



MEMORANDUM

Ordinance 23-39, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code Chapters 2.40 Department of Port and Harbor, 2.64 Port and Harbor Advisory Commission, and 10.04 General Port and Harbor Provisions Updating References to Port Director and Harbormaster, and Commissioner Absences. City Manager/Port Director.

Item Type: Backup Memorandum
Prepared For: Mayor Castner and Homer City Council
Date: May 30, 2023
From: Bryan Hawkins, Port Director
Through: Rob Dumouchel, City Manager

Recently, as part of budget discussions, we talked about several things that have come together making it necessary for me to think about how we are getting through the day-to-day operations at the Port. My job title has always been Port Director/Harbormaster and for the first 13 years in this position, I was able to be a lot more operations based. Meaning I could stand a watch for an operations shift and when necessary drop what I was doing to help in the field. However, out of necessity I've had to turn my focus to executive level management work, which has effectively removed me from the crew when it comes to operations.

We developed a reorganization plan for the Port and Harbor to address the new needs, and our goals were simple:

- ✓ Promote from within to share operations level workload with existing staff to capitalizing on their skills and capabilities.
- ✓ Continue to provide excellent level day-to-day service to our port and harbor customers.
- ✓ As an organization, make room for the Port and Harbor department to be able to focus on our community's goals for harbor expansion.

Part of this approved plan included splitting the Port Director and Harbormaster into two separate positions to better address the administrative and operational workloads, and with the budget passed and the plan getting ready for implementation, we need to update City Code language that currently states "Port Director/Harbormaster" to represent each entity as separate.

Recommendation

Adopt Ordinance 23-39



MEMORANDUM

Ordinance 23-39, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code Chapters 2.40 Department of Port and Harbor, 2.64 Port and Harbor Advisory Commission, and 10.04 General Port and Harbor Provisions Updating References to Port Director and Harbormaster, and Commissioner Absences. City Manager/Port Director.

Item Type: Backup Memorandum
Prepared For: Mayor Castner and Homer City Council
Date: June 8, 2023
From: Melissa Jacobsen, MMC, City Clerk

Homer City Code 2.64.020(c) currently reads “Any Commissioner who shall have two successive unexcused absences shall be subject to removal by the Commission by a majority vote of the members present”. This language conflicts with the Port and Harbor Advisory Commission bylaws and Homer City Code 2.58.050(h)(5).

HCC 2.64.020(c) should be amended to read “An appointment is vacated if a member has three consecutive unexcused absences, or misses half of all meetings within an appointment year, whether excused or unexcused” to be consistent with the bylaws and 2.58.050(h)(5).

Recommendation

Adopt Ordinance 23-39

1 **CITY OF HOMER**
2 **HOMER, ALASKA**

3 City Manager/Port Director

4 **ORDINANCE 23-39**

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
7 AMENDING HOMER CITY CODE CHAPTERS 2.40 DEPARTMENT OF
8 PORT AND HARBOR, 2.64 PORT AND HARBOR ADVISORY
9 COMMISSION, AND 10.04 GENERAL PORT AND HARBOR
10 PROVISIONS.

11
12 WHEREAS, Historically the job of Homer Port Director and Harbormaster have been
13 held by the same individual who has covered both the top administrative and top operational
14 needs of the Homer Port and Harbor facilities; and

15
16 WHEREAS, Growth within the harbor, large scope projects, and additional executive
17 level management needs have effectively made it unfeasible for the Port
18 Director/Harbormaster to help in the field or cover operations; and

19
20 WHEREAS, In the new budget starting July 1 2023, there will be an approved
21 restructuring and the addition of staff to absorb increased workloads, maintain our ability to
22 provide excellent levels of service, and allow for focus on the harbor's and community's long
23 term goals; and

24
25 WHEREAS, Part of this restructuring includes separating the Port Director and
26 Harbormaster into two separate positions which requires the editing of City Code to reflect the
27 changes; and

28
29 WHEREAS, Commission absences needs updating to be consistent with HCC 2.58.050
30 (h)(5) Required Procedures and the Commission's bylaws.

31
32 NOW, THEREFORE, The City of Homer Ordains:

33
34 Section 1. Homer City Code 2.40 Department of Port and Harbor, General Port is hereby
35 amended as follows:

36
37 Chapter 2.40 DEPARTMENT OF PORT AND HARBOR

38
39 Sections:

40 2.40.010 Department of Port and Harbor.

41
42 2.40.010 Department of Port and Harbor.

