter. Notwithstanding any other provisions of the Borough Code of Ordinances, this chapter [ORDINANCE] shall apply to negotiated land sales.

17.32.020 Notice by publication. The Mayor shall cause a notice to the public to be published once a week for four (4) weeks in one or more newspapers of general circulation within the Central Peninsula , Homer and Seward areas of the Kenai Peninsula Borough the intent to dispose of Borough selected lands under the terms and conditions of this chapter [ORDINANCE].

17.32.030 Contents of publication. The public notice shall contain the following information.

A. Who may apply.

B. The manner in which to apply.

C. The last date for applications to be received.

D. Where to apply.

E. The prescribed filing fee of $150.00 to cover advertising and other related fees.

17.32.040 Public hearings. That within 90 days after the closing date for filing of applications, the Mayor shall transmit to the Planning Commission all applications for comment and public hearing. The Planning Commission shall hold one public hearing on the applications for negotiated land sale within 30

days after the Mayor's transmittal of the applications and after 10 days' notice to the public in one or more newspapers of general circulation in the Central Peninsula, Homer and Seward areas of the Borough. The applicants will be notified by certified mail of the public hearing. The Planning Commission shall determine if the applications meet all of the specified minimum requirements and may place additional conditions as deemed necessary in the Borough's best interest.

17.32.050 Minimum qualification requirements. The minimum requirements for qualifying for a negotiated land sale are:

A. That the applicant notified the Borough in the prescribed manner as set forth in Section 1(A) through 1(E) and within the specified time as delineated in the public notice.

B. That one or more of the following conditions exist and will be verified by at least three notarized affidavits:

1. The applicant must clearly show a valid claim to the parcel under one or more of the following conditions:

(a) prior continuous use which is deemed to exist if the applicant during the entire period of his or her license, or tenancy, used the land of the State or the Borough for his or her purposes as often as needed or required, without interference, protest or objection by the State or Borough; provided that prior continuous use may not be based on squatting, trespassing, or other unauthorized use or possession.

(b) that sale of the land could adversely affect access or decrease land value of applicant's present land or fish site. A fish site is defined as a one-family or partnership location and not the number of nets fished; provided, however, that a negotiated land sale to accommodate a fish site shall not exceed five acres, unless justified by topographical data.

(c) prior or existing State lease.

2. The land applied for is a land-locked

parcel or remnant parcel created by erosion or the taking of land for highway right-of-way purposes.

C. The sale of the negotiated lands will not deny access to other private or Borough lands.

D. The applicant's previous and current years' taxes are paid in full.

17.32.060 Planning Commission recommendation. The Planning Commission shall submit its recommendations to the Assembly within 15 days after holding public hearing.

17.32.070 Assembly authorization--Terms and conditions of sale. The Assembly may authorize the Mayor to dispose of any or all of the negotiated sale lands upon the [FOLLOWING] terms and conditions contained in Sections 17.32.080 through 17.32.150.

17.32.080 Cash or promissory note. [A] All sales will be made by immediate cash payment in full, or by [REAL ESTATE CONTRACT] promissory note secured by deed of trust with those persons who have applied and met the requirements of Section 17.48.040 above. The sale shall be at 100% of the current year's assessed value of the parcel as determined by the Borough Assessor. The Borough shall make no representations as to actual market value of the parcel at the time of sale and all parcels shall be valued on the basis of the estimated acreage of the parcel as shown by the Borough Assessor's records.

B. The eligible purchaser shall be required to deposit with the Borough Finance Director the necessary down payment and to sign the appropriate real estate contract for any tracts required by Subsection (K) or (N) to be surveyed and replatted or replatted pending conveyance, or the deed of trust and promissory note for any tract not requiring platting or replatting as prepared by the Borough within 30 calendar days after notification of eligibility by certified mail or his or her rights shall be forfeited. The filing of an application for purchase shall not in any way vest any right in the applicant to the land or to the use of the land. Any such unauthorized use shall constitute a trespass.

C. The eligible purchaser of any parcel must deposit with the Borough Finance Director a down payment in the form of cash, certified check or cashier's check, equal to at least 15% of the total purchase price of the parcel. The principal balance

shall be paid in 10 equal annual installments on balances up to $30,000, and in 20 equal annual installments on balances of $30,000 or more. Simple interest at the annual rate of 10% will accrue on the unpaid balance and shall be paid annually with principal payment.

