

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2021-03

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING UNALASKA MUNICIPAL CODE TITLE 18

BE IT ENACTED by the City Council of the City of Unalaska:

Section 1: Form. Sections 2-15 of this ordinance are a Code ordinance.

Section 2: Amendment of Section 18.04.020. Section 18.04.020 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.04.020 STATE REGULATIONS ADOPTED.

To the extent that they are not inconsistent with any provisions of this title, the regulations contained in the Alaska Administrative Code, Title 17, Chapter 80, "Water and Harbors," pertaining to the operation of harbors and harbor facilities, are adopted by reference and made a part of this title with the following changes:

A. All references to "commissioner" shall mean "Port Director".

B. All references to "state harbor facility" shall mean. "Unalaska port facility".

Section 3: Amendment of Section 18.04.030. Section 18.04.030 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck] RESERVED FOR CONSIDERATION OF MINOR OFFENSE ENFORCEMENT MECHANISM.

Section 4: Amendment of Section 18.04.040. Section 18.04.040 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.04.040 DEFINITIONS.

The following terms shall have the following meanings for purposes of this title:

(~~Θ~~ A) "ALASKA TIDELAND SURVEY (ATS)." "Alaska Tideland Survey" or "ATS" means that platted surveyed, monumented and recorded tidal and submerged land areas that reflects a specific horizontal shore side boundary and depth to the approved director's line, established by the Director of Division of Lands, Alaska Department of Natural Resources.

(~~P~~ B) "AUTHORIZED EMERGENCY VESSELS." "Authorized Emergency Vessels" means any authorized vessel of the Port Director, Harbormaster, City of Unalaska, the United States Government and State of Alaska authorized patrol vessels.

(C) "DEPUTY PORT DIRECTOR" means the duly retained Deputy Port Director of the City of Unalaska, Alaska or his or her designated representatives.

(A ~~D~~) “DERELICT.” “Derelict” means any vessel moored or otherwise located in the boundaries of the port or at port facilities that is forsaken, abandoned, deserted, or cast away; or that by appearance gives evidence of being forsaken, abandoned, deserted, or cast away, or that is unsound, unseaworthy, and unfit for its trade or occupation, and that by any substantial evidence of neglect may be considered abandoned.

(~~G~~ E) “HARBORMASTER.” “Harbormaster” means the duly retained Harbormaster of the City of Unalaska, Alaska, or his or her designated representatives.

(F) “HARBOR OFFICER” means the duly retained Harbor Officer(s) of the City of Unalaska, Alaska.

(~~E~~ G) “LOADING AREAS.” “Loading Areas” means those approaches and designated areas of any float or dock that are posted and marked for use by the general public for the purpose of loading and unloading of supplies, equipment and stores.

(~~F~~ H) “MOORING FACILITIES RESERVATION FEE.” “Mooring Facilities Reservation Fee” is that fee which is charged to a vessel operator, in consideration for being granted a reserved mooring space in the port facilities.

(~~G~~ I) “MOORING FACILITIES USE FEE.” “Mooring Facilities Use Fee” is that fee charged to a vessel operator for the use of an open mooring space in the port facilities or a vacant reserved mooring space.

(~~H~~ J) “NUISANCE.” “Nuisance” means any condition which creates a danger, health hazard, attractive nuisance, a hazard to foot traffic on city floats and docks, or otherwise impedes the safe negotiation of docks, floats, and other facilities, by foot traffic, including defecation by a pet or other kept animal on a city float, dock or other port facility, or unnecessary and avoidable noise, such as loud music, between the hours of 10:00 p.m. and 7:00 a.m., and that disturbs the quiet enjoyment of users of the port or residents of the City of Unalaska.

(~~I~~ K) “OPEN MOORING SPACE.” “Open Mooring Space” means mooring space that has not been set aside and posted as a reserved mooring space and which is available on a “first-come-first-served” basis.

(~~J~~ L) “PORT.” “Port” means the International Port of Dutch Harbor, and includes, but is not limited to, all port facilities and waters within the jurisdiction of the City of Unalaska as defined by the city limits of the City of Unalaska.

(~~B~~ M) “PORT DIRECTOR.” “Port Director” means the duly appointed Port Director of the City of Unalaska, Unalaska or his or her designated representatives.

(~~D~~ N) “PORT FACILITIES.” “Port Facilities” are those improvements and their appurtenant areas within the jurisdiction of, and owned by, the City of Unalaska and that are adapted to the purpose of securing and/or servicing vessels. The term includes, but is not limited to, docks, mooring devices, floats, fingers, stalls, gridirons, and other appurtenances.

