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**KENAI PENINSULA BOROUGH  
ORDINANCE 92-30**

**AN ORDINANCE ENACTING AN ORDINANCE TO PROVIDE FOR THE  
ACQUISITION, MANAGEMENT, USE AND DISPOSITION  
OF BOROUGH OWNED LANDS**

**WHEREAS,** the Assembly of the Kenai Peninsula Borough has expressed the desire to develop a new Lands Ordinance; and

**WHEREAS,** the current ordinance does not adequately deal with classification and management of borough owned lands; and

**WHEREAS,** the existing code provisions only address sale of lands in limited situations and enactment of an ordinance is required to authorize any disposal not specifically provided for in its terms; and

**WHEREAS,** the land management ordinance should be comprehensive and deal with all aspects of acquisition, classification, management and disposition of interests in lands of the Kenai Peninsula Borough; and

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

**SECTION 1.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new Chapter 17.10 entitled "Borough Lands and Resources" to read as follows:

Chapter 17.10

**BOROUGH LANDS AND RESOURCES**

Sections:

- 17.10.100 Intent/Policy.
- 17.10.200 Acquisition of lands and resources - General policy.

- 17.10.210 Acquisition of lands and resources - Resolution contents.
- 17.10.220 Acquisition of lands and resources - Resolution sponsor.
- 17.10.230 Land bank - Establishment - Purpose.
- 17.10.240 Land bank - Deposit.
- 17.10.250 Land bank nomination and withdrawal - Procedure.
- 17.10.260 Classification/Reclassification of borough lands.
- 17.10.270 Land disposal policy.
- 17.10.280 Disposition of borough land.
- 17.10.290 Eligibility of purchaser.
- 17.10.300 Mayor authorized to sell borough land.
- 17.10.310 Terms of a land sale.
- 17.10.320 Notice of land sale.
- 17.10.330 Methods of disposition.
- 17.10.340 Conveyance of the land.
- 17.10.345 Lease.
- 17.10.350 Temporary use of borough land.
- 17.10.360 Casual use of borough land.
- 17.10.370 Sand, gravel and materials - Negotiated sales - Small quantities.
- 17.10.380 Trespass on borough land.
- 17.10.390 Use of borough land for temporary access.
- 17.10.400 General conditions.
- 17.10.410 Definitions.

17.10.100 Intent/Policy.

A. It is the policy of the Kenai Peninsula Borough to manage all borough owned and municipal entitlement lands and resources to provide for:

1. The efficient acquisition, management, classification and disposal of borough lands;
2. The promotion of orderly development;
3. The protection and orderly management of the borough's natural resources;
4. The preservation of borough lands important for wildlife habitat, scenic value, recreational needs, and historic areas;
5. The retention of borough lands essential for health, safety and educational needs.
6. The orderly disposal of lands and resources in a manner which is fair to all.

B. The purpose of this chapter is to provide a codification of the procedures for the acquisition, management, classification and disposal of borough lands and resources which may not be deviated from except upon the declaration of an emergency by the mayor of this borough or the Governor of the State of Alaska.

17.10.200 Acquisition of lands and resources - General Policy.

A. The borough may acquire lands and resources inside or outside its boundaries by any lawful means.

B. Lands or interests in lands and resources may be acquired without assembly

approval by the following methods:

1. Tax foreclosure;
2. Judgments entered by a court of competent jurisdiction as a result of legal action in which the borough is a party;
3. Dedications pursuant to the platting authority of the borough planning commission;

C. The acquisition of lands or interests in lands or resources subject to assembly approval by resolution include:

1. Negotiated purchase, which shall be subject to both approval of the purchase and appropriation of funds;
2. Negotiated lease which shall be subject to both approval of the terms and appropriation of funds each budget year. Each lease shall be deemed to have incorporated the following clause, "Unless the assembly by resolution provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the Kenai Peninsula Borough assembly fails to appropriate funds sufficient to make the lease payments on the leased property for the following fiscal year";
3. Negotiated exchange or trades of borough lands or interests in lands or resources for other lands or interests in lands or resources;
4. Grant, gift, devise or dedication not involving the platting authority of the borough planning commission;
5. Exercises of the powers of eminent domain and declaration of taking;
6. Municipal entitlement in accordance with Alaska Law;
7. Public purpose and expansion in accordance with AS 38.05.810 et. seq.;
8. Compromise or settlement of claims;
9. All other methods of acquiring lands or interests in lands and resources.

17.10.210 Acquisition of lands and resources - Resolution contents.

A. Assembly approval of the acquisition of lands or interests in lands or resources shall be by resolution or ordinance.

B. A resolution placing the question of the acquisition of lands or interests in lands or resources before the assembly shall set forth:

1. A summary of the purpose for the acquisition;
2. A description of the lands or interests in lands or resources concerned, together with a map or copy of an aerial photograph of the area involved, and a general location map;
3. A summary of the terms, conditions, or consideration for the proposed acquisition;
4. A statement of the anticipated benefit or detriment to the borough, including a valuation of the interests to be acquired and/or lost.

C. The statement of consideration or value may be waived when the acquisition is in compromise or settlement of claims, and the Borough Attorney asserts that the public disclosure of those facts would not be in the best interests of the borough. Upon such assertion, any assembly member may call for an executive session for the sole purpose of receiving a report by the attorney of the facts or reasons upon which the assertion was made.

