



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Colette Thompson, Borough Attorney

FROM: ~~Holly~~ Montague, Deputy Borough Attorney

DATE: June 10, 2016

SUBJECT: Amendment to Ordinance 2016-20 authorizing a negotiated lease at less than fair market value

The proposed ordinance would lease a public asset for \$1.00/year to a private organization for recreational purposes. The borough does not have recreational powers to support a gift of the use of its public land for a purpose that the Kenai Peninsula Borough does not have powers to pursue. The City of Homer has recreational powers and a vision for an indoor recreational facility as reflected in city planning documents. KPB 17.10.100 (D) authorizes the KPB to enter a non-competitively bid cooperative lease with a city. The lease will contain provisions that the facility be open and available to the general public and the KPBSD will be allowed a certain amount of usage to further ensure the borough's land is being used for public purposes. The administration respectfully requests the assembly approve the following amendments to this ordinance.

- Amend the title by deleting the language in ~~bold and stricken through~~ and adding the language in **bold and underline** below:

AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT LESS THAN FAIR MARKET VALUE WITH **THE CITY OF HOMER SAH SOCCER, INC. dba SOCCER ASSOCIATION OF HOMER** OF APPROXIMATELY 3.5 ACRES OF BOROUGH LAND ADJACENT TO THE HOMER MIDDLE SCHOOL FOR THE DEVELOPMENT, MANAGEMENT AND MAINTENANCE OF A YEAR-ROUND INDOOR FIELD AKA "SOUTH PENINSULA ATHLETIC AND RECREATION CENTER"

- Amend the second whereas clause by adding the language in **bold and underline** below:

WHEREAS, the City of Homer commissioned the 2015 Parks, Art, Recreation and Culture (PARC) Needs Assessment which identified **as the most significant priority**

space needs for year-round indoor **recreational** activities, including those within the scope of the SPARC indoor field; and

- Add a new whereas clause after the fifth whereas as follows:

WHEREAS, KPB 17.10.100(D) authorizes a cooperative lease with a city; and

- Add the following three new whereas clauses before the last three whereas clauses as follows:

WHEREAS, the Kenai Peninsula Borough comprehensive plan Goal 4.10 Objective 1 is to encourage coordination between the borough and cities which provide recreational facilities; and

WHEREAS, the City of Homer has recreational powers and the Kenai Peninsula Borough does not have recreational powers within the City of Homer; and

WHEREAS, the indoor recreational facility would be located within the South Kenai Peninsula Hospital Service Area which has wellness program powers; and

- Amend the second to last whereas clause by adding the language in **bold and underline** below:

WHEREAS, the Kenai Peninsula Borough Board of Education at its regularly scheduled meeting of June 6, 2016 recommended **a lease for the development of an indoor soccer facility**; and

- Amend the first paragraph of Section 1 by deleting the language in ~~**bold and striken through**~~ and adding the language in **bold and underline** below:

SECTION 1. Pursuant to KPB 17.10.100 (I) and 17.10.120 (D), the Assembly finds that leasing approximately 3.5 acres of borough land more particularly described in Section 2 below at less than fair market value to the ~~**Soccer Association of Homer City of Homer**~~ **City of Homer** for the development, management, and maintenance of an indoor field is in the best interest of the borough based on the following findings of fact:

- Amend the Section 1 by adding the following findings in **bold and underline** below:

The City of Homer has recreational powers and a vision for indoor recreational facilities while the borough does not have recreational powers within the city limits of Homer.

A less than fair market value lease to the City of Homer supports the city having funds available to support the development of the indoor recreational facility.

The City of Homer has demonstrated significant support for this project through adoption of plans supporting indoor recreation facilities and appropriating funds for the indoor recreation facility.

- Amend Section 3 by deleting the language in ~~bold and stricken through~~ and adding the language in **bold and underline** below:

SECTION 3. That the Assembly makes an exception to KPB 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
 - A. KPB 17.10.080(A) states classification of property is for review, plan implementation and management purposes. The classification system designates the most appropriate uses for land and thereby guides borough management of such lands and implementation actions to provide for the identified uses. Classification immediately prior to disposal of borough land that has been specified for a certain use does not accomplish these purposes.
 - B. The land use will be restricted by the terms of the lease.
 - C. The proposed lease will facilitate a land use consistent with the prior field uses.
 - D. The property is zoned by the City of Homer such that uses must conform to that zoning and applicable conditional use permitting processes.
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 ordinance authorizes subject land to be leased to the ~~Soccer Association of Homer~~ **City of Homer** on a non-competitive basis, at other than market value, pursuant to KPB 17.10.100(I) and 17.10.120(D). Classification will be redundant and not serve a useful purpose based on the findings of No. 1 above.

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 use of the subject land for indoor field purposes will benefit the public **health and** welfare **by providing indoor recreational facilities** and is consistent with prior field uses.
 - B. The land is suitable for the proposed use and is compatible with adjacent land uses, subject also to city of Homer Zoning Codes.

➤ Amend Section 4 by adding the language in **bold and underline** below:

SECTION 4. 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. The purpose of advertising, pursuant to KPB 17.10.110, is to notify the public of an opportunity to purchase or lease KPB land. However, because the authorization of this ordinance is for a sole source lease, advertising will not serve a useful purpose.
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. Making an exception to advertising, pursuant to KPB 17.10.110, will not affect any substantial property right as this is public land with previous seasonal field uses **and the conveyance is to a public entity to continue recreational use of the land.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. Making an exception to advertising, pursuant to KPB 17.10.110, will not be detrimental or injurious to any public or private parties as leasing the subject land is suited for the development of a year-round field and is compatible with the surrounding land use and supported by other city of Homer planning and zoning processes.

➤ Amend Section 5 by deleting the language in ~~**bold and stricken through**~~ and adding the language in **bold and underline** below:

SECTION 5. Based on the foregoing, after the final plat of the subject property is recorded, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) and 17.10.120 (D) to lease the land described in Section 2 above to the City of Homer SAH Soccer, Inc. dba Soccer Association of Homer for a term of 20 years with a 10-year renewal option at \$1/year. The Soccer Association of Homer shall be responsible for all surveying and platting costs. The authorization is for lease solely to the ~~Soccer Association of Homer and it may not assign any rights to negotiate or enter an agreement for lease with any other person or entity without obtaining prior approval in accordance with the lease~~ City of Homer which is authorized to sublease to the Soccer Association of Homer to establish an indoor soccer and recreational facility on the parcel.

- Amend Section 7 by deleting the language in ~~bold and stricken through~~ and adding the language in bold and underline below:

SECTION 7. That the ~~Soccer Association of Homer~~ City of Homer shall have 365 days to execute the lease document from the effective date of this ordinance.