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CITY OF THORNE BAY
ORDINANCE 16-03-01-02

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY,
ASLASKA, AMENDING TITLE 2-ADMINISTRATION AND PERSONNEL, CHAPTER
2.56-CITY PROPERTY,

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA

- Section 1. Classification. This ordinance is of a general and permanent nature, the chapter and section hereby amended shall be added to the Thorne Bay Municipal Code.
- Section 2. Severability. If any provisions of this ordinance or any application thereof to any person or circumstances is held invalid, the circumstances shall not be affected thereby.
- Section 3. Amendment of Chapter. Amending Chapter 2.56-City Property, is hereby added
- Section 4. Effective Date. This ordinance shall become effective upon adoption.

PASSED AND APPROVED March 1, 2016

James Gould, Mayor

ATTEST:

Teri Feibel, City Clerk

[Introduction: February 16, 2016]
[Public Hearing: March 1, 2016]

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Chapter 2.56
City Property

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ARTICLE I. REAL PROPERTY ACQUISITION

2.56.010 Acquisition and ownership-Authority. The city may acquire, own and hold real property within or outside the city boundaries by any lawful means or conveyance. (Ord. 85-06-13-02 § 1.01, 1985)

2.56.020 Real property defined. As used in this chapter, "real property" includes any estate in land, tideland, submerged land, easement, right-of-way, lease, permit, license, franchise, future interest, building, fixture or any other right, title or interest in land or a building. (Ord. 98-15 §§ 3(part), 4(part), 1998: Ord. 85-06-13-02 § 1.02, 1985)

2.56.030 Acquisition-Form. A. The city may acquire, own and hold real property by warranty or quitclaim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale of real property, plat dedication, lease, tax deed, will or

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any other lawful method or mode of conveyance or grant. Real property shall be held in the name of "The City of Thorne Bay, Alaska." Any instrument requiring execution by the city shall be signed by the mayor and attested by the city clerk.

B. Only upon a specific resolution of the city council, may the mayor act on its behalf in the acquisition of real property or interest in real property when the property to be acquired is for a valuable consideration.

C. Prior to approval, the mayor is to furnish the council with an abstract of title, an appraisal **OR OTHER ESTIMATE OF THE PROPERTY VALUE** of the real property, **OR** ~~and~~ a review of any problems in acquisition, but the failure to furnish the council with such material shall not affect the validity of any acquisition or purchase of real property by the city.

D. Unless otherwise provided by council, the city shall purchase marketable title in the real property. Unless otherwise provided by ordinance or resolution, or upon council approval of a purchase, the mayor is authorized to obtain title insurance, to execute any instruments and to take all steps necessary to complete and close the purchase and acquisition of the real property. (Ord. 85-06-13-02 § 1.03, 1985)

2.56.040 Eminent domain-Authority. A municipality may, only within its boundaries, exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the municipality under the procedures set out in AS 09.55.250 through 09.55.460. In the case of a second class city, the exercise of power of eminent domain or declaration of taking must be by ordinance that is submitted to the voters at the next general election or at a special election called for the purpose. A majority of the votes on the question is required for approval of the ordinance. (Ord. 88-34 § 5, 1988)

2.56.050 Eminent domain-Adverse possession. The city cannot be divested of title to real property by adverse possession. (Prior code Ch. 45 § 2)

2.56.060 Acquisition and ownership-Rights and powers. The city shall have and may execute all rights and powers in the acquisition, ownership and holding of real property as if the city were a private person. (Ord. 85-06-13-02 § 1.04, 1985)

2.56.070 Acquisition-Dedication of plat. The city may not acquire any real property by means of a dedication by plat unless the dedication of the real property is accepted in

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writing and signed by the mayor. (Ord. 85-06-13-02 § 1.05, 1985)

2.56.080 Industrial sites. The city may acquire, own and hold real property, either inside or outside the city boundaries, for sites available for new industries **OR EXPANDING INDUSTRIES** which will **POTENTIALLY ENHANCE THE REVENUES OF THE CITY AND ITS RESIDENTS.** ~~benefit the city.~~ (Ord. 85-06-13-02 § 1.06, 1985)

2.56.090 Federal and state aid. The city may apply for, contract and do all things necessary to cooperate with the United States Government and the state of Alaska for the acquisition, holding, improvement or development of real property within and outside the city boundaries. (Ord. 85-06-13-02 § 1.07, 1985)

2.56.100 Real property as security. The city council may pledge, mortgage or otherwise secure city real property for the payment of city bonded or other indebtedness when required, as authorized by law. (Ord. 85-06-13-02 § 1.08, 1985)

ARTICLE II. REAL PROPERTY SALES BY THE CITY

2.56.110 Applicability. A. The provisions of this chapter shall constitute the formal procedures for the sale or other permanent disposal of real property or an interest in real property owned by the City of Thorne Bay.

2.56.120 Commencement. A. The disposal process will commence upon, and be further governed and controlled by, a non-code ordinance consistent with the procedures set forth herein, and such other terms or conditions as the council may determine, identifying the particular land to be disposed of and the particular disposal method to be used.

B. Lands may not be sold or otherwise permanently disposed of until the land has been classified or zoned and the council had determined (in a non-code ordinance) that the disposal and subsequent use of the land is in the city's best interest.

C. Where a public hearing reveals that a particular upland or tideland disposal may have significant and wide spread public opposition, the council may, **BUT IS NOT REQUIRED TO DO SO, OBTAIN** ~~require~~ approval of the disposal by the qualified voters of the city.

2.56.130 Without warranty. Real property sold, traded, or exchanged shall be conveyed by the city without warranty; except

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in cases where a land trade with the federal government cannot proceed unless the city agrees to warrant title to the land being traded by the city, and any such warranty shall be supported by title insurance.

