

Ordinance 13-17(S) Making Technical Corrections to the Homer City Code Before its Republication by Code Publishing, Inc.

Ordinance ID: 13-17(S)
Ordinance Status: Adopted
Ordinance Summary:

An Ordinance of the City of Homer, Alaska, Making Technical Corrections to the Homer City Code Before its Republication by Code Publishing, Inc. City Clerk.

CITY OF HOMER
HOMER, ALASKA
City Clerk
ORDINANCE 13-17(S)

AN ORDINANCE OF THE CITY OF HOMER, ALASKA, MAKING TECHNICAL CORRECTIONS TO THE HOMER CITY CODE BEFORE ITS REPUBLICATION BY CODE PUBLISHING, INC.

WHEREAS, Code Publishing, Inc. has performed a legal analysis of the current Homer City Code, that has identified Code provisions that require technical correction before the republication of the Code; and

WHEREAS, It is desirable that the technical corrections identified by Code Publishing, Inc. be adopted before the Code republication to assure that the republished Code is as accurate and current as possible.

NOW, THEREFORE, THE CITY OF HOMER HEREBY ORDAINS:

Section 1. Subsection (c) of Homer City Code 1.16.040, Disposition of Scheduled Offenses—Fine Schedule, is amended to read as follows:

(c) The following violations of this code are amenable to disposition without court appearance upon payment of a fine in the amount listed below.

CODE SECTION DESCRIPTION OF OFFENSE

FINE

HCC 5.38.010 Feeding or baiting certain birds (first offense) \$50

HCC 5.38.010 Feeding or baiting certain birds (second and subsequent offense) \$200

HCC 19.20.020 General rules \$300

HCC 19.20.030 Park closure \$150

Section 2. Subsection (a) of Homer City Code 1.70.010, Created; Membership, is amended to read as follows:

a. There shall be a City of Homer Public Arts Committee, hereinafter referred to as the Committee. The Committee shall consist of five members, who shall be appointed by the Mayor subject to confirmation by the City Council. Prior to making appointments, the Mayor may solicit nominations from the Pratt Museum, community arts groups, and the public. All members of the Public Arts Committee should have a demonstrated interest and familiarity with arts and culture, either through professional practice or volunteer work. When considering applicants, preference may be given to:

1. A working professional artist.
2. A person working in the public education community.
3. A City Council member.
4. A person with experience or training related to the arts, such as art history, or employment in fields such as architecture, education, curation, conservation, performing arts or visual arts.
5. A person representing the public at large.

Section 3. Homer City Code 1.70.020, Terms of members; Vacancies, is amended to read as follows:

1.70.020 Terms of members; Vacancies. a. Members of the Committee are appointed for two-year terms, with two terms and three terms commencing in alternate years.

b. A vacancy on the Committee is filled for the unexpired term by appointment by the Mayor subject to confirmation by the City Council.

c. The Committee may declare a vacancy in the office of a Committee member with three or more unexcused absences from successive regular and special meetings of the Committee.

Section 4. Homer City Code 3.01.025, Deposit of money, is amended to read as follows:

3.01.025 Deposit of money. Deposit of money. All money collected by departments of the City shall be deposited with the Finance Director/Treasurer within three working days after collection, except that amounts less than \$100 shall be deposited with the Finance Director/Treasurer by 10:00 AM the following Friday.

Section 5. Homer City Code 3.05.005, Budget Assumptions, is amended to read as follows:

3.05.005 Budget Assumptions. By the third Friday in September the City Manager shall present to the Council an overview of preliminary budget assumptions for the next fiscal year of the City. These preliminary assumptions will address by fund, revenue projections, tax and utility rates, program additions or deletions, wages and benefits, or other issues with potential impact on the City's overall financial condition.

Section 6. Subsection (b) of Homer City Code 5.16.100, Overhead charge, civil penalties, is amended to read as follows:

b. Whenever a nuisance is abated by the City, the owner of the property in question shall pay a civil penalty in addition to the actual costs and overhead charge. The civil penalty for abating a nuisance is \$300 for the first nuisance abated. For each subsequent nuisance that is abated by the City within two consecutive calendar years concerning property owned by the same person, the civil penalty shall be fifty percent of the cost of abatement or \$500, whichever is more, but not exceeding \$1,000 per day that the nuisance has continued. The civil penalty shall be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

Section 7. Homer City Code 5.38.060, Violations and penalties, is repealed.

