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**KENAI PENINSULA BOROUGH  
ORDINANCE 92-57**

**AN ORDINANCE PROVIDING 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;

**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 repealing Chapter 17.04 and enacting a new Chapter 17.10 entitled "Borough Lands and Resources" to read as follows:

**Chapter 17.10  
BOROUGH LANDS AND RESOURCES**

**Sections:**

- 17.10.010 Policy/Purpose.
- 17.10.020 Land Management Division - Established.
- 17.10.030 Acquisition of lands and resources - General Policy.
- 17.10.040 Acquisition of lands and resources - Resolution contents.
- 17.10.050 Land Bank - Establishment - Purpose.

- 17.10.060 Land Bank - Deposit.
- 17.10.070 Land Bank Withdrawal - Procedure.
- 17.10.080 Classification and reclassification of borough land.
- 17.10.090 Disposition of borough land.
- 17.10.100 Methods of disposition.
- 17.10.110 Notice of disposition.
- 17.10.120 Terms of a land sale.
- 17.10.130 Conveyance of the land.
- 17.10.140 Lease - Types.
- 17.10.150 Lease - Terms and conditions.
- 17.10.160 Granting Rights-of-way and easements.
- 17.10.170 Forest and timber resources.
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- 17.10.190 Casual use of borough land.
- 17.10.200 Sand, gravel, and materials - Negotiated sale - Small quantities.
- 17.10.210 Sand, gravel, and materials - Commercial quantities.
- 17.10.220 Trespass on borough land.
- 17.10.230 Exceptions to chapter - Procedure - Assembly authority.
- 17.10.240 General conditions.
- 17.10.250 Definitions.

**17.10.010 Policy/Purpose.**

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 and resources for wildlife habitat, scenic value, recreational needs, and historic needs;
5. The retention of borough lands essential for health, safety and education 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 procedures for the acquisition, management, classification and disposal of borough lands and resources which may not be deviated from except upon declaration of an emergency by the mayor of this borough or the Governor of the State of Alaska.

**17.10.020 Land management division - Established.**

There is established within the office of the resource planning department the division of land management. The land management division shall manage borough land in accordance with this chapter, the management plans and with procedures adopted by the mayor and made available to the public. The division of land management shall be administered by the land management

officer. The land management division shall be the managing authority for all borough land unless the mayor has designated in writing another borough department as the managing authority for a specific parcel of land. A managing authority other than the land management division may promulgate rules and regulations for the use of borough land under their authority.

**17.10.030 Acquisition of land and resources - General policy.**

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

B. Lands or interest 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 interest 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 trade 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 lawful methods of acquiring lands or interests in lands and resources.

D. An offer to acquire land for the borough shall be in writing and shall be signed by the mayor.

**17.10.040 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 upon receipt of a planning commission recommendation.

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

1. The purpose of the acquisition;
2. The proposed land classification;

3. A description of the lands or interests in lands or resources concerned;
4. The terms, conditions, valuation or consideration for the proposed acquisition.

C. Subsection B(4) of this section may be waived when the acquisition is in compromise or settlement of claims, and the borough attorney asserts that the public disclosure or 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 borough attorney of the facts or reasons upon which the assertion was made.

#### **17.10.050 Land bank - Establishment - Purpose.**

There is hereby established a land bank for the purpose of holding appropriately classified lands or interests in lands or resources which have been requested for sale or lease. Said lands shall be held in the land bank until authorized for disposition pursuant to Section 17.10.070.

#### **17.10.060 Land bank - Deposit.**

A. Only appropriately classified lands or interests in land or resources shall be deposited in the land bank.

B. The mayor is authorized to deposit lands into the land bank on an on-going basis.

C. Any person may also submit a request for appropriately classified lands to be deposited in the land bank. Said request shall be submitted on a form provided by the land management division. A filing of a request for deposit does not give or imply any right or preference to the land.

D. If the application is incomplete as determined by the land management officer or his/her designee, it will be returned to the applicant. In the event an application is returned to the applicant, the review process begins on the date of resubmittal.

E. The land management officer shall maintain a list of lands held on deposit pending disposition.

F. Deposit in the land bank does not imply that a parcel will be authorized for disposal.

#### **17.10.070 Land bank withdrawal - Procedure.**

A. Disposals will be held a minimum of two times within a calendar year. The sale of lands foreclosed upon for nonpayment of real property tax may be considered as one of the disposals.

