

Title 16

PUBLIC LANDS

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Chapter 16.04**TIDELANDS**

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16.04.010 Acceptance of state conveyance.

The conveyance by the state to the then-City of Wrangell, dated March 20, 1963, of tidelands and submerged lands lying seaward of the then-city limit was previously approved and accepted. The provisions of this chapter apply to these conveyed tidelands and submerged lands. [Ord. 833 § 41, 2009; Ord. 245 § 5, 1969; prior code § 45.30.010.]

16.04.020 Approval and adoption of tideland plat.

A. The tidelands subdivision plat, referred to in this chapter as “plat,” is approved and adopted as the official tidelands subdivision plat of tide and submerged lands conveyed by the state to the borough, showing all structures and improvements thereon and the boundaries of each tract occupied or developed, together with the name of the owner or claimant thereof, including with the boundaries of each tract occupied or developed such surrounding tide and submerged lands as are reasonably necessary in the opinion of the assembly for the use and enjoyment of the structures and improvements thereon by the owner or claimant, but not including any tide or submerged lands which, if granted to such occupant, would unjustly deprive any occupant of adjoining lands from his reasonable use and enjoyment thereof.

B. Tide and submerged lands which are not occupied or developed by the establishment thereon of substantial permanent improvements as herein defined, but which are included within the boundaries of subdivided tracts as being reasonably necessary in the opinion of the assembly for use and enjoyment of the structures and improvements thereon by the owner or claimant, were so included at the direction of the assembly after public notice, hearing and due consideration. [Ord. 245 § 5, 1969; prior code § 45.30.020.]

16.04.030 Keeping of plat.

The plat shall be retained in the clerk’s office at the Wrangell City Hall and made available for public inspection at reasonable hours. [Ord. 245 § 5, 1969; prior code § 45.30.030.]

16.04.040 Preferential rights expired.

The time period in which certain persons were granted the right to file preference rights to tidelands pursuant to Article II of Wrangell Ordinance No. 180 and extended by Ordinance No. 197 has expired. [Ord. 245 § 5, 1969; prior code § 45.30.040.]

16.04.050 Purchase options to certain tidelands expired.

The time period in which certain persons were granted the right to purchase portions of filled tidelands area pursuant to Article III of Wrangell Ordinance No. 180 has expired. [Ord. 245 § 5, 1969; prior code § 45.30.050.]

16.04.060 Use and disposal of tide and submerged land materials.

Any person, firm or corporation who without written authority from the borough removes rock, gravel or other materials from the tide and submerged lands conveyed by the state to the borough shall be deemed guilty of a misdemeanor. No deed or lease granted by the borough to any person shall contain terms or be construed as granting any right to remove material from the borough tide and submerged lands, nor to use any such material removed from such tide and submerged lands after January 3, 1959. [Ord. 245 § 5, 1969; prior code § 45.30.060.]

16.04.070 Development by borough.

At least 45 days before final assembly approval of development of any tide or submerged lands by the borough, the borough manager shall file a development plan with the borough clerk setting for the information required by WMC 16.08.020(B). Upon receipt the borough clerk shall transmit the same directly to the port commission and the planning and zoning commission for review under WMC 16.08.080. [Ord. 656 § 5, 1999.]

Chapter 16.08

TIDELAND LEASES*

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- 16.08.420 Permits for five years or less.
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* For statutory provisions on borough tideland leases, see AS 38.05.820(b)(7).

16.08.010 Availability of lands for lease.

All tide and submerged land within the limits of the borough to which the borough holds title and which the borough assembly has classified for leasing may be leased for surface use only as provided in this chapter. [Ord. 245 § 5, 1969; prior code § 45.40.010.]

16.08.020 Application.

A. All applications for lease of tidelands shall be filed with the borough clerk on forms provided by him and available at the municipal building. Only forms completed in full and accompanied by a \$10.00 filing fee will be accepted for filing. Filing fees are not refundable.

B. With every application the applicant shall submit a development plan showing and stating the following:

1. The purpose of the proposed lease;
2. The use, value and nature of improvements to be constructed;
3. The type of construction;
4. Date construction is estimated to commence and be completed;
5. Whether the intended use complies with the zoning ordinance and comprehensive plan of the borough. [Ord. 245 § 5, 1969; prior code § 45.40.020.]

16.08.030 Costs of transaction – Deposits.

A. All applications filed with the borough clerk will be forwarded to the borough engineer or other designated official to determine his estimate of 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.

B. Upon determination of the estimated costs, the official shall notify the applicant in writing of such costs and a deposit thereof must be made within 30 calendar days after notice is mailed. Failure of applicant to pay the deposit shall result in the application being cancelled. If the applicant does not accept a lease within 30 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.

C. If the land applied for upon which deposit for costs is made 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.

D. 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.

E. All survey, appraisal and advertising shall be performed only under the control of the borough, and any such work done without such control will not be accepted by the borough. [Ord. 245 § 5, 1969; prior code § 45.40.030.]

16.08.040 Unauthorized use of lands deemed trespass.

The filing of an application for a lease shall give the applicant no right to a lease or to the use of the land applied for. Any use not authorized by a lease shall constitute a trespass against the borough. [Ord. 245 § 5, 1969; prior code § 45.40.040.]

16.08.050 Classification and land use plan.

Before accepting applications to lease tidelands the area involved shall have first been classified for leasing and for particular land uses and a land use plan of the area prepared and publicly posted in the office of the borough clerk for a period of not less than 10 calendar days. The land use plan shall be prepared and approved by the assembly prior to posting. No lease shall be granted except for the particular use for which the tract is classified. [Ord. 245 § 5, 1969; prior code § 45.40.050.]

