Chapter 10.04 General Port and Harbor Provisions

Sections:

10.04.010 Short Title.
10.04.020 Scope--Administrative powers.
10.04.030 Definitions.
10.04.035 Homer Port and Harbor Tariff.
10.04.040 Harbormaster--Powers and duties.
10.04.050 Rule and regulation establishment authority.
10.04.055 Fees.
10.04.060 Revenues--Use of.
10.04.080 City docks--Other closure.
10.04.090 Underway requirement.
10.04.100 Vehicles and other wheeled conveyances.
10.04.110 Violation--Penalty.
10.04.120 Impounded vessel procedure.
10.04.130 Nuisances declared--Removal.
10.04.132 Nuisances--Abatement procedure.
10.04.134 Nuisances--Post-removal hearing.
10.04.135 Nuisances--Form of demand for hearing--Hearing Officer.
10.04.138 Interference with impoundment prohibited.
10.04.139 Lien on impounded or nuisance vessel.
10.04.140 Annual review required.
10.04.150 Required Equipment.

10.04.010 Short Title. This title shall constitute the Port and Harbor Code of the City and may be cited as such. (Ord. 88-2 (part), 1988).

10.04.020 Scope--Administrative powers. This title and the Homer Port and Harbor Tariff shall be deemed an exercise of the powers of the City for the protection, safeguarding, and orderly moorage and control of boats, and for the protection and general welfare of the public and all of its provisions shall be liberally construed for the accomplishment of the purpose. The City, through its properly appointed representatives, shall have the authority to board any vessel utilizing the harbor or port facilities for the purpose of enforcing this title and the Homer Port and Harbor Tariff. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.030 Definitions. Unless otherwise provided in this title or required by the context, definitions set forth in the Homer Port and Harbor Tariff shall apply to this title. (Ord. 95-18(S)(part), 1995).

10.04.035 Homer Port and Harbor Tariff. The rates, charges, rules and regulations for wharfage, terminal storage, demurrage and other terminal services and privileges are set forth in the Homer Port and Harbor Tariff and as filed with the Federal Maritime Commission. Subject to the requirements of section 10.04.055, the Homer Port and Harbor Tariff may be amended from time to time by resolution of the City Council. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.040 Harbormaster--Powers and duties. A harbormaster, who shall have police powers, shall be appointed in the same manner as other city employees. The harbormaster shall be assigned to enforce the provisions of this title and the Homer Port and Harbor Tariff, maintain an accurate log of the registration data of all boats using Homer harbor facilities, showing the date of occupancy of berthing facilities, issue citations and impound vehicles, vessels, gear or equipment for violations of this title of the City Code, and collect or arrange for the collection of the established fees. The harbormaster is granted the power and authority from time to time, as circumstances require, but without any obligation to do so, and without any obligation or liability on his part, or that of the City for his failure to do so, to replace defective mooring lines, to pump vessels which are in a dangerous condition for lack thereof, and to move any boat for the purpose of protecting such boat from fire or from other hazard or for the protection of

other vessels or property therefrom. Whenever the harbormaster shall perform or cause to be performed any of the actions authorized in this title or other emergency actions, after having given notice of the immediate need therefore, or having attempted to give such notice within the time limits prescribed by the exigencies of the situation, a fee as prescribed in the Homer Port and Harbor Tariff shall be assessed the vessel owner or operator. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.050 Rule and regulation establishment authority. The City Manager is empowered and authorized to establish additional rules and regulations governing the use of the Homer harbor, assignment of stalls, and the general conduct in, around and on harbor facilities and parking areas. Such rules and regulations shall become effective upon approval by the City Council. The Council may provide for a different effective date. The City Manager shall print and make available to the public copies of regulations adopted pursuant to this section. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.055 Fees. a. Fees for the approved use of Homer harbor facilities and services as set forth in the Homer Port and Harbor tariff may be changed by City Council resolution; provided, that a public hearing is held prior to approval of the resolution; and, provided further, that any such change is effective only after the change is filed with the Federal Maritime Commission as an amendment to the Homer Port and Harbor Tariff.
b. The harbormaster may negotiate special fees and charges with a vessel owner or operator where the owner or operator requires an exceptional volume of, or unique or unusual services or facilities, and it is in the best interest of the City to enter into special arrangements. In such event, the harbormaster shall inform the City Manager of such special, negotiated arrangements. (Ord. 95-18(S)(part), 1995; Ord. 91-13(S) 1, 1991; Ord. 88-2 (part), 1988).

