

Denali Borough, Alaska
Ordinance 03-08

INTRODUCED BY ASSEMBLY MEMBER NEAL LAUGMAN

AN ORDINANCE AMENDING THE DENALI BOROUGH CODE OF
ORDINANCES TITLE IV CHAPTER 24, TITLED MANAGEMENT OF BOROUGH
REAL PROPERTY

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification. This ordinance is of a general and permanent nature.

Section 2. Purpose. The purpose of this ordinance is to amend the Denali
Borough Code of Ordinances Title IV Chapter 24.

CHAPTER 24

MANAGEMENT OF BOROUGH REAL PROPERTY

Sections:

1. Managing Authority
2. Management Plans
3. Annual Work Plan
4. Public Notice
- [4] 5. Leasing Borough Land
- [5] 6. Sale of Resources on Borough Land
- [6] 7. Temporary Use of Borough Land
- [7] 8. Definitions

Section 1. Managing Authority.

- A. The Denali Borough Assembly or designated representative shall be the Managing Authority for all Borough land.
- B. The Managing Authority shall manage all Borough land in accordance with this Title and adopted management policies and goals.
- C. The managing authority shall review and if necessary modify the "Schedule of Lease Rate Multipliers" described in Section 5, item J, of this chapter every year in January.
- D. The managing authority shall review the existing blocks of Borough lands to be considered for sale or lease on a quarterly basis and at that time may also approve new blocks of Borough lands to be sold or leased. This shall be made to coordinate with the Mayor's Annual Work Plan as described in Section 3 of this chapter.

Section 2. Management Plans.

- A. The Administrator, under the advisement of the Managing Authority of Borough lands, shall prepare for each parcel of Borough land, a written management plan that:
 1. Identifies the uses, including public uses, for which the parcel is suited;
 2. Evaluates the economics of the identified uses;
 3. Identifies whether the parcel may pose danger to public health, safety, or welfare because of a geophysical hazard; and
 4. Makes recommendations regarding the retention, management, development, and sale of the parcel.
- B. The Administrator shall publish notice of and hold at least one public meeting to hear public comment on the management plans.
- C. At least once every five years the Administrator shall review and update the management plans that are then in effect.

Section 3. Annual Work Plan.

- A. The Administrator shall prepare and submit for Assembly approval, an Annual Work Plan for proposed acquisitions of real property, inventory, management and disposal activities for the coming year which will include but not be limited to:
 1. A summary of the previous year's transaction, expenditures and investments;
 2. Proposed actions concerning real property;
 3. A proposed operating budget for land management activities.
- B. The Administrator shall have available a tentative Three Year Plan showing:
 1. Tentative proposed actions concerning real property;
 2. Financial projections of revenue from sales, leases, or Fund investments, and expenditures that would be incurred by any tentative proposed actions concerning real property; and
 3. Management activity increases or changes.

Section 4. Public Notice

"Before taking management action to lease, sell, or permit use of Borough property, the Administrator shall post notification of the proposed action for at least 21 calendar days and take reasonable steps to notify neighboring landowners and tenants near the affected parcel."

Section 5. Leasing Borough Land.

A. Except as provided in Subsection K of this section, all disposals of municipal land shall be [for] based on the Fair Market Value, as defined in Section 8 of this chapter, of the interest disposed of. The municipality may accept in exchange for municipal land any consideration of sufficient value not prohibited by law. The Assembly shall review and approve or reject offers for exchange of municipal land.

B. Management Plan

The Borough may lease municipal property when it is consistent with:

(1.) Its Classification as defined under the Denali Borough Code of Ordinances, Title IV Chapter 27, *Classification of Borough Owned Lands*; and

(2.) The Administrator's Management Plans as described under the Denali Borough Code of Ordinances, Title IV Chapter 24, *Management of Borough Real Property*, Sections 2 and 3; and

(3.) The Lessee's *Plan of Operations*.

C. Processing Fee

Applicants wishing to lease Borough property must complete an application and submit a non-refundable processing fee of \$200.

D. Plan of Operations

The lease applicant shall submit to the Borough a proposed Plan of Operations including a description of property improvements. If the lease is approved, the lessee shall provide the Borough amendments to the Plan of Operation if there are changes. The Administrator shall approve these changes in advance. If changes are made without approval of the Administrator, the Administrator may require the changes to be reversed at the lessee's expense.

E. Competitive Bids

The Borough may provide for competitive bidding to lease Borough land [of competitive-bid designated lands] that is suitable [are] for commercial or industrial use. The competitive bidding shall be conducted in accordance with requirements established by the Managing Authority.

