

Introduced by:	Mayor
Substitute Introduced:	02/16/10
O2010-01 (Sprague, Mayor)	See original for prior history
Hearing:	02/16/10, 03/02/10
Action:	Failed to Amend by Substitute
Vote:	2 Yes, 6 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-01
SUBSTITUTE (MAYOR)**

**AN ORDINANCE AUTHORIZING A LAND CONVEYANCE TO THE CITY OF
SOLDOTNA OF A 10-ACRE BOROUGH PARCEL ON WEST REDOUBT TO
SUPPORT A CITY CEMETERY THROUGH THE IMMEDIATE CONVEYANCE OF 5
ACRES FOR THE SUM OF \$1.00 AND THE OPTION TO PURCHASE THE
REMAINDER AT ONE-HALF OF THE FAIR MARKET VALUE**

- WHEREAS**, Chapter 4 of the 2005 Kenai Peninsula Borough Comprehensive Plan provides: “Some communities, including Soldotna, lack cemetery sites, necessitating significant travel to visit burial sites of family members or friends”; and
- WHEREAS**, the 2005 Comprehensive Plan Goal 4.11 Objective 1 is “[t]o reserve adequate public land and encourage private landowners to meet future cemetery needs throughout the Borough”; and
- WHEREAS**, the City of Soldotna formed a Cemetery Task Force to research feasibility, desirability, and available locations for a community cemetery in the Soldotna area; and
- WHEREAS**, the Cemetery Task Force recommended 10 acres of Borough-owned land on West Redoubt Avenue as a cemetery site; and
- WHEREAS**, the Soldotna City Council adopted Resolution 2009-070 requesting the Kenai Peninsula Borough to convey a 10-acre tract along West Redoubt Avenue in Soldotna to the City for cemetery use; and
- WHEREAS**, the fair market value of the subject 10 acres of Borough-owned land has been appraised by the Kenai Peninsula Borough Assessor at \$413,800; and
- WHEREAS**, KPB 17.10.100(D), (E), and (I) authorize sales in cooperation with another governmental entity, a negotiated sale for other than fair market value, and a combination of sale methods; and
- WHEREAS**, the City of Soldotna adopted resolution 2009-062 committing Crystalline Subdivision Tract 1 as a memorial park, subject to an evaluation by the city manager, and instructed the city manager to negotiate the purchase from the

Kenai Peninsula Borough of an adjacent 10 acre parcel south of Crystalline Subdivision; and

WHEREAS, the city has indicated through Soldotna Resolution 2009-062 its intent to access the cemetery site from West Redoubt Avenue and initiate cemetery development near the northern extent of the KPB parcel, which could be accomplished with the immediate conveyance of 5 acres along with the dedication of access; and

WHEREAS, the city has not yet designed the cemetery site; therefore, its need of the entire 10-acre borough parcel for cemetery purposes cannot be clearly evaluated by either the city or the borough at this time; however, granting the city the option to purchase the entire parcel for cemetery purposes would allow the city the security and flexibility to include lands in its design process without requiring that all lands be obligated to a single use; and

WHEREAS, structuring a partial sale at \$1.00 with option to purchase the remainder at a reduced value meets the immediate needs of the city, provides meaningful participation by the borough in an important public purpose, retains value in a valuable borough asset, and provides the city with benefit of time to further evaluate its long-term needs with a commitment from the borough to meet that need under reasonable terms; and

WHEREAS, the Kenai Peninsula Borough has no immediate plans for the 10 acres which would conflict with a cemetery use or would cause the city to be concerned about the borough invoking a first refusal notice in the near future; and

WHEREAS, a right of first refusal defers important future city and borough land use decisions to that time when those decisions can be more appropriately contemplated by the city and borough; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of January 25, 2010 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 conveying the following described property at less than fair market value to the City of Soldotna for cemetery use is in the best interest of the borough:

The SW¹/₄ SE¹/₄ SW¹/₄ within Section 30, Township 5 North, Range 10 West, Seward Meridian, Alaska, containing approximately 10.0 acres.

This finding is based on the following facts:

- a. The conveyance will benefit Borough residents by allowing the creation of a municipal cemetery within the City of Soldotna that will be available to both city and non-city residents.
- b. The cemetery will fulfill the need for a cemetery for the people of the Soldotna, Sterling, Ridgeway, Kasilof and other areas of the borough.
- c. The borough lacks authority to establish and operate a cemetery, but the City of Soldotna has such authority.
- d. The City of Soldotna shall be responsible for the costs of improvements, maintenance, and operation of the cemetery for the benefit of city and other borough residents.
- e. Charging fair market value for this property would preclude the use of such funds to establish and operate the cemetery.

