



City of Emmonak

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CITY OF EMMONAK, ALASKA
ORDINANCE 16-0/

AN ORDINANCE AMENDING CHAPTER 18.08 OF THE EMMONAK MUNICIPAL CODE TO CLARIFY TERMS FOR STORING PERSONAL PROPERTY ON CITY PROPERTY

WHEREAS, the City of Emmonak, Alaska (“City”) has limited usable land; and

WHEREAS, there are numerous entities in need of storage space; and

WHEREAS, the City also has a significant interest in ensuring the vessels and the cargo these vessels carry do not present unknown health and safety risks to the City; and

WHEREAS, it is in the City’s best interest to generate revenue by leasing its land for storage space or other designated purposes.

BE IT ORDAINED AND ENACTED BY THE CITY OF EMMONAK:

Section 1. Chapter 18.08 of the Code of Ordinances of the City of Emmonak, Alaska, is hereby amended to read as follows [**ADDED LANGUAGE IN BOLD AND UNDERLINED**; ~~DELETED LANGUAGE IS STRICKEN OUT~~]:

Chapter 18.08 CITY PORT

Sections:

- 18.08.010 City Port
- 18.08.020 Administration of City Port
- 18.08.030 Regulations
- 18.08.040 Fees and charges
- 18.08.050 Denial of facilities, equipment, or services
- 18.08.060 Storage areas
- 18.08.070 Impoundment, sale or disposal of vessels and other property

18.08.010 City Port. The City Port consists of the City dock, the adjacent waters located within the City limits, and adjacent City-owned land that the City Council designates by written resolution for Port uses.

18.08.020 Administration of City Port.

(a) There shall be a Port Administrator, who shall be the City Manager or a City employee designated by the City Manager.

(b) The Port Administrator shall enforce the provisions of this chapter and the provisions of the Tariff of the Port of the City of Emmonak and shall be vested with all powers of a peace officer of the City necessary to such enforcement duties.

(c) The Port Administrator shall classify areas within the Port for various uses, shall mark mooring spaces to be assigned, and shall post such signs, numbers, markings or other informational devices as will notify and inform interested parties of authorized and prohibited informational devices as will notify and inform interested parties of authorized and prohibited uses of the City Port facilities. The Port Administrator may post informational signs specifying areas where designated conduct is prohibited, but posting of signs shall not be necessary to the enforcement of any provision of this chapter, unless otherwise required in this chapter.

(d) The Port Administrator shall allocate and assign all mooring spaces.

(e) A hearing officer shall be appointed by the City Manager to hear matters described in section 18.08.070 below. The hearing officer shall be a person other than the Port Administrator.

18.08.030. Regulations.

All operations within the City Port, if not provided for specifically by ordinance, shall be conducted in accordance with regulations established by the Council by written resolution.

18.08.040. Fees and charges.

(a) The Council, by written resolution, shall establish the fees and charges for the use of all City Port facilities.

(b) Fees and charges for the use of the City Port facilities, including the fees and charges included in the Tariff of the Port of the City of Emmonak, that the City requires to be paid in advance shall be paid at the Port Administrator's office prior to utilization of any facility or equipment, or receipt of any service.

(c) Fees and charges for the use of the City Port facilities, including the fees and charges included in the Tariff of the Port of the City of Emmonak, that the City does not require to be paid in advance shall be paid within thirty (30) days after billing. Billings that are not paid within thirty (30) days shall accrue interest at the monthly rate of 2.00% (24% per annum) from the due date.

(d) The owner of a vessel is liable for fees and charges for moorage, equipment, and services that the City provides to the vessel under this chapter, notwithstanding the fact that the moorage, equipment, or services were provided at the request of an operator or other agent. In addition to any suits for collection against the vessel owner or other available remedies, the City may assert a lien under admiralty law for fees or charges for moorage, equipment, or services provided or rendered to the vessel, including fees and

charges owed pursuant to the Tariff of the Port of the City of Emmonak, that are not paid when due and may initiate appropriate proceedings for the seizure of the vessel and foreclosure of the lien.

