

MODEL CODE ORDINANCE FOR THE ACQUISITION, MANAGEMENT, AND DISPOSAL OF MUNICIPAL LANDS



This chapter provides a model code ordinance for the acquisition, management, and disposal of land in accordance with AS 29.35.090.

As discussed in Chapter One, a code ordinance is a permanent ordinance that establishes procedures, is general in nature, and is part of a municipality’s code of ordinances. The model code ordinance presented in this chapter was designed to be used as a tool to assist Alaska municipalities in the ordinance-writing process. The intent of any model ordinance is to provide some standard language that communities can reword and tailor to their specific needs.

In the creation of any ordinance, it is extremely important for municipalities to consult with their local attorneys. The expertise of the municipal legal staff can assist communities in creating an ordinance that is both legitimate and defensible within the legal framework of the community.

(DRAFT MODEL ORDINANCE, April 2008)

CITY OF _____, ALASKA

ORDINANCE NO. _____

AN ORDINANCE PERTAINING TO
THE ACQUISITION, MANAGEMENT, AND DISPOSAL
OF MUNICIPAL LAND

BE IT ENACTED BY THE CITY COUNCIL AS FOLLOWS:

Sections

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|---------------------------------|-------------------------|
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| 2. Acquisition of land. | 8. Leases. |
| 3. Economic development sites. | 9. Easements. |
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| 5. Casual use of city lands. | 11. Definitions. |
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Section 1. Rights and powers of city.

The city shall have and may exercise all rights and powers in the acquisition, ownership, holding and disposal of real property in any manner not prohibited by law.

Section 2. Acquisition of land.

A. The city may acquire, own, and hold real property or any interest in real property inside or outside the city boundaries by purchase, lease, exchange, transfer, donation, condemnation or declaration of taking under the city's power of eminent domain, or any other legal method. Unless otherwise directed by the city council, the mayor has authority to negotiate the terms of acquisitions, subject to council approval. Except as provided in subsections B and C of this section, and unless otherwise provided by law, all acquisitions shall be by resolution approved by a majority vote of the total membership of the city council. Real property shall be held in the name of "City of _____".

B. Upon passage of a resolution approved by a majority vote of the total membership of the city council, the mayor may act upon behalf of the city to execute those documents required in the acquisition of real property or interest in real property when that property to be acquired is conveyed from the Native Village Corporation in partial satisfaction of the requirements of Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA). When the conveyance is for full and complete satisfaction of the requirements of ANCSA Section 14(c)(3), a non-code ordinance shall be passed which shall include: a statement identifying the amount of land to be acquired; a legal description; a statement that the conveyance, in conjunction with any previous partial reconveyances, is in complete satisfaction of the ANCSA 14(c)(3) obligation; a finding that the lands are sufficient for existing and foreseeable community needs; and a statement of facts supporting that finding.

C. The city may exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the city in accordance with AS 09.55.240 - 09.55.460. The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general election or a special election called for that purpose. A majority of the votes on the question is required for approval of the ordinance.

D. The city council may approve and authorize the purchase of real property or interest in real property by contract of sale, deed of trust, or lease.

Prior to approval of the purchase of property under subsection D of this section, the mayor shall furnish the city council with an abstract of title, an appraisal of the real property, and a review of any problems in acquisition. The validity of any acquisition or purchase of real property by the city is not affected by the failure to furnish the city council with such materials.

Section 3. Economic development site. (OPTIONAL PROVISION)

The city may acquire, own, and hold real property, either inside or outside the city boundaries, as sites available for new industries which will benefit the city.

Section 4. Temporary use of city lands. (OPTIONAL PROVISION)

The mayor has the authority to issue special land use permits for the exclusive temporary use of city lands. A special land use permit does not convey an interest in the land and may be revoked for cause with 30 days notice. Unless otherwise agreed to in writing, the land will be restored to its original condition upon expiration or revocation of the permit. Easements will not be granted under a special land use permit.

Public comment shall be sought before the issuing of a special land use permit in those situations where, in the opinion of the mayor, a hazardous or obnoxious use might significantly affect the surrounding area. Notice of the proposed action shall be published and a period for public comment shall be provided. When significant adverse comment is received, a public hearing shall be held.

A special land use permit shall not be granted for a term exceeding one year. Special land use permits are not transferable nor renewable. Upon expiration, a special land use permit may be re-issued for a term not exceeding one year.

If a fee is charged for the issuance of a special land use permit, the fee schedule shall be established by the city council.