17.10.220 Acquisition of lands and resources - Resolution sponsor.

A resolution for the acquisition of lands or interests in lands or resources may be sponsored by the mayor or by a committee of the assembly, upon recommendation of staff or request of the Planning Commission or of a local community council or advisory planning commission.

17.10.230 Land Bank-Establishment-Purpose.

There is hereby established a Land Bank for the purpose of holding lands or interests in lands or resources until use of disposition has been authorized pursuant to this section.

17.10.240 Land Bank - Deposit.

A. All lands or interests in lands or resources previously classified for disposal but not yet disposed of and all unclassified lands or interests in lands or resources are hereby transferred to the Land Bank.

B. Lands or interests in lands or resources hereafter classified and approved for a specific purpose or use may be held in the Land Bank until such time as enabling legislation authorizes the withdrawal of land from the bank for disposition.

C. Lands which hereafter are withdrawn from the Land Bank for disposition but are not disposed of, may be redeposited in the Land Bank.

D. Lands or interests in lands or resources are not available for disposal until withdrawn pursuant to this chapter.

17.10.250 Land bank nomination and withdrawal - Procedure.

A. Unclassified lands or interests in lands or resources may not be withdrawn from the Land Bank, however, lands or interests in lands or resources may be classified in a withdrawal resolution.

B. A resolution for withdrawal of lands or interests in lands or resources from the Land Bank for disposal may be sponsored by an assembly committee or the mayor upon nomination by staff, the planning commission, a community advisory planning commission or community council.

C. A resolution for withdrawal from the Land Bank shall include:

1. A statement of the reason for the withdrawal;
2. A statement of the interests of the borough or the public to be served by the withdrawal;
3. The classification or proposed classification or reclassification of the lands or interests in lands or resources proposed for disposal, and its compatibility with any Assembly approved land use plan or applicable Planning Commission recommendations;
4. The method of disposal as permitted under this title; and
5. The date of the proposed disposal.

17.10.260 Classification/Reclassification of borough lands.

A. It is the intent of the Assembly of the Kenai Peninsula Borough that all lands or interests in lands or resources owned or selected by the Borough shall be classified or reclassified in an orderly manner consistent with the purposes and policies of this chapter.

B. Only those lands for which the Borough has received a state patent or has received a final decision for future title conveyance from the state under the Municipal Entitlement Act,

or has otherwise received clear title may be classified or reclassified.

C. Lands meeting the requirements of subsection (B) of this section shall be classified from time to time in an ongoing and orderly manner. Classification or reclassification may be initiated by the borough assembly, the mayor, the planning director as authorized by the mayor, borough planning commission, or other person and may be based on a need identified by the borough Comprehensive Plan, another assembly approved land use plan, the borough administration, the borough planning commission, an advisory planning commission, the public, private industry, the state or federal government, or another municipality.

D. Petitions for classifying or reclassifying land shall be submitted to the Borough land management officer on the appropriate form. Said form shall be completed in full and shall clearly state the description of the property, its current classification, the proposed classification, a justification for the classification and by whom submitted, including his address.

E. Within 30 days of submission of the completed petition, or the Planning Department's completion of a petition for the assembly or planning commission, notice of the proposed classification or reclassification shall be published two times in a newspaper of general circulation in the local area in which the classification is proposed and posted in the Post Office in the impacted community. The notice shall contain the description of the property to be classified or reclassified including a site location drawing, the proposed classification and/or reclassification, its justification, and allowed uses, compatibility with applicable land use plans, who initiated the classification, where written comments may be submitted, the last date for which written comments may be submitted, and the date, time, and location of the planning commission public hearing. A copy of the notice shall be sent by regular mail to all owners and/or leaseholders of record of property located within a radius of one-half mile of the lands to be classified and to the applicable advisory planning commission or in the absence of such commission, the local community council at the beginning of the notice period. The public comment period shall not be less than thirty (30) calendar days.

F. The planning commission shall hold a public hearing on the classification or reclassification and make recommendations to the assembly. Recommendations shall be based on findings of fact which may include: the location of the lands, surrounding uses and ownership, existing and future access, property characteristics including topography, soils and availability of utilities, any known encumbrances or permits, physical examination where necessary or feasible, and comments from an appropriate advisory planning commission. The classification or reclassification shall be compatible with any land use plan adopted under the borough Comprehensive Plan or separately approved by the Kenai Peninsula Borough Assembly. If a proposed classification or reclassification is not compatible with an approved land use plan, a plan revision would be necessary before the new classification could be adopted.

G. By resolution the assembly shall approve or disapprove the proposed classification or reclassification or return the matter classification or reclassification to the planning commission for recommendation on possible modification. The assembly may make minor classification changes without further notice or receiving the recommendation of the planning commission, but changes in the classification that are not consistent with the application submitted must be returned to the planning commission for recommendation before the assembly makes those changes.

