

Introduced by: Port Commission
Date: July 13, 2004
Public Hearing: July 27, 2004
& Aug 10, 2004
Action: Passed
Vote: 5-1 (No – Trantham)

CITY OF BETHEL, ALASKA

ORDINANCE #04-15

AN ORDINANCE AMENDING THE BETHEL MUNICIPAL CODE TO CREATE A PERMIT SYSTEM TO ALLOW LOGS AND LOG RAFTS TO BE BROUGHT INTO AND OFFLOADED IN THE SMALL BOAT HARBOR, BY AMENDING BETHEL MUNICIPAL CODE SECTION 14.10.040 AND ADDING BETHEL MUNICIPAL CODE SECTION 14.10.045

- WHEREAS**, the Bethel Municipal Code ("Code") at Section 14.10.040M prohibits log rafts and the unloading of logs or firewood in the small boat harbor;
- WHEREAS**, Section 14.10.040M was added to the Code to address the problem of unsecured and unattended log rafts or logs that created a nuisance and potential danger to vessels, harbor facilities (i.e., ramps, docks, floats), and/or a hazard to navigation;
- WHEREAS**, the port commission recognizes that the gathering of firewood and logs for steambaths and/or home heating, and to construct shelters, fish racks, artistic purposes, fences, etc., is important to the citizens of Bethel;
- WHEREAS**, the port commission also recognizes that log rafts and logs brought into the small board harbor could be secured and moored in a manner that does not present a danger to vessels, harbor facilities, and/or a hazard to navigation;
- WHEREAS**, the port commission proposes that the Code at Section 14.10.040M be amended and Section 14.10.045 added to authorize a permit system to be administered by the port director, that will allow for log rafts and logs to be brought into the small boat harbor, secured and moored, and off loaded;
- WHEREAS**, any person issued such a permit shall be strictly liable to the City in accordance with the Code at Section 14.02.070 for any damage to the port facilities or any property owned by the City, without regard to fault or negligence, caused by the log raft or logs while entering into or while in the small boat harbor;
- WHEREAS**, any person issued such a permit shall also agree to sign a written agreement to assume all risk of damage to property or injury to person, and to defend, indemnify and hold the City harmless from any and all claims and damages to his or her own property or property of another person or entity, as well as injuries to persons, including costs and attorney fees, caused by or resulting from any act or failure to act involving the log raft or logs while entering into or while in the small boat harbor; and
- WHEREAS**, the port commission has requested and recommended passage of an ordinance authorizing a permit process which will allow logs and log rafts to be brought into the small boat harbor for offloading purposes.

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BE IT ORDAINED by the City Council of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is permanent in nature and shall be incorporated into the Code.

SECTION 2. Content. Section 14.10.040 of the Code is hereby amended to read as follows:

14.10.040 Classification and use of mooring facilities.

- A. All of the mooring spaces in the small boat harbor can be classified as either open mooring or reserved mooring. The use of either classification of mooring facilities is contingent upon payment of the appropriate fee as set forth in this chapter.
- B. Areas designated as open mooring shall be open to all members of the public. Such areas shall be used primarily for temporary mooring. Open mooring spaces shall be utilized on a first-come, first-serve basis. No boat owner shall have exclusive rights to open mooring space. Should any boat leave, it shall have no exclusive right to return to the same space.
- C. Use of Reserved Mooring Facilities.
 - 1. Every boat owner desiring to guarantee the availability of a mooring space, or to moor temporarily at any vacant reserved mooring space, shall apply to the port director. No such space shall be so reserved or assigned until the mooring fee has been paid.
 - 2. Possession of a reservation for a reserved mooring space does not guarantee the holder any right to exclusive use of the reserved mooring for the duration of the reservation agreement. Possession of a reservation is a guarantee that the reserved mooring shall be available for the use of the holder of the reservation during those periods when the boat is within the small boat harbor facilities. The port director may temporarily assign another boat to a reserved mooring as he determines it expedient when the boat assigned to a reserved mooring is away from the small boat harbor.
 - 3. In the event that the holder of a reserved mooring returns to the small boat harbor facility and finds his reserved mooring occupied, the holder shall contact the port director. The port director will cause the temporarily assigned boat to be moved to another location.
 - 4. The boat owner who possesses a reserved mooring shall not sublease or in any other manner permit the use of the mooring by another boat owner without prior notification of the port director.
 - 5. No property rights are created by this section. The holder shall only have a permit to use the mooring reserved to him as provided for in this chapter.