10.04.060 Revenues--Use of. All revenues from the Homer harbor shall be expended for the maintenance, operation and improvement of the Homer harbor in accordance with generally accepted accounting principles. Revenues from the Homer Boat Harbor shall be expended solely for the furtherance of financial stability and self-sufficiency of the Homer harbor. (Ord. 95-18(S)(part), 1995; Ord. 92-22, 1992; Ord. 88-2 (part), 1988).

10.04.080 City docks--Other closure. The City, through its City Manager or other duly constituted agent, may prohibit the use of any wharves and docking facilities owned or controlled by the City at any time when closing the facilities is required to protect and preserve the public welfare and safety. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.090 Underway requirement. On at least two days in each calendar year, separated by at least sixty (60) days, a vessel moored in the Homer harbor shall depart under its own power from the Homer harbor and travel beyond the one quarter mile turning basin of the Pioneer and Deep Water Docks before returning under the vessel’s own power to the Homer harbor. The moorage charge for a vessel that fails to comply with this requirement shall be increased by 50% commencing at the time the vessel fails to comply and continuing during the period of non-compliance.

10.04.100 Vehicles and other wheeled conveyances. a. The harbormaster may designate restricted parking areas in the harbor area. In a restricted parking area, the harbormaster may:
(1) Establish time limits for parking;
(2) Designate areas for paid parking, and establish fees for paid parking there; and
(3) Designate areas for permit parking, and establish the fees and qualifications for obtaining a permit.
"Restricted parking" areas pertain to the parking of any vehicle or trailer, private or commercial.
b. The harbormaster shall notify the public of time limits in restricted parking areas, fees required to park in restricted parking areas, and permit requirements for parking in restricted parking areas by the placement of official traffic control devices. No person may stop, stand or park a vehicle in violation of such an official traffic control device. Every day in which such a violation continues shall constitute a separate offense.
c. No person other than an employee of the City or other person acting on City business shall drive a vehicle upon the inside gravel slope of the Small Boat Harbor except in case of emergency. Parking or leaving boats, trailers and/or other vehicles and equipment related thereto by the public shall be limited to specific areas designated for such use.
d. Hauling out boats on skids is prohibited unless approved in advance by the harbormaster. (Ord. 11-15 §1, 2011; Ord. 95-8(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.110 Violation--Penalty. a. Except as provided in (b) of this section, any violation of the provisions contained in this title or regulations adopted pursuant to this title shall be unlawful and punishable as provided in Section 1.16.010 of this Code.