[**Bold and underlined added.** Deleted language stricken through]

43 The Department of Port and Harbor is created which shall be headed by the Port ~~and Harbor~~
44 **Director** who shall be appointed by the City Manager for an indefinite term and shall be
45 removable by the City Manager. The Director will have supervision of and be responsible for
46 the operation of all port and harbor facilities including but not limited to docks, the small boat
47 harbor, spit land, warehouse, port terminal, grids, ice plant and fueling facilities in accordance
48 to operating rules and regulations enacted by the City Council and administrative direction of
49 the City Manager. The Department may be subdivided into divisions with their own supervisors
50 as deemed necessary.

51

52 Section 2. Homer City Code 2.64 Port and Harbor Advisory Commission is hereby
53 amended as follows:

54

55

Chapter 2.64
PORT AND HARBOR ADVISORY COMMISSION

56

57 Sections:

- | | | |
|----|----------|--|
| 58 | | |
| 59 | 2.64.010 | Commission – Creation and membership. |
| 60 | 2.64.020 | Commission – Terms of members. |
| 61 | 2.64.030 | Proceedings of the Commission. |
| 62 | 2.64.040 | Duties and responsibilities of the Commission. |

63

64 Prior legislation: Ord. 73-1.

65

66 2.64.010 Commission – Creation and membership.

67

68 a. There is created the City of Homer Port and Harbor Advisory Commission, referred to in this
69 chapter as the Commission. Such Commission will be made up of seven members, who shall
70 be nominated by the Mayor and confirmed by the City Council. Not more than two member(s)
71 may be from outside the City limits.

72

73 b. A Chairman and Vice-Chairman of the Commission shall be selected annually and shall be
74 appointed from and by the appointive members.

75

76 c. The Mayor, the City Manager, the Port ~~Manager~~ **Director** and the Harbormaster shall serve as
77 consulting members of the Commission in addition to the seven appointive members, and may
78 attend all meetings as consultants, but shall have no vote.

79

80 2.64.020 Commission – Terms of members.

81

82 a. Members of the first Commission shall be appointed for the following terms:

83

84 1. Three members shall be appointed for three-year terms;

85

86 2. Two members shall be appointed for two-year terms;

87

88 3. Two members shall be appointed for one-year terms.

89

90 b. At the end of the respective terms set forth in subsection (a) of this section, members shall
91 be appointed for full three-year terms.

92

93 ~~c. Any Commissioner who shall have two successive unexcused absences shall be subject to~~
94 ~~removal by the Commission by a majority vote of the members present.~~ **An appointment is**
95 **vacated if a member has three consecutive unexcused absences, or misses half of all**
96 **meetings within an appointment year, whether excused or unexcused.**

97

98 2.64.030 Proceedings of the Commission.

99

100 The Commission shall meet regularly once a month, and at the call of the Chairman.
101 Permanent records or minutes shall be kept of Commission proceedings and such minutes
102 shall record the vote of each member upon every question. Every decision or finding shall
103 immediately be filed in the office of the City Clerk, and shall be a public record open to
104 inspection by any person. Every decision or finding shall be directed to the City Council at the
105 earliest possible date.

106

107 2.64.040 Duties and responsibilities of the Commission.

108

109 a. It shall be the duty of the Commission to act in an advisory capacity to the City Manager and
110 the City Council on the problems and development of the City port and harbor facilities.
111 Consideration may include the physical facilities, possible future development and
112 recommendations on land use within the port and harbor areas.

113

114 b. The daily operation and maintenance of the port and harbor are the direct responsibility of
115 the Port Manager **Director** and the Harbormaster, under the direction of the City Manager. Any
116 recommendation the Commission or a Commission member may have regarding the
117 operation and maintenance of the facilities is to be directed to the City Manager, not a port or
118 harbor employee. The City Manager will study the recommendation and refer it to the Council,
119 or the recommendations of the Commission concerning policy issues shall be sent directly to
120 the Council upon the request of the Commission.

121

122 c. The Commission shall consider any specific proposal, problem or project as directed by the
123 City Council and any report or recommendations thereon shall be made directly to the Council,
124 unless otherwise directed by the Council.

125
126 d. The City Council may at a future date expand or withdraw duties and responsibilities of the
127 Commission.

