

Introduced by: Mayor  
Date: 09/15/20  
Hearing: 10/13/20  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2020-41**

**AN ORDINANCE AUTHORIZING FOUR COMMUNICATIONS SITE LEASE  
AGREEMENTS AT CERTAIN LOCATIONS WITH SPITWSPOTS, INC.**

**WHEREAS**, SPITwSPOTS, Inc. is proposing to install communication towers and related equipment at borough owned or managed locations in the rural communities of Ninilchik, Nikolaevsk, Cohoe and Bear Creek; and

**WHEREAS**, SPITwSPOTS, Inc. was awarded a Coronavirus Aid, Relief, and Economic Security Act (CARES) borough grant to make rural communication improvements which would be applied to these project locations; and

**WHEREAS**, the CARES grant eligibility has a performance period ending this calendar year which necessitates an accelerated timeline for construction and installation of the communications facility equipment resulting in the need to expedite processing of the associated communication tower lease agreements; and

**WHEREAS**, communication site lease agreements have been negotiated in standard form and in consideration of the interests of the agencies associated with the land title; and

**WHEREAS**, the Bear Creek Fire Service Area Board at its regularly scheduled meeting of October 6, 2020 recommended approval by majority consent; and

**WHEREAS**, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of September 28, 2020 recommended approval by unanimous vote;

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

**SECTION 1.** That the assembly finds that entering into communication site lease agreements with SPITwSPOTS, Inc., pursuant to KPB 17.10.100(I), authorizing the negotiated lease of borough lands, is in the best interest of the borough at the following locations:

- A) Lots 48 and 49, Nikolaevsk Village Subdivision No 4, Plat No. 80-33, Homer Recording District, State of Alaska (Parcels 165-640-45 & 165-640-44);

- B) Government Lot 2, excluding ITC Ninilchik Subdivision, Section 8, T2S, R14W, Seward Meridian, Alaska, Homer Recording District (Parcel 159-010-89);
- C) Tract D, Alaska State Land Survey 2005-6, Plat No. 2010-05, Kenai Recording District (Parcel 133-010-39); and
- D) Lot 1A, Bear Creek Fire Station 2013 Replat, Plat No. 2013-05, Seward Recording District, State of Alaska (Parcel 144-012-42);

This finding is based on the following facts:

- 1. The borough will receive a fair market rent, or a fair value in services in lieu of rent, for the term of the lease.
- 2. The land will be used to provide new communication sites that will improve connectivity services in rural areas of the Kenai Peninsula Borough.
- 3. That the communication improvements are compatible with the sites.

**SECTION 2.** Pursuant to KPB 17.10.230, the Assembly authorizes an exception to the requirements of KPB 17.10.080, KPB 17.10.090 and KPB 17.10.110 governing classification, disposition, and notice with respect to leasing of borough lands, based on the following facts:

- 1. That special circumstances or conditions exist.
  - a. The proposed leases are solely with SPITwSPOTS, Inc, for the purpose of constructing new cellular tower sites.
  - b. The leases are for ancillary uses that do not conflict with, or that do enhance, the primary use of the properties
- 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 notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is unnecessary

since the intent of the disposal is to lease the property solely to SPITwSPOTS, Inc.

- b. The communication site uses are not primary factors in the land classification system.
3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
    - a. Lease of communication sites on the subject parcels to SPITwSPOTS, Inc, is compatible with the current land uses and surrounding land uses.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to negotiate and enter into communications site lease agreements upon the properties identified in Section 1. The authorization shall be for a lease to SPITwSPOTS Inc., as grantee while also allowing for collocation or sublease of tower space to other internet and communication providers, if applicable.

**SECTION 4.** The mayor is authorized to execute communications site lease agreements with terms and conditions substantially similar to the agreements attached to this ordinance.

**SECTION 5.** SPITwSPOTS, Inc. shall have 15 days from the date of enactment of this ordinance to execute the lease agreement(s).

**SECTION 6.** That rent revenue from the subject lease shall be submitted to the borough finance department and deposited as follows:

Nikolaevsk Site Agreement: Anchor Point Fire & Emergency Service Area account 209.00000.00000.36316.

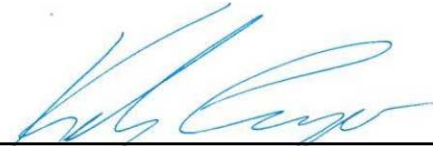
Ninilchik Site Agreement: Land Trust account 250.00000.00000.36316.

Cohoe Site Agreement: Land Trust account 250.00000.00000.36316

Bear Creek Site Agreement: Bear Creek Fire Service Area account 207.00000.00000.36316.

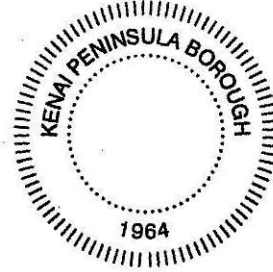
**SECTION 7.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 13TH DAY OF OCTOBER, 2020.**

  
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Kelly Cooper, Assembly President

ATTEST:

  
\_\_\_\_\_  
John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper  
No: None  
Absent: None