

Chapter 4.08 LEASE OF CITY PROPERTY

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4.08.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Appraised value” means the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels. For the purposes of the Valdez Municipal Code, appraised value and fair market value are considered the same.

“City lands” means 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.

“Fair market value” means the estimated price, which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

“Fair rental value” means ten percent of the fair market value annually.

“Lease” means a surface lease issued or held pursuant to this chapter and any other ordinance of the city. (Ord. 12-01 § 1; Ord. 97-08 § 1; Ord. 97-07 § 1; prior code § 31-1)

4.08.020 Lands available for leasing.

All city lands which the city council may determine are not needed or devoted to a public use may be leased as provided in this chapter. (Prior code § 31-2)

4.08.030 Fair rental value to be used for leases—Exceptions.

Except as otherwise stated in this chapter, no city lands shall be leased for less than the fair rental value thereof. Notwithstanding the preceding provisions, the city may lease city lands for less than the fair rental value to any state or federal agency or political subdivision, a public utility, a nonprofit organization, or to a new industry on terms advantageous to the public welfare of the city if the council, by motion passed by not less than six councilmen, determines the lease to be in the best interest of the public. (Prior code § 31-3)

4.08.040 Qualification of applicants.

An applicant for a lease is qualified if the applicant:

- A. Is a citizen of the United States and is over the age of nineteen years; or
- B. Has filed a declaration of intention to become a citizen and is over the age of nineteen years; or
- C. Is a group, association or corporation which is authorized to conduct business under the laws of the state. (Prior code § 31-4)

4.08.050 Application for lease.

All applications for lease of city lands shall be in writing and shall be filed with the city manager accompanied by an application fee and a prepaid fee. The filing fee shall be established by resolution of the city council. The prepaid fee shall be applied to the cost of appraising and surveying the property and the first year's rental fee. The application fee and the prepaid fee shall be established by resolution of the city council. Each application shall state:

- A. The identity and qualifications of the applicant;
- B. A legal description of the land desired to be leased;
- C. The proposed use of the land;
- D. The use, value and nature of improvements to be constructed;
- E. The type of construction;
- F. The dates construction is estimated to commence and be completed;
- G. The term desired;

H. The grounds and justification for consideration for less than fair rental value, if requested;

I. Any other information required by the city manager. (Prior code § 31-5)

4.08.060 Zoning.

No application for lease shall be considered unless the land desired to be leased is zoned to permit the use to which the applicant intends to put the land. (Prior code § 31-6)

4.08.070 Application review.

All applications for lease filed with the city manager shall be forwarded to the community development department for review and comment. The review 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. After review by the community development department, the planning and zoning commission shall review the application for lease and the community development department report and forward its recommendation to the city council for approval or rejection of the application. (Prior code § 31-7)

4.08.080 Right of city council to reject lease proposal.

The city council shall be under no obligation to accept any lease proposal, but shall evaluate all proposals under the criteria set forth in this chapter and accept or reject leases based on such evaluations. (Prior code § 31-8)

4.08.090 Approval of application.

The approval of any lease application shall be by resolution. Unless provided otherwise in the resolution, the mayor and city clerk shall execute the lease after approval as to form by the city attorney. The resolution shall contain the identity of the lessee, a description of the land, its area and general location, the proposed use and the annual rental. (Prior code § 31-9)

4.08.100 Application processing costs.

Where the application is granted and the applicant becomes a lessee, the applicant shall be required to pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process. (Prior code § 31-10)

4.08.110 Professional services.

All surveys, appraisals or other necessary work or services shall be performed only under the authorization of the city and any such work done without such authorization may be rejected. (Prior code § 31-11)

4.08.120 No rights prior to lease.

No preference rights shall exist prior to the issuance of a lease. The filing of an application for lease shall give the applicant no right to a lease or to the use of the land applied for. Any use not authorized by lease constitutes a trespass against the city. (Prior code § 31-12)

4.08.130 Term of lease.

The term of a lease shall depend upon the desirability of the proposed use, the amount of investment in improvements proposed and made, and the nature of the improvement proposed with respect to the time required to amortize the proposed investment. (Prior code § 31-13)

4.08.140 Annual rental payments.

Annual rental in amounts up to and including five hundred dollars shall be paid on an annual basis. Annual rentals in amounts exceeding five hundred dollars shall be paid in annual, quarterly or monthly installments as provided for in the lease. All rentals shall be paid in advance. (Prior code § 31-14)

4.08.150 Adjustment of annual rental.

All leases shall provide that the leased property shall be reappraised and the annual rental payment accordingly adjusted every fifth year. Such reappraisal shall be based upon the value of the land and any city-owned improvements, and shall not include improvements provided by the lessee. (Prior code § 31-15)

4.08.160 Public notice required.

No lease shall be effective until public notice as provided in this chapter shall have been given for at least thirty days. The resolution approving the lease shall be published twice in a newspaper in the city and shall be posted on the official city bulletin board and in two other public places in the city for thirty days prior to the effective date of the lease. (Prior code § 31-16)

4.08.170 Subleasing and assignment of leases.

No lessee of city lands shall sublease or assign a lease or any interest therein without the prior approval of the city council. City council approval may be withheld for any reason. Any sublease or assignment shall be in writing and shall subject the sublessee or assignee to all of the terms and conditions of the original lease unless otherwise provided by council. All applicants for sublease or assignment of lease shall submit an application pursuant to Section 4.08.050 which shall be submitted to the same application review as new applications for lease. (Prior code § 31-17)

4.08.180 Modification of leases.

No lease may be modified orally or in any manner other than by agreement in writing signed by all parties thereto or their successors in interest. (Prior code § 31-18)

