

See AO 2002 135 r

Submitted by: Chair of the Assembly at the  
Request of the Mayor  
Prepared by: Department of Law  
For reading: September 10, 2002

Anchorage, Alaska  
AO 2002-135

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION 25.40.025 REGARDING HERITAGE LAND BANK PROPERTY DISPOSALS, TO CLARIFY LEASE REQUIREMENTS, ALLOW FOR FLEXIBILITY IN METHODS OF DETERMINING PROPERTY VALUES, AND TO ALLOW FOR DISPOSITION OF PROPERTY FOR LESS THAN FAIR MARKET VALUE IN CONNECTION WITH SPECIFIC PROJECTS BENEFITING THE PUBLIC

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1.** Anchorage Municipal Code section 25.40.025 is hereby amended to read as follows: *(the remainder of the section is not affected and therefore is not set out.)*

**25.40.025      Heritage Land Bank disposals.**

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D. Except as otherwise provided in this section, a[A]ll proposed Heritage Land Bank land sales shall occur by an open competitive bid process for at least the appraised fair market value of the land, as determined by a certified real estate appraiser designated by, and given appropriate written instructions from, the Heritage Land Bank. An application to purchase Heritage Land Bank land shall grant the applicant no right of preference or priority.

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F. The Heritage Land Bank may lease Heritage Land Bank land.

The leases shall be awarded by open competitive bid process in one of the following ways:

a. for at least appraised fair market rental rates, as determined by a certified real estate appraiser designated by, and given appropriate written instructions from, the Heritage Land Bank; [,]

b. [OR] percentage of [THE GROSS] receipts; [,]or

c. user fee equivalent.

2. Where leases are based on appraised fair market rental rates under subsection F.1.a above, t[T]he lease rates shall be adjusted at intervals of no more than five years to reflect current market conditions. An application to lease shall grant the applicant no right of preference or priority. Heritage Land Bank land may be leased non-competitively to a non-profit agency for less than its appraised fair market value if the municipal benefits which are projected to accrue are found by the mayor and the assembly to be in the best interest of the municipality.

G. “Appraised fair market value,” for purposes of this chapter with respect to land sales or exchanges but not leases, means the most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. [WHERE REQUIRED, THE APPRAISED FAIR MARKET VALUE OF HERITAGE LAND BANK LAND FOR DISPOSAL SHALL BE DETERMINED BY A CERTIFIED REAL ESTATE APPRAISER DESIGNATED BY, AND GIVEN APPROPRIATE WRITTEN INSTRUCTIONS FROM, THE HERITAGE LAND BANK.] If the appraised fair market value would be increased by a rezoning of a parcel of land prior to its disposal, the Heritage Land Bank may seek a rezoning under applicable municipal procedures, taking into account the compatibility with the surrounding neighborhood.

H. In order to assist development that will provide public benefits and notwithstanding any other provision of this section, Heritage Land Bank land may be disposed of by lease, sale or other disposition, for the purpose of facilitating a specific project. The project shall provide public benefits. In addition to and consistent with the applicable requirements of titles 21, 23 and 24 of this code, the disposition shall include additional requirements to insure the proper development of the project in the public interest. Disposals pursuant to this subsection shall be through requests for proposals or through invitations to bid. The disposition of property pursuant to this subsection may be for less than fair market value or fair market rental rate, in which case the Heritage Land Bank shall, for informational purposes only:

1. provide a descriptive summary of the public benefits expected from the project; and

2. using a valuation technique that in the discretion of the Heritage Land Bank is suitable to the proposed transaction, determine the

approximate value of the property if it were disposed of without the development requirements imposed pursuant to this subsection.

No appraisal or other determination of fair market value or fair market rental rate is required for dispositions under this subsection. Assembly approval of a disposition under this subsection shall include a finding that the disposition provides public benefits.

