

Proposed by:	Administration
Attorney Review:	09/30/2008
First Reading:	10/02/2008
Second Reading:	10/16/2008
Vote:	4 Aye 1 Nay 1 Absent

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 08-20

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 16, PUBLIC LANDS BY ADDING CHAPTER 16.05, REAL PROPERTY ACQUISITION.

WHEREAS, AS 29.35.090 stipulates that formal procedures for the acquisition of lands and interests in land be adopted by the Municipality; and

WHEREAS, The Borough Assembly is currently considering the purchase of Garden City RV Park.

BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend Title 16, Public Lands by adding Chapter 16.05, Real Property Acquisition.

Section 3. Addition. Chapter 16.05, Real Property Acquisition is hereby added as follows:

Chapter 16.05 REAL PROPERTY ACQUISITION

Sections:

- 16.05.010** Acquisition authority.
- 16.05.020** Approval by assembly.
- 16.05.030** Acquisition by eminent domain.
- 16.05.040** Acquisition by conveyance.
- 16.05.050** Grants and Gifts.
- 16.05.060** Leases.
- 16.05.070** Land exchanges.
- 16.05.080** Exemption from competitive bidding.

16.05.010 Acquisition authority.

- A. The municipality may acquire real property for any public purpose, or as otherwise authorized by law.
- B. Except where this chapter establishes a procedure for acquiring real property, the municipality may acquire real property in any manner not prohibited by law.

16.05.020 Approval by assembly.

In addition to any other assembly action that may be required by law with regard to real property acquisition by the municipality, the following shall be subject to assembly approval:

- A. Acquisitions of real property, except:
 - 1. Acquisitions for which the specific location is identified and specifically authorized for purchase under an approved capital improvement budget, previously approved by the assembly.

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2. Acquisitions of rights-of-way incidental to a construction project which has been approved by the assembly.

3. Acquisitions by foreclosure or by judicial proceedings or settlements other than proceedings in eminent domain.

4. Acquisitions pursuant to the selection of state lands under the provisions of AS 29.65.010 et seq.

5. Acquisitions by the dedication of any interest in property in connection with the approval by the municipality of a subdivision plat under the provisions of Title 20.

Acquisitions by donation or devise without cost to the municipality.

B. The institution of eminent domain proceedings on behalf of the municipality.

16.05.030 Acquisition by eminent domain.

A. Definitions. As used in this section, the following terms shall have the meaning given in this subsection:

1. Property owner means the owner of record as shown in the records of the Recorder for the Skagway Recording District.

2. Tenant means any person other than the property owner known to be in actual possession of the real property.

B. The municipality may exercise the powers of eminent domain and declaration of taking as set out in AS 09.55.250 - 09.55.460.

C. In accordance with AS 29.35.030, the power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development, except as provided by AS 09.55.240(d)(1) - (6), and may not be exercised for purposes expressed in AS 09.55.240(e).

D. Notice to property owners. Prior to the assembly granting approval for the use of eminent domain as provided in Section 16.05.020(B), notice shall be given to all property owners and tenants whose property is subject to being taken.

1. Notice shall be in writing to the property owners and tenants, and shall be postmarked or hand-delivered no fewer than ten days before the date on which the assembly approves the use of eminent domain.

2. The notice shall contain the following:

a. The name and description of the project which requires acquisition of the property, including a map of the project area.

b. The location and legal description of the affected parcel and identification of the property interest to be acquired.

c. The date, time and location of the first meeting at which the assembly will consider approval of the authority to use eminent domain if necessary to acquire property.

d. The name and telephone number of an individual within the administration who will answer questions about the project.

E. Required negotiation.

1. The borough manager shall, prior to submitting a request to the assembly for the use of eminent domain, make a good-faith effort to negotiate the acquisition of the property.

a. The first offer shall be the municipality's estimate of fair market value

b. The borough manager may consider evidence presented by any interested party which substantiates a greater value, and may adjust municipality's offer accordingly.

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c. All offers must be in writing. No borough employee or representative or assembly member or the mayor has any actual or apparent authority to make any verbal offer or to accept any verbal offer to purchase property on behalf of the municipality.

2. After examining all available evidence relating to value, the borough manager shall prepare a final offer in writing.

3. In no case may the municipality acquire property under this section at a price which is higher than fair market value of the property.

4. Within 30 days of the delivery of the final offer, if such is not accepted, the borough manager shall file a request to use eminent domain with the assembly.

5. Upon approval by the assembly of the use of eminent domain, the municipality may file its eminent domain action on any property where an agreement has not been reached.

F. Public hearing. Prior to granting a resolution approving the use of eminent domain, the assembly shall hold a public hearing not to exceed two hours, unless extended by motion of the assembly at which any interested citizen may testify concerning the use of eminent domain and the municipality's final offer as provided in 16.05.030(C).

16.05.040 Acquisition by conveyance.

A. Any instrument pertaining to the conveyance of real property to the municipality and requiring execution by the municipality shall be signed by the mayor and attested by the municipal clerk.

B. No conveyance of real property to the municipality shall be effective until accepted in writing by the mayor, provided that no such acceptance shall be required to perfect a property interest in lands:

1. Acquired by foreclosure or by judicial proceedings or settlements including proceedings in eminent domain.

2. Acquired pursuant to the selection of state lands under the provisions of state law.

3. Acquired through the physical appropriation of lands by an act giving rise to a finding of inverse condemnation.

16.05.050 Grants and Gifts.

Real property to be acquired as a grant or as a part of a program of grants or which is offered to the municipality as a gift, or at less than fair market value and which is not required for an approved project, may be accepted only upon the approval of the assembly by resolution.

16.05.060 Leases.

A. The manager may lease real property for use by the municipality to the extent that funds are appropriated for that purpose. Lease agreements for real property must be in the interest of the public. The manager may lease such property under terms and conditions negotiated by the manager and approved by the assembly.

All leases for real property shall contain a clause permitting termination upon the failure of the assembly to appropriate sufficient funds for the continued lease of the property during the next fiscal year. A lease of property from another by the municipality which does not contain such a clause shall be deemed to have incorporated therein a clause reading as follows:

"This lease shall terminate on June 30 of any year during which the assembly of the Municipality of Skagway fails to appropriate sufficient funds for the lease of the subject property during the following fiscal year. Such termination shall be without penalty."

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16.05.070 Land exchanges.

Real property may be acquired in part or in whole through land exchanges. Upon direction of the assembly by motion, the manager may commence negotiations for the exchange of lands. The final terms of a disposal pursuant to this section are subject to approval by the assembly and shall be set forth in ordinance form. The disposal may not be executed until the effective date of the ordinance.

16.05.080 Exemption from competitive bidding.

Because of the unique nature of real property, the municipality need not acquire real property by competitive bidding.

Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 16th day of October, 2008.

Thomas D. Cochran, Mayor

ATTEST:

Marjorie D. Harris, Borough Clerk

(SEAL)