

**PETERSBURG BOROUGH
ORDINANCE #2018-12**

**AN ORDINANCE AMENDING AND UPDATING TITLE 16 OF THE MUNICIPAL CODE
(CHAPTERS 16.04 ENTITLED "DEFINITIONS", 16.12 ENTITLED "ACQUISITION AND
DISPOSAL OF BOROUGH OWNED LANDS", AND 16.16 ENTITLED "TIDELANDS"),
ADDING PROVISIONS FOR LAND EXCHANGE, AND UPDATING CURRENT LANGUAGE
TO REFLECT BOROUGH INCORPORATION**

Whereas, on January 3, 2013 the Election Division for the State of Alaska certified the election results of the December 18, 2012 incorporation election for the Petersburg Borough, and

Whereas, the certified election confirmed the incorporation of the Petersburg Borough and dissolved the City of Petersburg, and

Whereas, Petersburg Borough Charter, Section 19.06 requires all ordinances, resolutions, regulations, orders and rules in effect for the former City of Petersburg to continue in full force and effect within the Petersburg Borough, Service Area 1, until expressly reaffirmed, revised or repealed by the assembly, and

Whereas, acquisition and disposal of Borough owned lands procedures are in need of amending and updating, and the Assembly wishes to include provisions for land exchange.

Therefore, the Petersburg Borough Ordains, Chapters 16.04, 16.12 and 16.16, as set out below, are hereby adopted as borough ordinances.

Section 1. Classification: This ordinance is of a general and permanent nature and shall be codified in the Petersburg Municipal Code.

Section 2. Purpose: The purpose of this ordinance is to amend and update the language of the chapter.

Section 3. Substantive Provisions: Chapters 16.04, 16.12 and 16.16 of the former Petersburg City Code with amendments as noted herein, are hereby adopted as Borough ordinances and shall read as follows:

Chapter 16.04 - DEFINITIONS

Sections:

16.04.010 - Definitions.

For the purpose of this chapter:

"Alaska" means the state of Alaska.

"Assembly" means the borough assembly of the Petersburg Borough.

"Assessed value" means the official estimate made by the independent borough assessor of the full and true value of a real property.

"Assessor" means the independent hired or retained assessor of the borough.

"Borough" means the Petersburg Borough, or its authorized agents or representatives.

"Business day" means Monday through Friday, excluding days observed as federal, state or local holidays.

"Clerk" means the clerk of the borough.

"Full and true value," commonly referred to as "fair market value," means the price a property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

"Improvements" means buildings, wharves, piers, drydocks and other similar types of structures permanently fixed to lands that are constructed and/or maintained for business, commercial, recreational, residential or other beneficial uses or purposes. Floats secured by guide piles and used as floating wharves, where access is provided to the shore, shall be considered improvements.

"Mayor" means the mayor of the borough.

"Mean high tide" for any place subject to tidal influence, means the tidal datum plane of the average of the high tides as established by the U.S. National Geodetic Survey. Mean high water line shall be interpreted as the intersection of the datum plane of mean high water with the shore.

"Mean low water" for any place subject to tidal influence, means the tidal datum plane of the average of the low tides as established by U.S. National Geodetic Survey.

"Nonprofit entity" means an organization formed exclusively for educational or charitable purposes that has received an IRS nonprofit designation of 501(c)(3) or 501(c)(4). Religious organizations do not qualify as a nonprofit entity under this title.

"Person" means any person, firm, corporation, limited liability company, cooperative association, partnership or other entity legally capable of owning or having interest in land.

"Preference right" means the right of an upland owner to meet or exceed the amount of high bid or offer tendered by a non-upland owner for the lease or purchase of tideland or submerged land.

"State" means the state of Alaska.

"State or federal agency" means an agency of the state of Alaska or the United States government.

"Submerged lands" means lands covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further.

"Tideland" means land periodically covered by tidal water between the elevation of mean high water and mean low water.

"Upland owner" means the record owner or owners of real property above and adjoining the mean high tide line of a tract of tidelands.

