

**PETERSBURG BOROUGH
ORDINANCE #2024-21**

AN ORDINANCE AMENDING CHAPTER 16.16, *TIDELANDS*, OF THE PETERSBURG MUNICIPAL CODE TO PROVIDE FOR UPDATED PROVISIONS REGARDING THE DISPOSAL OF TIDELANDS AND SUBMERGED LANDS

WHEREAS, on September 19, 1962, the State of Alaska conveyed to the then-City of Petersburg tidelands and submerged lands lying seaward of the city; and

WHEREAS, due to the economic value of the tidelands to Petersburg for shipping purposes and our marine related industries such as commercial fishing, Municipal Code Chapter 16.16 provides that Borough-owned tidelands may be sold only “in isolated and necessary instances” when not needed for a public purpose; that the 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; and, that the sale of tidelands shall not be made for a consideration less than the assessed full and true value as established by the Borough Assessor; and

WHEREAS, the Harbor Advisory Board made recommendation to the Assembly to amend Chapter 16.16 to state that the sale of tidelands shall not be made for consideration less than the appraised full and true value, and to clarify the sale process to ensure any sale of tidelands and submerged lands is in the Borough’s best interests.

THEREFORE, THE PETERSBURG BOROUGH ORDAINS, Chapter 16.16, *Tidelands*, of the Petersburg Municipal Code is hereby amended as follows. The language proposed for addition is in bold and underlined, and the language proposed for deletion is struck through.

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 provisions for disposal of borough-owned tidelands and submerged lands.

Section 3. Substantive Provisions:

Chapter 16.16 - Tidelands

Sections:

16.16.010 - State conveyance approved and accepted.

16.16.020 - Subdivision plat approved and adopted.

16.16.030 - Plats to be retained at municipal hall.

16.16.040 - Preferential rights filing period declared expired.

16.16.045 - Power to dispose of tidelands and submerged lands—Methods of disposal.

16.16.050 - **Lease of** Tidelands leases.

16.16.060 - Lease for erosion control.

16.16.070 - Sale of tidelands—~~Procedure.~~

16.16.075 - Disposal procedures.

~~16.16.080 - Upland owner preference right.~~

16.16.080 - Disposal to a state or federal agency, federally recognized tribe or nonprofit entity, or for a public benefit purpose, for less than appraised value.

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.

16.16.045 - Power to dispose of tidelands and submerged lands—Methods of disposal.

The borough assembly may authorize the disposal of tidelands and submerged lands in accordance with the provisions of this Chapter and on terms and conditions as the assembly shall determine.

A. The borough may dispose of tidelands and submerged lands by sale, lease, equivalent value exchange, license, permit, or any other lawful means.

B. Tidelands and submerged lands may be disposed of by direct negotiations, public sale or lease conducted by outcry auction or sealed competitive bidding, or such other lawful methods as the borough assembly may approve.

C. The sale or equivalent value exchange of tidelands or submerged lands shall be by ordinance; such ordinance shall be submitted to the voters of the borough for ratification if the borough tidelands or submerged lands to be sold or exchanged are valued, by appraisal, at greater than One Million Five Hundred Thousand Dollars (\$1,500,000.00). The lease, license, permit, or other disposal of tidelands or submerged lands shall be by resolution.

16.16.050 - Lease of Tidelands-leases.

A. Except for a leases of tidelands or submerged lands to a state or federal agencies, federally recognized tribe, or nonprofit entities, or for a public benefit

~~purpose, or for erosion control under and as set out in subsection 16.16.060B, tidelands or submerged lands shall not be leased for a rental rate less than ten percent (10%) of its~~ **appraised** 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 **assembly** 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

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

D. The requirements and provisions of **section 16.16.075** ~~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 **deemed** necessary for use to control erosion to an upland property, the borough assembly may waive the public sale provisions of **section 16.16.075** ~~chapter 16.12~~ and authorize the borough manager to directly negotiate with the upland owner, **excepting that t** ~~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 **under this section**. The annual lease rate for ~~a~~ **these tidelands parcel hereunder shall be one thousand five hundred dollars (\$1,500.00), an amount which may be increased by the borough at five (5) year intervals.**

C. Only structures designed to stop wave and tidal action from eroding the shoreline may be constructed on tidelands leased under these provisions. **Any construction or installation on the tidelands shall require the prior written approval of the borough.**

16.16.070 - Sale of tidelands—Procedure.

In isolated and necessary instances, the assembly may, in the manner provided for in **section 16.16.075**, ~~the sale of other real property owned by the borough,~~ sell tracts of **tidelands** and submerged lands which are not needed for public purposes. **It is anticipated that the sale of tidelands or submerged lands, versus a lease or other type of disposal, will be uncommon, given the high nature of the burden of proof required of the applicant under section 16.16.075(F).**

Except for a sale of tidelands or submerged lands to a state or federal agency, federally recognized tribe or nonprofit entity, or for a public benefit purpose, as discussed in section 16.16.080, a ~~s~~**Sales of tidelands** and submerged lands shall not be made for a consideration less than the **appraised value of the tidelands or submerged lands, established by an appraisal issued no more than one (1) year prior to the date of sale.** ~~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 15 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 600 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.~~

16.16.075 - Disposal procedures.