(AO No. 95-198(S-3), § 2, 12-5-95)

**Section 2.** This ordinance shall be effective immediately upon passage and approval by the Anchorage Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk

**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects - General Government**

AO Number: 2002-135      Title: **amending Anchorage Municipal Code section 25.40.025 regarding Heritage Land Bank property disposals, clarifying lease requirements, allowing for flexibility in methods of determining property values, and allowing disposition of property for less than fair market value in connection with specific projects benefiting the public.**

Sponsor: HLB

Preparing Agency: Heritage Land Bank

Others Impacted:

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<b>CHANGES IN EXPENDITURES AND REVENUES:</b>	<b>(Thousands of Dollars)</b>			
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	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>
Operating Expenditures				
1000 Personal Services				
2000 Supplies				
3000 Other Services				
4000 Debt Service				
5000 Capital Outlay				

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**TOTAL DIRECT COSTS:** \$0.00    All transaction costs are the responsibility of purchaser or will be recovered by proceeds of sale flowing to MOA

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6000 IGCs

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**FUNCTION COST:**

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**REVENUES:**

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**CAPITAL:**

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**POSITIONS:** FT/PT and Temp.

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**PUBLIC SECTOR ECONOMIC EFFECTS:**

This ordinance provides important additional land leasing and disposal options for the Heritage Land Bank, in order to clarify leasing requirements, provide flexibility in determining property values, and provide incentives for economic development, including the ability to dispose of land for less than fair market value.

Passage of this ordinance brings no immediate public or private sector economic effects. It does, however, allow development proposals to be brought to the Assembly for consideration. Each of these proposals must stand on their own merits, and will be accompanied by SEE's.

The first anticipated development project to be brought to the Assembly through this ordinance adoption will likely be an amended lease with Glacier Valley Development Corporation (GVDC) for the proposed resort golf course in Girdwood. HLB anticipates bringing this to the Assembly before the end of the year. Anticipated public and private sector economic effects will depend upon the terms of the amended lease with GVDC.

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**PRIVATE SECTOR ECONOMIC EFFECTS:**

The ordinance has the potential to encourage economic development, and benefit the private sector. Each proposal brought to the Assembly must stand on its own merits, and will be accompanied by a SEE.

The first anticipated development project to be brought to the Assembly through this ordinance adoption will likely be an amended lease with Glacier Valley Development Corporation for the proposed resort golf course in Girdwood. HLB anticipates bringing this to the Assembly before the end of the year.

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Prepared by: **George J. Cannelos**

Telephone: **343-4337**

Validated by OMB: \_\_\_\_\_

Approved by: \_\_\_\_\_  
(Director, Preparing Agency)

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# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. 795 -2002

MEETING DATE: September 10, 2002

From: Mayor

Subject: AO 2002- 135; amending Anchorage Municipal Code section 25.40.025 regarding Heritage Land Bank property disposals, clarifying lease requirements, allowing for flexibility in methods of determining property values, and allowing disposition of property for less than fair market value in connection with specific projects benefiting the public.

### Purpose and Summary

The purpose of these proposed code changes is to provide the Heritage Land Bank (HLB) with increased flexibility to carry out land disposals, including sales and leases. This ordinance would give HLB broader authority to negotiate more complex real estate developments, including the authority to recommend less than fair market value disposals to the Assembly in connection with projects that provide public benefits.

In summary, this ordinance:

- Is good public policy, since the Municipality has relatively few land-related development incentives it can offer the private sector, compared to other cities.
- Maintains HLB's long-standing and important mission to safeguard uncommitted public property, and protects HLB's rigorous public approval process.
- Will facilitate the development of the proposed resort golf course in Girdwood, by allowing amendments to the lease with Glacier Valley Development Corporation (GVDC) to be brought before the Assembly.

This AM offers the following information to assist the Assembly:

- Background.
- Examples of property disposition provisions from other Alaska jurisdictions.
- Public accountability and safeguards.
- The public process.
- Potential applications to HLB property.

- Impact of this ordinance on the proposed resort golf course in Girdwood.
- Recommending a less than fair market value disposal for the golf course.
- How this ordinance responds to issues raised by the Superior Court.
- Sectional analysis of changes from the existing ordinance.