128
129 Section 3. Homer City Code 10.04 Port and General Port and Harbor Provisions is hereby
130 amended as follows:

131
132 Chapter 10.04
133 GENERAL PORT AND HARBOR PROVISIONS 1
134

135 Sections:

- 136
137 10.04.010 Short title.
138 10.04.020 Scope – Administrative powers.
139 10.04.030 Definitions.
140 10.04.035 Homer port and harbor tariff.
141 10.04.040 ~~Harbormaster~~ **Port Director**– Powers and duties.
142 10.04.050 Rule and regulation establishment authority.
143 10.04.055 Fees.
144 10.04.060 Revenues – Use of.
145 10.04.080 City docks – Other closure.
146 10.04.085 Use of load and launch ramp.
147 10.04.090 Underway requirement.
148 10.04.100 Vehicles and other wheeled conveyances.
149 10.04.105 Use of port and harbor dumpsters.
150 10.04.110 Violation – Penalty.
151 10.04.115 Appeal from port and harbor citation issued pursuant to HCC Titles 7 and 10.
152 10.04.120 Impounded vessel procedure.
153 10.04.130 Nuisances declared – Removal.
154 10.04.132 Nuisances – Abatement procedure.
155 10.04.134 Nuisances – Post-removal hearing.
156 10.04.135 Nuisances – Form of demand for hearing – Hearing officer.
157 10.04.138 Interference with impoundment prohibited.
158 10.04.139 Lien on impounded or nuisance vessel.
159 10.04.140 Annual review required.
160 10.04.150 Required equipment.
161
162 Prior legislation: Ords. 88-11, 89-6, 90-7, 90-8(A), 90-16, 90-17(A), 91-25, 92-23(A), 92-45, 92-46,
163 95-3, 95-4 and 95-9.
164
165 10.04.010 Short title.

166
167 This title shall constitute the Port and Harbor Code of the City and may be cited as such.

168
169 10.04.020 Scope – Administrative powers.

170 This title and the Homer port and harbor tariff shall be deemed an exercise of the powers of
171 the City for the protection, safeguarding, and orderly moorage and control of boats, and for
172 the protection and general welfare of the public and all of its provisions shall be liberally
173 construed for the accomplishment of the purpose. The City, through its properly appointed
174 representatives, shall have the authority to board any vessel utilizing the harbor or port
175 facilities for the purpose of enforcing this title and the Homer port and harbor tariff.

176
177 10.04.030 Definitions.

178
179 Unless otherwise provided in this title or required by the context, definitions set forth in the
180 Homer port and harbor tariff shall apply to this title.

181
182 10.04.035 Homer port and harbor tariff.

183
184 The rates, charges, rules and regulations for wharfage, terminal storage, demurrage and other
185 terminal services and privileges are set forth in the Homer port and harbor tariff and as filed
186 with the Federal Maritime Commission. Subject to the requirements of HCC 10.04.055, the
187 Homer port and harbor tariff may be amended from time to time by resolution of the City
188 Council.

189
190 10.04.040 ~~Harbormaster~~ **Port Director**– Powers and duties.

191
192 A ~~Harbormaster~~ **Port Director**, who shall have police powers, shall be appointed in the same
193 manner as other City employees. The ~~Harbormaster~~ **Port Director, or their designee**, shall be
194 assigned to enforce the provisions of this title and the Homer port and harbor tariff, maintain
195 an accurate log of the registration data of all boats using Homer harbor facilities, showing the
196 date of occupancy of berthing facilities, issue citations and impound vehicles, vessels, gear or
197 equipment for violations of this title, and collect or arrange for the collection of the established
198 fees. The ~~Harbormaster~~ **Port Director, or their designee**, is granted the power and authority
199 from time to time, as circumstances require, but without any obligation to do so, and without
200 any obligation or liability on his part, or that of the City for his failure to do so, to replace
201 defective mooring lines, to pump vessels which are in a dangerous condition for lack thereof,
202 and to move any boat for the purpose of protecting such boat from fire or from other hazard
203 or for the protection of other vessels or property therefrom. Whenever the ~~Harbormaster~~ **Port**
204 **Director, or their designee**, shall perform or cause to be performed any of the actions
205 authorized in this title or other emergency actions, after having given notice of the immediate
206 need therefor, or having attempted to give such notice within the time limits prescribed by the

207 exigencies of the situation, a fee as prescribed in the Homer port and harbor tariff shall be
208 assessed the vessel owner or operator.

209
210 10.04.050 Rule and regulation establishment authority.

211
212 The City Manager is empowered and authorized to establish additional rules and regulations
213 governing the use of the Homer harbor, assignment of stalls, and the general conduct in,
214 around and on harbor facilities and parking areas. Such rules and regulations shall become
215 effective upon approval by the City Council. The Council may provide for a different effective
216 date. The City Manager shall print and make available to the public copies of regulations
217 adopted pursuant to this section.

218
219 10.04.055 Fees.

