

Chapter 16.03

LEASE OF LANDS

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16.03.020 Lands available for leasing.

- A. All lands and interests in land owned by the municipality, including tide and submerged lands, may be leased as hereinafter provided for surface use only.
- B. Tidelands may be leased, subject to the pertinent provisions of this chapter, for surface use only, but shall not be sold.
- C. Before accepting applications to lease lands, the municipality shall have classified by ordinance the lands in question for leasing and for particular land uses; and a land use plan of the area shall have been prepared and publicly posted in the office of the borough clerk for a period of not less than ten (10) calendar days. The land use plan shall be approved by the borough assembly prior to posting. No lease shall be granted except for the particular use for which the tract is classified.

16.03.025 Referral to voters.

- A. Where required by subsection (B) of this section, the qualified voters of the municipality shall ratify the lease of real property or an interest therein by voting to approve or not approve the ordinance providing for the terms and conditions of the subject disposal. Ratification shall be by a majority of the qualified voters voting at a general or special election at which the question of ratification of the ordinance is submitted. In addition to federal government notice requirements, thirty (30) days' notice shall be given of the election, and during that period the borough assembly shall have published in the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the proposed sale, and stating the time and date of passage of the ordinance. Notice shall also be given by posting a copy of the ordinance in at least three (3) public places in the municipality at least thirty (30) days before the election.

- B. Ratification of the ordinance by the voters shall be required when the value of the lease payments over the entire term of the lease exceeds five million dollars (\$5,000,000.00). This value shall be estimated by multiplying the number of years in the entire lease term times the average annual rent for the first five (5) years, notwithstanding the possible future adjustment of the annual rent for subsequent five (5) year segments of the lease term pursuant to provisions of this chapter. A renewal option exercisable at the discretion of the lessee shall be counted in determining the term of the lease for purposes of this subsection.
- C. The whole of this section or any subsection within this section, Referral to voters, may not be repealed or amended without ratification of the ordinance by qualified voters of the municipality.

16.03.030 Applications, fees, terms, payment.

Unless otherwise provided by the borough assembly by a resolution which deals with the lease of specific lands, the following subsections shall apply to land leasing procedures:

- A. Qualifications of Applicants or Bidders. An applicant or bidder for a lease is qualified if the applicant or bidder:
 - 1. Is eighteen (18) years of age or over; or
 - 2. Is a group, association, partnership or corporation which is authorized to conduct business under the laws of Alaska; or
 - 3. Is acting as an agent for another or has qualified by filing with the borough manager or his designee, prior to the time set for the disposition, a power of attorney or a letter of authorization creating such agency. The agent shall represent only one (1) principal, to the exclusion of himself.
- B. Applications for Lease. All applications for lease of lands shall be filed with the borough clerk on forms provided by her. Only forms completed in full and accompanied by a one hundred dollar (\$100.00) filing fee will be accepted for filing. Filing fees are not refundable. With every application the applicant shall submit a development plan showing and stating:
 - 1. The purpose of the proposed lease;
 - 2. The use, value and nature of improvements to be constructed;
 - 3. The type of construction;
 - 4. Dates construction is estimated to commence and be completed; and
 - 5. Whether the intended use complies with the zoning ordinance and comprehensive plan.

- C. Deposits for Cost. All applications filed with the borough clerk will be forwarded to the borough manager or his designee to determine estimated costs required to handle the application, including but not limited to one (1) or more of the following: survey, appraisal, and advertising of the proposed lease of the area under application. Upon determination of the estimated costs, said official shall notify the applicant in writing of such costs, and a deposit thereof must be made within thirty (30) calendar days after the notice is mailed. Failure of the applicant to pay the deposit shall result in the application being canceled. If the applicant does not accept a lease within thirty (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. If the land applied for 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. 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. All survey, appraisal and advertising shall be performed only under the control of the municipality, and any such work done without such control will not be accepted by the municipality.
- D. Payment of Annual Rentals. Unless otherwise provided by the borough assembly by resolution, the following lease payment schedules shall apply: Annual rentals of less than five hundred dollars (\$500.00) shall be paid annually in advance. Annual rentals of more than five hundred dollars (\$500.00) but less than five thousand dollars (\$5,000.00) shall be prorated and paid in advance every calendar quarter. Annual rentals of more than five thousand dollars (\$5,000.00) shall be prorated and paid in advance each calendar month.

