

**CITY OF CORDOVA, ALASKA
ORDINANCE 1127**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA, AMENDING CORDOVA MUNICIPAL CODE TO REPEAL AND REENACT CHAPTER 5.22- DISPOSAL OF CITY REAL PROPERTY TO PERMIT THE SALE OF CITY PROPERTY FOR MORE THAN FAIR MARKET VALUE, INSTITUTE A LETTER OF INTEREST PROCESS FOR ACQUISITION OF CITY REAL PROPERTY, REQUIRE A HEIGHTENED SALE PRICE WHEN CITY PROPERTY IS SOLD TO REMEDY A VIOLATION OF TITLE 18 OF THE CODE, AND TO GENERALLY UPDATE CHAPTER 5.22 OF THE CITY OF CORDOVA MUNICIPAL CODE TO PROVIDE GREATER FLEXIBILITY IN THE DISPOSAL OF CITY PROPERTY

WHEREAS, the City of Cordova (“City”) adopted 5.22 in 2007 in order to clarify and create a public process for land disposal; and

WHEREAS, it is in the City’s best interest to simplify the land purchase proposal process and incentivize proposals from the public; and

WHEREAS, the City receives substantial economic benefit from having transparent and flexible land disposal options; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cordova, that:

Section 1. Cordova Municipal Code Chapter 5.22 is repealed and reenacted as follows:

Chapter 5.22 – DISPOSAL OF REAL PROPERTY

5.22.010 - Disposal authority.

5.22.020 - Documentation of conveyance.

5.22.040 – Letter of interest to lease or purchase.

5.22.050 - Letter of interest to lease or purchase school building property.

5.22.060 - Methods of disposal.

5.22.070 - Disposal for less than fair market value.

5.22.090 - Disposal by lease.

5.22.100 - Deposit–Disposal costs.

5.22.110 - Valuation–Consideration.

5.22.120 - Effect of city actions.

5.22.010 - Disposal authority.

Except where state statute, the Charter or this code establishes a specific mandatory procedure for disposing of city real property, the city may dispose of city real property by resolution of the council.

5.22.020 - Documentation of conveyance.

Every document conveying an interest in city real property under this chapter shall include the terms that are required by this chapter and any additional terms that the council or city manager requires,

and shall be executed by the city manager, attested by the clerk, and approved as to form by the city attorney.

5.22.040 – Letter of interest to lease or purchase.

- A. A person may submit a letter of interest to the city raising an interest in the purchase or lease of city property. Except as otherwise provided in this chapter, a letter of interest shall be submitted to the city manager and must include the following information:
 - 1. The name of the interested party and any other names under which the party does business;
 - 2. The interested party's mailing address and the address of the interested party's registered office in the state, if applicable;
 - 3. The use or purpose for which the interested party proposes to lease or purchase the property, and any additional information required by the city manager, school board, city planner or the planning commission.
- B. The city manager shall refer a letter of interest from a qualified interested party to the city planner. If the city planner finds that the real property is available for lease or purchase, the city planner shall schedule the letter of interest for review by the planning commission.
- C. The planning commission shall review the letter of interest and recommend to the city council whether to offer the real property interest for disposal by one of the methods as described in Section 5.22.060 (B).
- D. The city council shall review the letter of interest and the planning commission's recommendation, and determine, in the city council's sole discretion, whether to offer the real property interest for disposal by one of the methods as described in Section 5.22.060 (B).

5.22.050 - Letter of interest to lease or purchase school building property.

- A. A letter of interest to lease or purchase an interest in a school building shall be submitted directly to the school board and shall include all the information required in Section 5.22.040.
- B. Upon receipt of a letter of interest, the school board shall have authority to draft a resolution recommending action on the letter of interest and including recommended terms and conditions for any sale or lease of city owned real property with a school located on it.
- C. The city council shall review the letter of interest and school board's recommendation, and determine, in the city council's sole discretion, whether to offer the real property interest for disposal by one of the methods described in Section 5.22.060 (B).

