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| Proposed by:     | Civic Affairs Committee      |
| Attorney Review: | 11/28/2011                   |
| DCAB Review:     | 02/01/2012                   |
| First Reading:   | 02/16/2012                   |
| Second Reading:  | 03/01/2012                   |
| Vote:            | 5 Aye      0 Nay    1 Absent |

**MUNICIPALITY OF SKAGWAY, ALASKA  
ORDINANCE NO. 12-03**

**AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 16 PUBLIC LANDS BY AMENDING CHAPTER 16.02 THROUGH CHAPTER 16.12.**

**WHEREAS**, Amendments are required to address change in status from city to borough government; and

**WHEREAS**, the Civic Affairs Committee is conducting a review of the Municipal Code in conjunction with the code re-write to update the Municipal Code;

**NOW THEREFORE 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 amending Chapter 16.02 Lease of Lands, Chapter 16.04 Sale of Lands, Chapter 16.05 Real Property Acquisition, Chapter 16.06, Easements, Use Permits and Resource Removal Permits, Chapter 16.08 Dyea Flats Management Plan, Chapter 16.10 Dyea Management Plan and Chapter 16.12 Dewey Lakes Recreation Area Management Plan.

**Section 3. Amendment.** The Skagway Municipal Code is hereby amended (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. Chapter 16.02 Lease of Lands, Chapter 16.04 Sale of Lands, Chapter 16.05 Real Property Acquisition, Chapter 16.06, Easements, Use Permits and Resource Removal Permits, Chapter 16.08 Dyea Flats Management Plan, Chapter 16.10 Dyea Management Plan and Chapter 16.12 Dewey Lakes Recreation Area Management Plan are hereby amended as follows.

Chapter 16.02  
LEASE OF LANDS

- Sections:
- 16.02.010      Definitions.
  - 16.02.020      Lands available for leasing.
  - 16.02.025      Referral to voters.
  - 16.02.030      Applications, fees, terms, payment.
  - 16.02.040      Appraisal.
  - 16.02.050      Rights prior to leasing.
  - 16.02.060      Public use.
  - 16.02.070      Review.
  - 16.02.080      Term of leases.
  - 16.02.090      Public notice.
  - 16.02.100      Appeal.
  - 16.02.110      Completion of bid requirements.
  - 16.02.120      Issuance of lease.

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- 16.02.130 Negotiated leases
- 16.02.140 Responsibility to properly locate on leased premises.
- 16.02.150 Approval of other authorities.
- 16.02.160 Terms and conditions of leases.
- 16.02.010 Definitions.
- A. "Auxiliary to cultivation" are those structures directly necessary for cultivation, including barns, tool sheds and green houses. Residences, retail outlets and patron parking are not considered auxiliary to cultivation, and will not be subject to the easement. Any structure combining an auxiliary and non-auxiliary use will be considered non-auxiliary.
- B. "Commercial agriculture" is the cultivation of crops, flowers, plants, shrubs or trees for commercial resale, or for use in commercial ventures, where the cultivation of such is the primary purpose of the development of the property.
- C. "Land" or "lands" as used in this chapter includes the land and improvements of any nature made to or upon the land or such improvements, unless the context clearly indicates otherwise.
- D. "Utilities" are those services offered to the general public by private business that provide for heating fuel and propane.
- 16.02.020 Lands available for leasing.
- A. All lands and interests in land owned by the City 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 city 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 city borough clerk for a period of not less than ten (10) calendar days. The land use plan shall be approved by the ~~council~~ borough assembly prior to posting. No lease shall be granted except for the particular use for which the tract is classified.
- 16.02.025 Referral to voters.
- A. Where required by subsection B, the qualified voters of the city municipality shall ratify the sale, lease or other disposal 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 ~~city council~~ borough assembly shall have published in the city 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 city 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 exceed two hundred fifty

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thousand dollars (\$250,000.00). 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.

16.02.030 Applications, fees, terms, payment.

Unless otherwise provided by the ~~council~~ **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 principal, to the exclusion of himself.
- B. Applications for Lease. All applications for lease of lands shall be filed with the ~~city~~ **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 ~~city~~ **borough** clerk will be forwarded to the ~~city~~ **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 cancelled. 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

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city municipality, and any such work done without such control will not be accepted by the city municipality.

- D. Payment of Annual Rentals. Unless otherwise provided by the council 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.

16.02.040 Appraisal.

No lands shall be leased, or a renewal lease issued therefor, unless the same has been appraised at its fair market value within six (6) months prior to the date fixed for beginning of the term of the lease or renewal date fixed for beginning of the term of the lease or renewal lease. No land shall be leased for an annual rent less than eight percent (8%) of the appraised value of the land and any improvement thereon owned by the city municipality except as determined in 16.02.040 (A). Facilities for supplying utility services shall not be considered as such improvements.

- A. The City Council borough assembly has determined that there is benefit to the city municipality in having tracts of land in cultivation to protect the heritage of gardening in Skagway, as well as to beautify the community. The City Council borough assembly, at its sole discretion, may establish conservation easements for municipally owned lands leased for purpose of commercial agriculture. The lease amount for such lands shall be based upon a formula of not less than eight percent (8%) of fifty percent (50%) of the appraised value. This shall apply only to the portion of those leased lands under cultivation. Those lands within a lease not under cultivation, or not directly auxiliary to cultivation shall be subject to lease at the full market value.
- B. The City Council borough assembly has determined that there is benefit to the residents and businesses of the community in keeping the cost of utilities offered to the public at minimum. The City Council borough assembly may, at its sole discretion, offer adjusted lease rates for municipally owned lands used for the delivery of utilities to local subscribers of utilities as defined in 16.02.010. The lease amount for such lands shall be based upon a formula of not less than eight percent (8%) of fifty percent (50%) of the appraised value. This shall apply only to the portion of those lands necessary to the provision of these utility services, including all required setbacks. All lands within municipally leased property not directly necessary to the offering of these utilities, or ancillary to the offering of these utilities shall be subject to lease at the full market value.