17.32.090 Conveyance documents. A. [D.] The Borough will cause the [PROPER DOCUMENTS] warranty deed and deed of trust to be recorded in the appropriate recording district of the recorder's office at no cost to the Borough. The [REAL ESTATE CONTRACT] warranty deed, promissory note and deed of trust shall be made out in the name of the applicant as filed and no substitutions, alterations or changes will be permitted. In the event of a default for nonpayment or other reason, the [INTEREST OF THE PURCHASER SHALL BE FORFEITED] Borough Attorney shall immediately institute a trustee sale for condition broken and shall enter the appropriate offset bid to recover the property where permitted.

B. [E.] Upon final payment of all sums due under the purchase, a [WARRANTY] deed of reconveyance [SUBJECT TO RIGHTS AND RESERVATIONS OF RECORD] shall be conveyed by the [BOROUGH] title company to the purchaser.

17.32.100 Removing timber or gravel. [F.] The harvesting of timber or the extraction of sand or gravel for commercial purposes will not be permitted until the Borough transfers title to the purchaser upon payment in full for the parcel, and such prohibitions shall be made a condition of the deed of trust.

17.32.110 Reservations and exceptions of title. A. [G.] All parcels are sold "as is" and the [PURCHASER SHALL] warranty deed to the purchaser shall be subject to purchaser's obligation to ascertain the condition of the site and the extent of any easements, encroachments, alterations, or infringements upon the parcel.

B. [H.] The Borough shall [HAVE] reserve the right to preserve monuments, historical sites, graveyards, cemeteries and other public interest memorabilia and to adjust the sales price and legal description of the parcel.

C. [I.] The Borough will make a reasonable effort to disclose all types of information available to the Borough to assist interested persons in determining soil conditions, wetlands, flood plains, easements and

other encroachments, and in the event that certain other rights to the parcel have been previously granted by the Borough or the State of Alaska, or any previous owner, then the sale of the parcel shall be made subject to them. The purchaser shall be charged with putting himself on notice of the possibility that other pre-existing rights may exist and that further inquiry is required, and the warranty deed shall be subject to those limitations.

17.32.120 Subdivisions. [J.] The Borough shall not permit the subdivision of any sale land upon which there exists an unpaid principal balance, and such condition shall be included in the deed of trust.

17.32.130 Combining parcels. [K.] The Borough may, as a condition of sale, require the combining of parcels to prevent the presence of substandard lots, in which event the Borough's security shall extend to the entire tract created by any such replatting.

17.32.140 Multiple applicants. [L.] In the event that more than one applicant meets all of the qualifications for a negotiated sale of the same parcel, the Borough Assembly shall decide the most equitable manner for disposal of the parcel. This may include but shall not be limited to subdivision of the parcel or sealed bid by the individuals involved.

17.32.150 Survey and platting. A. [M.] The Borough will not be liable for the surveying and platting of any properties disposed of or for the identification and provision of access to the parcels, it being expressly understood that these are responsibilities of the prospective and actual purchaser.

B. [N.] To alleviate access problems, facilitate exchanges or other conditions of sale, the eligible purchaser may be required to plat the sale parcel in accordance with KPB Code of Ordinances, Chapter 20, within one year of approval of sale by the Assembly.

17.32.160 Evaluate requests and present to Assembly. [UNTIL SUCH TIME AS THE BOROUGH RECEIVES ITS ENTIRE LAND ENTITLEMENT FROM THE STATE OF ALASKA, THE] The Mayor and Planning Commission may evaluate requests for negotiated sales of Borough lands and may transmit to the Assembly for instruction by resolution the question of when to hold periodic sales under this chapter.

Section 7. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.36, Sealed bid procedure, and shall read as follows:

17.36.010 Sealed bid policy. The disposal of lands or interests in lands approved for disposal by sealed bid shall be conducted as provided in this chapter.

17.36.020 Application. A. Eligibility requirements and application fees in a sealed bid disposal shall be established by the Assembly when not otherwise provided in this title.

B. Every application and bid shall be accompanied by the nonrefundable application fee established by the Assembly, and shall be made upon the forms provided by the Mayor and shall be filed only at the locations designated by the Mayor.

17.36.030 Conduct of sealed bid sale. A. The Finance Director or an independent auditor contracted by the Mayor shall receive the applications and bids and note the date and time of receipt thereof; rule upon eligibility; open bids of each eligible bidder; and list by parcel the names, addresses and bids, in descending value of bids noting the date and time received for equal bids for the same parcel. If an independent auditor conducts the sale, the list shall be delivered to the Finance Director as soon as practicable after the opening of bids. The list of all bids and bidders shall be posted in the Borough Administration Building for not less than 30 days.