H. The Land Management Division shall be responsible for the official map depicting the current classifications.

- I. Borough lands may be classified as:
1. "Agriculture"
  2. "Residential"
  3. "Commercial"
  4. "Heavy Industrial"
  5. "Light Industrial"
  6. "Recreational"
  7. "Preservation"
  8. "Government" (including schools)
  9. "Resource Extraction"
  10. "Private" (noncommercial/nonindustrial including cemeteries)
  11. "Utility/Transportation" (not including oil and gas and electricity generation or production facilities)
  12. "Waste Handling"
  13. "Multiple Use"
  14. "Retain for Future Nonspecific Public Use" lands;
  15. "Undesignated" lands

The classifications are specifically defined in the KPB 17.10.420.

J. Undesignated lands. All borough lands or interests in lands or resources not otherwise classified are undesignated lands, and are not available for use other than casual use or disposal until reclassified.

K. Classification of property is for review, plan implementation and management purposes and does not represent a disposal decision. The classification system designates the most appropriate uses for land and thereby guides borough management of such lands and implementation actions to provide for the identified uses.

#### 17.10.270 Land Disposal Policy.

It is the policy of the Kenai Peninsula Borough to make appropriate land available to the public through an orderly land disposal program to provide for commerce, development and the public interest. Land disposal actions will be in conformance with the land classification system which will guide selection of the purposes and to prevent disposal of lands identified and classified for public retention purposes. Land disposal will take place through land sales or leases as deemed by the assembly to be in the best interests of the borough with consideration being given to existing land use plans, comprehensive plans, and recommendations from community councils and planning commissions.

#### 17.10.280 Disposition of borough land.

Except as otherwise provided by this title no land or interest in land may be sold or leased or otherwise disposed of unless the land has been classified in accordance with the provisions of this chapter. All lands except those received through tax foreclosure proceedings shall be sold or leased at fair market value or fair market rental value as determined by a qualified appraiser except as provided in section 17.10.310(D).

17.10.290 Eligibility of purchaser.

The mayor shall not sell, lease or authorize any other use or disposition of borough land to a person who is delinquent in the payment of any tax, debt or obligation owed to the borough.

17.10.300 Mayor authorized to sell borough land.

The mayor may sell borough land according to the terms fixed by the assembly except that the mayor shall not sell approved, unpatented general grant land without fully disclosing the unpatented status of the land to the purchaser and obtaining the consent of the State of Alaska, Department of Natural Resources, Director of Lands.

17.10.310 Terms of a land sale.

A. The assembly shall by resolution fix the terms of all sales of borough land unless such terms have been established by this chapter or other ordinance in which case the provisions of this chapter or other ordinance fixing such terms shall control over any inconsistent provisions of the resolution. The ordinance shall contain the date of the sale, the method or methods of sale, the manner in which payment is to be made, the interest to be conveyed, the instrument of conveyance to be used, and any other terms the assembly deems appropriate.

B. In authorizing a disposal, the assembly should consider specific terms or covenants which are appropriate for the land parcels to be sold. This determination should reflect guidance provided by the public, the administration, the Planning Commission, the borough Comprehensive Plan, and other assembly approved plans. It should also reflect consideration of the geographic characteristics of the land and the specific circumstances of the subdivision.

C. The assembly may authorize payment to be made over time only if:

1. The down payment is at least 10% of the land value;
2. The rate of interest is the prime rate in effect on the authorized date of sale plus two percent (2%);
3. The period for total payment does not exceed ten years, or twenty years if the land is sold for agricultural use; and
4. No sales will be financed that have a remainder balance due of \$7,500 or less after the down payment regardless of the required minimum down payment or any discounts.
5. A late fee of ten percent of the monthly payment shall be charged whenever a payment is received ten or more calendar days past the due date.

D. The assembly may authorize the sale of land for less than fair market value only if the land is to be offered at an auction, or if the ordinance authorizing the sale contains:

1. A finding that sale for less than fair market value is in the best interests of the borough;
2. A statement of the facts on which the finding is based; and
3. The period of time during which the offer may be accepted.

E. If the assembly requires a prospective buyer to pay to the borough a down payment, bond or other deposit, and if the prospective buyer breaches a term of the sale, then the borough shall retain as liquidated damages the prospective buyer's down payment, bond or other deposit.

17.10.320 Notice of land sale.

Notice of a land sale shall be published four times in the thirty day period immediately preceding the date of the sale. The last notice of sale must appear not less than five calendar days prior to the date of disposal. In areas not served by daily newspapers, the sale notice shall be posted in appropriate post offices and sent to appropriate advisory planning commissions and town councils. The notice shall contain a brief description of the land, the general location of the land and the terms of the sale as fixed by the assembly by ordinance.

17.10.330 Methods of disposition.

A. Tax foreclosure sale. Notwithstanding conflicting provisions of this title, the sale and management of tax foreclosed property shall be in accordance with the requirements of AS 29.45 and KPB 5.12.

B. Auction Sale or Lease. The assembly may by ordinance authorize the sale or lease of borough land by outcry public auction. Sale or lease of the land shall be to the highest bidder who performs all the terms of the disposal. The mayor may promulgate rules and regulations for conducting an action.

C. Exchange Sale. The assembly may by ordinance authorize the exchange of borough land but only if the ordinance authorizing the exchange sale contains a finding that the exchange sale is in the best interests of the borough and a statement of the facts on which the finding is based.

