



MAJOR CONSIDERATIONS INVOLVED WITH THE ACQUISITION, MANAGEMENT, AND DISPOSAL OF MUNICIPAL LANDS

This chapter addresses the constitutional, statutory and other considerations of municipalities in the management of public land.

Local governments should be aware of the legal considerations that must be addressed in the acquisition, management, and disposal of municipal land. Municipalities generally do not have the same freedom in the real estate market as private individuals. The Alaska Statutes and the constitutions of the United States and the State of Alaska contain provisions that apply to municipal land acquisition and disposal, and affect the manner in which these activities take place. This chapter briefly addresses the constitutional, statutory and other considerations of municipalities in the management of public land. For a more detailed discussion of these issues, your attention is directed to Appendix 2B, page 141, *Municipal Land Acquisition and Disposal in Alaska* prepared by attorney, Timothy E. Troll, in 1987 for DCCED (then DCRA) as part of a legal assistance grant to the City of Aleknagik.

Constitutional Requirements

The constitutions of the United States and the State of Alaska contain the following provisions that apply to municipal land acquisition and disposal:

The Equal Protection Standards: Both the United States Constitution and the Alaska Constitution have equal protection standards that provide for equal treatment of people who are similarly situated. Article VIII, Section 17 of the Alaska Constitution specifically addresses the equal application of laws and regulations governing the use or disposal of natural resources.

Article VIII, § 17 of the Alaska Constitution:

"Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation."

Perhaps the simplest legally acceptable method for disposing of land is to convey it to the individual offering the highest price. However, this method may not meet some of the community's objectives such as encouraging young families to stay in the community and construct homes. City officials are generally in favor of designing land disposal ordinances and procedures to best meet the special needs of their community.

In accomplishing this, special provisions may be proposed in order to:

- make land available for residents at prices they can afford;
- minimize speculative buying of land in the community by outsiders; and
- convey land to people who have a valid claim of equitable interest in the land.

The Public Purpose Clause of the Alaska Constitution (Article IX, Section 6):

Article IX, § 6 of the Alaska Constitution:

"No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

The public purpose clause of the Alaska Constitution is significant to the acquisition and disposal of municipal land because it states that public property cannot be transferred except for a public purpose. Local governments should be aware of the following public purpose considerations when disposing of municipal lands:

- municipal lands designated for disposal must no longer be necessary for public purposes.
- if municipal lands are to be disposed for less than fair market value or if preference provisions are involved in the disposal, a

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strong public purpose must be met to justify such disposals.

Statutory Requirements

As political subdivisions of the State, Alaska municipalities receive only those powers granted by the State government. In Alaska, this authority is granted by Alaska Statute Title 29, the law enacted by the Alaska State Legislature that governs the organization, powers, and activities of local government. Title 29 contains the following provisions that apply to municipal land acquisition and disposal:

- **AS 29.35.010 (8):** Municipalities have the power to acquire, manage, control, use, and dispose of real and personal property, whether the property is situated inside or outside the municipal boundaries.
- **AS 29.35.090:** The governing body shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality.
- **AS 29.25.010 (4):** The governing body of a municipality shall use an ordinance to make appropriations. (Disposal of municipal land is considered an appropriation).



Codified and Non-Codified Ordinances

In order for a municipality to comply with Title 29, the municipality must first pass a codified ordinance that provides the authority and general procedures the municipality must follow in acquiring and disposing of municipal lands. Codified or code ordinances are permanent ordinances that are included in the municipality's code of ordinances. Code ordinances are general

in nature and establish procedures. A model code ordinance is included in Chapter Two of this handbook.

Once the codified ordinance is passed, actual acquisition and disposal of lands (and management of lands, if these provisions are included in the ordinance) are handled with more specific actions (such as non-code ordinances or resolutions).

For specific land disposals and for certain types of land acquisitions, we recommend that a non-code ordinance(s) be passed. Most acquisitions can be effectively handled by resolution.

A non-code ordinance provides detailed information about specific land actions. For example, a non-code land disposal ordinance specifies the conditions, schedule, preference provisions, financial terms, price, location of the land, and other details about the procedures for each land disposal. Non-code ordinances are not included within the municipal code of ordinances.

Special Provisions in Municipal Land Disposals

There are several types of special provisions that municipalities may consider in developing ordinances and procedures for land acquisition and disposal. These provisions are introduced in the following section. More detailed discussion of these provisions is found in Chapter Five and Appendix 2 of this handbook.

1) Less than Fair Market Value: This provision is usually desired by municipalities when there is a fairly low income level in the community and a disposal of lands at fair market value would be too expensive for most residents to afford. A state attorney general's opinion (refer to Op. Atty. Gen of November 21, 1983, Appendix 5b, pages 253-269) states that conveyances for less than fair market value are legal as long as there is some consideration, and consideration is not so insignificant that the conveyance amounts to a gift. An exception to this statement would be the donation of municipal lands to another government or charitable institution and used for public purposes (refer to letter from Timothy Troll, attorney to John Gliva dated March 6, 1987, Appendix 2a, pages 129-140).

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A conveyance of municipal land for less than fair market value should not be made unless there are findings that some larger and more important public purpose justifies the conveyance (refer to letter from Timothy Troll, attorney, to John Gliva dated March, 1987 Appendix 2a, pages 129-140).

2) Preference Provisions: The usual goal of preference provisions is to make land accessible to local residents and minimize speculation by non-residents. It is extremely important that Constitutional provisions (equal treatment and public purpose) are carefully considered in preferential types of disposals.

a) Residency Requirements: One way that preference provisions are usually proposed is by the use of residency requirements. In determining what is meant by "resident", there are two considerations: 1) physical presence in a locale for a described duration ("durational qualifications"), and 2) a more subjective "domicile" test. (For additional reading on this topic, refer to: "Municipal Land Acquisition and Disposal in Alaska", Timothy Troll, 1987, Appendix 2b pp. 141-162; and memo to Jim Reeves from Doug Parker, January 24, 1984, Appendix 4, pp. 235-246).

1. Durational qualifications: This means the specified period of time a person must live in the community before qualifying to apply for land that is being disposed of. In this type of preference provision, the burden is on the governmental unit to demonstrate that the durational classification is related to a legitimate governmental objective. In other words, just benefiting residents is not enough. The municipality must show a strong relationship between the local problem and how the eligibility requirement will be effective in addressing the problem. For example: a city desires to make land available to residents to relieve overcrowding in existing homes.

In determining a durational requirement, keep in mind that a 30-day requirement will probably not be questioned. This period is also the minimum residency requirement in order to vote in



Alaska. As another example, there is a one year residency requirement in order to receive an Alaska permanent fund dividend.

2. "Domicile test": This test involves determining that an individual's intent is to not merely live in a place but to make a home there. For example, applicants for Alaska permanent fund dividends must sign a statement of intent to remain a resident of Alaska. If, during the filing period, the applicant took steps to set up residency in another state (e.g., accepts a permanent job in another state), that person would not be eligible for a permanent fund dividend even though the applicant met the physical presence requirements of the program by living in Alaska for a one year period.

A city council could determine "subjective intent to remain" from such objective criteria as it may deem appropriate. The council could set the criteria and obtain the information from an application for lot purchases (refer to letter from Timothy Troll to John Gliva dated March 6, 1987, Appendix 2a, pages 129-140).

b) Post-Conveyance Restrictions: A municipality may also achieve the same objectives of a residency requirement by having "postconveyance restrictions" incorporated into the deed or lease conveying lands through the disposal





program. These restrictions do not preclude anyone from participating in the disposal but when a deed is drawn up for the land, there are certain restrictions or performance standards that must be met by the recipient of the land. For example, the deed could require construction of a habitable dwelling within a prescribed period (refer to Troll report, Appendix 2b, page 31).

A common tool for enforcing a post-conveyance restriction is the reverter clause. A reverter clause is specific language that is included in a land transfer document such as a deed or easement which calls for the reversion or transfer of the ownership of the land back to the grantor (previous owner) upon the occurrence or non-occurrence of a specific event or events. In the example above, including a reverter clause could be a way to cause the ownership of the land to revert back to the city if the habitable dwelling is not constructed. If a reverter clause is used a “fee simple with a condition subsequent” reverter clause may be the most logical type for the city. With a fee simple condition subsequent the city can choose whether or not to take action to re-acquire the property by giving notice and executing a deed of reconveyance. The city’s action would be formal and would create a record that provides notice that the land has reverted thus eliminating any doubt of ownership. It also has the advantage of allowing the city to choose whether or not to re-acquire the land, an important option if the land is no longer desirable for city ownership.

A more preferable tool to carry out the intent of a residential housing disposal program may be to enter into a contract and issue a right of entry to the successful applicant. The contract could require the applicant construct the habitable dwelling before the city would be required to transfer the land. In this manner, the city could with less expense offer the land to another applicant if the first applicant was not able to construct the habitable dwelling within a required time period. Developing an actual

written housing disposal program that made periodical offerings of land could address some of these issues and also fulfill some of the legal requirements the city must meet.

The municipality could also minimize speculation by limiting the number of lots a person could receive through the municipal land disposal program (e.g., one lot per lifetime). This could be done by incorporating the language in the non-code ordinance itself and posted with the other information regarding a specific disposal.

c) Valid Claims of Equitable Interest:

One special type of preference provision involves the disposal of lands by a municipality to individuals who have valid claims of equitable interest in the land. Equitable interest is defined as a claim in property, which should be recognized in the interest of fairness or equity.

An example of equitable interest would be if someone believed they had received authority from the previous landowner (e.g., the federal townsite trustee) to move onto a piece of vacant property to build a house. Without a transfer of title taking place this person went ahead and built a house on the lot and began to live there. Subsequently, if the federal townsite lands were conveyed to the city, including the lot in question, the city would then obtain title to this lot and the improvements on it. In this case, the person living on the lot probably has a valid claim of equitable interest. If the city is to dispose of lands having valid claims of equitable interest, any ordinance conveying the property should clearly state what the council believes the equitable interest to be.

A trespasser would not have a valid claim of equitable interest; therefore, this provision of the land disposal ordinance should not be used to convey land to trespassers. Furthermore, a trespasser cannot make a claim of adverse possession on the land because adverse possession does not apply to state, federal or municipal property.