2.56.140 Appraisal required - Minimum price. Except as otherwise provided in this chapter, the mayor or the mayor's designee may sell, exchange or otherwise dispose of real property, or an interest therein, only after a consideration is determined by the council to be in the best interest of the city or an appraisal of the fair market value thereof by a qualified appraiser obtained by the city and conducted within thirty-six (36) months before the date of the sale, or the use of a comparable property appraisal **OR SALE** within the last thirty-six (36) months may be used to determine the ~~square foot~~ value of the property as determined by a vote of the city council. The price shall ~~not be less than the fair market value unless otherwise as directed by the city council.~~ **IF THE COUNCIL DETERMINES THAT AN APPRAISAL IS NOT FEASIBLE OR WILL DELAY THE ACQUISITION OF THE PROPERTY, AND THE COUNCIL DETERMINES IT OTHERWISE HAS SUFFICIENT INFORMATION TO COMPLETE THE TRANSACTION AS IN THE BEST INTERESTS OF THE CITY, THE COUNCIL MAY COMPLETE THE TRANSACTION WITHOUT AN APPRAISAL FROM A QUALIFIED APPRAISER.**

2.56.150 Disposal methods. A. Methods. Land may be disposed of by sealed competitive bid, auction, over-the-counter offerings of unsold remnants of ~~any of the~~ ~~aforsaid processes,~~ equal value, exchange, negotiated sale, or such other lawful methods as the council may approve by non-code ordinance for the specific disposal.

B. Negotiated Sales and Exchanges. Upon authorization by the council by non-code ordinance, the Mayor or City Administrator may commence negotiations for the sale or exchange or other disposal of city land. The final terms of a negotiated disposal are subject to approval by the council unless the minimum essential terms and the authority of the mayor to execute the disposal are set forth in the ordinance authorizing negotiations. The negotiated disposal may not be executed until the effective date of the ordinance.

C. Competitive bidding not required. The mayor or the mayor's designee, after council approval by non-code, non-emergency ordinance, may sell exchange or otherwise dispose of the following real property or an interest therein, without giving an opportunity for competitive bidding.

1. Real property, or an interest therein, to be exchanged for other real property, or an interest therein, which is determined by an appraisal prepared by a qualified appraiser

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obtained by the city to be at least equal in value to the city owned property or the interest therein that is to be exchanged, or appraisal or **SALE** of a comparable parcel within the last thirty-six (36) months and approved by the city council, or if the city's property is determined to be greater in value, if the difference is made up in cash or additional property of equivalent value. The equal-value requirement is not mandatory in transactions with other government entities. The person receiving the city owned property or interest to be exchanged shall pay the cost of the appraisal, plus survey, platting, recording and all other costs to the city attendant to the transaction; except where the exchange is with a governmental entity whose rules prohibit such payment.

2. Sale, lease, donation, exchange or other transfer of real property, or an interest therein, to or with another municipality, a state, or the United States, when and under such terms and conditions as the council, in its sole judgment, deems advantageous to the city.

3. Parcels of real property **THAT ARE, ADJACENT TO AN EXISTING PARCEL** or that are substandard in size ~~or configuration under existing zoning~~ may be disposed of by sale or exchange to the legal owner of adjoining property, with such adjoining parcel to be then re-platted to incorporate therein such ~~substantial~~ parcel sold or exchanged. That the sale price or exchange value shall be at least equal to the fair market value of the city-owned or interest therein transferred which may be determined by using the current assessed value of the property, or appraisal or sale of a comparable parcel within the last thirty-six (36) months and approved by the city council.

4. Easements may be released to the legal owner of the servient property when and under such terms and conditions as the council, in its sole judgment, deems advantageous to **AND IN THE BEST INTERESTS OF** the city.

5. Or a consideration is determined by the council to be in the best interest of the city.

2.56.160 Disposals for public use. A. Disposal to Governmental Agency. The sale or disposal of land may be made to a state or federal agency for less than the appraised value, provided the council approves the terms and conditions of such disposal by ordinance.

B. Disposal to nongovernmental agency. The sale, **LEASE** ~~lease or other~~ disposal of city land may be made to a private, nonprofit corporation at less than fair market value, provided the disposal is approved by the council by ordinance adopted after fourteen days public notice and the land or interest in land is to be used solely for the purpose of providing a service

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to the public which is supplemental to a governmental service or is in lieu of a service, which could ~~or should~~ reasonably be provided by the state or the city.

2.56.170 Disposal procedures. A. Conduct of Sale. The mayor or his designee shall conduct sales in accordance with the ordinance approved by the council for a specific sale. The **MAYOR OR HIS DESIGNEE** ~~city administrator~~ shall prescribe the procedures for the conduct of the sale to the extent not provided by this chapter or otherwise prescribed by the council for a specific sale.

B. Advertisement **FOR PARCELS REQUIRING COMPETITIVE BIDDING.**

1. The city shall publish notice in a newspaper of general circulation once per week for two weeks and the notice in at least three public places within the city at least thirty days prior to the sale date. The notice shall contain a general description of the types and locations of the parcels available, the terms and conditions of purchase, the last day upon which a person may register for the sale, the date, time and place of any sale activities, and the name, address and telephone number of the person or office to contact for sale or registration forms and further information.

2. Public notice as set forth above shall be required prior to all sales or other permanent disposals.

C. Qualifications. To qualify to purchase city lands, an individual must be eighteen years of age or older; a corporation must be registered to do business in the state. No person, corporation or other entity may register or bid if they have failed to remedy a default on a prior sale or lease of city real property, or if they have failed to pay in full the amount of any judgment obtained against them by the city from a court of law, **OR ARE DELINQUENT ON ANY ACCOUNTS OWED TO THE CITY.**

D. Conditions of Sale.

1. The buyer shall pay all closing costs, including fees for preparation of documents, escrow fees and recording fees.

2. The city reserves the right to require, in the event the buyer desires to remove or cause to be removed, merchantable timber, sand or gravel, or other materials, that prior to commencement of such activity, the entire remaining principal and accumulated interest, or any unpaid portion of the purchase price, be paid in full to the city **AND THE BUYER ENTER AN AGREEMENT TO DEFEND AND INDEMNIFY THE CITY FOR ANY AND ALL ACTIONS TAKEN BY THE BUYER.**

3. The city council shall consider placing restrictive covenants, reversionary clauses, performance bond

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requirements, or other similar restrictions in the deeds, or require the submission of a development plan when deemed reasonably necessary to protect the public health and welfare or to uphold the city's ordinances, ~~coastal coastal management plan~~ or other officially adopted land use plans.