F. Term of Lease

The term of the lease shall be based on the nature of the improvements to be made by the lessee and shall be long enough to allow for amortization of improvements made by the lessee. A lease for a term in excess of ten years shall be recorded. Leases shall have a maximum term of 35 years with a one-time right of renewal. Leases of parcels with terms of five years or less may be granted by the Administrator without Assembly review, if the lease is consistent with the management plan for the parcel.

G. Current Appraisal

Parcels to be leased must have a current appraisal performed by an Alaska State Certified, Alaska chapter Member of the Appraisal Institute (MAI) Appraiser. The appraisal must have been completed within the one year prior to execution of the lease. The Administrator as needed and with Assembly approval shall [every five years] reappraise leased Borough land to determine fair rental value. The reappraisal shall not include any improvements the lessee has made.

H. Easements

Every lease of municipal land shall provide that the municipality retains the right to designate or grant rights-of-way or utility easements across the leased premises without compensation, provided that the lessee shall be compensated for the taking or destruction of any improvements and provided further that the lessee at his option may terminate the lease or may demand a rental adjustment to reflect any reduction in value of the leased premises.

I. Right of Renewal

A lease may grant the lessee a right of renewal upon the expiration of the initial term, provided that the renewal, or any extension of the lease, shall be treated as a new lease and shall be subject to all provisions of this Code then in effect.

[J. Lease Rate]

[The rate schedule for leases of Borough land shall be based upon Fair Market Value as established by an Alaska State Certified, MAI Appraiser.]

J. Lease Rate

The rate for leases of Borough land shall be calculated by multiplying the property's Fair Market Value as established by an Alaskan State Certified, MIA Appraiser with the corresponding rate multiplier as listed in the "Schedule of Lease Rate Multipliers" below:

Lease Rate
Lease Rate Multiplier A (MA):
$MA = 8 - 0.375x$
Where $x = \text{Fair Market Value}/10,000$
$5\% \leq MA \leq 8\%$

K. Disposal for Less than Fair Market Value.

The Assembly may authorize the Administrator to lease Borough land for less than Fair Market Value only if the resolution authorizing the lease contains a finding that the lease is for a compelling public purpose or use beneficial to the Borough, and a statement of the facts on which the finding is based.

A. The Borough may dispose of municipal land to the United States, the state or any political subdivision thereof, or a nonprofit corporation or association for less than the Fair Market Value of the interest disposed of, upon a finding by the Assembly that the disposal will allow the use of the land for a public purpose beneficial to the Borough.

B. The Borough may lease municipal land at less than Fair Market Value where, pursuant to the lease, a commercial or industrial facility or use will be established or maintained on the leased land, but only if the Assembly first finds:

(1.) The rent reduction substantially increases the likelihood that the facility will be located or maintained within the Borough;

(2.) The operation of the facility within the Borough will confer a net economic benefit upon the Borough or the citizens of the Borough; and

C. A lease entered into pursuant to this subsection may be renewed only for a fair market rental value.

D. A lease providing for rent at a rate less than fair market value shall provide for an immediate rent adjustment to fair market value:

(1.) If the specified use or facility is not established within a time specified in the lease

(2.) If the specified use or facility is not continuously maintained except for such periods as are set forth in the lease; or

L. Land Survey

The Administrator may require for non-competitively bid lands a proposed lessee to cause the Borough land to be surveyed at the proposed lessee's own expense. Some or all of the survey costs may be considered as a part of the lease.

M. Attachment of Special Conditions

The Assembly or the Administrator may attach special conditions to a lease in order to reduce risk to the Borough, mitigate public concerns, or other purposes.

N. Termination of Lease

When the lease terminates, the lessee shall remove all improvements made pursuant to the Plan Of Operations except those improvements that the lease specifies shall become the property of the Borough, and the lessee shall restore the land to reasonably the same condition it was in at the time the lease was executed, or, if stipulated, to the condition specified in the lease agreement. Improvements that are not removed by the lessee at the expiration of the lease shall become the property of the Borough.

Section [5.] 6. Sale of Resources on Borough Land.

A. The Administrator may grant to a person an extraction license that allows a person to extract a maximum of two thousand cubic yards of Borough sand or gravel per year. If the extraction for the project is for a

public purpose, a larger extraction may be allowed. An extraction license does not convey an interest in land.