16.02.050 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 city municipality.

16.02.060 Public use.

The lease of any city 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 council borough assembly to be in the best interests of the city municipality.

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16.02.070 Review.

The classification of a tract of leased land may be changed only by the council **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 council **borough assembly** by ordinance.

16.02.080 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 council **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 city **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 subsection.

16.02.090 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 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.

16.02.100 Appeal.

In cases involving a competitive bidding process, an aggrieved bidder may appeal the determination of the apparent high bidder to the council **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 council **borough assembly** shall within thirty (30) days of receipt of a timely appeal review the asserted grounds for appeal and ~~rule thereon~~ **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 council's **borough assembly's** decision shall be final, ~~but without prejudice to any other right or rights the aggrieved bidder may have.~~ **Any appeal to the Alaska Superior Court shall be on the administrative records before the assembly.**

16.02.110 Completion of bid requirements.

Following the appeal period or the council's **borough assembly's** ruling, the city **borough** manager shall notify the successful bidder that the city **municipality** is prepared to issue an ~~appropriate~~ lease. The bidder shall be given thirty (30) calendar days from date of mailing the notice in which to remit to the city **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 city **municipality** shall be forfeited.

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16.02.120 Issuance of lease.

After expiration of the five (5) day appeal period, or after the ruling on the appeal to the ~~council~~ **borough assembly**, the **borough** manager shall cause a lease to be issued and executed containing such terms as the ~~council~~ **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.**

16.02.130 Negotiated leases

Upon authorization by the ~~council~~ **borough assembly** by ordinance, the **borough** manager may commence negotiations for the lease of city **municipal** land. The final terms of a negotiated lease are subject to approval by the ~~council~~ **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.

16.02.140 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 city **municipality** or on lands owned or leased by another, and violation shall constitute a misdemeanor.

16.02.150 Approval of other authorities.

The issuance by the city **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 city **municipality** by duly authorized state or federal agencies.

16.02.160 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 city **municipality** unless the ~~council~~ **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 ~~council~~ **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 city **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 city **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 rental payable pursuant to any lease shall be subject to adjustment by the ~~council~~ **borough assembly** on the fifth anniversary of the date of the lease and at each five (5) year interval thereafter. The adjusted annual rent shall be computed at that percentage of the fair market value of the land as set by the lease, inclusive of any improvements thereon made by the city **municipality**, but exclusive of any portion of value created by expenditures by lessee, except that the value of any improvements credited against rentals shall be included in the value. Such fair market value shall be determined by an

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appraisal made by the city borough assessor and reviewed and approved by the council borough assembly, whose decision is final. The new rental amount shall be effective at 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-year interval does not waive the municipality's right to increase the annual rate by completing an appraisal later than the fifth anniversary or later than any five-year interval.**

- 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 council 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 council 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 city borough manager.
- D. Assignments. The lessee may assign the lease issued to him, provided that the proposed assignment shall be first approved by the council borough assembly under such further terms and conditions as the council 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 cancelled in whole or in part, at any time, upon mutual written agreement by lessee and the council borough assembly. Any lease may, at the council's 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 city 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 city 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 city municipality without remedy by lessee of the default, the council borough assembly shall take such action as is necessary to protect the rights and best interests of the city 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 city 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 council borough assembly constitute grounds for cancellation. This time period may be extended by the council borough assembly by resolution.

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- 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 city 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 city 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 city municipality shall be deemed an acceptance of a surrender of the lease.
- J. Re-Lease. In the event that a lease is terminated, the city council 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 city municipality.
- L. Written Waiver. The receipt of rent by the city 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 city municipality to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the city municipality unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the city municipality to enforce the same in the event of any subsequent breach or default. The receipt by the city municipality of any other sum of money after the termination in any manner, of the term demised; or after the giving by the city 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 city 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 city 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 council borough assembly



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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 city municipal code on that subject;
  - d. Mutually agreeable terms, consistent with the provisions of this chapter governing lease terms, are negotiated by the city municipality and the prospective lessee.
2. Such lease shall be for an annual rental equal to the percentage 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.
  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 ~~city council~~ 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 city 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 city municipality.
- P. Compliance with Regulations and Code.
1. The lessee shall comply with all regulations, rules, and the code of the city 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 city 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 city 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 city 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 city municipality and shall not be removed from the land except with written permission of the ~~council~~ 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 ~~council~~ borough assembly in writing.

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- 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 ~~city~~ **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 ~~city~~ **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 ~~council~~ **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.

Chapter 16.04  
SALE OF LANDS

Sections:

- 16.04.010 Applicability.
- 16.04.020 Commencement.
- 16.04.030 Disposal methods.
- 16.04.040 Minimum acceptable offer.
- 16.04.050 Restrictions.
- 16.04.060 J.M. Frey land fund reserve revenues.
- 16.04.070 Disposals for public use.
- 16.04.080 Disposal procedures.
- 16.04.090 Definitions.

16.04.010 Applicability.

The provisions of this chapter shall constitute the formal procedures for the sale or permanent disposal of real property or interest in real property owned by the ~~City~~ **Municipality** of Skagway.

