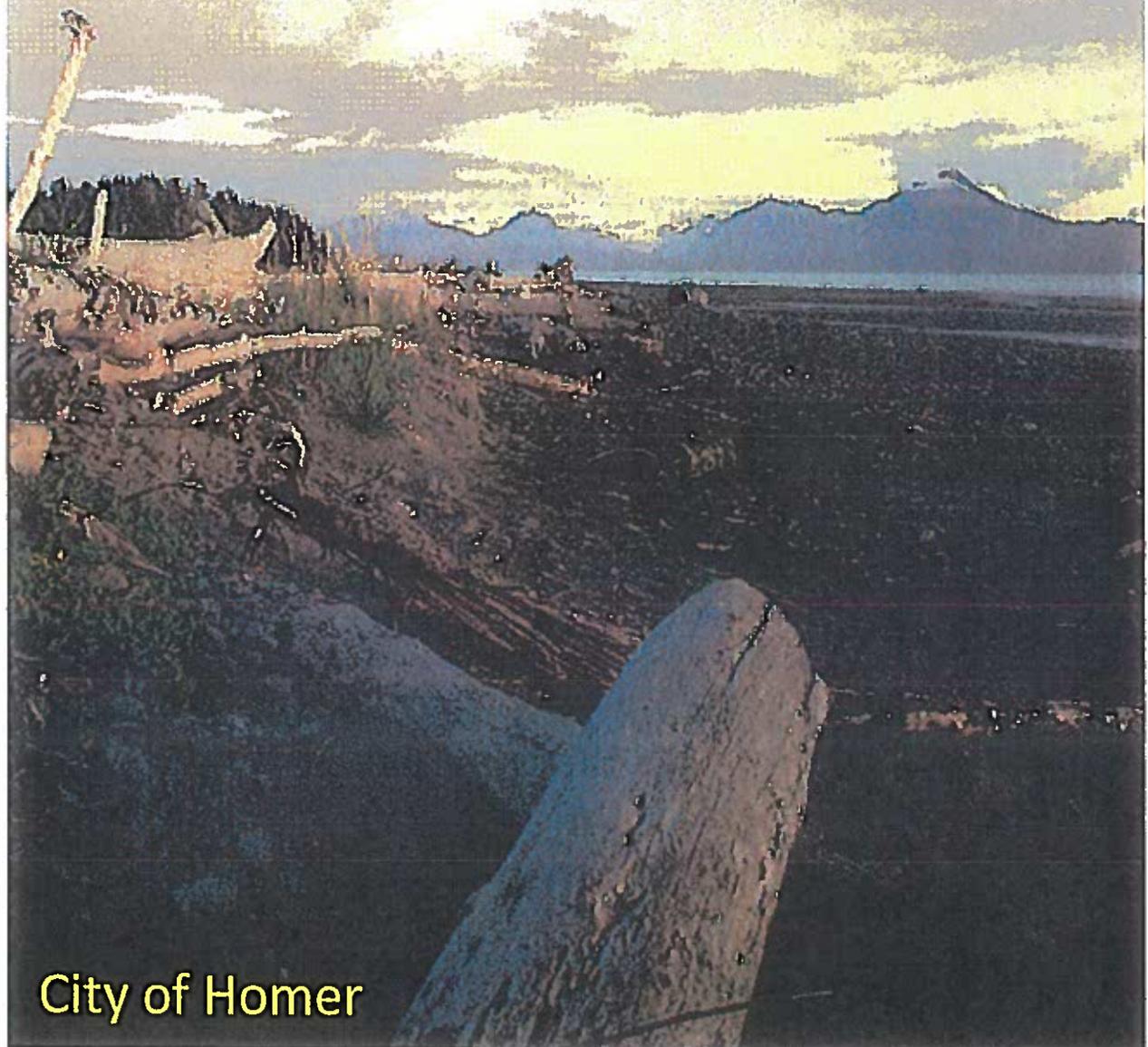


BEACH ENFORCEMENT REGULATIONS



City of Homer

Chapter 19.12 Excavation of Homer Spit Beach

Sections

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19.12.010 Intent It is the intent of this chapter to protect and preserve the stability of that land area known as the Homer Spit and all the land areas within the corporate limits of the City which may require like protection. (Prior code 91-100.1).

19.12.020 Definitions. The following words, when used in this chapter, shall have the meanings respectively ascribed to them in this section:

- a. "Beach area" means the zone of sand, gravel and other unconsolidated materials that extends landward from the low water line to the place where there is a marked change in material or physiographic form.
- b. "Berm" means a natural, linear mound or series of mounds of sand or gravel, or both generally paralleling the water at or landward of the line of ordinary high tide.
- c. "Dredge material" means earth, sand or gravel that is removed from below the low water line in City port and harbor facilities.
- d. "Excavation" means the digging out and removal of gravel or other fill materials whereby any existing surface grade is altered or disturbed.
- e. "Removal" means the movement, by lifting, pushing aside or taking away or off of any gravel or other fill materials from any area subject to the provisions of this chapter.
- f. "Storm berm" means a berm formed by the upper reach of storm wave surges or the highest tides. Storm berms generally include an accumulation of seaweed, driftwood, and other water-borne materials. A beach may have more than one storm berm.

(Ord. 11-09 §1 (part), 2011; Ord. 02-14(A)1, 2002; Prior code 1-100.9).

19.12.030 Reference to materials plat--Permits. The removal or excavation of gravel, gravel fill or other fill material from any beach or from any portion of the Homer Spit shall be regulated by the City. Reference shall be made in all cases to the Materials Plat prepared jointly by the State Division of Lands and the U. S. Corps of Engineers, which is available and may be examined during business hours at the Homer City Hall. Except as provided in §19.12.050, a permit shall be required in the following instances:

- a. Whenever-gravel, gravel fill or other fill material is removed from Homer Spit or from beaches elsewhere within the corporate limits, of the City;
- b. Whenever such materials are removed or excavated from any naturally created berm area, or from any berm area created for the protection of the land areas. (Ord. 11-09 §2 (part), 2011; Prior code 1-100.2).

19.12.040 Guidelines. Any applicant for a permit shall comply with the following:

- a. Permits shall be issued pursuant to guidelines formulated by the State Division of Lands and the U.S. Corps of Engineers, as referred to by the above-mentioned Materials Plat. Such guidelines may be altered from time to time by the Division of Lands and the Corps of Engineers as additional data is received by these agencies.
- b. No permits shall be issued for excavation or removal of gravel or fill materials from area "A" as designated on the above-mentioned plat prior to review and approval of the permit application by the Corps of Engineers and the

Division of Lands.

- c. Permits may be issued by the City for such excavation or removal from areas "B" and "C" as designated on the plat, without review and approval of the permit application by the Corps of Engineers or the Division of Lands.
- d. No permit will be issued by the City for such excavation or removal of gravel, gravel fill or other fill materials from any area other than areas "A", "B" and "C" as designated on the Materials Plat.
- e. All permit application required under this chapter shall be accompanied by a site plan showing the precise location and dimensions of the proposed excavation or removal in reasonably sufficient detail, including depth, and stating the amount of material to be excavated or removed.
- f. All applications required under this chapter shall be submitted to the City Clerk, together with the request accompanying instruments, and a permit fee of five dollars.
- g. No permit shall be issued that will allow gravel, gravel fill, or other fill materials to be taken off the Homer Spit. Any such materials excavated or removed anywhere on the Homer Spit shall be used only at another location on the Homer Spit.
- h. Gravel for transshipment: Non-native gravel or other earthen commodities may be shipped to the Homer spit, stored on the Spit, and exported from the Spit. Gravel for transshipment must be permitted by the City of Homer. The permit shall describe the terms and timelines of the transshipment and the volumes of materials involved. (Ord. 98-2(A)(S)(A) 2, 1998; prior code 1-100.3).