Chapter 16.12 - ACQUISITION AND DISPOSAL OF BOROUGH OWNED LANDS

Sections:

16.12.005	Leasing preference
16.12.010	Power to acquire and dispose of real property
16.12.020	Power to acquire and dispose of real property - methods of acquisition or disposal
16.12.030	Disposal to a state or federal agency or nonprofit entity, or for purposes of economic development.
16.12.040	Property exempt
16.12.050	Zoning classification required for disposal.
16.12.060	Borough initiation of disposal of real property
16.12.070	Initiation of disposal by application
16.12.080	Application for disposal - Preliminary Review and Determination
16.12.090	Application for disposal - Deposit for costs
16.12.100	Public sale
16.12.110	Appeal of determination of successful bid
16.12.120	Payment and conveyance following public sale
16.12.130	Permits for temporary property use
16.12.140	Land exchange
16.12.150	Over-the-counter disposals
16.12.160	Required authorization for disposal of borough real property
16.12.170	Required provisions for leaseholds and other similar temporary interests in property

16.12.005 - Leasing preference.

The orderly development of the borough with due consideration toward ocean resource harvesting, economic development, public recreation and public service centers, combined with dwindling municipal revenues and limited land available for public purposes, supports a strong preference toward leasing land versus outright sale of land.

16.12.010 - Power to acquire and dispose of real property.

The borough assembly, by resolution, may authorize the acquisition and disposal of real property in accordance with the provisions of this Chapter and on terms and conditions as the assembly shall determine. No acquisition or disposal shall be made until the assessor has assessed the affected property and given the assembly an opinion as to the property's full and true value. Except as otherwise provided herein, real property shall not be disposed of for less than its assessed value, plus any applicable costs of sale. The equivalency of value of property to be acquired and disposed of by land exchange shall be determined by appraisal, under the provisions of section 16.12.140.

16.12.020 - Power to acquire or dispose of real property - methods of acquisition or disposal.

A. The borough may acquire or dispose of real property by purchase or sale, lease, equivalent value exchange, license, donation, dedication, permit, easement or right-of-way, assignment of limited or specific use, or any other lawful means.

B. Property may be acquired or disposed of by directly negotiated purchases or sales, public sales conducted by outcry auction or sealed competitive bids, over-the-counter offerings of property unsold at public sale, property exchange, or such other lawful methods as the borough assembly may approve.

16.12.030 - Disposal to a state or federal agency or nonprofit entity, or for purposes of economic development.

A. The borough may dispose of borough real property for less than the assessed value to a state or federal agency or nonprofit entity, for considerations determined by the borough assembly to be in the best interest of the borough.

B. The borough assembly may authorize disposal of borough property for less than the assessed value, and by directly negotiated sale, for economic development purposes to entities wishing to install, construct and operate new or expanded industrial, manufacturing or commercial facilities within the borough, upon the terms and conditions as the assembly considers advantageous to the civic welfare of the borough. In addition to review and recommendation by the planning commission, any such proposal shall be reviewed by the Petersburg Economic Development Council, which shall research and advise the assembly on the potential benefits to the borough of the economic development proposal. The assembly may authorize the borough manager to negotiate directly for disposal of borough property for economic development purposes; the final terms of such a negotiated disposal are subject to approval by the assembly.

16.12.040 - Property exempt.

Notwithstanding any other provision of this chapter, the borough may lease office space or residential living units on a month to month basis without complying with the provisions of this chapter.

16.12.050 - Zoning classification required for disposal.

Unless a property is located outside of Service Area No. 1, disposal of borough property shall not be approved unless the property involved has been zoned by the borough.

16.12.060- Borough initiation of disposal of real property.

A. The borough assembly may initiate the disposal of real property not needed for a public use, on terms and conditions established by the assembly. The assembly may refer a proposed disposal to the planning commission for review and recommendation. All disposals of borough real property shall be by public sale to the highest responsible bidder, conducted either by sealed competitive bid or outcry auction, unless the assembly determines that an exemption from public sale is in the best interests of the borough; if the disposal is so exempted, the assembly shall establish the alternative method of disposal, and the terms and conditions of disposal. If the assembly determines to proceed by direct negotiations, the assembly may authorize the borough manager to commence such negotiations for disposal of borough property; the final terms of a negotiated disposal are subject to approval by the assembly unless the minimum essential terms and the authority of the borough manager to execute the disposal are set forth in the resolution or ordinance authorizing negotiations. If the disposal is to proceed by direct negotiations, notice shall be provided to the owners of real property located immediately adjacent to the property, by certified mail to the last known address of record, prior to any final assembly approval of the disposal.