## Background

HLB has one of the most compelling missions of municipal government: "to manage uncommitted municipal land and the Heritage Land Bank fund in a manner designed to benefit present and future residents of Anchorage, promote orderly development, and achieve the goals of the Comprehensive Plan."

HLB's mission requires serving a wide variety of constituents as the Municipality works to implement 2020, the Anchorage bowl's Comprehensive Plan, the Chugiak-Eagle River Comprehensive Plan, and the Girdwood Area Plan. HLB serves as:

- A land management agency to steward uncommitted property for the long-term.
- A catalyst to promote "orderly development" of our community. HLB helps identify, evaluate and transfer lands to other agencies for school sites, parkland and public facilities.
- A facilitator for responsible development, offering land not needed for public purposes to the private sector.

All HLB actions are subject to a rigorous public process. The HLB Advisory Commission and the Anchorage Assembly review and make recommendations through a public hearing process regarding all proposed disposals of HLB lands. The proposed ordinance does not change HLB's public process.

HLB receives no tax dollars, nor any appropriation from the Assembly. HLB supports itself through sales and leases of its land base. HLB originally managed over 25,000 acres. Through transfers to other agencies and occasional disposals, the total is now approximately 8,300 acres. Much of this acreage consists of steep slopes and wetlands unsuited for development.

HLB has proven to be of great value to the citizens of Anchorage, providing key holdings for parks, open space and greenbelts. HLB has provided sites for fire stations, school sites and public facilities of all kinds. HLB land sales have increased the property tax rolls and fostered good development throughout the Municipality.

Many significant land uses and facilities in the Municipality have become reality over the years through contributions from the Heritage Land Bank. These include school sites throughout the Municipality, Town Center Park, demolition of Hollywood Vista

1 apartments, Midtown/Cuddy Park, University Lake Park purchase, protection of Connors  
2 and Klatt Bogs, Alaska Botanical Gardens, Rabbit Creek Greenbelt purchase, Eagle River  
3 Town Commons, Eagle River Greenbelt, and NW1/4 of Section 25 land use study in  
4 Chugiak.

5  
6 Over half of HLB lands are in Girdwood. HLB contributions in Girdwood include the  
7 dedication of Moose Meadows, facilitating development of the Alyeska Prince Hotel,  
8 parking expansion plans for town square, a small industrial park, and the proposed resort  
9 golf course and Nordic skiing center.

#### 10 11 **Examples of Property Disposition Provisions from Other Alaska Jurisdictions.**

12  
13 Disposing of excess HLB property for less than fair market value is an important  
14 component to the proposed ordinance. This section illustrates how several Alaskan  
15 communities use this approach to attract economic development and benefit the public.

16  
17 **Matanuska-Susitna Borough** - The Mat-Su Borough has proposed a  
18 development incentive ordinance "...to provide the assembly certain methods and  
19 incentives to promote industrial, commercial, service, transportation, and recreational  
20 activities and facilities..." Among the proposed incentives is the ability to sell or lease  
21 borough land at less than fair market value. Eligibility is triggered if as few as five jobs  
22 are expected to be created for an existing business, or ten new jobs for a new business.

23  
24 **City of Dillingham** – Chapter 5.20 permits the City Council to "...convey real  
25 property without regard to appraised market value and upon the terms and conditions as it  
26 considers advantageous to the civic welfare of the city, to persons who will agree to  
27 install, maintain or operate a beneficial new industry."

28  
29 **City of Nome** – Chapter 2.10 authorizes the city council, by ordinance, to permit  
30 land disposals "...in furtherance of development of local trade or industry ....without  
31 seeking bids and for less than the current assessed value or current appraised value..."  
32 This chapter also stipulates that disposals under this subsection revert to the city in the  
33 event the real property is "...not being used in furtherance of the development of local  
34 trade or industry justifying the original disposal." According to the City Clerk, Nome  
35 hopes to use this clause to attract major industry or business development to Nome.