19.12.050 Exceptions. a. No permit shall be required for excavation necessary for the installation of sewage lines, water lines, underground power lines, armor rock or piling, wells, oil and fuel tanks and related lines and aboveground power lines from any location other than a berm area, provided such excavated material is not removed from site of construction, nor shall a permit be required for clearing or maintaining any public road.

b. This chapter shall not apply to the removal or excavation of gravel, gravel fill or other fill material from any beach or from any portion of the Homer Spit by the City of Homer.

c. This chapter shall not apply to dredge material placed or stored on the Homer Spit by the City of Homer. The City may provide for the use and disposal of such dredge material in the following order of priority, with all proceeds from sales of dredge material being deposited in the Port/Harbor Enterprise Fund:

1. Replacement of material removed from City beaches by storms or erosion.
2. Fill to improve City port and harbor facilities on the Homer Spit.
3. Sale for use as fill on privately owned or leased property on the Homer Spit.
4. Emergency repairs of erosion.
5. Sale for use as fill material at locations off the Homer Spit. (Ord. 11-09 §3 (part), 2011; Ord. 02-14(A), 1, 2002; Ord. 98-2(A)(S)(A) 1, 1998; Ord. 6-720.2 1-100.4).

19.12.060 Review. Any person whose application is denied shall be entitled to a review of such denial by the City Council. A request for review shall be in writing and submitted to the City Clerk within ten days of such denial. The City Clerk shall, whenever feasible, thereafter place the matter of review on the agenda for the next regularly scheduled meeting of the City Council, but in any event, such review shall not be later than the second regularly scheduled meeting after such request is received. (Prior code I-100.5).

19.12.070 Nonliability. The City shall not be liable for damages accruing as a result of any excavation or removal of gravel, gravel fill or fill material pursuant to the issuance of a permit under this chapter. (prior code 1-100.6).

19.12.080 Conformance to permit. Any excavation or removal of gravel, gravel fill or fill material except by permit where required shall be considered a violation of this chapter. (Prior code 1-100.7).

19.12.090 Driftwood Removal Prohibited. No person shall tamper with, burn or remove driftwood from a storm berm. (Ord. 02-14(A), 1, 2002.)

19.12.100 Violation--Penalties. The violation of any provision contained in this chapter shall be punished under the general penalty provision, Section 1.16.010, of the City Code. (Ord. 02-14(A), 1, 2002; Prior code 1-100.8).

[j] Prior ordinance history: Ordinances 6-720.1 and 6-720.2.

Chapter 19.16 Vehicles on Homer Spit Beach

Sections:

19.16.010 General

19.16.020 Definitions.

19.16.030 Use of vehicles-Prohibited..

19.16.040 Violation-Penalty.

19.16.010 General . It is the intent of this chapter to preserve and protect certain beach areas of the Homer Spit from the uncontrolled and ever increasing use of such areas by persons driving wheeled, motorized vehicles thereon. (Prior code 12-600.1).

19.16.020 Definitions.

For the purposes of this chapter, "beach area" shall include the zone of sand, gravel and other unconsolidated materials that extends landward from the low water line to the place where there is a marked change in material or physiographic form.

a. "Berm" means a natural, linear mound or series of mounds of sand or gravel, or both, generally paralleling the water at or landward of the line of ordinary high tide.

b. "Storm berm" means a berm formed by the upper reach of storm wave surges or the highest tides. Storm berms generally include an accumulation of seaweed, driftwood, and other water-borne materials. A beach may have more than one storm berm.(Ord. 02-14(A) 2, 2002; Prior code 12-600.2).

19.16.030 Use of vehicles Prohibited.

a. No person shall operate a recreational vehicle, motorcycle, motor bike, or motor scooter within or upon that beach area as defined in the immediately preceding section located from a line bisecting the Homer Spit at the centerline of the mouth of the Fishin' Hole to the tip of the Spit.

b. For the purpose of this section, recreational vehicle is defined as a self-propelled vehicle having wheels, tracks or rollers that may be operated on land areas located off the public roads. Use of vehicles engaged in commercial activity, as opposed to recreational, is exempted from this prohibition.

c. No person shall operate any motorized vehicle upon a storm berm on any beach within the city limits of Homer except in designated areas.

d. No person shall operate any motorized vehicle upon the following beach or tidal areas:

1. Mud Bay

2. Louie's Lagoon

3. Mariner Park Lagoon

4. Beluga Slough

e. The Official "Beach Policy Map of the City of Homer" is enacted by reference and declared to be part of this chapter in its exact form as it exists on the date that the ordinance is codified in this chapter and is adopted by the City Council. (Ord. 02-14(A) 2, 2002; Ord. 01-39, 2001; Ord. 78-16 1, 1978: prior code 12-600.4).

19.16.040 Violation Penalty.

The violation of any provision contained in this chapter shall be punished as follows:

a. first offense \$ 25 fine

b. second offense \$250 fine

c. third and subsequent offenses \$499 fine.

Ord. 02-14(A) 1, 2002; Prior code 12-600.6).

[i] For provisions regarding the impounding of vehicles on Homer Spit Beach, see Chapter 7.16. Prior ordinance history: Ordinance 77-10.

Chapter 5.20 Fire Prevention

Sections:

- 5.20.010 Adoption of state law by reference.
- 5.20.020 Open burning--Permit requirement.
- 5.20.030 Trash burning--Approved container.
- 5.20.040 Fire department inspection of buildings and installations.
- 5.20.050 Explosives.

5.20.010 Adoption of state law by reference.

All laws of the State of Alaska, and any rule or regulation adopted by any duly authorized agency of the State of Alaska, pertaining to fire, fire hazards, fire prevention or tire waste, and explosives are hereby incorporated into this chapter and made a part hereof by reference; and the violation of any such law, rule or regulation shall constitute an offense under this chapter. (Prior code 8-100.1).

5.20.020 Open burning--Permit requirement.

- a. Except as provided in subsection (c) and in section 5.20.030, no person shall burn any combustible material in the open without a permit from the City. Burning permits shall be available at the Fire Department and shall be issued only upon approval of the Fire Chief or other official with written delegation of authority from the Fire Chief. Any person burning combustibles, whether under the authority of a permit or not, is solely responsible for any damage caused by the fire.
- b. If the Fire Chief determines that weather or other conditions create a situation where open burning may create a hazard to public health or safety, or property, the Fire Chief may refuse to issue burning permits, restrict the number of permits issued, impose additional restrictions on new permits, modify, suspend, or revoke existing permits, prohibit campfires, and take other measures necessary to protect health, safety, life, and property for as long as the hazardous conditions exist.
- c. A person may use a barbecue and burn a campfire in a developed fire pit or ring without a burning permit.
- d. The Fire Chief shall have authority to impose conditions on burning permits and to suspend or modify burning permits as necessary to protect public health and safety, life and property. The Fire Chief shall have authority to revoke a burning permit for violation of the terms of the permit.
- e. The intentional use of coal as a fuel in any open burning, barbecues or campfires is prohibited, however, the use of charcoal is exempt.
- f. The violation of any provision contained in this chapter shall be punished under the general penalty provision of the City Code section 1.16.010. The City may also invoke civil penalties and remedies under section 1.16.020. (Ord. 01-40(A), 2001; Ord.98-5 1, 1998; Ord 79-15 1, 1979; prior code 8-100.2).

28. "Preference right" subject to the classification thereof established hereafter, means and includes the right of an occupant to acquire by grant, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in these regulations, any tract or tracts of tideland, or tideland and submerged land contiguous thereto, occupied or developed by such occupancy on and prior to January 3, 1959.

29. "Reclaimed or constructed tided or contiguous submerged lands" means those lands resulting by purposeful filling of tide or contiguous submerged lands.