16.08.060 Lease to governmental agencies.

The lease of any borough tidelands may be made to any state or federal agency or political subdivision of the state for less than the appraised value, and for a consideration to be determined by the assembly to be in the best interests of the borough. [Ord. 245 § 5, 1969; prior code § 45.40.060.]

16.08.070 Classification changes – Renewal lease.

The classification of a tract of leased land may be changed only by the assembly on application of the lessee. No renewal lease may be issued until the proposed renewal has been reviewed and approved by the assembly. [Ord. 245 § 5, 1969; prior code § 45.40.070.]

16.08.080 Examination of development plans and lease applications for lease.

A. Upon receipt of a private or public tidelands lease application or a development plan under WMC 16.04.070, the borough clerk shall transmit same directly to the port commission and the planning and zoning commission for preliminary examination, compliance with applicable codes, compatibility with existing and prospective uses, feasibility of the project and any other feature or aspect which the port commission and the planning and zoning commission in their independent discretion wish to undertake. The commissions' jurisdiction shall be limited to the power of investigations, findings of fact on the subject matter, and the submission of recommendations to the assembly. The commissions' findings and recommendations need not be submitted in formal form, but their reports shall be prepared and submitted within one month following submission of the tidelands lease application or development plan to them.

B. The assembly may, at any stage of the proceedings, refer the tidelands lease application to the port commission and/or planning and zoning commission for preliminary examination and/or further recommendations in the manner of the preceding paragraph. Neither the assembly nor the applicant are bound by the port commission's or the planning and zoning commission's findings of fact and recommendations to the assembly. [Ord. 656 § 6, 1999; Ord. 406 § 4, 1980; Ord. 361 § 5, 1977; prior code § 45.40.075.]

16.08.090 Term of lease.

Leases may be issued for a term of not less than five nor more than 55 years. The applicant shall state in his application the term desired. In determining whether to grant a lease for the requested term, the assembly shall consider the nature, extent and cost of the improvements which the applicant agrees, as a condition of the lease, to construct thereon, the value of the applicant's proposed use to the economy of the borough, and other relevant factors. [Ord. 245 § 5, 1969; prior code § 45.40.080.]

16.08.100 Appraisal – Required improvements.

A. No tidelands shall be leased, or a renewal lease issued therefor, unless the same has been appraised within six months prior to the date fixed for beginning of the term of the lease or renewal lease. No land shall be leased for an annual rent less than six percent of the appraised value of the land and any improvements thereon owned by the borough.

B. Upon the filing of an application for a lease of a parcel of classified tidelands and the deposit of the costs estimated by the borough clerk, the borough assessor shall cause the tract, and any improvements thereon owned by the borough, to be appraised at their fair market value. The appraisal shall be transmitted by the assessor to the assembly which shall review the same and determine the appraised value of the tract and improvements thereon owned by the borough. Facilities for supplying utility services shall not be considered as such improvements. The assembly shall determine the annual rental as six percent of the appraised value and shall determine any limitations, reservations, requirements or special conditions to be included in the lease.

C. Each lease shall contain a requirement that the lessee construct improvements suitable for the use of which the land is classified of a specified minimum value within two years from the date of the lease and that a Corps of Engineers permit shall be obtained prior to construction when required. Improvements in the limited context of the tidelands leasing provisions may include a parking lot with fill or surfacing, drainage, ingress and egress as the assembly shall require. The applicant shall be notified of the amount of the minimum annual rental and the value of the improvements required to be constructed thereon. [Ord. 361 § 5, 1977; prior code § 45.40.090.]

16.08.110 Payment of annual rentals.

Unless the lease specifies otherwise, annual rentals of \$250.00 and less shall be paid annually, in advance; rentals of an amount between \$251.00 and \$500.00 shall be paid in two equal installments every six months; annual rentals of an amount between \$501.00 and \$1,000 shall be paid in advance every calendar quarter; and annual rentals exceeding \$1,000 shall be paid in advance each calendar month. [Ord. 245 § 5, 1969; prior code § 45.40.100.]

16.08.120 Leasing procedure – Auction – Payments.

A. Leases of land with an initial annual minimum rental of less than \$100.00 shall be issued by the borough clerk after being so instructed by the assembly and without the necessity of a public auction.

B. All leases having a computed annual minimum rental of more than \$100.00 shall be offered at public auction.

C. All public auctions of tidelands in the borough shall be held in the assembly chambers, municipal building, by the mayor or, in his absence, the borough clerk. At the completion of the auction of each tract of land, said official shall indicate the apparent high bidder. The apparent high bidder shall thereupon deposit with the official the portion of the annual rental then due together with the unpaid costs of survey, appraisal and advertising.

D. All payments must be made in cash, money order, check or cashier's check, or any combination thereof within one hour. [Ord. 245 § 5, 1969; prior code § 45.40.110.]

16.08.130 Public notice.

Public notice of lease of land is required to be given under the provisions of this chapter. Thirty days' notice shall be given by publishing notice thereof in a newspaper of general circulation published in the borough once a week for three weeks prior to final action of public auction. The notice must contain a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, limitations if any, and time and place set for the lease auction, if auction is required, together with the name or names of the record owner or owners of the adjacent upland. [Ord. 245 § 5, 1969; prior code § 45.40.120.]

16.08.140 Auction – Receipt of bid.

Upon deposit of the required sum by the apparent high bidder, the official conducting the auction shall thereupon issue to the successful bidder a receipt for the required sum. [Ord. 245 § 5, 1969; prior code § 45.40.130.]