B. An independent contract auditor, his agents and employees and their immediate family members are not ineligible to participate as applications, provided the auditor certifies in writing under oath that there were no irregularities in the conduct of the sale resulting in any such person being a successful bidder to the best of his knowledge and belief and providing further that the auditor agrees in his contract to defend the Borough and hold int hamless from any claim or action initiated in respect to any such person being a successful bidder.

17.36.040 Acceptance or rejection of bid. The highest bid received for each parcel, which is equal to or more than any minimum acceptable bid established by the Assembly for that parcel shall be entitled to purchase the parcel. In the case of equal bids the first received shall be entitled to purchase. Nothing

contained in this section shall prohibit the Mayor from rejecting all equal bids received for any parcel.

17.36.050 Notice and opportunity to purchase. A. As soon as practicable after receipt of the list of all bids received, the Finance Director shall cause the name and bid of the highest acceptable bid received for each parcel to be published in a newspaper of general circulation in the Borough, and shall mail notice to the successful bidder for each parcel, by regular mail, informing them of the acceptance of the bid and the requirement that the disposal closing must be completed within 30 days of the date the notice was mailed unless such time is extended by the Mayor for the convenience of the Borough, and that upon failure of the successful bidder to close within the allotted time that the Mayor shall either award to the next eligible bidder within such time as may be allotted for alternate bidders, or reject all further bids for said parcel, as he deems to be in the best interests of the Borough.

17.36.060 Closing--Payment--Conveyance. The procedure for closing an individual disposal under a sealed bid shall be as set forth:

i) in Chapter 17.20 for sales; or

ii) in Chapter 17.52 for leases and permits.

Section 8. THat the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.40, Lottery disposal procedure, and shall read as follows:

17.40.010 Lottery policy procedures. The disposal of Borough lands approved for disposal by lottery shall be conducted as provided in this chapter.

17.40.020 Application. A. Eligibility requirements, application fees, and the number of applications to be permitted in a lottery disposal shall be established by the Assembly, when not otherwise provided in this title.

B. Every application shall be accompanied by the nonrefundable application fee established by the Assembly and shall be made upon the forms provided by the Mayor and shall be filed only at the locations designated by the Mayor.

17.40.030 Conduct of lottery. A. The Mayor may contract with an independent auditor to receive the applications; rule upon eligibility; assign each

eligible application a number, conduct the sale; draw the applications of each eligible purchaser and two alternates for each parcel; and to list by parcel the sales price and the names and addresses of the eligible purchaser and the first and second alternate to be delivered to the Borough Finance Director as soon as practicable after the drawing.

B. An independent contract auditor, his agents and employees and their immediate family members are not ineligible to participate as applicants, provided the auditor certifies in writing under oath that there were no irregularities in the conduct of the sale resulting in any such person being a successful applicant to the best of his knowledge and belief and providing further that the auditor agrees in his contract to defend the Borough and hold it harmless from any claim or action initiated in respect to any such person being a successful applicant.

17.40.040 Notice and opportunity to purchase. A. As soon as practicable after receipt of the list of successful applicants and alternates the Borough Finance Director shall cause said list to be published in a newspaper of general circulation in the Borough and shall mail by regular mail a notice of selection and opportunity to close to each eligible purchaser and first and second alternate informing them that the disposal closing must be completed within 30 days of the date the notice was mailed, and that upon the failure of the eligible purchaser to close within the allotted time then the alternate purchasers shall be afforded the opportunity to purchase the property in the order that their applications were drawn during the successive 40-day periods following the close of the initial allotted time.

17.40.050 Closing--Payment--Conveyance. The procedure for closing an individual disposal under a lottery shall be as set forth:

i) in Chapter 17.20 for sales; or

ii) in Chapter 17.52 for leases and permits.

Section 9. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, is amended by adding a new Chapter 17.44, Auction disposal procedure, and shall read as follows:

17.44.010 Auction policy. The disposal of Borough lands approved for disposal by auction shall be conducted as provided in this chapter.

Section 10. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.48, Exchanges of borough land, and shall read as follows:

17.48.010 Exchanges--Policy. The Assembly may provide by ordinance for the exchange of land or interests in land in any manner provided by law.

Section 11. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.52, Leases and permits, and shall read as follows:

17.52.010 Leases and permits--Policy. Leases and permits of lands or interests in lands shall be pursuant to the provisions of this chapter unless otherwise provided in this title.

Section 12. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.56, Recreation lands, and recodifying former Section 17.04.080 to be 17.56.010.

Section 13. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by recodifying former Chapter 17.08, Forest Resources to be Chapter 17.60, Forest resources, and recodifying former Sections 17.08.010 and 17.08.020 to be 17.60.010 and 17.60.020 respectively.