E. Subsequent Transfers. Any subsequent transfer or sale of the property by the buyer prior to full payment therefore shall require the prior written approval of the city, followed by the transferee's **PERSONAL GUARANTEE FOR AND** assumption of any remaining balance on the original buyer's promissory note and the original buyer's deed of trust to the city. The city may withhold approval based on lack of credit worthiness of the proposed transferee or other commercially reasonable grounds, in which case the sale or transfer shall not be made unless the entire remaining balance due the city is paid in full either prior to or as part of the buyer's sale transaction. **THE CITY WILL NOT APPROVE A TRANSFER TO AN LLC WITHOUT ALL THE MEMBERS OF AN LLC SIGNING AN AGREEMENT TO PERSONALLY GUARANTEE THE REMAINING BALANCE ON THE PROMISSORY NOTE TO THE CITY.**

ARTICLE III. LONG TERM LEASE OR SHORT TERM LEASE OF CITY-OWNED REAL PROPERTY

2.56.190 Lands available for leasing - classification of lands.

A. All lands and interest in land owned by the city, including tide and submerged lands, may be leased or rented as hereinafter provided. Thorne Bay R.V. Park, Thorne Bay Harbor Facilities, Parking and other service rented by the day, week, month or year are regulated in other sections of the Thorne Bay Municipal Code.

B. Before accepting applications to lease lands, the city shall have zoned by ordinance or otherwise classified the lands in question for leasing and for particular land uses. No lease shall be granted except for the particular uses for which the tract is zoned or classified. The classification of a tract of leased land may be changed by ordinance after consideration by the ~~planning and zoning commission~~ **CITY**

C. No city-owned property shall be leased or otherwise developed prior to the assignment of a particular zone or the repeal of the reserved use classification.

D. Long Term Lease. A long term lease herein referred to as "Lease" may not exceed ~~20~~**30** years. A renewal option exercisable at the discretion of the lessee with approval of the city council may extend a long term lease, for an additional periods of time, not to exceed ~~20~~**30** years. Long term leases are subject to terms set forth in Article III.

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E. Short Term Lease. A short term lease herein referred to as "Rental Agreement" may not exceed 4 5 years. A renewal option exercisable at the discretion of the lessee with approval of the city council may extend a short term lease for additional periods of time not to exceed ~~four~~ 5 years. **THE CITY MAY IN ITS DISCRETION REQUIRE AMENDMENTS OR REVISIONS TO THE LEASE AS A CONDITION OF APPROVAL FOR EXTENSION.** Short term leases are subject to the specific short term lease terms set forth in Article III.

2.56.200 Levels of approval required. A. Except as provided in subsection B and C, leases of city-owned property shall be authorized by non-code ordinance.

B. Leases valued at ten thousand dollars or less and for a lease term (including the lessee's rights of renewal) of ~~four~~ 5 years or less, and involving two acres or less, may be authorized by the council by resolution.

C. All short term leases or rental agreements may be authorized by the city council.

2.56.210 Rent. A. ~~Minimum rate~~ **RENT** ~~Except for short term leases and lands leased for public use, no land shall be leased for an annual rent less than eight percent of the appraised value of the land and any improvements thereon owned by the city.~~ shall be derived through negotiations with the City based on the best interest of the city. All monthly or annual rents or lease payments shall be reviewed and adjusted, at a minimum, every five (5) years unless provisions provide for ~~are spelled out within the lease or rental agreement for~~ automatic adjustments to the rent or lease payments. ~~Facilities for supply utility services shall not be considered as such improvements. The city council may, for a consideration determined by the council to be in the best interest of the city, set annual rent more or less than eight percent of the appraised value.~~

B. Public Use. City lands may be leased **OR RENTED** to any state or federal agency or political subdivision of the state or to a nonprofit organization ~~for less than eight percent of the appraised value,~~ and for a consideration determined by the council to be in the best interest of the city.

C. Appraisal. With the exception of the public uses described in paragraph B of this section, **THE CITY COUNCIL MAY DETERMINE IT IS IN THE BEST INTEREST OF THE CITY, THAT PRIOR TO LEASING OF** ~~no land shall be leased, or a renewal~~ renewal of a lease issued therefore, ~~unless~~ **THAT** the land has ~~bee~~ **BE** appraised according to Municipal Code, **BUT THE COUNCIL IS NOT REQUIRED TO OBTAIN AN APPRAISAL.** ~~or a consideration is~~

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~~determined by the council to be in the best interest of the city.~~

D. Short Term Leases. With the exception of the public uses described in paragraph B of this section, all lands leased through a short term lease "rental agreement", or a renewal lease issued therefore, shall be negotiated by the city and approved by the city council.

2.56.220 Term of leases. A. **ANY** Long Term Lease will be negotiated between the applicant and the city and be for a term not to exceed ~~20~~ **30** years with the option of renewal, **IN THE SOLE DISCRETION OF THE CITY, FOR A PERIOD NOT TO EXCEED 30 YEAR INCREMENTS AND WITH SUCH REVISIONS AND AMENDMENTS AS DEEMED BY THE CITY IN THE BEST INTERESTS OF THE CITY.** The applicant shall state in the application the term desired. In determining whether to grant a lease for the requested term, the council shall consider the nature, extent and cost of the improvements which the applicant agrees as a condition of the lease to construct ~~thereon,~~ **AND** the value of ~~the~~ other relevant factors. The term of any given lease shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the lessee, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment. A renewal option exercisable at the discretion of the lessee, **WITH APPROVAL OF THE COUNCIL,** shall be ~~counted~~ **CONSIDERED** in determining the term of the lease for purposes of this subsection.

