

**KENAI HARBOR COMMISSION
SPECIAL MEETING
JANUARY 6, 2020 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611**

<http://www.kenai.city>

1. **CALL TO ORDER**
 - a. Pledge of Allegiance
 - b. Roll Call
 - c. Agenda Approval

2. **UNSCHEDULED PUBLIC COMMENT** *(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)*

3. **UNFINISHED BUSINESS**
 - a. **Discussion/Recommendation** – Kenai Municipal Code Title 11

4. **NEXT MEETING ATTENDANCE NOTIFICATION** – February 10, 2020

5. **COMMISSIONER COMMENTS AND QUESTIONS**

6. **ADDITIONAL PUBLIC COMMENT**

7. **ADJOURNMENT**

<p>PLEASE CONTACT US IF YOU WILL NOT BE ABLE TO ATTEND THE MEETING: JACQUELYN -- 283-8231 OR, KAYLA -- 283-8236</p>
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"Village with a Past, City with a Future"

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MEMORANDUM

TO: Harbor Commission
FROM: Scott Bloom, City Attorney
DATE: November 4, 2019
SUBJECT: Title 11- Harbor and Harbor Facilities

The Harbor Commission has been reviewing Title 11 of the Kenai Municipal Code to recommend changes that more appropriately reflect its current functions, relationship with other commissions, and desires moving forward. This process is especially relevant now, with the enactment of Ordinance No.3072-2019 (Substitute) which repealed and re-enacted the City's approach to the managing City lands. Part of this approach was to bring certain harbor lands, along with airport lands outside the airport reserve into the City's general fund land sales and leasing process to establish a consistent Citywide approach. Additionally relevant to revisions of Title 11, many procedures and processes described in the Title are no longer applicable because they address the transfer of certain tidelands from the State of Alaska to the City on January 6, 1977 and the adjudication of preference rights from commercial fishermen much of which had to be accomplished by October 6, 1981.

It appears that when much of the Harbor Code was originally enacted, the City had a vision for a harbor that did not come to fruition. Further, many current code provisions address specific conveyance restrictions on specific parcels of land that do not broadly apply to all harbor lands. These specific restrictions are carried forward in the City's land management plan and do not need to remain codified. Rather than retain old code provisions that are no longer applicable or applied, I recommend removing the old language and addressing changes or new plans for the harbor on a go forward basis. The proposed changes limit the City's ability to move forward with any new plans or projects, however new code provisions may be appropriate to address any significant changes in harbor usage.

The code revisions below incorporate the recommended revisions from the Harbor Commission along with other proposed changes based on the enactment of Ordinance No. 3072-2019 (Substitute) and continued relevance of other sections of code. Many of the current code provisions reflect activities that the City does not carry out. The proposed changes are provided



in legislative format, underlined is new language, bracketed and capped is language to be removed. Also provided are explanations for the proposed changes in red.

If the Commission is in favor of all or some of these changes, at this meeting or the next meeting the Commission should move to request/ recommend the Council take action to introduce an ordinance effectuating the proposed changes. The ordinance would come back to the Commission for a recommendation.

Title 11

HARBOR AND HARBOR FACILITIES

Chapters:

- 11.05 Harbor Master**
- 11.10 Harbor Commission**
- 11.15 Tidelands**
- 11.20 Leasing of Tidelands**

Chapter 11.05

HARBOR MASTER

Sections:

- 11.05.010 Harbor Master.**
- 11.05.020 Harbor defined.**
- 11.05.030 Harbor regulations.**

- 11.05.080 Leasing not prohibited.**
- 11.05.090 Use of launch ramp and float.**
- 11.05.100 No wake zones.**

11.05.010 Harbor Master.

The Harbor Master, shall be the Public Works Director. The Harbor Master shall be the chief administrator of the harbor and its facilities. He or she shall have all powers and duties prescribed by ordinance and the regulations and rates prescribed by the City Manager. In addition, insofar as it is

appropriate, shall have all powers and duties and rates prescribed by the City Manager, subject to approval by the Council; and, in addition, insofar as it is appropriate, shall have all powers and duties imposed upon harbor masters, port directors, and administrative heads of harbors and ports by Federal or State law.

11.05.020 Harbor Defined.

The harbor shall embrace all that portion of the Kenai River located within the City of Kenai, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide, as may be leased from the State of Alaska.

11.05.030 Harbor Regulations.

The City Manager is hereby empowered, subject to change by the Council, to make such rules and regulations required for the operation of the harbor, not in conflict with the provisions of this Code, and to establish the fees, rates, and charges for the billing and collections for the support of the harbor, and no person shall fail to comply with any such rule or regulation.

11.05.080 Leasing Not Prohibited.

Nothing in this chapter or in this code of ordinances shall prohibit the City Council from leasing the docks, dock sites, and other harbor facilities to private persons, firms, and corporations.

11.05.090 Use of Launch Ramp and Float.

- (a) The City of Kenai launching facility shall be open to the public upon reasonable terms and conditions as provided by regulation.
- (b) Failure to pay a boat launch fee for the City of Kenai launching facility set forth according to KMC [11.05](#) within one (1) hour of the retrieval of the boat or vessel from the water shall be a violation punishable by a fine of fifty dollars (\$50.00).

(c) It is unlawful to block access to either of the launch ramp or float facilities. "Blocking access" means leaving a boat, trailer, or vehicle upon the launch ramp or float in such a position as to prevent the launching or retrieval of boats.

(d) Person blocking access to the ramp or float facilities shall be subject to a civil penalty as provided in KMC [13.05.010\(b\)](#).

(e) Each one (1) hour period for which the ramp or float is blocked shall be considered a separate offense for the purposes of civil penalties.

11.05.100 No Wake Zones.

(a) The City Manager, subject to change by the Council, is authorized to establish no wake zones within the Kenai Harbor outside of the Kenai River Special Management Area as needed to protect public and private property, and/or public safety.

(b) No wake zones may be established on a temporary or permanent basis.

(c) A "no wake zone" is defined as a zone where no person may operate a boat at a speed greater than five (5) miles per hour.

(d) Established no wake zones shall be marked with appropriate signage in a manner to provide reasonable public notice.

(e) A violation of this section shall be punishable as provided in KMC [13.05.010](#).

Chapter 11.10 HARBOR COMMISSION

Sections:

[11.10.010](#) Duties and powers.

Prior legislation: Ord. 1032.

11.10.010 Duties and Powers.

(a) The Harbor Commission shall be required to do the following:

(1) Develop, adopt, alter, or revise, subject to approval by the City Council, a master plan for the physical development of harbor or port facilities for the City. Such master plan with accompanying maps, plats, charts, descriptive, and explanatory matter, shall show the Harbor Commission's recommendations for the development of the City Harbor facilities may include, among other things:

- (i) development of the type, location, and sequence of all public harbor facilities;
- (ii) the relocation, removal, extension, or change of use of existing harbor facilities;

(2) Submit annually to the City Manager and Council, not less than ninety (90) days prior to the beginning of the budget year, a list of the recommended capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

(3) Make investigations regarding any matter related to City harbor facilities, tide or submerged lands. Make recommendations to the Council relative to the care, control, and development of tide and submerged lands.

(4) Review all City leases of City-owned tide, submerged, and lands or navigable waters within the City, and as to the planned improvements proposed and make recommendations to the City Council.

(5) Make and prepare reports and plans for approval by the City Council.

(6) Coordinate public efforts, individual and group, to the effectuation of approved plans.

(7) Shall act in advisory capacity in the selection of a Harbor Director should such a position be created by the City Council.

Chapter 11.15

TIDELANDS

Sections:

- 11.15.010** **Short title.**
- 11.15.030** **Approval and acceptance of State conveyance.**
- 11.15.040** **Approval and adoption of subdivision plat.**

11.15.010 Short Title.

This ordinance shall be known as the "Kenai Tidelands Ordinance."

11.15.030 Approval and Acceptance of State Conveyance.

The conveyance by the State to the City, dated January 6, 1977 of tidelands and submerged lands lying seaward of the City is hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the City.

11.15.040 Approval and Adoption of Subdivision Plat.

The Tidelands Subdivision Plat, hereinafter called "Plat" is hereby approved and adopted as the official Tidelands Subdivision Plat of the City of Kenai, Alaska, of tide and submerged lands conveyed by the State to the City by conveyance dated January 6, 1977. Said Alaska Tidelands Survey is numbered 272 and is filed under 76-179 in the Kenai Recording District.

