

CITY OF HOMER
HOMER, ALASKA

ORDINANCE 87-4(s)

AN ORDINANCE AMENDING TITLE 10, PORT AND HARBORS, OF THE HOMER CITY CODE, AMENDING SECTION 10.04.030, DEFINITIONS; REPEALING AND REENACTING CHAPTER 10.04, SECTION 10.04.055, MOORING CHARGES; AMENDING SECTION 10.04.120, VIOLATION -- PENALTY; REPEALING SECTION 10.12.010, MOORING AGREEMENT; REPEALING AND REENACTING CHAPTER 10.12, SECTIONS 10.12.030, MOORING RATES; REPEALING AND REENACTING SECTION 10.12.070, WAITING LIST FEE; ENACT SECTION 10.12.075, ASSIGNMENT OF STALLS; REPEALING AND REENACTING SECTION 10.12.080, ASSIGNMENT OF STALLS -- TRANSFER; REPEALING AND REENACTING SECTION 10.12.100, RAMP USE CHARGES; ENACT SECTION 10.12.110, IMPOUND VESSELS -- DISPOSITION PROCEDURE; ENACTING SECTION 10.12.120, NUISANCES DECLARED -- REMOVAL; ENACTING SECTION 10.12.130, SAFE CONDITION OF VESSEL; ENACTING SECTION 10.12.140 REPORT AND REGISTRATION; REPEALING AND REENACTING SECTION 10.16.220, USE OF BEACHES UNDER CITY CONTROL; ENACTING 10.16.240, REPORT AND REGISTRATION; ENACTING 10.16.250, FISH DOCK USE.

WHEREAS, the City of Homer has recognized a need to clarify existing harbor rules and regulations;

NOW THEREFORE, the City of Homer Ordains:

Section 1. Section 10.04.030 e., f. DEFINITIONS, of the Homer City Code is hereby amended to read:

Sec. 10.04.030. e., f. DEFINITIONS. For the purposes of this title the following words shall have the meanings set forth below:

. . . .

e. "Operator" means any lessee of a vessel, any master or captain who has actual physical use, control and/or possession of a vessel and who is in the employ of, or has a contractual relationship with the owner.

f. "Owner" means the individual, partnership or corporation holding legal title to the vessel.

Section 2. Section 10.04.055 MOORING CHARGES, of the Homer City Code is hereby repealed in its' entirety and reenacted to read:

Sec. 10.04.055. MOORING CHARGES. A schedule of mooring fees and other charges shall be established by the City Manager, with the approval of the City Council, and shall be subject to review as occasion demands. Notwithstanding the fees and charges provided in this chapter, 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.

Section 3. Section 10.04.120 VIOLATION -- PENALTY, of the Homer City Code is hereby amended to read:

Sec. 10.04.120. VIOLATION -- PENALTY. Any violation of the provisions contained in this title or regulations adopted pursuant to this title shall be unlawful as provided in Section 1.16.010.

Section 4. Section 10.12.010 MOORING AGREEMENT, of the Homer City Code is hereby repealed.

Section 5. Section 10.12.030 MOORING RATES, of the Homer City Code is hereby repealed in its entirety and reenacted to read:

Sec. 10.12.030. MOORING RATES. a. Any vessel utilizing the small boat harbor for mooring shall be charged a fee in accordance with the provisions of this chapter. All mooring fees, reserved or transient, must be paid in advance to the City for the period prescribed unless otherwise agreed to in writing by the Harbormaster. Payment for reserved moorage will only be accepted from the individual assigned the reserved stall. Any reduction in the moorage fee due to a substituted or amended moorage agreement is not applied retroactively and the owner or operator is not entitled to a refund or prorata adjustment of the moorage fees already due or paid.

b. No Change.

c. No Change.

d. The reserved stall payment shall be paid in full at the time the reserved stall agreement is executed. Any other arrangements are at the discretion of the Harbormaster and must be made in advance. A moorage sticker will be issued to the stall user and must be placed on the vessel windshield or other prominent place.

Section 6. Section 10.12.070 WAITING LIST FEE, of the Homer City Code is hereby repealed in its entirety and reenacted to read:

Sec. 10.12.070. WAITING LIST. a. The Harbormaster shall establish and maintain a reserved stall waiting list or lists. The list(s) shall include the sign-up date, the name, address and telephone number(s) of the applicant, the stall size requested and any other information requested by the Harbormaster. An applicant shall notify the Harbormaster in writing of any change of address or telephone number(s) immediately.

b. Any individual, partnership, corporation or governmental agency may apply for use of a reserved stall. All applicants, except government agencies, shall designate a single individual whose name shall appear on the waiting list and who shall be responsible for payment of all fees. Any change in the individual designated may result in the applicant's loss of priority on the waiting list, except as specifically provided in subsection f.

c. Separate lists may be maintained by the Harbormaster for the different stall sizes available in the small boat harbor. An applicant or existing reserved stall licensee may be placed on one or more of these lists.

d. The Harbormaster shall place applicants on the waiting list on a first-come, first-serve basis only upon receipt of all requested information and payment of the annual waiting list fee of fifteen dollars (\$15.00). The annual waiting list fee will be accepted only from the individual whose name appears on the waiting list. The fee is neither refundable nor creditable to the applicant.

e. An applicant need not own or operate a vessel to be placed on the waiting list.

f. Upon the death of an applicant, the applicant's rank on the waiting list shall be transferred to the surviving spouse upon written request to the Harbormaster.

Section 7. Section 10.12.075 ASSIGNMENT OF STALLS, of the Homer City Code is hereby enacted to read:

Sec. 10.12.075. ASSIGNMENT OF STALLS. a. A stall, on becoming available, shall promptly be made available to the next applicant from the top of the appropriate waiting list, as provided herein. The applicant may be assigned to an available stall upon completion and execution of the moorage agreement, payment of the appropriate moorage fee and providing proof, satisfactory to the Harbormaster, of vessel ownership, agreement to operate or intent to obtain a vessel within one year. In the later case, the moorage agreement will not be renewed without showing satisfactory proof of vessel ownership.

b. If applicant does not want to sign a Moorage Agreement within the time prescribed by the Harbormaster, after being offered a stall, he will be placed at the bottom of the Waiting List.

c. As a condition precedent to securing moorage space, each applicant shall, in writing, agree to the terms and conditions of the moorage agreement provided by the Harbormaster and provide the information requested on the moorage agreement. Providing false or misleading information on the moorage agreement is a ground for immediate termination of the moorage agreement.

d. The reserved stall is personal to the individual named as owner or operator on the moorage agreement. The stall is reserved only with respect to the vessel indicated on the moorage agreement. If the vessel is not in the reserved stall, the Harbormaster may at his discretion assign a transient vessel to the reserved stall. Neither the owner nor operator is entitled to payment for or reimbursement from the use of the reserved stall by the transient vessel.

e. A stall user who no longer has possession, control, or custody of the vessel or loses the vessel to fire, sinking or other casualty may continue to pay moorage fees with respect to the stall and retain reserved use for a period not more than one year from the date of sale, transfer or loss of possession of the vessel, so long as he replaced the vessel with another vessel of appropriate size for the stall assigned within such one-year period. Otherwise, the moorage agreement expires. Failure of the owner or operator to give notice in writing to the Harbormaster of the sale, assignment, transfer or loss of use, control and/or possession of a vessel occupying a reserved moorage space within fifteen (15) days of the loss or transfer is ground for immediate termination of the moorage agreement.

Section 8. Section 10.12.080 ASSIGNMENT OF STALLS -- TRANSFER, of the Homer City Code is hereby repealed in its entirety and reenacted to read:

Sec. 10.12.080. TRANSFER OF STALLS. a. No person may sell, lease, transfer, assign the moorage agreement for the use or control of the assigned stall to any other person or entity, or otherwise charge another person for the use of a stall. It is specifically understood that the stalls are operated by the City, which has the sole control of the assignment, transfer and use of the individual stalls.

b. Any person acquiring the vessel or any partnership or other interest therein, or if the owner is a corporation, any stock of the corporation, from an owner will not thereby acquire any right under the moorage agreement, or right to use the stall, except as specifically provided in subsection c.

c. Upon the death of any reserved stall user, reserved mooring privileges shall be transferred to the surviving spouse upon written request to the Harbormaster.

Section 10. Section 10.12.100 RAMP USE CHARGES, of the Homer City Code is hereby repealed in its entirety and reenacted to read:

Sec. 10.12.100. RAMP USE; CHARGES. a. The principal intended use of the launch ramp is the launch and recovery of vessels. An authorized subsidiary use is the incidental, non-commercial, loading or unloading of goods, supplies or materials.

b. The principal intended use of the inner harbor barge ramp is the commercial loading or unloading of goods, materials, equipment or personnel. An authorized subsidiary use is the loading or unloading of fishing gear and equipment or other use approved by the Harbormaster.

c. At the Harbormaster's discretion, reasonable restrictions may be placed on the use of any ramp owned or operated by the city.

d. Vessels that unnecessarily block portions of the launching ramp or loading floats, or vessels that are left unattended and unnecessarily delay departure from the area, may be charged an hourly fee of \$20.00 per hour for such use.

e. Vessels allowed to go dry on either the launch ramp or the barge ramp may be charged up to \$5.00 per foot for facility blockage and shall be charged repair costs as determined by the Harbormaster for any damage done to the facilities.

Section 11. Section 10.12.110 IMPOUNDED VESSEL -- DISPOSITION PROCEDURE, of the Homer City Code is hereby enacted to read:

Sec. 10.12.110. IMPOUNDED VESSEL - DISPOSITION PROCEDURE.

a. Impoundment of Vessels for Violations. The Harbormaster is hereby authorized to impound any vessel in the small boat harbor whose owner or operator is not aboard and which is not properly identified by name and/or number; or any vessel in the small boat harbor which is in violation of any of the parking, mooring or traffic regulations of the small boat harbor; or any vessel in the small boat harbor whose owner or operator has not paid the stall license fee or any other fee or charge due the City for the vessel by the due date of such fee or charge and such fee or charge is 30 days past due; or any vessel which has failed to qualify under 10.12.130 and whose owner or operator has failed to remove it in accordance with the notice given under 10.12.130. The Harbormaster may, impound a vessel by immobilizing it or removing or having it removed from the water and placed in City or commercial storage with all expenses and risks of haul-out and storage to be borne by the owner of such vessel.

b. The owner or operator of any vessel impounded by the City shall be subject to and liable for a storage charge and shall be subject to and liable for all costs incurred by the City by reason of the impounding or removal.

c. 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 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 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 provisions of 10.12.140. 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.

d. As to any vessel proposed for impoundment pursuant to this chapter by or at the request of the City, its agent or employees, 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 mailing of the notice required by subsection (c), whichever occurs first.

e. A hearing shall be conducted before a hearing officer designated by the City Manager within forty-eight hours of receipt of a written demand therefor from the person seeking the hearing unless such 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 the 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 affect any criminal proceeding in 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. 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.

f. 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. In the event that the hearing officer determines that there is probable cause, the hearing officer shall prepare and date a Certificate of Probable Cause, copies of which shall be given to the owner, operator or operator and 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 chapter.

g. 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 a cash payment of all City charges against the vessel.

h. 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 chapter, 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.

i. 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.

Section 12. Section 10.12.120 NUISANCES DECLARED -- REMOVAL, of the Homer City Code is hereby enacted to read:

Section 10.12.120. NUISANCES DECLARED -- REMOVAL. a. For the purposes of this title and in the interest of the greatest use of the facilities of the small boat harbor and the municipal waters by the general public, vessels in the small boat harbor and elsewhere on the municipal waters which are derelicts and unfit and 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 have been declared unqualified by the Harbormaster under the provisions of 10.12.130 or which are maintained in a manner as to constitute a fire hazard, and sunken vessels and vessels in imminent danger of sinking, are hereby declared to be nuisances and subject to abatement and removal from the small boat 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 hereby 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 small boat 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 nuisance. Any person causing or permitting the nuisances to be placed as aforesaid shall remove the same 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 said nuisances shall not excuse the person responsible therefore from prosecution hereunder.

c. Nuisances described under this section constituting a clear and present danger to the public health, safety or general welfare may be summarily abated. Vessels declared a nuisance under subsection a. which do not constitute a clear and present danger to the public health, safety or general welfare may be moved, impounded, and disposed of as provided in 10.12.130. Other nuisances under subsection b. to this section may be impounded, disposed of by destruction, private sale, or 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.

d. The Harbormaster or the City Manager may require an operator or owner of a vessel to furnish evidence that there is currently in effect insurance in an amount satisfactory to the Harbormaster by filing a certificate of insurance or other satisfactory evidence signed by an agent or officer of the insurance company and stating the coverage and expiration date thereof.