B. **ANY** Short Term Lease will be negotiated between the applicant and the city and be for a term not to exceed 4 5 years with the option of renewal **IN THE SOLE DISCRETION OF THE CITY, FOR PERIODS NOT TO EXCEED 5 YEARS AND WITH SUCH REVISIONS AND AMENDMENTS AS DEEMED BY THE CITY IN THE BEST INTERESTS OF THE CITY.** The applicant shall state in the application the term desired. In determining whether to grant an agreement for the requested term, the council shall consider the nature, extent and cost of the improvements which the applicant agrees as a condition of the rent to construct **AND** ~~thereon,~~ the value of ~~the~~ other relevant factors. The term of any given rental agreement shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the renter, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment. A renewal option exercisable at the discretion of the lessee **WITH APPROVAL OF THE COUNCIL,** shall be ~~counted~~ **CONSIDERED** in determining the term of the rental agreement for purposes of this subsection.

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2.56.230 Public Notice. Public Notice for competitive leasing shall be given ~~prior to long term leasing of city owned land~~ as stated in Section 2.56.230 of the Thorne Bay Municipal Code. A Thirty day notice shall be given by posting notice thereof in three public places and by publication in a newspaper of general circulation ~~twice~~. The notice must contain the name of the applicant, a brief description of the land, its area and general location, proposed use, term, computed annual minimum rent, limitations if any, a declaration stating the particular method of disposal to be used and the time and place set for a hearing on the proposed lease.

2.56.240 LEASING LAND - Negotiated or ~~competitive~~ **COMPETITIVE** leasing. **A. NEGOTIATED LEASING MAY BE CONDUCTED WITH A SINGLE PROSPECTIVE LESSEE OR RENTER THROUGH THE USE OF RESOLUTION. B. COMPETITIVE LEASING MAY BE CONDUCTED IF DETERMINED BY THE CITY, THROUGH A NON CODE ORDINANCE AND COMPETITIVE BIDDING REQUIREMENTS.** ~~Unless the council determines by resolution that a particular leasing transaction should proceed by negotiation with a single prospective lessee, competitive bidding will be utilized. The city council may elect to forgo competitive bidding requirements for negotiations with a single prospective lessee or renter.~~

2.56.250 Applications, fees, terms, and payments for competitive bidding.

Unless otherwise provided by the council in the ordinance or resolution authorizing the lease of specific lands, the following procedures shall be followed for competitive bidding:

A. Qualifications of applicants or bidders. An applicant or bidder for a lease is qualified if the applicant or bidder:

1. Is eighteen years or age or over;
2. Is a group, association, partnership or corporation which is authorized to conduct business in the State of Alaska; or
3. Is acting as an agent for another meeting one of the above criteria, and has qualified by filing with the administrator or his designee, prior to the time set for the disposition, a power of attorney or a letter of authorization creating such agency. The agent shall represent only one principal, to the exclusion of himself.

B. Applications for lease. All applications for lease of lands shall be filed with the City Clerk on forms provided by the city. Only forms completed in full and accompanied by a one hundred dollar (\$100.00) nonrefundable filing fee will be

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required for filing. Applications that qualify as a public use as defined in 2.56.210 (B) may be exempted from the filing fee. With every application the applicant shall submit a development plan showing and stating:

1. The purpose of the proposed lease;
2. The use, value and nature of improvements to be constructed;
3. The type of construction;
4. Dates construction is estimated to commence and be completed; and
5. Whether the intended use complies with the zoning and the Thorne Bay land use code.

C. Deposits for Cost. All applications filed with the city clerk will be forwarded to the administrator to determine estimated costs required to handle the application, including, but not limited to one or more of the following: survey, appraisal, and advertising of the proposed lease of the area under application. Upon determination of the estimated costs, **THE ADMINISTRATOR** ~~said official~~ shall notify the applicant in writing of such costs, and a deposit ~~thereof~~ must be made within thirty calendar days after the notice is mailed. Failure of the applicant to pay the deposit shall result in the application being cancelled.

If the applicant does not accept a lease within thirty-calendar days after it is offered to the applicant, all deposit money spent or encumbered for survey, appraisal or advertising shall be forfeited, and the balance, if any, shall be returned to the applicant. If the land applied for is leased to another, the latter shall be required to pay actual costs of survey, appraisal and advertising, and the original deposit shall be returned to the depositor. The lessee shall be required to pay any excess of costs over deposits, and where the deposit exceeds actual costs, the excess shall be credited to present or future rents under the lease. All survey, appraisal and advertising shall be performed only under the control of the city, and any such work done without such control will not be accepted by the city.

Those applications defined as a public use in 2.56.210 may be exempted from the requirements of this subsection.

2.56.260 Competitive bidding -- Appeals. A. Where competitive bidding is used, the city may either require written sealed bids stating the annual rental amount offered, or hold an auction on the rent amount. Only applicants who have completed the application requirements to the city's satisfaction (including submittal of a development plan and the deposits for cost) shall be qualified to bid. The City may base its award of

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lease on a combination of factors (including the development plan and the extent to which the proposed project will meet community needs) rather than solely upon rental amount bid. The city reserves the right to reject all bids and return the deposits to the applicants.

B. Appeal. In cases involving competitive bidding, an aggrieved bidder may appeal the determination of the winning bid to the council with five days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing, signed and notarized and contain a **COMPLETE** ~~short~~ statement of the grounds for appeal. The council shall within thirty days after receipt of a timely appeal review the asserted grounds for appeal and rule on the appeal. The council's decision shall be final.