16.03.050 Rights prior to leasing.

The filing of an application for a lease shall give the applicant no right to a lease nor to the use of the land applied for. Any use not authorized by a lease shall constitute a trespass against the municipality.

16.03.060 Public use.

The lease of any municipal lands may be made to any state or federal agency or political subdivision of the state or nonprofit organization for less than the appraised value, and for a consideration to be determined by the borough assembly to be in the best interests of the municipality.

16.03.070 Review.

The classification of a tract of leased land may be changed only by the borough assembly. No renewal lease for a use different from that in the original lease may be issued until the proposed renewal has been approved by the borough assembly by ordinance.

16.03.080 Term of leases.

Leases may be issued for a term of not more than thirty-five (35) years. The applicant shall state in his application the term desired. In determining whether to grant a lease for the requested term, the borough 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 municipality, and other relevant factors. The term of any given lease shall depend upon the desirability of the proposed use, the amount of investment and

improvements proposed to be made by the lessee, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment. Unless a different maximum term is established by ordinance authorizing the lease, the maximum term of a lease shall be ten (10) years. A renewal option exercisable at the discretion of the lessee shall be counted in determining the term of the lease for purpose of this section.

16.03.090 Public notice.

Public notice of lease of land is required to be given under the provisions of this chapter. Thirty (30) days' notice shall be given by posting notice thereof in three (3) public places. The notice must contain the name of the applicant, a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, limitations if any, a declaration stating the particular method of disposal by which the disposition is to be effected and the time and place set for a hearing on the proposed lease.

16.03.100 Appeal.

In cases involving a competitive bidding process, an aggrieved bidder may appeal the determination of the apparent high bidder to the borough assembly within five (5) days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing, must be notarized and contain a short statement on the grounds for appeal. The borough assembly shall within thirty (30) days of receipt of a timely appeal review the asserted grounds for appeal and decide the appeal on the record. The assembly may extend the time for review in its sole discretion. The decision on appeal may be by vote at the assembly meeting at which the appeal was reviewed or in writing and adopted by the assembly, in the assembly's sole discretion. The borough assembly's decision shall be final. Any appeal to the Alaska Superior Court shall be on the administrative records before the assembly.

16.03.110 Completion of bid requirements.

Following the appeal period or the borough assembly's ruling, the borough manager shall notify the successful bidder that the municipality is prepared to issue a lease. The bidder shall be given thirty (30) calendar days from date of mailing the notice in which to remit to the borough clerk any bid balance. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease, and, in addition, any monies paid or deposited with the municipality shall be forfeited.

16.03.120 Issuance of lease.

After expiration of the five (5) day appeal period, or after the ruling on the appeal to the borough assembly, the borough manager shall cause a lease to be issued and executed containing such terms as the borough assembly may establish. The assembly reserves the right to require a guarantor on any lease to a limited liability company (LLC), in the discretion of the assembly.

16.03.130 Negotiated leases.

Upon authorization by the borough assembly by ordinance, the borough manager may commence negotiations for the lease of municipal land. The final terms of a negotiated lease are subject to approval by the borough assembly unless the minimum essential terms and the authority of the borough manager to execute the lease are set forth in the ordinance authorizing negotiations. The

negotiated lease may not be executed until the effective date of the ordinance. A negotiated lease may not be executed for less than market rent.