b. A violation of HCC 10.04.100(b) is amenable to disposition without court appearance upon payment of a fine in the amount of $25.00. The person cited for the violation may mail or personally deliver to the City Finance Department the amount of the fine plus any surcharge required to be imposed by AS 29.25.074, together with a copy of the citation signed by the person indicating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of the fine. The payment of a fine under this subsection shall be treated as a judgment of conviction. The fine paid is complete satisfaction for the offense. If a person cited for a violation of HCC 10.04.100(b) appears in court to contest the citation and is found guilty, the maximum sentence which may be imposed is the scheduled fine amount plus any surcharge required to be imposed by AS 29.25.074. (Ord. 11-30 §1 (part, 2011; Ord. 11-15 §2, 2011; Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.120 Impounded vessel procedure. a. At least ten days prior to impounding any vessel, the City shall cause to be posted on the vessel, in the harbormaster's office, the City Clerk's office and on the bulletin board at the entrance of the United States Post Office, notice of such action to be taken by the City. A copy of the notice shall be mailed by certified mail return receipt requested, to the owner or operator of the vessel at his last known address, which address shall be the same as that furnished in accordance with the regulations of this tariff. The notice shall contain the name and/or number of the vessel, the name and address, if known, of the owner or operator and the location of the vessel.
b. As to any vessel proposed for impoundment, an owner or operator of the vessel has the right to a pre-impoundment administrative hearing to determine whether there is probable cause to impound the vessel if such person files a written demand, on forms so provided for such a hearing, with the City within ten days after such person has learned such vessel will be impounded or within ten days after the return of mail receipt of the notice required by subsection a. of this section, whichever occurs first.
c. A hearing shall be conducted before a hearing officer designated by the City Manager within forty-eight hours of receipt of written demand therefor from the person seeking the hearing unless the person waives the right to a speedy hearing. Saturdays, Sundays and City holidays are to be excluded from the calculation of the forty-eight-hour period. The hearing officer shall be someone other than the persons who will direct the impounding and storage of the vessel. The sole issue before the hearing officer shall be whether there is probable cause to impound the vessel in question. "Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was a breach of federal, local or municipal law or regulations, or any agreement entered into pursuant thereto, rendering the vessel subject to impoundment. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vessel. The harbormaster shall carry the burden of establishing that there is probable cause to impound the vessel in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision and reasons therefor shall be provided to the person demanding the hearing and the owner of the vessel if such owner is not the person requesting the hearing. The hearing officer's decision in no way affects any criminal proceeding connection with the impound in question and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final and may only be appealed to the Superior Court. Failure of the owner or operator to request or attend a scheduled pre-impoundment hearing shall be deemed a waiver of the right of such hearing.
d. The hearing officer shall only determine that as to the vessel in question either that there is probable cause to impound the vessel or that there is no such probable cause. In the event that the hearing officer determines that there is no probable cause, the hearing officer shall prepare and date a Certificate of No Probable Cause, copies of which shall be given to the owner or operator and to the harbormaster. Upon receipt of such Certificate of Probable Cause, the harbormaster may proceed with impoundment and disposition of the vessel by removal, sale or destruction as authorized by this title.
e. Any vessel impounded shall be held by the City for a period of not less than thirty days during which the City shall publish in a newspaper of general circulation in the City a notice describing the vessel in general terms, the name and/or number, if any, the name and address of the owner, or operator, if known, or if not known shall so state the location of the vessel and the intention of the City to sell the same at public auction, on a day and at a place and time certain, not less than ten days prior to the sale, for cash to the highest and best bidder. At any time prior to the auction, the owner or operator may redeem the vessel by cash payment of all City charges against the vessel.
f. The minimum acceptable bid shall be a sum equal to the City's charges against the vessel. The proceeds of the sale shall be first applied to the cost of sale, then to accrued stall license fees and charges, service fees, storage charges, attorney fees and costs, and other expenses provided for in this title, and the balance, if any, shall be held in trust by the City for the owner of the vessel to claim; and if not claimed within one year, the balance shall be deposited into the Small Boat Harbor facilities fund. Upon the sale being made, the City shall make and deliver its

bill of sale, without warranty, conveying the vessel to the buyer.
g. If at the public sale there are no bidders for the vessel, the City may destroy, sell at private sale or otherwise dispose of the vessel. The disposition is to be made without liability of the City, its employees or agents to the owner, master or any lien holder of the vessel. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.130 Nuisances declared--Removal. a. For the purposes of this title and in the interest of the greatest use of the facilities of the Homer harbor and the municipal waters by the general public, vessels in the Homer harbor and elsewhere on the municipal waters that are illegally moored, cause an obstruction to navigation, or that are abandoned or derelicts or unfit or unseaworthy or which are maintained in such manner as to make them liable to sinking for lack of being pumped or other maintenance, or which are unsafe or which are maintained in a manner as to constitute a fire hazard, and sunken vessels and vessels in imminent danger of sinking, are declared to be nuisances and subject to abatement and removal from the Homer harbor or other municipal waters by the City or its agents, without liability of the City for any damage done by virtue of the removal or for any of its consequences.
b. Refuse of all kinds or any other obstructions or debris are declared to be public nuisances, and it shall be unlawful for any person to place, or cause to be placed, any public nuisance in the Homer harbor or in the municipal waters, or on the shores thereof. Nets, gear, and other material left on any float or dock for more than twelve hours are hereby declared a public nuisance. Any person causing or permitting the nuisances to be placed as aforesaid shall remove the same and upon his failure to do so, the same may be removed or caused to be removed by the harbormaster. When the harbormaster has authorized such nuisances to be removed or stored commercially, all costs of such commercial removal or storage shall be paid by and recoverable from the person creating the nuisances and shall not excuse the person responsible therefore from prosecution hereunder. Any nuisance under this subsection may be impounded, disposed of by destruction, private or public sale, or by any other means deemed reasonable by the harbormaster. Such disposition is to be made without liability of the City, its employees or agents to the owner, master or any lien holder of the nuisance.
c. Upon the harbormaster's written determination that a nuisance described in subsection a. of this section 10.04.130 exists that constitutes a clear and present danger to the public health, safety or general welfare, the nuisance may be summarily abated by the harbormaster according to section 10.04.132 without prior notice.
d. Vessels declared a nuisance under subsection a. of this section that do not constitute a clear and present danger to the public health, safety and general welfare may be moved, impounded, or disposed of according to the procedure provided in section 10.04.120. (Ord. 95-28 1, 1995; Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.132 Nuisances--Abatement procedure. a. Unless otherwise provided, the procedure set forth in this section shall apply whenever a vessel has been impounded or removed or a nuisance vessel abated pursuant to subsection 10.04.130(a) or otherwise, and the pre-impoundment administrative hearing procedures of section 10.04.120 were not followed.
b. An impoundment is effective when a written order of impoundment is placed on a vessel. An order of impoundment shall identify the vessel, state the reasons for impoundment, and be dated and signed by the harbormaster or his authorized designee. An impounded vessel may be immediately towed or otherwise removed upon the order of the harbormaster. Nothing in this subsection b. Shall be construed to prevent the city from using alternatives to impoundment, including without limitation removal or other means to abate a nuisance.
c. When action is taken to impound, remove, or otherwise abate a nuisance vessel, notice of such action shall be placed on the vessel if possible, and within 6 hours a copy of the notice shall be personally delivered or placed in the U.S. mail addressed to the owner of the vessel. The notice shall include the following substantive provisions:

ATTENTION: The vessel _____ has been impounded/removed/abated by the City of Homer harbormaster as a public nuisance for the following reasons:

As the owner of the vessel you have the following options (those that apply are checked:
____ The vessel has been impounded and you may recover possession of the vessel by paying to the person having custody of the vessel the towing, storage, and other charges that may have accrued. ____ The vessel is at the following location:_____

____ The vessel has been removed and you may recover possession of the vessel at the following location:_____
_____
____ The vessel has been destroyed. You may direct any inquiries to the City of Homer harbormaster.
____ The following action has been taken, and any option you may have is described below:
_____
_____

If you believe the vessel was improperly impounded, removed, or otherwise abated, you may:

(i)In the case of an impoundment, recover possession of the vessel by paying any towing, storage, or other charges that have accrued, and you may claim a refund or reimbursement by filing
a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether the harbormaster had a sufficient factual and legal basis to impound the vessel; or
(ii) In the case of an impoundment, you may demand return of the vessel without paying the towing, storage, or other charges by filing a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether the harbormaster had a sufficient factual and legal basis to Impound the vessel; or
(iii) You may in any other case file a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether the harbormaster had a sufficient factual and legal basis to impound, remove, or abate the vessel.
To be entitled to such a hearing, your written demand must be filed with the City Clerk (a) within 5 workdays after you learned that your vessel was impounded, removed, or otherwise abated or (b) within 15 workdays after the City mailed notice to the vessel owner of the action taken, whichever is earlier. If you fail to make a timely request for a hearing you will lose all right to challenge the sufficiency of the basis for the action taken.

If timely requested, the hearing must be held within 48 hours after the filing of your written demand, not including, Saturdays, Sundays, and city holidays, unless you waive your right to a speedy hearing. A determination that there was an insufficient factual or legal basis for the action taken will require the release of the vessel to the owner without payment of the towing, storage, or other accrued charges, or it will entitle the owner to a refund or reimbursement if the charges were already paid.

A hearing may be demanded by filing the appropriate form with the City Clerk at Homer City Hall between 8:00 a.m. and 5:00 p.m. on any day other than Saturday, Sunday and city holidays. (Ord. 95-28 2, 1995).