220
221 a. Fees for the approved use of Homer harbor facilities and services as set forth in the Homer
222 port and harbor tariff may be changed by City Council resolution; provided, that a public
223 hearing is held prior to approval of the resolution; and provided further, that any such change
224 is effective only after the change is filed with the Federal Maritime Commission as an
225 amendment to the Homer port and harbor tariff.

226
227 b. The ~~Harbormaster~~ **Port Director, or their designee**, may negotiate special fees and charges
228 with a vessel owner or operator where the owner or operator requires an exceptional volume
229 of, or unique or unusual, services or facilities, and it is in the best interest of the City to enter
230 into special arrangements. In such event, the ~~Harbormaster~~ **Port Director** shall inform the City
231 Manager of such special, negotiated arrangements.

232
233 10.04.060 Revenues – Use of.

234
235 All revenues from the Homer harbor shall be expended for the maintenance, operation and
236 improvement of the Homer harbor in accordance with generally accepted accounting
237 principles. Revenues from the Homer boat harbor shall be expended solely for the furtherance
238 of financial stability and self-sufficiency of the Homer harbor.

239
240 10.04.080 City docks – Other closure.

241
242 The City, through its City Manager or other duly constituted agent, may prohibit the use of any
243 wharves and docking facilities owned or controlled by the City at any time when closing the
244 facilities is required to protect and preserve the public welfare and safety.

245
246 10.04.085 Use of load and launch ramp.

247

248 a. Terms and conditions for use of the small boat harbor load and launch ramp are provided in
249 the Homer port and harbor tariff as amended from time to time.

250
251 b. No person who is obligated to pay a fee for using the small boat harbor load and launch
252 ramp may use the small boat harbor load and launch ramp without first paying the fee
253 prescribed for its use.

254
255 c. A person who is obligated to pay a fee for using the small boat harbor load and launch ramp
256 must make the ticket verifying payment available upon request, or display the seasonal permit
257 on the port side of the permit holder's vessel.

258
259 10.04.090 Underway requirement.

260
261 On at least two days in each calendar year, separated by at least 60 days, a vessel moored in
262 the Homer harbor shall depart under its own power from the Homer harbor and travel beyond
263 the one-quarter-mile turning basin of the Pioneer and Deep Water Docks before returning
264 under the vessel's own power to the Homer harbor. The moorage charge for a vessel that fails
265 to comply with this requirement shall be increased by 50 percent commencing at the time the
266 vessel fails to comply and continuing during the period of noncompliance.

267
268 10.04.100 Vehicles and other wheeled conveyances.

269
270 a. No person other than an employee of the City or other person acting on City business shall
271 drive a vehicle upon trails in the harbor area that are designated for pedestrian or bicycle use
272 except in case of emergency. Parking or leaving boats, trailers and/or other vehicles and
273 equipment related thereto by the public shall be limited to specific areas designated for such
274 use.

275
276 b. Hauling out boats on skids is prohibited unless approved in advance by the ~~Harbormaster.~~
277 **Port Director, or their designee.**

278
279 10.04.105 Use of port and harbor dumpsters.

280
281 a. Dumpsters provided at port and harbor facilities are for port and harbor related use only.
282 b. The dumping of non-port-and-harbor-related waste, such as household waste or
283 construction waste, in port and harbor dumpsters is prohibited.

284
285 10.04.110 Violation – Penalty.

286

287 Except as provided in HCC 1.16.040 and 7.04.030, any violation of the provisions contained in
288 this title or regulations adopted pursuant to this title shall be unlawful and punishable as
289 provided in HCC 1.16.010.

290

291 10.04.115 Appeal from port and harbor citation issued pursuant to HCC Titles 7 and 10.

292

293 a. A person who has been issued a citation for a violation of HCC Title 7 or 10 by the City of
294 Homer ~~Harbormaster~~ **Port Director**, or their designee, may appeal that action to the hearing
295 officer designated by the City Manager by completing an administrative hearing request form
296 and delivering the form to the Homer City Clerk's office no later than 30 days after the issuance
297 of the citation.

298

299 b. The hearing officer shall schedule an appeal hearing for the next available hearing date after
300 the date of delivery of the administrative hearing request form to the City Clerk's office.

301

302 c. The appeal hearing shall be conducted informally and may be governed by such rules and
303 procedures as the hearing officer may establish, except that:

304

305 1. Each party has the right to be represented by counsel.

306 2. Each party may present witnesses and evidence.

307 3. Each party and witnesses may appear in person or by telephone.

308 4. Each party may confront and question witnesses.

309 5. The individual receiving the citation may testify in their own defense.

310 6. Each party may subpoena witnesses.

311 7. The hearing shall be open to the public.