4.08.190 Cancellation or forfeiture of leases—Generally.

- A. Leases in good standing may be canceled in whole or in part at any time upon written agreement between the lessee and the city.
- B. A lease is subject to cancellation by the city in whole or in part if improperly issued due to misrepresentation or error with respect to material facts.
- C. A lease may be canceled if the leased premises are used for any unlawful purpose.
- D. If the lessee shall be in default in the performance, observance or conditions of any of the lease terms, covenants or stipulations thereto, or of valid ordinances or regulations enforced, the city manager may immediately take appropriate action, including but not limited to cancellation of the lease. No improvements may be removed during any time the lessee is in default. (Prior code § 31-19)

4.08.200 Cancellation or forfeiture of leases—Re-entry.

In the event that a lease is terminated, or in the event that the leased lands are abandoned by the lessee during the term of the lease, the city, by the city manager or his designee, may immediately or at any time thereafter, re-enter and resume possession of such city land or any part thereof, and may remove all persons and property therefrom without being liable for any damages therefor. No re-entry by the city shall be deemed an acceptance of a surrender of the lease. (Prior code § 31-20)

4.08.210 Cancellation or forfeiture of leases—Re-leasing of land.

In the event that a lease under this chapter is terminated the city may offer such lands for lease or other appropriate disposal. (Prior code § 31-21)

4.08.220 Cancellation or forfeiture of leases—Forfeiture of rentals.

In the event that a lease under this chapter is terminated because of any breach by the lessee, the annual rental payment last made by the lessee shall be forfeited and retained by the city. (Prior code § 31-22)

4.08.230 Nonwaiver of provisions of lease.

The receipt of rent by the city with knowledge of any breach of a lease under this chapter shall not be a waiver of any of the provisions of the lease. No failure on the part of the city to enforce any provision of the lease shall invalidate the right of the city to enforce the same in the event of any subsequent breach or default. The receipt by the city of any rent or any other sum of money after the termination of the lease shall not reinstate, continue or extend the lease unless so agreed to in writing and signed by the city. (Prior code § 31-23)

4.08.240 Preference rights to re-lease.

A lessee under a lease existing under this chapter shall upon expiration of this lease be allowed a preference right to re-lease those lands previously leased by the lessee if all of the other factors are substantially equivalent and; provided, the lessee is not in breach or default of any of the terms or conditions of the lease, unless it shall be determined by the city that the renewal of such lease is not in the best interest of the city. (Prior code § 31-24)

4.08.250 Application to re-lease.

If, at the expiration of a lease, the lessee desires to re-lease the lands, lessee shall, not sooner than ninety calendar days and not later than sixty calendar days prior to the expiration, make application to re-lease the land. The re-lease application shall certify the character and value of all improvements placed by lessee on the land, the purpose and lengths for which the re-lease is desired, and any other information that the city manager or his designee may require. Applications to re-lease shall be submitted to the same application review as new applications for lease. (Prior code § 31-25)

4.08.260 Restoration of the land and removal or reversion of improvements upon termination of lease.

The leased land shall be restored to its prelease condition and all improvements owned by a lessee on city lands shall be removed by lessee within sixty days after termination of the lease for any cause; provided such removal will not cause injury or damage to the land; and further provided that the city manager may extend the time for removing such improvements in case hardship is shown. All periods of time granted lessee to remove improvements are subject to lessee paying prorated lease rentals for the period. The retiring lessee may, with the consent of the city council, sell his improvements to the succeeding lessee, if any. Any improvements not removed or sold within the time allowed shall become the property of the city. (Prior code § 31-26)

4.08.270 Compliance with ordinances and regulations.

The lessee shall comply with all ordinances or regulations which any public authority shall promulgate for sanitation, pollution control and fire protection, and shall comply with all building and zoning codes. The lessee shall allow authorized representatives of the city to enter the leased lands and all improvements for inspection at any reasonable time. Failure to comply with any such ordinances or regulations shall constitute a breach of the lease. (Prior code § 31-27)

4.08.280 Reservations, restrictions and special conditions.

Each lease made under the provisions of this chapter shall contain such reservations, restrictions or special conditions as the city council may deem necessary or appropriate to protect the public interest, including but not limited to special use conditions set forth in the R-22 or R-25 urban renewal plans. No lease granted under this chapter shall grant any interest in coal, oil, gas, gravel or mineral rights or any subsurface rights beyond those reasonably necessary to make use of the surface unless specifically so stated in the lease. (Prior code § 31-28)

4.08.290 Reservation of rights-of-way.

The city expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the city to do so. Annual rentals may be adjusted to compensate for loss of use and lessee shall be compensated for damages for improvements destroyed or damaged. (Prior code § 31-29)

4.08.300 Approval of other authorities.

The issuance by the city of a lease under this chapter does not relieve the lessee of any responsibility of obtaining licenses or permits required by local, state or federal public authorities. (Prior code § 31-30)

4.08.310 Conditional leases.

The city may issue conditional leases on lands it reasonably believes it will own or will acquire title to prior to the actual receipt of title. Leases on this conditional basis shall be canceled in whole or in part in the event the city is denied title to such lands under the lease. All prepaid lease rentals, in the event title is denied the city, shall be refunded to the lessee, based upon the prorated portions of the unexpired term of the lease. The city shall not be liable for any damage that may be done to the land by the lessee or liable for any claims by reason of having leased such land on a conditional basis. In the event the city does receive title to the land, the conditional lease shall then have the same standing, force and effect as a nonconditional lease issued under the regulations of this chapter. (Prior code § 31-31)

4.08.320 Competitive bid procedures allowed.

When the city council determines it to be in the best interest of the city to do so, it may require competitive bidding pursuant to Sections [4.04.010](#) through [4.04.070](#) of this code prior to entering into a lease for any tract of city land. (Prior code § 31-32)

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