

BOROUGH CODE

Chapter 11.55 **TIDELAND LEASES**



Sections:

- 11.55.010** Scope.
- 11.55.020** Set rate leases.
- 11.55.030** Applications.
- 11.55.040** Lease terms.

11.55.010 **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 borough pursuant to AS [38.05.830](#). Leases under this chapter are governed by this chapter and are exempt from Chapters [11.40](#) and [11.45](#) KGBC. Tidelands include land that is periodically covered by tidal waters between the elevations 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 public improvements or public utilities placed by the borough on tidelands or submerged lands. This chapter shall not apply to leases which have been assigned by the State of Alaska to the borough except that the borough assembly may apply some or all of the requirements of this chapter to the re-leasing of these assigned leases after their termination. The borough 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. No. 1441A, §1, 7-16-07. Code 1974 §40.19.010.]

11.55.020 **Set rate leases.**



- (a) The assembly may classify certain borough-owned tidelands or submerged lands as eligible for set rate lease. Property which has been classified as eligible for set rate lease may be leased to third parties on a first-come, first-serve basis for terms of up to five years without separate assembly approval. Such leases shall be at rates which are not less than the rates approved for lease of the designated space.
- (b) Property eligible for lease under a set rate lease shall be designated by resolution.
- (c) Lease rates applicable to set rate lease properties shall be established by resolution. If property is currently under a written lease when the resolution setting out the lease rates as it pertains to the subject property is amended, such lease shall continue to be governed by the rate in the written lease until the lease comes up for renewal or adjustment by its terms. [Ord. No. 1441A, §1, 7-16-07. Code 1974 §40.19.020.]

A person seeking a lease for tidelands or submerged lands shall file an application with the borough manager's office. A person seeking a lease for temporary occupation of less than 60 days shall file an application with the borough manager's office.

(a) *Development Plan.* The borough 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 that 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 that 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 security deposit if applicable; 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 borough manager may request. After notifying the applicant, the borough manager may, at the applicant's additional cost, obtain such surveys, title reports, appraisals, feasibility studies, traffic studies, environmental analyses, navigational studies, public utility and facilities studies, community impact studies, and other studies as the borough manager determines to be useful in evaluating the application. The borough manager may require the applicant to amend its development plan.

(b) *Notice of Publication.* The borough manager will cause a notice of tidelands lease application to be published for three consecutive weeks before final action to approve or reject the lease. If publication is in a newspaper, the publication shall be once each week, with the final publication at least one week prior to the final action on the application. 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 borough manager by a date identified in the notice. The notice shall also state that anyone wishing to protest the lease must file a written protest with the borough manager not later than a date identified in 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 borough manager shall mail notice to the owners, as shown on the borough tax rolls, of upland property within a radius of at least 1,200 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 date set for receipt of competing applications or protests, the borough manager shall submit to the assembly a report and

recommendation on each application timely received by the borough. No lease shall be approved by the assembly until the borough manager's report has been submitted to the assembly. [Ord. No. 2047, §1, 10-7-24; Ord. No. 1827, §13, 4-3-17; Ord. No. 1686, §3, 12-2-13; Ord. No. 1441A, §1, 7-16-07. Code 1974 §40.19.030.]

11.55.040

Lease terms.



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

(a) *Rent.* Unless the assembly specifies that the lease is based on considerations other than value, or is being assigned to a government agency or nonprofit corporation, the annual rent shall be two-and-one-half percent of the real property value as defined in KGBC 11.40.020 of the tideland before any improvements were installed, constructed, or developed. Such rate shall be subject to adjustment during the term of the lease at intervals of not less than five years in accordance with subsection (b) of this section.

The assembly may authorize a reduction from this benchmark rate for leases issued to federal, State, or local government agencies and nonprofit organizations when the assembly finds that benefits to the public from, and the public interest served by, the use of the leased area justifies the reduction in the lease rate.

(b) *Term.* The term of the lease including any renewable options shall not exceed 55 years. In determining the term, the assembly shall consider:

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

The assembly shall be the sole judge of the weight, if any, to be given to any of the above considerations. The assembly'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 borough to adjust the rent based upon two-and-one-half percent of the current real property value as defined in KGBC 11.40.020 of the tideland before any improvements were installed, constructed, or developed no less frequently than every five years. 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 borough as an also insured in an amount to be determined by the borough manager. The lessee shall indemnify, defend, and hold harmless the borough, 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 borough, 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 borough 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. Changes in the development plan must include a complete development plan as prescribed in KGBC 11.55.030(a), approved by the borough manager or designee, and must be consistent with the current zoning of the upland zoning district.

(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 lessee's 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 borough, may provide for the improvements to revert to and become the sole property of the borough at no cost to the borough.

(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 borough 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 assignee agrees to all terms and conditions of the lease. No lessee may sublease any tidelands or submerged lands without the approval of the borough manager. Subleases shall be in writing and shall be subject to all terms and conditions of the tidelands lease. Assignment of existing leases issued by the State of Alaska prior to transfer shall be subject to approval of the assembly according to the terms of the existing lease regarding assignment or transfer of those leases. An assignment of security interest in a tideland lease for the purpose of financing improvements to the tidelands is subject to approval of the borough manager, but is not subject to assembly approval.