B. During the first quarter of each calendar year, the list maintained pursuant to Section 17.10.060(E), shall be reviewed by the planning commission. The list shall contain the assessor's parcel number, the legal description, general location and the fair market value or fair market rental value. After review, the planning commission shall forward its recommendations to the assembly.

C. By ordinance, the assembly may authorize the withdrawal of land from the land bank. The ordinance shall set the date, time and place of the disposal and the method of disposal as permitted under this chapter.

D. If any lands are not sold by the authorized means within ninety days, or the period specifically authorized by the ordinance, the property may be available for sale as an over-the-counter sale to be conducted as provided in section 17.10.100(H). Any lands not sold within

120 days after being eligible over-the-counter will revert to the land bank.

**17.10.080 Classification and reclassification of borough lands.**

A. Classification of property is for review, plan implementation and management purposes. 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.

B. All lands or interests in lands or resources owned by the borough shall be classified or reclassified in a manner consistent with the purposes and policies of this chapter.

C. 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.

D. Lands meeting the above requirements shall be classified on an on-going basis. Classification or reclassification may be initiated by the assembly, the mayor, or the planning commission.

E. Classification or reclassification shall be based on a need identified in the borough Comprehensive Plan or upon recommendations from the mayor, the planning commission, an advisory planning commission, the public, or a local, state or federal government agency.

F. An individual may request classification or reclassification of land by submission of a petition on the form as provided by the land management division accompanied by the appropriate fee. Said form shall be completed in full and shall clearly state, but not be limited to, the proposed classification and the justification for the classification. In the case of a reclassification the existing classification shall also be included.

G. Individual petitions for classification or reclassification may be grouped together in a batch and acted upon a minimum of two times within each calendar year. The procedures outlined in subsections H and I of the section shall apply.

H. Notice of the proposed classification shall be published two times in a newspaper of general circulation in the local area in which the classification is proposed. In areas not served by daily newspapers, the notice shall be posted in the post office of the impacted community and sent to the appropriate advisory planning commission. The notice shall contain the description of the property to be classified, the general location, proposed 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. At the beginning of the notice period 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. Notice shall also be sent to applicable local, state or federal government agencies, advisory planning commission and other interested groups. The public comment period shall not be less than thirty (30) calendar days from the date of the first publication of the notice.

I. The planning commission shall hold a public hearing as specified in subsection (H) of this section 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 and 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 another plan approved by the assembly. If a proposed classification or reclassification is not compatible with an approved land use plan, a plan revision shall be necessary before the classification or reclassification is adopted.

J. The Land Management Division shall be responsible for the official map depicting the current classification.

K. All borough lands shall be classified as one of the following:

1. Agriculture
2. Residential
3. Commercial
4. Heavy Industrial
5. Light Industrial
6. Recreation
7. Preservation
8. Government
9. Resource Extraction
10. Institutional
11. Utility/Transportation
12. Waste Handling
13. Rural

The classifications are specifically defined in KPB 17.10.250.

L. All borough lands or interest in lands or resources not otherwise classified are undesignated lands.

#### **17.10.090 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. Lands shall not be sold unless the borough has clear title to the land. All lands shall be sold or leased at fair market value or fair market rental value as determined by a qualified appraiser except as provided in sections 17.10.100(I) and 17.10.120(D).

#### **17.10.100 Methods of disposition.**

A. Tax foreclosure sale. 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. The ordinance shall specify the minimum acceptable bid which shall be fair market value or fair market rental value. 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 auction.

C. Exchange Sale. The assembly may by ordinance authorize the exchange of 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 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 or 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 or Lease. The assembly may by ordinance authorize the mayor to conduct the sale or lease of lands by lottery provided the land is sold for fair market value or fair market rental 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 or fair market rental value.

I. Negotiated Sale or Lease. The assembly may by ordinance authorize the negotiated sale or lease of borough land in accordance with section 17.10.120(D).

#### **17.10.110 Notice of disposition.**

Notice of disposition shall be published four times in the thirty day period immediately preceding the date of the sale. The last notice of disposition must appear not less than five calendar days prior to the date of disposal. In areas not served by daily newspapers, the notice shall be posted in appropriate post offices and sent to appropriate advisory planning commissions. 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.