D. Cooperative Sale or Lease. The assembly may by ordinance authorize the mayor to develop and sell or lease borough land in cooperation with a person or a public agency. This cooperation may include, but is not limited to, the sale or lease of borough land subject to a preliminary subdivision plat, the sale or lease to a private developer of borough land subject to a development contract, or a sale of lease in cooperation with a public or governmental agency. A cooperative sale or lease shall be conducted according to the bidding requirements of KPB 5, unless the sale or lease is in cooperation with a public or governmental agency.

E. Combination Sale or Lease. The assembly may by ordinance authorize the sale or lease of borough land by the use of any combination of the methods authorized by this chapter.

F. Sealed Bid Sale or Lease. The assembly may by ordinance authorize the sale or lease of borough land by sealed bid.

G. Lottery Sale. The assembly may by ordinance authorize the mayor to conduct a residential lot or recreational lot sale by lottery provided the land is sold for fair market value.

H. Over-the-counter Sale or Lease. The assembly may by ordinance authorize the sale or lease of borough land over-the-counter on a first come basis, provided that the land is sold for fair market value.

17.10.340 Conveyance of the land.

A. After a qualified, successful purchaser or lessee has paid to the borough the payments required by ordinance, the mayor shall execute the instrument of conveyance authorized by ordinance that transfers the land or the interest in land to the buyer. All conveyance documents shall be recorded in the appropriate recording office and made a part of the public record.

B. An instrument conveying land or an interest in land for agricultural use shall contain restrictions that:

1. Restrict the use of the land to agricultural use; and
2. Prohibit subdivision.

C. An instrument conveying land with a classification of residential use shall contain restrictions that restrict the use of the land to residential use. Said restriction may only be removed in accordance with section 17.10.260.

D. An instrument conveying land with a classification of industrial use shall contain restrictions that restrict the use of the land to industrial use.

E. Lands classified as "Residential" shall be conveyed by a deed containing restrictions or covenants which prohibit the use of the land for any other purpose. Restrictions or covenants may be modified by:

1. Submittal of a petition to the land management officer requesting modification and stating the justification for the request;
2. Within 60 calendar days from the date of receipt of the petition after acquiring public, relevant property owner and applicable advisory planning commission input, the land management officer shall report and recommend to the planning commission;
3. The planning commission shall consider the petition and recommend an appropriate action to the assembly;
4. The assembly may by resolution authorize the repeal of any restriction or covenant and cause the appropriate document to be filed with the district recorder.

#### 17.10.345 Lease.

A. Short term lease. The mayor may lease borough land for a period not to exceed five years according to the terms fixed by the assembly except that the mayor shall not lease approved, unpatented general grant land without fully disclosing the unpatented status of the land to the lessee.

1. Applications to lease must be submitted on forms approved by the borough and be accompanied with the appropriate fee as established by the fee schedule.
2. Proof that all taxes, debts or other obligations due the borough are current.
3. The filing of an application for lease does not give or imply that the applicant has a right to the lease or use of the land under application.
4. Unless otherwise authorized by assembly ordinance, an application shall expire at the end of 90 days after authorization if the applicant has not completed and signed all required documents and the land shall return to the Land Bank.
5. All annual lease fees are due and payable in advance.

B. Long-term lease. The mayor may lease borough land for a period exceeding five years according to the terms fixed by the assembly including the applicable classification except that the mayor shall not lease approved, unpatented general grant land without fully disclosing the unpatented status of the land to the lessee.

1. An application to lease must be submitted on forms approved by the borough and be accompanied with the appropriate fee as established by the fee schedule.
2. Proof that all taxes, debts or other obligations due the borough are current.
3. An application must be submitted with a development plan disclosing use,

nature of improvements and estimate of value, and development and construction time table.

4. The filing of an application for lease does not give or imply that the applicant has a right to the lease or use of the land under application.

5. Unless otherwise authorized by assembly ordinance, an application shall expire at the end of 90 days after authorization if the applicant has not completed and signed all required documents and the land shall return to the Land Bank.

6. The annual lease rate for the first five years for a long term lease shall be established as the "fair market rental value" as determined by a qualified appraiser.

7. The lease rate shall be adjusted on the anniversary date of the lease every five years after the initial five year term unless otherwise authorized by assembly ordinance. The adjusted lease rate shall be determined by a qualified appraiser.

8. All annual lease fees are due and payable in advance.

9. Leased lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease and in conformity with the lessee's development plan, applicable classification, and any land use or comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease and the lease will become subject to cancellation.

10. Failure on the part of the lessee to substantially complete his development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation.

11. For the purpose of interim or permanent financing or refinancing of the improvements to be placed upon the leased premises, and for no other purpose, a lessee may, upon written approval of the borough, encumber by mortgage, deed of trust, assignment or other appropriate instrument, the lessee's interest in the leased premises and in and to the lease, provided said encumbrance pertains only to the leasehold interest.

C. Agricultural Lease. The mayor may lease borough land for agricultural purposes according to the terms fixed by the assembly including the applicable classification, except that the mayor shall not lease approved, unpatented general grant land without fully disclosing the unpatented status of the land to the lessee.