(~~K~~ O) “RESERVED MOORING SPACE.” “Reserved Mooring Space” means mooring space which has been set aside and posted for long-term mooring with the prior knowledge and approval of the Harbormaster, following payment of the appropriate fee.

(~~N~~ P) “TIDAL AND SUBMERGED LAND.” “Tidal and Submerged Land” or Tide and Submerged Land means those lands which are periodically covered by tidal waters between the elevation of

~~mean high and mean low tides that water covered area affected by the influence of the tidal action and those lands that are always submerged beneath the water.~~

(~~L~~ Q) "VESSEL." "Vessel" means watercraft of every kind and descriptions, including but not limited to boats, barges, houseboats, rafts, ships and skiffs.

(~~M~~ R) "VESSEL OPERATOR." "Vessel Operator" means the actual or registered owner, master, managing agent, person in navigational control of, and any other person responsible for the physical operation of the vessel.

Section 5: Amendment of Subsection 18.08.010(A). Subsection 18.08.010(A) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deletions are overstruck]

18.08.010 PORT DIRECTOR.

(A) The Port Director shall attempt to enforce all of the provisions of this title and any rules and regulations duly adopted hereunder. ~~In the performance of such enforcement the Port Director shall have all of the powers of a peace officer of the city.~~ The Port Director may delegate enforcement authority to the Deputy Port Director.

Section 6: Amendment of Subsection 18.08.020(A). Subsection 18.08.020(A) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deletions are overstruck]

18.08.020 HARBORMASTER.

(A) The Harbormaster shall attempt to enforce all of the provisions of this title and any rules and regulations duly adopted hereunder. ~~In the performance of such enforcement the Harbormaster shall have all of the powers of a peace officer of the city.~~ The Harbormaster may delegate enforcement authority to any Harbor Officer.

Section 7: Amendment of Subsection 18.08.030(A). Subsection 18.08.030(A) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deletions are overstruck]

18.08.030 REGISTRATION.

(A) Every vessel operator using the port facilities is required to register ~~his~~ their name, telephone number, post office address, street address, the name and state or federal certificate of number of the vessel, its length, its breadth, and its registered tonnage, if any, and any other information deemed necessary, with the Harbormaster on forms to be provided ~~by him~~ for that purpose. Vessel operators shall immediately notify the Harbormaster in writing of any changes in this information.

Section 8: Amendment of Section 18.08.080. Section 18.08.080 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]:

18.08.080 CITY OWNED TIDELANDS.

(A) The City of Unalaska has received, through patent, selected tidal e and submerged land areas from the State of Alaska. The areas are indicated by Alaska Tideland Surveys (ATS). The continued use of the city owned areas by private companies through the construction of permanent docks, wharfs, fish processing out-fall lines, and seawater in-take lines ~~is accommodated by~~ requires a specific lease agreement with the City of Unalaska as outlined in Title 7.16, UCO.

(B) The utilization of Alaska Tideland Survey areas ~~are~~ is subject to on-site lease compliance checks by the Harbormaster to ~~insure~~ ensure that lease terms are complied with. The field checks may be done in conjunction with the Department of Planning. ~~Citations may be issued if substantial violations are noted and not corrected.~~

Section 9: Amendment of Section 18.12.010. Section 18.12.010 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.12.010 POLLUTION AND SANITATION.

Every vessel operator using the port or any port facility shall:

(A) Use all reasonable precautions in keeping the vessel in his or her charge in a reasonably clean and sanitary condition;

(B) Refrain from pumping ~~bulges~~ bilges and sanitary holding tanks into the waters of the port, or otherwise allowing any petroleum products, bilge water, raw sewage, or other pollutants to be introduced into the waters of the port;

(C) Refrain from throwing or allowing to be introduced into the waters of the port any garbage, wood, pallets, plastic, or other waste. Materials stored or stacked on a vessel's deck shall be secured in such a way as to ~~insure~~ ensure that the wind cannot blow materials from the vessel into the waters of the port; and

(D) Comply with all applicable state or federal laws and regulations regarding pollution, waste disposal and sanitation. ~~;, which are incorporated herein by reference.~~

Section 10: Amendment of Section 18.12.020. Section 18.12.020 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.12.020 SAFEGUARDING.

(A) ~~Vessels~~ Vessel operators shall not anchor a vessel in such a way as to endanger other vessels moored or at anchor. Should a conflict arise between anchored vessels, the previously anchored vessel shall have right-of-anchorage, and the subsequently anchored vessel shall have the burden of changing anchorage.

