
Chapter 3.16 TIDELAND LEASES

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3.16.010 Scope.

This chapter governs leases for tidelands and submerged lands which have been or which will hereafter be conveyed by the state of Alaska to the city pursuant to AS [38.05.830](#). Tidelands include land that is periodically covered by tidal waters between the elevation of mean high water and mean low water. Submerged land includes land covered by tidal waters and extending seaward from the line of mean low water. This chapter shall not apply to leases or permits issued under KMC Titles [13](#) and [14](#) or to public improvements or public utilities placed by the city on tidelands or submerged lands. KMC [3.16.030](#) and [3.16.040](#) shall not apply to leases which have been assigned by the state of Alaska to the city except that the city council may apply some or all of the requirements of this chapter to the re-leasing of these assigned leases after their termination. The city shall not grant anyone a right to occupy or use tidelands or submerged lands for a period of more than 60 days without a lease. (Ord. 1552 § 1, 2006; Ord. 1491 § 2, 2004)

3.16.020 Exemption from competitive bidding requirements.

Leases awarded pursuant to this chapter are exempt from the requirements of Sections 5-16 and 5-17 of the City Charter and from any other requirements relating to leases of city land. (Ord. 1491 § 2, 2004)

3.16.030 Applications.

A person seeking a lease for tidelands or submerged lands shall file an application with the manager's office. A nonrefundable processing fee of \$500.00 shall be paid to the city at the time of filing.

(a) Development Plan. The manager shall require the applicant to submit a development plan that includes and is consistent with plans required by other agencies involved in the development process. The development plan shall include:

- (1) A description of the proposed use for the tidelands, submerged land, and adjacent uplands;
- (2) A description of the improvements which will be placed on the tidelands, submerged land, and adjacent uplands;
- (3) The dates by which construction will begin and will be completed;

- (4) The estimated cost of the improvements which will be placed on the tidelands, submerged lands, and adjacent uplands;
- (5) A description of the effects that the proposed use of the tidelands, submerged lands, and adjacent uplands will have on public streets, public facilities, public services, public utilities, traffic, and parking. The description shall include a plan for mitigating adverse effects on streets, public facilities, public services, public utilities, traffic congestion, and parking, and a plan for paying the costs thereof;
- (6) A proposed rent; and
- (7) The names and addresses of the owners, officers, and proposed managers.

The development plan shall describe how the applicant will fulfill the terms of any permits or approvals required by the Ketchikan Gateway Borough. The applicant shall provide such additional information, including designs and specifications, as the manager may request. After notifying the applicant, the manager may, at the applicant's additional cost, obtain such surveys, title reports, appraisals, feasibility studies, traffic studies, impact studies, and other studies as the manager determines to be useful in evaluating the application. The manager may require the applicant to amend its development.

(b) Notice of Publication. The manager will cause a notice of tidelands lease application to be published once each week for two consecutive weeks with the last publication to occur not less than one week before final action to approve or reject the lease. The notice shall identify the applicant, the location of the proposed lease, the proposed rent, and the proposed use. The notice shall state that any other persons interested in a lease for the area should file an application with the manager within one week of the final publication of the notice. The notice shall also state that anyone wishing to protest the lease must file a written protest with the manager not later than one week after the final publication of the notice. Such protest shall be in writing and shall state all reasons for the protest. Failure to timely protest as required by this subsection shall constitute a waiver of any right to lease or use the location and shall waive any right to contest the awarding of the lease. The manager shall endeavor to mail notice to the owner, as shown on the borough tax rolls, of upland property within a radius of 300 feet of the shore side boundary of the tidelands or submerged lands to be leased. Such notice will not be sent to the applicant if the applicant is the owner of some of the upland property. No sooner than one week after the last publication of the notice of application for lease, the city manager shall submit to the council a report and recommendation on each application timely received by the city. No lease shall be approved by the council until at least one week after the last publication of the notice of application for lease and until the manager's report has been submitted to the council. (Ord. 1491 § 2, 2004)

3.16.040 Lease terms.

All leases issued under this chapter shall contain the following minimum terms and conditions:

(a) Rent. Unless the lessee is a federal, state, or local government agency or a nonprofit organization, the annual rent shall be based upon two and one-half percent of the current real property value of the leased premises before any improvements were installed, constructed or developed. For purposes of this chapter, "real property value" means that value specified by the council for certain real property or those certain real property rights that the council deems representative of current market conditions. This determination shall be based upon independent appraisals, current assessed values, or any other information that the council deems relevant and reliable.