1. An application to lease must be submitted on forms approved by the borough and be accompanied with the appropriate fee as established by the fee schedule.

2. Proof that all taxes, debts or other obligations due the borough are current.

3. An application must be submitted with a range management plan, development plan disclosing use, nature of improvements and estimate of value, and development and construction time table.

4. The filing of an application for lease does not give or imply that the applicant has a right to the lease or use of the land under application.

5. Unless otherwise authorized by assembly ordinance, an application shall expire at the end of 90 days after authorization if the applicant has not completed and signed all required documents and the land shall return to the Land Bank.

6. The annual lease fee shall be established at the prevailing rate.

7. All annual lease fees shall be due and payable in advance.

8. Leased lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease and in conformity with the lessee's

development plan, and any land use or comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease and the lease will become subject to cancellation.

9. Failure on the part of the lessee to substantially complete his range management plan, development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation.

17.10.350 Temporary use of borough land.

A. A person who wishes to use borough land for a temporary use shall apply to the mayor for a permit on lands appropriately classified to allow such use. The borough shall not issue a permit until applicant has provided proof that all tax accounts, debts or other obligations due the borough are current.

B. A temporary use permit is exclusive and nontransferable and is valid for a period no greater than five years from the date of issue. If the land management officer determines that the proposed use may substantially affect the surrounding area, then the land management officer shall publish notice of the proposed use. The notice shall be published twice in a newspaper of general circulation and posted in the Post Office, or other appropriate public location in the affected community. It shall include a description of the proposed use, and notice of a fourteen calendar day period during which public comment on the proposed use will be accepted by the land management officer. If substantial public comment adverse to the proposed use is received, then prior to issuing the permit the land management officer shall request that the planning commission hold a public hearing on the proposed use before granting a permit.

C. The applicant shall pay in advance to the borough the permit fee as required by the fee schedule.

D. If the land management officer determines a temporary use may cause damage to the borough land then the land management officer shall require the applicant to post a bond in advance with the borough to insure that the applicant restores the land to reasonably the same condition it was in at the time the permit was executed. The bond amount shall be not less than the fair market value of the land. The bond shall not be released until the user has complied with all conditions of the permit upon termination or cancellation of the permit.

E. The borough land may be inspected at any time to insure compliance with conditions of the permit. The land management officer may, for cause and without notice to the permittee, immediately revoke a temporary use permit. The permittee whose temporary use permit has been revoked shall, within the time specified in the permit and if no time is specified within thirty days of the revocation of the permit, remove from the borough land all improvements placed on the borough land pursuant to the temporary use. Any improvements remaining on the land after thirty days of revocation become the property of the borough and may be disposed of as surplus property in accordance with KPB Chapter 5 or by other authorized means at the expense of the permittee.

F. A temporary use permit may not be renewed, but the land management officer may reissue another permit if the permittee has complied with the provisions of this section and the terms of the prior permit.

G. A temporary use permit does not create an interest in the title to the land.

17.10.360 Casual use of borough land.

- A. Only lands classified as "undesigned" or "multiple use" may be subject to casual use. Casual use is nonexclusive and involves only minimal disturbance to the land.
- B. The casual use of borough land does not require a permit.
- C. A casual use does not create an interest in the title of the land.
- D. The mayor may close any and all borough land to casual use by issuing a written order that contains a finding that an emergency exists and a statement of the facts on which the finding is based. The mayor shall publish notice of the location of borough land that the mayor has closed to casual use.

17.10.370 Sand, gravel, and materials - Negotiated sales - Small quantities.

- A. Prior to selling material from established material sites or other sites classified as resource extraction, a management plan will be developed to provide for its use, reclamation and eventual closure.
- B. The land management officer is authorized to sell material from established material sites or other sites classified as Resource Extraction at the current market value. Each contract shall permit removal of a stated amount of material not to exceed 300 cubic yards per applicant per year from the date of execution of the contract.
- C. All applications shall be submitted on the appropriate borough form.
- D. Proof that all taxes, debts or other obligations due the borough are current.
- E. The applicant may be required to file a mining plan. The plan may consist of cross-section survey of uplands, methodology for site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching and development of access, and other information as may be required.
- F. Material sale contracts shall not be extended in time nor in quantity.
- G. Full payment shall be made at the time the sale contracted is executed.
- H. A bond may be required at the time sale contract is executed. The bond shall be at least One Hundred Dollars (\$100.00) or ten percent (10%) of the negotiated price. The bond shall be retained until such time as site restoration and all other requirements are met and completed and accepted by the borough.
- I. Liability insurance or additional requirements may be required if deemed necessary in the best interests of the borough.

17.10.380 Trespass on borough land.

- A. A person shall not trespass on borough land. If the mayor has knowledge of a trespasser, then the mayor shall take steps to remove the trespasser. Unless provided otherwise, the trespasser shall restore the borough land to the same condition it was in at the time just before trespass began. The trespasser shall pay all costs incurred by the borough as a result of the trespass.
- C. The borough may grant a lease or an easement to an unintentional trespasser because of extreme hardship that will be suffered by the trespasser. A nonexclusive example of such an extreme hardship is where a permanent residential structure is unintentionally built on borough land.
- D. A trespass may be resolved through negotiated sale of the smallest practical area to the trespasser with all or a portion of the survey and related costs being paid by the

trespasser.