B. The borough assembly may require the construction of improvements within a specified period of time as a condition of disposal of any borough owned real property. Whenever the assembly determines construction of improvements shall be required as a condition of a disposal, the terms and conditions shall be incorporated in the conveyance agreement.

16.12.070 - Initiation of disposal by application.

A. Any person desiring to obtain an interest in borough owned real property shall make application to the borough clerk on forms provided by the borough. An application shall describe the real property, state with specificity the interest in the property sought by the applicant (ownership, leasehold, etc.) and set out the proposed terms.

B. Only applications completed in full and accompanied by five hundred dollar filing fee will be accepted. Filing fees are not refundable.

C. The borough clerk shall refer the application to the planning commission, and any other borough board or commission that may have interest in the application, for preliminary review and recommendation.

D. The filing of an application shall not give the applicant any right to obtain the interest applied for.

16.12.080 - Application for disposal - Preliminary Review and Determination.

A. The planning commission shall hold a public hearing on the application and provide its recommendations regarding the proposed disposal to the assembly within 100 days of referral. The planning commission may require an applicant to state the nature, extent, size and general specifications of improvements the applicant intends to construct upon the real property and the time when the improvements will be completed. The planning commission may also require an applicant to furnish development plans.

B. The recommendations of the planning commission and other interested borough boards or commissions, along with the assessor's official estimate of property value, shall be submitted to the ~~city~~ borough assembly for preliminary consideration. The applicant shall be notified of the date and time when the assembly will meet. At the meeting the applicant and any representative from a commission or board may present their views.

C. In preliminarily determining whether to grant the interest sought, or to place terms or conditions on such interest, the borough assembly shall consider the nature, extent and cost of improvements which an applicant may construct, the value of an applicant's proposed use to the economy of the borough and other relevant factors.

D. The borough assembly may amend the terms and conditions from those proposed by an applicant.

E. The borough assembly shall determine whether an application shall move forward in the application process or be denied. If the application is to move forward, the assembly shall schedule a public sale or exempt the application and disposal from public sale. If the application and disposal are exempted from public sale, the borough assembly shall thereafter proceed to establish the alternative method of disposal, and the terms and conditions of disposal. If the assembly determines to proceed by direct negotiations, the assembly may authorize the borough manager to commence such negotiations for disposal of borough property; the final terms of a negotiated disposal are subject to approval by the assembly unless the minimum essential terms and the authority of the borough manager to execute the disposal are set forth in the resolution or ordinance authorizing negotiations.

F. A favorable preliminary determination shall not preclude the borough assembly from making subsequent impositions of additional or different terms or conditions during the balance of the application process.

G. Receipt of preliminary approval shall not give the applicant right to the interest applied for.

16.12.090 - Application for disposal - Deposit for costs.

A. Upon preliminary approval the borough clerk shall make an estimate of costs required to handle the application, including, but not limited to, title report, survey, legal fees, postage, recording fees, public noticing and advertising.

B. The borough clerk shall notify the applicant in writing of the estimated costs. The applicant shall have fifteen calendar days from date of estimate mailing to pay the estimated costs to the borough. Failure of the applicant to pay the estimated costs shall result in the application being cancelled.

C. The applicant shall be required to pay the actual costs associated with an application. If the actual costs exceed the estimate, the applicant shall pay the excess costs immediately upon notice from the borough. At the end of the transaction, if the actual costs are less than estimated, the borough will refund the applicant the difference.

D. All title research, surveying, public noticing, recording and advertising shall be performed under the control of the borough. Work done without borough approval will not be accepted.

E. Payment of estimated costs shall not give the applicant right to obtain the interest applied for.

16.12.100 - Public sale.

