

Introduced by:	Mayor
Date:	01/05/21
Hearing:	02/02/21
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-01**

**AN ORDINANCE AMENDING KPB 17.10, BOROUGH LANDS AND RESOURCES, TO  
CHANGE AGRICULTURE AND GRAZING LEASE RATES TO A STANDARD FEE  
SCHEDULE AND CLARIFY TAX RESPONSIBILITY**

**WHEREAS,** KPB 17.10.010 provides for the efficient acquisition, management, classification and disposal of borough lands, the promotion of orderly development, the protection and orderly management of the borough's natural resources, and the orderly disposal of lands and resources in a manner which is fair to all; and

**WHEREAS,** KPB 17.10.140(C) - (D) provide that the mayor may lease borough land for agricultural and grazing purposes according to terms fixed by the assembly; and

**WHEREAS,** KPB code currently requires that annual fees for agricultural and grazing leases be established by the borough assessor with annual rates fixed for a minimum period of five years; and

**WHEREAS,** the assessing department can provide fee simple taxable values of land subject to agricultural and grazing leases but the market rental rate for these types of leases are subject to many factors, including usable acreage, use restrictions and use requirements, which substantially impact the fair market rental value of these leases; and

**WHEREAS,** standardizing agricultural and grazing lease fees would be an efficient and fair way to establish and maintain agricultural and grazing lease rates and encourage the development of these industries in the borough; and

**WHEREAS,** it would be beneficial to clarify that agricultural and grazing leases of borough property can create a taxable interest and that it is the responsibility of the leaseholder to pay such taxes; and

**WHEREAS,** the borough planning commission held a public hearing on January 11, 2021 and recommended approval by unanimous consent;

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

**SECTION 1.** Amend KPB 17.10.090, as follows:

**17.10.090. Disposition of borough land.**

Except as otherwise provided by this title no land or interest in land may be sold or leased or otherwise disposed of unless the land has been classified in accordance with the provisions of this chapter. Lands shall not be sold unless the borough has clear title to the land. All lands shall be sold or leased at fair market value or fair market rental value as determined by a qualified appraiser except as provided in sections 17.10.100(I) [AND], 17.10.120(D) and 17.10.140(C) and (D).

**SECTION 2.** That KPB 17.10.140 (C) and (D) are hereby amended as follows:

**17.10.140. Lease—Types**

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- C. *Agricultural lease.* The mayor may lease borough land for agricultural purposes according to the terms fixed by the assembly including the applicable classification, except the mayor shall not lease approved, unpatented grant land without fully disclosing the unpatented status of the land to the lessee.
1. An application to lease must be submitted with a farm management and development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, and a development and construction time table.
  2. The annual lease fees shall be [ESTABLISHED BY THE BOROUGH ASSESSOR WITH ANNUAL RATES FIXED FOR A MINIMUM PERIOD OF FIVE YEARS] in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
  3. Lease lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease and in conformity with the lessee's farm management and development plan, applicable classification, and any land use of comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease, and the lease will become subject to cancellation.
  4. Failure on the part of the lessee to substantially complete the lessee's farm management and development plan within the time frame specified in the plan, or failure to be consistent with the conditions of the lease shall constitute grounds for cancellation. The mayor or

his designee shall determine whether the plan is substantially complete and may extend these deadlines for good cause shown or when the mayor determines it to be in the borough's best interests.

5. Upon written approval of the borough, an agricultural lease may be assigned subject to the same terms and conditions of the existing lease. No agricultural lease may be assigned within two years of the anniversary date.

D. *Grazing lease.* The mayor may lease borough land for grazing purposes according to the terms fixed by the assembly including the applicable classification, except the mayor shall not lease approved, unpatented grant land without fully disclosing the unpatented status of the land to the lessee.