(B) Vessel operators shall ~~insure~~ ensure that each vessel in their charge has sufficient scope and ground tackle to preclude dragging of the anchor in all weather conditions.

(C) Vessel operators, while anchored within the port, shall maintain a radar or visual watch from the bridge of the vessel to ~~insure~~ ensure that each vessel in their charge maintains its position.

(D) Vessel operators shall maintain a radio watch on VHF channel 16 while anchored in the port.

(E) Vessel operators shall obtain permission from the Harbormaster before anchoring in a fairway, and shall move anchorage immediately at the request of the Harbormaster.

(F) Mooring buoys shall be of a sort approved by the U.S. Army Corps of Engineers, and ground tackle for buoys shall be of sufficient size to preclude movement off position in all weather conditions. If a mooring buoy is moved off position, the owner of the buoy shall increase the size and weight of the buoy's anchoring system and move the buoy back into position as soon as possible.

(G) Mooring buoys shall be white in color, with a horizontal blue band midway between the waterline and the top of the buoy. Mooring buoys shall be maintained in such a way, through painting, lighting, or other means to maximize their visibility at night.

(H) Vessel operators shall use all reasonable precautions in keeping each vessel in their charge free from fire hazards of any type or nature.

(I) Vessel operators shall use all reasonable efforts and precautions to keep each vessel in their charge well and securely moored with lines in reasonably fit condition and of a sufficient diameter and number to ~~insure~~ ensure that the vessel will remain securely moored under all weather conditions.

(J) Vessel operators shall ~~insure~~ ensure that each vessel in their charge is sufficiently pumped so as to remain afloat and not be in danger of sinking, and shall otherwise attend to the needs of each vessel.

Section 11: Amendment of Section 18.16.020. Section 18.16.020 of the Unalaska Code of Ordinances is hereby amended to read as follows: [deletions are overstruck]:

8.16.020 MOORING FACILITIES ~~RESERVATION~~ FEE.

(A) Vessel operators who have applied for and been granted a reserved mooring space shall be required to pay a mooring facilities ~~reservation~~ fee.

(B) The mooring facilities ~~reservation~~ fee schedule applicable to mooring spaces located within each port facility shall be set out in that facility's operating plan.

(C) Individuals who wish to cancel their reservations to their mooring or stalls, upon notification to the Harbormaster of their intention, shall be allowed a rebate of the fee paid, if and to the extent permitted by that facility's operating plan.

(D) The vessel operator of a vessel that is being occupied, lived on, rented or leased as a place of human habitation or a primary residence shall be charged the regular fee for a reservation of a mooring space plus an additional fee to be set by ordinance per calendar month. This additional fee is payable on a monthly basis in advance on the first day of each calendar month.

The city may waive the additional monthly fee if the vessel operator or occupant notifies the Harbormaster in writing prior to the calendar months in question, stating the dates that the vessel will be vacant, and that the vessel will be occupied for less than 15 days in the calendar month, and that the vessel is no longer used as a primary residence during that period.

Section 12: Amendment of Subsection 18.20.010. Subsection 18.20.010 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.20.010 IMPOUNDMENT.

(A) The Harbormaster may take ~~immediate~~ possession and/or impound and remove any vessel within his jurisdiction:

- (1) To abate derelicts and nuisances;
- (2) For failure to comply with the registration provisions of this title;
- (3) That is ~~is~~ obstructing port traffic and the vessel operator is unable, fails or refuses to immediately attend to and remove the vessel such that it no longer obstructs port traffic;
- (4) Whose operator reasonably appears incapable of safely operating the vessel or appears incapable of directing the disposition of the same;
- (5) Whose operator refuses to properly identify ~~himself/herself~~ themselves upon lawful request of the Harbormaster, or refuses or fails to obey an order of the Harbormaster to proceed to or from an area following issuance of a citation or in an emergency;
- (6) Whose operator operates a vessel in a reckless manner under § 18.20.030, in a negligent manner under § 18.12.040, or in another manner so as to endanger the safety of others or to unreasonably interfere with the navigation of other vessels, and the Harbormaster believes such operation would continue unless possession of the vessel be taken;
- (7) That is moored in a reserved mooring space assigned to another after reasonable efforts were made at attempting to contact the vessel operator to move the vessel in question, or who, after receiving notification to move the vessel, refuses to do so;
- (8) That is moored at a loading area or launch ramp area for a period of time longer than permitted;
- (9) That is ~~is~~ in imminent danger of sinking; ~~and or~~
- (10) That constitutes a fire hazard to itself, port facilities or other property.