16.08.150 Auction – High bidder other than applicant.

Where the apparent high bidder is not the same as the person who filed the original application, then the high bidder will be required to submit all information as submitted by all other applicants pursuant to this chapter. The apparent high bid, complete with application and other required information, shall be submitted to the assembly for acceptance or rejection of the lease. The assembly, at any stage of the proceeding, may refer the tidelands application to the planning and zoning commission pursuant to WMC 16.08.080. [Ord. 361 § 5, 1977; prior code § 45.40.135.]

16.08.160 Auction – Appeals.

An aggrieved bidder may appeal the determination of the apparent high bidder to the assembly within five days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing and contain a short statement of the grounds for appeal and rule thereon. The assembly's decision shall be final, but without prejudice to any other right or rights the aggrieved bidder may have. [Ord. 245 § 5, 1969; prior code § 45.40.140.]

16.08.170 Completion of bid.

Following the appeal period or the assembly's ruling, the borough clerk shall notify the successful bidder that the borough is prepared to issue an appropriate lease. The bidder shall be given 15 calendar days from date of mailing the notice in which to remit to the borough clerk any bid balance or any other sums that may be due and sign the lease. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease and, in addition, any moneys paid or deposited with the borough shall be forfeited. [Ord. 245 § 5, 1969; prior code § 45.40.150.]

16.08.180 Issuance of lease.

After expiration of the five-day appeal period, or after the ruling on the appeal to the assembly, the borough clerk shall execute a lease containing such terms as the assembly by its determination shall establish. [Ord. 245 § 5, 1969; prior code § 45.40.160.]

16.08.190 Limitations and conditions of lease.

All leases shall be issued on standard forms approved by the assembly, but shall contain such limitations, reservations, requirements or special conditions as the assembly has determined, including requirements for improvements of a specified value to be constructed or located on the land within two years from the date of the lease. [Ord. 361 § 5, 1977; prior code § 45.40.170.]

16.08.200 Proper location of improvements on leased land.

It shall be the responsibility of the lessee to properly locate his improvements on the leased land within the one-year period. It is unlawful to encroach on other lands of the borough or on lands owned or leased by another, and violation shall constitute a misdemeanor. [Ord. 245 § 5, 1969; prior code § 45.40.180.]

16.08.210 Utilization in compliance with lease and regulations.

Leased tidelands shall be utilized for purposes within the scope of the land use classification, the terms of the lease, and in conformity with the ordinances of the borough, including any zoning ordinance. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to cancellation at any time. The terms of this chapter are made a part of all leases and any violation thereof shall be grounds for cancellation of any leases. [Ord. 245 § 5, 1969; prior code § 45.40.190.]

16.08.220 Rental adjustments.

The annual rental payable pursuant to any lease issued under the provisions of this chapter shall be subject to adjustment by the assembly on the fifth anniversary of the date of the lease and each anniversary date thereafter which is divisible by the number five. All adjusted rates shall be computed at six percent on the fair market value of the land and improvements owned by the borough and leased thereunder. Such value shall be determined by an appraisal made by the borough assessor and reviewed and determined by the assembly as provided in WMC 16.08.100. [Ord. 245 § 5, 1969; prior code § 45.40.200.]

16.08.230 Subleasing.

Any lessee may sublease lands or any part thereof leased to him under this chapter; provided, that the proposed lessee first obtains the approval of the borough assembly to such sublease. Subleases shall be in writing and be subject to the terms and conditions of the original lease. A copy of the sublease shall be filed with the borough clerk. [Ord. 245 § 5, 1969; prior code § 45.40.210.]

16.08.240 Assignment.

Any lessee may assign the lease; provided, that the proposed assignment shall be first approved by the assembly. The assignee shall be subject to all of the provisions of the lease and the assignor shall not be relieved of his obligations thereunder. [Ord. 361 § 5, 1977; prior code § 45.40.220.]

16.08.250 Modification – Extension of term.

A. No lease may be modified orally or in any manner other than by an agreement in writing signed by all parties in interest or their successors in interest.

B. In the event any lessee requires an extension of lease term by reason of the requirements of any mortgagee or lending institution, or the requirements of any government regulatory agency or government agencies insuring or in any way guaranteeing improvements or purchase loans, upon application to the assembly and a showing of good cause, the assembly shall liberally grant extensions of lease terms by modification of existing leases. [Ord. 245 § 5, 1969; prior code § 45.40.230.]

16.08.260 Cancellation – Forfeiture.

A. Leases in good standing may be cancelled in whole or in part at any time upon mutual written agreement by the lessee and the assembly.

B. Any lease of lands used for an unlawful purpose may be terminated by the assembly.

C. If the lessee defaults in the performance or observance of any of the lease terms, covenants, or stipulations, or the terms of this chapter or any of the ordinances of the borough, and the default continues for 30 calendar days after service of written notice by the borough on the lessee without remedy by the lessee of the default, the borough assembly shall take such action as is necessary to protect the rights and best interests of the borough, including the exercise of any or all rights after default permitted by the

lease. No improvements may be removed by the lessee or any other person during any time the lessee is in default. [Ord. 245 § 5, 1969; prior code § 45.40.240.]

16.08.270 Notice or demand – Method of giving.

A. Any notice or demand which, under the terms of a lease or under any statute must be given or made by the parties thereto, 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.

B. A notice given under this chapter shall be deemed delivered when deposited in a United States general or branch post office enclosed in a registered or certified mail prepaid wrapper or envelope addressed as provided in this section. [Ord. 245 § 5, 1969; prior code § 45.40.250.]