Disposal of an interest in borough owned property shall be by public sale to the highest responsible bidder, unless the assembly specifically approves a motion to allow an exemption. A public sale may be conducted

either by sealed competitive bid or outcry auction. When property is disposed of at a public sale the following procedures shall apply:

A. The assembly shall determine the minimum accepted bid price after review of the borough assessor's official estimate of the full and true value of the property and the interest to be disposed of. The required form of bids shall be established by the borough assembly, but the following general rules shall apply:

1. Bids for a leasehold or other similar temporary interest in property shall be either in the form of a percentage of the assessed value a bidder is willing to pay annually, or in the form of whole dollars representing the total amount a bidder proposes to pay for an annualized fee over the term of the interest, subject to five year adjustments under Subsection 16.12.140.D.

2. Bids for the purchase of fee ownership of property shall be in the form of whole dollars representing the total price a bidder proposes to pay for the property, excluding filing, processing and recording costs.

B. Owners of real property located immediately adjacent to a property included in a public sale shall receive notice of the sale by certified mail to the last known address of record at least fourteen (14) calendar days prior to the due date for bid submittal.

C. Notice of the public sale shall be published once a week for two consecutive weeks in a newspaper of general circulation in the borough and posted within the same time at three public places within the borough. The published notice shall include a description of the property included in the sale, the value of the interest according to current assessment, the means and method of disposal, the date and time of the sale, if by outcry auction, or the date, time, place and manner in which bids are to be submitted and opened, if by sealed bid.

D. 1. Outcry Auction. Except as otherwise provided by the assembly, outcry auctions shall be held in the borough assembly chambers by the borough assembly. The mayor or other person designated by the assembly to conduct the auction, immediately prior to opening the auction for bids, shall announce all terms, conditions or limitations the borough determines necessary for disposal of the interest to be auctioned. Bidders shall submit their bid with the understanding that if determined the successful bidder, all such terms, conditions or limitations shall be met by the successful bidder. The successful bidder shall be publicly announced upon completion of the auction.

2. Sealed bids. Sealed bids shall be received by the Borough Clerk within the time set in the published notice. Bids shall be opened publicly, and submitted to the assembly at its next regular meeting. The Assembly reserves the right to reject any and all bids received at the public sale if the highest bid is below the minimum accepted bid price, including costs of sale, or is not made by a responsible bidder.

E. The successful bid is the bid that offers the highest annual percentage of assessed value, or highest annual fee, for a leasehold or other similar temporary interest in a parcel, or the bid that offers the highest whole dollar price to purchase fee ownership of a parcel.

F. If the successful bidder is not a party to an original application, upon the borough's collection of the costs for the public sale and property transaction from the successful bidder, the borough shall refund to the original applicant the estimated costs paid under section 16.12.090.

G. A property not disposed of at public shall become available over-the-counter, on a first-come, first-served basis, under the provisions of section 16.12.150, unless the assembly directs that it be re-offered at a subsequent public sale.

16.12.110 - Appeal of determination of successful bid.

A. An aggrieved bidder may appeal the determination of the successful bidder to the borough assembly, within five business days following completion of sale. If no timely notice of appeal is filed, the right to protest the determination is waived.

B. Appeals must be in writing on a form provided by the borough, contain a detailed statement of the grounds for appeal, and be accompanied by an appeal fee of \$500.00.

C. The assembly shall schedule and conduct a hearing on the appeal. Hearings shall be conducted informally, with due regard for the rights of the parties and shall be recorded. The borough assembly's decision shall be in writing and contain findings of fact and conclusions of law. The decision shall be the borough's final decision and may be appealed to the superior court within thirty days of distribution of the decision, in accordance with the applicable rules of court governing administrative appeals.

16.12.120 - Payment and conveyance following public sale.

A. Within fourteen calendar days following expiration of the five-day appeal period set out in section 16.12.110(A), if no appeal was filed, or distribution of the assembly's decision under 16.12.110(C) in the event an appeal was filed, the successful bidder shall,

1. if obtaining fee ownership of property, deposit five percent of the bid amount with the borough, and execute and deliver to the borough clerk the contract of sale and other conveyance documents. The deposit shall be applied toward the purchase price and the balance of the purchase price shall be due and payable within ninety calendar days after the date of deposit. If the successful bidder fails to timely make the deposit and execute the required documents, or to timely pay the remaining bid amount in full all sums previously deposited with the borough, including costs deposited under 16.12.090, shall be forfeited to the borough unless an extension, up to a maximum of ten calendar days, is authorized in writing by the borough manager; or

2. if obtaining a leasehold or other similar temporary interest in property, pay in full to the borough the first year's annual percentage or fee and all required costs of sale, and execute and deliver to the borough clerk the required conveyance documents.

