



CITY OF WASILLA

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Requested by: Administration
Prepared by: Administration

Code Ordinance

ORDINANCE SERIAL NO. 91-02

AN ORDINANCE OF THE CITY OF WASILLA, ALASKA AMENDING CHAPTER 7.16 DISPOSAL OF LANDS TO PROVIDE FOR THE LEASING OF AIRPORT PROPERTY.

BE IT ORDAINED AND ENACTED BY THE CITY OF WASILLA, ALASKA AS FOLLOWS:

SECTION I. Classification. This ordinance is of a general and permanent nature and shall become a part of the Wasilla Municipal Code.

SECTION II. Purpose. To amend Chapter 7.16 to add procedures and requirements specifically applicable to the leasing of airport property.

SECTION III. Enactment. It is hereby enacted as follows:

Chapter 7.16, Disposal of Lands is amended to add:

7.16.120 Lease of Airport Lands.

A. General

1. All the airport lands within the limits of the City to which the City holds title may be leased as hereinafter provided. In deference to the special circumstances of airport operations and related economic requirements the lease of airport lands shall be conducted in accordance with the provisions of this section and to the exclusion of leasing regulations pertaining to other lands.

2. The intent of the City is to generate a fair market return for lease of property with due consideration to the need to maximize income to compensate for airport maintenance costs. The City Council shall establish the lease rate for airport lands on an amount per square foot per year. The amount that is established as fair market value may be determined by review of other airport land lease rates in South Central Alaska, by use of an independent professional appraiser, or by any other methodology deemed reasonable by the Council. The then effective lease rate shall be incorporated into leases of airport lands.

3. In recognition of a need for lessors to have a reasonable assurance of stability in future lease rates, all leases shall provide for a redetermination of the lease rate for each lot or parcel to be made on the fifth (5th) anniversary of each lease. All leases of lands on the airport shall include language to the following effect: "At each five-year interval, the fair market value shall be determined by the City Council in a manner deemed appropriate by Council. The redetermined lease rate shall be limited to a maximum of a fifty percent (50%) increase in the prior lease rate until the 30th year anniversary of the

lease after which the five-year lease rate redetermination shall not be subject to the fifty percent (50%) cap provision.

4. The City Council shall establish, and from time to time may redetermine or change, the lease rate for airport property by resolution.

B. Application to Lease Airport Property

1. Applications to lease airport property shall be submitted to the Wasilla Planning and Utilities Commission for consideration and recommendation during a regularly scheduled meeting. Eight copies of applications must be received by the City Clerk not less than 10 days prior to a meeting at which the application will be considered.

a. Applicants shall pay a \$25.00 filing fee with their application. Information required in the application must include as a minimum:

- (1) Name(s), address, phone number of applicant(s).
- (2) Identification of lot for which lease application is made. Alternate lots that would be suitable to the applicant should be identified.
- (3) Specific nature of commercial activity(s) to be conducted on the leased land.
- (4) Scale drawing depicting location of lot in relation to adjoining lots and facilities and dimensions including heights of buildings proposed to be constructed or placed on the leased lot.
- (5) Proposed location of sewer and water facilities.
- (6) The proposed use, dollar value, and type of materials proposed for structures.
- (7) The date construction is estimated to commence and estimated date of completion (maximum of two years).
- (8) Written business plan including investments, services, and number of employees.

b. The Planning and Utilities Commission may hear an applicant's presentation and responses to commissioner questions. The Commission may recommend to City Council that an application for lease of airport lands be approved, denied, or approved with specific changes or conditions. The Commission's recommendation will be in the form of a formal motion and recorded in the minutes.

3. The Commission's recommendations and the development plan will be forwarded to the Airport Manager or his designee for review and preparation for consideration by the City Council.

a. The Airport Manager shall determine if any administrative costs will be incurred prior to consummation of the lease and will estimate the total amount of those costs. Potential costs may be in the nature of surveying,

subdividing, replatting, appraisals, legal, administrative or other costs.

b. Prior to review of the application by Council, the applicant shall deposit with the City an amount equal to the estimated costs as provided in paragraph a above. Upon execution of the lease, any funds remaining shall be returned to the applicant. Costs incurred in excess of the deposit must be paid prior to execution of a lease. Funds will not be expended until City Council approves the application, after which any funds expended to meet conditions or requirements to consummate the lease shall not be returned to the applicant, regardless whether or not the lease is consummated.

4. The City Council will review the application and the recommendation of the Planning and Utilities Commission within 45 days following the Commission's recommendation, or receipt by the City of the deposit required in paragraph 3 above, whichever is later. In the event a deposit is required but not received within 15 days after notification to the applicant of the amount of deposit required, the application may be considered to have been withdrawn and shall not be reviewed by Council.

5. The City Council reserves the right to accept, reject or modify a development plan and lease proposal and by formal motion may authorize the Mayor to enter into a lease agreement with an applicant for lease of airport lands. Council may direct that specific terms or conditions be included as part of the lease agreement. The authorization of Council for the Mayor to enter into a lease agreement is not to be construed as a consummation of a lease agreement with an applicant, but is approval for the Mayor to negotiate and finalize the terms of an agreement which shall include the specific directions of Council, if any, prior to consummating a lease agreement.

a. An applicant may appear before the City Council during consideration of the application. The applicant will have an opportunity to state any disagreement he may have with the recommendations of the Planning and Utilities Commission. Council approval to enter into a lease agreement is not binding until a written lease, including an appendix containing provisions of the development plan and revisions and conditions, is signed by the applicant and by the authorized City representative.

b. In the event that the City Council does not approve an application, any unused deposits made to the City as required herein shall be returned. Any re-submittal by the same applicant will be processed as a new application.

c. In the event that, for any reason, the proposed lease is not consummated within six (6) months of Council authorization to enter into a lease, the application and any unused deposit monies shall be returned to the

applicant, unless the applicant and the Airport Manager agree in writing to a 90-day extension to complete any actions necessary to finalize and sign the lease agreement.

C. Bidding Procedures

As an exception to the procedure in B above, the City Council may designate a specific lot or lots to be made available for lease for a general or specific development through a sealed bid procedure and may include a minimum lease amount for any bid submitted. Sealed bids may be received offering one-time premiums in addition to the established minimum lease rate. Award to the highest bidder shall be subject to review and approval by the City Council. The City Council reserves the right to reject any and all bids.

D. Leased Land Utilization

Lands leased under the provisions of this chapter shall be utilized for purposes stated in the terms of the lease and in conformity with City and Borough ordinances. Use or development for other than approved uses shall constitute a violation of the lease and subject the lease to cancellation. Failure to substantially complete the development plan of the land, consistent with the proposed use and terms of the lease shall be grounds for cancellation of the lease.

E. Payment of Rent

Rent shall be pro-rated until July 1 and paid in advance and thereafter shall be paid annually and due July 1 of each year. If the equivalent monthly payment exceeds \$200, the Lessee may make advance installment payments of the annual lease amount on a quarterly basis.

F. Subleasing or Assignments

No lessee may sublease or assign the airport lands leased by him without Council approval. Any approved assignment or sublease shall be in writing and shall be subject to the terms and conditions of the original lease. Any approvals required of the Council shall not be unreasonably denied.

G. Financing-Rights of Mortgagee or Lienholder

1. As described below, upon the occurrence of certain conditions, the lessee may be entitled to enter into a financial arrangement whereby the lessee mortgages, grants a deed of trust title to, or grants a security assignment of the leasehold so as to secure the promise of repayment of a loan. Hereinafter, the concept of a mortgage, transfer of title by deed of trust, or creation of a security assignment shall be generally referred to as a "security assignment". If the conditions by which a security assignment is allowed have been fulfilled and if the holder of such a security assignment shall give the City, before any default shall have occurred in the lease, a written notice containing the name and post office address of such security assignee,

the City shall thereafter give to such holder a copy of each notice of default by the lessee at the same time as any notice of default shall be given to the lessee. Further, the City will provide notice to the security assignee in the event that the lessee and the City enter into any modification of the lease or in the event that the City and the lessee mutually agree to surrender possession of the leasehold.

2. In the event that the conditions have been fulfilled allowing a security assignment of the leasehold, to be described below, a security assignee who exercises his rights of foreclosure or assignment of the leasehold shall be subrogated to the position of the lessee. More specifically, the security assignee, upon foreclosure of the security or upon assignment of the lease, shall be entitled to all the rights and shall be further subject to all the duties, covenants, and conditions of the lease agreement, including the duty to cure and/or satisfy any payment, arrearages, and/or defaults created by the lessee prior to foreclosure or assignment.