16.08.280 Notices to mortgagee or lienholder.

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 and every sublease thereof shall be given a duplicate copy of any notice of default in the same manner as notice is given the lessee, provided such mortgagee or sublessee has given the borough clerk notice of such mortgage or sublease. [Ord. 245 § 5, 1969; prior code § 45.40.260.]

16.08.290 Entry and reentry by lessor.

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 lessor or its agents, servants, or representative may, immediately or any time thereafter, reenter and resume possession of the lands or such part thereof and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No reentry by the lessor shall be deemed an acceptance of a surrender of the lease. [Ord. 245 § 5, 1969; prior code § 45.40.270.]

16.08.300 Re-lease or other disposition.

In the event that a lease is terminated the borough assembly may offer the lands for lease or other appropriate disposal pursuant to the provisions of this chapter. [Ord. 245 § 5, 1969; prior code § 45.40.280.]

16.08.310 Forfeit of rental upon termination.

In the event that the lease should be terminated because of any breach by the lessee, as provided in this chapter, the annual rental payment last made by the lessee shall be forfeited and retained by the lessor. [Ord. 245 § 5, 1969; prior code § 45.40.290.]

16.08.320 Nonwaiver of terms or conditions upon certain actions.

The receipt of rent by the lessor 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 lessor to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the lessor unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the lessor to enforce the same in the event of any subsequent breach or default. The receipt, by the lessor, of any other sum of money after the termination, in any manner, of the term demised, or after the giving by the lessor 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 efficacy of any such

notice or termination as may have been given thereunder by the lessor 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 lessor. [Ord. 245 § 5, 1969; prior code § 45.40.300.]

16.08.330 Expiration of lease – Surrender of lands.

Unless the lease is renewed or sooner terminated as provided in this chapter, 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. [Ord. 245 § 5, 1969; prior code § 45.40.310.]

16.08.340 Expiration of lease – Renewals.

A. Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties thereto, the assembly may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, without offering the lease at auction, provided:

1. The lessee or his assignee makes written application therefor at least 60 days prior to such termination.
2. The lessee is not in default under the lease.
3. The use to which the land is to be put is compatible with the current use classification and zoning provisions of the borough ordinances on that subject.
4. Mutually agreeable terms are negotiated by the assembly and the prospective lessee.

B. Such lease shall be for an annual rental equal to the percent of the appraised value of the land which is then being charged for new leases and shall be subject to adjustment on every fifth anniversary. [Ord. 245 § 5, 1969; prior code § 45.40.320.]

16.08.350 Expiration or termination of lease – Removal or reversion of improvements.

A. Improvements owned by a lessee may, within 60 calendar days after the termination of the lease, be removed by him; provided, that the borough assembly may extend the time for removing such improvements in cases where hardship is proven. All periods of time granted the lessees to remove improvements are subject to the lessees paying to the borough pro rata lease rentals for said periods.

B. If any improvements and/or chattels are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest in, the borough. [Ord. 245 § 5, 1969; prior code § 45.40.330.]

16.08.360 Sanitary maintenance required.

The lessee shall comply with all ordinances of the borough which are promulgated for the promotion of sanitation. The premises of the lease shall be kept in a neat, clean and sanitary condition and every effort shall be made to prevent the pollution of waters. [Ord. 245 § 5, 1969; prior code § 45.40.340.]

16.08.370 Compliance with building and zoning regulations required.

Leased lands shall be utilized only in accordance with the building and zoning ordinances and rules and regulations thereunder. Failure to do so shall constitute a violation of the lease. [Ord. 245 § 5, 1969; prior code § 45.40.350.]

16.08.380 Fire protection.

The lessee will take all reasonable precaution to comply with all laws, regulations and rules promulgated by the borough for fire protection within the area wherein the leased premises are located. [Ord. 245 § 5, 1969; prior code § 45.40.360.]

16.08.390 Right of entry for inspection.

The lessee shall allow an authorized representative of the borough to enter the leased land at any reasonable time for the purposes of inspecting the land and improvements thereon. [Ord. 245 § 5, 1969; prior code § 45.40.370.]

16.08.400 Use of minerals and resources on leased lands.

All coal, oil, gas and other minerals and all deposits of stone, earth or gravel valuable for extraction or utilization are reserved by lessor and shall not be removed from the land. The lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, 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 borough assembly. [Ord. 245 § 5, 1969; prior code § 45.40.380.]

16.08.410 Protection of public interest.

The lease shall contain such restrictions and reservations as are necessary to protect the public interest. [Ord. 245 § 5, 1969; prior code § 45.40.390.]

16.08.420 Permits for five years or less.

The assembly may authorize the borough clerk to grant permits to applicants and to use such applicant's permits for the use of tide and/or submerged lands for a period to not exceed five years, without appraisal of the value of the land or public auction of the permit, for any purpose compatible with the land use classification of such lands and on such terms for such rental as the assembly shall determine. The provisions of WMC 16.08.010 through 16.08.070, 16.08.190 through 16.08.210, 16.08.230 through 16.08.330, and 16.08.350 through 16.08.410, pertaining to leases, shall, insofar as practical, apply and be a part of every such permit. Such permit may, however, be granted for the purpose of removing earth, stone or gravel from such lands, in which event the rental may be on a yardage basis and WMC 16.08.400 shall not apply. [Ord. 245 § 5, 1969; prior code § 45.40.410.]

16.08.430 Sale of tide and submerged lands.

A. When it is in the public interest, the assembly may by resolution authorize the sale of small tracts of tidelands and submerged lands; provided, that no such tract shall be greater in area than 400 square feet, such tract is unsuitable for use as a public use area, and such tract cannot be leased.

