

Introduced by:	Mayor
Date:	7/6/21
Hearing:	8/3/21
Action:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-**

**AN ORDINANCE AUTHORIZING A WISP TOWER AND GROUND LEASE
AGREEMENT AT CERTAIN LOCATIONS WITH SPITwSPOTS, INC.**

WHEREAS, SPITwSPOTS, Inc. is proposing to install single provider towers and equipment at borough owned locations in the communities of Sterling and Funny River; and

WHEREAS, the purpose of the agreement would be to expand wireless internet connectivity in the borough;

WHEREAS, suitable sites have been identified near borough solid waste and Central Emergency Services operating sites known as the Sterling Transfer Site, the Funny River Transfer Site, CES Sterling Station #3, and CES Funny River Station #5; and

WHEREAS, SPITwSPOTS, Inc. has the capability to assist KPB with communication equipment installations and services that would benefit KPB operations through the information technology services available between the sites and save costs to KPB through the services provided; and

WHEREAS, communication tower lease agreements have been negotiated on terms which would provide wireless internet connectivity services to KPB, with a cash rent alternative should connectivity be discontinued; and

WHEREAS, entering into a WISP (Wireless Internet Service Provider) Tower and Ground Lease Agreement with this provider benefits borough infrastructure while also providing a community-wide benefit in expanding existing wireless internet infrastructure and connectivity in the borough; and

WHEREAS, the Central Emergency Service Area Board at its regularly scheduled meeting of _____, 2021 recommended _____; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of July 12, 2021 recommended _____;

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

SECTION 1. That the assembly finds that entering into a WISP Tower and Ground Lease Agreement 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) Lot 2 Sterling Fire Station Subdivision, Plat No. 86-139, Kenai Recording District (Parcel 063-680-15);
- B) Gov Lots 3 & 4 Section 10, T5N, R9W, S.M. lying north of the Sterling Highway, excepting that portion per Q/D Book 380, Page 957 (Parcel 063-860-17);
- C) Lot 5 Salmon Bend Subdivision FRVFD Addition, Plat No. 2002-24, Kenai Recording District (Parcel 066-170-31);
- D) Lot 1A, Block 2 Beacon Subdivision, Plat No. 92-10, Kenai Recording District (Parcel 066-010-21);

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 cash rent, for the term of the lease.
- 2. The land will be used to provide new wireless internet provider sites that will improve internet connectivity services in rural areas of the Kenai Peninsula Borough.
- 3. That the proposed wireless internet service facilities and 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 lease agreement is solely with SpitwSpots, Inc, for the purpose of constructing or installing new broadband wireless internet tower sites.
 - b. The lease agreement is 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 communications 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 wireless internet communications sites on the subject parcels to SpitwSpots, Inc, is compatible with the current land uses and surrounding land uses.
- b. The development of communications infrastructure on these sites will benefit the KPB operations on those sites, and provide a community-wide benefit by expanding the availability of wireless internet service connectivity.

SECTION 3. Based on the foregoing and pursuant to KPB 17.10.100(I), the mayor is hereby authorized to execute a WISP Tower and Ground lease Agreement for the properties identified in Section 1 that contains terms and conditions substantively similar to the the agreement attached to this ordinance.

SECTION 4. SPITwSPOTS, Inc. shall have 120 days from the date of enactment of this ordinance to execute the lease agreement(s).

SECTION 5. That rent revenue from the subject lease shall be submitted to the borough finance department and deposited as follows:

Funny River Fire Station: Central Emergency Service Area account 211.00000.00000.36316.

All other sites: Land Trust account 250.00000.00000.36316.

SECTION 6. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk