

ORDINANCE 98-04

AN ORDINANCE OF THE CITY OF HOMER AMENDING HOMER CITY CODE CHAPTER 14.08 TO ESTABLISH PRIORITY FOR USE OF CITY WATER; AUTHORIZING SALE OF SURPLUS WATER; PROVIDING FOR THE DECLARATION OF WATER SHORTAGES AND WATER EMERGENCIES; PROVIDING FOR THE RESTRICTION, INTERRUPTION OR TERMINATION OF SALE OF WATER FOR EXPORT OR CONSUMPTION OUTSIDE THE CITY'S SERVICE AREA AND OTHER MEASURES IN THE EVENT OF WATER SHORTAGE OR EMERGENCY; PROVIDING FOR APPEALS; AND PROVIDING FOR IMMUNITY FOR DISCRETIONARY ACTS.

THE CITY OF HOMER HEREBY ORDAINS:

Section 1. Homer City Code Section 14.08.020 is hereby amended to read as follows:

14.08.020 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings set forth below:

a. "Bulk water" means water purchased from the City and supplied to the customer by means of fire hydrant, tanker truck, or by any other means other than through a direct connection from the City water main to the premises where the water is consumed.

b. "Bulk water customer" means a person who purchases bulk water from the City.

c. "Certificated service area" means the authorized service area for the Homer Water System described in the certificate of public convenience and necessity issued to the city by the Alaska Public Utilities Commission.

d.e. "Reseller" or "reseller of water" means a person who purchases water from the City and, for valuable

41 who purchases water from the City and, for valuable
42 consideration provides any quantity of such water to another
43 person, but it shall not include any eating or drinking
44 establishment that provides its customers City water only by the
45 glass.

46 e.d. "Standard service account" means an established
47 City water utility account for metered water service through a
48 direct connection from the City water main to the premises
49 served.

50 f.e. "Water connection" means that part of the
51 water system between the water main and the abutting
52 property.

53 g.f. "Water extension" means that part of the water
54 distribution system extending from the water connection into
55 the premises served.

56 h.g. "Water main" means that part of the water
57 distribution system intended to serve more than one water
58 connection.

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60 Section 2. The Homer City Code is hereby amended by the creation of
61 a new section 14.08.072 to read as follows:

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63 Section 14.08.072. Priority use of water. The first
64 priority of use of the water produced by the Homer
65 Water System is to provide for the human consumption,
66 sanitation, and fire protection needs of water consumers
67 located within the certificated service area. Water
68 consumed outside the certificated service area is not
69 entitled to any priority.

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71 Section 3. The Homer City Code is hereby amended by the creation of
72 a new section 14.08.074 to read as follows:

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74 Section 14.08.074. Surplus water; sale. Surplus water, if any,
75 may be made available for sale to bulkwater customers, resellers,
76 and others for export or consumption outside the certificated
77 service area. As used in this section, "surplus water" is water that
78 the city, in its sole discretion, determines is in excess of the
79 sanitation, fire protection, and demands of water consumers for
80 consumption within the certificated service area.

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Section 4. The Homer City Code is hereby amended by the creation of a new section 14.08.076 to read as follows:

Section 14.08.076. Water shortage or emergency declaration.
a. A water shortage may be declared by the city council in its discretion, after a public hearing and upon adoption of a finding that there is insufficient water available to meet the sanitation, fire protection, and consumption needs of water consumers located within the certificated service area, or when there is insufficient surplus water available to meet the demands of all bulk water customers, resellers, and others for export or consumption outside the certificated service area. Examples of circumstances that may justify the declaration of a water shortage include, but are not limited to, increased demand for water resulting from new development or population increases; low water levels in the reservoir or other water supply deficiencies; malfunction of the water system; increased demand from bulk water customers, resellers, or consumers located within or outside the certificated service area; or any other cause or circumstances that render the output of the Homer Water System inadequate to meet the demands.

b. The city manager may, in his or her discretion, declare a water emergency of not to exceed 15 days, and the city council may, in its discretion, declare a water emergency of not to exceed 30 days without a public hearing, or of any length after a public hearing, upon adoption of a finding that sudden or unanticipated causes have impaired or pose imminent threat of impairment of the city's ability to meet the ordinary current demands of all consumers or purchasers of city water. Examples of circumstances that may justify the declaration of a water emergency include, but are not limited to, disaster; actual or imminent threat of malfunction or breakdown of dams, water treatment facilities, mains, distribution lines, pumps, storage tanks, or any other component of the water system; actual or imminent threat of contamination of the water supply; or injury or imminent threat of injury to the public health, safety, or welfare.