(e) The City finance department shall maintain a separate account titled "Emmonak Port fund." All dockage, wharfage, and other fees arising out of the operation of the Port facilities by the City shall be deposited to this fund and used exclusively for such costs of operation, maintenance, and supervision of the Port facilities as the City Council may authorize; except, that when advances are made to such fund by the City general fund, the Port fund may reimburse such general fund by written approval of the City Council.

18.08.050. Denial of facilities, equipment, or services.

(a) The Port Administrator may refuse moorage facilities and other services to any person or vessel who does not provide a copy of their manifest as required under Section 1.10 Manifests Required of Vessels.

(b) The Port Administrator may refuse moorage to any vessel which is, or may become, or may create a fire hazard or otherwise become a menace to the safety or welfare of other boats or their occupants.

(c) As a condition to permitting a vessel access to mooring facilities, the Port Administrator may require satisfactory evidence of seaworthiness of the vessel or evidence of adequate insurance coverage.

(d) The Port Administrator may refuse moorage facilities or other services or equipment to any person or vessel in violation of the provisions of this chapter, or delinquent in the payment of any authorized fee or charge.

(e) An owner or operator of a vessel may not fail or refuse to remove the vessel from the City Port facilities and may not cause or permit the vessel to be moored, tied, affixed, or located adjacent to any City Port facilities after the Port Administrator has notified the owner or operator of the vessel that moorage or mooring facilities are refused, terminated, or withdrawn.

(1) Notice of refusal, withdrawal, or termination of facilities or other services or equipment to a vessel that is not registered may be given verbally by the harbormaster and shall be effective immediately.

(2) Notice of refusal, withdrawal, or termination of moorage facilities to a registered vessel may be given by the Port Administrator orally or in writing. Oral notice relating to the services and equipment shall be effective immediately. Oral or written notice personally delivered to the owner or operator relating to the refusal, withdrawal, or termination of mooring facilities shall be effective twenty-four (24) hours after the time of delivery unless a later effective date is specified in writing.

(3) Written notice of refusal, withdrawal, or termination of mooring facilities for a registered vessel may be mailed to the address designated on the registration information or may be posted in a conspicuous place on the vessel. A written notice that is posted or mailed shall be effective at four-thirty p.m. on the fifth (5th) day following posting or mailing of such notice.

18.08.060. Storage areas.

(a) Areas designated by the Port Administrator shall be available for lease for the storage of cargo, **equipment or materials** received at the City Port ~~and awaiting further transportation~~. A person desiring to utilize a storage area shall first register with the Port Administrator and provide the requested information regarding the description and quantity of items to be stored, as well as the anticipated period for storage. **Any lease for the storage of cargo, equipment, or materials on City property must be approved by resolution by the City Council.**

(b) The lessee of storage space at the City Port shall be responsible for the security of all stored items. The City provides storage space as a lessor, and shall not act as bailee of any stored items.

(c) Rent shall be charged for storage area space used to store items for a period longer than any initial free period the Council may establish.

(d) The Port Administrator may impound and remove any items stored at the City Port outside of a designated storage area, or for which the required rent has not been paid. Violators will be fined **\$300.00** per day for each piece of equipment, chassis, truck, trailer, container, heavy equipment, flat, fuel truck, modular building, boat, containerized vehicle, ATV, outboard motor, snow machine, engine, appliances or other appurtenances. The Port Administrator will dispose of the items, using the procedure for impoundment of vessels described in Section 18.08.070 below.

18.08.070. Impoundment, sale or disposal of vessels and other property.

(a) The Port Administrator may impound a vessel in the City Port that the Port Administrator determines to be (1) derelict; (2) in violation of a provision of this chapter, or (3) delinquent in the payment of moorage or other charges for services rendered to the vessel by the City. The harbormaster may impound a vessel by immobilizing the vessel or by hauling the vessel out of the water and storing it, with all expenses and risks of haul-out and storage to be borne by the owner of the vessel.

(b) Except in the circumstances described in subsection (c) of this section, the Port Administrator shall not haul-out or otherwise impound a vessel without first providing notice and an opportunity for a hearing on the impoundment under this subsection.