C. Lease to Successful Bidder. Following the appeal period or the council's ruling, the city administrator shall notify the successful bidder that the city is prepared to issue **THE** ~~an appropriate~~ lease. The bidder shall be given thirty calendar days from date of mailing the notice in which to remit to the city ~~elert~~ any bid balance. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease, and in addition, any monies paid or deposited with the city shall be forfeited.

D. Issuance of Lease. After expiration of the appeal period, or after the ruling on the appeal to the council, the administrator shall cause a lease to be issued and executed containing such terms as the council shall have established.

2.56.270 Negotiated leases. ~~Upon authorization by the city council by ordinance or resolution, t~~
The city administrator may commence negotiations **WITH A SINGLE PROSPECTIVE LESSEE** for the lease of city land. The final terms of a negotiated lease are subject to approval by the council **THROUGH A RESOLUTION FOR SHORT TERM LEASE AND NON CODE ORDINANCE FOR A LONG TERM LEASE.** ~~unless the minimum essential terms and the authority of the administrator to execute the lease are set forth in the ordinance or resolution authorizing negotiations.~~ The negotiated lease may not be executed until the effective date of the ordinance or resolution.

2.56.280 Rights prior to leasing. A. The filing of an application for a short or long term lease shall give the applicant no right to a lease nor to the use of the land applied for.

B. Any use of city-owned property not authorized by a short or long term lease shall constitute a trespass against the city.

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2.56.320 Terms and conditions of long term leases and short term leases (rental agreements). In addition to other applicable provisions of this code, the terms, conditions and covenants following as subsections A. through V. of this section shall govern all long term leases and may govern short term leases (rental agreements) made under the provisions of this chapter and shall be as a matter of law incorporated in all such leases of land made, or issued by the city unless the council by resolution provides otherwise as to a specific lease, and are incorporated as though set out in full in the lease. Each lease shall contain such additional provisions as the council deems necessary to protect the public interest. Violation by the lessee of any duty of lessee's contained in subsections A through V shall be grounds for the city's termination of the lease, if, following written notice to lessee of lessee's breach, lessee has not in thirty days entirely remedied the breach to the city's satisfaction. **ALL LONG TERM AND SHORT TERM LEASES SHALL BE REVIEWED EVERY FIVE YEARS THROUGHOUT THE LIFE OF ALL LEASES. ADDITIONS, MODIFICATIONS, ADJUSTMENTS OR CHANGES MAY BE MADE TO ALL LEASES AT THE TIME OF REVIEW.**

A. Lease Utilization. Leased lands shall be utilized only for purposes within the scope of the applicable land use classification or zoning and the terms of the lease, and in conformity with the ordinances of the city, **FEDERAL AND STATE LAWS AND REGULATIONS.** Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to **TERMINATION OR** cancellation by the city at any time.

B. Adjustment of Rent **FOR LONG TERM OR SHORT TERM LEASES.** The annual rent payable pursuant to any lease becomes subject to adjustment by the council on the ~~fourth~~ **FIFTH** anniversary of the date of the lease and at each ~~four~~ **FIVE** year interval thereafter unless specified otherwise in ~~THE~~ said lease. **THE PROCESS UPON WHICH RENTS MAY BE ADJUSTED BY THE CITY COUNCIL WILL BE DETERMINED PRIOR TO FINALIZING ANY LEASE.** ~~The adjusted annual rent shall be computed at that percentage of the fair market value of the land as set by the lease, inclusive of any improvements thereon made by the city, or a consideration is determined by the council to be in the best interest of the city, but exclusive of any portion of value created by expenditures by lessee, except that the value of any improvements credited against rentals shall be included in the value. Such fair market value shall be determined by the City Administrator and reviewed and approved by the council. The lessee may obtain council reconsideration of the council's prior approval of the appraiser's figure for market value by giving~~

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~~written notice of request for reconsideration within ten days after the council's original decision, and by thereafter presenting an alternative appraisal, prepared by a Member of the Appraisal Institute (MAI) within ninety days after the council's original decision. The council shall, upon presentation of the lessee's evidence, within thirty days decide the final market value to be used in adjusting the rent. The new rental amount shall be effective at the beginning of the three year interval to which it applies.~~

C. Subleasing. The lessee may sublease lands or any part thereof leased to him hereunder, provided that the lessee ~~first~~ obtains the approval of the council to such sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing, and subject to the terms and conditions of the original lease and such further terms and conditions, as the council may deem **PROPER** ~~appropriate~~ including adjustments to rents and conditions. A copy of the sublease shall be filed with the city administrator.

D. Assignments. The lessee **SHALL NOT ASSIGN THE LEASE WITHOUT PRIOR APPROVAL OF THE CITY COUNCIL, WHICH MAY IMPOSE TERMS AND CONDITIONS ON THE ASSIGNMENT.** ~~may assign the lease issued to him, provided that the proposed assignment shall be first approved by the city council under such further terms and conditions as the city council may deem appropriate. The assignee shall be subject to all of the provisions of the original lease, and the assignor shall not be relieved of his obligations there under. A copy of any assignment shall be filed with the city administrator.~~ **THE CITY COUNCIL WILL NOT APPROVE AN ASSIGNMENT TO AN LLC UNLESS ALL THE MEMBERS OF THE LLC SIGN A PERSONAL GUARANTEE FOR PERFORMANCE OF THE LEASE TERMS AND CONDITIONS.**

E. Modification. Any modification or amendment of a lease shall be in writing, signed by both the city and the lessee. Modification of any lease **DOES NOT** require authorization by ordinance or resolution **WHERE THE LEASE WAS NEGOTIATED WITH A SINGLE PROSPECTIVE LESSEE.** ~~in the case of a lease negotiation with a single prospective lessee.~~

F. Cancellation and Forfeiture.

1. Leases in good standing may be cancelled in whole, or in part, at any time, upon mutual written agreement by lessee and the council. Any lease may, at the council's option, include a term providing that the lease may be terminated by the lessee upon ninety days' notice in writing to the city before the end of an annual rental period **UNLESS STATED OTHERWISE IN THE LEASE.**

2. If the lessee defaults in the performance or observance of any of the lease terms, covenants or stipulations,

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or any applicable term of this chapter, or any portion of the city code as applied to the property in question, the lessee is automatically in default on the lease by operation of law.