312 8. An electronic recording shall be made of the hearing.

313

314 d. The hearing officer may exercise independent judgment as to the weight of evidence
315 supporting or refuting the notice of violation or impoundment, and may exercise independent
316 judgment on legal issues raised by the parties.

317

318 e. No later than 30 days following the hearing the hearing officer shall issue a written decision
319 including findings of fact and conclusions of law. Such findings must be reasonably specific so
320 as to provide interested persons and, where appropriate, reviewing authorities, a clear and
321 precise understanding of the reasons for the decision entered. The decision, findings of fact,
322 and conclusions of law shall be forwarded to all parties to the appeal. A final appealable
323 decision must indicate that it is a final order and that a party disputing the decision has 30 days
324 to appeal.

325

326 f. A final decision issued under subsection (e) of this section may be appealed to the Superior
327 Court within 30 days after the date the decision was issued. For the purposes of this section the
328 date of issuance is the date upon which the decision was mailed or delivered to the parties.

329

330 10.04.120 Impounded vessel procedure.

331

332 a. At least 10 days prior to impounding any vessel, the City shall cause to be posted on the
333 vessel, in the Harbormaster's office, the City Clerk's office and on the bulletin board at the
334 entrance of the United States Post Office notice of such action to be taken by the City. A copy
335 of the notice shall be mailed by certified mail, return receipt requested, to the owner or
336 operator of the vessel at his last known address, which address shall be the same as that
337 furnished in accordance with the regulations of this tariff. The notice shall contain the name
338 and/or number of the vessel, the name and address, if known, of the owner or operator and
339 the location of the vessel.

340

341 b. As to any vessel proposed for impoundment, an owner or operator of the vessel has the right
342 to a pre-impoundment administrative hearing to determine whether there is probable cause
343 to impound the vessel if such person files a written demand, on forms so provided for such a
344 hearing, with the City within 10 days after such person has learned such vessel will be
345 impounded or within 10 days after the return of mail receipt of the notice required by
346 subsection (a) of this section, whichever occurs first.

347

348 c. A hearing shall be conducted before a hearing officer designated by the City Manager within
349 48 hours of receipt of written demand therefor from the person seeking the hearing unless the
350 person waives the right to a speedy hearing. Saturdays, Sundays and City holidays are to be
351 excluded from the calculation of the 48-hour period. The hearing officer shall be someone
352 other than the persons who will direct the impounding and storage of the vessel. The sole issue
353 before the hearing officer shall be whether there is probable cause to impound the vessel in
354 question. "Probable cause to impound" shall mean such a state of facts as would lead a person
355 of ordinary care and prudence to believe that there was a breach of Federal, local or municipal
356 law or regulations, or any agreement entered into pursuant thereto, rendering the vessel
357 subject to impoundment. The hearing officer shall conduct the hearing in an informal manner
358 and shall not be bound by technical rules of evidence. The person demanding the hearing shall
359 carry the burden of establishing that such person has the right to possession of the vessel. The
360 ~~Harbormaster~~ **Port Director, or their designee**, shall carry the burden of establishing that
361 there is probable cause to impound the vessel in question. At the conclusion of the hearing,
362 the hearing officer shall prepare a written decision. A copy of such decision and reasons
363 therefor shall be provided to the person demanding the hearing and the owner of the vessel if
364 such owner is not the person requesting the hearing. The hearing officer's decision in no way
365 affects any criminal proceeding connection with the impound in question and any criminal
366 charges involved in such proceeding may only be challenged in the appropriate court. The

367 decision of the hearing officer is final and may only be appealed to the Superior Court. Failure
368 of the owner or operator to request or attend a scheduled pre-impoundment hearing shall be
369 deemed a waiver of the right of such hearing.

370
371 d. The hearing officer shall only determine that as to the vessel in question either that there is
372 probable cause to impound the vessel or that there is no such probable cause. In the event that
373 the hearing officer determines that there is no probable cause, the hearing officer shall prepare
374 and date a certificate of no probable cause, copies of which shall be given to the owner or
375 operator and to the ~~Harbormaster~~ **Port Director, or their designee**. Upon receipt of such
376 certificate of probable cause, the ~~Harbormaster~~ **Port Director, or their designee**, may
377 proceed with impoundment and disposition of the vessel by removal, sale or destruction as
378 authorized by this title.

379
380 e. Any vessel impounded shall be held by the City for a period of not less than 30 days during
381 which the City shall publish in a newspaper of general circulation in the City a notice describing
382 the vessel in general terms, the name and/or number, if any, the name and address of the
383 owner, or operator, if known, or if not known shall so state the location of the vessel and the
384 intention of the City to sell the same at public auction, on a day and at a place and time certain,
385 not less than 10 days prior to the sale, for cash to the highest and best bidder. At any time prior
386 to the auction, the owner or operator may redeem the vessel by cash payment of all City
387 charges against the vessel.

