

**CITY OF HOMER
HOMER, ALASKA**

Evensen /Aderhold

RESOLUTION 20-007(S)

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA URGING THE STATE OF ALASKA TO RETAIN THE BAN ON PERSONAL WATERCRAFT IN THE KACHEMAK BAY AND FOX RIVER FLATS CRITICAL HABITAT AREAS UNDER 5 AAC 95.310 UNTIL THE DEPARTMENT OF FISH & GAME PROVIDES RESPONSES TO THE CITY'S PREVIOUS CONCERNS, AN ANALYSIS DETAILING THE CITY'S POTENTIAL LEGAL LIABILITY EXPOSURE, AND ADEQUATE FUNDING FOR THE CITY TO ADOPT AND ENFORCE NEW RULES IF 5 AAC 95.310 IS REPEALED

WHEREAS, The Homer Spit and Kachemak Bay provide important recreational and economic opportunities for local residents and attract tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Alaska Department of Fish & Game (ADFG) opened a thirty (30) day notice period on December 5, 2019, to repeal 5 AAC 95.310, state code that was adopted with strong community support in 2001 as one protection measure for the Kachemak Bay and Fox River Flats Critical Habitat Areas; and

WHEREAS, On December 16, 2019, the Homer City Council passed Resolution 19-091(A), calling on ADFG to 1) provide scientific and technical information supporting its proposed rule change in a timely manner so the City of Homer and local residents can better understand and comment on the issues presented; 2) extend the comment period to ninety (90) days to allow local residents sufficient time to comment meaningfully on the proposed rule change; and 3) provide an explanation why this rule change should not be considered as part of the ongoing revision process for Management Plans of Kachemak Bay and Fox River Flats Critical Habitat Areas; and

WHEREAS, On December 16, 2019, the ADFG issued a supplemental notice extending the public comment deadline for fifteen (15) days, until January 21, 2020; and

WHEREAS, Despite Homer City Council Resolution 19-091(A), to date, the State of Alaska has provided no explanation or rationale for the proposed rule change to the City of Homer or the general public, and has not explained why this policy change should not occur under the management plan revision process; and

WHEREAS, ADFG adopted the current Management Plan for Kachemak Bay Critical Habitat Area in 1993; and

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45 WHEREAS, In 1999 the Homer City Council adopted Resolution 99-111, stating that
46 “extensive research from around the country demonstrates that personal watercraft pose
47 threats to waterfowl, seabirds, shorebirds, marine mammals, other wildlife, and their habitat;
48 cause excessive noise and water pollution; create increased accident rates and user conflicts;
49 and could have a negative impact on Homer’s visitor industry;” and

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51 WHEREAS, Over the past several years City of Homer staff have worked as part of a large
52 stakeholder group with ADFG on the revision process of Kachemak Bay Critical Habitat Area
53 Management Plan; since 2016 the City has participated in at least twenty (20) stakeholder
54 meetings, spending significant time and City resources; and

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56 WHEREAS, Rule changes affecting the Kachemak Bay Critical Habitat Area should be
57 included in the management plan revision process, where they can be fully vetted by City of
58 Homer staff and other stakeholders; and

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60 WHEREAS, Personal watercraft (PWC) can be launched from local beaches and boat
61 ramps owned by the City of Homer, and the City of Homer may be forced to adopt new rules to
62 manage the launch and operation of PWCs in City-owned lands and waters; and

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64 WHEREAS, Design and intended use of PWC are inherently different from skiffs and
65 other boats, and a PWC’s ability to achieve high speeds, jump waves, and navigate extremely
66 shallow waters in and around beaches, tidelands, and waters owned by the City of Homer
67 presents new and unknown liability concerns; and

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69 WHEREAS, Because ADFG has performed no analysis of the potential effects of PWCs on
70 municipalities located within and adjacent to the Kachemak Bay Critical Habitat Area, the City
71 of Homer has no ability to assess the liabilities and costs of rule implementation and
72 enforcement if 5 AAC 95.310 is repealed, resulting in an unfunded mandate from the State of
73 Alaska; and

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75 WHEREAS, Over 99% of Alaskan waters are open to PWC use and Alaskans and tourists
76 alike have ample access to Kachemak Bay, one of the most heavily used waterways in the
77 State, through the use of private and commercial vessels.

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79 NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska urges the
80 State of Alaska to retain the ban on personal watercraft in the Kachemak Bay and Fox River
81 Flats Critical Habitat areas under 5 AAC 95.310 until the Department of Fish & Game:

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- 83 1. Provides adequate responses to Homer City Council Resolution 19-091(A);
- 84 2. Provides an analysis detailing the City of Homer’s potential legal liability exposure if
- 85 5 AAC 95.310 is repealed; and

86 3. Provides adequate funding for the City of Homer to adopt and enforce new rules if
87 5 AAC 95.310 is repealed.

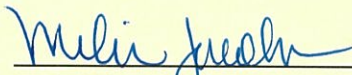
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89 PASSED AND ADOPTED by the Homer City Council this 13 day of January, 2020.

91 CITY OF HOMER

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94 KEN CASTNER, MAYOR

95 ATTEST:

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98 MELISSA JACOBSEN, MMC, CITY CLERK

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100 Fiscal information: N/A