B. All sales of tidelands and submerged lands shall be public sales and shall be governed by the provisions of this chapter, insofar as may be applicable.

C. The assessed value of the property shall be stated in the notice required by WMC 16.08.130 instead of the annual minimum rental. All sales shall be made for cash and the successful bidder must make payment in full at the time of the sale.

D. The assembly may provide additional requirements not inconsistent with this chapter in the resolution authorizing such sale.

E. Anything in this chapter to the contrary notwithstanding, all such sales shall be subject to Charter provisions. [Ord. 245 § 5, 1969; prior code § 45.40.400.]

Chapter 16.12**DISPOSITION OF PUBLIC LANDS AND TIDELANDS**

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- 16.12.180 Construction as condition of sale – Inspection and report authority – Appeals.

16.12.010 Applicability of provisions.

The provisions of this chapter shall constitute the formal procedure for the lease, sale, or other disposition of real property for interest in real property or tideland owned by the borough. Nothing herein shall preclude the assembly from waiving all of the provisions of this chapter, when in the judgment of the assembly the public interest so requires, so as to dispose of public lands by lease, exchange, trade, sale, or other disposition of said public lands when the value of said property, lease, or interest is \$1,000,000 or less (as determined by a qualified appraiser or the borough assessor) and is accomplished by resolution after public notice published 14 days prior to passage of the resolution. [Ord. 677 § 4, 2000; Ord. 645 § 5, 1998; Ord. 588 § 4, 1993; Ord. 429 § 4, 1982; Ord. 275 § 5, 1972; prior code § 45.20.010.]

16.12.012 Disposition of real property for economic development purposes.

A. In the exercise of the borough's economic development powers, the assembly may determine, in its sole discretion, that it is in the best interest of the borough to dispose of borough-owned real property, including tidelands, or any interest therein, which interest has a value of \$1,000,000 or less (as determined by the borough assessor or a qualified appraiser), without requests for proposals or sealed bid procedures and at less than fair market value.

B. In determining the best interests of the borough under this section, the assembly may consider any relevant factors, which may include:

1. The desirability of the economic development project;
2. The actual or potential economic benefits to the borough, its economy and other businesses within the borough;

3. The contribution of the proponent to the economic development project in terms of money, labor, innovation, expertise, experience and otherwise;
4. The business needs of the proponent of the project in terms of integration into existing facilities and operations, stability in business planning, business commitments, and marketing;
5. Actual or potential local employment due to the economic development project;
6. Actual and potential enhancement of tax and other revenues to the borough related to the project; and
7. Existing and reasonably foreseeable land use patterns and ownership.

C. Prior to disposal under subsection (A) of this section, the assembly shall hold a public hearing. The borough clerk shall publish notice of the public hearing in a newspaper of general circulation in the borough at least 14 days prior to the hearing. The notice shall include the date, time and place of the hearing, and general or legal description of the real property or interest, and the proposed disposition and its purpose.

D. Following the hearing, and with comments/recommendations from the port commission, the planning and zoning commission, and the economic development committee, the assembly may authorize disposition of the real property or interest therein by resolution.

E. Where the acquisition of the real property or any interest therein or the construction of a permanent improvement has been approved by the voters at an election, the disposition of such property, interest or improvement under this section by sale, trade or lease for a term exceeding five years shall be made only by authority of an ordinance ratified by a majority of the qualified voters of the borough who vote upon the question. For purposes of this subsection, the term of any such lease shall include the terms of all options to extend or renew the lease. The requirements of this subsection do not apply where the voter approval involved was in the form of authorizing the issuance of bonds to finance the acquisition of the real property or any interest therein or the construction of a permanent improvement. [Ord. 781 §§ 1, 2, 2006; Ord. 756 § 1, 2004.]

16.12.015 Disposal of public lands for public use.

A. When the borough assembly determines it is in the best interests of the public to dispose of real property, or any interest therein, owned by the borough, including tidelands, which interest has a value of \$1,000,000 or less, to the state or U.S. government for public use, the disposal may be made without sealed bid procedures and at less than fair market value.

B. Prior to disposal under subsection (A) of this section, the assembly shall hold a public hearing. The borough clerk shall publish notice of the hearing in a newspaper of general circulation in the borough at least 10 days prior to the hearing. The notice shall include the date, time, and place of the hearing and a description of the real property, stating in full the proposed public use.

C. Following the hearing, the assembly may authorize disposal of the real property by resolution, which shall include any special terms and conditions the assembly may require for the disposal. Upon adoption of the resolution, the borough attorney shall prepare a deed or other appropriate instrument of conveyance. [Ord. 677 § 4, 2000; Ord. 645 § 5, 1998; Ord. 588 § 5, 1993; Ord. 410 § 5, 1981; prior code § 45.20.015.]

16.12.020 Commencement of proceedings.

Proceedings commencing disposition of real property, including tidelands, to other than the state or U.S. government, as provided in WMC 16.12.015, shall be initiated by the borough clerk or by the assembly or a assembly member upon motion at a meeting, or by an interested third party upon written application or request submitted to the borough clerk seven days prior to the assembly meeting. Such motion, application, or request must identify the property by general or legal description, state the interest to be

disposed (sale, lease, or other) and state the reason and purpose of the proposed disposition. [Ord. 677 § 4, 2000; Ord. 410 § 6, 1981; Ord. 275 § 5, 1972; prior code § 45.20.020.]

