

CITY OF HOMER
HOMER, ALASKA

ORDINANCE 95- 28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF HOMER AMENDING TITLE 10
OF THE HOMER CITY CODE TO
REVISE PROCEDURES FOR IMPOUNDMENT, REMOVAL, OR OTHER
ABATEMENT OF NUISANCE VESSELS; PROVIDING FOR A LIEN ON
IMPOUNDED OR ABATED VESSELS; AND PROHIBITING INTERFERENCE
WITH IMPOUNDMENT OR NUISANCE ABATEMENT

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Section 10.04.130 is hereby amended to read as follows:

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 derelict 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 therefor 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.

Section 2. A new section 10.04.132 of the Homer City Code is hereby created to read as follows:

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.

Section 3. A new section 10.04.134 of the Homer City Code is hereby created to read as follows:

Section 10.04.134 Nuisances--Post-removal hearing. a. If demand is timely made, 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 other 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.

Section 4. A new section 10.04.135 of the Homer City Code is hereby created to read as follows:

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, remove, or otherwise abate a nuisance vessel shall be eligible to serve as a hearing officer.

Section 5. A new section 10.04.138 of the Homer City Code is hereby created to read as follows:

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.

Section 6. A new section 10.04.139 of the Homer City Code is hereby created to read as follows:

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.

Section 7. This is an ordinance of a general and permanent nature, and it shall be included in the city code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER,
ALASKA, this 27th day of November, 1995.

CITY OF HOMER


HARRY E. GREGOIRE, MAYOR

ATTEST:

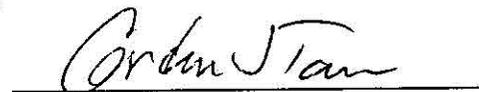

MARY L. CALHOUN, CITY CLERK

AYES:
NOES:
ABSTAIN:
ABSENT:

First Reading: 10/09/95
Public Hearing: 10/23/95
Second Reading: 11/27/95
Effective Date: 11/28/95

Reviewed and approved as to form and content:


Patti J. Whalin
City Manager


Gordon Tans