17.10.390 Use of borough land for temporary access.

A. The land management officer may grant a temporary access permit for access across borough land when such access is necessary for construction, resource extraction, or other temporary activities on adjoining land or where borough lands hinder access within an area.

B. The temporary access permit provided for in this section shall be subject to such conditions as shall be considered necessary to ensure the prudent use of borough resources while allowing access across borough land.

C. A temporary access permit is nonexclusive and is valid for a period no greater than five years from the date of issue. A temporary access permit may be reissued with the same conditions, upon application if there are no substantial changes in the projected plan of operations and all conditions of the previous permit have been met.

D. The applicant shall pay in advance to the borough the fee required by the fee schedule. The transferee must provide proof that all tax accounts, debts and other obligations due the borough are current.

E. A temporary access permit is transferrable subject to the written approval of the land management officer and subject to the agreement of the transferee to abide by all terms and conditions of the temporary access permit. Within thirty days of receipt of written notification of a transfer, the land management officer shall provide written approval or disapproval. The permittee remains liable for all permit conditions until the transfer has been approved or the land management officer receives written notice canceling the license. The transferee must provide proof that all real, personal and sales tax accounts are current.

F. The permittee shall reimburse the borough for timber of commercial quality which is used or destroyed by the permittee on borough land. The amount of reimbursement shall be determined based upon accepted forestry practices for the appraisal of timber value.

G. The permit area may be inspected by the borough at any time to ensure compliance with conditions of the permit. If a permittee fails to demonstrate good faith efforts to comply with the conditions of the permit, and after receiving written notice, fails to remedy such default within the time specified in the notice, the land management officer may revoke the permit upon thirty days written notice, and require the posting of a bond before issuing a new permit. The bond amount shall be not less than the fair market value of the permit area. The bond shall not be released until the user has complied with all conditions of the permit upon termination or cancellation of the permit.

17.10.400 General conditions.

A. Applicability. Each of the following terms and conditions shall, unless inapplicable by its own terms, apply to every sale or lease of land or interest in land by the borough, unless otherwise specifically provided by ordinance of the assembly. The terms and conditions, as well as any others established by the assembly or the land management officer, shall be included in every agreement of sale, lease or other document disposing of land or an interest in borough land in substantially the manner set out in this section.

B. Assignments. Any purchaser, lessee, or permittee may assign the lands upon which he has an agreement only if approved by the mayor or the land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the

borough. The assignment shall be approved if it is found that all interests of the borough are fully protected. The assignee shall be subject to and governed by the provisions and regulations applicable thereto.

C. Breach of Agreement. In the event of a default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty days after written notice of the default, the borough may cancel the agreement, lease, or permit or take any other legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

D. Cancellation. A purchase agreement, lease or permit in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by the purchaser, lessee, or permittee and the mayor or land management officer when applicable. A purchase agreement, lease, or permit is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

E. Conditional Contract. The borough may conditionally sell, lease, or issue permits for land it selects under the various state land grants and lands it reasonably believes it will own or will acquire title to prior to the actual receipt of title. An agreement, lease, or permit issued on this conditional basis shall be canceled in whole or in part in the event the borough is denied title to said lands. Payment made by the purchaser, lessee, or permittee on the land to which title is denied the borough shall be refunded in whole or in part to the agreement holder of record and any properly recorded lienholder, if any, jointly. However, the borough shall in no way be liable for any damage that may be done to the land by the purchaser, lessee, or permittee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under agreement, the conditional agreement shall then have the same standing, force and effect as non-conditional agreements issued under any regulations of this chapter.

F. Entry or Re-entry. In the event that the purchase agreement or lease is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the purchaser during the agreement term, the borough or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by the borough shall not be deemed an acceptance of surrender of the contract.

G. Fire Protection. The purchaser, lessee, or permittee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.

H. Modification. A purchase, lease or permit agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

I. Notice. Any notice or demand, which under the terms of an agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such

notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor, and in like manner a notice from the borough to a vendee shall be deemed received by the vendee when such notice arrives at the general or branch post office from which final delivery to the said purchaser, lessee or permittee would normally be accomplished.

J. Notice of Default. Notice of the default will be in writing as provided in subsection I. of this section. A copy of the notice will be forwarded to all lienholder or others who have properly recorded their interest in the purchase, lease or permit agreement with the borough.

K. Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.

1. Improvements owned by a purchaser, lessee, or permittee on borough lands shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The retiring purchaser, lessee, or permittee may, with the consent of the mayor or land management officer when applicable, dispose of his improvements to the succeeding purchaser, lessee or permittee.

2. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the purchaser, lessee, or permittee under the terminated or canceled contract, be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former purchaser, lessee, or permittee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the borough all monies due and owing and expenses incurred in making such sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

3. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the purchaser, lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to the borough.

L. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the purchaser, lessee, or permittee or placed on the land during his tenure with or without his permission and remaining upon the premises after the termination of the contract shall entitle the borough to charge a reasonable rent therefor.

M. Resale. In the event that a purchase or lease agreement should be terminated, canceled, forfeited or abandoned, the borough may offer said lands for sale, lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations. If said land is not immediately disposed of then said land shall return to the Land Bank.