121 Section 5. The Homer City Code is hereby amended by the creation of a new section
122 14.08.077 to read as follows:

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Section 14.08.077. Water shortage or emergency -- interruption of sale of surplus water; other measures. a. If a water shortage or water emergency is declared, the city shall first restrict, decrease, interrupt, or terminate the sale of surplus water to bulk water customers, resellers, and others for export or consumption outside the certificated service area as and to the extent the city, in its sole discretion, deems appropriate in response to the water shortage or water emergency. In addition, the city may take any other measures that the city determines, in its sole discretion, are necessary to alleviate or otherwise address the water shortage or water emergency, including, but not limited to, allocating water necessary for the first priority uses identified in Section 14.08.072 and establishing secondary priorities and allocations for the remaining water, without discrimination between consumers located within the certificated service area using water for the same purpose or purposes.

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b. Any measures adopted in response to a declared water shortage or water emergency shall, for the duration of the period of the declared shortage or emergency, prevail over any conflicting provisions of law establishing rights of persons to receive specific or proportionate amounts of the water supply available for distribution within the certificated service area or otherwise.

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c. Any measures adopted in response to a declared water shortage or water emergency shall be made available for public inspection and copying at the city clerk's office, at the city library, and at the department of public works for the duration of the period of the declared shortage or emergency. As soon as practical after the adoption of such measures, notice of the measures shall also be published once a week for two consecutive weeks in a newspaper of general circulation in the city, unless the duration of the declared shortage or emergency ends sooner.

160 Section 6. The Homer City Code is hereby amended by the creation of a new

161 section 14.08.078 to read as follows:

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163 Section 14.08.078. Water shortage or emergency -- appeal. Any
164 person aggrieved by a city council declaration of a water shortage
165 or water emergency under section 14.08.076, or by any action
166 taken by the city in response to such a declaration, may appeal
167 the declaration or action to the superior court. The appeal must
168 be taken within 30 days from the date the declaration was
169 adopted or action taken. The declaration or action of the city
170 shall not be reversed except on the ground that such declaration
171 or action was fraudulent, arbitrary, or capricious.

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173 Section 7. The Homer City Code is hereby amended by the creation of a new
174 section 14.08.079 to read as follows:

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176 Section 14.08.079. Water shortage or emergency -- immunity for
177 discretionary acts. An action for damages may not be brought against
178 the city, or any of its agents, officers, or employees, for a claim based
179 on the exercise or failure to exercise any discretionary function or
180 duty granted in this chapter, whether or not the discretion was abused,
181 including, without limitation, the exercise of discretion to restrict,
182 interrupt, decrease, or terminate the sale of water to bulk water
183 customers, resellers, or others for export or consumption outside the
184 certificated service area. Nothing in this section shall be construed to
185 limit any defenses or immunities available under AS 09.65.070 or any
186 other provision
187 of law.

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189 Section 8. This ordinance is of a general and permanent nature and shall be
190 included in the City Code.

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192 ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA,
193 this 20th day of April, 1998.

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195 CITY OF HOMER

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Jack Cushing, Mayor

201 ATTEST:

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203 Mary L. Calhoun

204 Mary L. Calhoun, City Clerk

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206 AYES: 5

207 NOES: 1

208 ABSTAIN: 0 -

209 ABSENT: 0 -

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211 First Reading: 03/09/98

212 Public Hearing: 03/23/98

213 Second Reading: 04/20/98

214 Effective Date: 04/21/98

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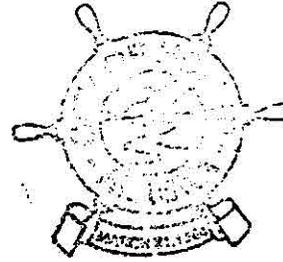
216 Reviewed and approved as to form:

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218 Patti Whalin

219 Patti Whalin

220 City Manager



Gordon J Tans

Gordon J Tans

City Attorney