- B. If the Administrator determines an extraction license may substantially affect the surrounding area then the Administrator shall publish notice of the proposed use. The notice shall include a description of the proposed use. Notice shall be of a two-week period, during which public comment on the proposed use will be accepted by the Administrator. If the Administrator receives substantial adverse public comment to the proposed use, then before issuing the license, the Administrator shall hold a public hearing on the proposed use.
- C. The applicant shall pay the Borough both the extraction license fee as required by the fee schedule established by the Administrator and the fair market value of the extracted materials as determined by the Administrator. The Assembly may authorize the Administrator to waive the license fee and the fee for fair market value of the material used by a non-profit organization or public agency for a public purpose.
- D. If the Administrator determines an extraction license may cause damage to the Borough land then the Administrator shall require the applicant to post a bond with the Borough to ensure that the applicant restores the land to reasonably the same condition it was in at the time the license was executed. The Administrator shall not release the bond until the licensee has complied with all conditions of the license.
- E. The Administrator may inspect the Borough land at any time to ensure compliance with license conditions. The Administrator may, for cause, revoke an extraction license. The Administrator shall give notice of the cause of the revocation and give the licensee a reasonable amount of time to correct the problem. A user of Borough resources whose extraction license has been revoked shall within a reasonable time restore the land to reasonably the same condition it was in at the time the license was executed.
- F. The Assembly may by resolution, establish the terms of a commercial sale of Borough sand or gravel resources. A commercial sale means a sale that would not qualify for an extraction license.
- G. The resolution shall include the date of sale, whether the sale is by outcry or sealed bid auction, the manner in which payment is made, the restoration conditions, and any other term that Assembly deems appropriate.
- H. The Administrator shall cause notice of the sale of Borough sand or gravel resources to be published four times in the thirty-day period

preceding the date of the sale. The notice shall contain a brief description of the Borough land from which the resource is to be removed and the terms of the sale as established by the Assembly by resolution. The Administrator shall sell the Borough resources offered for sale to the highest bidder who performs all the terms of the sale. The Administrator may promulgate rules and regulations for commercial sale. These rules must be approved by the Assembly. The Assembly may authorize the Administrator to sell sand or gravel to non-profit organizations for less than fair market value.

- I. After review and comment by the State Department of Transportation/Public Facilities, the Administrator may issue an extraction license or the Assembly may authorize a commercial sale that allows a person to extract gravel from a joint use material extraction site on Borough land as established by the cooperative agreement between the State and the Borough.

Section [6.] 7. Temporary Use of Borough Land.

- A. The Administrator has the authority to issue special land use permits for temporary use of borough lands. A special land use permit does not convey an interest in the land and may be revoked for cause within 30 days notice. Unless otherwise agreed to in writing, the land will be restored to its original condition upon expiration or revocation of the permit. Temporary easements will be considered on a case-by-case basis.
- B. Public comment shall be sought before the issuing of a special land use permit in those situations where, in the opinion of the Administrator, a hazardous or obnoxious use might significantly affect the surrounding area. Notice of the proposed action shall be published and a period for public comment shall be provided.
- C. A special land use permit shall not be granted for a term exceeding one year. Special land use permits are not transferable. Upon expiration, a special land use permit may be extended for a term not exceeding one year.
- D. If a fee is charged for the issuance of a special land use permit, the fee schedule shall be established by the Denali Borough Assembly.

Section [7.] 8. Definitions. Definitions as used in this Chapter:

- A. Hazardous Use: A risk to human health and well being.

B. Interest: In Property: A right, claim, title, or legal share in that property. Refers to the bundle of rights, which may be transferred or conveyed separately or in total. methods of transfer include deed, lease, or easement.

C. Lease: [Leases are used to dispose of specific interests in real property without transferring ownership of that property, and it is a contract for exclusive possession of lands or tenements for a determinate period.]

A contract granting exclusive use or occupation of property during a specified period in exchange for a specified rent.

D. Obnoxious Use: A use which people may find objectionable, disagreeable, offensive, or displeasing.

E. Public Interest: Something in which the public, the community at large, has some pecuniary interest (having to do with money), or some interest by which their legal rights or liabilities are affected.

F. Temporary Use of Land: A[n] non- exclusive use of borough land, without conveying an interest in the land, which has a duration for one year or less, involves minimal disturbance to the land, and does not allow permanent structures or improvements.

G. Fair Market Value: The most probable price, as of a specified date, in cash, or in terms equivalents to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Section 3. Effective Date. This ordinance becomes effective upon adoption of the Denali Borough Assembly and signature of the Mayor.

DATE INTRODUCED: May 14, 2003

FIRST READING: May 14, 2003

PUBLIC HEARING: May 12, 2004



ATTEST:



Denali Borough Mayor



Denali Borough Clerk