

**CITY OF UNALASKA
CITY MANAGER REGULATIONS**

Subject: Tidelands Leasing, License, Exchange or Sale	
Number: REG - 01	Reference: UCO 7.08.050(F); 7.12; 7.16
Effective Date: September 23, 1997	Re-evaluation Date: April 24, 2012

PURPOSE

The City Manager shall provide by regulation procedures governing the leasing, license, exchange, or sale of City owned tide and submerged lands. The following are the policies and procedures established for all persons who may want to use City-owned tidal and submerged land areas.

STATEMENT OF POLICY

Background: The City of Unalaska, under Alaska Statutes, has requested the State of Alaska to transfer ownership in certain tide and submerged lands from the State to the City. The State of Alaska Department of Natural Resources has complied with the City's request and patents were issued to the City for these tideland areas after survey and platting requirements were completed.

- A. It is the policy of the City of Unalaska to comply with all conditions of ownership transferred from the State of Alaska regarding the public's rights to enter and make incidental use of all Alaskan-owned waters.
- B. The City may dispose of its interest in tidelands by lease, license, in exchange, or by sale, in accordance with Title 7, UCO.
- C. It is the policy of the City of Unalaska to establish a non-discriminatory reasonable fee or yearly rate for the lease of any City-owned tideland.
- D. Selected City tidelands may not be available for major project development because of habitat loss, subsistence use, water quality issues or limited availability of services and are zoned "subsistence" Other tidelands will be zoned "developable". As community observations and changes are realized, tidelands currently zoned "subsistence" may be considered for rezoning so long as such action is in accordance with the City of Unalaska's Comprehensive Plan and Title 8.12, UCO.
- E. The City of Unalaska City Council will review all applications for lease, easement or right-of-way, license, exchange or sale of any City owned tideland. Each

agreement will become effective only if approved by a City Council resolution adopted after a public hearing.

- F. Tidelands to be utilized are classified into three categories:
 - 1. Category A: All commercial use docks, wharves, piers, structures, permanently moored vessels, barges, barge landings and/or fills placed within the tideland area. Said uses may be either existing or proposed.
 - 2. Category B: All recreational or subsistence use finger piers, structures, docks, material barges on/off loading sites and/or fills placed within the tideland area. Said uses may be either existing or proposed.
 - 3. Category C: Existing or future outfall or intake lines located on, over, or in a tideland area.
- G. The City of Unalaska will honor existing tideland leases, options, and refusal rights already in force when the State of Alaska patents are transferred to the City of Unalaska. For any category of use that has no lease in force with the State of Alaska, the City lease will be effective from the date of initial City ownership as established by the patent.
- H. These tideland leasing policies and procedures do not apply to privately owned tideland areas nor to tidal and submerged lands still owned by the State of Alaska.
- I. In keeping with Section 7.12.040, UCO, the owner of the uplands adjacent to the tidelands shall have a first preference and refusal right to lease the tidelands if they file development plans supported by Title 8 of the Unalaska City Code of Ordinances and City of Unalaska's Comprehensive Plan with the Department of Planning within 90 days of formal notice. Said formal notice may be in the form of a public posting or written letter.

PROCEDURES

- A. General
 - 1. Chapter 7.12 of the Unalaska City Code of Ordinances applies to the Procedures for the lease of City properties including tide and submerged lands leases.
 - 2. The City of Unalaska City Council, by resolution, shall approve, disapprove or modify all tideland use applications which are for a period greater than five years.
 - 3. Tideland Plats shall be prepared and approved in accordance with Chapter 8.08 of the Unalaska City Code of Ordinances.

B. Application

1. An applicant for a tideland lease shall apply for a City of Unalaska tideland lease by completing the application (Form 1) as well as an authorization form (Form 2), if the applicant is representing the upland owner, and submitting said form(s) to the Department of Planning for processing. All applications shall include the payment of application fees indicated in the fee schedule and a site development plan. The Department of Planning will review, analyze and recommend a course of action to the City Manager for each lease application submitted, who will in turn submit a recommendation to the City Council. The City Council, by resolution, may approve, reject or modify each lease, license, exchange or sale under consideration.
2. Either before or after an application for lease or use of previously improved tidelands is submitted, the City Manager may solicit competing proposals or applications for the lease and use of said previously improved tidelands upon such terms and conditions as are approved by the City Council by resolution or may negotiate directly with one or more potential lessees subject to City Council approval of any negotiated agreement. If a decision to solicit competing proposals is made after an application is submitted, the terms of the initial application shall be held strictly confidential and the applicant provided the opportunity to submit a revised application.
3. Applicant shall pay for and submit a survey or plat of the tidelands leasing area that has been created by a Registered Professional Land Surveyor in the State of Alaska. Tidelands plats shall be approved and recorded prior to the lease being signed.
4. Work involved with the determination of the appraised value of the property is performed under control of the City. Associated costs may be incorporated into the lease agreement.
5. All applicants shall provide proof of financial ability to construct and complete the project to be developed.
6. All applicants shall have applied for all state and federal permits, i.e. Corps of Engineers, EPA, or ADEC permits, required for the project prior to the lease being signed by the City Manager. Proof of application for such permits shall be submitted to the Department of Planning within 14 days of City Council approval of the Lease Agreement. Construction shall not begin until all permits and the lease are completed and approved. Regulatory permits and City approval may be pursued concurrently. Copies of all permits must be submitted to the Department of Planning.