(j) *Payment of 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 borough manager may determine. The terms and conditions described in this section do not prohibit the assembly or the manager 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 assembly will approve or reject the negotiated lease. No rights to new leases or new use of tidelands or submerged lands may arise until the assembly approves a final written lease. Nothing in this chapter requires the assembly to accept any lease. [Ord. No. 1729, §1, 7-21-14; Ord. No. 1686, §4, 12-2-13; Ord. No. 1441A, §1, 7-16-07. Code 1974 §40.19.040.]

The Ketchikan Gateway Borough Code is current through Ordinance 2078, passed July 21, 2025.

Disclaimer: The borough clerk's office has the official version of the Ketchikan Gateway Borough Code. Users should contact the borough clerk's office for ordinances passed subsequent to the ordinance cited above.

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TITLE 13
LUMMI NATION CODE OF LAWS
TIDELANDS CODE

Enacted: Ordinance L-31 (1/8/70) (section 13.01.040)
Resolution S-13 (10/7/74) (all sections except as otherwise indicated)

Amended: Resolution 88-36 (4/5/88)
Resolution 94-128 (8/5/94)

**TITLE 13
LUMMI NATION CODE OF LAWS
TIDELANDS CODE**

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**TITLE 13
LUMMI NATION CODE OF LAWS
TIDELANDS CODE**

Chapter 13.01 Purpose and Scope

13.01.010 History

It is generally recognized that the Indians of the Reservation have, beyond the memory of man, used the tidelands within and adjacent to the reservation freely, continuously, and uninterruptedly for the purposes of fishing and the taking of shellfish, for the taking of driftwood, for firewood, for recreational purposes, and other purposes. Such uses are a result of the ownership of the tidelands and the rights established on any other tidelands by custom, tradition, practice and long and continuous use.

13.01.020 Necessity of Regulation

It is necessary for the preservation, protection and best use of the tidelands to adopt reasonable regulations on the use thereof.

13.01.030 Definition of "Tidelands"

"Tidelands" means any lands including beaches, seaward of the line of natural vegetation or the meander line, whichever be more landward along all saltwater bordering the reservation, including all such lands east of the Pt. Francis Treaty Rock line.

13.01.040 Tidelands Closed to Non-Members

The Lummi Tidelands are reserved for the exclusive use of the Lummi Indians by the Treaty of 1855. The Lummi Tidelands are closed to persons who are not members of the Lummi Nation, in the absence of a lease permitting non-member use of the tidelands, or use permits issued pursuant to this Title.

Chapter 13.02 Prohibited Acts

13.02.010 Barriers Prohibited--Permit Exception--Violations Deemed Trespass

It shall be a civil offense for any person to create, erect, maintain, or construct any building, obstruction, barrier, restraint of any nature whatsoever within the tidelands as defined in this ordinance, without having first

obtained a written permit from the Council. No permits shall be given for the areas below the line of mean high tide except as provided herein. A permit for the construction within the area above the line of mean high tide shall be granted only at the discretion of the Council and only after it is clearly shown that such construction will not be inconsistent with the provisions of this Ordinance nor interfere with the rights of the Indians of the Reservation to freely and uninterruptedly use the tidelands for the purposes which have long been established and that such construction will have no damaging effect upon the marine life or cleanliness of water or air in and along such lands. The Council is authorized to adopt rules and regulations for the issuance of such permits and to prescribe reasonable fees to be charged therefore. Anyone who violates the provisions of this section shall be deemed to be in trespass of the property rights of the Tribe in and to the tidelands and shall be required to remove any obstructions or barriers, and to cease from further obstruction or interference, and shall be liable for all damages caused by any such acts. Council may take all appropriate legal action to enforce the provisions of this ordinance and to take such other lawful actions as may be appropriate.

13.02.020 Prohibited Uses

It shall be a civil offense for anyone to use the tidelands in such a manner that would tend to destroy the natural beauty or pollute such lands, interfere with the established use thereof by Indians of the Reservation, or which would tend to create a nuisance thereon. The following rules and regulations covering the use thereof are hereby adopted:

(a) No person shall deposit or willfully permit the deposit of any debris, rubbish, or refuse upon tidelands.

(b) No person shall deface or destroy the natural beauty of the rocks, cliffs, vegetation, and other objects of nature upon or within tidelands.

(c) No sands, rock, mineral, marine growth, driftwood, fish, wildlife, or souvenirs or other product of the tidelands shall be taken from such lands by anyone except pursuant to the terms and conditions of a written permit first obtained from the Council. No permit shall be issued unless it is shown that the removal will not be inconsistent with the conservation of the natural resources of the tidelands. The Council is authorized to adopt rules and regulations for the issuance of such permits and to prescribe reasonable fees to be charged therefore.

(d) No person shall set or permit any fire to be set upon the tidelands except pursuant to permits issued by the Council as areas permitting the setting of camp fires as provided herein.

