

Introduced By: Mayor Eberhart
Council Member Pruhs
Council Member Gatewood
Finance Committee May 12, 2015
Date: May 18, 2015

ORDINANCE NO. 5981

**AN ORDINANCE AUTHORIZING LEASE OF SPACE IN CITY
HALL TO JONATHAN DUNHAM D/B/A NOEL BOXING &
FITNESS GYM, AND SETTING AN EFFECTIVE DATE.**

WHEREAS, the City owns and maintains City Hall, containing 64,00 square feet of building area, located at 800 Cushman Street, also known as Block 104A, Fairbanks Townsite; and

WHEREAS, the City Council previously leased basement space in City Hall for a successful youth boxing program, and the space is currently vacant; and

WHEREAS, Jonathan Dunham, d/b/a Noel Boxing & Fitness Gym, sent a letter to the City Mayor, as shown in attached "Exhibit A", respectfully requesting a lease of the 1,400 square feet premises for a similar youth boxing program as described in Exhibit "B"; and

WHEREAS, the City administration has reviewed the space and determined that the area is not required for municipal purposes and can be leased to others; and

WHEREAS, Fairbanks General Code of Ordinances Section 70-44 provides that the City may lease to a non-profit organization without public sale and for less than market value, whenever in the judgment of the City Council it is advantageous to do so; and

WHEREAS, it is the finding of the City Council that a lease of City Hall building space to Jonathan Dunham, d/b/a Noel Boxing & Fitness Gym, is in the best interest of the community.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That a lease instrument substantially in the form shown on attached "Exhibit B" is hereby authorized by Council for the purposes herein stated, providing for a two-year lease term, with a three-year renewal to be determined at the discretion of the Mayor.

SECTION 2. That the Mayor is hereby authorized and directed to execute said lease on behalf of the City, and the City Clerk is authorized to attest and affix the City Seal to said instrument, the execution of which shall take place not less than thirty (30) days after the effective date of this ordinance, as prescribed by City Charter Sec. 8.3 and FGC Sec. 70-56.


SECTION 3. That the effective date of this ordinance shall be the 13th day of June, 2015.


JOHN EBERHART, Mayor

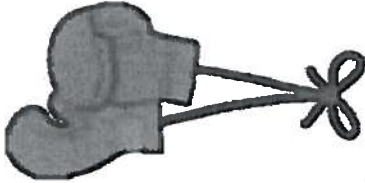
AYES: Walley, Matherly, Gatewood, Cleworth, Staley
NAYS: None
ABSENT: Pruhs
ADOPTED: June 8, 2015

ATTEST:

APPROVED AS TO FORM:


D. DANIELLE SNIDER, CMC, City Clerk


PAUL EWERS, City Attorney



**Noel Boxing & Fitness Gym 1321 Karen Way Apt.
25 Fairbanks, Alaska 99709 Phone (907) 371-7403**

May 6, 2015

Honorable Mayor John Eberhart and Council Members
City of Fairbanks
800 Cushman Street
Fairbanks, Alaska 99701

Subject: Request for Space at City Hall, Youth Boxing Program

Dear Mayor and Council:

Please accept this letter as my introduction and request for basement space in City Hall.

My name is Jonathan Dunham. When the City first leased space to the Fairbanks Boxing Club in 1998, I was personally mentored and coached by the founder, Bill Fairbanks. Seventeen years later, I am in a position to give back to the youth of our community in the same way that I was blessed. While working at a large gym over the last six years, I have coached over 500 young boxers.

With the assistance of a grant writer, I am applying for a Division of Vocational Rehabilitation Grant, for which I am qualified, and a grant from CST. These grants will provide the seed money for sports equipment and monthly expenses. However, approval of these grants will require that I have located a space for the Boxing Club. I also have local funding opportunities, but these too depend on having a suitable space.

Like my own mentor, my goal is to reach out to at-risk youth and young adults. My formula is simple, and that is to require discipline, create pride and to provide rewards and recognition. I believe that I can make a difference in the "prison pipeline" that affects our disadvantaged youth. I hope to provide the sense of belonging through organized sports that many from lower economic backgrounds are denied.

Boxing Club members will be registered with USA Amateur Boxing, who will place them and the Club under their insurance policy, providing liability insurance of \$1,000,000.

I am respectfully requesting that the City grant a lease of the former boxing club space to Noel Boxing & Fitness Gym. I do understand that a lease can only be approved by the City Council. Please let me know if there is anything I can do to support this request. I have, for example, draft rules of conduct and school attendance that I would be happy to share. It is my hope that the City will rent to me on the same basis as the Boys & Girls Club. Thank you for considering this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Dunham'.

