

Fair Rental Value

Valdez Municipal Code Chapter 4.08, Lease of City Property, applies to “all those lands, improved or unimproved, to which the city holds title, or to which the city may become entitled, not including city tidelands as defined in Section 14.04.020, and not including buildings or land on which buildings are located.” VMC 4.08.010 defines “fair rental value” as “ten percent of the fair market value annually,” and 4.08.030 provides that “no city lands shall be leased for less than the fair rental value thereof” unless an express exception applies. Thus for most leases, ten percent of the fair market value is the floor for the rental amount, but the amount can be higher.

“Fair rental value” is defined differently under Chapter 14.04, Tidelands. The amount is still derived from the fair market value of the land, but is to be “the highest price, described in terms of money for which the property would rent, if exposed for rent for a reasonable time in the open market, with an owner willing but not forced to rent and a renter willing but not forced to rent, both being fully informed of all the purposes for which the property is best adapted or could be used.”

As we have discussed, these different definitions do not necessarily dictate different determinations as to the rent to be charged, but Chapter 14 requires an analysis as to the highest price supported by the market. We understand that the City’s established practice has been to charge ten percent of fair market value in all its leases, but this is the minimum amount permitted under Chapter 4.08 and Chapter 14 requires the highest amount supported by the market. There is certainly discretion as to the scope of the market analysis as well as the appraisals of value underlying the rent calculations, especially given that neither Code chapter expressly governs buildings or lands with buildings. We agree that the City would benefit from a comprehensive review of its leasing policies and provisions to ensure both that the Code is fully implemented, is applied consistently, and reflects the City’s evaluation of its interests as a lessor.

Site Assessment Requirement

We have also discussed the basis in Code for the City to require Environmental Site Assessments as part of its leases. Under VMC 4.08.070, review of a lease application by the community development department “may include, *but shall not be limited to* the following: review and comment by other city departments, comments on survey requirements and costs, comment on appraisal requirements and costs, and comment on other interest in use or lease of the land in question” (emphasis added). Thus the City has broad authority to review and evaluate lease applications. VMC 4.08.100 requires a successful applicant to “pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process.” If the City includes a site assessment as part of its lease process, that cost is reasonably included under this provision. Furthermore, VMC 4.08.280 provides that each lease “shall contain such reservations, restrictions or special conditions as the city council may deem necessary or appropriate to protect the public interest[.]” Environmental site assessments go directly to the public interest in monitoring environmental contamination.

With regard to the tidelands leases, VMC 14.04.070(B) provides broad authority for the city manager to negotiate the specifics of individual leases, subject to approval by the city council. While an express assessment requirement in these chapters would leave less room for argument, our opinion is that requiring lessees to pay for these assessments is within the City’s reasonable authority under current Code.