(1) At least 15 days before impounding the vessel, the Port Administrator shall (A) post notice of the impoundment on the vessel, in the Port Administrator's office, at the City offices, and at the United States Post Office; and (B) mail the notice by certified mail, return receipt requested, to the last-known address of the registered owner, lienholder, operator, master or agent of the vessel, as identified on the Vessel Mooring Agreement or application for certificate number filed with the Department of Motor Vehicles.

(2) The notice of proposed impoundment shall contain (A) the name and number of the vessel; (B) the name and address, if known, of the registered owner,

lienholder, operator, master or agent of the vessel; (C) the location of the vessel; (D) the reasons for impoundment and, if the vessel was impounded pursuant to subsection (a) above, the date of impoundment; (E) a statement that unless a hearing is requested, the Port Administrator will impound the vessel under this section within fifteen (15) days after the date of the notice; (F) a statement that the right to a hearing will be waived if not timely requested and the Port Administrator may proceed with impoundment and disposition of the vessel by sale, destruction, or other disposition authorized by law; (G) a statement that if the vessel is impounded and not redeemed within thirty (30) days after impoundment, title to the vessel and its contents shall vest in the City and the vessel and its contents will be sold or otherwise disposed of as provided in this title; and (H) the name, address, and telephone number of the Port Administrator or other City representative to be contacted concerning the impoundment.

(3) A person claiming an interest in the vessel may obtain a hearing on the impoundment of the vessel by requesting the hearing in writing at the office of the Port Administrator not more than fifteen (15) days after the date of the notice of impoundment. The hearing shall be conducted by a hearing officer appointed in accordance with 18.08.020(e) (above).

(c) If the Port Administrator determines that the derelict condition of a vessel constitutes a fire or safety hazard to harbor facilities or other vessels, or a pollution hazard to the waters and marine life of the City Port, and that damage from such fire, safety, or pollutant hazard will more likely than not occur within the notice period required under subsection (b) of this section (above), the Port Administrator may take reasonable steps to prevent damage from the fire, safety, or pollutant hazard without prior notice or hearing, including, without limitation, impounding the vessel by immobilizing the vessel or by hauling the vessel out of the water and storing it. Promptly after impounding a vessel under this subsection, the Port Administrator shall give notice of the impoundment in accordance with subsection (b)(1) of this section (above). A person claiming an interest in the vessel may obtain a hearing on the impoundment of the vessel by requesting the hearing in writing at the office of the Port Administrator not more than fifteen (15) days after the date of the notice of impoundment. The hearing shall be conducted by a hearing officer appointed in accordance with 18.08.020(e) (above).

(d) Upon written request by the owner, master, or agent of the vessel, a hearing officer, as designated by the City Manager, in accordance with 18.08.020(e) (above), shall conduct a hearing on the impoundment of the vessel within seven (7) days after the request for hearing. The sole issue before the hearing officer shall be whether there is probable cause to impound the vessel. Probable cause to impound shall mean a state of facts that would lead a person of ordinary care and prudence to believe that one or more of the grounds stated in subsection (a) of this section (above) for impounding the vessel has occurred and is continuing. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by the technical rules of evidence. Any person claiming an interest in the vessel may appear, present evidence, and cross-examine witnesses. The hearing shall be recorded. Within seven (7) days after the conclusion of the hearing, the hearing officer shall prepare a written decision whether to impound the

vessel, or, in the case of a post-impoundment hearing, whether to release the vessel from impoundment, stating the reason for the decision. The hearing officer shall provide a copy of the decision to each person who appeared at the hearing and claimed an interest in the vessel. The hearing officer's decision has no effect on any criminal proceeding for the violation of this chapter.

(e) Any person aggrieved by the Port Administrator's decision under subsection (d) of this section (above) to impound a vessel or not to release a vessel from impoundment may appeal the decision to the superior court within thirty (30) days after the date the decision was mailed or delivered to the parties. Unless the court orders otherwise, the Port Administrator may impound a vessel under this section immediately after issuing a decision approving the impoundment, but may not sell or otherwise dispose of the vessel until either the court affirms the decision, or the time for appeal expires without an appeal having been filed.