Jonathan Dunham
Noel Boxing & Fitness Gym

**EXHIBIT 'B' TO ORDINANCE NO. 5981
DRAFT REAL ESTATE LEASE**

THIS LEASE executed and effective this _____ day of _____, 2015, between THE CITY OF FAIRBANKS, a municipal corporation of the State of Alaska, with address of 800 Cushman Street, Fairbanks, Alaska, 99701, hereinafter called Lessor, and JONATHAN DUNHAM d/b/a NOEL BOXING & FITNESS GYM, with address 1321 Karen Way, Apt. 25, Fairbanks, Alaska 99709, hereinafter called Lessee;

WHEREAS, the City of Fairbanks, by Ordinance No. 5981 authorized execution of this lease of City-owned property identified below.

NOW THEREFORE, Lessor, in consideration of the rent hereinafter specified and of the mutual covenants and agreements herein expressed does lease that certain real property, including land and buildings, described as follows:

1. Lease of Premises. The Lessor leases to Lessee, and Lessee leases from Lessor, the real property located at Fairbanks, Alaska, more particularly described as follows:

1.1 Premises. A portion of 800 Cushman Street, Fairbanks, Alaska, located within Block 104, Fairbanks Townsite, known as "City Hall", containing 1,400 square feet, comprised of the following identified building area:

1.2 Basement. The basement area located in the "north west addition", with entry adjacent to Eighth Avenue, as indicated in Attachment 1.

2. Parking. The following parking is made part of this Lease:

2.1 Reserved Parking. Lessee shall have exclusive use of one designated parking space, located in the "rear" (west) parking lot of City Hall, as indicated in Attachment 2. Street parking is available for use, subject to regulatory signage.

3. Term. The term of this Lease shall be for two years, commencing on July 13, 2015, and ending at midnight on July 12, 2017.

3.1 Renewal. This lease may be renewed for an additional three years upon expiration of the original term, provided that Lessee requests such renewal in writing not less than forty-five days in advance of the termination date. Approval of this renewal request shall be at the sole discretion of the City Mayor.

4. Escape Cancellation. Lessee, upon 90 days advance written notice delivered to the address of Lessor, may cancel and terminate this lease, surrendering the premises in a neat and clean condition.

5. Rent. As compensation for use of the premises during the life of this lease and any extensions thereof, Lessee shall pay monthly its full pro-rata share of the utility expenses for City Hall. The Lessee's pro-rata share of utilities shall be computed as a portion of the total average monthly utility expenses for City Hall, allocated by the percentage of total building area

occupied by Lessee. For purposes of this lease, the pro-rated amount is **\$318.00 per month**. Rent is subject to increase or decrease upon annual review of actual utility expenses.

6. Renovation & Hazardous Materials. Should abatement of asbestos or other hazardous materials within the lease area become necessary during performance of any tenant renovations, the cost of such abatement shall be the responsibility of Lessee. Abatement of asbestos or other hazardous substances which must be performed as part of any renovation or occupancy of the premises shall be conducted in compliance with rules and requirements of the Alaska Department of Labor, Division of Labor Standards, OSHA, and the US Environment Protection Agency. Qualified, certified and competent workers, techniques, and notice and reporting requirements shall be used at all times. Abatement of asbestos or other hazardous substances shall be subject to review and approval by the Building Official and City Engineer. Any tenant renovations or modifications of the lease space shall first be submitted to the Mayor for review and approval at his discretion.

7. Condition. Lessee has inspected the premises, is familiar with its physical condition and accepts the premises in its "as-is" condition.

8. Permitted Uses. Lessee shall use the premises for the nonprofit business of youth boxing and fitness activities.

9. Prohibited Uses. Lessee shall not use or permit the use of the premises or any part thereof in violation of any applicable law, ordinance, regulation, or provision of this Lease. Overnight boarding is specifically prohibited.

10. Access and Security. Access to the lease area for all purposes shall be through the north entrance only, as shown in Attachment 1. Lessee shall be responsible for operation and security of the doors at this location. Lessee shall be responsible for keeping members or other users of Noel Boxing & Fitness Gym within the lease area.

11. Payment of Expenses Relating to the Premises.

11.1 Utilities. Lessee shall be responsible for payment of telephone, cable TV, and other privately contracted services as required by the utility provider. Lessee shall also pay a monthly fee to compensate for general utility usage as set forth in Section 5.

11.2 Maintenance. Lessee shall perform all routine interior maintenance associated with the leased premises proper, including but not limited to incidental replacement of light bulbs, repair of electrical and mechanical systems within the lease area, and general maintenance, keeping the premises in a clean and safe condition. In the event that Lessor performs maintenance or repairs under this section, whether at its election or upon request of Lessee, Lessee shall repay Lessor for the actual costs of materials and labor expended for same. Such charges shall not include indirect costs of Lessor's employees.