16.12.030 Sale of tidelands.

A. The policy of outright disposal by sale of tide and submerged lands is not favored; the orderly development of the borough with due consideration toward ocean resource harvesting, municipal revenue and public recreation would indicate a strong preference toward tidelands leasing. However, when it is in the public interest, the assembly may, by resolution, authorize the sale of tracts of tide and submerged lands in the manner provided for the sale of other real property owned by the borough. Tidelands, which may be sold pursuant to this section, as that term is used herein, refers only to those tide and submerged lands conveyed by the state of Alaska to the then-City of Wrangell pursuant to AS 38.05.820.

B. All sales of tide and submerged lands shall be public sales and shall be governed by the provisions of this chapter, insofar as applicable. [Ord. 833 § 42, 2009; Ord. 677 § 4, 2000; Ord. 645 § 5, 1998; Ord. 618 § 4, 1996; Ord. 588 § 6, 1993; Ord. 410 § 7, 1981; Ord. 275 § 5, 1971; prior code § 45.20.030.]

16.12.040 Value assessment – Notice of terms.

A. When an application is filed for the sale, lease or other disposition of real property, tidelands or any interest therein, the borough clerk shall cause an appraisal of the interest to be disposed of to be made by the assessor, who shall submit a report to the assembly, which will include his estimate of the market value of the interest. The assembly shall then submit the application and, upon approval of a majority of those voting on the question, the assembly shall approve the sale on such terms and conditions as provided herein, or set by the assembly. The costs of appraisal fees, survey fees and fees necessary for the preparation of documents, and all other costs associated with the application shall be borne by the applicant.

B. Following approval by the assembly, if the subject interest has a value of \$1,000,000 or less, the borough clerk shall thereafter give notice of the sale, lease or other disposition by publication of notice in a newspaper of general circulation in the borough at least 30 days before the date of the sale, lease, or other disposition, and the notice shall be 30 days before the date of the sale, lease, or other disposition, and the notice shall be posted within that time in at least three public places in the borough.

C. The notice shall contain a description of the property and the interest therein which is being disposed; the estimated value of the interest; declare that the disposition shall be effected through sealed bids, the forms for which may be obtained in advance at the borough clerk's office at City Hall; shall specify the address to which the sealed bids shall be addressed or delivered by the bidders; state the date and hour upon which bids shall be opened in public, and that sealed bids may be submitted at any time prior to the opening; that the property may be sold, leased, or disposed to the highest responsible bidder for cash, or terms as provided in WMC 16.12.015; that the borough reserves the right to reject any and all bids.

D. Terms. Certified or cashier's check or cash equal to 25 percent of the bid must accompany the bid. Personal checks will not be accepted. Purchasers may choose to pay balance by cash or execute an installment purchase agreement with the City and Borough of Wrangell. Term of installment purchase agreement shall not exceed 15 years. Interest rate on unpaid balance will accrue at prime plus two points at time of closing. The unpaid balance shall be evidenced by a promissory note secured by a deed of trust on the property.

E. Fund Disposition. All funds received from tidelands sales shall be deposited into the City and Borough of Wrangell's permanent fund. [Ord. 750 § 4, 2004; Ord. 746 § 4, 2004; Ord. 692 § 4, 2000; Ord. 677 § 4, 2000; Ord. 312 § 5, 1974; prior code § 45.20.040.]

16.12.050 Landlocked tidelands.

Those portions of borough-owned tidelands which have been filled and are now landlocked with no access to navigable waters shall be treated as all other uplands owned by the borough and disposed of in the manner provided in Chapter 16.12 WMC for borough-owned real property. [Ord. 677 § 4, 2000.]

16.12.060 Restriction on sale of tidelands and sufficiency of proof.

No sale of tidelands shall occur except upon public hearing, 30 days' notice of which shall be given by three successive weekly publications in the local newspaper, the cost of which shall be borne by the applicant. At the hearing, the applicant must clearly demonstrate the benefits of sale of the subject tidelands tract that could not be realized by the borough through leasing; a determination by the assembly adverse to the applicant may not be appealed unless clearly erroneous. An applicant for purchase of tidelands must conclusively demonstrate the outright sale of the nominated tidelands tract, as contrasted with the lease of such tract, is in the borough's best interest. The borough reserves the right to refuse sale of any tidelands tracts, regardless of sufficiency of proof. [Ord. 677 § 4, 2000.]

16.12.070 Preference rights of upland owners and tidelands lessees.

A. Uplands owner abutting tide and submerged lands for which a sale application is submitted, whether submitted by the uplands owner or a third party, shall be entitled to a preference right in the form of the right to meet or exceed the highest bid or offer tendered by another person for the purchase of abutting tide or submerged lands. No additional notice other than that already required by this title shall be required of the applicant. Furthermore, failure to exercise this preference right at or before the time of sale shall result in the forfeiture of said preference right.

B. The lessees of an existing and current tidelands lease shall be entitled to a preference right in the form of the right to meet or exceed the highest bid or offer tendered by another person for the purchase of the tidelands leased by said lessee. The tidelands lessees' preference shall be superior to that preference granted to uplands owners in subsection (A) of this section. No additional notice, other than that already required by this title, shall be required of the applicant. Furthermore, failure to exercise this preference at or before the time of sale shall result in the forfeiture of said preference right. [Ord. 677 § 4, 2000.]

16.12.075 Additional requirements.

The borough assembly may provide such additional and necessary requirements as they find necessary to carry out the specific and unique terms of each such sale and as may from time to time be necessary and not inconsistent with this chapter. [Ord. 677 § 4, 2000.]