388
389 f. The minimum acceptable bid shall be a sum equal to the City's charges against the vessel.
390 The proceeds of the sale shall be first applied to the cost of sale, then to accrued stall license
391 fees and charges, service fees, storage charges, attorney fees and costs, and other expenses
392 provided for in this title, and the balance, if any, shall be held in trust by the City for the owner
393 of the vessel to claim; and if not claimed within one year, the balance shall be deposited into
394 the small boat harbor facilities fund. Upon the sale being made, the City shall make and deliver
395 its bill of sale, without warranty, conveying the vessel to the buyer.

396
397 g. If at the public sale there are no bidders for the vessel, the City may destroy, sell at private
398 sale or otherwise dispose of the vessel. The disposition is to be made without liability of the
399 City, its employees or agents to the owner, master or any lien holder of the vessel.

400
401 10.04.130 Nuisances declared – Removal.

402
403 a. For the purposes of this title and in the interest of the greatest use of the facilities of the
404 Homer harbor and the municipal waters by the general public, vessels in the Homer harbor
405 and elsewhere on the municipal waters that are illegally moored, cause an obstruction to
406 navigation, or that are abandoned or derelicts or unfit or unseaworthy or which are maintained
407 in such manner as to make them liable to sinking for lack of being pumped or other

408 maintenance, or which are unsafe or which are maintained in a manner as to constitute a fire
409 hazard, and sunken vessels and vessels in imminent danger of sinking, are declared to be
410 nuisances and subject to abatement and removal from the Homer harbor or other municipal
411 waters by the City or its agents, without liability of the City for any damage done by virtue of
412 the removal or for any of its consequences.

413
414 b. Refuse of all kinds or any other obstructions or debris are declared to be public nuisances,
415 and it shall be unlawful for any person to place, or cause to be placed, any public nuisance in
416 the Homer harbor or in the municipal waters, or on the shores thereof. Nets, gear, and other
417 material left on any float or dock for more than 12 hours are hereby declared a public nuisance.
418 Any person causing or permitting the nuisances to be placed as aforesaid shall remove the
419 same and upon his failure to do so, the same may be removed or caused to be removed by the
420 ~~Harbormaster~~ **Port Director, or their designee**. When the ~~Harbormaster~~ **Port Director, or**
421 **their designee**, has authorized such nuisances to be removed or stored commercially, all costs
422 of such commercial removal or storage shall be paid by and recoverable from the person
423 creating the nuisances and shall not excuse the person responsible therefor from prosecution
424 hereunder. Any nuisance under this subsection may be impounded, disposed of by
425 destruction, private or public sale, or by any other means deemed reasonable by the
426 ~~Harbormaster~~ **Port Director**. Such disposition is to be made without liability of the City, its
427 employees or agents to the owner, master or any lien holder of the nuisance.

428
429 c. Upon the ~~Harbormaster's~~ **Port Director's** written determination that a nuisance described
430 in subsection (a) of this section exists that constitutes a clear and present danger to the public
431 health, safety or general welfare, the nuisance may be summarily abated by the ~~Harbormaster~~
432 **Port Director** according to HCC 10.04.132 without prior notice.

433
434 d. Vessels declared a nuisance under subsection (a) of this section that do not constitute a clear
435 and present danger to the public health, safety and general welfare may be moved,
436 impounded, or disposed of according to the procedure provided in HCC 10.04.120.

437
438 10.04.132 Nuisances – Abatement procedure.

439
440 a. Unless otherwise provided, the procedure set forth in this section shall apply whenever a
441 vessel has been impounded or removed or a nuisance vessel abated pursuant to
442 HCC 10.04.130(a) or otherwise, and the pre-impoundment administrative hearing procedures
443 of HCC 10.04.120 were not followed.

444
445 b. An impoundment is effective when a written order of impoundment is placed on a vessel. An
446 order of impoundment shall identify the vessel, state the reasons for impoundment, and be
447 dated and signed by the ~~Harbormaster~~ **Port Director**, or his ~~his~~ **their** authorized designee. An
448 impounded vessel may be immediately towed or otherwise removed upon the order of the

449 ~~Harbormaster~~ **Port Director**. Nothing in this subsection shall be construed to prevent the City
450 from using alternatives to impoundment, including without limitation removal or other means
451 to abate a nuisance.