Chapter 11.20 LEASING OF TIDELANDS

Sections:

- 11.20.020 Lands available for leasing.**
- 11.20.650 Tidelands claims.**
- 11.20.660 Subjection to harbor ordinance.**
- 11.20.680 Provisions regulating public use purpose.**
- 11.20.690 Provision to be included in public use lease.**
- 11.20.700 Public use: defined.**
- 11.20.710 Controlled access.**
- 11.20.720 Use charges.**
- 11.20.730 Maintenance of dock.**
- 11.20.780 Penalties.**
- 11.20.790 Tideland leases for shore fisheries.**

11.20.020 Lands Available for Leasing.

All classified tide and contiguous submerged land within the limits of the City to which the City holds title may be leased for surface use only, and under the condition that said lease is subject and inferior to preference right claims and subject to the rights of existing set net site holders within the City limits.

11.20.650 Tidelands Claims.

The City shall lease the subject land subject to any preference rights claims made pursuant to the provisions of Alaska State 38.05.820 or Ordinance No. 455-78, dated September 5, 1979 of the City of Kenai, adopted pursuant thereto, and the lessee holds lessor harmless for any damages, legal expenses, or compensation necessitated by the resolution or satisfaction of said claims, if any.

11.20.660 Subjection to Harbor Ordinance

All leases are subject to the terms, conditions, and regulations imposed by Title II, Harbor and Harbor Facilities, of the 1979 Kenai Code of ordinances as amended of which this section is part.

11.20.680 Provisions Regulating Public Use Purpose.

The City Council realizes that only a limited area of tidelands bordering navigable waters are available within the City of Kenai and which are owned by the City of Kenai. It would be in the public interest to insure that these lands do not pass out of community control at least to the extent that the public would not be deprived of harbor services at reasonable rates in the future. Therefore, areas of City-owned tidelands which are developable for the bona fide public purposes as enumerated below shall be leased only with the following covenants defined to insure public use and access at reasonable rates.

11.20.690 Provision to be Included in Public Use Lease.

The following provision shall be included in leases where harbor facilities are constructed to be utilized all or in part for bona fide public uses.

11.20.700 Public Use: Defined.

(a) Public use shall mean a use limited in part or in whole to the following:

(1) In general, the lessee may use the demised premises or part thereof for any of the following purposes only:

- (i) Public dock facilities.
- (ii) Maritime commerce.
- (iii) Transportation.
- (iv) Fishing.
- (v) Boat harbor.
- (vi) Port and waterfront development purposes.

(b) Before lessee may conduct any activities which fall under this general criteria, but are not specifically mentioned above, lessee must obtain written consent of the City.

11.20.710 Controlled Access.

Lessee, for its own protection, may construct or install fences, gates, or other types of barriers to restrict access to portions of the demised premises that are not designated for a public use and may provide reasonable controls for access to public use areas to allow for security for such areas while insuring reasonable public access. Reasonable public access includes accommodations made for fishing operations during fishing season. Any Controlled Access measures shall be indicated on the Lessee's Development Plan.

11.20.720 Use Charges.

Lessee shall make reasonable and non-discriminatory charges to the public for use of any of its facilities.

11.20.780 Penalties.

(a) It is unlawful for any person to violate any of the provisions of this chapter and upon conviction thereof shall be fined as provided for violations in KMC [13.05.010](#). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(b) In addition to or as an alternative to the above penalty provision, the City may impose a civil penalty in an amount as provided by KMC [13.05.010](#) per day for the violation of any provision of this chapter and seek injunctive relief for any infraction thereof for which the offending party will be charged for reasonable attorney's fees and costs incurred by the City as awarded by the court.

(c) Nothing in this section shall be deemed to restrict the City's exercise of any of its rights pursuant to the lease agreement including those enumerated in KMC [11.20.220](#) and KMC [11.20.240](#) hereof.

11.20.790 Tideland Leases for Shore Fisheries.

(a) Notwithstanding other provisions of the City's Code of Ordinances the annual minimum rental rate for tideland leases used primarily for shore fisheries shall be an annual fee as set forth in the City's schedule of fees adopted by the City Council. However, should the State of Alaska set an annual lease rate higher than that established by the City for similar tideland leases for shore fisheries on land owned by the State, the City may amend the annual rental to a rate equal to that charged by the State of Alaska.