The following procedures shall apply to disposal of tidelands and submerged lands:

A. Disposal of tidelands and submerged lands may be initiated in two ways:

1. The borough assembly may initiate the disposal of tidelands or submerged lands on terms and conditions established by the assembly; or

2. Any person desiring to obtain an interest in borough-owned tidelands or submerged lands may make application to the borough clerk on forms provided by the borough. An application shall provide a legal description of the tidelands or submerged lands, the desired interest in the land sought under the application, the intended use of the tidelands or submerged lands, and the nature and extent of improvements the applicant intends to place upon the land. In the case of an application seeking to purchase tidelands or submerged lands, the applicant shall also state with specificity how the sale of the land would satisfy the requirements of paragraph F below. Only applications completed in full and accompanied by a nonrefundable filing fee of five hundred dollars (\$500) will be accepted by the clerk. Accepted applications shall be presented to the borough assembly at its next regular meeting, and the assembly shall decide whether the application shall proceed. In determining whether the application is to proceed, the assembly shall consider the nature and extent of applicant's intended use and development of the lands, the value of an applicant's proposed use to the economy of the borough and other relevant factors known at that time.

3. Upon a determination that an application is to proceed, the borough clerk shall make an estimate of costs that will be incurred by the borough in the application process, including without limitation, title report, survey and/or appraisal, legal fees, postage, recording fees, public noticing and advertising. The clerk shall notify the applicant in writing of the estimated costs and the applicant shall have fifteen (15) calendar days from mailing or other delivery of the notice to pay the estimated costs to the borough. Failure of the applicant to pay the estimated costs shall result in the application being cancelled. The applicant shall be required to pay the actual costs associated with an application, and if the actual costs exceed the estimate, the applicant shall pay the excess costs immediately upon notice from the borough. All costs paid to the borough hereunder are nonrefundable, excepting that if the actual costs are less than estimated, the borough will refund the applicant the difference.

a. All title research, survey or appraisal services, public noticing, recording and advertising shall be performed under the control of the borough. Work done without borough approval will not be accepted.

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

B. Any borough-initiated disposal, or any application for disposal that the borough assembly has accepted for further proceedings, shall be referred to both the borough planning commission and the borough harbor board for their review and recommendations. The planning commission shall hold a public hearing on the proposed disposal.

C. The planning commission and the harbor board shall each provide their written report on the referral to the assembly no less than one hundred (100) days of the date of referral; if the harbor board does not provide a timely report to the assembly, the assembly may grant the board additional time, but is not required to do so; the process may proceed without a report from the harbor board.

In the case of a sale or equivalent value exchange of tidelands or submerged lands, the reports shall including the following, at a minimum:

1. A discussion of the assessed and appraisal values of the lands proposed for sale or exchange;

2. Any relevant title information;

3. A discussion regarding the past usage history of the lands proposed for sale or exchange, and the potential conduct of or need for an environmental assessment;

4. Recommended terms and conditions of the sale or exchange;

5. Alternatives considered, including alternative uses for the land that could be expected to result in greater benefits for the community, or that would prevent worse losses to marine services; and

6. Consideration of how the sale or exchange would benefit the public.

It is not necessary for both reports to cover each of the topics set out in paragraphs (1) through (6) above provided that each topic is addressed in at least one of the two reports. Either the assembly, the harbor board, or the planning commission may require an applicant to furnish a site or conceptual plan, a detailed development plan, a listing of estimated development costs, and a good faith development deadline.

The assembly may also refer the matter to any other borough board or commission that may have an interest in the application, for its review and recommendations

D. Following receipt of the reports, 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 (15) days before the hearing, and by posting on the borough website. In addition to publication and posting, the borough shall mail notice of the hearing to the applicant and to the owner(s) of the properties immediately adjacent to the tidelands or submerged lands proposed for disposal, to the last known address of record. If the potential disposal was initiated by application, the applicant shall pay the nonrefundable cost of the public notice and mailing.

E. At the hearing, if tidelands or submerged lands are proposed for sale, the benefit to the borough of sale, that could not be realized through leasing, must be clearly demonstrated.

F. In the case of an application for the purchase of tidelands or submerged lands, an applicant bears the burden of conclusively demonstrating, by clear and convincing evidence,

1. That outright sale of the land, as contrasted with lease or other means of disposal, is in the borough's best interests, and

2. That sale, contrasted with lease or other means of disposal, is the only viable option for the applicant's development plans to successfully proceed.

The borough reserves the right to refuse sale of any tidelands or submerged lands, regardless of sufficiency of proof.