(f) An impounded vessel, and its registered owner, master, or agent shall be jointly and severally liable for the costs of hauling out, storing, securing, and selling or otherwise disposing of the vessel, as well as the costs of abating any fire, safety, or pollution hazard that is caused by the vessel.

(g) A vessel that is impounded under this section shall be held by the City for a period of not less than thirty (30) days. After impounding a vessel, the Port Administrator shall determine whether to sell or to otherwise dispose of the vessel. The Port Administrator shall sell the vessel unless the Port Administrator determines that the market value of the vessel does not exceed the amount owed from the vessel to the City plus the costs of the sale, or that the vessel is a derelict and unlikely to be returned to a safe and seaworthy condition. If the amount owed from the vessel plus the costs of the sale do not exceed \$10,000, the Port Administrator may estimate the market value of the vessel to make this determination. Otherwise, the Port Administrator shall make the determination after obtaining an independent marine survey of the market value of the vessel from a qualified ~~appraiser~~ marine surveyor. If the vessel need not be sold, the Port Administrator may destroy or otherwise dispose of the vessel. The owner of the vessel shall be liable for the costs of destroying or otherwise disposing of the vessel.

(h) The Port Administrator shall give notice of the City's intent to sell or dispose of an impounded vessel in the manner provided in subsection (b) of this section at least ten (10) days before the date of sale or disposal. The notice shall state the name and number of the vessel, the name and address, if known, of the registered owner, master or agent of the vessel, the lienholder, if known, the location of the vessel, that the Port Administrator has impounded the vessel under this section, that the Port Administrator intends to sell or dispose of the vessel on a day and at a place and time certain, and the requirements for a person claiming an interest in the vessel to reclaim the vessel. If the vessel is to be sold, the notice shall describe the vessel to be sold, state any required terms of the sale and any required minimum sale price, and the date, time, and place where bids will be received. This notice shall also be published in a newspaper of general circulation in the City once at least ten (10) days prior to the date of the sale or disposal of the vessel.

(i) At any time prior to the sale or disposal of the vessel, a person claiming an interest in an impounded vessel may reclaim possession by paying to the City all charges against the vessel to the date possession is reclaimed, including any interest owed; provided that, if the Port Administrator determines that an impounded vessel is a derelict and unlikely to be returned to a safe and seaworthy condition, the Port Administrator may refuse further moorage of the vessel, and condition the return of possession of the vessel on the claimant making satisfactory arrangements to remove the vessel from the City Port, and providing the City with security acceptable to the port administrator for the vessel's proper and timely removal.

(j) The City may offer an impounded vessel for sale at public auction or by sealed competitive bid. Continued moorage of the vessel in the City Port after sale shall be at the discretion of the Port Administrator. If the City intends to refuse further moorage of the vessel, the notice of sale shall so state, and the sale shall be conditioned upon the purchaser making satisfactory arrangements to remove the vessel from the harbor, and provide the City with security acceptable to the Port Administrator for the vessel's proper and timely removal. The sale by the City of an impounded vessel shall be without warranty as to title or otherwise, if the City receives no acceptable bids for the vessel, the Port Administrator may destroy or otherwise dispose of the vessel.

(k) The proceeds of the sale of an impounded vessel shall be applied first to any fees or charges owed to the City on account of the vessel, including reimbursement for all costs of impoundment and sale. Any part of the proceeds remaining thereafter shall be made available to the owner of the vessel if claimed within thirty (30) days from the date of sale, and if not so claimed shall become the property of the City.

Section 2. This ordinance is of a permanent and general character and shall be included in the Emmonak Municipal Code.

Section 3. This ordinance shall take effect immediately upon adoption.

ENACTED THIS 9th DAY OF February, 2016.



Wilbur Hootch, Mayor

SIGNED AND ATTESTED TO THIS 10th DAY OF February, 2016.



Shannon Andrew, City Clerk

[AFFIX CITY SEAL HERE]

First Reading: January 19, 2016

Second Reading: January 25, 2014

Public Hearing: February 9, 2016