10.04.134 Nuisances--Post-removal hearing. a. If demand is timely made, the owner or person entitled to possession of the vessel is entitled to an administrative hearing to determine whether there was a sufficient factual and legal basis for the action to impound, remove, or otherwise abate the vessel. To be entitled to such a hearing, a written demand must be filed with the City Clerk (a) within 5 workdays after the owner or other person entitled to possession learned that the vessel was impounded, removed, or otherwise abated, or (b) within 15 workdays after the city mailed the notice required by section 10.04.132(c) to the vessel owner, whichever is earlier. If no timely request for a hearing is made, the factual and legal basis for the action taken will be conclusively deemed sufficient for all purposes.
b. The hearing will be held within 48 hours after the filing of a written demand, not including Saturdays, Sundays and city holidays, unless the person demanding the hearing waives a speedy hearing.
c. The hearing officer shall not be bound by formal rules of evidence. A copy of the harbormaster's written determination that a public nuisance exists will constitute prima facie proof of a sufficient factual and legal basis for the action. The burden will be on the vessel owner to prove by a preponderance of the evidence that there was not sufficient factual or legal basis for impounding, removing, or otherwise abating the vessel.
d. At the conclusion of the hearing, the hearing officer shall prepare a written decision, including the reasons for the decision. A copy of such decision shall be provided to the person demanding the hearing and the owner of the vessel. The hearing officer's decision in no way affects any criminal charges that may be pending. The decision of the hearing officer is final and may only be appealed to the Superior Court.
e. A determination by the hearing officer that there was not a sufficient factual or legal basis for the action taken will require the release of the vessel to the owner or other person entitled to possession without payment of the towing, storage, or the accrued charges, or will entitle the person to a refund or reimbursement by the city if the charges have already been paid. If the hearing officer determines there was a sufficient factual and legal basis for the action taken, the harbormaster may proceed to dispose of the vessel by sale according to subsections e-g of section 10.04.120, or the harbormaster may destroy or otherwise dispose of the vessel without sale if he makes a good faith determination that the value of the vessel does not exceed the costs of towing, storage, sale, and other harbor charges accrued against the vessel. (Ord. 95-28 3, 1995).

10.04.135 Nuisances--Form of demand for hearing--Hearing officer. a. The City Clerk shall prepare and make available a form of demand for a hearing pursuant to section 10.04.134. Upon receipt of a demand for a hearing the City Clerk shall immediately forward the demand to the City Manager or his designee, who shall schedule an administrative hearing and notify all parties.
b. The City Manager shall appoint a hearing officer to conduct hearings pursuant to section 10.04.134. No person with the authority to impound, removed, or otherwise abate a nuisance vessel shall be eligible to serve as a hearing

officer. (Ord. 95-28 4, 1995).

10.04.138 Interference with impoundment prohibited. a. Unless authorized by the harbormaster, it is unlawful for any person to remove an impoundment order from a vessel upon which it has been posted.
b. Unless authorized by the harbormaster, it is unlawful for any person to move a vessel after it has been posted with an impoundment order.
c. It is unlawful for any person to interfere with the harbormaster or any other person under the harbormaster's authority engaged in the impound, removal, or abatement of a vessel or public nuisance. (Ord. 95-28 5, 1995).

10.04.139 Lien on impounded or nuisance vessel. The City shall have a lien on any vessel impounded or abated as a nuisance under this title for charges for towing, storage, costs of abatement, costs of sale, attorneys fees, any other charges incurred in connection with the impoundment or abatement, and charges for harbor services, including without limitation, moorage, dockage, stall rental, utilities, and other services provided to or for the benefit of the vessel. (Ord. 95-28 6, 1995).

10.04.140 Annual review required. An annual review shall be required of all Port and Harbor rates. Such annual review shall be part of preparation of the Port, and charges and Harbor fiscal operating budgets. (Ord. 95-18(S)(part), 1995; Ord. 88-2 (part), 1988).

10.04.150 Required equipment. All water craft or vessels shall carry the equipment required by any applicable United States laws or regulations as now or hereafter amended, and shall be numbered or designated in accordance with any applicable United States laws or regulations as now or hereafter amended. In the absence of extenuating circumstances, failure of any boat or vessel within the Homer harbor to comply with applicable United States laws or regulations shall be in violation of this title. (Ord. 95-18(S)(part), 1995).

1. For Statutory provisions authorizing municipalities to provide for and regulate harbor facilities see AS 30.
Ordinance 95-18(S) repealed and reenacted Title 10 with the bulk of Title 10 being incorporated into the Homer Port and Harbor Tariff 95-1, adopted by Resolution 95-69. Prior Ordinance History: Ord. 95-9, 1995; Ord. 95-4, 1995; Ord. 95-3, 1995; Ord. 92-46, 1992; Ord. 92-45, 1992; Ord. 92-23(A), 1992; Ord. 92-22, 1992; Ord. 91-25, 1991; Ord. 91-13(S), 1991; Ord. 90-17(A), 1990; Ord. 90-16, 1990; Ord. 90-8(A), 1990; Ord. 90-7, 1990; Ord. 89-6, 1989; Ord. 89-4, 1989; Ord. 88-11, 1988; Ord. 88-2, 1988.

Source URL (retrieved on *2013-05-24 02:37*):
http://www.cityofhomer-ak.gov/cityclerk/chapter-1004-general-port-and-harbor-provisions