5.22.060 - Methods of disposal.

- A. Except as this chapter provides otherwise, all disposals of interests in city real property shall be for no less than fair market value. The city may accept in exchange for an interest in city real property any consideration of sufficient value not prohibited by law.
- B. In approving a disposal of an interest in city real property, the city council shall select the method by which the city manager will conduct the disposal from among the following:

1. Negotiate an agreement with the party who submitted a letter of interest to lease or purchase the property;
 2. Invite sealed bids to lease or purchase the property;
 3. Offer the property for lease or purchase at public auction;
 4. Request sealed proposals to lease or purchase the property.
- C. If the city elects to dispose of an interest in city real property under one of the competitive methods described in subsections B.2. through B.4. of this section, notice of the disposal shall be published in the manner which the city manager deems most likely to inform the public of the proposed disposal for a period of at least thirty days. At a minimum, the notice shall describe the interest in city real property to be disposed of, the method of disposal, and the time and place for submitting bids or proposals.
- D. An invitation for bids to lease or purchase city real property shall specify any minimum price requirement and any required terms.
- E. A request for proposals to lease or purchase city real property shall specify the criteria upon which proposals will be evaluated and the minimum rent or purchase price. All proposals submitted in response to a request for proposals shall be reviewed by the planning commission, which shall make a recommendation to the city council to accept or decline any or all of the proposals. The city council shall review the proposals and the planning commission's recommendation and accept or decline any of the proposals.

5.22.070 - Disposal for less than fair market value.

- A. The city may dispose of an interest in city real property for less than fair market value to the United States, the state of Alaska or any political subdivision thereof, or a nonprofit or tribal corporation or association, upon a finding by the council that the disposal will allow the use of the real property for a purpose beneficial to the city.
- B. The city may lease city real property for less than fair market value where a commercial or industrial facility or use will be established and maintained on a continuous, year-round basis under the lease, if the council finds each of the following:
1. The reduction in rent below fair market value substantially increases the likelihood that the facility or use will be located in Cordova; and
 2. The operation of the facility or use in Cordova will confer an economic benefit on the city and no equivalent benefit could be obtained by leasing the real property at its fair market value.
- C. The city shall publish notice of a proposed disposal of an interest in city real property for less than fair market value at least one week before the date on which the council will consider the agreement for the disposal. At a minimum, the notice shall describe the real property, summarize the terms on which it may be disposed of, identify the proposed lessee or purchaser, and state the date and time of the meeting at which the council will consider the proposal.

5.22.090 - Disposal by lease.

In addition to the other requirements in this chapter, a lease of city real property shall conform to the following requirements:

- A. The lease may not be assigned without the approval of the city, which may be granted at the sole discretion of the city council.
- B. The term of the lease may not exceed thirty years, including renewals, unless the city council approves a longer term upon finding that the longer term will be beneficial to the city or the citizens of Cordova in light of the purpose of the lease, the use of the premises and the nature of any improvements to be constructed thereon.
- C. A lease having a term longer than two years may be subject to a rental adjustment at intervals no less frequent than every two years, but no such adjustment shall cause a reduction in the rent under the lease.
- D. A lease may grant the lessee one or more options to renew, provided that:
 - 1. The term, including all available renewal terms, does not exceed the term permitted under subsection B of this section; and
 - 2. Upon each renewal, the lease shall be subject to all provisions of this code in effect at the time of the renewal.
- E. The lease shall reserve to the city the right to designate or grant rights-of-way or utility easements across the leased premises without compensation; provided, that the lessee shall be compensated for any resulting, taking or destruction of improvements owned by the lessee, and provided further that the rent shall be adjusted to reflect any resulting reduction in the fair market value of the leased premises.
- F. The lessee's performance under a lease shall be secured in the manner that the city council may require, including without limitation, a security deposit, surety bond or guaranty.
- G. Unless the council provides otherwise in authorizing the lease, the lessee shall pay rent to the city on an annual basis, in advance, with payments due upon commencement of the term and on each anniversary thereof during the term.
- H. The lease shall provide for payment of interest or a late fee for rent past due, and provide for recovery by the city of attorneys' fees and costs to the maximum extent allowed by law in the event the city is required to enforce the lease in court, and such additional provisions pertaining to defaults and remedies as the city manager may determine to be in the city's interest.
- I. A lease of space within a city school building shall provide that payments received for rent shall be made payable to the school district and assigned to a special revenue fund designated by the city council in consultation with the school board.

