

PROPOSED CITY COUNCIL ORDINANCE ON PERSONAL WATERCRAFT

Whereas, the Alaska Department of Fish and Game has repealed the Personal Watercraft (PWC) prohibition for Kachemak Bay and Fox River Flats Critical Habitat Areas (5 AAC 95.310); and

Whereas, this rule change includes no restrictions on use of PWC around the sensitive tidelands and submerged lands owned by the City of Homer that are the critical habitat for shorebirds, salmon, marine mammals and shellfish; and

Whereas, the rule change includes no restrictions to protect the health, safety, and property of other users in City tidelands; and

Whereas the rule change includes no provisions to ensure compatibility with other users in City tidelands such as sport- and substance fishing, kayaking, surfing, stand up paddle boarding, wildlife viewing; and

Whereas, most states and many coastal cities restrict use of personal watercraft to particular areas, times of day, age of users, and it against US Coast Guard Regulations to operate a Personal Watercraft between sunset and sunrise;^{1 2} and

Whereas, the City of Homer owns most of the tidelands within City limits and “it is unlawful for any person to commit waste or other injury upon City-owned tideland and contiguous submerged land” (18.28.200 Waste or injury to land); and

Whereas, the City of Homer Comprehensive Plan states that “growth will need to be guided to meet Homer’s concerns about protecting community character and the quality of the environment;” and

Whereas, the City of Homer owns parcels on the Homer Spit—of a total of approximately 133 acres—that have conservation easements to protect habitat, particularly shorebird habitat in sensitive areas; additionally a portion of Louie’s Lagoon has a conservation easement held by the Kachemak Heritage Land Trust; the Nature Conservancy donated a 2.62 acre parcel along the Homer Spit to the city;³ and

¹ <https://www.boatingsafetymag.com/boatingsafety/personal-watercraft-safety>

² <http://www.nasbla.net/referenceguide/index.php?queryID=4.6>

³ https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/city_manager039s_office/page/7387/2021_land_allocation_plan.pdf

Whereas, the Homer Spit is a popular place for sport and subsistence fishing, standup paddle boarding, kayaking, surfing, and wildlife viewing;^{4 5}and

Whereas, Kachemak Bay—including the City of Homer’s tidelands—is a home and critical stopover for hundreds of thousands of shorebirds has been designated by Audubon Alaska as an Important Bird Area is also a Western Hemispheric Shorebird Reserve Network Site of International Importance; and

Whereas, the Kachemak Bay Shorebird Festival is Alaska’s largest wildlife viewing festival with over 900 annual visitors and a significant portion of their activities occur around the City-owned tidelands;⁶ and

Whereas, PWC are lighter and have a shallower draft than most boats and are therefore operable closer to shore and in shallower waters (U.S Department of the Interior, 1998); and

Whereas, operation in shallow waters damages sensitive habitats, increases turbidity, and pushes animals out of their habitats;^{7 8} and

Whereas, the intensive activity characteristic of PWC has been shown to push fish and wildlife out of their habitats (Snow, 1989; Gentry, 1996; Richardson et al., 1995; Szaniszlo 1999.; Miller 2008); and

Whereas, personal watercraft have a higher rate of collision than any other type of boat according to the US Coast Guard and the National Transportation Safety Board;⁹ and

Whereas, National Transportation Safety Board reports that over 80% of boaters and PWC users have never received any type of boating instruction (1998) and the

⁴ https://www.adfg.alaska.gov/static/fishing/PDFs/sport/byarea/southcentral/homer_shore-based_fishing.pdf

⁵ <https://thekenai.wordpress.com/tag/stand-up-paddleboarding-homer-alaska/>

⁶ <https://kachemakshorebird.org/>

⁷ <https://www.sea-doo.com/us/en/owner-zone/safety/social-responsibility.html>

⁸ <https://www.boatus.org/study-guide/activities/pwc/>

⁹ Safety Study: Personal Watercraft Safety, NTSB/SS-98/01, PB98-917002; Recreational Boating Statistics 2008, COMDTPUB P16754.21, U.S. Dept. of Homeland Security, U.S. Coast Guard, Office of Auxiliary and Boating Safety; “Why Are There So Many PWC Accidents? And How Can They be Avoided? ” <https://www.boatus.com/>

American Red Cross reports that PWC use is highest among boaters with little or no experience (American Red Cross 1991, Mangione et al. 2000); and

Whereas, according to the US Coast Guard and Boat US, PWC can take up to 300 feet to stop from 60 mph and generally cannot be steered without using the throttle, as the great majority of them lack rudders and even those with rudders are difficult to steer without throttle;^{10 11 12} and

Whereas, neither the City of Homer, nor the State of Alaska, nor NOAA, nor the US Coast Guard, have a budget or personnel dedicated to the manage personal watercraft use in Kachemak Bay to protect the health, safety, and private property; and

Whereas, the City of Homer restricts uses of City lands to protect people and property, to reduce conflicts of user groups, and to protect the natural environment, through restrictions on snowmachine use (7.20.030 Use of snowmachines); closure of beaches to vehicles (Ordinance 16-05(S-2)(A-2)); restrictions on conveyance of tidelands and submerged lands (18.28.210 Additional tide and submerged land); and environmental restrictions on vehicles without mufflers (7.06.010 Motor vehicle muffler and exhaust system);

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer Alaska Enacts the following ordinance:¹³

PURPOSE.