N. Responsibility of Location. It shall be the responsibility of the purchaser, lessee,

or permittee to properly locate himself and his improvements on the purchased, leased, or permitted lands.

O. Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a lease or sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease or sale agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument. Any party acquiring an agricultural purchase or lease agreement must meet the same requirements as the original purchaser or lessee.

P. Rights-of-way. The borough may and does expressly reserve for itself, its successors, assignees or permittees, an easement or right-of-way fifty feet on each side of all section lines running through or bordering borough owned land. Further all trails or roads recognized by the borough as in existence at the time the land is sold shall be considered an easement for public use. Nothing herein contained shall prevent the mayor or land management officer when applicable from specifically reserving such additional easements and rights-of-way across borough lands as deemed reasonable and necessary prior to the sale thereof.

Q. Sale Documents. All sales of borough lands shall be on approved borough forms suitable for recording and may consist of a warranty deed, deed of trust, agreement to purchase, promissory note and any other required documents.

R. Sanitation. The purchaser, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises under purchase or lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and land.

S. Shore Land Public Access Easement. The borough shall establish a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark before it sells or leases its land adjacent to any public waters, anadromous fish stream or any of its land reasonably required for public access to such public waters. At the least, the easement shall allow the passage of the public by foot or non-motorized method.

T. Subleasing. No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

U. Violation of any provisions of this chapter or of the terms of the agreement of sale, lease or permit may expose the purchaser, lessee, or permittee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of his interest in accordance with state law.

V. Written Waiver. The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provisions or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment or any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of

termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.

#### 17.10.420 Definitions.

In this chapter, unless the context otherwise requires:

A. "Agriculture" means lands suited for raising and harvesting crops; feeding, breeding and management of livestock; dairying; or, other farm use or any combination of these. Lands subclassified as "agriculture" shall be rated based on the same or similar criteria as used for the "Land Evaluation and Site Assessment" prepared by the Homer and Kenai-Kasilof Soil and Water Conservation Districts. Parcels of land qualifying for this subclassification may be varied in size.

B. "Borough land" means land or interest in land to which the borough holds legal and/or equitable title.

C. "Casual use" means a use of borough land that is nonexclusive and involves only minimal disturbance to the land. Nonexclusive examples of a casual use are hiking, backpacking, hunting, fishing, camping for less than fourteen days, picnicking, cross country skiing, snow machining, berry picking, brushing survey lines or trails where roots are not disturbed, livestock drives, and the use of all-terrain vehicles off an established road or right-of-way but on an existing trail. However, hiking trails or consistent use for hiking and hunting do not constitute a casual use.

D. "Commercial" means lands suitable for development or location of service oriented facilities such as stores, offices, medical clinics, restaurants, lodges, hotels, and camper parks. Lands must be able to support on-sight water and sewer systems or capable of receiving water and/or sewer service, near public utilities and be in proximity to residential areas.

E. "Date of Sale" means the calendar date for which the sale is scheduled to take place, not the date of closing.

F. "Dedication" means the deliberate grant of land by an owner to the public for any general and public use, with the owner reserving no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted and the borough has formally accepted it.

G. "Easement" means an interest held by one party in land of another whereby the first party is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of his land.

H. "Emergency" means an unforeseen circumstance which demands immediate action.

I. "Established material site" means those former state permit sites which were transferred to the borough.

J. "Fair market value" means the estimated price that land would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels. The borough assessor shall determine fair market value unless the mayor determines in writing that a fee appraiser shall determine fair market value.

K. "Fair market rental value" means the estimated rental price that land would rent for in an open market and under the then prevailing market conditions in a lease between a willing lessor and a willing lessee both conversant with the property and with prevailing general rent levels. The borough assessor shall determine fair market rental value unless the mayor

determines in writing that a fee appraiser shall determine fair market rental value.

L. "General grant land entitlement" means a grant of land pursuant to A.S. 29.65.

M. "Geophysical hazard" includes, but is not limited to, a hazard such as an earthquake, slumping, flooding, erosion, or avalanche.

N. "Government" means lands that may be or are required for use by a federal, state or local governmental entity. Such uses include existing and future school sites; sites for service area facilities; or, any governmental use determined to be beneficial to the public.

O. "Heavy Industrial" means lands suitable for processing chemicals or manufacturing from or extraction of raw materials, stockyards, fish processing plants, distilleries, or uses that may discharge water, create hydrocarbons, excessive noise, odors, danger of explosions, or waste material, making them incompatible with most other land uses. Lands should not be located in or immediately adjacent to residential development; parcels should be of sizes reasonably appropriate to accommodate the activities together with sufficient buffers zones for the activity associated with this class of use. Appropriate access shall be available or feasible without going through residential areas. The lands shall be in a location that is reasonably convenient to conduct the activity.

P. "Light Industrial" means lands suitable for industrial uses that generally do not have offensive characteristics and can be conducted primarily inside closed buildings. Such uses may include warehousing, storage inside enclosed areas, and light manufacturing not inside buildings.

Q. "Materials" means common varieties of sand, gravel, rock, peat, pumice, pumicite, cinders, clay and sod.

R. "Multiple Use" means lands suitable for more than one classification or subclassification based on location, size, topography or other characteristics.