#### **17.10.120 Terms of a land sale.**

A. The assembly shall by ordinance fix the terms of all sales of borough lands. The ordinance shall contain the date of 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. Land disposal actions will be in conformance with the land classification system.

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

1. The down payment is at least 10% of the sale price;
2. The rate of interest is the prime rate on the authorized date of sale plus two percent (2%);
3. The period for total payment does not exceed ten years;
4. The period for total payment does not exceed twenty years if the land is sold for agricultural use;
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.
6. Any unpaid balance due the borough must be paid in full if the purchaser sells the property unless the assembly has provided otherwise.

D. The assembly may authorize the sale of land for an amount other than fair market

value only if the ordinance authorizing the sale contains:

1. A finding that sale for an amount other than fair market value is in the best public interest;

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.

F. 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.

G. When applicable, the sale of land shall be subject to the veteran's credit as defined KPB Chapter 1.30.

#### **17.10.130 Conveyance of the land.**

A. The mayor shall execute all conveyance documents authorized by ordinance and said documents shall be recorded in the appropriate recording district.

B. The purchaser shall be responsible for acquiring title insurance.

C. The purchaser or lessee shall be responsible for all fees, which may include recording fees, closing fees, escrow setup fees, annual escrow fees, collection fees, surveying and platting fees if applicable, or other associated fees unless otherwise authorized.

D. All lands or interests in lands shall be conveyed by an instrument containing restrictions that restrict the use of land to that classification and prohibit the use of the land for any other purpose.

E. An instrument conveying land or an interest in land for agricultural use shall prohibit subdivision.

F. Restrictions may be modified by:

1. Submittal of a petition and accompanied by the appropriate fee 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, notice of the petition shall be published two times in a newspaper of general circulation in the local area in which the property is located. In areas not served by daily newspapers, the notice shall be posted in the post office of the impacted community and sent to the appropriate advisory planning commission. The notice shall contain the description of the property, the general location, proposed restriction modification, 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 meeting. At the beginning of the notice period 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 under petition. Notice shall also be sent to applicable local, state or federal government agencies, advisory planning commission and other interested groups. The public comment period shall not be less than thirty (30) calendar days from the date of the first publication of the notice.

3. The planning commission shall consider the petition and recommend an appropriate action to the assembly.



4. The assembly may by ordinance authorize the repeal of any restriction and cause the appropriate document to be filed in the appropriate recording district based upon 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 and feasible, and comments from an appropriate advisory planning commission, and be compatible with any land use plan adopted under the borough comprehensive plan or another plan approved by the assembly.

#### **17.10.140 Lease - Types.**

A. Short term lease. The mayor may lease borough land for a period not to exceed five years according to the terms fixed by ordinance and based on the land classification. The mayor shall not lease approved, unpatented general grant entitlement land without fully disclosing the unpatented status of the land to the lessee.

1. An application to lease must be submitted with a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, and a development and construction time table.

2. The annual lease rate for a short term lease shall be established as the fair market rental value as determined by a qualified appraiser unless otherwise authorized by ordinance.

3. Leased lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease, the applicable land 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.

4. Failure on the part of the lessee to substantially complete his development 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.

5. Short term leases may not be assigned or renewed.

B. Long term lease. The mayor may lease borough land for a period exceeding five years according to the terms fixed by ordinance and based on the land classification. The mayor shall not lease approved, unpatented general grant entitlement land without fully disclosing the unpatented status of the land to the lessee.

1. An application to lease must be submitted with a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, and a development and construction time table.

2. The annual lease rate for the first five years shall be established as the fair market rental value as determined by a qualified appraiser unless otherwise authorized by ordinance.

3. Unless otherwise authorized by ordinance, the lease rate shall be adjusted on the anniversary date of the lease every five years after the initial five year term. The adjusted lease rate shall be determined by a qualified appraiser and based on the fair market rental value.

4. Lease 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 of 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.

5. 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.

6. For the purpose of interim 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.

7. Upon written approval of the borough, a long term may be assigned subject to the same terms and conditions of the existing lease.

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 the mayor shall not lease approved, unpatented grant land without fully disclosing the unpatented status of the land to the lessee.

1. An application to lease must be submitted with a range management plan and a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, and a development and construction time table.

2. The annual lease fees shall be established by the borough assessor.

3. Lease 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 range management plan, development plan, applicable classification, and any land use of 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.