16.03.140 Responsibility to properly locate on leased premises.

It shall be the responsibility of the lessee to properly locate improvements on the leased land. It is unlawful to encroach on other lands of the municipality or on lands owned or leased by another, and violation shall constitute a misdemeanor.

16.03.150 Approval of other authorities.

The issuance by the municipality of leases under the provisions of this title does not relieve the lessee of responsibility of obtaining licenses or permits as may be required of the municipality by duly authorized state or federal agencies.

16.03.160 Terms and conditions of leases.

In addition to other applicable provisions of this code, the terms, conditions and covenants following as subsections (A) through (U) of this section shall govern all leases made under the provisions of this chapter and shall be incorporated in all such leases of land made or issued by the municipality unless the borough assembly by resolution provides otherwise as to a specific lease, and are hereby incorporated as though set out in full in the lease. The lease shall contain such additional restrictions and reservations as the borough assembly deems necessary to protect the public interest including but not limited to hazardous substance and environmental indemnifications and adequate insurance requirements and additional insured protection for the municipality.

- A. Lease Utilization. Leased lands shall be utilized only for purposes within the scope of the applicable land use classification and the terms of the lease, and in conformity with the ordinances of the municipality, 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 by the municipality at any time. The terms of this subsection are made a part of all leases and any violation thereof shall be grounds for cancellation of any lease.
- B. Adjustment of Rental. The annual rent payable to any lease shall be subject to adjustment by the borough assembly on the fifth anniversary of the lease and each five (5) year interval thereafter. The adjusted rent shall be based on market rent as determined by an appraisal. The appraisal shall include any improvements owned or made by the municipality of Skagway. The new market rent shall be effective on the beginning of the five (5) year interval to which it applies. The failure to complete an appraisal by the fifth anniversary or at a later five (5) year interval does not waive the municipality's right to increase the annual rent by having an appraisal completed later.
- C. Subleasing. The lessee may sublease lands or any part thereof leased to him hereunder; provided, that the lessee first obtains the approval of the borough assembly to such sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing, and subject to the terms and conditions of the original lease and such further terms and conditions as the borough assembly may deem appropriate, including but not limited to hazardous substance and environmental indemnifications and adequate insurance requirements and additional insured protection for the municipality. A copy of the sublease shall be filed with the borough manager.

- D. Assignments. The lessee may assign the lease issued to him; provided, that the proposed assignment shall be first approved by the borough assembly under such further terms and conditions as the borough assembly may deem appropriate. The assignee shall be subject to all of the provisions of the original lease, and the assignor shall not be relieved of his obligations thereunder. The assembly reserves the right to require a guarantor on any assignment to a limited liability company.
- E. Modification. 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 successor in interest.
- F. Cancellation and Forfeiture.
1. Leases in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by lessee and the borough assembly. Any lease may, at the borough assembly's option, include a term providing that the lease may be terminated by the lessee upon ninety (90) days' notice in writing to the municipality before the end of an annual rental period.
 2. If the lessee defaults in the performance or observance of any of the lease terms, covenants or stipulations, or any applicable term of this chapter, or any portion of the municipal code as applied to the property in question, the lessee is automatically in default on the lease by operation of law. If such default continues for thirty (30) calendar days after service upon lessee of written notice of default by the municipality without remedy by lessee of the default, the borough assembly shall take such action as is necessary to protect the rights and best interests of the municipality, including the exercise of any or all rights after default permitted by the lease. No improvements may be removed by lessee or any other person during any time the lessee is in default.
 3. The municipality may cancel the lease if it is used for any unlawful purpose.
 4. Failure to make substantial use of the land, consistent with the proposed use, within one (1) year shall with the approval of the borough assembly constitute grounds for cancellation. This time period may be extended by the borough assembly by resolution.
- G. Notice or Demand. 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. A notice given hereunder shall be deemed delivered when deposited in the U.S. mails enclosed in a registered or certified mail prepaid envelope addressed as herein provided.
- H. Rights of 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 shall be given a duplicate copy of any notice of default in the same manner as notice is given the lessee,

provided, such mortgagee has given the borough clerk notice of such mortgage and the mortgagee's address.