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6. A waiting list will be maintained by the port director of names of persons requesting reserved moorings at times when no reserved moorings exist. As reserved moorings become available they will be offered to the first name on the waiting list whose LOA fits the criteria for the mooring available.
- D. No boat shall be moored in any area designated by the port director as a loading area any longer than it is necessary for loading/unloading the boat. No unattended boats shall be left at any loading area.
- E. No boat shall block or be moored in any area designated by the port director as a launching area any longer than necessary for launching/hauling out the boat.
- F. Any person moving a boat they do not own shall report to the port director where the boat was moved from, and where the boat has been moved to.
- G. Any person having knowledge of a petroleum spill within the small boat harbor shall immediately report such spill to the port office; if the port office is closed, the spill shall be reported to the police department.
- H. No person shall bring into, moor or berth within the small boat harbor any boat which is unseaworthy or is in such a badly deteriorated condition that it is liable to sink or damage small boat harbor facilities or other boats or which may become a menace to navigation, except in cases of extreme emergency, in which case the boat owner shall be liable for any damage caused by such boat. In the event a boat sinks within the small boat harbor, the boat owner shall mark its location and provide for the raising and disposition of the boat and assume all liabilities for damage to city property and other boats in the small boat harbor.
- I. No aircraft or float plane shall land, operate within, or take-off from the small boat harbor or the entrance thereto.
- J. Vehicles and boat trailers must be removed from the launching areas after the boat has been launched and parked only in areas designated and posted by the port director as parking areas. Vehicles and boat trailers parked in areas not designated and posted as parking areas may be removed and impounded.
- K. Launching or hauling out of boats on skids is prohibited; trailers or other wheeled conveyances shall be used for launching or hauling out boats. Boats shall be launched at designated launching areas only.
- L. Beach storage of supplies, merchandise, or other property of boat owners shall be limited to areas designated by the port director. Boat owners shall obtain a space assignment for storage of property from the port director and pay storage fees in advance.
- M. Except as provided in Section 14.10.045, no logs or firewood shall be unloaded and placed on the beach of the small boat harbor, and no log rafts shall be allowed within the small boat harbor or the entrance thereto.

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N. No vessels will be allowed to be more than one beam's width from the dock.

SECTION 3. Content. The Code at Chapter 14.10 is amended to add a new section to read as follows:

14.10.045 Permit allowing logs or a log raft in the small boat harbor.

- A. Any person may submit a permit application on a form provided by the port director to bring logs or a log raft into the small boat harbor for offloading. The purpose for the logs must be for personal use and not commercial use. Personal use includes use of the logs for home heating, artistic purposes, steambaths, or constructing shelters, fish racks, or fences.
- B. The application must be submitted to the port director at least 24-hours before the requested effective date of the permit. No fee is required to obtain a permit. The port director has the sole discretion to grant, deny, or cancel a permit. The decision of the port director to deny or cancel a permit may only be reversed for abuse of discretion if appealed under subsection I.
- C. The permit will designate the maximum size and number of logs, the location for storing and offloading the logs or log raft, and the rules for transporting, cutting, offloading, and/or removing the logs in the small boat harbor.
- D. A permit allowing logs or a log raft in the small boat harbor expires three days after it is issued. The logs or log raft, as well as all debris from the logs or log raft, must be removed by the expiration of the permit. The permit will only be extended after the three-day period has expired for good cause, which means circumstances beyond the control of the permittee that has prevented the complete removal of the logs, log raft and/or debris from the small boat harbor.
- E. Any logs, log raft, and/or debris that remains after expiration of the permit shall be declared abandoned and a public nuisance, and may be impounded, removed, sold, or otherwise disposed of in the following manner:
1. The port director shall send a registered or certified letter, with a return receipt, notifying the permittee at the address listed on the permit application, that the logs, log raft, and/or debris has been impounded and may be removed, sold or otherwise disposed of, within seven days after the date of the letter, unless the permittee:
 - a. redeems the property by payment of all the charges listed in the letter, which shall include expenses for clearing and storing the logs, log raft, and/or debris; or
 - b. timely submits a written appeal to the port commission under subsection I.
 2. If the property is not redeemed and no appeal is filed, the logs, log raft, and/or debris may be disposed of by public auction if valued by an independent appraiser at over one thousand dollars, or if valued at one thousand dollars or


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less, may be disposed of as junk, donated to a governmental agency, local non-profit agency, or destroyed.

- F. The permittee is liable for any expenses incurred by the city for the removal, storage, and/or disposal of the logs, log raft, and/or debris. Additionally, even if the logs, log raft, and/or debris are sold, the permittee shall be liable for any remaining charges not covered by the sales proceeds. Interest and collection costs shall be included regarding any charges that are not paid within 30 days of the billing by the port director under subsection E. Penalties may also be imposed and the city may seek injunctive relief in accordance with Section 14.02.086. Additionally, the permittee shall be subject to loss of privileges for use of the small boat harbor facilities until all charges, interest, collection costs, and any penalties are paid.
- G. Any person issued a permit under this section shall sign a written agreement to assume all risk of loss or damage to property and risk of injury to persons, as well as to defend, indemnify and hold the city harmless from any and all claims and damages to his or her own property, or the property of another person or entity, or injury to persons, including costs and attorney fees, caused by or resulting from any act or omission involving the log raft or logs while entering into or while in the small boat harbor.
- H. In accordance with Section 14.02.070, any person issued a permit under this section shall be strictly liable to the city without regard to fault or negligence for any damage to the port facilities or any property owned by the city caused directly or indirectly by the log raft or logs while entering into or while in the small boat harbor.
- I. Any appeal must be filed in writing with the port commission within seven days after the port director denies or cancels a permit, or issues a letter that assesses charges, interest, collection costs, and/or penalties, or denies the permittee use of the small boat harbor facilities. Any appeal of a decision of the port commission issued under this subsection shall be in writing and filed with the city council within seven days of the date of the written decision by the port commission.

SECTION 4. Effective Date. This Ordinance shall take effect immediately upon approval by the City Council.

ENACTED THIS 28th DAY OF SEPTEMBER 2004 BY A VOTE OF FIVE IN FAVOR AND ONE OPPOSED.



Hugh Short, Jr., Mayor

ATTEST:


Selena Malone, City Clerk