Section 8. Homer City Code 6.08.010, Flight to avoid arrest, is amended to read as follows:

6.08.010 Flight to avoid arrest. No person may avoid or attempt to avoid arrest by intentionally evading a police officer following the officer's request or command by words or signal to stop.

Section 9. Subsection (a) of Homer City Code 6.12.010, Definitions, is repealed and reenacted to read as follows:

a. "Controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 – 11.71.190, as amended.

Section 10. Subsection (b) of Homer City Code 6.12.010, Definitions, is amended to read as follows:

b. "Drug paraphernalia" means all items, equipment, devices, products and materials of any kind which are used, or intended for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance as defined herein. Drug paraphernalia includes, but is not limited to:

1. Kits used or intended for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is controlled substance or from which a controlled substance can be derived;

2. Kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

3. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

4. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances except for use by or under the direction of law enforcement agencies or medical research or treatment facilities;

5. Scales and balances used or intended for use in weighing or measuring controlled substances;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, manite, dextrose and lactose, used or intended for use in cutting controlled substances;
7. Separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;
9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
10. Containers and other objects used or intended for use in storing or concealing controlled substances;
11. Hypodermic syringes, needles and other objects used or intended for use in injecting, controlled substances into the human body;
12. Objects used or intended for use in injecting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - ii. Water pipes;
 - iii. Carburetion tubes and devices;
 - iv. Smoking and carburetion masks;
 - v. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - vi. Miniature cocaine spoons, and cocaine vials;
 - vii. Chamber pipes;
 - viii. Carburetor pipes;
 - ix. Electric pipes;
 - x. Air-driven pipes;
 - xi. Chillums;
 - xii. Bongs;
 - xiii. Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors the following:

1. Statements by the manufacturer, owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state of federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of AS 11.71.010 – 11.71.060, as amended ;
4. The proximity of the object to controlled substance;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of AS 11.71.010 – 11.71.060, as amended ; the innocence of an owner, or of anyone in control of the object, as to a direct violation of AS 11.71.010 – 11.71.060, as amended shall not prevent a finding that the object is intended for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning its use.

Section 11. Homer City Code 7.04.023, State schedule of minor traffic offenses and bail forfeiture--Adopted, is amended to read as follows:

7.04.023 State schedule of minor traffic offenses and bail forfeiture--Adopted. The City, pursuant to AS 28.05.151, adopts the schedule of minor traffic offenses and bail forfeiture amounts contained in Rule 43.1 of the Alaska Rules of Administration. A copy of Rule 43.1 is on file in the Office of the City Clerk, and is made a part of this section.

Section 12. Footnote 1 to Homer City Code 7.06.100, Penalty and fine schedule, is deleted:

Section 13. Subsection (b) of Homer City Code 7.08.020, Stopping or parking--Where prohibited, is amended to read as follows:

b. No parking shall be permitted on a City arterial, as defined in Section 21.03.040.

Section 14. Homer City Code 7.08.060, Violation--Penalty, is amended to read as follows:

7.08.060 Violation--Penalty. Unless another penalty is expressly provided, the penalties for violating provisions of this chapter are the same as those listed in the State of Alaska Traffic Bail Forfeiture Schedule pursuant to Rule 43.1 of the Alaska Rules of Administration for violations of 13 AAC 02.340 through 13 AAC 02.377 .

Section 15. Subsection (h) of Homer City Code 7.20.030, Use of snowmachines, is amended to read as follows:

7.20.030 Use of snowmachines. No person shall drive, operate, stop or move a snowmachine:

* * *

h. Without having such snowmachine registered as provided for in AS Chapter 28.39;

Section 16. The footnote to Homer City Code Chapter 8.04, Alcoholic Beverage Licenses, is amended to read as follows:

For statutory provisions authorizing municipalities to regulate alcoholic beverages see AS 04.21.010; for provisions authorizing municipal protest of state licensing board decisions, see AS 04.11.480.