Section 5. Casual use of city land. (OPTIONAL PROVISION)

- A. No permit or lease is required for casual uses of city land.
- B. Any use under this section is at the risk of the user. The city assumes no responsibility for such use.
- C. The city shall notify the public of the location of city lands that are not open to casual use.

Section 6. Disposal of real property.

A. The city may dispose of real property or an interest in real property which has been found to be no longer necessary for municipal purposes. All disposals shall be by a non-code ordinance. The minimum time between introduction and adoption of ordinances for disposals other than by sealed bid or public outcry or lottery shall be _____ longer than required for other non-code ordinances. The ordinance shall include:

1. A finding that the real property or interest in real property is no longer necessary for municipal purposes and a statement of facts upon which such a finding is based;
2. A legal description of the property;
3. Type of interest in property to be disposed of as defined in section 11;
4. The purpose of the disposal;
5. The method of disposal as identified in section 7;
6. The value of the property or the value of the interest in property as determined under subsection B of this section;
7. The procedure for conducting the disposal and the time, place and manner in which the proposed disposal shall occur.

B. The value of the property or interest in property shall be fair market value as determined by an appraisal prepared by a qualified appraiser or assessor, or the city council may determine the fair market value by any other means it deems appropriate.

Section 7. Methods of disposal.

A. All disposals shall be conducted in a fair and impartial manner. Procedures for conducting all disposals shall be set out in the non-code ordinance authorizing each disposal.

B. Competitive disposal. The city may conduct the following types of competitive disposal:

1. Sealed bid auction. The minimum bid for a sealed bid auction shall be the fair market value of the property or interest in property as determined under section 6B.
2. Public outcry auction. The minimum bid for a public outcry auction shall be the fair market value of the property or interest in property as determined under section 6B.
3. Lottery. In the case of a lottery, the price of the property or interest in property may be established by the city council.

C. Disposal for public services.

The city council may dispose of real property or an interest in real property to a municipality, state, or federal entity or to a nonprofit corporation or association, or a Native Tribal council, when the recipient is providing a necessary public service to residents of the municipality, without seeking bids and for less than the fair market value of the real property or interest in real property. If a disposal is made under this subsection, the non-code ordinance authorizing the disposal must include in addition to the requirements in section 6:

1. A finding that the disposal to the entity is for provision of a necessary public service and a statement of facts upon which such a finding is based;
2. A requirement that the conveyance of the property or property interest disposed include a



condition that the title will revert to the municipality in the event the property is no longer used for the necessary public service justifying the disposal; and

3. In the event that the entity receiving the property or interest in real property is a Native Tribal council, a requirement that the Native Tribal council waive any immunity from suit for the purpose of enforcing the reversion provision.

D. Disposal for economic development.

The city council may dispose of real property or an interest in real property to any person or entity in furtherance of local trade or industry without seeking bids and for less than the fair market value of that real property or interest in real property as determined under section 6B. If a disposal is made to further economic development, the non-code ordinance authorizing the disposal must include in addition to the requirements in section 6:

1. A finding that the property or property interest which is the subject of the disposal will be used in furtherance of local trade or industry; and
2. A requirement that the conveyance of the property or property interest disposed include a condition that title will revert to the municipality in the event the property is no longer used for the local trade or industry justifying the disposal.

E. Miscellaneous disposals.

The city council may settle disputed claims or litigation by authorizing disposal of real property or an interest in real property.

F. Disposal to settle claims of equitable interest.

Upon a finding by the city council that it is in the public interest, the city may convey real property or an interest in real property for less than fair market value to a person who has a valid claim of equitable interest in the property or in a substantial improvement located upon the property. That finding shall be incorporated in and made a part of the non-code ordinance that accomplishes the conveyance.

G. Disposal for residential purposes.

Upon a finding by the city council that there is a current residential housing shortage in the community and that making land available for residential purposes at less than market value is in the public interest, the city may convey real property or an interest in real property for less than fair market value to a domiciled city resident who seeks the parcel for development and use as a personal place of residence. That finding shall be incorporated in and made a part of the non-code ordinance that accomplishes the conveyance. When real property or interest in real property is disposed of pursuant to this subsection, the deed or lease must contain a condition subsequent which ensures that if the land is used for any use other than residential use for a period of ___ years after the disposal, title will revert to the city. In addition, disposals under this subsection shall include a requirement for the construction of a habitable dwelling within ___ years after the disposal or title will revert to the city.

Section 8. Leases.

A disposal of interest in real property by lease shall follow the requirements of sections 6 and 7. The terms and conditions of leases shall be established by the city council for each such disposal.

Section 9. Easements.