- I. Entry and Reentry. 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 municipality or its agents, servants, or representative may, immediately or any time thereafter, reenter and resume possession of such 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 municipality shall be deemed an acceptance of a surrender of the lease.
- J. Re-Lease. 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.
- K. Forfeiture of Rental. In the event that the lease is terminated because of any breach by the lessee, as herein provided, the annual rental payment last made by the lessee shall be forfeited and retained by the municipality.
- L. Written Waiver. The receipt of rent by the municipality 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 municipality to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the municipality unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the municipality to enforce the same in the event of any subsequent breach or default. The receipt by the municipality of any other sum of money after the termination in any manner, of the term demised; or after the giving by the municipality 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 efficiency of any such notice or termination as may have been given thereunder by the municipality 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 borough manager.
- M. Expiration of Lease. Unless the lease is renewed or sooner terminated, as provided herein, 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.
- N. Renewal of Lease.
 - 1. Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties thereto, the borough assembly may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, without competitive bidding, provided:
 - a. The lessee or his assignee makes written application therefor at least ninety (90) days prior to such termination;

- b. The lessee is not in default under the lease;
 - c. The use to which the land is to be put is compatible with the current use classification and zoning provisions of the municipal code on that subject;
 - d. Mutually agreeable terms, consistent with the provisions of this chapter governing lease terms, are negotiated by the municipality and the prospective lessee.
2. Such lease shall be for market rent, and shall be subject to adjustment on every fifth anniversary.
 3. Any renewal preference granted the lessee is a privilege, and is neither a right nor bargained for consideration.
- O. Removal or Reversion of Improvements upon Termination of Lease. Improvements owned by a lessee may within sixty (60) calendar days after the termination of the lease be removed by him, provided, such removal will not cause injury or damage to the lands or improvements demised; and further 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 lessee to remove improvements are subject to the lessee paying to the municipality pro rata lease rentals for such periods. 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 municipality.
- P. Compliance with Regulations and Code.
1. The lessee shall comply with all regulations, rules, and the code of the municipality, and with all state and federal regulations, rules and laws as the code or any such rules, regulations or laws may affect the activity upon or associated with the leased land.
 2. The lessee shall comply with all provisions of the municipal code which are promulgated for the promotion of sanitation, life safety and public health. The leased premises shall be kept in a neat, clean and sanitary condition, and every effort shall be made to prevent pollution.
 3. Fire Protection. The lessee shall take all reasonable precaution to comply with provisions of the municipal code concerning fire protection applicable to the area wherein the leased premises are located.
- Q. Inspection. The lessee shall allow an authorized representative of the municipality to enter the leased land at any reasonable time for the purposes of inspecting the land and improvements thereon.
- R. Use of Material. All coal, oil, gas and other minerals, and all deposits of stone, earth or gravel valuable for extraction or utilization, are reserved by the municipality and shall not be removed from the land except with written permission of the borough assembly. The lessee shall not sell

or remove for use elsewhere any timber, stone, gravel, peat moss, 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 in writing.

- S. Rights-of-Way. The lessor expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the municipality to do so. If the lessor grants an easement or right-of-way across any of the leased land, the lessee shall be entitled to damages for all lessee-owned improvements destroyed or damaged. Damages shall be limited to improvements only and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate the lessee for the loss of use.
- T. Warranty. The municipality does not warrant by its classification or leasing of land that the land is ideally suited for the use authorized under the classification or lease and no guaranty is given or implied that it will be profitable to employ land to said use.
- U. Terms of Lease. All leases shall contain such limitations, reservations, requirements or special conditions as the borough assembly has determined, including requirements for improvements of a specified value to be constructed or located on the land within one (1) year from the date of the lease.