452
453 c. When action is taken to impound, remove, or otherwise abate a nuisance vessel, notice of
454 such action shall be placed on the vessel if possible, and within six hours a copy of the notice
455 shall be personally delivered or placed in the U.S. mail addressed to the owner of the vessel.
456 The notice shall include the following substantive provisions:

457
458 ATTENTION: The vessel _____ has been impounded/removed/abated by the City of
459 Homer ~~harbormaster~~ **Port Director** as a public nuisance for the following reasons:

460
461 _____
462 As the owner of the vessel you have the following options (those that apply are checked):

463 _____ The vessel has been impounded and you may recover possession of the vessel by paying to
464 the person having custody of the vessel the towing, storage, and other charges that may have
465 accrued. The vessel is at the following location:

466 _____
467 _____ The vessel has been removed and you may recover possession of the vessel at the following
468 location: _____

469 _____ The vessel has been destroyed. You may direct any inquiries to the City of Homer
470 ~~harbormaster~~ **Port Director**.

471 _____ The following action has been taken, and any option you may have is described below:
472 _____

473 If you believe the vessel was improperly impounded, removed, or otherwise abated, you may:

474
475 (i) In the case of an impoundment, recover possession of the vessel by paying any towing, storage,
476 or other charges that have accrued, and you may claim a refund or reimbursement by filing a
477 demand (on a form provided by the city) for an administrative hearing before a hearing officer as to
478 whether the ~~harbormaster~~ **Port Director** had a sufficient factual and legal basis to impound the
479 vessel; or

480
481 (ii) In the case of an impoundment, you may demand return of the vessel without paying the towing,
482 storage, or other charges by filing a demand (on a form provided by the city) for an administrative
483 hearing before a hearing officer as to whether the ~~harbormaster~~ **Port Director** had a sufficient
484 factual and legal basis to impound the vessel; or

485
486 (iii) You may in any other case file a demand (on a form provided by the city) for an administrative
487 hearing before a hearing officer as to whether the ~~harbormaster~~ **Port Director** had a sufficient
488 factual and legal basis to impound, remove, or abate the vessel.

489
490 To be entitled to such a hearing, your written demand must be filed with the City Clerk (a) within 5
491 workdays after you learned that your vessel was impounded, removed, or otherwise abated or (b)
492 within 15 workdays after the City mailed notice to the vessel owner of the action taken, whichever

493 is earlier. If you fail to make a timely request for a hearing you will lose all right to challenge the
494 sufficiency of the basis for the action taken.

495
496 If timely requested, the hearing must be held within 48 hours after the filing of your written demand,
497 not including, Saturdays, Sundays, and city holidays, unless you waive your right to a speedy
498 hearing. A determination that there was an insufficient factual or legal basis for the action taken
499 will require the release of the vessel to the owner without payment of the towing, storage, or other
500 accrued charges, or it will entitle the owner to a refund or reimbursement if the charges were
501 already paid.

502
503 A hearing may be demanded by filing the appropriate form with the City Clerk at Homer City Hall
504 between 8:00 a.m. and 5:00 p.m. on any day other than Saturday, Sunday and city holidays.

505
506 10.04.134 Nuisances – Post-removal hearing.

507
508 a. If demand is timely made, the owner or person entitled to possession of the vessel is entitled
509 to an administrative hearing to determine whether there was a sufficient factual and legal
510 basis for the action to impound, remove, or otherwise abate the vessel. To be entitled to such
511 a hearing, a written demand must be filed with the City Clerk (1) within five workdays after the
512 owner or other person entitled to possession learned that the vessel was impounded,
513 removed, or otherwise abated, or (2) within 15 workdays after the City mailed the notice
514 required by HCC 10.04.132(c) to the vessel owner, whichever is earlier. If no timely request for
515 a hearing is made, the factual and legal basis for the action taken will be conclusively deemed
516 sufficient for all purposes.

517
518 b. The hearing will be held within 48 hours after the filing of a written demand, not including
519 Saturdays, Sundays and City holidays, unless the person demanding the hearing waives a
520 speedy hearing.

521
522 c. The hearing officer shall not be bound by formal rules of evidence. A copy of the
523 ~~Harbormaster's~~ **Port Director's** written determination that a public nuisance exists will
524 constitute prima facie proof of a sufficient factual and legal basis for the action. The burden
525 will be on the vessel owner to prove by a preponderance of the evidence that there was not
526 sufficient factual or legal basis for impounding, removing, or otherwise abating the vessel.

