

CITY OF HOMER
HOMER, ALASKA

ORDINANCE 94-10S

AN ORDINANCE OF THE CITY OF HOMER AMENDING
CHAPTER 7.08 OF THE CITY CODE TO AMEND
PROCEDURES FOR IMPOUNDMENT OF MOTOR VEHICLES,
TO PROVIDE FOR HEARINGS TO CHALLENGE THE
SUFFICIENCY OF GROUNDS FOR IMPOUNDMENT,
AND PROHIBITING REMOVAL OF AN IMPOUNDED
VEHICLE OR AN IMPOUNDMENT NOTICE

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Section 7.08.050 is hereby amended to read as follows:

7.08.050 Vehicles Subject to Impound. A police officer or authorized peace officer as defined in AS 11.81.900 (B) (38), may impound and remove a vehicle which is found to be in violation of the provisions of this chapter. The owner of record of an impounded vehicle is responsible for all costs incurred for impounding, removing and storing ~~and removal~~ of the vehicle.

Section 2. Homer City Code Chapter 7.08 is hereby amended by adding Section 7.08.051 to read as follows:

7.08.051 Impound Procedure.

a. Unless otherwise provided, the procedure set forth in sections 7.08.051-.053 shall apply whenever a motor vehicle is subject to impoundment (including booting) and removal pursuant to motor vehicle, traffic, or parking codes or laws, including without limitation unlawful stopping, standing, or parking under any provision of the city code or regulations adopted thereunder.

b. An impoundment is effective when a written order of impoundment is placed on a vehicle. An order of impoundment shall identify the vehicle, state the reasons for impoundment, and be dated and signed by a police officer or an authorized peace officer. An impounded vehicle may be immediately towed and removed to a safe place upon the order of a police officer or peace officer.

c. Upon impoundment, a notice of procedure options shall be placed on the vehicle, and within 6 hours a copy shall be personally delivered or placed in the U.S. mail addressed to the owner of the vehicle. The notice shall state substantially as follows:

ATTENTION: Your vehicle has been impounded by the City of Homer. As the

owner of an impounded vehicle, you have the following options:

(A) You may recover possession of the vehicle by paying to the person having custody of the vehicle the towing and storage fees that may have accrued.

(B) If you take issue with the impoundment of your vehicle, you may:

(i) Recover possession of the vehicle by paying the towing and storage fees that have accrued to such person and claim a refund by filing a demand (on a form provided by the city) for an administrative hearing before a hearing officer as to whether there was a sufficient factual and legal basis for impounding your vehicle; or

(ii) Demand (on a form provided by the city) an administrative hearing before a hearing officer as to whether there was a sufficient factual and legal basis for impounding your vehicle.

To be entitled to such a hearing, your written demand must be filed with the City Clerk with (a) 5 workdays after you learned that your vehicle was impounded or was missing; or (b) within 15 workdays after the city mailed notice to the vehicles's registered owner that the vehicle had been impounded; whichever occurs first. If you fail to make a timely request for a hearing, you will lose all right to challenge the sufficiency of the basis for impoundment.

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. A determination that there was an insufficient factual or legal basis for impounding your vehicle will require the release of the vehicle to you without your having to pay the towing and storage fees, or will entitle you to a refund if you have already paid the fees.

A hearing may be demanded by filing the appropriate form with the City Clerk at 491 E. Pioneer Ave. , Homer between 8:00 A.M. and 5:00 P.M. on any day other than Saturday, Sunday, and city holidays.