The purpose of this ordinance is to limit potential conflicts between uses of the coastal waters of Homer, eliminate adverse impacts to the diverse and abundant species found in Kachemak Bay, and to promote overall public safety.

SCOPE

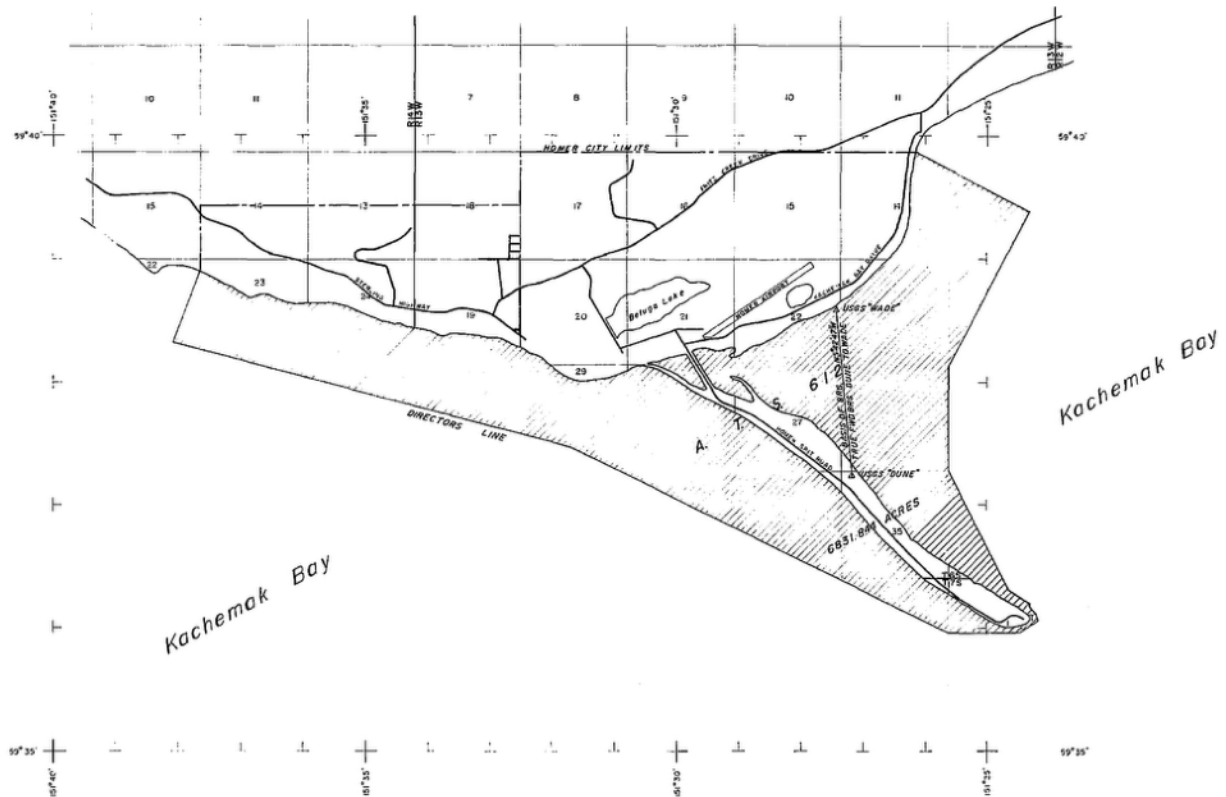
All tidal and contiguous submerged lands within or seaward of the boundaries of the City from the meander line as established on ATS 612 and seaward to a line agreed upon by the City and the State and shown on ATS 612. These regulations pertain to the use and disposal of City-owned tide and contiguous submerged land.

¹⁰ “Why Are There So Many PWC Accidents? And How Can They be Avoided?” <https://www.boatus.com/>

¹¹ <https://www.boatingsafetymag.com/boatingsafety/personal-watercraft-safety>

¹² <https://www.boatus.org/study-guide/activities/pwc/>

¹³ Structure of ordinance adapted from City of San Francisco’s ordinance: <https://ilsr.org/rule/noise-pollution/2448-2/>



Plat from ADNDR's Recorder's Office: <http://dnr.alaska.gov/ssd/recoff/search/docdisplay?>

DEFINITIONS

- (a) "Submerged land" means land covered by tidal water from the elevation of mean low water seaward to the corporate boundary of the city.
- (b) "Tideland" means land that is periodically covered by tidal water between the elevation of mean high water and mean low water.
- (c) "Waste or injury to land" means the disturbance of ground cover, damage to vegetation, littering or dumping of waste, removal of or damage to any material from a berm, or use of a vehicle in areas designated as prohibited to vehicles. [Ord. 01-38, 2001. Code 1967 § 21-100.4].