527
528 d. At the conclusion of the hearing, the hearing officer shall prepare a written decision,
529 including the reasons for the decision. A copy of such decision shall be provided to the person
530 demanding the hearing and the owner of the vessel. The hearing officer's decision in no way
531 affects any criminal charges that may be pending. The decision of the hearing officer is final
532 and may only be appealed to the Superior Court.

533

534 e. A determination by the hearing officer that there was not a sufficient factual or legal basis
535 for the action taken will require the release of the vessel to the owner or other person entitled
536 to possession without payment of the towing, storage, or the accrued charges, or will entitle
537 the person to a refund or reimbursement by the City if the charges have already been paid. If
538 the hearing officer determines there was a sufficient factual and legal basis for the action
539 taken, the ~~Harbormaster~~ **Port Director, or their designee,** may proceed to dispose of the
540 vessel by sale according to HCC 10.04.120(e) through (g), or the ~~Harbormaster~~ **Port Director,**
541 **or their designee,** may destroy or otherwise dispose of the vessel without sale if he makes a
542 good faith determination that the value of the vessel does not exceed the costs of towing,
543 storage, sale, and other harbor charges accrued against the vessel. [Ord. 95-28 § 3, 1995].

544
545 10.04.135 Nuisances – Form of demand for hearing – Hearing officer.

546
547 a. The City Clerk shall prepare and make available a form of demand for a hearing pursuant to
548 HCC 10.04.134. Upon receipt of a demand for a hearing the City Clerk shall immediately
549 forward the demand to the City Manager or his designee, who shall schedule an administrative
550 hearing and notify all parties.

551
552 b. The City Manager shall appoint a hearing officer to conduct hearings pursuant to
553 HCC 10.04.134. No person with the authority to impound, remove, or otherwise abate a
554 nuisance vessel shall be eligible to serve as a hearing officer. [Ord. 95-28 § 4, 1995].

555
556 10.04.138 Interference with impoundment prohibited.

557
558 a. Unless authorized by the ~~Harbormaster~~ **Port Director, or their designee,** it is unlawful for
559 any person to remove an impoundment order from a vessel upon which it has been posted.

560
561 b. Unless authorized by the ~~Harbormaster~~ **Port Director, or their designee,** it is unlawful for
562 any person to move a vessel after it has been posted with an impoundment order.

563
564 c. It is unlawful for any person to interfere with the ~~Harbormaster~~ **Port Director** or any other
565 person under the ~~Harbormaster's~~ **Port Director's** authority engaged in the impound, removal,
566 or abatement of a vessel or public nuisance. [Ord. 95-28 § 5, 1995].

567
568 10.04.139 Lien on impounded or nuisance vessel.

569
570 The City shall have a lien on any vessel impounded or abated as a nuisance under this title for
571 charges for towing, storage, costs of abatement, costs of sale, attorney fees, any other charges
572 incurred in connection with the impoundment or abatement, and charges for harbor services,
573 including, without limitation, moorage, dockage, stall rental, utilities, and other services
574 provided to or for the benefit of the vessel. [Ord. 95-28 § 6, 1995].

575
576 10.04.140 Annual review required.

577
578 An annual review shall be required of all port and harbor rates. Such annual review shall be
579 part of preparation of the port, and charges and harbor fiscal operating budgets.

580
581 10.04.150 Required equipment.

582
583 All watercraft or vessels shall carry the equipment required by any applicable United States
584 laws or regulations as now or hereafter amended, and shall be numbered or designated in
585 accordance with any applicable United States laws or regulations as now or hereafter
586 amended. In the absence of extenuating circumstances, failure of any boat or vessel within the
587 Homer harbor to comply with applicable United States laws or regulations shall be in violation
588 of this title. [Ord. 95-18(S), 1995].

589
590 1
591 For statutory provisions authorizing municipalities to provide for and regulate harbor facilities
592 see AS 30. Ordinance 95-18(S) repealed and reenacted HCC Title 10 with the bulk of HCC
593 Title 10 being incorporated into the Homer Port and Harbor Tariff 95-1, adopted by Resolution
594 95-69.

595
596 Section 4. This ordinance is of a permanent and general character and shall be included
597 in Homer City Code.

598
599 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 26th day of June, 2023.

600
601
602
603
604 CITY OF HOMER
605
606
607 _____
KEN CASTNER, MAYOR

608 ATTEST:
609
610 _____
611 MELISSA JACOBSEN, MMC, CITY CLERK

612
613 YES: 6
614 NO: 0
615 ABSTAIN: 0

616 ABSENT: 0

617

618 First Reading: 6/12/23

619 Public Hearing: 6/26/23

620 Second Reading: 6/26/23

621 Effective Date: 6/27/23