B. In the event a successful bidder on a property defaults, the property shall become available over-the-counter, on a first come, first served basis, under the provisions of 16.12.150, unless the assembly directs that it be re-offered at a subsequent public sale.

C. Conveyance documents for the interest disposed of, including deeds for real property sold by the borough, will be issued upon receipt of the full payment due for the interest, and compliance with all terms and conditions of the conveyance.

16.12.130 - Permits for temporary property use.

A. The assembly may, by resolution, authorize permits for the temporary use of borough real property for a period not to exceed five years. Permits may be issued without public sale, for any purpose compatible with the land use classification of the land, and on terms and conditions as the assembly shall determine. The assembly may authorize the borough manager to enter into direct negotiations for a temporary use permit; the final terms of a temporary use permit are subject to approval by the assembly unless the minimum essential terms and the authority of the borough manager to execute the permit are set forth in the resolution.

B. The rental rate for temporary use shall be determined using the current assessed value of the property.

C. The application, review and deposit provisions of Sections 16.12.070-090 shall apply to temporary use permits.

16.12.140 Land Exchange.

A. Borough real property may be exchanged for real property of equivalent value. The equivalency of value of property to be acquired and disposed of by land exchange shall be determined by appraisal. A property exchange may be initiated by the assembly under section 16.12.060, or by application under section 16.12.070. In addition to other costs collected under section 16.12.090, the costs of appraising all parcels involved in the proposed exchange shall be collected from an applicant, along with the cost of obtaining a preliminary commitment for title insurance for the property to be received by the borough. If the exchange is completed, the cost of appraising the borough property may be reimbursed to the applicant, by agreement of the assembly.

B. All proposed land exchanges shall be reviewed by the planning commission, which shall provide its recommendations to the assembly. The planning commission's report and recommendations shall include the following, at a minimum:

1. A discussion of the assessed values of the properties proposed for exchange;
Initial evidence of marketable title for the property to be received by the borough;

3. A discussion regarding the past usage history of the property to be received by the borough, and the potential conduct of an environmental assessment;
 4. Recommended terms and conditions of the exchange, including the responsibility for costs of surveys, appraisals, environmental assessments, title search and insurance, and agreement preparation;
 5. Alternatives considered; and
 6. Consideration of how the exchange would benefit the public.
- C. The borough assembly shall consider the planning commission's report and recommendations, and determine whether to proceed with the exchange process. If the exchange is to move forward, the assembly shall direct the borough manager to proceed with further investigation and direct negotiations for the exchange, including ordering appraisals and any assessments for the properties and a preliminary commitment for title insurance for the property to be obtained by the borough. The final terms of an exchange are subject to approval by the assembly.
- D. A favorable preliminary determination shall not preclude the borough assembly from imposing additional or different terms or conditions during the balance of the exchange process, nor grant the applicant any rights in connection with the exchange.

16.12.150 Over-the-counter disposals.

The borough may dispose of borough real property over-the-counter upon the following terms and conditions:

1. The property must have previously been included in a public sale conducted under this Chapter by outcry auction or sealed competitive bid.
The assembly ordinance or resolution authorizing the disposal must not specifically prohibit properties from becoming available over-the-counter if not disposed of at the sale. Such prohibition may include all or specific properties.
3. The over-the-counter price shall be the minimum accepted bid price set forth in the original resolution or ordinance authorizing the public sale or, in the event the property becomes available over-the-counter upon a default under 16.12.120, the amount of the successful bid at the public sale. The conveyance shall be made upon the same terms, conditions and restrictions as set forth in the original resolution or ordinance.
4. A property shall be disposed of over-the-counter under this section to the first potential purchaser who delivers to the borough clerk during regular business hours a signed contract of sale or other conveyance agreement and all required conveyance documents. Payment shall be due to the borough within the same deadlines as established in subsections 16.12.120(A)(1) and (2), except that the commencement of the payment period is the date of submittal of the signed conveyance documents to the clerk. The conveyance documents shall be in the same form as utilized in the original public sale. If, on the same business day, more than one potential purchaser submits to the borough signed conveyance documents for a property, then the documents shall be deemed to have been received simultaneously and the purchaser shall be determined by lot, conducted by the borough manager or manager's designee.
5. The borough manager may, at any time, determine that it is no longer in the best interests of the borough to sell a property over-the-counter, and withdraw that property from availability.
6. Any conveyance documents must be submitted hereunder by a potential purchaser no later than one year from the date of the original public sale authorized by resolution or ordinance.