16.04.020 Commencement.

The disposal process will commence upon, and be further governed and controlled by, a non-code ordinance consistent with the procedures set forth herein, and such other terms or conditions as the ~~council~~ **borough assembly** may determine, identifying the particular land to be disposed of and the particular disposal method to be used. Lands may not be sold or otherwise disposed of until the land has been zoned or classified. Tidelands shall not be sold.

16.04.030 Disposal methods.

- A. Land may be disposed of by sealed competitive bid, auction, over-the-counter offerings of unsold remnants of any of the foregoing processes, equal value exchange, negotiated sale, or such other lawful methods as the ~~council~~ **borough assembly** may approve by ordinance for a specific disposal.
- B. Negotiated Sales and Exchanges. Upon authorization by the ~~council~~ **borough assembly** by ordinance, the **borough** manager may commence negotiations for the sale or exchange or other disposal of ~~city~~ **municipal** land. The final terms of a negotiated disposal are subject to approval by the ~~council~~ **borough assembly** unless the minimum essential terms and the authority of the **borough** manager

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to execute the disposal are set forth in the ordinance authorizing negotiations. The negotiated disposal may not be executed until the effective date of the ordinance.

16.04.040 Minimum acceptable offer.

For all sales or disposals of city municipal property, the minimum acceptable offer shall be fair market value, or one hundred percent (100%) of the appraised value of the particular parcel, as determined by appraisal by the city borough assessor not more than ninety (90) days prior to the date of sale or other disposal. "Date of sale or other disposal," for this purpose, shall be the date of bid opening, date of auction, or date of buyer's signing of a purchase contract for negotiated sales, exchanges or over-the-counter sales.

16.04.050 Restrictions.

The city borough manager may, with ~~council~~ borough assembly confirmation, place restrictive covenants in the deeds as deemed reasonably necessary to protect the public health and welfare or to uphold the city's municipality's ordinances, coastal management plan or other officially adopted land use plans.

16.04.060 J.M. Frey land fund reserve revenues.

A. The revenue from all disposals of land, interests in land, or resources under this chapter shall be credited to the account of the J.M. Frey Land Fund Reserve; except:

1. Revenues from the lease, sale or other disposal of land, interests in land, or resources which are accounted for as an asset held for an enterprise operation such as water and solid waste utilities or port, may be credited to the account of the enterprise or to the General Fund;
2. Proceeds from the sale of tax foreclosed land shall be distributed in accordance with applicable state law with any remainder being deposited in the J.M. Frey Land Fund Reserve.
3. Proceeds from the sale of land not acquired under the Municipal Entitlement program may be deposited, as directed by the ~~Council~~ borough assembly action approving such disposal, to the account of the J.M. Frey Land Fund Reserve or the General Fund.

B. Unless specifically appropriated from a different source or account, all expenses for or associated with the acquisition, subdivision, development or disposal of city municipal lands, interests in lands or resources shall be expenses of the J.M. Frey Land Fund Reserve; except that such expenses which are primarily for the benefit of the enterprise operation shall be expenses of that enterprise.

16.04.070 Disposals for public use.

A. Disposal to Governmental Agency. The sale or disposal of land or resources may be made to a state or federal agency for less than the appraised value, provided the ~~council~~ borough assembly approves the terms and conditions of such disposal by ordinance.

B. Disposal to Nongovernmental Agency. The sale, lease or other disposal of city municipal land may be made to a private, nonprofit corporation at less than market value, provided the disposal is approved by the ~~council~~ borough assembly by ordinance adopted after fourteen (14) days' public notice and the land or interest in land is to be used solely for the purpose of providing a service to the public which is supplemental to a governmental service or is in lieu of a

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service which could or should reasonably be provided by the state or the city municipality.

16.04.080

Disposal procedures.

- A. Conduct of sale. The borough manager or his designee shall conduct sales in accordance with the ordinance approved by the assembly for a specific sale. The borough manager or his designee shall prescribe the conditions for the conduct of the sale to the extent not provided by this chapter or otherwise prescribed by the assembly for a specific sale.
- B. Advertisement. When required by the ordinance authorizing a sale, the municipality shall place a display advertisement in a newspaper of general circulation and post the advertisement in at least three (3) public places within the municipality at least thirty (30) days prior to the sale date. The advertisement shall contain a general description of the types and locations of the parcels available, the terms and conditions of purchase, the last day upon which a person may register for the sale, the date, time and place of any sale activities, and the name, address and telephone number of the person or office to contact for sale or registration forms and further information.
- C. Qualifications. To qualify to purchase municipal lands, an individual must be eighteen (18) years of age or older; a corporation must be registered to do business in the state. No person, corporation or other association may register or bid if they have defaulted on a prior sale or lease of municipal real property, or if they have failed to pay in full any judgment for money damages obtained against them by the municipality from a court of law. In order to qualify to purchase municipal lands, the person, corporation or other association must be current on all payments or debts owed the municipality; including, but not limited to, property tax and public utility bills.
- D. Minimum offer. Except as described in section .070 of this chapter, no municipal land or interest in land shall be sold or otherwise disposed of for less than fair market value, or one hundred percent (100%) of the appraised value as determined by the municipal assessor not more than ninety (90) days prior to the sale date. The municipality reserves the right to refuse any or all bids or offers for purchase of lands.
- E. Conditions of Sale. The buyer shall pay all closing costs, including fees for preparation of documents, escrow fees and recording fees. The municipality reserves the right to require, in the event the buyer desires to remove or cause to be removed, merchantable timber, sand or gravel, or other materials, that prior to commencement of such activity, the entire remaining principal and accumulated interest, or any unpaid portion of the purchase price, be paid in full to the municipality. Any subsequent transfer or sale of the property by the buyer prior to full payment shall require the written approval of the municipality.