Section 3. Homer City Code Chapter 7.08 is hereby amended by adding Section 7.08.052 to read as follows:

7.08.052 Impoundment Hearing.

a. If demand is timely made, the owner or other person entitled to possession of a vehicle is entitled to an administrative hearing to determine whether there was a sufficient factual and legal basis for impoundment of the vehicle. To be entitled to such a hearing, a written demand must be filed with the City Clerk within (a) 5 workdays after the owner or person entitled to

possession learned that the vehicle was impounded or was missing; or (b) within 15 workdays after the city delivered or mailed the notice required by section 7.08.051 (C) to the vehicle's owner; whichever occurs first. If no timely request for a hearing is made, the factual and legal basis for impoundment will be conclusively deemed sufficient for all purposes.

b. The hearing shall be held within 48 hours after the filing of a written demand, not including Saturdays, Sundays, and city holidays.

c. The hearing officer shall not be bound by formal rules of evidence. A copy of the fully completed and signed order of impoundment will constitute prima facie proof of sufficient factual and legal basis for impoundment. The burden will be on the vehicle owner to prove by a preponderance of the evidence that there was an insufficient factual or legal basis for impounding the vehicle.

d. A determination by hearing officer that there was an insufficient factual or legal basis for impounding the vehicle will require the release of the vehicle to the owner or other person entitled to possession without payment of the towing and storage fees, or will entitle the person to a refund if the fees have already been paid.

e. The city will be responsible for payment or refund of the towing and storage fees for any vehicle impounded upon order of a city police officer or city peace officer if the hearing officer determines there was an insufficient factual or legal basis for such impound.

Section 4. Homer City Code Chapter 7.08 is hereby amended by adding Section 7.08.053 to read as follows:

7.08.053 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 7.08.052. 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 one or more persons who shall serve as hearing officers to conduct hearings pursuant to section 7.08.052. No police officer or peace officer with authority to impound an improperly parked vehicle shall be eligible to serve as hearing officer.

Section 5. Homer City Code Chapter 7.08 is hereby amended by adding Section 7.08.058 to read as follows:

7.08.058 Removal of Impoundment Notice or Impounded Vehicle Prohibited. a. Unless authorized by a police officer or peace officer with authority to enforce parking laws and regulations, it is unlawful for any person to remove an impoundment order from a vehicle upon which it has been posted.

b. Unless authorized by a police officer or peace officer with authority to enforce

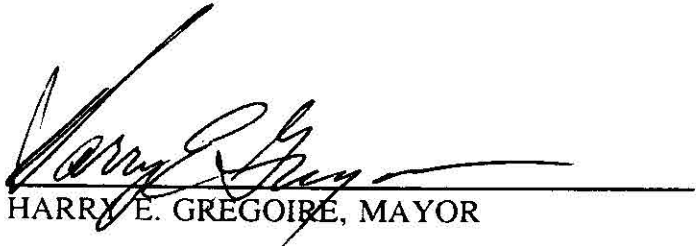
parking laws and regulations, it is unlawful for any person to move a vehicle after it has been posted with an impoundment order.

c. A violation of this section shall be punished pursuant to section 1.16.010 of this code.

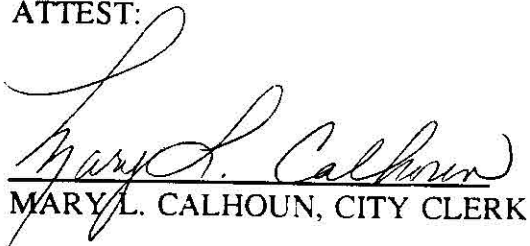
Section 6. This ordinance is of a permanent and general character and shall be included in the City code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA, this 27th day of June, 1994.

CITY OF HOMER


HARRY E. GREGOIRE, MAYOR

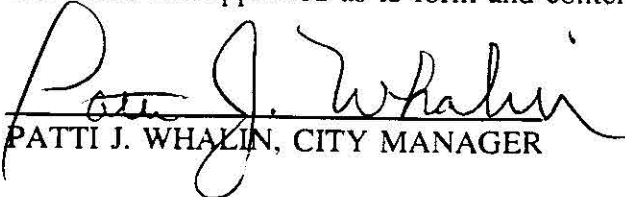
ATTEST:


MARY L. CALHOUN, CITY CLERK

AYES: 6
NOES: 0
ABSTAIN: 0
ABSENT: 0

First Reading: 05-23-94
Public Hearing: 06-13-94
Second Reading: 06-27-94
Effective Date: 06-28-94

Reviewed and approved as to form and content:


PATTI J. WHALIN, CITY MANAGER

GORDON J. TANS, CITY ATTORNEY