Section 17. HCC 8.11.010, Applicable state law incorporated, is amended to read as follows:

8.11.010 Applicable state law incorporated. All statutes of the State of Alaska and any rules or regulations adopted by any state agency pertaining to public nuisances, food and food service establishments, public health and public sanitation applicable to a mobile food service, with particular reference but not limited to, Titles 17 and 18, Alaska Statutes, as amended, and 18 AAC 31.600, et seq., as amended, are incorporated by this reference as though fully set forth in this chapter.

Section 18. Subsection (a) of HCC 9.16.100, Exemptions, is amended to read as follows:

9.16.100 Exemptions. a. Sales of nonprepared food items from September 1st through May 31st of each year.

Section 19. Subsection (b) of HCC 14.04.020, Connection--Required, is amended to read as follows:

b. No person shall occupy and no person shall own, maintain or control any structure or premises used as a home, apartment, or other living quarters unless the structure is connected to the City sewer; nor shall any person occupy, maintain or control any structure or premises used for any commercial, industrial or business use unless the structure is connected to sewer; provided, however, that the provision of this subsection shall not apply if the existing sanitary facilities shall have been approved by the Alaska Department of Environmental Conservation as providing adequate disposal of wastes and continues to function as approved.

Section 20. HCC 14.05.215, IWAN required for significant industrial users, is amended to read as follows:

14.05.215 IWAN required for significant industrial users. No SIU may connect to or remain connected to the STW, or otherwise introduce or cause the entry of waste into the STW, without first obtaining an Industrial Wastewater Acceptance Notification (IWAN).

Section 21. Subsection (b)(2) of HCC 14.05.220, Application for industrial wastewater acceptance, is amended to read as follows:

2. The 2012 North American Industry Classification System (NAICS) number of the SIU;

Section 22. Subsection (b) of HCC 18.20.010, Definitions, is amended to read as follows:

b. "Abandoned vehicle" is any vehicle, as defined by subsection (a), that has been discarded, left unattended, standing or parked in a public right-of-way upon or within 10 feet of the traveled portion of a highway or street, in excess of 48 hours; or that has been discarded, left unattended, standing or parked upon private property without the consent of the owner or person in charge of the property in excess of 24 hours; or that has been discarded, left unattended, standing or parked upon public property without the consent of the person in charge of the property for more than 30 days.

Section 23. HCC 18.28.080, Herring spawn covenant, is repealed.

Section 24. Footnote 1 to Homer City Code Chapter 19.08, Campgrounds, is deleted:

Section 25. Subsection (b) of HCC 20.08.030, Nuisance animals, is amended to read as follows:

b. The owner of any animal shall not permit the same to defecate, dig upon or injure private property owned by another person or public property or a public thoroughfare.

Section 26. Subsection (b) of HCC 22.10.055, Underground utilities, is amended to read as follows:

b. All existing overhead utility wire or cable facilities, including, but not limited to, electric power, telephone, and telecommunications cables which shall be relocated and/or which receive major modifications, shall be placed underground unless the utility obtains an exception pursuant to the provisions of subparagraphs e. and f. of this section. Major modifications shall not include reconductoring, reinsulating or in-kind replacement. The provisions of this subparagraph shall apply equally to the abandonment of pole lines except that if one utility abandons a pole line another existing utility which shares that pole line may buy the pole line and continue to use the pole line for the acquiring utility's cable facilities.

Section 27. Subsection (c) of HCC 22.10.055, Underground utilities, is amended to read as follows:

c. All extensions of utility wire or cable facilities including, but not limited to, electric power, telephone, and telecommunications cables for the purpose of providing such utility service to any land not served before that date by overhead cable facilities shall be installed only as provided by HCC Chapter 14.50.

Section 28. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL of the City of Homer, Alaska, this 28th day of May 2013.

CITY OF HOMER

MARY E. WYTHER, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

AYES:

NOES:

ABSTAIN:

ABSENT:

First Reading:

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Reviewed and approved as to form:

Walt Wrede, City Manager Thomas F. Klinkner, City Attorney

Date: _____ Date: _____

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