Lessor shall perform maintenance of the building exterior, roof, and walls, including mechanical and electrical systems beyond the leased area, exterior maintenance, and snow removal. Lessor shall also maintain sidewalks and grounds adjoining the leased premises. Lessee shall notify Lessor of hazards or safety concerns in the exterior common areas in a timely manner.

11.3 Janitorial and Garbage Collection. Janitorial and garbage service within the premises, if any, shall be provided by Lessee.

11.4 Taxes. Lessor is a municipality of the State of Alaska and is, therefore, exempt from property taxes. If taxes are levied against the leased premises by a governmental body while Lessor remains the owner of record, any such taxes shall be paid by Lessee.

12. Exculpation and Indemnity.

12.1 Exculpation of Lessor. Lessor shall not be liable to Lessee for any damage to Lessee or Lessee's property from any cause. Lessee shall bear all risk of loss as to all personal property of the Lessee, stored, or remaining on or near the premises, including without limitation, inventory, equipment, fixtures, and employees' personal effects.

12.2 Indemnity. Lessee shall defend and hold the Lessor harmless from all damages arising out of any damage or injury to any person or property occurring in, about, or on the premises, excluding exterior public areas.

12.3 Public Liability and Damage Insurance. Lessee at its sole cost shall at all times maintain public liability and damage insurance with a single combined liability limit of \$1,000,000 and insure against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the premises, excluding exterior public areas. All public liability insurance and property damage insurance shall insure performance by Lessee of the indemnity provisions provided herein. Lessor shall be named as an additional insured.

13. Prevention of Waste and Nuisance. Lessee shall not use the premises in any manner that will constitute waste, nuisance, or unreasonable annoyance to Lessor or the owners or occupants of adjacent properties. Violation or breach under this section shall be determined at the sole discretion of the Mayor.

14. Assignment and Sublease. Lessee shall not assign its rights under this Lease or sublet all or any portion of the premises without the prior written consent of Lessor. Consent shall be at the sole discretion of Lessor.

15. Liens. Lessee shall keep the premises free from any liens, including without limitation those liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

16. Consultation with Attorney. Lessee acknowledges that it has the right to review this Lease and all other documents relating to the Lease with its own attorney. Each party electing to have this Lease reviewed by an attorney shall bear the costs and expenses so incurred.

17. Destruction. If during the Lease term, the premises are totally or partially destroyed from any cause, rendering the premises totally or partially inaccessible or unusable, Lessee, at its election, may either terminate this Lease or restore the premises. Lessor shall have no duty to repair or restore the premises. If lessee elects to restore the premises, Lessee will have one hundred twenty (120) days in which to complete the repairs. If Lessee elects not to repair the premises, this agreement will terminate.

18. Right of Entry. Lessor, its agents and authorized employees shall have the right to enter the leased premises to examine it and to make repairs as Lessor may deem necessary or desirable during Lessee's business hours. All such entry shall be preceded by 24 hours

advance notice to Lessee, except that immediate entry shall be allowed in event of an emergency.

19. Default. Failure to occupy and operate the premises for 30 consecutive days or failure to perform any provision of this Lease shall constitute default by Lessee of this Lease. Upon Lessee's default, Lessor shall give Lessee ten days notice to cure the default. No default notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice.

20. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, addressed to the other party at the address set forth in the introductory paragraph of this Lease. Either party may change its address by notifying the other party of the change of address.

21. Attorney's Fees. If Lessor brings or maintains an action for enforcement of any of the covenants, terms or conditions of this Lease, Lessee shall pay all costs incurred by Lessor for such action including attorney's fees in the event Lessee is found to be at fault.

22. Time of the Essence. Time is of the essence of each provision of this Lease.

23. Successors. This Lease shall be binding on and inure to the benefit of the parties and their successors.

24. Severability. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first written above.

LESSEE:
Noel Boxing & Fitness Gym

LESSOR:
City of Fairbanks

By: Jonathan Dunham
Title: Sole Proprietor

By: John Eberhart
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

D. Danyielle Snider, CMC
City Clerk

Paul Ewers
City Attorney

(City seal)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2015 the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared JOHN EBERHART, and D. DANYIELLE SNIDER, and that they acknowledged before me that they executed the same for and on behalf of The City of Fairbanks and under the authority of said municipal corporation so granted by the City Council, as their free and voluntary act and deed of said corporation.

IN WITNESS, I have set my hand and affixed my official seal on this _____ day of _____ 2015.