16.12.160 - Required authorization for disposal of borough real property

- A. Property Valued at Five Hundred Thousand Dollars or More. The sale or equivalent value exchange of fee ownership of a borough property assessed at greater than five hundred thousand dollars shall be by ordinance submitted to the electors of the borough for ratification. The ordinance shall incorporate the contract of sale or exchange agreement by reference. Upon approval of a majority of those voting on the question, the assembly may approve the sale or exchange on the terms and conditions approved by the voters. If the sale or exchange was initiated by application, the applicant shall pay all costs of the election in advance, unless the assembly determines the costs shall be paid or shared by the borough.
- B. Property Valued at More than Two Hundred Fifty Thousand Dollars but Less than Five Hundred Thousand Dollars. The sale or equivalent value exchange of fee ownership of a borough property with an

assessed value greater than two hundred fifty thousand dollars but less than five hundred thousand dollars shall be by ordinance. The ordinance shall incorporate the contract of sale or exchange agreement by reference. The assembly may not authorize the sale of real property unless the assembly first determines the property is not required for municipal purposes. The ordinance shall contain an authorization of the appropriate officers of the borough to execute all deeds, agreements or other documents required to complete the transaction.

C. Property Valued at Two Hundred Fifty Thousand Dollars or Less, or disposal by leasehold or other similar temporary interest in borough property. The sale or equivalent value exchange of real property of assessed value of two hundred fifty thousand dollars or less, or the disposal of property by leasehold or other similar temporary interest, shall be authorized by a resolution of the assembly. The assembly may not authorize the sale of real property unless the assembly first determines the property is not required for municipal purposes. The resolution shall incorporate the conveyance documents by reference, and shall contain an authorization of the appropriate officers of the borough to execute those documents.

D. Pursuant to section 11.13 of the Borough Charter, any sale of real property previously dedicated to a public use shall not be final until the ordinance or resolution to do so has been on file in the office of the borough clerk for thirty days.

16.12.170 - Required provisions for leasehold and other similar temporary interests in property.

In addition to special terms or conditions expressed in individual conveyance documents, the following provisions, unless specifically excluded, apply to all leases, licenses, and other temporary conveyances of interests in borough property, including leases of tidelands and submerged lands under Chapter 16.16, whether expressed or not in the written document.

A. All such conveyances shall be issued in a form approved and prepared by the borough.

B. A conveyance document may contain special limitations, reservations, requirements or conditions, including requirements for improvements and payment of real property taxes, as the borough determines necessary. Conveyance documents may contain restrictions and reservations as are necessary to protect the public interest.

C. A conveyance term shall be no less than five years and no longer than fifty-five years.

D. The annual fee shall be adjusted by the borough on each fifth anniversary of the date of the conveyance document. The annual fee shall be adjusted based upon a flat rate or percentage increase, as further set out in the conveyance document.

E. The property shall be utilized for only those purposes within the terms of the conveyance document and in conformity with the ordinances of the borough. Improvements shall be properly located on the property. Utilization or development for other than allowed uses shall be a violation and subject the conveyance to cancellation.

F. All ordinances of the borough for the promotion of sanitation shall be complied with. The property shall be kept in neat, clean and sanitary condition and every effort shall be made to prevent pollution.

G. Compliance with all federal, state and local laws, regulations and rules that apply to the property and permitted uses shall be required.

H. The borough shall be permitted to enter the property at any reasonable time for the purpose of inspecting the land and improvements.

I. All oils, gases, coal, ores, minerals, fissionable material and fossils are reserved by the borough or state of Alaska and shall not be removed from the land.

J. Timber, stone, gravel, peat moss, topsoil or any other materials valuable for building or commercial purposes, are reserved by the borough and shall not be removed from the land. Material required for the development of the property, as permitted under the conveyance, may be used if such use is first approved by the borough.

K. Subleases and assignments are permitted only upon the written approval of the borough assembly. Such subleases and assignments shall be in writing and be subject to terms and conditions of the original conveyance document. A copy of an approved sublease or assignment shall be filed with the borough clerk.

L. The borough assembly shall have full and unlimited discretion in deciding whether to consent to the assignment or sublease and may place additional terms and conditions on assignments and subleases.

- M. The borough assembly may approve an assignment made solely for the purpose of securing a loan. The lender or assignee shall not be liable for obligations under the conveyance document unless the lender/assignee is or becomes in possession of the property.
- N. Modifications must be in writing signed by all parties in interest or their successors in interest.
- O. Receipt of rental or fees due by the borough with knowledge of any breach or of any default in observance or performance of any of the conditions or covenants of a conveyance document shall not be deemed a waiver of any provision. Failure on the part of the borough to enforce any covenant or provision or waiver of any right by the borough, unless in writing, shall not discharge or invalidate such covenants or provisions or affect the right of the borough to enforce the same in the event of any subsequent breach or default.
- P. The parties may cancel in whole or in part at any time by mutual written agreement.
- Q. Any use of property for an unlawful purpose may result in termination by the borough.
- R. If there is a default in the performance or observance of any term, covenant or stipulation, or any terms of this chapter or other ordinances of the borough, the borough shall take action as necessary to protect the rights and interests of the borough. The borough shall provide at least thirty days written notice to cure default. No improvements shall be removed from the property during any default period.
- S. Required notices or demands shall be given in writing and delivered to the parties by certified mail through the U.S. post office to the party's last known address of record.
- T. The holder of a recorded mortgage for improvements on a property and every sublessee or assignee shall be given a duplicate copy of any notice of default in the same manner as notice is given under paragraph S above, provided the mortgagee or sublessee/assignee has given the borough clerk notice of the recorded mortgage or sublease/assignment.
- U. The receipt by the borough of any rent or any other sum of money after a notice of termination has been given shall not reinstate, continue or extend the conveyance.
- V. If a conveyance is terminated or abandoned, the borough may immediately re-enter and resume possession of the property and remove all persons and property without liability for damages. Re-entry by the borough shall not be deemed an acceptance of a surrender of the conveyance document.
- W. If a conveyance is terminated, the borough may offer the property for other appropriate disposal.
- X. The property shall be peaceably and quietly surrendered on the last day of the term of the conveyance. Improvements owned by the holder of the conveyance shall be removed by the holder by the date of termination, although the borough may extend the time for removing improvements in cases where hardship is proven. The retiring holder may, with the consent of the borough, sell improvements to the successor. All periods of time granted to remove improvements are subject to payment to the borough or pro rata rent or fee. Improvements not removed within the time allowed shall revert to and absolute title shall vest in the borough, at the discretion of the borough.

Chapter 16.16 - TIDELANDS

Sections:

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| 16.16.010 | State conveyance approved and accepted |
| 16.16.020 | Subdivision plat approved and adopted |
| 16.16.030 | Plat to be retained at municipal hall |
| 16.16.040 | Preferential rights filing period declared expired |
| 16.16.050 | Tideland leases |
| 16.16.060 | Lease for erosion control |
| 16.16.070 | Sale of tidelands—Procedure |
| 16.16.080 | Upland owner preference right |
| 16.16.090 | Permits for temporary tideland use. |

16.16.010 - State conveyance approved and accepted.

The conveyance by the state to the then-city of Petersburg, dated September 19, 1962, of tidelands and submerged lands lying seaward of the city, was approved and accepted.

16.16.020 - Subdivision plat approved and adopted.

The tidelands subdivision plat, (meaning that certain plat of subdivision of Alaska Tidelands Survey No. 9, prepared by Toner & Nordling, Registered Engineers, and entitled "Tidelands Addition to the City of Petersburg, Alaska, Subdivision of ATS No. 9.") was approved and adopted as the official tidelands subdivision plat of the tidelands and submerged lands conveyed by the state to the then-city of Petersburg by conveyance dated September 19, 1962.

16.16.030 - Plats to be retained at municipal hall.

The plats demonstrating tidelands and submerged lands held by the borough shall be retained at the Petersburg Municipal Hall, and made available for public inspection at reasonable hours.

16.16.040 - Preferential rights filing period declared expired.

The time period in which certain persons were granted the right to file preference rights to tidelands pursuant to Article II of Petersburg Ordinance No. 184 has expired.

16.16.050 - Tideland leases.

A. Except for leases of tidelands or submerged lands to state or federal agencies or nonprofit entities and as set out in subsection 16.16.060(B), tidelands or submerged land shall not be leased for a rental rate less than ten percent of their assessed value including any improvements. The borough assembly may negotiate rental rates for tidelands or submerged lands leased to state or federal agencies or nonprofit entities for less than ten percent consideration.

B. Tidelands and submerged lands owned by the borough may be leased for surface use only.

C. A particular tideland or submerged land may be offered for lease by the borough upon its own motion, or may be nominated for lease by an application which must demonstrate:

1. The proposed use of the nominated tideland or submerged land is a beneficial use in terms of highest and best use; and

That it is in the borough's interest to lease the nominated tideland or submerged land.

D. The requirements and provisions of Chapter 16.12 for the lease of borough owned real property shall apply to the lease of tidelands and submerged lands.

16.16.060 - Lease for erosion control.

A. In instances where the planning commission determines a tideland is necessary for use to control erosion to an upland property, the borough assembly may waive the public sale provisions of Chapter 16.12 and authorize the borough manager to directly negotiate with the upland owner. The application, review, and deposit provisions of Chapter 16.12 shall apply.

B. The lessee must obtain all state and federal approvals before a lease is granted. The annual lease rate for these tidelands shall be One Thousand Dollars.

C. Only structures designed to stop wave and tidal action from eroding the shoreline may be constructed on tidelands leased under these provisions.

16.16.070 - Sale of tidelands—Procedure.

In isolated and necessary instances, the assembly may, in the manner provided for the sale of other real property owned by the borough, sell tracts of tide and submerged lands which are not needed for public purposes. Sales of tide and submerged land shall not be made for a consideration less than the assessed

full and true value as established by the borough assessor. In addition to the initiation and sale procedures in Chapter 16.12, the following procedures shall apply:

A. The assembly shall hold a public hearing to consider the disposal. Notice of the hearing shall be given by publication in the local newspaper at least fifteen days before the hearing. In addition to public notification, the borough shall send notice of the hearing by certified mail to all property owners within six hundred feet of the property proposed for sale, to the last known address of record. If the sale was initiated by application, the applicant shall pay the cost of the public notice and certified mailing.

B. At the hearing, the benefits of sale of the subject tideland that could not be realized through leasing must be clearly demonstrated.

C. An applicant for purchase of tidelands must conclusively demonstrate that outright sale of a tideland, as contrasted with lease of the tideland, is in the borough's best interests. The borough reserves the right to refuse sale of any tideland, regardless of sufficiency of proof.

16.16.080 - Upland owner preference right.

The upland owner of a subject tidelands tract to be leased or sold shall be accorded preference right to meet the high bid, under procedures to be established by the assembly in the resolution or ordinance permitting the sale.

16.16.090 - Permits for temporary tideland use.

A. The assembly may, by resolution, authorize permits to applicants for the temporary use of tidelands and/or submerged lands for a period not to exceed five years. Permits may be issued without public auction of the permit, for any purpose compatible with the land use classification, and on terms and conditions as assembly shall determine. The assembly may authorize the borough manager to enter into direct negotiations for a temporary use permit; the final terms of a temporary use permit are subject to approval by the assembly unless the minimum essential terms and the authority of the borough manager to execute the permit are set forth in the resolution.

B. The rental rate for temporary use shall be determined using the current assessed value of the property.

C. The application, review and deposit provisions of Chapter 16.12 shall apply.

Section 4. Severability: If any provision of this ordinance or any application 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.

Section 5. Effective Date: This Ordinance shall become effective immediately upon final passage.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this 14th day of May, 2018.

Mark Jensen, Mayor

ATTEST:

Debra K. Thompson, Borough Clerk

Adopted: 5/14/2018

Noticed: 5/17/2018

Effective: 5/14/2018