SECTION 2. The mayor is authorized, pursuant to KPB 17.10.100(D), (E), and (I) to convey 5.0 acres, more or less, to the City of Soldotna from the land described in Section 1 above for the sum of \$1.00 along with dedicated access from West Redoubt Avenue appropriate to serve cemetery purposes. Borough land shall be conveyed to the City of Soldotna by Quitclaim Deed. The City of Soldotna shall be responsible for any surveying and platting required, title insurance, and any other closing costs.

SECTION 3. The City of Soldotna shall prepare a subdivision plat of its design which combines the portion of Tract 1 Crystalline Subdivision that is to be used for cemetery purposes with the 5.0 acres, more or less, authorized for conveyance herein. Upon recordation of the plat the City of Soldotna shall place a deed restriction on the city owned portion of the new parcel as set forth in Section 5 of this ordinance.

SECTION 4. The mayor is authorized, pursuant to KPB 17.10.100(D), (E), and (I) to grant to the City of Soldotna the option to purchase and right of first refusal on the remaining borough-owned portion of the land described in Section 1 above for the sum equal to one-half the fair market value at the time of exercising such right or option. The option to purchase and right of first refusal may be extended over a portion or all of the remaining borough land. Fair market value shall be determined by the borough assessor unless the mayor determines in writing that a fee appraiser shall determine fair market value. At the time of exercising such right or option, the assembly may by ordinance amend the terms of conveyance to further reduce the purchase price if it deems appropriate, or alternatively the land may be conveyed administratively at one-half fair market value as established by this section. The option to purchase shall provide the City a right to purchase the property upon no less than 90 days' written notice to the borough. The right of first refusal shall provide that prior to any sale or development of these lands by the borough, the City shall receive no less than 90 days' written notice in which it may exercise its right to purchase the property, after which period the City shall

forfeit all rights to purchase the property subject to the notice of right of first refusal. Land shall be conveyed to the City of Soldotna by Quitclaim Deed. The City of Soldotna shall be responsible for any surveying and platting required, title insurance, and any other closing costs.

SECTION 5. There shall be a deed restriction placed on the deed to the City of Soldotna. The deed restriction shall require that the parcel be used for cemetery purposes only, that it not be limited to use by Soldotna residents but rather shall be available to the general public on equal fees and terms, and that use as a cemetery shall begin within five years of the date this ordinance is enacted. Burials must begin within this time frame. If at any time thereafter any portion of the parcel is used for purposes other than a cemetery, the borough shall have a right of reentry for a broken condition subsequent to the portion of the parcel not used as a cemetery.

SECTION 6. Pursuant to KPB 17.10.230, the Assembly authorizes an exception to the requirements of KPB 17.10.110, Notice of disposition, based on the following facts:

1. That special circumstances or conditions exist;
 - a. KPB 17.10.110. Notice of Disposition, requires publishing notice of the sale four times in the 30-day period immediately preceding the date of the sale. This notice requirement is intended to make the public aware of an opportunity to purchase borough land. Publishing notice of this conveyance will not serve a useful purpose as the City of Soldotna is the specified recipient of the borough land in this conveyance.
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 exception to the notice requirement is not necessary to preserve a substantial property right, and the assembly hereby authorizes this exception to that finding requirement as it is impractical, and compliance is not in the best interests of the borough due to the delay and unnecessary expense it would cause.
 - b. Notice has been provided for the Planning Commission and Assembly hearings. Additional notice is not necessary to comply with the intent of KPB 17.10.
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 public will receive notice of this conveyance through publication of the Planning Commission and Assembly meeting agendas.
- b. The proposed land use conforms with city zoning code applicable to the borough owned parcel.

SECTION 7. The City of Soldotna shall have 180 days from the date of enactment of this ordinance to execute the purchase agreement which shall contain the option to purchase and first right of refusal provisions. The mayor is authorized to execute documents necessary to effectuate the intent and purposes of this ordinance.

SECTION 8. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF * 2010.**

Pete Sprague, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes: Fischer, Superman

No: Haggerty, McClure, Pierce, Smalley, Smith, Sprague

Absent: Knopp