16.04.090

Definitions.

In this chapter, unless otherwise specified:

- A. "Appraised value" of a parcel being offered for sale means the fair market value of the parcel as determined by the city borough assessor, applying his best professional judgment to determine the value that would be paid in an arms-length transaction between a prudent buyer who is not obligated to buy and a prudent seller who is not obligated to sell;

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- B. "Domicile" is the true and permanent home of a person from which he has no present intention of moving, and to which he intends to return whenever he is away;
- C. "Materials" includes minerals;
- D. "Parcel" means a unit of land and usually is a single lot, tract or survey of land which is not further subdivided, but may include two (2) or more lots, tracts, surveys, or a combination thereof it treated as a unit for purposes of disposal or development.

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.
  - 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.
  - 6. 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:

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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.
    - 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.

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- 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~~ **borough** 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 **borough** 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 **borough** manager may lease such property under terms and conditions negotiated by the **borough** manager and approved by the assembly.

- B.** 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."

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 **borough** 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.

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

Chapter 16.06

EASEMENTS, USE PERMITS AND RESOURCE REMOVAL PERMITS

Sections:

- 16.06.010 Easements.
- 16.06.015 Encroachment of Structures.
- 16.06.020 Temporary use permits.
- 16.06.030 Timber and resource disposal.

16.06.010 Easements.

- A. Authorized. The **borough** manager may convey or lease an easement in ~~city~~ **municipally** owned land upon approval by the ~~council~~ **borough assembly**. Easements shall be non-exclusive unless otherwise provided in the easement document.
- B. Application and Fee. The applicant for an easement shall apply to the **borough** manager or his designee on a form prescribed by the **borough** manager. The application shall be accompanied by plans, reports, a narrative and other material sufficient to permit the ~~city~~ **municipality** to evaluate need for and use to be made of the requested easement. The application shall also be accompanied by a base fee of fifteen dollars (\$15.00) plus an amount determined by the **borough** manager or his designee to cover the cost of an appraisal of the value of the easement. From time to time, the **borough** manager shall adjust the base fee to reflect changes in the cost of municipal services.
- C. Departmental Action. The application for the easement shall be referred for comment to ~~city~~ **municipal** departments which may have an interest in the parcel subject to the proposed easement. Upon receipt of the comments of the departments, the **borough** manager shall refer the application and departmental comments to the ~~council~~ **borough assembly**. Upon receipt of the **borough** manager's recommendation, the ~~council~~ **borough assembly** may, by resolution, authorize the **borough** manager to execute the easement under such terms and conditions as are authorized by the ~~council~~ **borough assembly**.
- D. Survey. Prior to the execution of an approved easement, the applicant shall provide a survey of the easement to the standards required by the **borough** manager.
- E. Easement Price. The sale or lease price of an easement shall be the appraised value established not more than ninety (90) days prior to ~~council~~ **borough assembly** authorization of the easement. Upon execution of the easement by the ~~city~~ **municipality**, the applicant shall pay to the ~~city~~ **municipality** the market value of any marketable materials, timber or other resources within the easement area which will be destroyed, cut or removed. The **borough** manager shall determine the value of resources of any marketable materials, timber or other resources within the easement area which will be destroyed, cut or removed.
- F. Improvements and Changes. No improvements or changes in improvements may be made within an easement unless first approved by the **borough** manager.
- G. As-built Plans. Immediately upon completion of the construction of any improvements within the easement area, the easement holder shall provide the **borough** manager with accurate, complete and legible as-built drawings of such improvements. Upon making any changes or additions to such improvements,



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the permittee shall provide the borough manager with as-built drawings showing such changes or additions.

- H. Restoration. The borough manager may require restoration and the posting of such security for restoration as he determines necessary.

16.06.015 Encroachment of Structures.

- A. Except as provided by this chapter, it shall be illegal for anyone to construct or cause to be constructed any structure, as defined in SMC 15.12.080(I), or portion of any structure, upon public streets, alleys, or rights-of-way owned by the ~~City~~ Municipality of Skagway. Any such encroachments of structures built prior to February 1, 1999, as determined based upon the R&M Survey completed on February 6, 1998, shall be administered as follows:

1. The portion of any structure constructed within the urbanized area (SMC 15.08.025) prior to 1910 that encroaches upon the property of the ~~City~~ Municipality of Skagway shall receive a permanent easement which terminates on the demolition of the portion of the structure encroaching onto public property or portions of the structure immediately adjacent to the encroachment, unless an exact replica of the structure is reconstructed on the site.

- a. Cost of Permanent Easement – The cost for the permanent easement shall be \$1.00. The fee will be paid upon the effective date of the easement.

2. The portion of any structure constructed within the urbanized area (SMC 15.08.025) after 1910, but before February 1, 1999 that encroaches upon the property of the ~~City~~ Municipality of Skagway shall receive a lifetime easement that shall terminate upon the destruction or demolition of the portion of the structure encroaching onto public property or portions of the structure immediately adjacent to the encroachment.

- a. Cost of Lifetime Easement – The cost of the lifetime easement shall be 8% of the assessed valuation of the portion of the improvement encroaching upon municipal property, per annum. The fee will be paid with the property taxes each year.