36  
37 **City of Sand Point** – Chapter 8.10 provides for less than fair market value sales or  
38 leases in three circumstances: 1) to a government or nonprofit agency providing public  
39 services; 2) in furtherance of economic development; and 3) for residential development.  
40 No appraisal is required if the assembly waives the appraisal requirement.



1 When disposing of property for economic development, the City Council must include:

- 2
- 3 • A finding that the disposal is "...in furtherance of local trade or industry"; and
- 4 • A requirement that the conveyance include a reverter clause "...in the event that
- 5 property is no longer used for the local trade or industry justifying the disposal."
- 6

7 When disposing of property for residential development, the City Council may offer land  
8 to a "domiciled city resident" who desires the parcel for a "primary place of residence",  
9 provided "...there is a current residential housing shortage....and that making land  
10 available...at less than fair market value is in the public interest." Deeds shall include  
11 requirements for building and occupying the dwelling for a certain number of years.

12  
13 **City of Soldotna** – Chapter 2.34 permits the City Council to dispose of land for at  
14 least 95% of fair market value, unless council "...makes a finding that it would be  
15 advantageous to the municipality to accept other terms and conditions..." According to  
16 the City Manager, the Council is willing to consider less than fair market value  
17 transactions to promote appropriate development, citing as an example of an effort to  
18 locate an assisted living center next to the hospital. Land would have been disposed of at  
19 less than fair market rates, but the transaction fell through for other reasons.

20  
21 These ordinances demonstrate that it is not unusual for jurisdictions to allow for less than  
22 fair market value dispositions if a generalized public interest, such as economic  
23 development, is expected to be advanced by the transaction. Thus, the proposed revision  
24 to AMC 25.40.025 to allow less than fair market value dispositions that will provide  
25 public benefits is consistent with ordinances in several other Alaska jurisdictions.

## 26 27 **Public Accountability and Safeguards**

28  
29 The HLB Advisory Commission received testimony concerning the potential for abuse  
30 with an ordinance allowing less than fair market value transactions. Testimony centered  
31 on a distrust of government, and a concern over the potential for "sweetheart deals."

32  
33 The safeguards in place adequately protect the public trust. First, these changes will have  
34 no affect on HLB's already rigorous public process, and the existing code requirement to  
35 secure Mayoral and Assembly approval for any proposed land disposals. Second, any  
36 potential less than fair market value disposal would have the same safeguards that are  
37 already in place; e.g.:

- 38
- 39 • All HLB disposals must conform to adopted Comprehensive Plans of the
- 40 Municipality.
- 41 • All HLB disposals must be in accordance with an Assembly adopted HLB Work
- 42 Plan (or an amended plan).

- 1 • The Mayor and a majority of the Assembly must agree before any disposal takes
- 2 place.
- 3 • All disposals, except for those negotiated with non-profit organizations which are
- 4 approved by the Mayor and Assembly, will be through existing competitive bid
- 5 processes.
- 6

7 Finally, HLB believes that less than fair market value transactions would be infrequently  
8 applied. The majority of HLB sales and leases would continue to be for fair market  
9 value, based on certified appraisals.

#### 10 11 **The Public Process to Date**

12  
13 The public process to evaluate and comment on the proposed ordinance changes has  
14 proceeded as follows:

- 15  
16 • Public notice was provided in accordance with AMC 25.40 prior to May 8, 2002
- 17 Heritage Land Bank Advisory Commission (Commission) meeting.
- 18 • On May 8 2002, the Commission took testimony during a public hearing. The
- 19 hearing was continued to the June Commission meeting to give the public
- 20 additional time to consider and comment on the proposals.
- 21 • As a courtesy, Mr. Cannelos presented the ordinance changes to the Girdwood
- 22 Board of Supervisors during their May 20, <sup>2002</sup> meeting.
- 23 • Mr. Cannelos and Mr. Tilton discussed the ordinance changes in depth to a special
- 24 meeting of the Girdwood Land Use Committee on June 5, 2002.
- 25 • The Commission heard testimony from 13 people during the continued public
- 26 hearing on June 12, 2002 and considered several written submissions. The
- 27 Commission closed the public hearing, debated the issue, and requested changes to
- 28 the draft ordinance from the Municipal Attorney's Office.
- 29 • The Commission concurred with changes prepared by the Municipal Attorney's
- 30 Office, and voted on July 17th to recommend Assembly approval of the draft
- 31 ordinance.
- 32

