

Chapter 14.04 TIDELANDS

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14.04.010 Purpose and applicability.

This chapter pertains to the leasing of city owned tidelands and to the responsibilities of the city manager and city council with respect thereto. The intent of this chapter is to insure equitable leasing of city owned tidelands in such manner as will encourage development for its highest and best use in connection with the Port of Valdez facilities. (Prior code § 27-2)

14.04.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“City tidelands” means all those lands which are periodically covered by tidal waters between the elevations of mean high and mean low tides, together with such additional lands as may be conveyed by the state to the city as tidelands.

“Fair rental value” means the rent computed from the appraised fair market value of the land, and such term shall mean the highest price, described in terms of money for which the property would rent, if exposed for rent for a reasonable time in the open market, with an owner willing but not forced to rent and a renter willing but not forced to rent, both being fully informed of all the purposes for which the property is best adapted or could be used.

“Lease” means a surface lease issued or held pursuant to this chapter and any other ordinances of the city.

“Regulations” means the leasing regulations of this chapter as well as other pertinent regulations promulgated by the city. (Prior code § 27-1)

14.04.030 Lands available for leasing.

All tidelands to which the city holds title, or to which the city may become entitled, may be leased as provided in this chapter. (Prior code § 27-3)

14.04.040 Application for lease.

All applications for lease of city tidelands shall be in writing and shall be filed with the city administrator

in such form as prescribed by him. (Prior code § 27-4)

14.04.050 Fair rental value to be used for leases—Exceptions.

Except as otherwise stated in this chapter, no tidelands of the city shall be leased for less than the fair rental value thereof. Notwithstanding the preceding provisions, the city may lease tidelands for less than the fair rental value to any state or federal agency, political subdivision, nonprofit organization or new industries, as defined in Alaska Statutes, Section 29.10.132, if such lease is determined by the city council to be fair and proper and in the best interest of the public. The determination of the fair rental value of tidelands, as determined by the city council, shall be conclusive in the absence of fraud. (Prior code § 27-5)

14.04.060 Terms of leases—Renewal periods.

Leases under this chapter may be issued for a maximum initial period of twenty-one years, and may provide for not more than six, five year renewal options. (Prior code § 27-6)

14.04.070 Leases to be by negotiation.

A. It is the determination of the city council that the limited amount of tidelands available for leasing, the need to develop those tidelands in accordance with a plan for the development of the waterfront area of the city and the limited number of qualified bidders for any particular parcel of tidelands to be used for a particular purpose preclude the lease or sale of such tidelands by open competitive bidding. It is the determination of the city council that the interest of the city will best be protected and promoted by leases negotiated in good faith at not less than the fair rental value thereof.

B. Leases may be negotiated by the city manager or his designee with any person making application for the lease of tidelands, but no lease shall be consummated and executed until the city council has satisfied itself that the lease of such property is in the long range interest of the city, that such lease has been negotiated fairly and impartially and without favoritism for one applicant over the other and that the terms of the lease adequately protect the city, including the receipt of an annual rental reflecting the true value of the premises leased. (Prior code § 27-7)

14.04.080 Right of city council to reject lease proposal.

The city council shall be under no obligation to accept any lease proposal, but shall evaluate all proposals under the criteria set forth in this chapter and accept or reject leases based on such evaluations. (Prior code § 27-8)

14.04.090 Approval of leases.

All leases of city-owned tidelands shall be submitted for the approval of the city attorney as to legal sufficiency and form and to the city council for determination as to whether or not the lease should issue. The decision to lease property shall be made by motion duly passed in regular or special session of city council. In determining whether or not a lease should issue, the city council may consult with the planning and zoning authority of the city as to the advisability of any particular lease. (Prior code § 27-9)

14.04.100 Annual rental payments.

Annual rental in amounts up to and including two hundred fifty dollars shall be paid on an annual basis. Annual rentals in amounts exceeding two hundred fifty dollars shall be paid in annual, quarterly or monthly installments as provided for in the lease. All rentals shall be paid in advance. (Prior code § 27-10)

14.04.110 Adjustment of annual rental.

All leases shall stipulate that the annual rental payment shall be subject to adjustment at specified intervals, based primarily upon the then existing fair market rental value of the tidelands. (Prior code § 27-11)

14.04.120 Utilization of leased property.

Leases shall be utilized solely for the purposes within the scope of the lease. Development for other use without the express consent of the city council shall constitute a violation of the lease. The city council may require a development plan to be submitted and followed by the lessee. Failure to develop the land consistent with the development plan constitutes grounds for cancellation of the lease at the option of the city council. (Prior code § 27-12)

14.04.130 Subleasing and assignment of leases.

No lessee of city tidelands shall sublease or assign his lease or any interest therein without the prior written consent of the city council. Consent to sublease or assign shall not be unreasonably withheld, but shall be granted in all cases, where the city council finds that the assignment or sublease will not be detrimental to the interest of the city in the development of the port area. (Prior code § 27-13)

14.04.140 Modification of leases.

No lease under this chapter may be modified orally or in any manner other than by an agreement in writing signed by all parties thereto or their respective successors in interest. (Prior code § 27-14)

14.04.150 Cancellation or forfeiture of leases—Generally.

A. Leases in good standing may be canceled in whole or in part at any time upon written agreement between the lessee and the city.