4. 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.

5. Upon written approval of the borough, an agricultural lease may be assigned subject to the same terms and conditions of the existing lease. No agricultural lease may be assigned within two years of the anniversary date.

#### **17.10.150 Lease - Terms and conditions.**

A. The following terms and conditions shall be applicable to all leases:

1. Application to lease must be submitted on a form provided by the land management division.

2. Section 17.10.120(F) shall apply.

3. The filing of an application for lease does not give or imply any right to lease or use of the land under application.

B. In the case of an agricultural lease, within 90 calendar days of the prospective lessee being notified that he/she is eligible to lease borough lands and prior to executing the lease documents, the prospective lessee must submit a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, a range management plan and a development and construction time table.

C. The land management officer shall have 90 calendar days in which to review the proposed development plan. This review shall include approval by the borough attorney and any other consultation which may be necessary to determine the adequacy of the plan.

D. The land management officer may require additional information if it is determined that the plan does not address all of the potential impacts of the proposed land use. The prospective lessee shall bear the responsibility of obtaining professional assistance if it is deemed necessary by the land management officer that additional technical information is needed.

E. After the required additional information is provided, the land management officer shall have 60 calendar days to review the amended development plan.

F. After written notification by the land management officer that the development plan and other lease documents are acceptable, the lessee shall have 30 calendar days in which to sign the appropriate documents to execute the lease. If at the end of the 30 calendar days the lessee has not completed and signed the documents, the authorized lease shall become null and void.

G. All annual rental fees of lease lands are due and payable on or before the first day of each term year.

#### **17.10.160 Granting rights-of-way and easements.**

The mayor is authorized to dedicate rights-of-way and grant easements across any borough lands upon receipt of application on the form provided by the land management division and payment of the appropriate fee.

#### **17.10.170 Forest and timber resources.**

Lands to be utilized for forest and timber resources shall first be classified as "Resource Extraction" and shall be subject to the terms and provisions of KPB 17.50.

#### **17.10.180 Temporary use of borough land.**

A. A person who wishes to use borough land for a temporary use shall apply for a nonrenewable permit on a form provided by the land management division and accompanied with the appropriate application fee as required by the fee schedule. A permit shall not be issued until the applicant has complied with Section 17.10.120(F).

B. A temporary use permit is nontransferable and is valid for a period no greater than one year from the date of issue.

C. At the time the permit is issued, the applicant shall pay 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 may 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 One Hundred Dollars (\$100). 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 not no time is specified within thirty days of the revocation of the permit, remove from the borough land all improvements or chattels placed on the borough land pursuant to the temporary use. Any improvements or chattels 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. The land management officer may reissue a 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.

#### **17.10.190 Casual use of borough land.**

A. A casual use does not create an interest in the title of the land.

B. The casual use of borough land does not require a permit.

C. 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.

#### **17.10.200 Sand, gravel, and materials - Negotiated sale - 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. Application shall be submitted on the form provided by the land management division and accompanied by the appropriate fee.

D. Applicant shall comply with Section 17.10.120(F).

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 the 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.

#### **17.10.210 Sand, gravel, and materials - Commercial quantities.**

A. The mayor is authorized to negotiate at the current market value the sale of material from lands classified as resource extraction.

B. Application shall be submitted on the form provided by the land management division and accompanied by the appropriate fee.

C. A contract shall not be issued until the applicant has complied with Section 17.10.120(F).

D. A successful buyer may be required to file a mining plan as required, but not limited to, AS 27.19. 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.

E. A payment schedule shall be set and made a part of the contract.

F. A bond shall be required at the time the sale contract is executed. The bond shall be a minimum of ten percent (10%) of the sale price. The bond shall be retained until such time as site restoration and all other requirements are met, completed and accepted by the borough.

G. Liability insurance or additional requirements may be required if deemed necessary in the best interests of the borough.

#### **17.10.220 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.

B. The mayor is authorized to negotiate the terms of a license to an unintentional trespasser because of an extreme hardship that will be suffered by the trespasser. The license is subject to approval by assembly resolution.