30. "Shore lands" means all lands which are covered by nontidal waters that are navigable under the laws of the United States up to ordinary high water mark as heretofore or hereafter modified by natural accretion, erosion or reliction.

31. "Submerged lands" means those land covered by tidal waters between the line of mean low water and seaward to a distance of three geographical miles, or as may hereafter be properly claimed by the City.

32. "Substantial permanent improvement" shall for these regulations have the same meaning as "improvements" as defined in this section.

33. "Tidelands" means those land which are periodically covered by tidal waters between the elevation of mean high and mean low tides.

34. "Tideland review committee" means that committee appointed by the City Council to decide on matters pertaining to the administration, adjudication and disposal of tideland preference right applications.

35. "Upland owner" means that owner whose upland property abuts the line of mean high tide.

36. "Waste or injury to land" means the disturbance of ground cover, damage to vegetation, littering or dumping of waste, removal of or damage to any material from a berm, or use of a vehicle in areas designated as prohibited to vehicles. (Ord. 01-38, 2001; Prior code 21-100.4 (part).)

18.28.060 Ownership. Except as otherwise provided herein, the City, by virtue of Section 47-2B-35 (3) ACLA, 1959 Supp. and tideland Patent No. 271 issued 12/09/74, recorded in Vol. IV and any other patents hereafter issued to it, reserves and has succeeded to all right, title and interest of the State of Alaska in tide and submerged lands lying seaward of the City, including lands, improvements, reclaimed lands, or natural resources in all lands up to the original GLO meander line and seaward of the corporate city limits of Homer, Alaska to the Director's line as defined in said Tidelands Patent No. 271, or on any succeeding patents; provided, however, that those lands and rights therein lawfully vested in others by Acts of Congress prior to January 3, 1959, shall not be infringed upon and provided further that title to natural resources therein shall be reserved to the State of Alaska until such time as the State may convey such title to the City. (Ord. 01-55, 2001; Prior code 21-100.5)

18.28.200 Waste or injury to land. It is unlawful for any person to commit waste or other injury upon City-owned tideland and contiguous submerged land and the person so offending shall, in addition to being civilly liable for any damages caused, upon conviction be punished in accordance with Section 1.16.010. (Prior code 521-100.19).

Chapter 1.16 General Penalty

Sections:

1.16.010 General penalty.

1.16.020 Civil remedies.

1.16.030 Surcharge.

1.16.010 General penalty. Every act and violation of this Code is declared unlawful. Unless another penalty is expressly provided by this Code for any particular provision or section, every person convicted of a violation of any provision of this Code or any rule or regulation adopted or issued in pursuance thereof shall be punished by a fine of not more than three hundred dollars. Every act of violation and every day upon which such violation shall occur shall constitute a separate offense. (Ord. 90-1 Section 1, 1990; Ord. 88-14 Section 4, 1988; Ord. 78-1 Sections 1 and 2, 1978; prior code Section 1-100.7).

1.16.020 civil remedies. The city may institute a civil action against a person who violates any provision of this Code or any rule or regulation adopted or issued in pursuance thereof. In addition to injunctive and compensatory relief, a civil penalty not to exceed one thousand dollars may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or threatened violation, the Superior Court shall grant the injunction. Each day that a violation continues constitutes a separate violation. (Ord. 90-1 Section 2, 1990).

1.16.030 Surcharge. In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of violating this Code or any rule or regulation adopted or issued in pursuance thereof shall be assessed a surcharge in the amount, if any, prescribed by AS 12.55.039. The surcharge shall be collected as provided in AS 12.55.039 and AS 29.25.075. The failure to pay the surcharge is punishable as contempt of court as provided in AS 12.55.039. (Ord 98-22, 1998).

[1] For statutory provisions authorizing municipalities to prescribe penalties for violation of ordinances, see AS 29.35.010(7); for provisions limiting maximum penalties, see AS 29.25.070.

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