

Introduced by: Mayor
Date: 03/03/09
Hearing: 04/07/09
Action: Enacted as Amended
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-14**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT FAIR MARKET
VALUE OF TRACT 5 KALBEA TRACT 5 SUBDIVISION CONTAINING 18.57 ACRES
MORE OR LESS TO MARATHON OIL COMPANY FOR OIL AND GAS
OPERATIONS**

WHEREAS, the Kenai Peninsula Borough ("KPB") owns the surface estate of the 18.57 acre Tract 5 Kalbea Tract 5 Subdivision; and

WHEREAS, Marathon Oil Company ("MOC") has an oil and gas leasehold under said parcel which is unitized as part of the Kenai River Unit; and

WHEREAS, MOC has a number of surface improvements, some of which are allowed under the Oil and Gas Lease and some which require surface interest; and

WHEREAS, KPB and MOC have negotiated a lease to authorize MOC's continued use of the borough parcel for oil and gas related operations; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of March 23, 2009 recommended enactment by unanimous consent.

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

SECTION 1. That the Assembly finds that leasing Tract 5 Kalbea Tract 5 Subdivision , Plat No. 75-95 KR D, containing 18.57 acres more or less, to Marathon Oil Company, pursuant to KPB 17.10.100 (I) is in the best interest of the borough.

SECTION 2. That the Assembly makes an exception to KPB 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
 - A. KPB 17.10.080(A) states that 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. Classification immediately prior to disposal of borough land that has been specified for a certain use does not accomplish these purposes.

- B. The subject property has been occupied by oil and gas facilities dating back to 1959.
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.
- A. This ordinance authorizes subject land to be leased to Marathon Oil Company on a non-competitive basis at market value pursuant to KPB 17.10.100(I). Classification will be redundant and not serve a useful purpose based on the findings of No. 1 above.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
- A. Lease of the subject land to Marathon Oil Company authorizes land uses which compliment existing oil and gas uses on the property.

SECTION 3. That the Assembly additionally makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
- A. This ordinance authorizes subject land to be leased to Marathon Oil Company on a non-competitive basis, at market value pursuant to KPB 17.10.100(I).
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.
- A. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land and advertising this sole source lease to Marathon Oil Company will not serve a useful purpose.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

- A. The proposed lease will provide for existing oil and gas related uses.
- B. The subject property has been continuously occupied by MOC or its predecessors since 1959.

SECTION 4. That the Assembly additionally makes an exception to KPB 17.10.240(L) and (M) removal or reversion of improvements. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
 - A. Marathon Oil Company has a gravel pad, office building, shop and other valuable improvements. The KPB may desire that these improvements be left in place when Marathon Oil Company abandons the site. The KPB 17.10.240(L) and (M) code requirements to remove improvements after termination of a lease agreement may not be applicable in this situation, and alternative language has been provided in the proposed lease to give KPB the option to have improvements removed at the Lessee's expense.
- 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.
 - A. Retaining the option to have improvements removed or left in place at the termination of the lease preserves the intent of KPB 17.10.230 while providing a beneficial discretion to KPB.
- 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. Leaving valuable improvements in place such as a gravel pad, office building and shop would not be detrimental to the public welfare or injurious to other property in the area.

SECTION 5. That the Assembly additionally makes an exception to KPB 17.10.240(H) hazardous waste. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
 - A. That hazardous waste is commonly generated, handled and stored in standard oil and gas operations, and such hazardous waste handling and storage is regulated through state and federal laws.

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.
 - A. MOC has the right to handle and store hazardous waste as necessary for oil and gas production and transportation under its federal Oil and Gas Lease serial A-028055, subject to applicable laws and regulations.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. Protections to public health and the environment from the handling and storage of hazardous waste are in place through state and federal laws and regulations.
 - B. Hazardous waste disposal will not be allowed by the terms of the lease.

SECTION 6. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100 (I) to lease the land described in Section 1 above to Marathon Oil Company for a term of 20 years at annual rental of \$15,000 for the first year of this lease with a rental increase of 3 percent each subsequent year. The authorization is for lease solely to Marathon Oil Company, and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity. Once entered, the lease may be assigned or subleased pursuant to the terms of the lease agreement.

SECTION 7. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

SECTION 8. Marathon Oil Company shall have 180 days from the time of enactment of this ordinance to execute the lease document.

SECTION 9. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF APRIL, 2009.

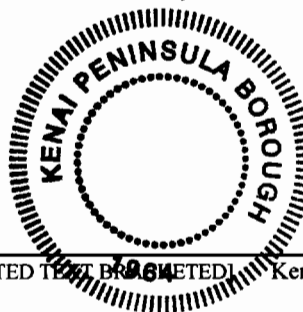


Milli Martin, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Yes: Fischer, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: Knopp