

CITY OF HOMER  
HOMER, ALASKA

ORDINANCE 95-~~18~~(S)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF HOMER REPEALING AND REENACTING TITLE 10  
OF THE HOMER CITY CODE, HOMER PORT AND HARBOR

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Title 10, entitled "Port and Harbor", is hereby repealed and reenacted to read as follows:

10.04.010 Short title. This title shall constitute the Port and Harbor Code of the City, and may be cited as such.

10.04.020 Scope--Administrative powers. This title and the Homer Port and Harbor Tariff shall be deemed an exercise of the powers of the City for the protection, safeguarding, and orderly moorage and control of boats, and for the protection and general welfare of the public, and all of its provisions shall be liberally construed for the accomplishment of the purpose. The City, through its properly appointed representatives, shall have the authority to board any vessel utilizing the harbor or port facilities for the purpose of enforcing this title and the Homer Port and Harbor Tariff.

10.04.030 Definitions. Unless otherwise provided in this title or required by the context, definitions set forth in the Homer Port and Harbor Tariff shall apply to this title.

10.04.035 Homer Port and Harbor Tariff. The rates, charges, rules and regulations for wharfage, terminal storage, demurrage and other terminal services and privileges are set forth in the Homer Port and Harbor Tariff and as filed with the Federal Maritime Commission. Subject to the requirements of section 10.04.055, the Homer Port and Harbor Tariff may be amended from time to time by resolution of the City Council.

10.04.040 Harbormaster--Powers and duties. A harbormaster, who shall have police powers, shall be appointed in the same manner as other city employees. The harbormaster shall be assigned to enforce the provisions of this title and the Homer Port and Harbor Tariff, maintain an accurate log of the registration data of all boats using Homer harbor facilities, showing the date of occupancy of berthing facilities, issue citations and impound vehicles, vessels, gear or equipment for violations of this

title of the City Code, and collect or arrange for the collection of the established fees. The harbormaster is granted the power and authority from time to time, as circumstances require, but without any obligation to do so, and without any obligation or liability on his part, or that of the City for his failure to do so, to replace defective mooring lines, to pump vessels which are in a dangerous condition for lack thereof, and to move any boat for the purpose of protecting such boat from fire or from other hazard or for the protection of other vessels or property therefrom. Whenever the harbormaster shall perform or cause to be performed any of the actions authorized in this title or other emergency actions, after having given notice of the immediate need therefor, or having attempted to give such notice within the time limits prescribed by the exigencies of the situation, a fee as prescribed in the Homer Port and Harbor Tariff shall be assessed the vessel owner or operator.

~~10.04.045 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 and payment of a fifteen-dollar fee. 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 of this section.~~

~~c. 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.~~

~~d. If the 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.~~

10.04.050 Rule and regulation establishment authority.

The City Manager is empowered and authorized to establish additional rules and regulations governing the use of the Homer harbor, assignment of stalls, and the general conduct in, around and on harbor facilities and parking areas. Such rules and regulations shall become effective upon approval by the City Council. The Council may provide for a different effective date. The City Manager shall print and make available to the public copies of regulations adopted pursuant to this section.

10.04.055 Fees. a. Fees for the approved use of Homer harbor facilities and services as set forth in the Homer Port and Harbor Tariff may be changed by City Council resolution; provided, that a public hearing is held prior to approval of the

resolution; and, provided further, that any such change is effective only after the change is filed with the Federal Maritime Commission as an amendment to the Homer Port and Harbor Tariff.

b. 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.

10.04.060 Revenues--Use of. All revenues from the Homer harbor shall be expended for the maintenance, operation and improvement of the Homer harbor in accordance with generally accepted accounting principles. Revenues from the Homer Boat Harbor shall be expended solely for the furtherance of financial stability and self-sufficiency of the Homer harbor.

10.04.070 City docks--Prohibited usage. Use of the Homer City Docks by private individuals for noncommercial use is prohibited.

10.04.080 City docks--Other closure. The City, through its City Manager or other duly constituted agent, may prohibit the use of any wharves and docking facilities owned or controlled by the City at any time when closing the facilities is required to protect and preserve the public welfare and safety.

10.04.090 State of Alaska lease and operations policy. It is the intent of the City to operate the Homer Small Boat Harbor in conformance with the conditions of the lease between the City and the State and the operation policies promulgated by the State.

10.04.095 State of Alaska lease--Restrictions incorporated by reference. In compliance with the conditions of the lease agreement between the City and the State for the operation of the Homer Small Boat Harbor, any and all restrictions which are a part of such lease are incorporated into this code as though fully set forth herein.

10.04.100 Vehicles and other wheeled conveyances.

a. "Restricted parking" areas will be established at such time and places as may be determined by the harbormaster. "Restricted parking" areas pertain to the parking of any vehicle or trailer, private or commercial. Violations of "restricted parking" areas will be fined according to the City traffic code.

b. No person other than an employee of the City or other person acting on City business shall drive a vehicle upon the inside gravel slope of the Small Boat Harbor except in case of emergency. Parking or leaving boats, trailers, and/or other

vehicles and equipment related thereto by the public shall be limited to specific areas designated for such use.

c. Hauling out boats on skids is prohibited unless approved in advance by the harbormaster.

10.04.110 Violation--Penalty. Any violation of the provisions contained in this title or regulations adopted pursuant to this title shall be unlawful as and punishable as provided in Section 1.16.010 of this Code.

10.04.120 Impounded vessel procedure. a. 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 City 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 by certified mail, return receipt requested, 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 regulations of this tariff. 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.

b. As to any vessel proposed for impoundment, 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 return of mail receipt of the notice required by subsection a. of this section, whichever occurs first.

c. A hearing shall be conducted before a hearing officer designated by the City Manager within forty-eight hours of receipt of written demand therefor from the person seeking the hearing unless the 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 affects 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 and may only be appealed to the Superior Court. 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.

d. 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 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 title.

e. 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.

f. 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 title, 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.

g. 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.

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 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 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 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.

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 of this section which do not constitute a clear and present danger to the public health, safety and general welfare may be moved, impounded, and disposed of as provided in of this title. Other nuisances under subsection b. of 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.

10.04.140 Annual review required. An annual review shall be required of all Port and Harbor rates. Such annual review shall be part of preparation of the Port, and charges and Harbor fiscal operating budgets.

10.04.150 Required equipment. All water craft or vessels shall carry the equipment required by any applicable United States laws or regulations as now or hereafter amended, and shall be numbered or designated in accordance with any applicable United States laws or regulations as now or hereafter amended. In the absence of extenuating circumstances, failure of any boat or vessel within the Homer harbor to comply with applicable United States laws or regulations shall be in violation of this title.

Section 2. This title shall constitute the Port and Harbor Code of the City, and may be cited as such.

Section 3. This ordinance shall take effect on August 29, 1995.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER,  
ALASKA, this 28<sup>th</sup> day of August, 1995.

CITY OF HOMER

  
HARRY E. GREGOIRE, MAYOR


ATTEST:


  
MARY L. CALHOUN, CITY CLERK

AYES: 5  
NOES: 0  
ABSTAIN: 0  
ABSENT: 1

First Reading: 7/24/95  
Public Hearing: 8/14/95  
Second Reading: 8/28/95  
Effective Date: 8/29/95

Reviewed and approved as to form and content:

  
Fatti J. Whalin  
City Manager

  
Gordon Tans  
City Attorney

FISCAL NOTE INFORMATION NOT REQUIRED