

Introduced by:	Mayor
Date:	07/07/09
Hearing:	08/04/09
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-41**

**AN ORDINANCE AUTHORIZING THE MODIFICATION OF DEED RESTRICTIONS
ON TWO PARCELS OF LAND IN COOPER LANDING THAT WERE SOLD TO THE
COOPER LANDING SENIOR CITIZEN CORPORATION, INC. FOR SENIOR
HOUSING PURPOSES**

- WHEREAS,** Ordinance 2005-06 (Mayor) Substitute, enacted March 1, 2005, authorized the lease with option to purchase, through partial releases, of 12.5 +/- acres on Snug Harbor Road in Cooper Landing to the Cooper Landing Senior Citizen Corporation, Inc. (CLSCCI); and
- WHEREAS,** under Ordinance 2005-06 CLSCCI purchased a 2 +/- acre parcel, being Lot 1, subject to a senior housing public purpose deed restriction with right-of-reentry, successfully developed that property according to its development plan, and secured long-term financing through the Alaska Housing Finance Corporation (AHFC); and
- WHEREAS,** Ordinance 2005-06 (Mayor) Substitute was amended by Ordinance 2008-11 (Mayor, Long) Substitute, enacted May 20, 2008, which modified the financial terms under the lease with option to purchase; and
- WHEREAS,** under Ordinances 2008-11 and 2005-06 CLSCCI purchased the remaining two lots under the lease with option to purchase, being Lot 2A and Lot 2B, both being subject to a senior housing public purpose deed restriction with automatic reversion; and
- WHEREAS,** CLSCCI is completing construction of a 6-unit senior housing facility on Lot 2A, but is unable to secure long-term financing through AHFC because of the automatic reversion language in the deed to Lot 2A; and
- WHEREAS,** CLSCCI has similar intentions for development and long-term financing of Lot 2B, but CLSCCI may be hindered by difficulty with securing financing due to the automatic reversion language in the deed to Lot 2B; and
- WHEREAS,** modifying the deed restrictions on Lot 2A and Lot 2B to remove the automatic reversion and replace that with a right-of-reentry similar to the language in the deed for Lot 1 will allow AHFC to proceed with financing while preserving protection for the borough in its ability to enforce the deed restriction; and
- WHEREAS,** notice has been published and sent in accordance with KPB 17.10.130(F)(2); and

WHEREAS, at its meeting of July 8, 2009, the Cooper Landing Advisory Planning Commission recommended enactment by unanimous consent; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of July 20, 2009 recommended enactment by unanimous consent; and

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

SECTION 1. That pursuant to KPB 17.10.130 (F)(4), the mayor is hereby authorized to execute and record an instrument to modify the deed restriction language on the deeds for Lot 2A and Lot 2B, Cooper Landing Senior Campus 2008 Addition, according to Plat No. 2008-12 on file in the Seward Recording District, Third Judicial District, State of Alaska, as set forth in recorded instruments serialized respectively as 2008-000965-0 and 2009-000443-0 Seward Recording District as follows:

[DELETE] the deed language as shown below:

FURTHER SUBJECT TO a condition on use of the land described above to planning, design, site preparation, development, construction and operation of senior facilities, i.e., senior housing and senior center and other associated public purposes. [IF THE PARCEL IS NOT PRIMARILY USED FOR THESE PUBLIC PURPOSES FOR ANY CONTINUOUS PERIOD OF ONE YEAR, THE KENAI PENINSULA BOROUGH MAY FORECLOSE THE DEED OF TRUST, OR IF THE PARCEL HAS BEEN PURCHASED IT WILL BE FORFEITED TO THE BOROUGH, FOR FAILURE TO COMPLY WITH THIS CONDITION UNLESS OTHERWISE AGREED UPON IN WRITING BY THE BOROUGH AND CLSCCI. "USED FOR THESE PUBLIC PURPOSES" INCLUDES PLANNING, DESIGN, SITE PREPARATION AND DEVELOPMENT AS WELL AS ON-SITE USES.]

Replace the above with the inserted language as shown below:

FURTHER SUBJECT TO a condition on use of the land described above to planning, design, site preparation, development, construction and operation of senior facilities, i.e., senior housing and senior center and other associated public purposes. In the event grantee does not use, or ceases to use, the described property for these specified senior purposes for any continuous one year period, grantor or grantor's assigns may reenter and repossess the premises; and grantor or grantor's assigns may bring action to regain title to the described property.

SECTION 2. That the action of Section 1 of this ordinance is supported by the following findings of fact:

- a. CLSCCI is in good standing with the requirements of Ordinance 2005-06, Ordinance 2008-11, and the restrictions set forth in their respective deeds.
- b. Senior housing is supported by the Cooper Landing Land Use Plan.

- c. The modification of the deed restrictions provided by this Ordinance are consistent with the intent of Ordinance 2005-06 and Ordinance 2008-11.
- d. The modification of the deed restrictions provided by this Ordinance retains the Senior Housing public purpose restriction and provides a mechanism for enforcement of that restriction to protect the borough's interests.
- e. The modification of the deed restrictions provided by this ordinance are intended to enable AHFC long-term financing on the subject property for CLSCCI's use in completing construction of a six-unit senior housing facility on Lot 2A.
- f. The modification of the deed restrictions provided by this ordinance will not have a deleterious effect on surrounding uses, resources, features, or infrastructure.

SECTION 3. The mayor is authorized to sign and record any documents necessary to effectuate this ordinance.

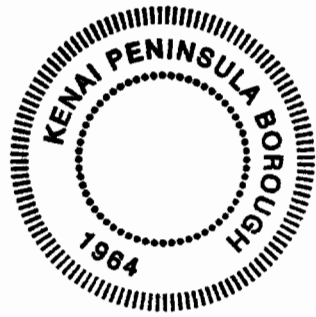
SECTION 4. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF AUGUST, 2009.


 Milli Martin, Assembly President

ATTEST:


 Johni Blankenship, Borough Clerk



Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
 No: None
 Absent: None