16.12.080 Exchange or trade of borough real property or tidelands.

Notwithstanding any other requirement of this chapter, except the requirements provided for public notice in WMC 16.12.015, exchanges or trades of borough-owned real property or tidelands or interests therein shall be governed solely by this subsection and in compliance with the borough charter, the borough assembly may, by resolution and without public bidding, exchange any borough-owned real property or tidelands or interest therein, provided that:

A. The value of the borough-owned real property, or interest therein, and the value of the real property, or tidelands, or interest therein, to be exchanged have been determined by either an appraisal prepared by a qualified appraiser obtained by the borough within the preceding 12 months, or by review of the then current property assessment records of the borough.

B. The value of the borough-owned real property, or tidelands or interest therein, is equal to the value of the real property, tidelands or interest therein, to be exchanged; or, if the value of the borough-owned real property, tidelands or interest therein is different from the value of the real property, or tidelands or interest therein, to be exchanged, the difference is made up in money.

C. The borough assembly determines by resolution that the borough-owned property or tidelands or interest therein is no longer needed for municipal purposes and that the exchange of properties or tidelands or interests therein is in the public interest. [Ord. 677 § 4, 2000.]

16.12.090 Effective date of resolution.

A resolution providing for the disposition of property shall become effective upon adoption by the assembly. The borough attorney shall prepare a deed or other appropriate instrument of conveyance to be executed by the mayor and clerk, subject to any deed of trust securing installment payments of the purchase price and other obligations to the borough. [Ord. 750 § 4, 2004; Ord. 677 § 4, 2000; Ord. 618 § 5, 1996; Ord. 410 § 8, 1981; Ord. 312 § 5, 1974; prior code § 45.20.050.]

16.12.100 Ratification by election – Procedure.

Repealed by Ord. 800. [Ord. 746 § 5, 2004; Ord. 677 § 4, 2000; Ord. 645 § 5, 1998; Ord. 588 § 7, 1993; Ord. 410 § 9, 1981; prior code § 45.20.060.]

16.12.105 Over-the-counter sales.

A. Lots or parcels of land offered for sale pursuant to WMC 16.12.030 for which no responsive bids are received may, upon resolution of the assembly, be offered for over-the-counter sale upon such terms and conditions as provided in WMC 16.12.040(C) and (D).

B. The resolution shall specify the date and hour on which over-the-counter sales shall commence and an expiration date.

C. Such lots shall be offered by the borough clerk over the counter at City Hall on a first-come, first-served basis and be sold for the minimum bid value (appraised valuation).

D. The purchases shall be ratified by a resolution of the assembly, and conveyed as provided for in WMC 16.12.090. [Ord. 750 § 4, 2004; Ord. 677 § 4, 2000; Ord. 618 § 6, 1996; Ord. 337 § 5, 1975; prior code § 45.20.080.]

16.12.115 Ratification of prior conveyances.

Previous installment sales of borough property made before April 1, 2004, where the property was conveyed by a deed subject to a deed of trust securing payment of the purchase price are hereby ratified and approved. [Ord. 750 § 4, 2004.]

16.12.120 Construction as condition of sale – Generally.

The assembly or its agents may require the construction of certain improvements within a specified period of time as a condition to the conveyance of any borough-owned real property by sale or other disposition. Whenever the contract of sale and/or instrument of conveyance recites “construction” or “construction conditions” or similar language, or if the notice of sale pertaining or relating to the subject property recites the aforementioned terminology or similar language pertaining to construction requirements, all of the provisions of this section and WMC 16.12.090 through 16.12.130 shall be applicable thereto and become incorporated by reference in the transaction as if fully set forth. [Ord. 677 § 4, 2000; Ord. 618 § 8, 1996; Ord. 281 § 5, 1973; prior code § 45.20.070(a).]

16.12.130 Construction as condition of sale – Term during which construction must begin.

Real property sold or otherwise disposed of by the borough with the stipulation that construction shall be undertaken or otherwise subject to construction requirements or construction as a condition subsequent to vesting shall mean that construction shall occur within two years from the date of sale. The date of sale for the purposes of this section shall mean the effective date of the resolution authorizing the conveyance of the subject property, lease agreement, or other agreement evidencing the conveyance. [Ord. 677 § 4, 2000; Ord. 618 § 9, 1996; Ord. 281 § 5, 1973; prior code § 45.20.070(b).]

16.12.140 Construction as condition of sale – Construction completion terms.

A. “Construction,” within the meaning of WMC 16.12.080 through 16.12.130, shall require 80 percent completion of a residential or commercial structure. “Eighty percent completed” is intended to imply greater progress than mere substantial completion.

B. Standards for minimum acceptable completion shall include the following in compliance with WMC Title 18.

1. Earthwork site preparation;
2. Foundation completion;
3. Structural completion of the building, including all exterior walls and the completed roof;
4. Installation and connection of electrical, water and sewer utilities;
5. Installation of all plumbing, including internal fixtures;
6. Installation of all electrical wiring completed through the point of installing boxes and connections thereto from the primary power source; and
7. Installation of all insulation materials.

C. Completion shall not require installation of the following:

1. Finished flooring;
2. Dry wall, sheet rock, or other interior wall board or ceiling material;
3. Installation of internal lighting fixtures, switches, outlets and box covers;
4. Interior walls or partitions not containing plumbing or electrical wiring;
5. Paint;
6. Drain gutters; or
7. Finished landscaping. [Ord. 677 § 4, 2000; Ord. 281 § 5, 1973; prior code § 45.20.070(c).]

16.12.150 Construction as condition of sale – Construction completion terms for industrial development.

A. “Construction,” within the meaning of WMC 16.12.080 through 16.12.130, for industrial development shall require development consistent with WMC Title 20, and shall be substantially complete within two years after the date of sale.