C. Under the provisions of Section 17.10.100(I) and 17.10.230, 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.

#### **17.10.230 Exceptions to chapter - Procedure - Assembly authority.**

A. The assembly may authorize exceptions to any of the requirements set forth in this chapter. The applicant requesting any such exception shall present the assembly with substantial evidence, justifying the requested exception stating fully the grounds for the exception and the facts relied upon. The assembly shall find the following facts before granting any exceptions:

1. That special circumstances or conditions exist;
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter;
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

#### **17.10.240 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 land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. 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 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 purchase, 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 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 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 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. Hazardous Waste. The storage, handling and disposal of hazardous waste shall not be allowed on lands under lease or permit from the borough.

I. **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.

J. **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.

K. **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 lienholders or others who have properly recorded their interest in the purchase, lease or permit agreement with the borough.

L. **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 a 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.

M. **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.

N. 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.

O. 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.

P. 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.

Q. Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be 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.

R. 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.

S. 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 lands.

T. Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

U. 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.

V. Violation. Violation of any provision 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.

W. 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 provision 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 of 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 payment fully satisfies the breach.

#### **17.10.250 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 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, cross country skiing, snow machining, berry picking, hunting, 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 establishing hunting camps 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, vehicular service stations, 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 or 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 ten 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 the fair market rental value unless the mayor determines in writing that a fee appraiser shall determine fair market rental value.

L. "Final Decision" or "selected approved" means lands acquired under the borough's general land grant entitlement and have been approved by receipt of a final decision from the State, but patent has not been issued to the borough. Management authority for these lands has been passed from the state to the borough.

M. "General grant land entitlement" means a grant of land pursuant to A.S. 29.65 and also may be referred to as "municipal entitlement land".

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

O. "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.

P. "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 reasonable convenient to conduct the activity.

Q. "Institutional" means lands which may be of value for the location of churches, private schools, clubs, associations, nonprofit organizations, cemeteries.

R. "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.

S. "License" means permission to do something which without the license would not be allowable. A license does not grant any interest in the land.

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

U. "Person" means any person, firm, corporation or partnership.

V. "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.

W. "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.

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

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

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

AA. "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.

BB. "Recreational" means land 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. Recreational lands disposed of to private parties must allow public use unless specifically waived ordinance. If recreational lands are for sale or lease then restrictions may be imposed for appropriate uses given conditions and surrounding use. Not all activities are suitable for all sites.

CC. "Residential" means lands suitable for development for single family or multifamily settlement of a permanent nature. Residential parcels may be located adjacent to existing communities or are determined to be necessary for future community development. Residential 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.

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

EE. "Rural" means lands which are located in a remote area. This classification will have no restrictions.

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

GG. "Subdivision":

1. Means the division of a parcel of land into two or more lots or other division 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.

HH. "Temporary use" means a use of borough land that is either exclusive or nonexclusive, but the use is not pursuant to an authorized lease, easement, extraction license, or commercial sale of borough sand, gravel, or green wood timber sources. Examples of a temporary use are the use of borough land for temporary access or a construction easement, one day only events, staging areas, or annual civic events.

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

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

KK. "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 general and production facilities for oil and gas and electricity.

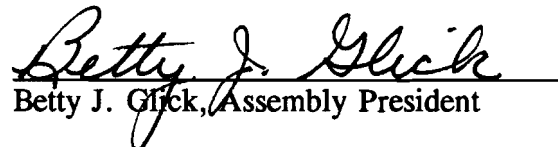
LL. "Waste Handling" means land with suitable characteristics and location for the express purpose of providing facilities to handle solid waste, recyclable materials, transfer stations, junked or wrecked vehicles, demolition refuse, septic and sewage waste and industrial waste. Disposal or use of any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

MM. "Unapproved selection" or "unapproved lands" means those lands selected under the borough's general land grant entitlement for which approval has not been obtained from the State.

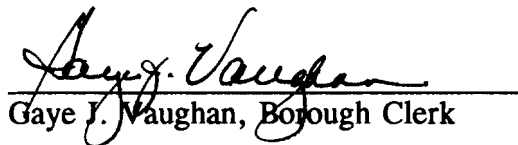
**SECTION 2.** That any applications for purchase or lease of borough owned lands that were submitted prior to the effective date of this ordinance will be handled under the provision of KPB 17.10.

**SECTION 3.** 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 2nd DAY OF FEBRUARY, 1993.**

  
Betty J. Glick, Assembly President

ATTEST:

  
Gaye J. Vaughan, Borough Clerk