5.22.100 - Deposit—Disposal costs.

- A. When disposal of an interest in city real property is by the method in Section 5.22.060B.1, the interested party shall deposit the sum of one thousand dollars, and shall deposit such additional sums as the city manager may from time to time require to cover ongoing expenses incurred by the city in connection with the transaction, including without limitation staff time, appraisal costs, attorney's fees and costs, surveying and platting fees and costs, closing costs and escrow fees. The interested party shall reimburse the city in full at or before the closing of a sale or exchange, or the execution by the city of the lease or other document conveying the property interest, for all fees and costs the city incurred to third-parties in the transaction. Any unexpended deposit shall be applied to this reimbursement obligation. If

negotiations with the interested party are terminated by either the city or the interested party and the disposal is not executed the city will keep the deposit to cover expenses incurred by the city in connection with the negotiation. The city will refund any unexpended part of the deposit to the interested party no later than ten days after consummation or termination of the transaction.

- B. Proposals and bids submitted to the city for disposal of city real property under Section 5.22.060.B.2 or 5.22.060.B.4 shall include a deposit less than or equal to ten percent of the minimum purchase price to cover costs associated with the disposal process. The amount of the required deposit shall be indicated in the bidding or proposal documents. The deposit will be put toward the fees and costs the city incurs, including without limitation city staff time, appraisal costs, attorney's fees and costs, and platting fees. In the event that the city notifies an interested party that its proposal or bid has been selected and the interested party subsequently withdraws its proposal or bid, the city will retain the interested party's entire deposit. The city will refund in full an interested party's deposit if the interested party's proposal or bid is not selected by the city or the city withdraws the invitation or request for proposal after selection. Any unexpended portion of a winning bidder's deposit shall be applied toward the property's purchase price or rental rate.

5.22.110 - Valuation—Consideration.

Prior to the disposal of any interest in city real property, the city will determine the fair market value of the interest by using a qualified appraisal, tax assessment values, comparable property values or any other method the city determines, in its sole discretion, calculates the fair market value of the interest.

- A. Where the disposal is by lease at fair market value, the minimum annual rent shall be the fair market value as determined by the city.
- B. Where the disposal is by sale or other disposition at fair market value, the minimum purchase price shall be the fair market value of the city's interest.
- C. Where the disposal is to accommodate a structure that encroaches on city property or fails to conform to code requirements in Title 18, the purchase price of the property shall be three times the property's fair market value, which value is determined by the city according to this section.
- D. Where the disposal is for less than fair market value, the city council will determine the rent, purchase price or other consideration owed to the city for the property interest.

5.22.120 - Effect of city actions.

No action or inaction by the city council, city manager or any other officer, agent or employee of the city relating to or in furtherance of the development, preparation for disposal or disposal of city real property or any interest therein shall be deemed to constitute an express or implied representation or warranty that such real property, or any interest therein, is suitable or usable for any specific purpose whatsoever. Any such action or inaction shall be deemed to be and constitute performance of a discretionary policy and planning function only and shall be immune and give no right of action as provided in AS 9.65.070, or any amendment thereto.

Section 2. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, and published within ten (10) days after its passage.

1st reading: April 15, 2015
2nd reading and public hearing: May 6, 2015

PASSED AND APPROVED THIS 6th DAY OF MAY, 2015



James Kacsh, Mayor

ATTEST:

Susan Bourgeois, CMC, City Clerk