



KENAI PENINSULA BOROUGH

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441

PHONE: (907) 262-4441 • FAX: (907) 262-1892

www.kpb.us

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: *HT* Holly Montague, Deputy Borough Attorney

DATE: June 21, 2016

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

As reflected in an amendment memo in the assembly packet the proposed ordinance would lease a public asset for \$1.00/year to a private organization for recreational purposes. This raised issues of conveying a public asset for a private purpose as well as the borough not having recreational powers within the city of Homer. Therefore, it was proposed that the Kenai Peninsula Borough lease the land to the City of Homer which has recreational powers and the city in turn could sublet the property to SAH Soccer, Inc. (SAH). However, it would be more efficient and straightforward for the Kenai Peninsula Borough to assume a limited portion of the city's recreation powers for the purpose of leasing the borough land to SAH for an indoor soccer facility. This would avoid dual approval processes and another layer of government in administering the lease over the next 20–30 years. The lease will contain provisions that the facility be open and available to the general public and the Kenai Peninsula Borough School District will be allowed a certain amount of usage to further ensure the borough's land is being used for public purposes. The transfer of a power from a city to a second class borough is authorized by AS 29.25.010(7) and AS 29.35.310.

The administration respectfully requests the assembly approve the following amendments to this ordinance rather than the amendment memo submitted in the packet authorizing a lease to the City of Homer.

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

AN ORDINANCE ACCEPTING A TRANSFER OF LIMITED RECREATIONAL POWERS FROM THE CITY OF HOMER AND AUTHORIZING A NEGOTIATED LEASE AT LESS THAN FAIR MARKET VALUE WITH 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 the following four 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, AS 29.25.010(7) and AS 29.35.310 provides that a city may transfer a power to a second class borough by ordinance; 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 **the lease to SAH Soccer, Inc. for the development of an indoor soccer facility; and**

- Amend the Section 1 by adding the following finding 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 but has a land management division that routinely manages leases for a variety of functions.

- Amend Section 3 by 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 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.

- Add a new Section 8 by adding the language in **bold and underline** below:

SECTION 8. That the Assembly hereby accepts from the City of Homer a transfer of limited recreational powers for the sole purpose of entering the lease which is the subject of this ordinance for the management, development, and maintenance of an indoor recreational facility. The borough shall exercise all powers and functions necessarily or fairly implied in or incident to the lease of the subject land for the management, development, and maintenance of an indoor recreational facility.

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

SECTION 89. That this ordinance shall take effect immediately upon ~~its enactment.~~ the adoption of an ordinance by the City of Homer transferring the power specified in Section 8 of this ordinance using significantly the same language to transfer the power as set forth in Section 8.