#### 33 **Potential Applications on HLB Property**

34  
35 HLB envisions a variety of potential uses in the future, in addition to the golf course  
36 project in Girdwood. For example:

- 37  
38 • Industrial and business parks. Vision Anchorage, the current economic
- 39 development planning project sponsored by AEDC concludes that Anchorage is at
- 40 a disadvantage for competing with outside businesses because of a lack of ready
- 41 and available land for industrial and business clients. Anecdotaly, the
- 42 Municipality has attempted to sell, at appraised fair market value, a nine acre

1 parcel managed by the Anchorage Water and Wastewater Utility at Minnesota and  
2 International Airport Drive without success. No bids were received despite two  
3 widely advertised bidding periods. The ability to lease or sell such property at less  
4 than fair market, or appraised value may be a necessary incentive to attract  
5 desirable business to Anchorage.

- 6 • Affordable housing subdivisions. There is a growing need for affordable housing  
7 projects throughout Anchorage, including in the Girdwood Valley. HLB manages  
8 over 5,000 acres in Girdwood, and has the potential to develop a subdivision  
9 aimed at low to moderate income residents. If Code permitted HLB to attach  
10 development conditions HLB property could be disposed of to provide a  
11 subdivision compatible with the small town character envisioned in the Girdwood  
12 Area Plan.
- 13 • Large-scale projects which provide public benefits, but which would otherwise be  
14 too risky or too infeasible for private sector investment.

#### 16 **How This Ordinance Affects the Proposed Resort Golf Course in Girdwood**

17  
18 While the ordinance would apply on all HLB properties, the first application for these  
19 changes will likely be the proposed resort golf course in Girdwood. In 1997, the  
20 Municipality awarded RFP No. HLB 97-01 to Glacier Valley Development Corporation  
21 (GVDC). This award gave GVDC the exclusive opportunity to negotiate a long-term  
22 lease, including options to purchase property for golf course residential and commercial-  
23 related uses. GVDC and the Municipality negotiated a lease agreement which was  
24 approved by the Assembly in August 1998. In *Turnagain Arm Conservation League v.*  
25 *Municipality of Anchorage*, 3AN-99-04120, the Alaska Superior Court found the  
26 ordinance approving the lease invalid on a number of procedural grounds.

27  
28 The changes proposed by this ordinance also address the deficiencies and problems  
29 identified by the Alaska Superior Court. If the Assembly passes the proposed ordinance,  
30 HLB will negotiate with GVDC to amend the lease, as required, to move the project  
31 forward.

- 32  
33 • Results of lease negotiations would be brought before the Commission for  
34 consideration.
  - 35 • If the Commission endorses the amended lease, HLB will forward the package to  
36 the Assembly for consideration.
  - 37 • If the Assembly endorses the lease, the lessee would then embark upon the testing  
38 and master planning phases of the project. These phases call for extensive public  
39 involvement as part of the planning process.
- 40  
41  
42

Here is a brief history of this project:

- During the 1980s, the State conveyed lands in the Girdwood valley to the Municipality.
- Debate and concern over the future development of these lands led to the creation of the Girdwood Area Plan (GAP), adopted as an official Comprehensive Plan in 1995. The GAP set forth a significant policy direction for Girdwood – that it should strive to take advantage of its unique setting and character to become a four-season resort and recreational area, as opposed to pursuing development patterns to become another bedroom community for the Anchorage bowl.
- As one step in achieving the above goals, HLB released a Request for Proposals for development of a resort golf course and Nordic ski center in 1997. Subsequently, the Municipality and Girdwood Valley Development Corporation negotiated and signed a lease in 1998.
- The RFP, GVDC's proposal and the lease all call for a world-class resort golf course to be planned and developed in the lower Girdwood valley. The team, led by Tom Yeager and Jim Barnett, includes Hurdzen Fry Golf Course Design. Dr. Michael Hurdzan is recognized internationally for environmentally-responsive golf course design, and holds a Ph.D. in environmental plant physiology.
- The lease provides for a study area consisting of approximately 330 acres for the golf course/Nordic ski area, up to 10 acres for commercial use, up to 40 acres for residential development, and another 350 acres for open space.
- The lease provided for an extensive testing and master planning phase, prior to final approval by the Municipality. Although the lease set forth a well-conceived public evaluation process prior to actual development, opponents of the project sued the Municipality for violating the Municipality's ordinances, which required a site specific land use study be completed prior to commencement of the lease.
- Consequently, the extensive studies and public process outlined in the master plan were placed on hold.
- During 2001, HLB commissioned Chris Beck & Associates to prepare the site specific land use study. Adopted by the HLB Advisory Commission in November 2001, this study identifies the overall lease area, and sets forth important environmental and development guidelines to assure a successful project. HLB engaged the public in the land use study throughout the year, including the Girdwood Land Use Committee, the Girdwood Board of Supervisors, the Planning & Zoning Commission and the HLB Advisory Commission.
- In December 2000, HLB commissioned a flood plain study of Virgin Creek, in response to public concern that important environmental baseline data was not yet available, from which to make informed decisions. The draft study was submitted to FEMA for their review in August 2002.

- HLB has sought to identify the best strategy to both meet the requirements of the court, and give HLB more flexibility to undertake development agreements throughout the Municipality, which benefit the public. The proposed ordinance reflects our efforts to not only bring this project back on track, but also to give HLB important tools to promote sensible development throughout the Municipality.

#### **Recommending a Less Than Fair Market Value Disposal for the Golf Course Property.**

A common misperception from critics of the golf course project is that HLB has committed to selling 50 acres of commercial and residential property to GVDC for \$7,000/acre, and to leasing land for the golf course at less than fair market value.

First, the lease rates are based on a percentage of gross receipts earned from all operations of the resort golf course. These rates represent fair market value for a recreational project such as a golf course, but are certainly less than could be received if the property were leased for a residential or commercial development project.

Second, GVDC is not able to purchase any land from HLB without first investing over \$10 million to complete the golf course. Only in the second year of operation does a five-year option period begin, when GVDC can purchase up to 40 acres of residential land and up to 10 acres of resort-related commercial property. Thus, the value of the 50 acres is linked directly to the overall private sector investment to develop and operate the resort golf course.

Third, most of the 50 acres is off-road and has no infrastructure, further depressing the "as is" market value for development.

The Alyeska Prince Hotel in Girdwood is an example of a similar negotiated sale that brought millions of dollars of positive benefits to Anchorage. Alyeska and HLB negotiated a sales price of \$17,000/acre for the hotel footprint, but title to the property did not pass to Alyeska until Seibu actually completed the hotel.

The leased portions will remain at fair market rental value. Depending on lease negotiations, HLB may or may not come forward with a less than fair market value sale for the 50 acres.

#### **How the Ordinance Responds to Issues Raised by the Superior Court.**

In an oral ruling on February 2, 2000 and a subsequent written order dated February 6, 2001, in the case *Turnagain Arm Conservation League v. Municipality of Anchorage*,

1 3AN-99-04120, the Superior Court identified four legal issues implicated by the  
2 Girdwood golf course lease ("Lease") approval process. Each issue raised by the  
3 Superior Court, as well as how the issue is resolved by the proposed Code revision, is  
4 addressed below:

## 5 6 **1. Appraisal Requirements.**

7  
8 *Issue:* The Superior Court determined that the ordinance approving the Lease was  
9 invalid because no certified appraisal was obtained. This conclusion was based on the  
10 Code definition of "appraised fair market value" applicable to all dispositions that stated:  
11 "Where required, the appraised fair market value shall be determined by a certified real  
12 estate appraiser designated by, and given appropriate written instructions from, the  
13 Heritage Land Bank." AMC 25.40.025G. Even though this sentence is qualified by the  
14 "where required" language, the Superior Court decided that this applies to all fair market  
15 value dispositions. The Superior Court also determined that the appraisal requirement  
16 applied regardless of whether the disposition was by sale or by lease, and without regard  
17 to how the lease payment terms are structured.