INCURRING ~~Occurring~~ **DEBT WITH THE CITY SHALL CONSTITUTE A DEFAULT.** If such default continues for thirty calendar days after service upon lessee of written notice of default by the city without remedy of lessee of the default, the council shall take such action as is necessary to protect the rights and best interests of the city, including the exercise of any or all rights after default permitted by the lease. Lessee **SHALL NOT** ~~may remove~~ **ANY** ~~no~~-improvements during the time the lessee is in default.

3. The city may **TERMINATE OR** cancel the lease if the land is used for any unlawful purpose.

4. Failure to make substantial use of the land, consistent with the proposed use, within one year shall with the approval of the council constitute grounds for **TERMINATION OR** cancellation. This time period may be extended by the council by resolution **OR BY COUNCIL AUTHORIZATION TO THE ADMINISTRATOR.**

G. Site contamination Prohibited-Environmental Compliance Required.

1. Any violation, at the site of the leased land, by lessee, or by a third party present upon the land with lessee's permission, of an environmental statute or regulation of the city, state or federal governments shall be grounds for immediate termination of the lease by the city, at the city's sole discretion. By entering into the lease, the lessee agrees not to make any claim for monetary damages against the city for lease **TERMINATION OR** cancellation pursuant to this subsection.

2. The lessee shall at all times manage lessee's activities upon the leased lands, and the activities of third parties present with lessee's permission, so as to positively prevent any and all contamination of the site which would violate any **FEDERAL OR STATE** statute or regulation, which could subject the city to an enforcement action **OR ANY ADMINISTRATIVE PROCEEDING** by a state or federal agency, or which could subject the city to statutory or common law liability, diminish the value of the land, or cause city expenditures for response costs **OR REMEDIATION COSTS** caused by a hazardous substances release, **DISCHARGE, OR SPILL. THE CITY SHALL HAVE THE RIGHT TO INSPECT OR OTHERWISE ENTER ON TO THE LEASED PREMISES DURING THE TERM OF THE LEASE TO ASSURE LESSEE'S COMPLIANCE WITH FEDERAL AND STATE ENVIRONMENTAL LAWS AND REGULATIONS.**

3. By entering into the lease, the lessee agrees to defend and indemnify the city from and against any and all claims **OF ANY KIND AND ANY NATURE, INCLUDING DEATH,** by third parties (including governmental entities and industry pollution-

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based claims) brought against city **ARISING OUT OF OR RELATING TO IN ANY WAY THE USE OF THE LEASED PREMISES BY THE LESSEE OR ANYONE ON THE LEASED PREMISES BY INVITATION OR AUTHORIZATION OF THE LESSEE. THIS OBLIGATION TO DEFEND AND INDEMNIFY THE CITY SHALL EXTEND BEYOND THE TERM OF THE LEASE TO ANY CLAIM OR ACTION OCCURRING DURING THE TERM OF THE LEASE.** ~~by reason of activities on the land during the period of lessee's lease.~~

4. By entering into the lease, the lessee agrees to reimburse the city for any and all expenses reasonably incurred by the city (including any response, **REMEDICATION** or site cleanup costs) because of activities on the land during the period of lessee's lease, **INCLUDING THE CITY'S ATTORNEY'S FEES.**

H. Rights of Mortgagee or Lien holder. In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage of the improvements on the land shall be given a duplicate copy of any notice of default in the same manner as notice is given the lessee, provided such mortgagee has given the city clerk notice of such mortgage and the mortgagee's address.

I. Payment of Annual Rentals. Unless otherwise provided by the council by ordinance **OR RESOLUTION, ALL** ~~the following lease payment schedules shall apply:~~ **Annual rentals AND LEASE PAYMENTS SHALL BE DUE AND PAYABLE ON THE FIRST OF THE MONTH. PAYMENTS NOT MADE BY THE 10TH OF THE MONTH SHALL BE CONSIDERED DELINQUENT.** ~~of five hundred dollars or less shall be paid annually in advance. (Annual rentals of more than five hundred dollars but less than five thousand dollars shall be prorated and paid in advance every calendar quarter.) Annual rentals of five thousand dollars or more shall be prorated and paid in advance each calendar month.~~

J. Entry and Re-entry. In the event the lease is terminated, or in the event that the demised lands, or any part thereof, are abandoned by the lessee during the term, The city or its agent or representative may, immediately or any time thereafter, reenter and resume possession of such lands or such part thereof, and remove all persons and property there from either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefore. No reentry by the city shall be deemed an acceptance of a surrender of the lease.

K. Re-Lease. In the event that a lease is terminated, the city council may offer the lands for lease or other appropriate disposal pursuant to the provisions of this Chapter.

L. Forfeiture of Rental. In the event that the lessee terminates the lease because of any breach, the rental payment last made by the lessee shall be forfeited and retained by the city.

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M. Written Waiver. The receipt of rent by the city with knowledge of any breach of the lease by the lessee, or of any default on the part of the lessee in observance or performance of any of the conditions or covenants of the lease, shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the city to enforce any covenant or provision of the lease, nor any waiver of any right thereunder by the city unless in writing, shall discharge or invalidate such covenants or provisions or affect 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 other sum of money after the termination in any manner, of the term demised, or after the giving by the city of any notice thereunder to effect such termination, shall not reinstate, continue or extend the resultant term therein demised, or destroy, or in any manner impair the efficiency of any such notice or termination as may have been given thereunder by the city to the lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the city administrator.

N. Expiration of Lease. Unless the lease is renewed or sooner terminated, as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up unto the Lessor all of the leased land on the last day of the term of the lease.