Section 13. Section 10.12.130 SAFE CONDITION OF VESSEL, of the Homer City Code is hereby enacted to read:

Section 10.12.130. SAFE CONDITION OF VESSEL. a. To qualify or remain qualified for moorage space a vessel must be seaworthy, must be equipped in accordance with 10.12.150, and must have sufficient motive power to permit the vessel to be maneuvered and controlled safely in and out of the small boat harbor under wind and water conditions which are not unusual and which do not constitute a hazard to small craft.

b. Whenever the Harbormaster has probable cause to believe that a vessel is not qualified under the conditions of this section, he may require, upon seventy-two hours notice to the owner or operator of any such vessel that such vessel demonstrates that it is or remains qualified. An exception shall be made where repairs are being diligently pursued or where other extenuating circumstances prevent demonstration of qualification, but such exception shall be for only a reasonable time, considering the circumstances.

c. The Harbormaster may refuse mooring space to any vessel which does not qualify; it shall be a condition of every stall agreement that any vessel authorized to moor at a stall in the small boat harbor shall remain qualified so long as it remains in the small boat harbor. The Harbormaster may terminate the moorage agreement for any mooring space which is occupied by a vessel which is authorized to occupy such space, but which vessel is not qualified in accordance with this section. Upon failure of a vessel to qualify, the Harbormaster may require, upon notice to the owner or operator of such vessel, that the stall agreement has been terminated, that such vessel be removed from the small boat harbor within not less than one week. Any such vessel remaining after the time specified in the notice shall be subject to impoundment or removal as a nuisance.

Section 14. Section 10.12.140 REPORT AND REGISTRATION, of the Homer City Code is hereby enacted to read:

Section 10.12.140. REPORT AND REGISTRATION. Every owner or operator of any vessel using the facilities of the small boat harbor is hereby required to report to the Harbormaster to register his name, the name and number of the vessel and other pertinent information, with the Harbormaster on forms to be provided by him for that purpose, and pay the required fees immediately but no later than eight (8) hours after the vessel enters and moors anywhere in the small boat harbor or before using any harbor facilities, and shall execute an agreement providing for payment of license fees and other charges. Failure to so register within the time specified shall result in an automatic charge of ten dollars (\$10.00), above the regular fee provided by these ordinances, for each day during which the vessel remains in the harbor.

Section 15. Section 10.16.220 USE OF BEACHES UNDER CITY CONTROL, of the Homer City Code is hereby repealed in its entirety and reenacted to read:

Sec. 10.16.220. USE OF BEACHES UNDER CITY CONTROL. a. The use of beaches under City ownership or control for commercial barge purposes, must be approved in advance by the Harbormaster.

b. The Harbormaster shall charge a fee of seventy-five dollars (\$75.00) for landing or parking a barge vessel on the beaches under City ownership or control, and a parking fee of seventy-five dollars (\$75.00) per day thereafter. Said charge may be waived by the Harbormaster under appropriate circumstances.

c. The user of any beach area must repair any damage to the beach and remove all debris. Failure to make such repairs and removal will result in repairs and cleanup by the harbor staff. The costs incurred by the harbor staff will be fully charged to the beach user. Labor rate for the harbor staff will be \$50 per hour per person, plus appropriate equipment rental costs.

Section 16. Section 10.16.240 REPORT AND REGISTRATION, of the Homer City Code is hereby enacted to read:

Sec. 10.16.240. REPORT AND REGISTRATION. Every owner or operator of any vessel using the port facilities is hereby required to report to the Harbormaster to register his name, the name and number of the vessel and other pertinent information, with the Harbormaster on forms to be provided by him for that purpose, and pay the required fees immediately but no later than two hours after the vessel enters and moors anywhere in the port or before using any port facilities, and shall execute an agreement providing for payment of license fees and other charges. Failure to so register within the time specified shall result in an automatic surcharge of one hundred dollars (\$100.00), above the regular fee provided by these ordinances, for each day during which the vessel remains in the port.

Section 17. Section 10.16.250 USE OF FISH DOCK, of the Homer City Code is hereby enacted to read:

Sec. 10.16.250. USE OF FISH DOCK. a. The fish Dock is to be used primarily for the loading and unloading of fish, fish products and fishing gear. Any other use must be approved in advance by the Harbormaster.

b. For an approved user blocking access to cranes other than those in use, a fee of ten dollars (\$10.00) per hour will be assessed for each crane blocked if another vessel is thereby forced to wait.

c. Failure to obtain prior approval for a use other than loading and unloading fish, fish products or fishing gear will result in the imposition of a surcharge of thirty dollars (\$30.00) per hour in addition to the regular fee.

ATTEST:

Patte J. Whalen
City Clerk

CITY OF HOMER
BY: J.P. Calda
Mayor

Reviewed and Approved as to form and content:

Phil Shealy
City Manager

City Attorney

First Reading: 2/23/87
Public Hearing: 3/9/87
Second Reading: 3/23/87
Date of Adoption: 3/23/87
Effective Date: 3/24/87

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