3. Both permanent and lifetime easements shall be recorded with the district court and become affixed to the deed of ownership of the respective properties.

4. Structures outside of the urbanized area constructed prior to February 1, 1999 encroaching on the property of the ~~City~~ Municipality of Skagway may be granted easements, leases, or vacation of right-of-way, at the discretion of the ~~City Council~~ borough assembly.

- B. Penalties – The owner of any structure constructed after February 1, 1999, found to be encroaching on any public street, sidewalk, alley, or right-of-way shall remove such structure from public property, or pay a fine equal to 25% of the assessed valuation of the entire improvement which contains the encroaching structure. Such fine shall be imposed on an annual basis until the said encroachment has been removed.

16.06.020 Temporary use permits.

- A. The borough manager or his designee may issue temporary use permits for the purpose of authorizing entry onto and use of ~~city~~ municipal property for exploration, survey, archaeological exploration and other uses of less than one (1) year which are essentially nondestructive. Permits issued under this section

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shall be for such fees and under such terms and conditions as the **borough** manager determines are appropriate.

- B. The ~~council~~ **borough assembly** may, by resolution in each specific case, authorize the ~~city~~ **borough** manager to grant permits to applicants for the use of ~~city~~ **municipal** lands for a period not to exceed two (2) 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 use as the ~~council~~ **borough assembly** determines. The provisions of Section 16.02.160 of this chapter shall, insofar as practical, apply and be a part of every such permit.

16.06.030 Timber and resource disposal.

- A. The **borough** manager or his designee may authorize the sale or disposal of resources on ~~city~~ **municipal** land, including materials and structures, dead and down or diseased timber for such fees and under such terms and conditions as he determines are appropriate. Materials and structures may be sold or disposed of only if the **borough** manager determines that there is little commercial value for the material or structure and the disposal is incidental to or consistent with a planned use of the property.
- B. The ~~council~~ **borough assembly** may, by resolution in each specific case, authorize the **borough** manager to grant permits to applicants for the purpose of removing earth, stone, gravel, timber or other resource from such lands, in which event the payment due the ~~city~~ **municipality** under the permit shall be based on fair market value of the materials removed, and the ~~council's~~ **borough assembly's** resolution hereunder shall constitute the written permission required under Section 16.02.160 R.

Chapter 16.08

DYEA FLATS MANAGEMENT PLAN

Sections:

- 16.08.010 Statement of Intent and Goals.
- 16.08.020 Allowed/Prohibited Uses.
- 16.08.030 Permits and Fees.
- 16.08.040 Penalties.

16.08.010 Statement of Intent and Goals.

- A. The ~~City~~ **Municipality** of Skagway recognizes that the Dyea Flats is an area of local, State and national importance. Its historic value as the "gateway" to the Klondike Gold Rush of 1898 has warranted its inclusion in the Klondike Gold Rush National Historic Park and its designation as a National Historic Landmark. An area of scenic beauty and uncommon open space, the Flats is also valued highly by Skagway residents and visitors to the National Park for its recreational and scenic values and for the opportunity it provides to escape the ~~City~~ environs during the busy summer months. The tidal flats have also been recognized for their biological diversity and the habitat that they provide for waterfowl and other fish and wildlife.
- B. It is the ~~City~~ **Municipality** of Skagway's intent to be a responsible steward of the resources and values of the Dyea Flats in perpetuity. The citizens of Skagway are fond of the Flats as a familiar place for recreation and relaxation. Public testimony and responses to opinion surveys echoed with stories of recreation

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activities on the Flats and strong statements regarding the need to keep the Flats in public ownership because of its historical, natural and recreational values.

- C. The City municipality believes that Skagway residents' use of the Flats for recreation is an extremely important local "public use" that should receive full consideration, along with the interests of the State and national "public," in decisions regarding ownership and management of the area. The City municipality also recognizes that the Flats have State and national significance—particularly due to the historic events which took place there nearly 100 years ago, and the artifacts that remain from that time. The Flats are integrally connected to the other historic properties in the National Park, and will be managed by the City municipality with that consideration.
- D. It is the City's municipality's intent to keep the Dyea Flats in public ownership. The City Municipality of Skagway will implement this Land Management Plan, in cooperation with the National Park Service, the State of Alaska, other Dyea property owners, and the public.

16.08.020 Allowed/Prohibited Uses.

In order to protect the scenic, historical, ecological and archaeological resources of the Dyea Flats, the following allowed and prohibited uses are adopted.

- A. Allowed Recreational Uses (non-commercial)
  - 1. Walking, Skiing, Bicycling, Snowshoeing
  - 2. Boating, Canoeing, Rafting, Kayaking
  - 3. Interpretation, Public Education
  - 4. Picnicking
  - 5. Remote control airplanes in designated areas
  - 6. Fishing, Hunting, Trapping (in compliance with State/Federal regulations, restricted to small game and water fowl as defined by Alaska Fish & Game)
  - 7. Bird Watching
  - 8. Edible plant gathering
  - 9. Beach log and seaweed harvest for personal use
  - 10. Horseback riding
  - 11. Use of road legal vehicles on designated roads
  - 12. Use of off-road all terrain vehicles (ATV's) on designated roads and off-road in designated areas.
  - 13. Camping, (including recreational vehicles) in designated camping areas
  - 14. Campfires in provided campfire rings
  - 15. Snow machine use on roads and off-roads in designated areas when adequate snow cover is present to protect underlying vegetation.
- B. Allowed Recreational Uses With Permit
  - 1. Use of the Flats by organized groups for "allowed uses" in 16.08.020(A)
  - 2. Camping outside of designated areas
  - 3. Research and inventory related to historic and biological resources
  - 4. Use of the Flats for low impact special events, particularly those that benefit non-profit groups.
  - 5. Commercial recreational uses as provided in 16.08.020(C).
- ~~C. Commercial Uses. Commercial Recreational Uses are allowed by permit with the following provisions:~~
- C. Commercial Uses. There shall be no pre-existing rights. Commercial Recreational Uses are allowed by permit with the following provisions:

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1. Designation of Areas Open to Commercial Uses. The City Council borough assembly shall, by resolution, establish an area(s) on the Dyea Flats which shall be the portion of the Flats to which commercial use will be confined.
2. Dyea Flats – Commercial activity is prohibited on the Dyea Flats except for the two (2) existing permit holders providing non-motorized horse and bicycle tours through their existing ownership.
  - a. There shall be a review by the borough assembly after five (5) years;
  - b. Maximum group size of 12;
  - c. Each vendor is limited to two (2) tours on the Flats at one time and only one (1) tour south of the northern most parking area;
  - d. Total passenger volume will not exceed that of each operator's 1999 visitor volume for product sold on the Dyea Flats;
  - e. Other elements of the "Agreement for Limited Commercial Use of the Dyea Flats" shall be directly negotiated with each vendor;
  - f. Conditions of the contract with each vendor shall be subject to borough assembly approval; and
  - g. There shall be an annual review of each vendor by the Dyea Community Advisory Board following the end of the tourist season each year.
- ~~2. Limits on the number and types of commercial vendors. Commercial uses of the Dyea Flats shall be limited to those vendors able to demonstrate three previous years of historical use of the Dyea Flats for commercial purposes within the following categories:
  - a. Horseback Tours – not more than 1 operator
  - b. Bicycle Tours – not more than 1 operator
  - c. Motorized vehicles used for commercial purposes or any other commercial enterprise, will not be allowed beyond the Nelson Slough Bridge.~~
- ~~3. Limits on group size and group concentration. Each commercial vendor will be limited to groups not to exceed 12 people. Commercial vendors shall work among themselves to assure that not more than 2 commercial groups are within the designated area at any given time. Total passenger volume will not exceed that of each operator's 1999 visitor volume for product sold on the Dyea Flats.~~
43. General Provisions
  - a. Permit holders are responsible for complying with all State, Federal and local laws applicable to their activities.
  - b. Permit holders shall reimburse the City **Municipality** of Skagway for any damages to municipal property caused by the permit holder's activities.
  - c. Permit holders shall have in their possession at all times the permit issued pursuant to this section.
  - d. Permit holders, as a condition of receiving a permit, shall execute an instrument under the terms of which the permit holder will agree to indemnify, defend and hold harmless the City

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Municipality of Skagway from any and all claims for injury or damage to person or property as a result of the permit holders activities.

- e. Prior to issuance of a permit, the prospective permit holder must provide the City Municipality of Skagway with a certification of insurance showing the permit holder has obtained at least five hundred thousand dollars (\$500,000) combined single limit public liability insurance. This certificate must establish that the City municipality is named as an additional insured on such policy, and that the insurer thereof shall notify the City municipality twenty (20) days before the policy is modified, cancelled, or terminated.
- f. Permit holders are responsible for compliance with permit conditions. Any person listed on a permit issued shall be deemed to be jointly and severally liable for any violation of this chapter by any person or employee operating under the permit.
- g. Each permitted operator shall provide on an annual basis following each season, a report to the City municipality of the commercial activity of that season. Such report shall include daily volumes, monthly totals, and seasonal totals of activity.
- h. Permits authorized under this chapter are not transferable, and shall revert back to the City municipality in the event of any abandonment or failure to perform.
- i. ~~The term of permits under this chapter shall expire on September 30, 2004. At that point the City Council borough assembly shall review the program, and determine a course of further action.~~  
**Permits may be terminated by the municipality at any time.**

D. Prohibited Uses

- 1. Commercial activities including tours not permitted, rentals, retail sales or any other uses where compensation is made or offered.
- 2. Grazing
- 3. Unrestricted road vehicles and ATV access
- 4. Camping outside of designated areas without a City municipal permit
- 5. Subdivision and/or sale of public lands
- 6. Residential, industrial and commercial structures or other intensive developments.

**E. Campground Provisions**

- 1. Campers are required to self-register at the established kiosk and to familiarize themselves with burn restrictions and possible animal problems in the area.**
- 2. Camping shall be limited to a total of 14 days within a 45 consecutive day time frame. Long-term camping is prohibited. For the purposes of this section long-term camping means a duration of more than 14 days within a 45 consecutive day time frame.**
- 3. Collection of registrations shall be once each week by Public Works employees while picking up the trash.**

16.08.030 Permits and Fees.

- A. Permits - The City borough Mmanager shall establish a system for the permitting of uses requiring such permits as identified in section 16.08.020(B) above, except that the City Council borough assembly shall by resolution

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establish the permit requirements for commercial uses of Dyea Flats. Permits shall be obtained prior to the conduct of any of the intended uses.

- B. Fees – The ~~City Council~~ **borough assembly** shall establish by resolution a schedule of fees for uses of the Dyea Flats, when and if such fees are determined necessary.

16.08.040 Penalties.

Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.

Chapter 16.10  
DYEAMANAGEMENT PLAN

Sections:

- 16.10.010 Statement of Intent and Goals.  
16.10.020 Allowed/Prohibited Uses.  
16.10.030 Permits and Fees.  
16.10.040 Penalties.

16.10.010 Statement of Intent and Goals.

- A. It is the ~~City~~ **Municipality** of Skagway's intent to be a responsible steward of the resources and values of the Dyea and West Creek areas.  
B. The ~~City~~ **municipality** believes that commercial uses in the Dyea area impacts the Flats and private properties in the area.  
C. The ~~City~~ **Municipality** of Skagway will implement this Land Management Plan for ~~City~~ **municipal** property outside the Dyea Flats, in cooperation with the National Park Service, the State of Alaska, other Dyea property owners, and the public.

16.10.020 Allowed/Prohibited Uses.

In order to protect the scenic, historical, ecological and archaeological resources of the Dyea and West Creek Valleys, the following allowed and prohibited uses are adopted.

- A. Allowed Recreational Uses (non-commercial)
1. Walking, Skiing, Bicycling, Snowshoeing
  2. Boating, Canoeing, Rafting, Kayaking
  3. Interpretation, Public Education
  4. Picnicking
  5. Fishing, Hunting, Trapping (in compliance with State/Federal regulations)
  6. **Bird Watching**
  7. Edible plant gathering
  8. Beach log and seaweed harvest for personal use on ~~City~~ **municipal** property. Harvest of dead and downed firewood for personal use.
  9. Horseback riding
  10. Use of road legal vehicles on designated roads
  11. Use of off-road all terrain vehicles (ATV's) on designated roads and off-road in designated areas.
  12. Camping, (including recreational vehicles) in ~~City~~ designated camping areas **on municipal property**
  13. Campfires in safe campfire rings
  14. Snow machine use on roads and off-roads in designated areas when adequate snow cover is present to protect underlying vegetation.

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B. Commercial Uses. There shall be no pre-existing rights. Commercial Recreational Uses are allowed by permit with the following provisions:

- ~~1. Dyea Flats — Commercial activity is prohibited on the Dyea Flats except for the two (2) existing permit holders providing non-motorized horse and bicycle tours through their existing ownership.~~
  - ~~a. There shall be a review by the City Council after five (5) years;~~
  - ~~b. Maximum group size of 12;~~
  - ~~c. Each vendor is limited to two (2) tours on the Flats at one time and only one (1) tour south of the northern most parking area;~~
  - ~~d. Total passenger volume will not exceed that of each operator's 1999 visitor volume for product sold on the Dyea Flats;~~
  - ~~e. Other elements of the "Agreement for Limited Commercial Use of the Dyea Flats" shall be directly negotiated with each vendor;~~
  - ~~f. Conditions of the contract with each vendor shall be subject to council approval; and~~
  - ~~g. There shall be an annual review of each vendor by the Dyea Community Advisory Board following the end of the tourist season each year.~~

12. Designation of Areas Open to Commercial Uses.

- a. West Creek: There shall be no commercial tour operations on the West Creek Road or into the West Creek Valley.
- b. Taiya River: There shall be no commercial tour operations north of the Rafter Put-in on the Taiya River or at the mouth of West Creek where it enters Taiya River.

23. Limits on numbers of permits allowed. The number of commercial permits allowed in Dyea outside of the Dyea Flats shall be three (3). There shall be a separate permit required for each product offered. The Council **borough assembly** may, at its discretion, increase or reduce the number of permits allowed as conditions warrant and as recommended by the Dyea Community Advisory Board.

34. General Provisions

- a. Permit holders are responsible for complying with all State, Federal and local laws applicable to their activities.
- b. Permit holders shall reimburse the City **Municipality** of Skagway for any damages to municipal property caused by the permit holder's activities.
- c. Permit holders shall have in their possession at all times the permit issued pursuant to this section.
- d. Permit holders, as a condition of receiving a permit, shall execute an instrument under the terms of which the permit holder will agree to indemnify, defend and hold harmless the City **Municipality** of Skagway from any and all claims for injury or damage to person or property as a result of the permit holders activities.
- e. Prior to issuance of a permit, the prospective permit holder must provide the City **Municipality** of Skagway with a certification of insurance showing the permit holder has obtained at least one million dollars (\$1,000,000) combined single limit public liability insurance. This certificate must establish that the City **municipality** is named as an additional insured on such policy, and that the insurer thereof shall notify the City **municipality**

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twenty (20) days before the policy is modified, cancelled, or terminated.

- f. Permit holders are responsible for compliance with permit conditions. Any person listed on a permit issued shall be deemed to be jointly and severally liable for any violation of this chapter by any person or employee operating under the permit.
- g. Each permitted operator shall provide on an annual basis following each season, a report to the City municipality of the commercial activity of that season. Annual reports shall include all reports of complaints, accidents or incidents, daily volumes, monthly totals, and seasonal totals of activity.
- h. Permits authorized under this chapter are not transferable, and shall revert back to the City municipality in the event of any abandonment or failure to perform.

C. Prohibited Uses

- 1. Commercial activities including tours not permitted, rentals, retail sales or any other uses where compensation is made or offered.
- 2. Grazing
- 3. Unrestricted road vehicles and ATV access
- 4. Camping outside of designated areas without a City municipal permit

**D. Campground Provisions**

- 1. Campers are required to self-register at the established kiosk and to familiarize themselves with burn restrictions and possible animal problems in the area.**
- 2. Camping shall be limited to a total of 14 days within a 45 consecutive day time frame. Long-term camping is prohibited. For the purposes of this section long-term camping means a duration of more than 14 days within a 45 consecutive day time frame.**
- 3. Collection of registrations shall be once each week b Public Works employees while picking up the trash.**

16.10.030 Permits and Fees.

- A. Permits - The City borough Manager shall establish a system for the permitting of uses requiring such permits as identified in section 16.10.020(B) above. Permits shall be obtained prior to the conduct of any of the intended uses.
- B. Fees – The City Council borough assembly shall establish by resolution a schedule of fees when and if such fees are determined necessary.