B. A lease is subject to cancellation in whole or in part if improperly issued due to misrepresentation or error with respect to material facts.

C. A lease may be canceled if the leased premises are used for any unlawful purpose.

D. If the lessee shall be in default in the performance, observance or conditions of any of the lease terms, covenants or stipulations thereto, or of valid regulations enforced, the city manager may immediately take appropriate action, including but not limited to cancellation of the lease. No improvements may be removed during any time the lessee is in default. (Prior code § 27-15)

14.04.160 Cancellation or forfeiture of leases—Right of mortgagee or lien holder.

In the event of a cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage, conditional assignment or collateral assignment, which has received the prior written approval of the city manager, shall have the option to acquire the lease for the unexpired term thereof subject to the same terms and conditions as in the original lease. (Prior code § 27-16)

14.04.170 Cancellation or forfeiture of leases—Re-entry of abandoned, etc., land.

In the event that a lease under this chapter is terminated, or in the event that the lands are abandoned by the lessee during the term of the lease, the city, by the city manager or his designee, may immediately or at any time thereafter, re-enter and resume possession of such tidelands or any part thereof, and may remove all persons and property therefrom either by summary proceedings or by suitable action or proceeding at law without being liable for any damages therefor. No re-entry by the city shall be deemed an acceptance of a surrender of the lease. (Prior code § 27-17)

14.04.180 Cancellation or forfeiture of leases—Releasing of land.

In the event that a lease under this chapter is terminated the city may offer such lands for lease or other appropriate disposal, pursuant to the provisions of the City Charter and this code or any other ordinances of the city. (Prior code § 27-18)

14.04.190 Cancellation or forfeiture of leases—Forfeiture of rentals.

In the event that a lease under this chapter is terminated because of any breach by the lessee the annual rental payment last made by the lessee shall be forfeited and retained by the city as partial or total liquidated damages for such breach. (Prior code § 27-19)

14.04.200 Waiver of provisions of lease.

The receipt of rent by the city with knowledge of any breach of a lease under this chapter by the lessee or any default on the part of the lessee in observance or performance of any of the conditions or covenants of the lease shall not be deemed to be a waiver of any provision of the lease. (Prior code § 27-20)

14.04.210 Preference rights to release.

A lessee under this chapter, under an existing lease, shall upon expiration of the lease be allowed a preference right to release those lands previously leased by him if all of the factors are substantially equivalent, unless it shall be determined by the city that the renewal of such lease is not in the best interest of the city. (Prior code § 27-21)

14.04.220 Removal or reversion of improvements upon termination of lease.

Improvements owned by a lessee on city tidelands shall be removed by him within sixty days after termination of the lease for any cause; provided, that such removal will not cause injury or damage to the land; and that the city manager may extend the time for removing such improvements in cases where hardship is shown. The retiring lessee may, with the consent of the city manager, sell his improvement to the succeeding lessee. (Prior code § 27-22)

14.04.230 Giving of notices and demands.

Any notice or demand which must be given under the terms of a lease under this chapter may be given, in writing, by registered or certified mail addressed to the other party at the address shown on the lease. Notice shall be deemed given when deposited in the United States postal receptacle. (Prior code § 27-23)

14.04.240 Compliance with regulations.

The lessee shall comply with all regulations or ordinances which any proper public authority shall promulgate for the promotion of sanitation and fire protection, and shall comply with all building and zoning codes. The lessee's premises shall be opened for inspection by authorized representatives of the city at all reasonable times. (Prior code § 27-24)

14.04.250 Reservation of rights-of-way.

The city expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the city to do so. The lessee whose land such easements cross shall be entitled to damages for all improvements destroyed or damaged. (Prior code § 27-25)

14.04.260 Restrictions and reservations.

All leases of tidelands shall be subject to the provisions of the tideland regulations and to the herring spawn covenant. (Prior code § 27-26)

14.04.270 Conditional leases.

The city may issue conditional leases on lands it reasonably believes it will own or will acquire title to prior to the actual receipt of title. Leases on this conditional basis shall be canceled in whole or in part in the event the city is denied title to such lands under lease. All prepaid lease rentals, in the event title is denied the city, shall be refunded to the lessee, based upon the prorated portions of the unexpired term of the lease. The city shall not be liable for any damage that may be done to the land by the lessee or liable for any claims by reason of having leased such land on a conditional basis. In the event the city does receive title to the land, the conditional lease shall then have the same standing, force and effect as a nonconditional lease issued under the regulations of this chapter. (Prior code § 27-27)