1. An application to lease must be submitted with a range management and development plan which shall disclose the use, nature of improvements, if any, an estimate of value of the improvements, the location of the proposed improvements, the description of the necessity for such improvements, and a statement that the improvements, as proposed, will not impair the value of the land or interfere with other reasonable uses thereof. Except as provided below, improvements of a permanent nature, such as housing, barns, sheds, slaughter houses, silos, and permanent grain or hay storage buildings, or other similar structures may not be authorized on a grazing lease. Should such structures be desired, the applicant must apply for a different form of lease in which such structures are authorized. The following uses and improvements may be authorized by the borough for use on grazing leases in a manner consistent with grazing lease uses and purposes:
  - a. Permanent or temporary improvement of foliage quality and species to be used for grazing purposes by the lessee and not for sale or trade.
  - b. Improvements to a spring to allow for an environmentally safe watering system.
  - c. Fences in an approved place on the leased premises are not prohibited by this provision.
  - d. Temporary animal facilities, such as corrals and chutes for loading animals.

- e. Temporary grain or hay storage facilities, provided such facilities may be no larger than the size necessary for storing a one-year supply of feed for the animals proposed to use the lease shown in the development plan.
  - f. A maximum of ten percent of standing timber may be used for authorized lease improvements. Clearing of timber, other than that which is approved as necessary for grazing purposes, or the sale of timber taken from the grazing lease premises, is prohibited.
  - g. Temporary living facilities such as cabins, tents, or other temporary structures as approved by the planning director, provided that the approved temporary living facilities must be removed upon the expiration of the lease.
- 2. The annual lease fees shall be [ESTABLISHED BY THE BOROUGH ASSESSOR WITH ANNUAL RATES FIXED FOR A MINIMUM PERIOD OF FIVE YEARS] in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
  - 3. Lease lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease and in conformity with the lessee's range management and development plan, applicable classification, and any land use of comprehensive plans. Utilization or development by lessee for other than the allowed uses shall constitute a violation of the lease and the lease will become subject to cancellation. The mayor may contract with appropriate federal or state agencies to cooperatively manage borough grazing leases in conjunction with, or on behalf of, the borough.
  - 4. Failure on the part of the lessee to substantially complete the lessee's range management and development plan of the land within the time frame specified in the plan, or failure to be consistent with the conditions of the lease shall constitute grounds for cancellation. The mayor or his designee shall determine whether the plan is substantially complete and may extend these deadlines for good cause shown or when the mayor determines it to be in the borough's best interests.
  - 5. Upon written approval of the borough, a grazing lease may be assigned subject to the same terms and conditions of the existing lease.
  - 6. A grazing lease conveys no right, title, or interest held by the Kenai Peninsula Borough in any lands or resources and does not grant an exclusive right to use of the leased area, except as may be necessary

to protect lessee's authorized assets as may be provided in the grazing lease.

7. The lessee shall not prohibit or otherwise interfere with reasonable access to the leased area for other uses as may be authorized by the borough.

**SECTION 3.** That KPB 17.10.150 is hereby amended as follows:

**17.10.150. Lease—Terms and Conditions.**

- A. The following terms and conditions shall be applicable to all leases:
  1. Application to lease must be submitted on a form provided by the land management division.
  2. Section 17.10.120(F) shall apply.
  3. The filing of an application for lease does not give or imply any right to lease or use of the land under application.
- B. In the case of an agricultural lease, within 90 calendar days of the prospective lessee being notified that the applicant is eligible to lease borough lands and prior to executing the lease documents, the prospective lessee must submit a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, a range management plan, and a development and construction time table.
- C. The land management officer shall have 90 calendar days in which to review the proposed development plan. This review shall include approval by the borough attorney and any other consultation which may be necessary to determine the adequacy of the plan.
- D. The land management officer may require additional information if it is determined that the plan does not address all of the potential impacts of the proposed land use. The prospective lessee shall bear the responsibility of obtaining professional assistance if it is deemed necessary by the land management officer that additional technical information is needed.
- E. After the required additional information is provided, the land management officer shall have 60 calendar days to review the amended development plan.
- F. After written notification by the land management officer that the development plan and other lease documents are acceptable, the lessee shall have 30 calendar days in which to sign the appropriate documents to execute the lease. If at the end of the 30 calendar days the lessee has not completed

and signed the documents, the authorized lease shall become null and void.

G. All annual rental fees of lease lands are due and payable on or before the first day of each term year.

H. That any taxes levied against the leasehold interest shall be the responsibility of the lessee to pay when due.

**SECTION 4.** That this ordinance shall take effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF FEBRUARY, 2021.**

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Brent Hibbert, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None