S. "Preservation" means lands needed for stabilization or maintenance of natural features, historic value, known nesting areas of migratory birds or required to maintain the integrity of certain types of easements or as buffers, green belts, water sheds or other reservations to preserve natural resources and aesthetic qualities. Soils may be of such a nature as to not be usable for construction of buildings.

T. "Private" (noncommercial/nonindustrial including cemeteries) means lands which may be of value for the location of churches, private schools, clubs, associations, nonprofit organizations, cemeteries.

U. "Public purpose" or "public use" means a present or future purpose or use that will promote the health, safety, morals, general welfare, security, prosperity and happiness or the residents of the borough as a community at large rather than as individuals.

V. "Public utility" means an agency that is licensed, authorized, and regulated to provide utility services for public use.

W. "Public utility easement" means a portion of land reserved for the purpose of providing utility services by an agency or public utility.

X. "Publish" means appearing at least once in a newspaper of general circulation distributed in the borough.

Y. "Qualified appraiser" means a real estate appraiser or firm that employs an appraiser that is in good standing and is certified by the State of Alaska in accordance with AS 08.87.020, AS 08.87.110, and AS 08.02.030. An appraiser who is certified by the Alaska Association of Assessing Officers as an Alaska Certified Assessor/Appraiser. It shall also mean

that the appraiser shall hold the appropriate level certification commensurate with the appraisal assignment.

Z. "Recreational" means lands located in an area where the potential for recreational use exists. This may include both indoor and outdoor uses such as gun ranges, archery ranges, camping, golf courses, snow machine trails, cross country trails, skiing, boating, fishing or which may provide access to those activities. Recreational does not include use of lands for amusement parks. Site conditions for any authorized use must be appropriate and suited for such uses. Lands disposed of to private parties must allow public use unless specifically waived by the planning commission. If lands are for sale or lease then may restrictions may be imposed for appropriate uses given conditions and surrounding use. Not all activities are suitable for all sites.

AA. "Residential" means lands suitable for development for single family or multifamily settlement of a permanent nature. Parcels may be located adjacent to existing communities or are determined to be necessary for future community development. Parcels must be able to support on-sight water and sewer systems or capable of receiving water and/or sewer service, have legal access and feasible physical access, suitable terrain and appropriate with the given surrounding uses.

BB. "Resource Extraction" means lands which may be sold or leased or permitted use for the taking of sand, gravel, timber, peat, turf, topsoil, rock quarry, water, shale or such other resource having value.

CC. "Retain for future nonspecific public use " means land that has been designated for retention for further study on particular public uses as deemed necessary for future growth and development of the borough.

DD. "Short term lease" means the lease of borough land for a period not to exceed five years.

EE. "Subdivision":

1. Means the division of a parcel of land into two or more lots or other divisions for the purpose of sale or building development, includes resubdivision, and relates to the process of subdividing or to the land subdivided;

2. Does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state regardless of whether these plats include easements or other public dedications.

FF. "Temporary use" means a use of borough land that is exclusive, but the use is not pursuant to an authorized lease, easement, extraction license, or commercial sale of borough sand, gravel, or green wood timber resources. Nonexclusive examples of a temporary use are the use of borough land for access to a firewood cutting area or a temporary construction easement.

GG. "Timber of commercial quality" means white spruce or mixed white spruce stands of a minimum DBH of ten inches which can produce a twenty foot log.

HH. "Trespass" means the unauthorized use or possession of borough land.

II. "Unintentional trespass" means the inadvertent location of a structure on borough land.

JJ. "Utility/Transportation" (not including oil and gas and electricity generation or production facilities) means lands which may be of value for airports, port and harbor facilities, power lines, pipelines, utility services, rights-of-way, easements and related activities but does

not include generation and production facilities for oil and gas and electricity.

KK. "Waste Handling" means lands with suitable characteristics and location for the express purpose of providing facilities to handle solid waste, recyclable materials, transfer stations, junked or wrecked vehicles, demolition refuse, septic and sewage waste and industrial waste. Disposal or use of any tract so classified will be subject to determination of the tract being suitable for a particular proposed activity.

LL. "Unpatented lands" means lands for which land selection under the borough's land entitlement has been approved by the State, but patent has not been issued to the borough.

MM. "Unapproved selection" or "unapproved lands" means those selected by the borough under the land entitlement provisions of the State for which approval has not been obtained from the State.

**SECTION 2.** That KPB 17.04 is hereby repealed.

**SECTION 3.** That notwithstanding the provisions of this ordinance repealing KPB 17.04, any applications for purchase or lease of borough owned lands that were submitted prior to the effective date of this ordinance will be handled as if that Chapter were still in effect and that the provisions of the new KPB 17.10 will not apply. The provisions of KPB 17.10 enacted by this ordinance will govern the disposition of any interest in borough owned lands initiated on or after January 21, 1992.

**SECTION 4.** That this ordinance shall take effect at 12:01 a.m., on the day following its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1992.**

\_\_\_\_\_  
Betty J. Glick, Assembly President

ATTEST:

\_\_\_\_\_  
Gaye J. Vaughan, Borough Clerk