18  
19 *Resolution:* The proposed revisions address these issues in three ways: 1) the sentence  
20 quoted above is deleted from AMC 25.40.025G, and similar language is inserted in AMC  
21 25.40.025D, relating to fair market value sales, and in AMC 25.40.025F, relating to fair  
22 market value leases; 2) the definition of "appraised fair market value" is revised to  
23 clarify the definition applies only to sales but not to leases; and 3) new AMC 25.40.025H  
24 specifically provides that no appraisal or other determination of value is required in  
25 Assembly-approved less than fair market value development projects benefiting the  
26 public.

## 27 28 **2. Lease Payment Adjustment Requirements.**

29  
30 *Issue:* AMC 25.40.025F identifies three types of lease payment arrangements: 1) fair  
31 market rental rates; 2) percentage of gross receipts; and 3) user fee equivalent. AMC  
32 25.40.025F requires lease rental rate adjustments at five-year intervals to reflect market  
33 conditions. As a percentage-of-receipts lease, the Lease does not contain such  
34 adjustments, because market rate leases are the only payment arrangement reasonably  
35 susceptible to interim market rate adjustments. The Court determined that AMC  
36 25.40.025F applies to all leases regardless of the basis for the payment arrangement, and  
37 found the ordinance approving the Lease illegal because no five-year market adjustments  
38 were included.

39  
40 *Resolution:* AMC 25.40.025F has been revised to clarify that the requirement of market  
41 rate adjustments applies only to leases based on appraised fair market value rental rates.  
42

**3. Less Than Fair Market Value Dispositions.**

**Issue:** The Superior Court determined that the Code does not allow for less than fair market value sales of HLB property, except for dispositions to non-profits.

**Resolution:** This issue is addressed by adding a new subsection H, which allows for disposition of HLB property subject to development conditions advancing the public interest. This subsection specifically provides that no appraisal is required for less than fair market value dispositions. However, HLB is required to provide a descriptive summary of the public benefits expected from the project and, using a valuation technique that in the discretion of the Heritage Land Bank is suitable to the proposed transaction, determine the approximate value of the property if it were disposed of without the development requirements imposed pursuant to this subsection. Assembly approval of a disposition under this subsection must include a finding that the disposition will provide public benefits.

**4. Site Specific Land Use Study.**

**Issue:** AMC 25.40.025C requires a site specific land use study if available information is insufficient to determine whether the disposal of the parcel or parcels is consistent with the comprehensive plan and implementing measures. No site specific land use study had been conducted when the Superior Court reviewed the case. The Superior Court determined that the parcels to be disposed were not identified, and so there was insufficient information to determine whether the disposal was consistent with the comprehensive plan and implementing measures.

**Resolution:** A site specific land use plan for the Girdwood Golf Course disposition has been completed. To comply with the court, HLB commissioned a site specific land use study, which was approved by the commission in November 2001. The *Girdwood Golf Course, Trail & Open Space Project, Site Specific Land Use Study, Generalized Land Use Plan*, prepared by Christopher Beck & Associates and Land Design North, defined the boundaries of the open space and the lands to be leased for the proposed project. The study concluded:

A 380 acre golf course/Nordic ski course as outlined in the lease agreement can be developed in a location consistent with the *Girdwood Area Plan*, the more recently adopted *Girdwood Transportation and Commercial Areas Master Plan*, and environmental factors described in this report.

Therefore, the proposed ordinance changes do not address this issue.

**Sectional Analysis**

Following is a paragraph by paragraph discussion of the proposed revisions to AMC 25.40.025.