3. For the purpose of interim or permanent financing or re-financing of the improvements to be placed upon the leased premises and for no other purpose, a lessee, upon giving written notice of the intent to create a security assignment to the City of Wasilla, may encumber by mortgage, deed of trust, security assignment or other equivalent instrument, the lessee's interest in the leasehold estate as described in the written lease agreement. However, the right to so encumber the leasehold estate of the lessee may not occur until and unless the conditions described in this paragraph have been fulfilled. The conditions of the right to enter into such a security assignment are as follows:

a. The security assignment shall provide that the encumbrance pertains only to such leasehold estate and does not relate or pertain to or create any interest in the City's title to the real property which is the subject of the leasehold estate. That is, the encumbrance shall be limited to the improvements located upon the realty and/or the business enterprise conducted in relationship to such permanent improvements and/or the personal property or accounts owned by the lessee and located upon or within the improvements constructed on the leasehold real property.

b. The security assignment shall provide that the security assignee shall acquire the lessee's interest in such leasehold estate and shall be subject to the terms of the lease, including the duty to cure any then existing defaults, in the event of a sale under said security assignment pursuant to a foreclosure, deed of trust sale, transfer in lieu of foreclosure or sale, or through settlement of any pending or contemplated foreclosure or sale action.

c. In the event that the security assignee has taken action to acquire the leasehold estate from the lessee, the security assignee shall not be entitled to assign its interest in the

leasehold estate to a new lessee unless and until a written consent of the City of Wasilla has been obtained. However, the City shall not unreasonably withhold consent to the substitution of a new lessee by the security assignee in the event that the new lessee assumes, in writing, all of the covenants and conditions required to be performed by the preceding lessee and further providing that all payment arrearages and defaults have been fully paid and/or cured prior to the substitution of a new lessee. Any loan entered into between the new lessee and the security assignee shall be subject to the requirements of this ordinance in the event that this loan is to be secured by the leasehold estate. In the event that the security assignee proposes a new lessee, subject to the consent of the City, and if the security assignee asserts that the City is unreasonably withholding its consent to any such proposed assignment, such dispute shall be resolved, pursuant to the terms of this ordinance and the lease agreement, by arbitration in accordance with arbitration procedures mutually agreed upon between the security assignee and the City or, in the event that such procedures cannot be mutually agreed upon, then according to the procedures established by the American Arbitration Association effective as of the time of the dispute.

4. The terms of this subparagraph are intended to deal with those circumstances where no foreclosure or sale action pursuant to the security assignment has taken place, but a default exists resulting in the City's action of terminating the leasehold estate of the lessee and obtaining repossession of the property. If, by reason of any default of the lessee, either the lease or any extension thereof shall be determined and/or repossessed by the City prior to the stated expiration of such lease, the City may (if the security assignee desires) enter into a new lease with the security assignee for the remainder of the term, effective as of the date of the termination of the prior lease and/or repossession of the property by the City. In the event of such a desire by the security assignee, the new lease with the security assignee shall be subject to the following conditions:

a. the security assignee shall make written request to the City for such a new lease. In the event of such a written request by the security assignee, it is fully understood that the City may simultaneously negotiate with or seek a lessee other than the security assignee.

b. The security assignee shall pay to the City, at or prior to the execution and delivery of the new lease agreement, any and all past arrearages and/or cure any prior defaults related to the pre-existing lease. Such payments and/or cures shall include, but shall not be limited to, reasonable expenses, including actual legal costs and attorney's fees to which the City may have been subjected by reason of the prior actions or inactions of the former lessee.

The security assignee shall, on or before the execution and delivery of the new lease, perform all other conditions required to be performed by the former lessee to the extent that the former lessee shall have failed to perform such conditions.

H. Warranty

The City, by entering into a lease of airport land or by land classification expressly does not warrant that the land is ideally suited for the use authorized under said classification or lease, and no guaranty is given or implied that it shall be profitable to employ the land to said use. The City shall bear no responsibility for any water erosion of land.

SECTION IV. Effective Date. This ordinance becomes effective upon adoption by the Wasilla City Council.

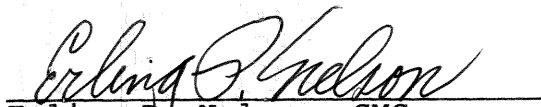
Introduction: 06/10/91

Public Hearing: 06/24/91

ADOPTED by the Council of the City of Wasilla on this 8th day of July, 1991.


RAYMOND P. MCCARTHY
Deputy Mayor

ATTEST:


Erling P. Nelson, CMC
City Clerk

(SEAL)