7. All applicants shall comply with all local regulations, including compliance with the Unalaska Code of Ordinances. Any variances, conditional use, and building permits must be secured prior to construction of improvements or regulated activity taking place in, on, or through the leased tidelands.

C. Initial Rent and Adjustments to Rent

1. Category A: An initial Annual Market Rent for all Category A uses shall be based on an appraisal performed under control of the City and paid by the lessee. The annual rent will typically be 10% of the appraised value of the tideland, including all previously existing improvements, as determined by an appraiser or based on the Fair Market Rent as established by an appraiser. Annual rent will not be less than \$2,250 per acre with a \$2,250 minimum annual rent if the lease is less than one acre.

The exact rate shall be negotiated by the City Manager and the applicant, subject to City Council approval, and may take into account all factors associated with the proposed use, including but not limited to:

- i. Current assessed and appraised value of the tidelands and/or structures;
- ii. Projected additional revenue to the City resulting from the proposed uses other than rent (such as sales tax, property tax, and port fees);
- iii. Other obligations to be undertaken by either the City or the proposed lessee under the terms of the proposed lease;
- iv. Other rental rates proposed, if any, by other potential leases if proposals for use are public solicited;
- v. The cost of obtaining the tideland appraisal; and
- vi. The public interest.

Tidelands, including any previously existing improvements included in the lease agreement, but excluding improvements made by existing lessee, shall be reappraised every five years by the City and the annual rent shall be adjusted accordingly. In some instances, a letter of opinion from an appraiser may be all that is warranted and may be considered every five years with a reappraisal every 10 years. Rent shall at no point never be less than \$2,250 per acre with a \$2,250 minimum annual rent. The cost of subsequent reappraisals will be split equally between the City and the Lessee and may be incorporated into the lease agreement.

2. Category B: An initial cost of \$2,250 per year is established for all Category B uses. Said fee is subject to periodic review and adjustment every 5 years, with a \$2,250 minimum annual rent. Subsequent rates may follow a similar process as described in section C1 above as determined by the City Manager.

3. Category C: An initial cost of \$2,250 per year is established for all Category C uses. Said fee is subject to periodic review and adjustment every 5 years, with a \$2,250 minimum annual rent. Subsequent rates may follow a similar process as described in section C1 above as determined by the City Manager.

D. Terms of Lease and Special Circumstances

1. Each separate leasing agreement for Categories A and B tidelands shall be in the general form as indicated in Form A and agreements for Category C shall be similar to Form B, with the rental amounts and bond amounts completed. In addition, lease agreements for previously improved tidelands may also include project-specific provisions or separate agreements related to the proposed use.
2. Lease terms should not exceed 30 years including any renewable options and shall be approved by City Council. In determining the term of the lease, Council should consider:
 - i. The desirability of the proposed use;
 - ii. The proposed investment in improvements;
 - iii. The durability of the improvements;
 - iv. Public benefit; and
 - v. Other relevant factors.
3. Insurance requirements will be outlined in the individual lease documents. Requirements for hazardous materials and/or petroleum products in the tideland area and/or Oil Spill Contingency plans will be part of all lease documents for Category A and Category B tidelands. Based on the proposed use, it is at the City Manager's discretion as to whether or not such requirements are warranted for Category B tidelands.
4. Tidelands shall not be sublet without prior written consent by the Lessor.
5. If an early termination is desired by the Lessee, all requests for early termination shall be submitted to the Lessor in writing. If granted, early termination shall not necessarily release Lessee from the compensation specified in this lease agreement.


D. Performance Bonds and Improvements

1. A performance bond based upon five percent (5%) of the estimated value of the total construction for a new facility or the appraised value of an existing facility shall be provided at the time the lease period begins. The City Manager signature may not be given unless this bond is provided. The

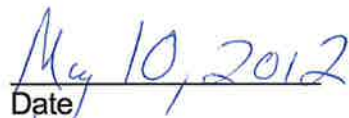
purpose of the bond is to ensure performance of the lease conditions and/or removal of the structures within the tideland area in the event of default or damage due to acts beyond the control of either party. A minimum performance bond of \$25,000 shall be required for all projects. Based on the proposed use and improvements, Category B and C projects may, at the City Manager's discretion, be exempt from this requirement.

2. Improvements shall be made to the leased tideland within 2 years of the signing of the lease, or lease may be revoked. No construction of any improvement upon the tidelands shall commence without the prior approval of the City, as evidenced in writing. All such approved construction shall be in accordance with a development plan which shall be submitted to and approved by the City in writing prior to the signing of any lease. All improvements on all categories of tidelands shall be constructed in accordance with applicable state, federal, and local laws, statutes, ordinances, regulations, permits, building codes, and safety codes.
3. No filling, dredging, blasting, mining, or other disturbance of the tideland may occur without prior written consent of the City.
4. Any buildings, improvements, fixtures, machinery, equipment or other items of real or personal property, which are not removed from the Property within the time allowed in paragraph 33 (a) of this Lease, shall immediately become the property of Lessor and title thereto shall vest in Lessor without further action on the part of Lessee or Lessor. Lessor may use, sell, destroy, or otherwise dispose of any such property in any matter that it sees fit, without further obligation to Lessee. Costs incurred in the disposal of property shall be the responsibility of the Lessee.

APPROVAL:



Chris Hladick, City Manager
City of Unalaska



Date