Section 14. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.64, Agricultural lands, and shall read as follows:

17.64.010 Classification--General policy--Limitations. A. The Assembly may be ordinance classify Borough lands as Agricultural Lands for disposal as provided in this chapter.

B. The Mayor may negotiate the leasing of small tracts of Borough lands for agricultural-related purposes to adjoining property owners pending classification or other disposition, for renewable terms not exceeding two years.

Section 15. That the Kenai Peninsula Borough Code of Ordinance, Title 17, Borough Lands, be amended by adding a new Chapter 17.68, Sand and gravel permits, and shall read as follows:

17.68.010 Sand and gravel permits--Policy. Common varieties of sand, stone, gravel, or construction fill material which exceed the needs of the Borough may be disposed as provided in this chapter.

17.68.020 Disposal plan. The Mayor may submit a plan for the disposal of common varieties of sand, stone, gravel, or construction fill material on any borough lands previously classified as disposal lands to the Assembly for approval by resolution.

17.68.030 Notice--Disposal terms. Following notice by publication and posting as provided in this title, the Mayor may issue disposal permits for such common varieties of sand, stone, grave, or construction fill material as approved by the Assembly to the highest bidder at public auction or by sealed bid.

17.68.040 Term of permit. Permits issued to the successful applicant pursuant to this chapter shall expire not later than the fifth anniversary date of the awarding of the permit unless otherwise provided by the Assembly, and any such common variety material remaining in or on the site as of the expiration date shall be the property of the Borough and shall thereafter be available for repermitting.

17.68.050 Interest of permittee--Improvements. A. The successful permittee under this section obtains no right or interest in and to the fee estate of the tract or lands permitted other than the right to remove the designated common variety material from the designated area.

B. Nothing in this section shall prohibit a successful permittee from constructing scales, loading ramps, tool storage, buildings or other structures necessary or convenient to the efficient removal of the common variety material permitted from said area provided however that all said improvements shall be removed from the property on or before the expiration date of the permit and any costs incurred by the Borough in removing or obtaining the removal of any such improvements remaining after the termination of the permit shall be assessed against the permittee and enforced or collected in any manner provided by law.

17.68.060 Reclamation. The Mayor may include in the permit of said common varieties of material any conditions or requirements for the reclamation of the site following the removal of the common variety and may further require the posting of an appropriate

performance bond or surety in such amount as may be reasonable to provide for said reclamation upon the failure of the permittee.

Section 16. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.72, Public use lands, and by recodifying: Former 17.04.090 to be 17.72.010; and former 17.04.100 to be 17.72.020; and former 17.04.110 to be 17.72.030; and former 17.04.120 to be 17.72.040; and further by recodifying and amending former 17.04.140, .150, and .160 to read as follows:

17.72.050 [17.04.140] Public lands--Disposition--To nongovernmental body--Prohibited when--Exceptions. Borough lands [OTHER THAN BOROUGH-SELECTED LANDS,] which are classified as public use lands, may be sold [OR DISPOSED OF] only to the United States, the state or a political subdivision thereof[, AND NOT TO A COMMUNITY ORGANIZATION OR NONPROFIT CORPORATION]. Except that nothing herein shall prevent the borough from entering into contracts for the use, management or improvement of borough lands for public purposes, or for the exchange for similar lands.

17.72.060 [17.04.150] Public--Private use prohibited when. No lands shall be classified as public use lands unless it appears from the petition, or the terms of conveyance prescribed by the assembly, or both, that the uses to which the property is to be put are restricted to public uses for the benefit of all the people.[OF THE BOROUGH. IF THE PROPERTY OR ANY PORTION OF IT IS EVER PUT TO A PRIVATE USE OR PURPOSES THE PROPERTY SO USED SHALL EITHER REVERT TO BOROUGH OWNERSHIP OR THE BOROUGH SHALL BE PAID THE MARKET VALUE OF THE PROPERTY AT THE TIME THE PRIVATE USE BEGINS.] Nothing contained herein shall prohibit the reclassification of public use lands upon recommendation of the Planning Commission after findings that the public use is no longer required.

17.72.070 [17.04.160] Public lands--Availability for use on equal basis required when. Public use lands which are devoted to a use as a golf course, cemetery, park, or other use involving public accommodation, must be available to the public [ALL RESIDENTS OF THE BOROUGH] on an equal basis and such use may not be limited to the residents of a particular community or area of the borough[, UNLESS THE FULL MARKET VALUE IS RECEIVED BY THE BOROUGH].