The disposal of interest in real property by grant of easement shall follow the requirements of sections 7 and 8. The terms and conditions of easements shall be established by the city council for each such disposal.

Section 10. Notice of disposal.

A. A notice of the disposal shall be posted in three conspicuous public places within the city not less than _____ before:

1. The date of the bid opening; or
2. The date of the lottery; or
3. The date of the auction; or
4. The date of the disposal.

B. The notice shall include:

1. A legal description of the property and the type of interest to be disposed;
2. The method of disposal as identified in section 7;
3. The assessed or estimated value of the property or interest in property;
4. The date of the proposed disposal and the time, place, and manner in which the proposed disposal shall occur.

Section 11. Definitions.

As used in this Chapter:

Abstract of title: A condensed history of the title to land together with a statement of all liens, charges, or liabilities to which the land may be subject.

Appraisal: An estimation of value of property by a qualified appraiser.

Casual use: The temporary, safe, non-exclusive and non-surface-disturbing use of city land and includes but is not limited to such uses as: hiking, hunting, fishing, short-term camping, picnicking, skiing, snowmachining or berry picking.

City boundaries: The city limits, established when the city is incorporated, inside which all city ordinances are enforceable.

Competitive disposal: A disposal of property wherein no preference is shown to any prospective bidder or group of bidders.

Condition subsequent: An event that occurs after transfer of title which will act to restore title to the maker of the condition.

Contract of sale: A contract between a willing seller and a willing buyer to transfer title to property.

Deed of trust: An instrument, taking the place and serving the uses of a mortgage, by which legal title to real property is placed in a trustee, to secure the repayment of a sum of money or the performance of other conditions.

Disposal: The act of giving away or selling; the transfer of interest in property.

Disputed claims: Claim for property that is protested by another, or for property which is also claimed by another.

Domiciled resident: One who has resided in the city for at least the thirty days previous, maintains an address in the city, and intends to make the City his/her permanent residence.

Easement: A right or privilege in another's land, such as the right to cross for a specific purpose. Easements allow passage across real property without granting any other ownership rights in that property.

Economic development: The growth of the local economy; the increased income of residents.

Eminent domain: The power of a municipality to convert private property to a public use.

Equitable interest: A claim (in property or other) which should be recognized in the interest of fairness or equity.

Evaluate: To judge the quality of.

Federal entity: The Federal government or an agency thereof.

Hazardous use: A use involving danger; risky to human health and well-being.





Interest: In property: A right, claim, title, or legal share in that property. Refers to the "bundle of rights", which may be transferred or conveyed separately or in total. Methods of transfer include deed, lease, or easement.

Inventory: A list of property, containing a description of each article of property.

Lease: Leases are used to dispose of specific interests in real property without transferring ownership of that property; a contract for exclusive possession of lands or tenements for a determinate period.

Legal description: That part of a conveyance document which identifies the land or premises intended to be affected by that conveyance.

Litigation: Contest in a court of justice for the purpose of establishing a right.

Lottery: A plan whereby the right to obtain interest in property, either by purchase or gift, is decided by luck or chance through some type of drawing of names.

Municipality: A unit of local government organized under the laws of the State of Alaska.

Non-code ordinance: An ordinance that is not part of the permanent city code.

Nonprofit corporation: An organization formed under the laws of the State of Alaska not to obtain a profit, but to supply an essential service to its constituents.

Obnoxious use: A use which people may find objectionable; disagreeable; offensive; displeasing.

Public interest: Something in which the public, the community at large, has some pecuniary interest (having to do with money), or some interest by which public interest legal rights or liabilities are affected.

Public outcry auction: Sale of property to the highest bidder, at a public auction, where each prospective buyer has the right to enter successive bids until a price is reached at which no higher subsequent bid is made.

Public service: Activities and enterprises which specially serve the needs of the general public.

Referendum: A method of submitting an important measure to the direct vote of the whole people.

Revert: With respect to property, title to go back to and lodge with former owner.

Sealed bid: A written offer to purchase property, placed in an envelope, and opened along with all other bids (if any) at a public bid opening.

State: The State of Alaska or an agency thereof.

Substantial Improvement: A major change or addition to land or real property that makes it more valuable.

Temporary use: An exclusive use of city land which has a duration of one year or less, involves minimal disturbance to the land, and does not allow permanent structures or improvements exceeding \$_____.

Valid Claim: A legally enforceable claim by a third party.

INTRODUCTION: _____

PUBLIC HEARING: _____

PASSED and APPROVED by the _____ CITY COUNCIL THIS ____ day of _____, 20__.

MAYOR

ATTEST: _____