O. Renewal of Lease.

1. Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties, thereto, the council may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, ~~without competitive bidding,~~ provided:

a. The lessee or his assignee makes written application ~~therefore~~ at least ninety days prior to such termination;

b. The lessee is not in default under the lease;

c. The use to which the land is to be put is compatible with the current use classification (or with such new classification as the council may adopt effective at the end of the current lease term) or with the applicable zoning provisions;

d. The lessee's improvements on the leased land are in compliance with applicable building codes, fire and safety codes;

e. The lessee has complied with all requirements of the lease, particularly including the provisions of subsection G of this section, and there are no outstanding

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and unresolved environmental enforcement actions **OR PROCEEDINGS OR NOTICES OF VIOLATION** pertaining to the leased premises;

f. The lessee is current in all monetary obligations to the city, including property taxes, sales taxes, utility bills, and rents for any other lands leased from the city; and

g. Mutually agreeable terms, consistent with the provisions of this chapter governing lease terms, are negotiated by the city and the prospective lessee.

2. Such lease shall be for an annual rent equal to the ~~percentage of the appraised~~ value of the land which is then being charged for new leases or a consideration is determined by the council to be in the best interest of the city, and shall be subject to adjustment on every ~~third~~ **FIFTH** anniversary

3. Any renewal preference granted the lessee is a privilege, and is neither a right nor bargained for consideration.

P. Removal or Reversion of Improvements upon Termination of Lease. Improvements owned by a lessee may within thirty calendar days after the termination of the lease be removed by **THE LESSEE** ~~him~~, provided, such removal will not cause injury or damage to the lands or improvements **OF THE CITY** ~~demised~~; and further provided that the city council may extend the time for removing such improvements in cases where **ACTUAL** hardship is **ESTABLISHED TO THE SATISFACTION OF THE COUNCIL**. ~~proven~~. All periods of time granted the lessee to remove improvements, are subject to the lessee paying to the city pro rata lease rentals for such periods. If any improvements and/or **PERSONAL PROPERTY** ~~chattels~~ are not removed within the time allowed, such improvements and/or **PERSONAL PROPERTY** ~~chattels~~ shall revert to, and absolute title shall vest in, the city, **WITHOUT ANY FURTHER NOTICE TO THE LESSEE**.

Q. Inspection. The lessee shall allow an authorized representative of the city to enter the leased land at any reasonable time for the purposes of inspecting the land and improvements thereon. Upon the city's request, the lessee shall permit an authorized representative of the Alaska Department of Environmental Conservation (ADEC) to make an environmental audit of the leased premises. Notwithstanding any confidentiality provisions in federal or state law, by entering into the lease, the lessee agrees that the results of any environmental audit of the premises made by or at the order of any state or federal agency shall be made available to the city as land owner.

R. Use of Material. All coal, oil, gas and other minerals, and all deposits of stone, earth or gravel valuable for extraction or utilization, are reserved by the city and shall not be removed from the land except with written

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permission of the council. The lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoil, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the council in writing.

S. Rights-of-way. The lessor expressly reserves the right to grant easements or right-of-way across leased land if it is determined in the best interest of the city to do so. If the lessor grants an easement or right-of-way across any of the leased land, the lessee shall be entitled to damages for all lessee-owned improvements destroyed or damaged. Damages shall be limited to improvements only and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate the lessee for the loss of uses.

T. Warranty. The city does not warrant by its zoning, classification or leasing of land that the land is ideally suited for the use authorized under the zoning, classification or lease, and no guaranty is given or implied that it will be profitable to employ the land for **ANY** ~~said~~ use.

U. Notice or Demand. Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in the U.S. mails enclosed in a registered or certified mail prepaid envelope addressed as herein provided. **E-MAIL SHALL NOT CONSTITUTE PROPER NOTICE UNDER THIS SECTION.**

V. Additional Lease Terms. Any lease shall contain such additional limitations, reservations, requirements or special conditions as the council may determine ~~are appropriate~~ to protect the city's interest, including (without limitation) requirements (a) for improvements of a specified kind and value to be constructed or located on the land by the lessee within a specified time period, (b) for the lessee to complete the improvements set forth in the development plan submitted with the lease application within a specified time period, or (c) requirements that the lessee **DEFEND AND** indemnify the city against the third party claims for personal injury or property damage arising from lessee's occupancy of **OR USE OF** the land, and **PROVIDE** ~~support that indemnification with~~ liability insurance **IN AN AMOUNT DETERMINED BY THE CITY AND REQUIRING THAT** naming the city **BE NAMED** as an additional insured.

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ARTICLE IV. DISPOSITION OF CITY-OWNED PERSONAL PROPERTY

2.56.400 Value schedule for disposal of personal property.

A. Personal property, other than surplus stock, valued at less than five thousand dollars may be disposed of upon such notice and terms considered reasonable by the mayor, taking into consideration the value of the article, the reason for disposal, and the general preference for disposal by competitive bid. The mayor shall report disposals to the council.

B. Personal property valued at more than five thousand dollars but less than ten thousand dollars may be disposed of upon such notice and terms considered reasonable by the mayor and approved by the city council by resolution, taking into consideration the value of the article, the reason for disposal, and the general preference of disposal by competitive bid.

C. Personal property valued at more than ten thousand dollars, but less than one hundred fifty thousand dollars shall be disposed of in the manner provided for land under one hundred fifty thousand dollars as required in subsection B of Section 2.56.160.

D. Personal property valued at more than one hundred fifty thousand dollars shall be disposed of in the manner provided for land over one hundred fifty thousand dollars as required in subsection C of Section 2.56.160. (Ord. 98-15 §§ 3(part), 4(part), 1998: Ord. 85-06-13-02 § 4.01, 1985)

2.56.410 Competitive bidding not required for sale of surplus or obsolete goods. The mayor may sell the following without giving an opportunity for competitive bidding:

A. Surplus Stock or obsolete supplies, materials or equipment whose total value does not exceed five thousand dollars in a single transaction.