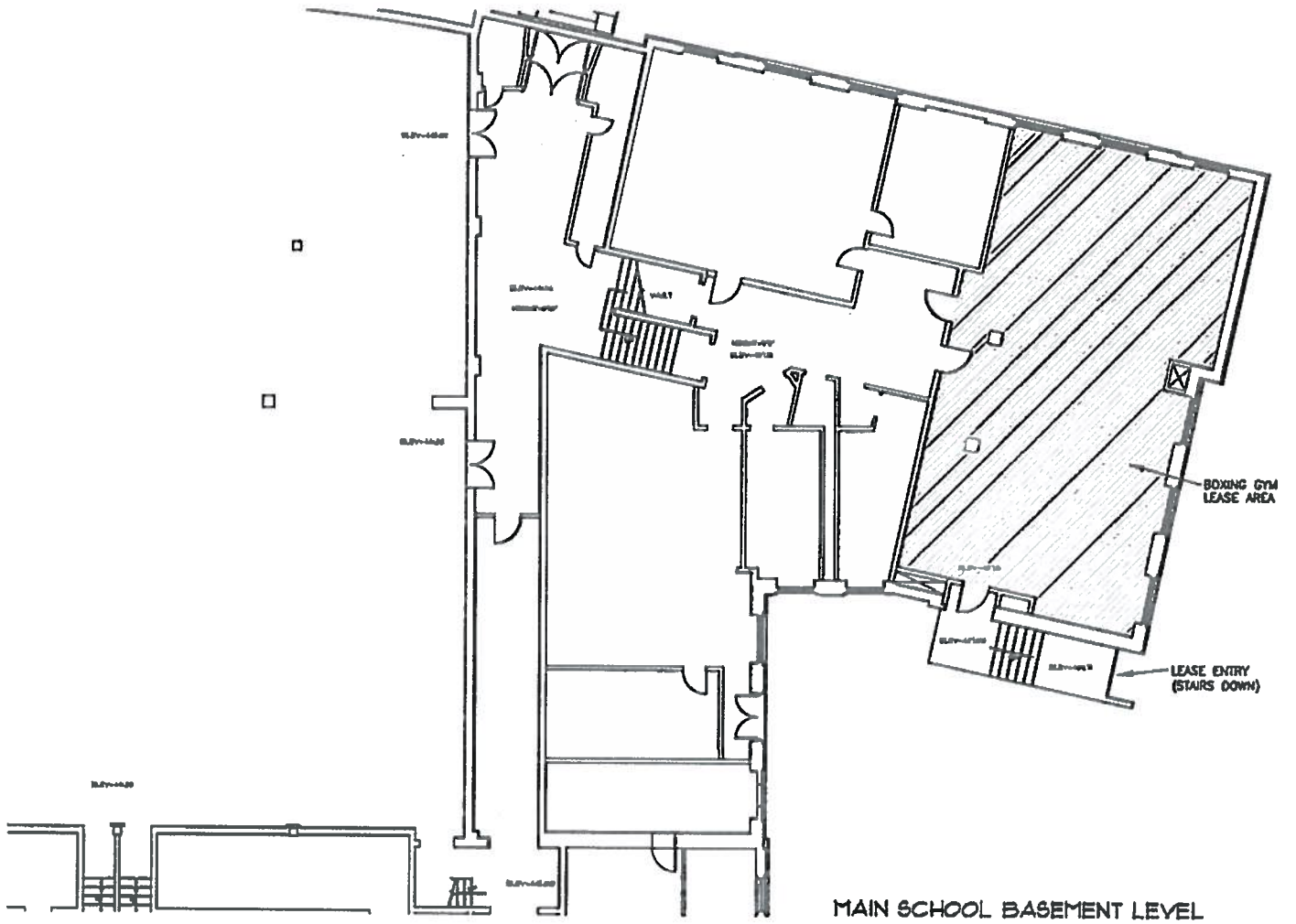
Notary Public
My Commission Expires: _____

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2015 the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared **Jonathan Dunham**, Sole Proprietor, Noel Boxing & Fitness Gym., to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that she/ he signed the same freely and voluntarily for the uses and purposes therein mentioned, having authority to do so.

IN WITNESS, I have set my hand and affixed my official seal on this _____ day of _____ 2015.

Notary Public
My Commission Expires: _____



MAIN SCHOOL BASEMENT LEVEL

LEASE 'ATTACHMENT 1'

8TH AVENUE

PP

CB

PP

C.O.

BOYS & GIRLS CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

YOUTH CLUB

EMPLOYEE

EMPLOYEE

EMPLOYEE

EMPLOYEE

EMPLOYEE

EMPLOYEE

EMPLOYEE

EMPLOYEE

ONE SPACE,
BOXING GYM

MAIN SCHOOL BASEMENT LEVEL

CITY OF FAIRBANKS

⊕

LEASE 'ATTACHMENT 2'