B. Within 60 days after the date of sale, purchaser of the subject property shall present a written development plan to the planning and zoning commission for approval. At a minimum, the development plan shall include a description of the construction planned and a time schedule for its completion. The commission shall forward the plan, with its recommendations, to the borough assembly for approval within 30 days after receipt from the purchaser. If the plan is not approved by the assembly, the assembly shall prepare and deliver a written statement to the purchaser explaining their reasons for disapproving the plan. The purchaser shall be required to submit a revised plan to the assembly within 30 days. If the revised plan is not approved by the assembly, the sale shall be considered in default.

C. After approval of the purchaser’s development plan by the borough assembly, the purchaser shall have the remainder of the two-year period after date of sale to make the improvements indicated by the approved plan.

D. Notwithstanding any other provisions of this section, an enclosed building will be required as part of any development plan submitted by the purchaser for approval. The building and all other development features shall comply with WMC Titles 15 and 18. [Ord. 677 § 4, 2000; Ord. 515 § 4, 1987.]

16.12.160 Construction as condition of sale – Extension of construction period.

A. Upon the written request of the purchaser, the borough assembly may extend the time for construction completion for good cause shown by the purchaser. The purchaser shall submit written evidence of good cause to the assembly. The purchaser may request an extension on or before 30 days before the construction completion date. The assembly shall prepare a written decision within 30 days of the purchaser's request for extension, and a copy of such decision shall be provided to the purchaser.

B. Extensions of time for construction completion of industrial development will be granted if the borough has prevented compliance by not meeting those elements of the development plan required to be performed by the borough.

C. In the event of assignment or subsequent conveyance by the initial purchaser or lessee, the original completion requirements shall remain in effect and be binding upon the subsequent grantee or lessee. [Ord. 677 § 4, 2000; Ord. 515 § 5, 1987.]

16.12.170 Construction as condition of sale – Default provision.

In the event of the acquiring party's failure to strictly comply with the completion requirements set forth in this chapter, the following default provisions shall apply:

A. In the event there has been no foundation or site of preparation work, the contract shall terminate and the real property or interest therein shall revert to the borough. The borough may require that the defaulting party or parties execute a quitclaim deed to the borough conveying all of their interest in the subject property to the borough. The borough shall refund to the defaulting party or parties the amounts paid toward the purchase of the subject property except the greater of 25 percent of the total purchase price of \$500.00, whichever is greater, which shall be retained by the borough as liquidated damages. In the event of a lease, the borough shall retain all sums paid to the date of default as liquidated damages.

B. In the event of default after completion of substantial earthwork and site preparation but before installation of a foundation, the contract shall terminate and the real property shall revert to the borough. The borough may require the defaulting party or parties to execute a quitclaim deed conveying all of their interest in the subject property to the borough. The borough shall refund 25 percent of the total purchase price to the defaulting party or parties and retain all other amounts paid to that date as liquidated damages. In the event of default under a lease, the borough shall retain all rental amounts theretofore paid the borough as liquidated damages.

C. In the event of default after the foundation is substantially complete, whether the foundation is of piling, poured concrete or other recognized and acceptable foundation material, the defaulting party shall have the option of removing the foundation and restoring the lot to its original condition within 30 days and relinquishing all of his right, title, and interest therein by quitclaim conveyance to the borough and be refunded 50 percent of the total purchase price, or to retain the real property and pay the borough liquidated damages for breach of conditions in the amount of the original lot purchase price within 30 days after default; and, in the event of failure to timely make such remittance, the real property and all improvements thereon shall revert to the borough which shall also retain all amounts theretofore paid for the purchase of said property as liquidated damages. A lessee in default shall have the option of terminating the lease and relinquishing the real property and all improvements thereon to the borough and forfeiting all rental payments theretofore paid as liquidated damages, or may retain the property and continue the lease and pay the borough the amount of \$2,000 in liquidated damages within 30 days after the default. [Ord. 677 § 4, 2000; Ord. 515 § 6, 1987; Ord. 281 § 5, 1973; prior code § 45.20.070(e).]

16.12.180 Construction as condition of sale – Inspection and report authority – Appeals.

A. The borough building inspector shall have the duty of inspecting all properties subject to the construction conditions. The inspection will be made on or before the date constituting expiration of the term for construction completion, except that the purchaser may request earlier inspection. The building inspector shall inspect within 30 days of written request by the purchaser.

B. The purpose of the inspection is to determine whether or not there has been compliance with the construction requirements according to the standards contained in this chapter.

C. The building inspector shall report his findings to the planning and zoning commission. The commission shall immediately review the findings and prepare a written report of their compliance determination and submit it promptly to the borough manager who shall take whatever action is appropriate in the circumstances. The commission shall also mail or otherwise forward a copy of the report to the purchaser or lessee of the subject property.

D. An aggrieved party wishing to challenge or controvert the determination of the planning and zoning commission may appeal to the borough assembly by giving and delivering written notice of appeal to the borough manager or borough clerk within five days after receipt of notice of the commission's determination. Thereafter, the assembly shall conduct a hearing on the appeal at a special or regular meeting of the assembly within 10 days after receipt of notice of appeal. The assembly may enter its findings at the hearing or may take the matter under advisement and thereafter collectively inspect the subject property, disregarding any work on the building occurring between their inspection and that of the planning and zoning commission, and shall enter its decision within two days after the hearing without necessity for formal reconvention at special or regular meeting. [Ord. 677 § 4, 2000; Ord. 515 § 7, 1987.]