(d) "Personal watercraft" means:

158; repealed 1 / 9 / 2021, Register 237)

5 AAC 95.552(b) is amended to read:

(b) In this section, "personal watercraft" means a vessel that is

(1) less than 16 feet in length;

(2) propelled by a water-jet pump or other machinery as its primary

source of motor propulsion; and

(3) designed to be operated by a person sitting, standing, or kneeling

on the vessel, rather than by a person sitting or standing inside it [HAS THE

MEANING GIVEN IN 5 AAC 95.310(b)]. (EFF. 8/6/2010, Register 195; and 1/9/2021,
Register 237)

Authority: AS 16.05.020

AS 16.20.020

AS 16.20.050

AS 16.05.050

AS 16.20.030

AS 16.20.060

(e) "Operator" means the person on board who is steering the vessel while underway.

(f) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

(g) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except either a seaplane on the water or a watercraft specifically designed to operate on a permanently fixed course.

PROHIBITED USE OF PERSONAL WATERCRAFT IN SPECIAL USE AREA.

Personal watercraft shall only be launched from the City of Homer Harbor boat ramp, and are subject to the same launch fees as other vessels.

The tidelands and submerged lands owned by the City of Homer shall be designated a Special Use Area.

Personal watercraft shall not be operated in the Special Use Area except through 200 ft.-wide corridor designated to access waters outside these bounds, or by the most direct route consistent with safety considerations. Personal watercraft operators shall not exceed a speed of 5 mi/hr within that corridor.

Personal watercraft operators are required to wear a personal floatation device and complete a boating safety course, as offered through the State of Alaska, Department of

Natural Resources, Water Wise Program¹⁴ and shall be required to carry certificate of completion while operating vessel;

No person shall launch a personal watercraft from the City of Homer between sunset and sunrise.

No person under 16 years of age may launch a personal watercraft from the City of Homer.

The restrictions imposed by this Section shall not apply to the use of personal watercraft by Fire Department, Police Department, or Coast Guard personnel in the performance of search and rescue missions or other emergency or law enforcement operations.

Signs summarizing the relevant provisions of this Article shall be erected where personal watercraft have the ability to launch. These signs shall also provide a telephone number designated to accept calls by the public reporting violations of this Article.

VIOLATIONS; ENFORCEMENT; PENALTIES.

A violation of the provisions of _____ shall be an infraction. Any person found guilty of such an infraction shall be punished by a fine not to exceed \$100 for the first offense; for the second offense committed within a one-year period by a fine not to exceed \$250; for the third and each additional offense committed within a one-year period by a fine not to exceed \$500.

Any person who commits, or proposes to commit, an act in violation of this Article may be enjoined therefrom by any court of competent jurisdiction. Action for injunction under this Section may be brought by any aggrieved person, by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the public.

The city shall cooperate with the U.S. Cost Guard, NOAA, ADF&G, and ADNR to enforce these Articles.

CITIZEN ENFORCEMENT ACTIONS.

Any citizen may commence a civil action on his or her own behalf against any person who is alleged to have violated, or to be in violation of the provisions of this Article. For purposes of this Section, "citizen" shall mean either an individual who resides in the

¹⁴ Joe McCullough, with ADNR is in charge of the program and says: "we offer several courses on boating safety (which includes PWCs). We are also in the process of developing a hands-on module specific to PWCs that we will test this summer. Would love to talk to understand a little more of what you may be looking for. In a nutshell our office offers several types of boating workshops (1-2 hours) that we can modify to meet the needs of the audience. In addition we have the state's nationally approved course which contains PWC elements."

City; or a corporation, partnership or association that maintains its principal office in the City, and which has an interest which is, or may be, adversely affected.

In any action brought under this Section where the City is not a party, the City may intervene as a matter of right. Whenever an action is brought under this Section, the plaintiff shall serve a copy of the complaint on the City Attorney upon filing. No consent judgment or settlement shall be entered in an action in which the City is not a party prior to 30 days following receipt of the proposed consent judgment or settlement by the City Attorney.

The court in issuing any final order brought pursuant to this Section shall award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party who brought the underlying action, when the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought by the citizen, require a filing of a bond or undertaking in accordance with State law and local court rules.

Nothing in this Section shall restrict any right which any person may have under any statute, ordinance, or common law to seek enforcement of any requirement prescribed by or under this Article, or to seek any other relief. Nothing in this Section shall be construed to prohibit or restrict the City from bringing any administrative, civil or criminal action or obtaining any remedy or sanction against any person to enforce any requirement set forth in this Article.

SEVERABILITY.

If any provision, section, paragraph, clause, sentence or phrase of this ordinance, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provisions or application and, to this end, the provisions of this ordinance are hereby declared to be severable.