

TITLE 50  
PROPERTY

CHAPTER

50.10      REAL PROPERTY ACQUISITION AND DISPOSAL

TITLE 50  
PROPERTY

Chapter 50.10 -- Real Property Acquisition and Disposal

**Sections:**

50.10.010	Rights, Powers and Duty of Borough.
50.10.020	Acquisition of Real Property.
50.10.030	Temporary Use of Borough Lands.
50.10.040	Casual Use of Borough Lands.
50.10.050	Disposal of Real Property.
50.10.060	Methods of Disposal.
50.10.070	Price For Disposal.
50.10.080	Conveyances to Natives Tribes or Councils.
50.10.090	Form, Fees, and Standard Terms.
50.10.100	Definitions.

**50.10.010 Rights Powers and Duty of Borough.**

- (a) The borough shall have and may exercise all rights and powers to acquire, own, hold, dispose of manage real property, both inside and outside the borough.
- (b) The borough holds all real property in trust for the benefit of the public and shall hold, manage and dispose of such property in a manner consistent with that trust; it must insure that the public receives fair and reasonable compensation or benefit from borough actions in the disposal of real property.

(Ord. 89-5, Sec. 50.10.010)

**50.10.020 Acquisition of Real Property**

- (a) Except as may be prohibited by law, the borough may acquire, own, and hold real property inside or outside the borough boundaries by purchase, lease, exchange, transfer, dedication, gift, condemnation or declaration of taking under the Borough's power of eminent domain, tax or special assessment foreclosure, or any other legal method.
- (b) Unless otherwise directed by the assembly, the mayor, without further assembly approval, may acquire real property by a negotiated purchase when:
  - (1) The real property has been identified by the assembly for acquisition, or is required for a project approved by the assembly,
  - (2) funds have been appropriated for the acquisition, and

- (3) the real property is acquired for a price not exceeding either fair market value or the amount appropriated or budgeted for the real property.
- (c) Unless otherwise directed by the assembly, the mayor may after failure of negotiations for real property under the conditions set out in subsection (b), initiate acquisition by condemnation or declaration of taking.
- (d) The selection of real property to be acquired pursuant to an entitlement under AS 29.65, or under Section 14(c) (3) of the Alaska Native Claims Settlement Act (P.L. 92-203), as amended, or under any other limited entitlement must be approved by the Assembly by resolution as set out in subsection (g). Any conveyance or agreement purporting to be in complete satisfaction of any entitlement is ineffective until approved by the assembly by ordinance.
- (e) Except as provided in subsections (b) and (c) acquisition of real property for a valuable consideration, including an exchange, must be authorized by the assembly by ordinance.
- (f) All acquisitions by gift, donation, bequest, or dedication other than a dedication through a subdivision plat approved by the borough platting authority, or any other method not involving the giving of valuable consideration and not covered by subsection (d) shall be in accordance with the terms and conditions approved by the assembly by resolution or motion.
- (g) Before acquiring real property for a valuable consideration, the mayor shall obtain a title report on, and shall determine the fair market value of, the real property; provided, the mayor with approval of the assembly may waive the requirement for a title report upon a determination that the risk involved or the interest to be acquired does not warrant a title report. The determination of fair market value may be by means of a fee appraisal or such reasonable estimates as the mayor with the approval of the assembly finds to be reliable or appropriate under the circumstances.
- (h) All real property shall be held in the name of the "Aleutians East Borough."

(Ord. 89-5, Sec. 50.10.020)

#### **50.10.030 Temporary Use of Borough Lands.**

- (a) The mayor with the approval of the Assembly may issue special land use permits for the exclusive or non-exclusive, temporary, non-consumptive use

of borough lands. A special land use permit does not convey an interest in the land and may be revoked upon 30 days' notice unless a shorter period is provided for in the permit or may be revoked without prior notice for breach of a condition of the permit. Unless otherwise agreed to in writing, the land must be

restored to its original condition upon expiration or revocation of the permit. Easements may not be granted under a special land use permit.

- (b) Upon receipt of an application for a temporary land use permit under this section, the mayor shall post notice of the application, including the date upon which the assembly will hear persons or receive comments on the proposed application. The date of the hearing must be at least two weeks after the first day upon which the notice is posted. After the hearing, the assembly may, by motion, authorize the issuance of the permit and may impose such restrictions as it deems appropriate.
- (c) A special land use permit and all extensions and renewals thereof may not exceed one year except upon assembly approval. Special land use permits are not transferable.
- (d) Fees charged for a special land use permit shall be in accordance with a fee schedule established by the assembly.

(Ord. 89-5, Sec. 50.10.030)

**50.10.040 Casual Use of Borough Lands.**

- (a) Except as provided in subsection (b) and (c), no borough land is open to public use.
- (b) Land which has been acquired or improved by the borough for a public function may be opened to public use under such terms and conditions as the borough may prescribe.
- (c) Land which has been designated by the borough as casual use land is open to the public for casual use; provide, the borough makes no warranty as to the natural or artificial conditions of such land and persons who use such land do so at their own risk as to natural and artificial conditions of the land, and by such use waive their right to recover from the borough for any injury or death occurring on the land not attributable to reckless or intentional misconduct of the borough. No fee may be charged for casual use of borough land.