**1. Subsections A through C and E are unchanged**

**2. Subsection D**, which provides the general rule that sales of HLB land occur through an open competitive bid process for fair market value, is amended to provide that this rule applies “except as otherwise provided in this section.” This is added to insure that subsection D is interpreted consistently with new subsection H, which specifically provides for less than fair market value dispositions. In addition, a clause is inserted in the first sentence to make it clear that an appraisal is required for fair market value sales.

**3. Subsection F is amended in four ways**

- a. The subsection is reorganized into subparagraphs to improve clarity.
- b. A clause is inserted in subsection .a. to make it clear that an appraisal is required for fair market rental rate leases.
- c. Subsection F.1.b is revised to remove the requirement that percentage receipts leases be based on gross receipts. This allows the flexibility to structure leases on the basis of net receipts as well as gross receipts.
- d. Subsection F.2 is revised to make it clear that the requirement of periodic adjustments to reflect market requirements applies only to leases based on fair market rental rates, and not to the other payment formats specified. This amendment specifically addresses the Superior Court’s determination that the Lease was invalid because it did not provide periodic adjustments tied to market rates.

**4. Subsection G contains two amendments**

- a. The definition of fair market value is revised to clarify that it applies only to land sales or exchanges but not to leases. As currently written, the definition appears to be more applicable to sales rather than leases. The amendment will preclude any confusion on that point.
- b. The second sentence, which provides for appraisals by a certified appraiser with instructions from the Municipality, is removed. However, similar language is



1 inserted in AMC 25.40.025D, relating to fair market value sales, and in AMC  
2 25.40.025F, relating to fair market value leases.  
3

4 **5. Subsection H** is new. Subsection H provides a catch-all provision that  
5 empowers the Assembly to approve disposition of property in order to assist development  
6 that will provide public benefits. Dispositions pursuant to this subsection must include  
7 additional requirements to insure the proper development of the project in the public  
8 interest. Disposals must be through the open competitive processes of requests for  
9 proposals or invitations to bid. Dispositions pursuant to this section may be for less than  
10 fair market value. Although a certified appraisal is not required, HLB must provide a  
11 descriptive summary of the public benefits expected from the project and, using a  
12 valuation technique that in the discretion of the Heritage Land Bank is suitable to the  
13 proposed transaction, determine the approximate value of the property if it were disposed  
14 of without the development requirements imposed pursuant to this subsection. Assembly  
15 approval of a disposition under this subsection must include a finding that the disposition  
16 will provide public benefits.  
17

18  
19 THE ADMINISTRATION RECOMMENDS THAT THE ASSEMBLY ADOPT THE  
20 PROPOSED AMENDMENTS TO AMC 25.40.025.  
21

22  
23 Concurrence:

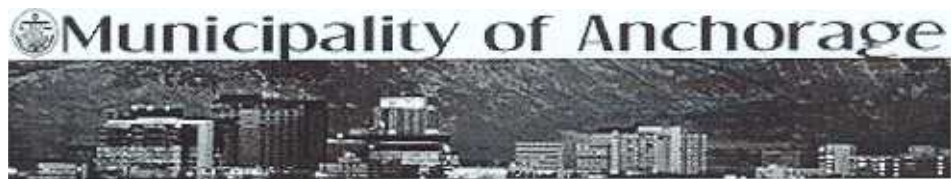
Prepared by:

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29 Municipal Manager  
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George Cannelos, Director  
Heritage Land Bank  
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32 Respectfully submitted:  
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38 Mayor  
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Workflow Name	Action Date	Action	User	Security Group	Content ID	Revis
HLB_SubWorkflow	8/23/02 4:44 PM	Approve	canelosgj	Public	000173	0
OMB_SubWorkflow	8/26/02 9:07 AM	Approve	frascacl	Public	000173	0
Legal_SubWorkflow	8/27/02 8:50 AM	Approve	wheelerda	Public	000173	0
MuniManager_SubWorkflow	8/30/02 3:57 PM	Approve	campbellce	Public	000173	0
MuniMgrCoord_SubWorkflow	8/30/02 5:20 PM	Approve	bealejl	Public	000173	0

**INTRODUCTION**

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