(b) Term. The term of the lease shall not exceed 55 years. In determining the term, the council shall consider:

- (1) The desirability of the proposed use to the city;
- (2) The proposed investment in improvements;
- (3) The durability of such improvements; and
- (4) The time needed to amortize the proposed investment.

The council shall be the sole judge of the weight, if any, to be given to any of the above considerations. The council's conclusions shall be final. For purposes of this chapter, the term of any lease shall be calculated by including all renewal periods provided by the lease. Any lease with a term exceeding five years shall allow the city to adjust the rent every five years based upon two and one-half percent of the current real property value of the leased premises before any improvements were installed, constructed or developed. The lease shall provide for early termination if the lessee violates the terms of the lease and fails to cure the violation within such time as may be provided for in the lease.

(c) Patent Conditions. The lease shall be subject to the terms and conditions of the patent or deed from the state of Alaska, and subject to any littoral rights and any rights of the public under the Public Trust Doctrine.

(d) Insurance and Indemnification. The lessee shall provide and maintain comprehensive general liability insurance with the city as an also insured in an amount to be determined by the manager. The lessee shall indemnify, defend, and hold harmless the city, its agents, insurers, officers, and employees from all claims, damages, fines, forfeitures, losses, injuries, or deaths arising from or related to the lease or the use of the tidelands or submerged lands. In particular, the lessee shall indemnify, defend, and hold harmless the city, its agents, insurers, officers, and employees from any such claims, damages, losses, or injuries relating to navigational rights, littoral rights, or rights to access or use tidelands or submerged lands.

(e) No Warranties of Title or Condition. The lease shall state that the city makes no warranties or representations as to its title or as to the suitability or condition of the leased premises for its intended use or any other use.

(f) Development Plan. The lease shall restrict the use of the tidelands and submerged lands to those uses described in the development plan and shall obligate the lessee to fulfill its obligations under the development plan in a timely manner.

(g) Removal or Reversion of Improvements upon Termination. The lease shall provide that within a negotiated period of time from the date the lease terminates all improvements, fill, or other alterations to the tidelands and submerged lands will be removed in a legally approved manner by the lessee at its cost. At the termination of the lease the tidelands and submerged lands will be restored to their condition prior to the lease. Alternatively, the lessee, with the concurrence of the city, may provide for the improvements to revert to and become the sole property of the city at no cost to the city.

(h) Lessee to Obtain All Other Permits and Approvals. The lease shall require the lessee to obtain at its expense all other permits and approvals required by law. The manager may require that the lessee obtain all such permits and approvals prior to the effective date of the tidelands or submerged lands lease and may set a deadline for obtaining such permits and approvals.

(i) Assignment and Subleases. The rights of lessees may not be assigned unless the assignment is first approved by the council and the assignee agrees to all terms and conditions of the lease. No lessee may sublease any tidelands or submerged lands without the approval of the city council. Subleases shall be in writing and shall be subject to all terms and conditions of the tidelands lease.

(j) Payment of Property Tax. The payment of property tax shall be as a leasehold tax. Lessee shall pay all such taxes subject to such rights of appeal as are provided by law.

(k) Other Terms and Conditions. The lease shall contain such other terms and conditions as the manager may determine. The terms and conditions described in this section do not prohibit the council from imposing greater restrictions or obligations on any lessee.

(l) Upland Property Owner Preference. Upland property owners shall be granted a preference for leasing submerged lands adjacent to their property for any private development of the tidelands.

The council will approve or reject the negotiated lease. No rights to lease or use tidelands or submerged lands may arise until the council approves a final written lease. Nothing in this chapter requires the council to accept any lease. (Ord. 1938 § 1, 2021; Ord. 1491 § 2, 2004)

3.16.050 Renewals, assignments, extensions, and amendments of leases assigned by the state of Alaska.

Any lease of tidelands or submerged lands entered into by the state of Alaska and subsequently assigned to the city may be renewed, assigned, extended, and/or amended by motion adopted by the council. (Ord. 1552 § 2, 2006)

The Ketchikan Municipal Code is current through Ordinance 1995, passed November 21, 2024.

Disclaimer: The City Clerk's Office has the official version of the Ketchikan Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.ktn-ak.us/>

City Telephone: (907) 228-5658

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