(B) When taking possession or impounding as authorized by ~~subsection (A) of this section~~, this Chapter the Harbormaster may impound the vessel in place by chaining or otherwise mooring it to a float or other suitable object, or if practical by removing it from the water and placing it in either city or commercial land storage. Vessels not practical to impound by moving, mooring or removing from the water may be impounded by posting a notice of impoundment in the places set out in § 18.20.030.

(C) The Harbormaster may appoint a custodian to maintain and safekeep the vessel while it remains impounded. In the discretion of the Harbormaster, such custodian may be the operator of the vessel.

(D) Upon impoundment of a vessel, it shall be unlawful for any person:

(1) To move, load, unload, rebuild, or enter upon such vessel without written permission from the Harbormaster, other than for necessary maintenance and repair to prevent deterioration of the same or sinking; and

(2) To remove, mutilate, destroy or conceal any notice or sign posted by the Harbormaster pursuant to this section.

Section 13: Amendment of Subsection 18.20.030. Subsection 18.20.010 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.20.030 NOTICE OF IMPOUNDMENT.

(A) ~~Immediately upon~~ At least ten (10 days prior to impounding any vessel, the city shall cause to be posted on the vessel and in five public locations throughout the city a notice of such action to be taken by the city. A copy of the notice shall be mailed, by registered or certified mail, to each affected vessel operator at his/~~her~~ their address of record and to all other persons known to have an interest in the vessel, including all ~~lienholders~~ lienholders shown on the records of a state or federal agency. ~~If the vessel is documented under the laws of the United States, notice shall also be sent to the collector of customs of the port of documentation, if such can be reasonably ascertained.~~

(B) The notice required by this section shall contain the name and/or number of the vessel; the name and address, if known, of the vessel's owner and each operator; and the vessel's location. The notice shall further state the grounds upon which the vessel is being impounded, and the proposed disposition of the vessel. The notice shall further state that any person with a property interest in the vessel may request a hearing as provided in this chapter.

Section 14: Amendment of Section 18.20.040. Section 18.20.040 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.20.040 HEARING AFTER BEFORE IMPOUNDMENT.

(A) Any person with a property interest in an impounded vessel may obtain a prompt hearing before the Port Director before the vessel is impounded to determine whether there is probable cause to impound the vessel by ~~submitted~~ submitting a written request for a hearing at least no later than 10 days prior to public sale of the vessel after receipt of notice of impoundment or after the person has learned such vessel will be impounded whichever comes first.

(B) At the hearing, the Port Director shall review whether ~~proper grounds~~ probable cause exists for impounding the vessel. "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. Any person with a property interest in the vessel may present evidence, call witnesses, and present argument as to the impoundment, its propriety and/or release of the vessel. The city may also present evidence, call witnesses and present argument in response. If it is determined that probable cause to impound exists the City may proceed to impound and sell or destroy the vessel as provided in UCO 18.20.050.

(C) At any time prior to sale, tThe Port Director ~~shall~~ may release the vessel from impoundment to the owner or operator of the vessel upon such terms and conditions as the Port Director in ~~his/her~~ their discretion finds will abate the nuisance or other cause for impoundment, otherwise remedy the reason for impoundment, and reimburse and compensate the city for expenses owing pursuant to § 18.20.020.

(D) The written decision of the Port Director is a final administrative decision when mailed to each party requesting a hearing, and may be appealed only to the Superior Court. Any appeal must be commenced within thirty (30) days of the date of mailing of the decision.

Section 15: Amendment of Section 18.20.060. Section 18.20.060 of the Unalaska Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

18.20.060 ABATEMENT OF NUISANCES.

(A) Upon the Harbormaster's written determination that a condition described in UCO 18.20.010(A) exists that constitutes a clear and present danger to the public health, safety or general welfare, the nuisance may be summarily abated by the Harbormaster without prior notice. The Harbormaster may take immediate possession and/or impound and remove any nuisance or property creating a nuisance on port facilities property.

(B) All ~~other~~ personal property, including but not limited to machinery, equipment, gear, appliances and furniture, placed or stored on port facilities property without the express permission of the Harbormaster shall be considered to be a hazard and a hindrance to the public use of port facilities. Such property shall be subject to impound if not removed, or written permission from the Harbormaster for such placement or storage is not received, within 24 hours of placement on port facilities property.