(Ord. 89-5, Sec. 50.10.040)

**50.10.050 Disposal of Real Property.**

- (a) Except for real property acquired or developed for or dedicated or devoted to a governmental purpose, the borough holds all real property in a proprietary capacity as a borough resource. The disposal of all real property not covered by disposal methods under other sections of this chapter may be processed in accordance with this section.
  
- (b) The disposal must be authorized by ordinance and must contain:
  - (1) a description of the property,
  - (2) a finding and the facts that supports the finding that the property or interest is no longer required for a public purpose if the property or interest is or was used for a governmental purpose,
  - (3) the type of interest to be disposed of if less than a fee interest,
  - (4) conditions and reservations that are to be imposed upon the property,
  - (5) the fair market value of the property,
  - (6) the minimum disposal price of the real property,
  - (7) the method of disposal, including time, place and dates when relevant,
  - (8) special conditions for the disposal, including, when relevant, special qualifications of purchasers and purchase terms, and
  - (9) a finding and the facts supporting the finding of the public benefits to be derived if the disposal is to be for less than market value.

(Ord. 89-5, Sec. 50.10.050)

**50.10.060                    Methods of Disposal.**

Disposal of real property may be by sealed bids, outcry auction, lottery, first-come, first-served, negotiation, or such other method as the assembly may provide in the resolution authorizing the disposal.

(Ord. 89.5, Sec. 50.10.060)

**50.10.070                    Price for Disposal.**

- (a) Unless otherwise provided in the resolution authorizing the disposal, the disposal shall be at not less than the fair market value as determined by a fee appraisal, by the borough's assessor's valuation, or by such reasonable estimates as the mayor or assembly, as appropriate, finds to be reliable or appropriate under the circumstances.

- (b) Except for a conveyance to another governmental unit, a disposal for less than fair market value may be made only upon a determination by the assembly that the public benefits to be realized from the disposal equal or exceed the reduction in value of the consideration to be received by the borough. If a disposal at less than market value is to be made to a private entity or person and the reduced price is justified by an identified use, the conveyance document must contain a clause restricting the use of the property to the identified use. The assembly may limit the time during which the use restriction applies. When determined appropriate by the assembly, the conveyance document must also include a clause providing for the reversion to the borough of the real property upon the failure of the real property to be used for the identified use.
- (c) Uses and purposes that may justify a disposal at less than market value include, but are not limited to:
  - (1) use for a governmental or governmental type of service;
  - (2) use for new business or industry;
  - (3) use that promotes economic development;
  - (4) the purpose of increasing the availability of land if the assembly has determined that the land values in an area are inflated because of a scarcity of land in private ownership or that such disposals are necessary to stimulate or reduce the cost of new housing construction; and
  - (5) the purpose of settling boundary or other land disputes.
- (d) A conveyance to the state, the federal government, another local government, or to a governmental agency may be at less than the market value if the assembly, in its sole discretion, determines the conveyance should be authorized. Such conveyances may, but need not, contain restrictions on use, reverter clauses and be for some consideration.

(Ord. 89-5, Sec. 50.10.070)

**50.10.080 Conveyances to Native Tribes or Councils.**

No real property may be conveyed to a Native Tribe or Council organized under Section 16 or 17 of the Indian Reorganization Act of 1934 as amended (25 U.S.C.A. 476, 477) unless the tribe or council gives to the borough a waiver of immunity from suit for the purpose of enforcement of the provisions of the conveyance and associated instruments.

(Ord. 89-5, Sec. 50.10.080)

**50.10.090 Form. Fees and Standard Terms.**

- (a) The mayor may establish procedures and forms for the processing of requests, applications and disposals under this chapter.
- (b) The assembly may establish a schedule of fees, including application, use, and rental fees, applicable to application, permits and the use and conveyance of real property under this chapter.
- (c) The assembly may approve standard terms to be included in leases, licenses, permits and other conveyance documents. Upon such approval all conveyances to which the standard terms are applicable shall include such terms unless modified or waived by the assembly or the mayor determines that one or more terms are inappropriate or must be modified or deleted to meet the intent or purpose of the conveyance authorization.

(Ord. 89-5, Sec. 50.10.090)

**50.10.100 Definitions.**

The following words have the meanings ascribed in this chapter unless the context clearly indicates a different meaning.

- (1) "Casual use" means the temporary, safe, non-exclusive use of borough land in a manner that does not disturb the surface and includes but is not limited to such uses as hiking, hunting, fishing, short term camping, picnicking, operation of all terrain and similar vehicles and berry picking.
- (2) "Conveyance" means the voluntary transfer of real property from one person or entity to another.
- (3) "Fair market value" means the price a property would bring in a sale between a willing buyer and a willing seller, both being fully informed as to all relevant conditions of the property when the property has been exposed for sale for a reasonable period of time.
- (4) "Hazardous or obnoxious use" means a use involving a danger or a risk of damage to property or injury to persons or a use the ordinary person would find offensive.
- (5) "Mayor" means the mayor the Aleutians East Borough or a person designated by the mayor for the purpose of discharging any duty or right of the mayor under this chapter.
- (6) "Posting" means the posting in each community within the borough at a place where public notices are posted, a notice of the action proposed,

along with the date, time, and place or address at which a hearing will be held or to which comments are to be sent.

- (7) "Real Property" includes interests in real property as well as rights to real property, and includes, but is not limited to, leases, easements, security interests, licenses, permits and options.

(Ord. 89-5, Sec. 50.10.100)