

Introduced by:	Mayor
Date:	06/07/11
Hearing:	06/21/22
Action:	Enacted
Vote:	7 Yes, 2 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-22**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE OPTION AND
SUBSEQUENT GROUND LEASE OF CERTAIN REAL PROPERTY CONTAINING 40
ACRES MORE OR LESS TO UTOPIAN POWER FOR THE DEVELOPMENT OF A
SOLAR FARM FACILITY.**

WHEREAS, the Kenai Peninsula Borough (Borough) has fee title to the parcel described in Section 1 of this ordinance which was acquired from the State of Alaska by patent issued in 1975; and

WHEREAS, Utopian Power, LLC (“UP”) has submitted an application for a negotiated lease by way of a lease option for 40 acres of land; and

WHEREAS, the subject property, commonly referred to as the “Sterling Special Waste Site”, is classified as “waste handling” and managed as a decommissioned solid waste facility with continued subsurface management responsibilities; and

WHEREAS, due to the parcel’s location and favorable attributes resulting from prior use, it has been identified as a desirable site to accommodate a two megawatt solar farm facility; and

WHEREAS, the use proposed by UP will be conditioned to not interfere with or damage the existing waste management measures required by the State of Alaska; and

WHEREAS, entering into a lease option agreement will provide UP the ability to conduct necessary due diligence and negotiate potential contracts as an independent power producer (“IPP”) for the sale of the electricity generated from the proposed facility prior to entering into a ground lease with the Borough; and

WHEREAS, the Borough’s Planning Commission at its regularly scheduled meeting of June 13, 2022, recommended approval by unanimous consent;

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

SECTION 1. That leasing of the 40 acres, legally described as: Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Third Judicial District, State of Alaska, to Utopian Power, LLC, pursuant to KPB 17.10.100(I) and 17.10.140(B) is in the best interest of the Borough based on the following:

- A. Under the terms of the Lease, the proposed use would be developed in a way that is compatible with the Borough's solid waste program requirements and objectives.
- B. The proposed use will make productive use of idle land, resulting in power generation beneficial to the residents of the Borough and important revenue to the Land Trust Fund.
- C. Active use and additional security measures developed under the Lease will benefit the Borough's site security and potentially reduce nuisance issues at the location.

SECTION 2. Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of 17.10.110, Notice of Disposition, based on the following findings of facts:

- 1. Special circumstances or conditions exist.
 - a. The proposed lease is solely with Utopian Power, LLC and for the purpose of operating and maintaining a solar farm site.
- 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 property is not being disposed through a sale. The proposed lease is solely with Utopian Power, LLC for the purpose of operating and maintaining a solar farm site. To provide notice to Utopian Power's competitors of an opportunity to lease a site that UP approached the Borough about would be unfair and detrimental to UP and is not a practical manner of complying with the intent of KPB Chapter 17.10.
- 3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
 - a. The solar farm site is compatible with the surrounding land uses.

SECTION 3. That the Lease Option shall be for a term of up to three years commencing on the effective date of the Agreement and terminating on the third anniversary of the effective date. A \$3,500 annual fee shall be paid to the Borough for each year the Lease Option is in place. During the Lease Option period UP shall be provided the exclusive right to use the premises for the purpose of determining feasibility of the proposed solar project, subject to the Borough's reserved rights to continue to manage for solid waste purposes.

SECTION 4. That the Lease Option shall provide that UP may enter a ground lease of the real property described in Section 1 for an initial 25-year term, with two consecutive 10-year renewal periods. A fixed annual base rent payment shall be \$250.00 per acre for a total annual lease amount of \$10,000.00 per year. Additional rental compensation shall be in the form of a 12% royalty payment to be calculated by the annual gross revenue from the sale of power generated from the solar facility.

SECTION 5. That the rental and royalty amounts authorized above are negotiated values, established without the use of an independent appraisal, which consider the character of the property, the nature of the use, and the retained rights of the Borough.

SECTION 6. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

SECTION 7. That UP shall have until 90 days after enactment of this ordinance to execute the Lease Option agreement.

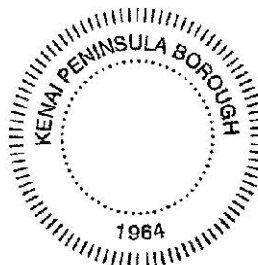
SECTION 8. That this ordinance shall be effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF JUNE, 2022.


Brent Johnson, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Chesley, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
No: Bjorkman, Cox
Absent: None