B. Supplies, materials or equipment when sold at a price at least as great as that paid by the city for the same. (Ord. 98-15 §§ 3(part), 4(part), 1998: Ord. 85-06-13-02 § 4.02, 1985)

2.56.420 Surplus stock or obsolete supplies, materials or equipment. A. All city departments shall submit to the mayor or the mayor's designee at such times and in such form as the mayor shall prescribe, reports showing stocks of all supplies, materials or equipment that are no longer used or that have become obsolete, worn out or scrapped.

B. The mayor or the mayor's designee shall have the authority to transfer surplus stock from one city department to another and provide for proper fiscal transfer of such.

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C. The mayor or the mayor's designee, with the approval of the city council by resolution shall have the authority to sell all surplus stock or obsolete supplies, materials or equipment valued at over five thousand dollars in a single transaction, that have become unsuitable for public use, or to exchange the same for or trade-in the same on any new stock, supplies, materials or equipment.

1. Sales of surplus stock or obsolete supplies, materials or equipment valued at over five thousand dollars under this section shall be made to the highest responsible bidder.

2. The mayor or the mayor's designee shall conduct the sale and issue the certificates of sale to the purchaser of surplus stock or obsolete supplies, materials or equipment. (Ord. 98-15 §§ 3(part), 4(part), 1998: Ord. 85-06-13-02 § 4.03, 1985)

2.56.430 Declaration of obsolescence. No surplus stock or obsolete supplies, materials or equipment having a value of more than five thousand dollars may be sold until the city council by resolution shall have declared them obsolete or surplus. (Ord. 98-15 §§ 3(part), 4(part), 1998: Ord. 85-06-13-02 § 4.04, 1985)

ARTICLE V. SALE OF NATURAL RESOURCES

2.56.500 Power to dispose of natural resources. Except as provided herein, the city may sell, convey, exchange, transfer, donate, dedicate, direct or assign to use, or otherwise dispose of city-owned natural resources by any lawful means of conveyance. (Ord. 98-15 § 4(part), 1998)

2.56.510 Natural resources defined. As used in this chapter, "natural resources" includes any timber, rock, minerals, water, or other materials created by natural causes. "Natural resources" also includes trees or plants planted by man. (Ord. 98-15 § 4(part), 1998)

2.56.520 Sale or disposal-Form. The city may sell or dispose of natural resources by any lawful means. Any instrument requiring execution by the city shall be signed by the mayor or the mayor's designee and attested by the city clerk. (Ord. 98-15 § 4(part), 1998)

2.56.530 Sale or disposal-Rights and powers. Except as provided herein, the city shall have and may exercise all rights and powers in the sale and disposal of natural resources as if

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the city were a private person. The city may sell or dispose of any natural resource, including natural resources acquired or held for or devoted to a public use, when in the judgment of the city council it is no longer required for city purposes. (Ord. 98-15 § 4(part), 1998)

2.56.540 Natural resource exchanges. The city council by resolution may approve the conveyance and exchange of natural resources, **EXCEEDING FIVE THOUSAND DOLLARS**, for equivalent natural resources, or for goods and services subject to such conditions as the council may impose on the conveyance or exchange, whenever, in the judgment of the city council, it is advantageous to the city to make the natural resource exchange. (Ord. 98-15 § 4(part), 1998)

2.56.550 Public sale-When required. Unless otherwise provided in this chapter, natural resources no longer used or useful for a public use or purpose, exceeding five thousand dollars, shall be sold to the highest responsible bidder at a public sale. (Ord. 98-15 § 4(part), 1998)

2.56.560 Public sale procedures. Natural resources of the city, except as otherwise provided in this chapter, shall be sold or otherwise disposed of as follows:

A. The city council shall make a determination that the natural resource exceeding five thousand dollars is no longer used or useful for a public use or purpose and shall recommend that the natural resource be sold.

B. An estimated value of the natural resource shall be made using the best available information to determine current market value.

C. After the estimated value of the natural resource has been determined, the city council may by resolution direct the sale of such natural resource under such terms and conditions as is required, including the minimum offered sales price.

D. Notice of disposition and the manner in which the natural resource is to be disposed of shall be published in a newspaper of general circulation within the city once each week for two successive weeks not less than thirty days prior to the date set for the public sale.

E. Notice shall also be posted in at least three public places within the city for at least thirty days prior to the date set for the public sale.

F. The notice must contain a brief description of the natural resource, its location, terms and conditions of sale, minimum offered sales price, and the time and place set for auction or bid opening. (Ord. 98-15 § 4(part), 1998)

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2.56.570 Minimum acceptable offer. If there are no acceptable offers, the mayor, or the mayor's designee may negotiate for the sale of natural resources but the city council must, by resolution, approve the terms, price, and conditions of any such negotiated sale, **EXCEEDING FIVE THOUSAND DOLLARS**, before such sale shall be binding upon the city. (Ord. 98-15 § 4(part), 1998)

2.56.580 Conditions of sale. The city council, in the resolution authorizing the sale of natural resources **EXCEEDING FIVE THOUSAND DOLLARS**, shall set forth the terms and conditions of the public sale. The council reserves the right to reject any and all bids received at the public sale, if the highest bid is below the minimum offered sales price plus the cost of sale or is not made by a responsible bidder. The resolution shall provide if the sale is for cash, or cash deposit and purchase agreement. The city council shall approve any purchase agreement prior to its execution by the city. The approval of any public sale by the council authorizes the mayor or the mayor designee to take all steps and execute all instruments to complete and close the sale. The mayor, or the mayor's designee, shall conduct the sale, and shall give to the buyer a receipt for all moneys received by the city. A purchaser at a public sale who fails to make such other cash payments within the times required by the resolution shall forfeit any cash deposit paid to the city. (Ord. 98-15 § 4(part), 1998)