Section 17. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new

Chapter 17.76, Industrial lands, and by recodifying and amending former 17.04.180, and shall read as follows:

17.76.010 [17.04.180] Lands--Disposition--For private use--Industrial incentives. The assembly, for the borough, in order to make sites available for new industries which will benefit the borough, may acquire, own and hold such sites, including real property, and may sell, lease, or dispose of them by ordinance upon the terms and conditions as it considers advantageous to the civic welfare of the borough, to persons who will agree to install, maintain and operate [IT,] a beneficial new industry[, WITHOUT REGARD TO THE LIMITATIONS OF SECTION 17.04.170 OR SECTIONS 17.04.090 THROUGH 17.04.160.].

Section 18. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.80, Tax-foreclosed lands, and by recodifying and amending former 17.04.060, and shall read as follows:

17.80.010 [17.04.060] Tax-foreclosed land--Disposal. The disposal of tax-foreclosed properties is governed by Chapter 5.12 of this code except as otherwise provided in this title.

Section 19. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.84, Other lands, and by recodifying and amending former 17.04.170, and shall read as follows:

17.84.010 [17.04.170] Other--Lands--Disposition--For private use--Procedure required. Borough properties other than borough land grant entitlement lands or other borough-selected land disposed of pursuant to other provisions in this title or charitable and religious disposals pursuant to Chapter 17.88, [SECTIONS 17.04.020 THROUGH 17.04.070] which are not needed for any public purpose, shall be disposed of according to the following procedure:

A. Any land to be disposed of under this section shall first be appraised by a qualified appraiser or the assessor and an estimated value of he property established.

B. A notice of disposition [SALE] shall be published in a newspaper of general circulation in the borough no less than 30 days before the date of the sale, lease or disposition, and posted within that time in at least 3 public places in the borough.

C. Disposal shall be at public auction or opening of sealed bids unless the assembly by ordinance [RESOLUTION] shall otherwise direct.

D. Any disposition of real property under this section, valued at $25,000 or more, shall not become [BE BY ORDINANCE. NO SUCH DISPOSITION SHALL BE] final unless the action of the borough is ratified by a majority of the qualified voters voting at a general or special election at which the question of ratification of the ordinance is submitted.

E. 30 days' notice shall be given of the election and during that period the assembly shall publish at least once each week in a newspaper published in the borough, a notice stating the time of election and place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least 3 public places in the borough at least 30 days before the election.

17.84.020 Terms and conditions. The terms and conditions of the sale, of payment, and of conveyance of title in and disposal under this chapter shall be pursuant to the provisions of Chapter 17.20.060 through 17.20.100 unless otherwise provided by the Assembly by ordinance.

Section 20. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by adding a new Chapter 17.88, Charitable and religious disposals, and shall read as follows:

17.88.010 Charitable and religious disposals--Policy. Unless otherwise prohibited by law, all Borough lands, except tax-foreclosed properties, may be disposed of by sale or lease to any "not for profit," charitable or religious corporation maintaining a "not for profit," charitable or religious corporate tax exemption registration from the United States Internal Revenue Service.

17.88.020 Planning Commission review. The Mayor shall transmit any petition received from the authorized officer or agent of a qualified charitable or religious corporation requesting the sale or lease of any parcel of Borough lands, together with a copy of the assessed value of said parcel, to the Planning Commission for review, publication, public hearing and

findings and recommendation as provided in Chapter 17.24.

17.88.030 Assembly review--Voter ratification. A. The Mayor shall transmit the religious or charitable petition, a copy of the assessed valuation, and the findings and recommendations of the Planning Commission to the Assembly.

B. The Assembly may, by resolution, deny the petition, or may approve the petition and establish the terms and conditions for any disposal, including the disposal price, for ratification by a majority of the qualified voters of the Borough voting at a regular or special election at which the question of the ratification of the disposal is submitted after publication in a newspaper of general circulation distributed within the Borough at least 30 days before the election.

C. Any religious or charitable disposal shall be conditioned upon both the continued use of the parcel for the religious or charitable purpose, and upon the continued United States Internal Revenue Service tax exemption registration, and upon the failure of either, the title to said parcel shall automatically revert to the Borough, and the former owner's interest shall be forfeited.

Section 21. That the Kenai Peninsula Borough Code of Ordinances, Title 17, Borough Lands, be amended by repealing Sections 17.04.020, 17.04.050 and 17.04.130.

Section 22. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS _____ DAY OF _____, 1983.

_____
Donald L. McCloud, Assembly President

ATTEST:

_____
Borough Clerk