16.10.040 Penalties.

- A. Damage to public property or resources. The permit holder shall be responsible for any damages to any public land, road, trail, facility or natural resources including trees, waters, or wildlife, and shall pay actual costs of remediation of these damages.
- B. Impact upon the quiet enjoyment of public lands by non-commercial users. Complaints by non-commercial users of public lands filed with the Skagway Police Department against any commercial operator may result in a citation.
- C. Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.



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- D. Grievance Procedure – Any reported violation of this code may result in a correction order issued by the City ~~borough~~ Manager under SMC 5.01.050. An appeal of such correction order may be filed as provided in SMC 5.01.070, Appeal to City Council ~~borough assembly~~.

Chapter 16.12

DEWEY LAKES RECREATION AREA MANAGEMENT PLAN

Sections:

- 16.12.010 Statement of intent and goals.
- 16.12.020 Description of area.
- 16.12.030 Allowed/prohibited uses.
- 16.12.040 Permits and fees.
- 16.12.050 Penalties.

- 16.12.010 Statement of intent and goals.

- A. The City Municipality of Skagway recognizes that the Dewey Lakes Recreation Area is an area of local, State and regional significance. An area of historic importance and scenic beauty, the Dewey Lakes is valued highly by Skagway residents and visitors for its recreational and scenic values and for the opportunity it provides for nature and wilderness experiences. Public testimony and responses to opinion surveys from the City Comprehensive Plan and the Comprehensive Trails Plan consistently indicate overwhelming support for continued public ownership of the area by the City Municipality of Skagway and for the protection of its significant natural, scenic and recreational uses and values. It is the City Municipality of Skagway's intent to preserve the historic and traditional uses and intrinsic values of the Dewey Lakes Recreational Area and to be a responsible steward of its resources in perpetuity.
- B. The City municipality believes that Skagway residents' traditional uses of the Dewey Lakes Recreational Area for recreation, quiet and solitude is an extremely important local "public use" that should receive full consideration along with State and regional interests in decisions regarding ownership and management of the area.
- C. It is the City's municipality's goal to preserve the Dewey Lakes Recreational Area, to maintain its public ownership and to preserve the traditional and historic recreational uses of the area. To this end, the City Municipality of Skagway shall implement this Land Management Plan, in cooperation with the State of Alaska, other adjoining property owners and the public.

- 16.12.020 Description of the area.

All City municipal property east of the railroad right of way within Township 28SR59E and Township 28SR60E and Township 27SR60E, Copper River Meridian, except those lands designated Industrial in the 1999 Skagway Comprehensive Plan.

- 16.12.030 Allowed/prohibited uses.

In order to protect the scenic, ecological and archaeological resources of the Dewey Lakes Recreation Area, the following allowed and prohibited uses are adopted.

- A. Allowed Recreational Uses (non-commercial)
  - 1. Walking, skiing, bicycling, horseback riding.
  - 2. Off leash dog walking.
  - 3. Fishing, hunting & trapping (in compliance with State/Federal Regulations).

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- 4. Plant gathering.
- 5. Use of off-road all terrain vehicles (ATVs) on designated areas.
- 6. Campfires in provided campfire rings.
- 7. Other traditional uses.
- B. Allowed Recreational Uses with Permit:
  - 1. Camping under ~~City~~ **Municipal** Code Section 9.02.050.
  - 2. Rental of Upper Lake Cabins.
  - 3. Research and inventory related to historic and biological resources.
  - 4. Uses of the Dewey Lakes Recreational Area for low impact special events, particularly those that benefit non-profit groups.
- C. Allowed Utility Uses:
  - 1. Watershed and ~~City~~ **municipal** facilities for ~~City fire~~ **emergency services water supply**.
  - 2. Watershed and facilities for hydroelectric power generation.
  - 3. Access for the above uses.
- D. Prohibited Uses:
  - 1. Commercial activities including tours, rentals, retail sales or any other uses where compensation is made or offered.
  - 2. Use of motor vehicles in undesignated areas.
  - 3. Camping without a ~~City~~ **municipal** permit.
  - 4. Campfires outside of designated areas without a ~~City~~ **municipal** permit.
  - 5. Subdivision and/or sale of public lands.
  - 6. Residential, industrial and commercial structures and other intensive developments.

16.12.040 Permits and fees.

- A. Permits – The ~~City~~ **borough** ~~Manager~~ may establish a system for the permitting of uses requiring such permits as identified in Subsection 16.12.030(B)1-4.
- B. Fees – The ~~City Council~~ **borough assembly** may establish by resolution a schedule of fees when and if such fees are determined necessary.

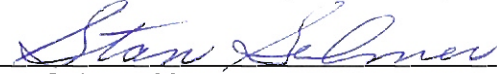
16.12.050 Penalties.

Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.

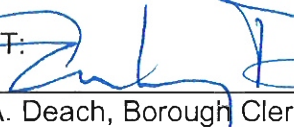
**Section 4. Severability.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

**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 1<sup>st</sup> day of March, 2012.

  
Stan Selmer, Mayor

ATTEST:

  
Emily A. Deach, Borough Clerk  
(SEAL)