(C) Immediately upon impounding any property, the city shall cause to be posted on the property and in five public locations throughout the city a notice of such action. A copy of the notice shall be mailed, by registered or certified mail, to the person who the Harbormaster determines through the exercise of due diligence is the owner of the property and to all other persons known to have an interest in the property

(~~C~~D) Property impounded under this section shall be subject to an impound fee to be set by ordinance, plus all costs of impoundment including labor, and a storage charge to be set by ordinance for each day the property remains in the Harbormaster's possession. All impound charges and fees shall be paid in full and in certified funds, before the Harbormaster may release the impounded property to its owner.

(E) A person with a property interest in impounded property may obtain a prompt hearing before the Port Director by submitting a written request for a hearing no later than 10 days after receipt of notice of impoundment or learning of the impoundment whichever is earlier. If following the

hearing it is determined the property was improperly impounded it shall be released to the property owner.

(~~D~~ E) In the event property impounded under this section remains impounded for 90 days after written notice of impound is issued to the person who the Harbormaster determines through the exercise of due diligence is the owner of the property and impound charges and fees remain unpaid, the Harbormaster may sell the property at public auction to the highest and best bidder. Such sale shall be conducted pursuant to a procedure generally similar to that set forth in § 18.20.060 for sale of impounded vessels. If impounded property is without value, it shall be destroyed and otherwise disposed.

(~~E~~ G) Upon impoundment of property, it shall be unlawful for any person:

(1) To take, move, or access such property without written permission from the Harbormaster ~~pursuant to this section.~~

(2) To remove, mutilate, destroy or conceal any notice or sign posted by the Harbormaster pursuant to this section.

Section 16: Effective Date. This ordinance shall be effective upon adoption.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on January _____, 2021.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Peggy McLaughlin, Port Director
Through: Erin Reinders, City Manager
Date: January 12, 2021
Re: Ordinance 2021-03 Amending Title 18

SUMMARY: Ordinance 2021-03 is a code ordinance. By passing this ordinance, City of Unalaska (COU) Code will be amended to align COU Title 18 with Alaska Administrative Code, Title 17, Chapter 80, "Water and Harbors", to address processes for abandoned and derelict vessels, and to correct minor grammar errors. This is the legal foundation for COU Ports and Harbors authorities, operating plans, and the framework for establishing fees and services. It is recommended that Council adopt Ordinance 2021-03.

PREVIOUS COUNCIL ACTION: Council reviewed and amended Title 18 in 1993. In 2016, Council amended Title 18.12.04-09.

BACKGROUND: Most of our COU Code Ordinances refer to the Alaska Administrative Code. Title 18 has not been reviewed thoroughly since 1993. Alaska Administrative Code has had some changes, including processes for Abandoned and Derelict vessels, and our enforcement processes have changed locally. This Title is long overdue for review for consistency with the Alaska Administrative Code.

DISCUSSION: The proposed changes in Title 18 allow for Ports and Harbors to conduct business more efficiently, to consistently align with the Alaska Administrative Code, and to provide consistency between other COU Codes and Title 18.

The simplest changes come in the form of corrections of misspellings, misuse of words, and poor grammar. Additionally, there are changes and additions to align with other titles. As an example, Deputy Director is to be included, and is referenced in Title 2 Administrative Code and succession plans. "Tidal and Submerged Lands" are redefined to be consistent with Title 8 Planning Code definitions.

Alaska Senate Bill 92 passed into law an Abandoned and Derelict vessel program. "An Act relating to abandoned and derelict vessels; relating to the registration of vessels; relating to certificates of title for vessels; relating to the duties of the Department of Administration; relating to the duties of the Department of Natural Resources; establishing the derelict vessel prevention program; establishing the derelict vessel prevention program fund; relating to the authority of certain persons to enforce laws relating to derelict vessels; and providing for an effective date."

A great deal time was spent reviewing the processes outlined in Title 18 for Ports to manage Derelict and Abandoned vessels. The changes provided clarify a fair and efficient process for both vessel owners and Port personnel.

ALTERNATIVES: Council could choose to not adopt these Code changes. The Alaska Administrative Code would still prevail. Council could choose to wait and further review or recommend additions or other changes.

FINANCIAL IMPLICATIONS: There is no immediate direct financial impact by changing Title 18. This code does give Ports and Harbors authority to charge for fees and services, but does not detail those fees and services.

LEGAL: COU City Attorney has been part of drafting and reviewing this Code Ordinance.

STAFF RECOMMENDATION: Staff recommends adopting Ordinance 2021-03.

PROPOSED MOTION: Recommend adopting Ordinance 2021-03 and moving to a Second Reading on January 26, 2021.

CITY MANAGER'S COMMENTS: City Manager recommends approval

ATTACHMENTS: Ordinance 2021-03