

Introduced by:	Mayor
Date:	01/05/10
Hearing:	02/16/10
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-04**

**AN ORDINANCE AUTHORIZING THE MAYOR TO AMEND THE AARDVARK
SEPTIC WASTE DISPOSAL LEASE TO MODIFY THE LEASE BOUNDARY, ADJUST
THE RENT, SUSPEND THE LEASE, AND PROVIDE AN OPTION TO REINSTATE
THE LEASE FOR A PERIOD OF FIVE YEARS**

WHEREAS, pursuant to Ordinance 2003-06 the borough entered into a long-term lease of a 30-acre parcel with Aardvark Pumping, Inc. (Lessee) for the purpose of development and operation of a septic waste disposal site; and

WHEREAS, the Lessee has made a substantial investment into proprietary systems investigation, site specific environmental investigations, and permitting; and

WHEREAS, investigations conducted by the Lessee support a reconfiguration of the lease boundaries to incorporate lands better suited for septic disposal operations, and those lands are classified appropriately for such use; and

WHEREAS, the Lessee has recently made changes to its business structure which prevent it from developing the leasehold for a period of time and have necessitated the assignment of the leasehold; and

WHEREAS, the Kenai Peninsula Borough and the Lessee have negotiated terms to enable suspension of the lease for a time period in which the septic waste disposal project proponent can determine whether it desires to proceed or forfeit its investment into the property; and

WHEREAS, the Lessee is in good standing with the lease and has made good faith efforts to proceed judiciously with due consideration to the public interests; and

WHEREAS, the Lessee desires to assign its interests to Aardvark Services, Inc;

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 amending the lease to Aardvark Pumping, Inc. to delete the SE1/4NE1/4NE1/4 Section 14, T4N, R11W, S.M. and to add the N1/2NW1/4NW1/4 Section 13, T4N, R11W, S.M. and to adjust the annual rental schedule by four-thirds, being proration of the change in leasehold acreage, under KPB 17.10.100 (I) is in the best interest of the borough.

SECTION 2. That the Assembly finds that amending the lease to Aardvark Pumping, Inc. to suspend the lease, to provide a 5-year option to reinstate the lease at an annual option fee of \$900, and to provide for a new 30-year term upon reinstatement under KPB 17.10.100 (I) is in the best interest of the borough.

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 Jerry K. Holland DBA Aardvark Pumping, Inc. or its assignee 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 Jerry K. Holland DBA Aardvark Pumping, Inc or its assignee 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 property is part of the landfill buffer and is surrounded by additional borough owned buffer lands.
 - B. The modifications to the lease boundary are intended to protect the public's interest.

SECTION 4. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100 (I) to enter into the "Lease Amendment, Suspension of Lease, Option to Reinstate Lease and Assignment of Interests" substantially in the form of the attached agreement.

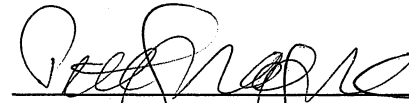
SECTION 5. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

SECTION 6. The parties thereto shall have 180 days from the time of enactment of this ordinance to execute the agreement.

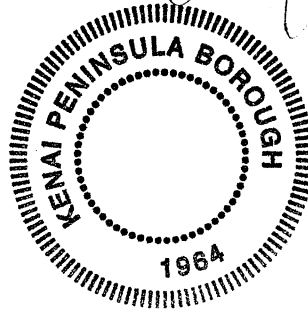
SECTION 7. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF FEBRUARY, 2010.

ATTEST:


Pete Sprague, Assembly President


John Blankenship, Borough Clerk



Yes: Fischer, Haggerty, McClure, Pierce, Smalley, Smith, Superman, Sprague
No: None
Absent: Knopp