(e) No person shall erect any tent or overnight shelter upon the tidelands or use the tidelands as an overnight camping area except pursuant to permits issued by the Council in those areas specifically designated and posted by the Council as overnight camping areas as provided herein.

(f) No person shall operate or park or permit the operation or parking of any motor vehicle upon the tidelands except in areas specifically designated and posted by the Council as permitting such operation or parking as provided herein.

(g) No person shall be permitted upon the tidelands in an intoxicated or disorderly condition, or shall engage while on the tidelands in any acts of indecency or immorality.

(h) No person shall violate any rules and regulations subsequently adopted for the use of the tidelands by the Council.

Chapter 13.03 Regulation of Tidelands

13.03.010 Council Authority to Regulate

The Council may regulate the use of tidelands in a manner consistent with the purposes of this ordinance.

13.03.020 Council Authority to Prepare Development Plans

The Council may prepare plans for

development of tidelands, classify tidelands as to use and designate areas where specific activities may be permitted.

13.03.030 Council Authority to Grant Rights-of-Way

Nothing in this Ordinance shall be deemed to diminish the right of the Council to lease or permit rights-of-way over and across tidelands except that any such lease or permit affecting tidelands shall be subject to all the provisions of the Ordinance.

13.03.040 Council Authority to Close Tidelands

The Council is authorized to close all or any portion of the tidelands if it finds that the rules and regulations herein provided, or the rules and regulations adopted by the Council pursuant to this Ordinance, cannot be adequately enforced or if necessary to preserve the tidelands.

13.03.050 Regulation of Construction of Bulkheads and Other Structures within Lummi Coastal Zone Management Area

The Council authorizes the Natural Resources Department, in consultation with the Planning and Water departments, to adopt regulations governing the construction of bulkheads and other structures on or adjacent to tribal tidelands which have the potential for impacting natural resources on the tidelands and adjacent properties. Regulations shall be designed to protect and restore Lummi Nation natural resources from the short-term, long-term and cumulative impacts of construction activities on Reservation shorelines.

(a) Regulatory authority includes the authority to require permits, fees, and technical studies to adequately determine risks.

(b) Any person or company who violates this section shall be subject to the penalties of Chapter 13.04 of this Ordinance.

13.03.060 Interim Fees and Rates for use of Tribal Tidelands

(a) All project proposals and required environmental assessments must be approved and conditions established by tribal I.D. team (interdisciplinary team of tribal technical staff) prior to a permit being issued.

- (1) \$200 per/day for low risk construction.
- (2) \$400 per/day for high risk construction.
- (3) \$2500-\$5000 bond, returned after an inspection of the construction site determines that damages have not occurred or have been mitigated or remediated.

(b) Interim criteria for low risk construction:

- (1) Access to the beach is not restrictive and would not require moving equipment and/or supplies a significant distance over the beach or intertidal zone.
- (2) The slope of the beach is less than 5 degrees and the biological assessments demonstrate no potential for impacts to adjacent biological resources.
- (3) The location of the bulkhead is not subject to severe wave energy which causes rapid beach erosion.
- (4) There is little or no potential risk of adverse impacts to upland or aquatic biota or other natural resources.

(c) Interim criteria for high risk construction:

- (1) Access to the beach is restricted and would require moving equipment and supplies a significant distance over the beach or intertidal zone.
- (2) The slope of the beach is 5 degrees or greater and the biological assessment indicates a significant possibility for impacts to Biological resources.
- (3) The location of the bulkhead would subject it to severe wave energy which causes rapid beach erosion.
- (4) There is no potential risk of significant adverse impacts to upland or aquatic biota or other natural resources.

Chapter 13.04 Penalties

13.04.010 Civil Penalties--Confiscation

- (a) Any person who violates this ordinance or

any rule governing entry upon or use of the tidelands shall be deemed to have committed a civil offense. Any person found to have committed a trespass shall be subject to a civil penalty in an amount not to exceed five hundred dollars (\$500.00) for a first offense and one thousand dollars (\$1,000.00) for a second or subsequent offense.

(b) Any object involved in such violation shall be subject to confiscation and forfeiture following a hearing in the tribal court regardless of whether the person in possession of the object is the owner of it. In the event the person in possession is not the owner, the owner shall also be given notice of the hearing and provided an opportunity to raise any defense he may have. At the hearing the tribe shall have the burden of proving by a preponderance of the evidence that the object was present on the tidelands without the permission of the Tribe or without compliance with this ordinance or the rules and regulations promulgated under this ordinance.

(c) A proceeding to enforce this title shall be commenced in the same manner as any civil action in tribal court. In the event that an object is found abandoned on the tidelands and ownership of the object cannot be determined, an action may be commenced against the object itself with notice of the action being published in a newspaper of general circulation in the reservation area.

13.04.020 Refusal to Leave Scene of Violation is Deemed Trespass

Any person who violates this ordinance or any rule or regulation of the Council with regard to tidelands may be requested to leave such lands and failure to leave or return without proper permission shall be deemed trespass.

13.04.030 Prohibited Entry is Deemed Trespass

Any person who enters upon any closed tidelands or who enters upon any tidelands without valid permission or permit shall be deemed to have committed trespass.

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