G. Following the public hearing, the assembly shall determine whether the disposal shall move forward, and the method of disposal. In the case of the sale of tidelands or submerged lands, the assembly must also make one of the following findings in order for the sale to move forward, and state the factual basis for its finding:

1. If the borough does not sell the land, it is expected that the borough will lose specific essential public marine-related services, or these services will be severely weakened; or

2. If the borough does sell the land, it is expected that the borough will gain specific essential public marine-related services, or these services will be significantly strengthened.

If a board report identifies an alternative use that would lead to greater benefits, or prevent worse losses, to marine services than that use proposed by the application, and the assembly elects not to pursue that alternative, the assembly findings must set out the factual basis for its determination that the alternative use shall not proceed.

If more than one application has been submitted for a single parcel of tidelands or submerged lands, and both would meet the requirements of paragraphs G above, the assembly shall consider the potential development plans under each application and determine which would be of highest and best benefit to the borough. The assembly findings shall identify the highest and best use.

H. All disposals of borough tidelands or submerged lands 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.

1. *Public Sale.* The assembly shall determine the minimum accepted bid price after review of the appraisal value. The required form of bids shall be established by the borough assembly. Appeals from a determination of a successful bidder, and payment and conveyance of the land following a public sale, shall be made pursuant to the provisions of PMC 16.12.110-.120.

2. *Other Means of Disposal.* If a disposal is exempted from public sale, 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 the land; 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 of the negotiated sale price shall be provided to the owner(s) of property located immediately adjacent to the tidelands or submerged lands, by mailing to the last known address of record, prior to any final assembly approval of the disposal.

3. *Equivalent Value Exchange.* If an exchange is to move forward, the assembly shall direct the borough manager to conduct direct negotiations for the exchange, including ordering appraisals for the exchange 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.

I. The borough assembly may require the construction of improvements within a specified period of time as a condition of disposal of any borough-owned tidelands or submerged lands. Whenever the assembly determines construction of improvements shall be required as a condition of a disposal, the terms and conditions shall be incorporated into the conveyance agreement.

J. The minimum required provisions for leasehold and other similar temporary interests in tidelands and submerged lands shall be as set out in PMC 16.12.170.

~~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.~~

16.16.080 - Disposal to a state or federal agency, federally recognized tribe or nonprofit entity, or for a public benefit purpose, for less than appraised value.

A. The borough may dispose of borough tidelands and submerged lands for less than the appraised value to a state or federal agency, federally recognized tribe or nonprofit entity, or for a public benefit purpose, for considerations determined by the borough assembly to be in the best interest of the borough. The application, review and deposit provisions of section 16.16.075 shall apply to such disposals, except that the assembly may determine not to require an appraisal in the case of a sale to a state or federal agency, federally recognized tribe or nonprofit entity.

B. A disposal for a public benefit purpose may be authorized by the assembly for less than the appraised value, or for other forms of consideration in addition to or in lieu of, in whole or in part, direct monetary payment to the Borough, when the proposed disposal is for a project meeting both of the following requirements: (1) the project consists of economic development consisting of installation, construction, or operation of new or expanded marine industrial, manufacturing, or commercial facilities; and (2) the assembly determines the project will result in a significant short- or long-term public benefit to the Petersburg Borough. "Public benefit", as used hereunder, means a project that provides one or more positive economic impacts on the community that in the assembly's determination outweigh maximizing the direct monetary payment to the borough.

C. In addition to the application, review and deposit provisions of section 16.16.075, the following requirements apply to disposals for a public benefit:

1. If a disposal is initiated by application, the application shall include, at a minimum, a conceptual plan and development timeline.

2. The borough manager shall prepare and submit to the assembly, prior to the public hearing, a written report and recommendation that, at a minimum, includes:

a) A fair market value appraisal of the property, including any borough-owned improvements, determined by a certified real estate appraiser, assuming the property was sold without any development requirements that may be imposed pursuant to this section;

b) A descriptive summary listing of expected economic public benefits of the project, and associated costs;

c) Recommended disposal requirements or conditions, if any, to ensure the proper development and timely completion of the project in the public interest; and

d) A proposed method of disposal.

3. The assembly, if it wishes to approve the disposal, shall issue written findings setting out its basis for the determination that the project provides one or more positive short- or long-term economic impacts on the community that outweigh maximizing the direct monetary payment to the borough of the appraised value of the property.

4. As a condition of disposal and to ensure provision of the anticipated public benefit, the assembly may impose specific project requirements and conditions, including without limitation construction of specific improvements, a time frame for completion of those improvements or the project as a whole, subsequent sale restrictions, and monetary impacts on the applicant if the project requirements and conditions are not met. The disposal requirements and other conditions shall be set out in a purchase agreement, and if needed, the parcel deed.

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 **(5)** 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 **section 16.16.075** 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 application to any person and circumstance shall not be affected.

Section 5. Effective Date: This ordinance shall be effective immediately upon final passage.

PASSED AND APPROVED by the Petersburg Borough Assembly, Petersburg, Alaska this _____ day of _____, 2024.

Mark Jensen, Mayor

ATTEST:

Debra K. Thompson, Borough Clerk

Adopted:
Published:
Effective: