

Chapter 7.10. Harbor and Port Facilities

Entire Code of Ordinances for City of Seward, Alaska may be found online at:
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Article 1. General Provisions

7.10.110. Short title.

This title shall be known and cited as the Seward Harbor Ordinance.

(Ord. 95-11)

7.10.115. Purpose.

The purposes of this chapter are to:

- (1) Maximize the safe and efficient use of the harbor;
- (2) Provide for the orderly management, development, and control of the harbor;
- (3) Protect and preserve public and private property within the harbor and the lives, health, safety, and well-being of persons who use, work, or maintain property in the harbor;
- (4) Prevent and discourage the use of the harbor by vessels that are derelict or a nuisance, and prevent and abate fire, health, safety, and navigation hazards; and
- (5) Assess reasonable fees for the use of harbor facilities.

(Ord. 95-11)

7.10.120. Interpretation.

(a) *Consistent interpretation and effect of invalidity.* This title shall be construed, to the greatest extent reasonable, in such a manner as to be consistent with applicable federal and state laws and regulations and any conveyances or agreements from or with the state pertaining to the harbor. If any section of this title is declared invalid, the remaining sections shall not be affected.

(b) *Application in an emergency.* The provisions of this title shall not be construed to limit a vessel owner from taking action necessary to protect life, limb, or property in the case of an emergency.

(Ord. 95-11)

7.10.125. Implied agreement from use of facilities.

The use of the harbor or the presence of a vessel in the harbor constitutes an agreement by the owner to conform to the provisions of this title, the harbor tariff, and any rule, regulation, or order made pursuant thereto, and to pay all fees and charges provided by this title or the harbor tariff.

(Ord. 95-11)

7.10.130. Accident report.

Any person operating a vessel involved in an accident within the harbor resulting in the death or injury of any person, or damage to property in excess of \$500.00 shall, in addition to any other notices required by law, immediately give oral notice of the accident to the harbormaster and shall, within 24 hours after the accident, file a written report with the harbormaster on such form as the harbormaster may provide.

(Ord. 95-11)

7.10.135. Definitions.

Whenever the words, terms, phrases, and their derivations set forth in this section are used in this title, they shall have the meaning set forth in this section.

Abandoned property. "Abandoned property" means personal property which is unattended and is either not registered with the harbormaster or not in a location the harbormaster has designated for its storage.

Anchor. "Anchor" means to secure a vessel to the bed of a body of water by dropping an anchor or anchors or by using a buoy or other ground tackle.

Business. "Business" means any profession, trade, occupation, or calling carried on for a profit or livelihood, including every kind of commercial enterprise, and including the operation of games, machines, or mechanical devices.

City. "City" means the City of Seward.

City manager. "City manager" means the city manager for the City of Seward or the designee of the city manager.

Derelict. "Derelict" means any vessel which is or appears to be forsaken, abandoned, deserted, or cast away, or which, in the opinion of the harbormaster, is unsound, unseaworthy, or unfit for its trade or occupation.

Distress. "Distress" means a state of disability or a present or obvious imminent danger which if unduly prolonged could endanger life or property.

Dock. "Dock" means any pier, float, slip, wharf, finger, ramp, gangway, bulkhead, dolphin, or sea wall within the harbor that is owned or operated by the city.

Emergency. "Emergency" means a state of imminent or proximate danger to life or property in which time is of the essence.

Finance director. "Finance director" means the finance director for the City of Seward or the designee of the finance director.

Harbor. "Harbor" means all waters, tidal areas, and adjacent upland areas owned by the city and listed and identified in the land use plan as "harbor commercial and industrial," together with any and all facilities of a port or maritime nature either publicly or privately owned that are primarily used by or for the service of vessels, including the port facilities located at SMIC, and all docks, pilings, hoists, parking areas, leased water areas, concessions and/or service facilities located within the area defined herein.

Harbormaster. "Harbormaster" means the harbormaster for the City of Seward, the deputy harbormaster, or any assistant harbormaster or other person designated by the harbormaster to act in his place.

Harbor tariff. "Harbor tariff" means the City of Seward Terminal Tariff as approved by the city council and amended from time to time.

Land use plan. "Land use plan" means the land use plan authorized in Title 15, Chapter 15.05 of the Seward City Code as amended from time to time.

Moor. "Moor" means to secure a vessel other than by anchoring.

Moorage. "Moorage" means the process of mooring or the state of being moored and, when the context requires, the fees for such acts imposed by under title.

Nuisance. "Nuisance" means a derelict vessel, a vessel which is not kept and regularly pumped free of excess water inside its hull, a vessel which is submerged, grounded, disabled, or in immediate danger of sinking, or a vessel which, in the opinion of the harbormaster, creates or constitutes a fire, health, safety, or navigation hazard. A vessel shall be presumed to constitute a nuisance if:

- (1) The vessel is obstructing a waterway, or is endangering life or property and has been left unattended for a continuous period of 24 hours; or
- (2) The vessel has been moored, anchored, or otherwise left in the harbor and:
 - a. The vessel's state registration number or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the United States Coast Guard, the State of Alaska, or the harbor;
 - b. The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined, or the vessel identification number or other means of identification have been obliterated or removed in a manner that nullifies or precludes efforts to locate or identify the owner;
 - c. Vessel registration records of the United States Coast Guard, the State of Alaska, or the harbor contain no record of the vessel ever having been registered or documented, and the owner's name cannot be determined; or
- (3) The vessel does not clear the harbor at least three times per year.

Owner. "Owner" means the registered owner of a vessel or a person authorized to act on behalf of the owner. The following persons are presumed to have authority to act on behalf of the owner of a vessel:

- (1) The master or operator of the vessel;
- (2) A person entrusted with the management of the vessel; and
- (3) An officer or agent appointed by (a) the owner, (b) a charterer, or (c) an agreed buyer in possession of the vessel.

Person. "Person" means any natural person, partnership, corporation, or governmental agency. A natural person and a corporation may be considered the same if the former has control over the latter.

Processed fish. "Processed fish" means fish that has been prepared to render it suitable for human consumption, industrial uses, or long-term storage including, but not limited to, fish that has been cooked, canned, smoked, salted, dried, frozen, or rendered into meal or oil, but does not include fish that has only been deheaded, gutted, or iced.

Qualifying interest. "Qualifying interest" in a vessel means the interest of a person who owns the vessel or, under the provisions of a written charter or lease, has exclusive control over the operation and navigation of the vessel. A person who transfers title to a vessel or enters into a charter or lease of the vessel, and thereby relinquishes his exclusive control over the use and operation of the vessel, ceases to have a qualifying interest in the vessel.

Slip. "Slip" means a vessel's berth between two piers or floats.

Small boat harbor. "Small boat harbor" means all navigable waters and all facilities of a port or maritime nature either publicly or privately owned that are primarily used by or for the service of vessels that are within the confines of the breakwaters.

SMIC. "SMIC" means the Seward Marine Industrial Center.

Trailer. "Trailer" means any movable cradle, structure, or device used for moving boats into or out of the water or used for the storage of boats.

Transfer of cargo. "Transfer of cargo" means all types of loading, unloading, transfer, and containerization of any kind of cargo including, but not limited to, fish, shellfish, and other fish products.

Vessel. "Vessel" means every description of watercraft including any ship, boat, skiff, barge, or craft of any kind and description, pleasure and commercial, other than

seaplanes, used or designed to be used as a means of transportation on or through the water.

(Ord. 95-11)

Article 2. Administration

7.10.210. Harbormaster.

(a) *Appointment.* The city manager shall appoint a harbormaster.

(b) *Duties.* The harbormaster shall, under the supervision of the city manager:

(1) Administer the harbor with the powers provided by this title;

(2) Enforce this title, issue and enforce regulations for the operation and use of the harbor that are not inconsistent with this title, and enforce the terms and conditions of the harbor tariff;

(3) Promptly report to the appropriate enforcement entity the violation of any law pertaining in any way to navigable waters or port/harbor facilities including, but not limited to, laws for the protection of navigation and the preservation of navigable waters;

(4) Promptly report to the appropriate enforcement entity the violation of any law pertaining to the disposal of hazardous or waste materials and promptly furnish information as necessary to assure that such improper disposal ceases and any nuisance is abated;

(5) Collect harbor fees and charges and maintain and operate an accounting system to collect harbor fees and charges that meets with the approval of the finance director and that will satisfy all controls as may be deemed necessary by the city's annual audit;

(6) Record in a proper register the name, length, draft, beam, type, and identification number, location of each vessel moored in the harbor, as well as the name and address of each vessel's registered owners; and

(7) Maintain at the harbormaster's office a map or chart of the harbor showing the position of each approved mooring.

(Ord. 95-11)

7.10.215. Limitation of liability.

(a) The authority granted to the harbormaster pursuant to this title shall not create any obligation or duty requiring the harbormaster to take action to protect or preserve any vessel or property located within, or utilizing, the harbor.

(b) The city does not accept control of vessels or other property moored or stored in the harbor. When the city assigns moorage space to a vessel or assigns storage space to a vessel or other property the city is not accepting possession or control of the vessel or other property; the relationship between the parties is simply that of a landlord and tenant. Unless the vessel or other property is formally impounded by the city, the vessel or other property shall at all times remain in the exclusive possession and control of the owner of said property and the city is not acting, and shall not be held liable in any manner, as a warehouseman or a bailee.

(c) City shall not be liable for any loss or damage resulting from use of the harbor or any harbor facility from any cause whatsoever, except and to the extent solely caused by the city's own negligence or intentional misconduct. City disclaims any and all other liability, whether for negligence or other tort, in contract or otherwise, and specifically disclaims

any warranty of whatsoever kind or nature including, but not limited to, any warranty of workmanlike service or performance. The liability of city for damages caused solely by its own negligence or intentional misconduct shall be limited to the reasonable cost of repairing the vessel or other property that was moored or stored in, or making use of, the harbor or harbor facilities. The owner of the vessel or other property assumes all responsibility for any and all other claims or damages otherwise resulting including, but not limited to, claims by owner or third-parties for property damage, personal injury or death, pollution or discharge of a polluting or hazardous substance (together with cleanup, removal, and remediation of same), as well as any direct, indirect, special, consequential, or commercial damages, claims for loss of profits or earnings, or other claims or damages of whatever kind or nature.

(d) Each owner of a vessel or other property moored or stored in, or making use of, the harbor or harbor facilities releases and agrees to defend, hold harmless, and indemnify the city and its officers, employees, and agents from and against any and all losses, claims, demands, actions, damages, liabilities, or expenses of every kind, character, and nature whatsoever (including, but not limited to, personal injuries, death, environmental contamination, property damage, or employee liability) arising out of, resulting from, or in any way related to use of the harbor by the owner or owner's agent, employees, invitees, guests, or passengers, except where liability for same is caused solely by the city's own negligence or intentional misconduct. Defense shall include payment of actual attorney's fees and costs. The owner waives any right of subrogation against the city which might otherwise arise upon payment of a loss by owner's insurers.

(Ord. 95-11)

Article 3. Moorage

7.10.310. Registration required.

The owner of a vessel using the harbor is required to register with the harbormaster, by completing and providing all information requested on a registration form approved by the harbormaster, within two hours after the vessel first enters the harbor; provided, however, that vessels arriving after 5 p.m. shall have until 10 a.m. of the following day to register. The owner is responsible for informing the harbormaster of any changes in the registration information provided by the owner.

(Ord. 95-11)

7.10.315. Transient moorage.

(a) *Availability.* Transient moorage space is available within the harbor at locations designated or assigned by the harbormaster, which may include temporary use of reserved moorage space. A written and signed application for moorage on a form approved by the harbormaster shall be provided to the harbormaster within the time allowed for registration. The applicant shall promptly notify the harbormaster of any changes in the information set forth on the moorage application. Prepayment of fees for transient moorage is required. Approval of such application by the harbormaster confers no rights in the land or water constituting the space.

(b) *Assignment periods.* The daily assignment period is 8 a.m. on the first calendar day to 8 a.m. the next calendar day. The daily moorage fee as set forth in the harbor tariff will

be levied on all vessels that are registered on the harbor's daily inventory that do not have a reserved moorage space assigned, unless longer term moorage is paid in advance. Discounts for prepayment of transient moorage fees are available as set forth in the harbor tariff for quarterly, semi-annual, and annual terms. Quarterly, semi-annual, and annual term transient moorage rates will be calculated from the closest of either (1) the first day of the current month, or (2) the first day of the following month (with daily fees assessed for all days in the current month). No credits will be allowed for back dating the application for moorage to the first day of the current month.

(c) *No preferential right.* A user receives the privilege of occupying designated or assigned transient moorage on an as available basis, with consideration given to which vessel is most suitable for a particular location. Users have no preferential right to moor in any particular location nor the right to return to the same space if another vessel is occupying that space.

(d) *Rafting.* Rafting of vessels in transient moorage space shall be permitted at locations designated by the harbormaster. Vessels moored in such locations are subject to yet another vessel tethering aside and are subject to being crossed by persons seeking access to other rafted vessels. Each vessel must have at least one line to the float, alternating ends.

(e) *Duration.* A user's right to transient moorage space, once assigned, continues until the user removes the vessel from the transient moorage space, or until the user's death, or until the user's voluntary or involuntary relinquishment of the right to use transient moorage space. The right to use transient moorage may not be assigned or transferred by the user and does not transfer with the sale or other disposition of the vessel.

(f) *Voluntary relinquishment.* A user may voluntarily relinquish transient moorage space at any time by notifying the harbormaster in writing.

(g) *Involuntary relinquishment.* The right to use transient moorage space shall be involuntarily relinquished if:

- (1) The user supplies misleading or false information in the moorage application;
- (2) The user fails to pay all fees required by this title or the harbor tariff without a prior written agreement to pay such fees on other terms acceptable to the harbormaster;
- (3) The user fails to maintain a qualifying interest in the vessel;
- (4) The user fails, upon request of the harbormaster, to provide proof of a qualifying interest in the vessel;
- (5) The user fails to maintain on the vessel the equipment required by this title;
- (6) The vessel becomes a derelict or a nuisance; or
- (7) The user fails to observe any section of this title.

(Ord. 95-11)

7.10.320. Reserved moorage.

(a) *Availability.* Reserved moorage space is available within the harbor at locations designated or assigned by the harbormaster.

(b) *Application.* Reserved moorage space shall be assigned on a first-come, first-served basis to those who have provided to the harbormaster a written and signed application as provided by the harbormaster. The applicant shall promptly notify the harbormaster of any changes in the information set forth on the application.

(c) *Assignment of reserved moorage.* Reserved moorage space shall be assigned by the harbormaster to assure the maximum use of space available. The harbormaster will establish minimum and maximum vessel sizes for each space or class of spaces available.

(d) *Wait list.* If more applications are received than there are spaces available, the harbormaster shall establish and maintain a reserved moorage wait list. A non-refundable annual fee shall be required by October 31 of each year to place and maintain an application on the list. Applications will be placed on the list in the order in which they are received. The applicant shall promptly notify the harbormaster of any changes in the information set forth on the application. Wait list priority may not be transferred except, upon applicant's death, to applicant's spouse or child.

(e) *Retention of wait list priority.* If an applicant chooses not to accept a reserved moorage space when offered, or does not respond to a notice of space availability, the applicant forfeits the applicant's priority on the wait list and the applicant's name will be placed at the bottom of the wait list. The applicant's name will be retained in the new position for the remainder of time covered by the applicant's annual fee payment. Continued placement in the new position will be subject to payment of the required annual fee. If an applicant refuses to accept a reserved moorage space when offered on two separate occasions, or fails to respond on two separate occasions, it shall be presumed that the applicant has voluntarily withdrawn his application and the applicant's name will be removed from the wait list and the applicant's annual fee payment forfeited.

(f) *Three space limit.* As long as there are applicants on the wait list no person currently holding three or more reserved moorage spaces may be assigned an additional reserved moorage space notwithstanding the number of vessels held with a qualifying interest by that applicant.

(g) *Notice of space availability.* When space becomes available, the harbormaster shall notify the first applicant on the wait list that has a qualified interest in a vessel of the size for which space is available. Notice shall be by certified mail, return receipt requested. An applicant shall have ten days from the date the return receipt is signed to respond. If the notice is returned by the post office or the applicant fails to respond, the harbormaster will notify the next eligible applicant on the wait list and so on until the space is assigned.

(h) *Preference.* Approval of an application for reserved moorage space and assignment of reserved moorage space by the harbormaster confers only the privilege of occupying the assigned moorage space on a preferential basis and does not convey any rights in the land or water constituting the space.

(i) *Berth to be vacant for five days.* Prior to departing the harbor, owners shall report to the harbormaster if a reserved moorage space is to be unoccupied for more than five days. The harbormaster shall have full discretionary authority to allow other vessels to occupy an empty reserved moorage space any time the assigned vessel is absent for more than five days without compensation to the holder.

(j) *Duration.* A holder's rights to reserved moorage space, once assigned, continues until the holder ceases having a qualifying interest in the vessel, until the holder's death, or until the holder's voluntarily or involuntarily relinquishment of the space. A holder's right does not transfer with the sale or other disposition of the vessel.

(1) *Loss of qualifying interest.* A holder must promptly notify the harbormaster if the holder ceases to have a qualifying interest in the vessel assigned to reserved moorage space. The holder may retain the reserved moorage space if the holder obtains a qualifying interest in another vessel of the appropriate size within three months and registers the new vessel with the harbormaster as required by this title. The harbormaster may, for cause, grant an extension not to exceed an additional three months if the vessel was lost, destroyed, or stolen. Failure to obtain a qualified interest in a replacement vessel of appropriate size for the assigned slip will result in forfeiture of assignment to reserved moorage and will cause the replacement vessel to be classed as transient.

(2) *Death.* In the case of the death of the holder the space may be transferred only to the holder's spouse or child. To be an effective transfer the spouse or child must have a qualifying interest in the vessel assigned to the reserved moorage space and must make a request for transfer, in writing, to the harbormaster with appropriate documentation no later than the date the next annual moorage fee is due.

(3) *Voluntary relinquishment.* A holder may relinquish reserved moorage at any time by notifying the harbormaster in writing. 4. *Involuntary relinquishment.* A holder's right to an assigned space shall be involuntarily relinquished and the right to use the assigned space terminated if:

- a. The holder supplies misleading or false information in the moorage application;
- b. The holder fails to pay all fees as provided by this title or the harbor tariff without a prior written agreement to pay such fees on other terms acceptable to the harbormaster;
- c. The holder fails to maintain a qualifying interest in the assigned vessel or substitute qualified vessel within the period allowed;
- d. The holder fails to use the space for the assigned vessel at least two months each calendar year;
- e. The holder fails, upon request of the harbormaster, to provide proof of a qualifying interest in the vessel assigned to the space;
- f. The holder fails to maintain on the vessel the equipment required by this title;
- g. The vessel to which the space is assigned becomes a derelict or a nuisance; or
- h. The holder fails to observe any section of this title.

(Ord. 95-11)

7.10.325. Moorage conditions and restrictions applicable to transient and reserved moorage.

(a) *Qualifying interest required.* Moorage space may only be assigned to an applicant with a qualified interest in the vessel to which space is to be assigned.

(b) *No unpaid charges.* Moorage space may only be assigned to an applicant who has no delinquent harbor fees or charges.

(c) *One space.* No vessel may be assigned to more than one moorage space.

(d) *Use by assigned vessel only.* A vessel assigned a moorage space may only use that space. Vessels that moor or anchor outside their regular moorage space, and vessels which have no regular assignments which moor or anchor without making application to and securing the permission to use such space as required by this title, do so at their own risk and shall be held responsible for all loss or damage of any kind resulting from such use.

(Ord. 95-11)

7.10.330. Refusal of moorage.

The harbormaster may refuse moorage or use of any harbor facility to any vessel or applicant which or who the harbormaster has probable cause to believe has not complied, or is not in compliance, with this title or the harbor tariff or whenever such moorage or use of the harbor facilities would not be in the best interests of the city.

(Ord. 95-11)

7.10.335. Required equipment.

(a) All vessels moored in the harbor shall carry the equipment required by any applicable law or regulation, and shall be numbered or designated in accordance with any applicable law or regulation.

(b) All vessels moored or anchored in the harbor shall be fitted with moorings or anchors satisfactory to the harbormaster, and shall be maintained at all times in such condition that, in the opinion of the harbormaster, will not endanger any person or vessel in the harbor or any harbor facility.

(Ord. 95-11)

7.10.340. Utilities.

Electric and water utility service may be provided to vessels moored in the harbor in such locations and according to such specifications as the harbormaster may specify by regulation. The charge for electrical service furnished within the small boat harbor shall be established by resolution of the city council. Vessels mooring at slips having electrical power shall connect to the electrical system. A meter deposit shall be collected from any person who connects to the electrical power system.

(Ord. 95-11)

7.10.345. Insurance.

All owners shall provide the city proof of liability insurance covering the vessel and owner's employees, invitees, guests, or passengers. The amount of liability insurance required shall be specified on the moorage agreement covering that vessel. If the vessel carries passengers for hire, owners shall have the city named as an additional insured with waiver of subrogation on any policy of liability insurance.

(Ord. 95-11)

7.10.350. Authority of harbormaster to board and move vessel.

(a) *Emergency.* The harbormaster may, in the event of emergency, board, re-secure, de-water, or move any vessel within the harbor, or take any other reasonable action to resolve the emergency with respect to such vessels to prevent loss of life or property.

(b) *Noncompliance with this title.*

(1) Subject to subsection (2) of this section, when the harbormaster has reasonable cause to believe that a violation of this title exists, or when necessary to perform a duty under this title, the harbormaster may, at any reasonable time and upon presentation of proper identification, board and enter a vessel within the harbor. If a vessel is improperly anchored or moored the harbormaster may order the vessel's position changed. If the harbormaster's order is not complied with, or the vessel is unattended, the harbormaster

may move the vessel and charges shall be assessed in the same manner as for ordinary services. If a vessel is in violation of any section of this title the harbormaster may declare the user or holder of the moorage space to have involuntarily relinquished the space.

(2) Where the constitution of the United States or of the State of Alaska so requires, the harbormaster shall obtain an administrative search warrant authorizing an inspection and exhibit the warrant to the person in charge of the vessel before conducting the inspection.

(c) *Vessel in transient moorage space.* The harbormaster shall have authority to move a vessel in transient moorage space to another location to better maximize the use of available space.

(d) *Notice to move.* Any vessel, upon notice to move, which refuses or fails to move may be shifted by tug or otherwise by the city, and charges shall be assessed in the same manner as for ordinary services.

(Ord. 95-11)

7.10.355. Seaplanes.

(a) From June 1 through September 30, seaplanes shall not be granted slip privileges in the harbor, except at the seaplane float, and shall not land within the small boat harbor. From October 1 through May 31 seaplanes may be granted slip privileges in the harbor only when doing so will not preclude a vessel desiring moorage from tying to the float system.

(b) When a seaplane is provided a slip within the confine of the harbor, it shall be under the jurisdiction of the harbormaster and shall abide by this title and all regulations applicable to vessels.

(c) The fees for providing slips for seaplanes shall be set by resolution of the city council and may be found in the harbor tariff.

(Ord. 95-11)

7.10.360. Determination of involuntary relinquishment.

(a) *Right to notice.* The city shall give at least 20 days written notice of its intent to declare the involuntary relinquishment of mooring space.

(b) *Content of notice.* A notice of involuntary relinquishment shall be prepared by the harbormaster and shall contain:

(1) The name and address of the user or holder of the moorage space last appearing in the records of the harbormaster;

(2) A statement that the city intends to declare the moorage space involuntarily relinquished if corrective action is not taken within 20 days from the date the notice is mailed/posted;

(3) The reason for the anticipated action;

(4) The owner's right to a hearing and the manner in which a hearing can be requested; and

(5) The name, address, and telephone number of a person at the city to contact in case of questions.

(c) *Distribution of notice.* The notice of involuntary relinquishment shall be:

(1) Mailed by certified mail, return receipt requested, to the user or holder of the moorage space at the user's or holder's last known address. The notice is effective when

mailed. If the harbormaster cannot determine the address of the holder of the moorage space, notice shall also be published at least once in a newspaper of general circulation in the city.

(2) Posted at or near the moorage space in question, in the harbormaster's office, at city hall, and in a United States Post Office in the city.

(d) *Demand for hearing.* The user or holder of moorage space which the city intends to declare involuntarily relinquished may obtain an administrative hearing to determine whether there is probable cause for involuntary relinquishment by filing a written demand with the city clerk within 20 days from the date of the notice.

(e) *Hearing procedure.* The hearing shall be conducted within 48 hours of receipt of a timely written demand from the person seeking the hearing, unless such person waives the right to a speedy hearing. Saturdays, Sundays, and city holidays are to be excluded from the calculation of the 48-hour period. The hearing officer shall be designated by the city manager and shall be someone other than the harbormaster. The sole issue before the hearing officer shall be whether there is probable cause to declare that the moorage space was involuntarily relinquished. "Probable cause to declare the moorage space involuntarily relinquished" shall mean such a state of facts as would lead a reasonable person exercising ordinary prudence to believe there are grounds to find that the moorage space has been involuntarily relinquished. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The harbormaster shall have the burden of establishing by a preponderance of the evidence that there is probable cause to declare that the moorage space has been involuntarily relinquished. Failure of the user or holder of the moorage space to request or attend a scheduled hearing shall be deemed a waiver of the right to such a hearing.

(f) *Decision.* Within five working days after the conclusion of the hearing, the hearing officer shall prepare a written decision. The hearing officer shall only determine whether probable cause to declare the moorage space involuntarily relinquished exists. A copy of the decision shall be provided to the user or holder of the moorage space. The decision of the hearing officer is final.

(g) *Action after decision.* In the event the hearing officer determines there is probable cause to declare that the right to the moorage space has been involuntarily relinquished, the harbormaster may eject, remove, or require the removal of the vessel from the moorage space and assess charges for said removal in the same manner as ordinary services, and reassign the moorage space without compensation to the prior moorage holder. Moorage fees cease accruing on the date the vessel actually ceases to occupy a moorage space in the harbor.

(Ord. 95-11)

Article 4. Wharfage, Storage and Other Activity

7.10.410. Wharfage.

(a) *Application.* No cargo may be transferred within the harbor without prior written application to and approval by the harbormaster, on such form as the harbormaster shall specify. Transfers of cargo that occur on a regular basis may be approved in advance.

(b) *Wharfage assignment.*

(1) All vessels are prohibited from mooring at any wharf at which they have no regular assignment or for which they have failed first to make a mooring application with the harbormaster. Vessels that moor outside their regular assignments, and vessels that have no regular assignments and which moor without making application to and securing the permission from the harbormaster, shall do so at their own risk and shall be held responsible for all loss or damage of whatsoever nature resulting from such use.

(2) Assignment to the wharf at locations where transfer of cargo is approved shall be made by the harbormaster upon application. Charges for preferential assignment shall commence on the date specified in the assignment. Preferential assignments may be revoked by (a) the harbormaster upon 30 days prior written notice to the assignee, or (b) the assignee upon 30 days prior written notice to the harbormaster.

(3) Subject to the rates, charges, rules, and regulations of this chapter, the harbor tariff, and any restrictions, conditions, limitations and modifications set forth in the assignment itself, wharf area assignments shall include only the license or right:

- a. To moor vessels owned, operated, or represented by the assignee at the area assigned;
- b. To assemble, distribute, load, and unload merchandise and the cargoes of vessels over, through, or upon the assigned wharf area; and
- c. To perform such other related activities as may be necessary.

(4) When the assigned wharf area, or any part thereof, is not required for the use of the assignee or is unoccupied, the harbormaster may, at his discretion, assign such facility, or any part thereof, for temporary use by another person.

(c) *Locations for cargo transfer.* Transfer of cargo may occur at the following locations:

- (1) City dock within the small boat harbor;
- (2) North Dock of SMIC;
- (3) Inlet Salmon Dock at the SMIC;
- (4) Syncrolift Dock at the SMIC.

(d) *Prepayment.* The harbormaster may require prepayment of the estimated fees due under this title or the harbor tariff prior to any cargo transfer.

(e) *Duration.* A vessel may moor for transfer of cargo for up to two hours without paying for transient moorage but must notify the harbormaster at least two hours in advance of actually mooring. Failure to notify the harbormaster could result in assessment of a day's transient moorage charge.

(f) *Refusal of cargo.* The harbormaster may refuse to permit the transfer of any cargo whose volume, weight, hazardous nature, or other characteristics would present a risk to the safety of persons or property, private or public, within the harbor or whose value is less than the fees due under this title.

(g) *Information and manifests.*

(1) *Information.* To enable the harbormaster to keep an accurate record of the number, size, and kind of vessels using the harbor, the amount, kind, and value of waterborne freight handlers, and the number of passengers carried, the masters and pursers of all vessel using the harbor are required to furnish the harbormaster with such information if so requested and to permit the harbormaster to examine their papers;

(2) *Manifest.* A complete copy of the manifest showing all the cargo unloaded or discharged at the harbor will be furnished to the harbormaster. Inbound manifests will be furnished prior to or concurrent with the vessel's arrival. Outbound manifests will be

furnished prior to or concurrent with the vessel's departure. In lieu of manifests, freight bills containing all information as required in this section may be accepted.

(h) *Persons responsible for fees.* Vessels, their owners, and shippers or consignees of cargo transferred within the harbor shall be jointly and severally liable for all fees due for activities described in this chapter notwithstanding any contrary provisions contained in any bills of lading, charter party agreements, contracts, or other agreements.

(i) *Cargo on which fees have become delinquent.* Cargo on which fees have become delinquent may, after ten days written notice to the shipper, carrier, or consignee of such cargo, be sold at public or private auction without advertising.

(j) *Retention of cargo.* Any cargo upon which fees provided by this chapter have become delinquent may be confined to the harbor by the harbormaster until the fees have been paid.

(k) *Liability and indemnity.* All risk of loss from theft, fire, or other casualty to cargo shall be assumed by the parties to the shipping agreement and not the city. The person making application for the berth shall defend, indemnify, and hold the city harmless from all claims arising from the cargo transfer within the harbor.

(Ord. 95-11)

7.10.415. Storage.

(a) *Generally.* Storage space for vessels, cargo, and gear is available. The terms, conditions, and fees for the use of storage space for vessels, cargo, and gear is governed by the harbor tariff.

(b) *Upland storage.*

(1) Upland storage on any harbor property owned by the city shall be limited to the storage of vessels, vessels on trailers, or trailers.

(2) Major construction work on vessels while in storage is prohibited. Disagreements as to what constitutes major construction shall be resolved by the harbormaster.

(Ord. 95-11)

7.10.420. Fish processing.

Fish or shellfish may be cleaned or processed within the harbor only in areas and with equipment approved by the harbormaster.

(Ord. 95-11)

7.10.425. Grid and boat lifts.

The city has available a grid and boat lifts. The terms, conditions, and fees for use of the grid and boat lifts are governed by the terms of the harbor tariff.

(Ord. 95-11)

Article 5. Prohibited Practices

7.10.510. Speeding.

No person shall operate or cause to be operated a vessel within the small boat harbor in a manner which causes an excessive wake, wash, or wave action which will damage, endanger, or cause undue distress to any other vessel or occupant thereof.

(Ord. 95-11)

7.10.511. Operating under the influence.*

*See § 11.50.010D as to liability for costs associated with city response to emergency caused by a person operating a vessel under the influence of alcohol or drugs.

No person may operate a vessel within the harbor while under the influence of alcohol or other drugs to the extent that it would be unlawful to operate a motor vehicle under state law in such condition.

(Ord. 95.11)

7.10.512. Reckless operation.

No person shall operate a vessel in any manner which unreasonably interferes with the free and proper use of the harbor or unreasonably endangers the users of the waters of the harbor.

(Ord. 95-11)

7.10.513. Hazard to navigation.

No person shall create or fail to remove after request from the harbormaster, a hazard to navigation within the waters of the harbor.

(Ord. 95-11)

7.10.514. Failure to register.

No person shall fail to register a vessel operated by that person with the harbormaster as required by this title.

(Ord. 95-11)

7.10.515. Improper mooring and anchoring.

(a) Except as provided in subsection (c) of this section, no person may moor, anchor, or beach a vessel in the harbor except in a location designated by the harbormaster for that purpose, after receiving prior permission from the harbormaster, and after complying with all applicable provisions of this title.

(b) Except as provided in subsection (c) of this section, no person may moor, anchor, or beach a vessel for fishing or other purpose within the harbor or any other body of water over which the city has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(c) A person may moor, anchor, or beach a vessel in the harbor as required in an emergency, but only for so long as required by the emergency. A person who moors, anchors, or beaches a vessel in the harbor as permitted by this subsection shall promptly notify the harbormaster and comply with the instructions of the harbormaster for the securing and placement of the vessel. Improperly stored, beached, or disposed vessels may be removed by the city and the costs of such removal may be recovered by the city from the person violating this section.

(Ord. 95-11)

7.10.516. Inadequate equipment.

No person shall operate or moor a vessel within the harbor that does not have the equipment required by this title.

(Ord. 95-11)

7.10.517. Improper use of facilities.

No person may use the harbor for purposes or in a manner not authorized by this title.

(Ord. 95-11)

7.10.518. Improper disposal.

No person shall dispose of trash, garbage, timber, refuse, human or animal waste, flammable liquid, alcohol, bilge water, dead animals, fuel, oil, fuel or oil derivatives, wastes, or by-products, or other petroleum products, or any similar substance into the water of the harbor or on the harbor grounds (including, but not limited to, parking areas) except in receptacles or locations designated by the harbormaster. Improperly disposed materials may be removed by the city, with or without notice, and the costs of such removal may be recovered by the city from the person violating this section.

(Ord. 95-11)

7.10.519. Improper care and control of animals.

No person shall have or bring a dog or other animal within the harbor unless the dog or animal is on a leash or confined to a vessel. The person bringing the dog or other animal to the harbor is responsible for properly disposing of the animal's defecation.

(Ord. 95-11)

7.10.520. Water sports.

No person shall engage in swimming, diving, water skiing, or other sports where the body of the person comes into contact with the water within the harbor except after notice to and with permission of the harbormaster. Diving for the purpose of vessel repair and inspection or for law enforcement purposes is not prohibited by this section.

(Ord. 95-11)

7.10.521. Failure to make accident report.

No person shall fail to make an accident report as required by this title.

(Ord. 95-11)

7.10.522. Dinghies, rowboats and skiffs.

No dinghies, rowboats, skiffs, or other auxiliary vessels may be (a) stored on a dock except in location designed for that purpose by the harbormaster, (b) tied along side of vessels in transient moorage space, or (c) kept in the water except at the end of the slip or at other locations designated by the harbormaster.

(Ord. 95-11)

7.10.523. Noise.

(a) No person shall make or cause to be made any unnecessary noise in the harbor.

(b) No person shall, in an unreasonably loud manner, play any musical instrument or operate any radio, stereo, T.V. or other similar equipment in the harbor between 11:00 p.m. and 7:00 a.m. The harbormaster has sole discretion in determining whether an instrument or equipment has been played in an unreasonably loud manner.

(c) If any group or organization wishes to hold any function that may continue after 11:00 p.m., request for approval must be made, in writing, to the harbormaster who may extend the time.

(Ord. 95-11)

7.10.524. Derelict, nuisance, unseaworthy, wrecked and sunken vessels.

(a) No person may bring into or keep within the harbor a vessel that is derelict or a nuisance, or in the opinion of the harbormaster, is so unseaworthy or in such a deteriorated condition that it may sink, become a hazard to navigation, or damage docks, floats, or other vessels, except as required in an emergency, but only for so long as required by the emergency.

(b) In the event a vessel is wrecked or sunk within the harbor, it shall be the owner's responsibility to immediately notify the harbormaster, mark the vessel's position and provide for the raising and disposition of such vessel as soon as reasonably possible, and the owner shall assume all liability for damage to persons or property located in the harbor which is caused by the vessel.

(Ord. 95-11)

7.10.525. Unauthorized utility connections; interference with harbor property.

(a) No person may tap, connect, disconnect, or interfere with any water, telephone, or electric utility equipment maintained or operated by the city in the harbor without first having obtained the permission of the harbormaster.

(b) No person shall damage, interfere, or tamper with any dock or other facility operated by the city in the harbor.

(c) No person may damage, interfere, or tamper with any dock, buoy, life preserver, sign, notice, navigational marking, or other similar property operated by the city or any other governmental agency in the harbor.

(Ord. 95-11)

7.10.526. Unauthorized boarding of vessels.

No person may board a vessel in the harbor without the consent of the owner provided, however, that any person placing a vessel in transient moorage where the vessel is or may be rafted to other vessels implicitly consents that people may cross the vessel if necessary to access other rafted vessels.

(Ord. 95-11)

7.10.527. Improper use of fire-fighting equipment.

No person shall use fire hoses or other fire-fighting equipment except for fighting fires.

(Ord. 95-11)

7.10.528. Welding equipment, torches, open flame.

No person shall use welding equipment, a burning torch, or any other open flame apparatus on any dock or on any vessel moored in the harbor without the prior written permission of the harbormaster. The person using such equipment shall exercise such care as is necessary to provide for the safety of other vessels and harbor facilities, have readily available an approved fire extinguisher of sufficient size, have readily available as a standby a water hose attached to an outlet where available, and maintain a fire watch.
(Ord. 95-11)

7.10.529. Loading or unloading explosives.

No person may possess, transport, load, unload, or store explosives within the small boat harbor. Loading and unloading explosives at harbor locations outside the small boat harbor, requires a permit from the fire chief and approval of the harbormaster.
(Ord. 95-11)

7.10.530. Solicitation, advertising and signs.

Solicitation of patronage in the harbor is prohibited. No person shall row, propel, navigate, or maintain any vessel or float in the harbor for the purpose of advertising. No signs or other printed matter shall be placed on any part of the harbor without the prior approval of the harbormaster.
(Ord. 95-11)

7.10.531. Fenders on fingers.

No person may install fender material on fingers unless the fender material is approved by the harbormaster.
(Ord. 95-11)

7.10.532. Use of docks and fingers.*

*The main and marginal float systems within the harbor are by state statute extensions of public streets and side walks and are subject to state statutes and city ordinances governing their use.

No person may store on a dock any raft, net, tackle, cargo, equipment, tools, materials, mooring lines, hoses, electrical cables, other service lines, or other obstruction except in a location designated for that purpose by the harbormaster. Tools and other equipment may be temporarily placed on the dock for rigging and maintenance work so long as the tools or equipment do not obstruct the docks or access to the dock and the space is maintained in a neat, clean, and orderly fashion.
(Ord. 95-11)

7.10.533. Children.

Children under ten years of age are prohibited on the docks except when in the immediate presence of the child's parent or guardian or other responsible adult.
(Ord. 95-11)

7.10.534. Bicycles, motorcycles, rollerblades, skateboards.

The use of wheeled or motorized objects such as bicycles, motorcycles, rollerblades, skateboards, and four wheelers on the docks within the harbor is prohibited.

(Ord. 95-11)

7.10.535. Parking of vehicles generally.

The parking of vehicles outside designated parking areas in the harbor area is prohibited.

(Ord. 95-11)

7.10.536. Unauthorized collection of fees and use of waterfront.

No person shall collect any toll, wharfage or dockage without being authorized to do so by the harbormaster. No person shall place property upon or remove property from any portion of the waterfront or docks without being authorized by the harbormaster.

(Ord. 95-11)

7.10.537. Movement of vessels.

Cruising between rows of slips is prohibited; movement of vessels within the harbor and between rows of slips shall be for the purposes of mooring, anchoring, or entering or leaving a slip.

(Ord. 95-11)

7.10.538. License.

No person shall operate a vessel unless that person is properly licensed as required by applicable state and federal laws and regulations.

(Ord. 95-11)

7.10.539. Outboard motors.

No person shall operate any motor within the harbor without having such motor equipped with a muffler.

(Ord. 95-11)

7.10.540. Searchlights, crab lights.

No person shall use searchlights indiscriminately or in such manner as to annoy or disturb other persons or vessels. No person shall leave on a crab light used to balance the load on a vessel's generator while the vessel is moored in the harbor.

(Ord. 95-11)

7.10.541. Residential use.

No portion of the harbor or cargo within the harbor may be used for residential purposes. No vessel within the harbor may be used for permanent living quarters while moored unless a permit is first obtained from the harbormaster and a fee as set by city resolution is paid.

(Ord. 95-11)

7.10.542. Failure to observe city health and conduct rules.

No person in the harbor shall violate any provision of this code dealing with health, sanitation, the conduct of persons, or prohibiting acts contrary to public health, morals, safety, or public peace.

(Ord. 95-11)

7.10.543. Vessels extending beyond berth.

No part of any vessel, including without limitation any davit, boom, boomkin, or bowsprit, may extend over the main walkway of a float, or extend more than four feet beyond the end of any finger.

(Ord. 95-11)

7.10.544. Obstruction of walkway, float, gangway prohibited.

No person shall place or permit to remain any mooring lines, hose, electrical cable or other service lines across any walkway. A person in charge of a walkway, float, or gangway shall maintain the same in good condition so as to prevent injury to persons and shall keep such walkway, float, or gangway clear of any obstruction.

(Ord. 95-11)

7.10.545. Repairs and maintenance of vessels.

No person may spray paint a vessel while moored or anchored in the harbor. No person may repair or maintain a vessel at its berth unless all the work is performed aboard the vessel and all the materials used in repairing or maintaining the vessel are kept on board the vessel. Repair and maintenance work that cannot be done within the confines of the vessel shall be accomplished only in an area designated for that purpose by the harbormaster.

(Ord. 95-11)

7.10.546. Removal of vessel without payment of charges.

No person shall remove from the harbor any vessel upon which charges of any kind are delinquent, without paying such delinquent charge.

(Ord. 95-11)

7.10.547. Cargo on the beach.

No person may load, unload, or store cargo on the beach within the harbor except in a location designated for that purpose by the harbormaster unless a permit has first been obtained from the harbormaster and a fee as set by the harbor tariff has been paid. Any permitted loading, unloading, or storage of cargo shall be for a period not exceeding 72 hours. There shall be no barge or vessel landing from the beach within the small boat harbor.

(Ord. 95-11)

Article 6. Fees and Penalties

7.10.610. Fees.

(a) *Harbor facilities.* After public hearing, the city council shall set by resolution, the rates for use of all harbor facilities, and such rates may be found in the harbor tariff.

Notice of the public hearing shall be published in a newspaper of general circulation and shall be posted in at least three public places within the city at least ten days prior to the hearing.

(b) *Ordinary services.* Ordinary services performed by harbor personnel may be rendered by agreement with the harbormaster. The city council shall set by resolution the rates for services provided by the harbor personnel and such rates may be found in the harbor tariff. If no rate for a particular service has been set by the city council, the charge shall be set by the harbormaster and shall compensate the city for reasonable labor, time, and materials expended, plus overhead expenses. The harbormaster may require a deposit or payment in advance of furnishing any ordinary services, and all charges shall be payable at the time services are rendered.

(c) *Emergency services.* Charges for emergency services shall be assessed in the same manner as for non-emergency services. All charges for services shall be payable at the time services are rendered.

(Ord. 95-11; Ord. No. 2005-05, § 1, 9-26-2005)

7.10.615. Fee collection.

(a) *Invoicing.* Invoices for fees shall be due upon receipt. Invoices may be delivered personally or mailed on a monthly or other basis to the last address provided to the harbormaster. It is the harbor user's obligation to notify the harbormaster in writing of any changes in address.

(b) *Payment.* Mooring fees shall be due and payable in advance. Payment shall be made at the harbor or at city hall.

(c) *Refunds.* Refunds are not automatically available to vessels departing the harbor; only vessels that no longer require transient or reserved moorage may receive a refund. If a vessel owner desires a refund of prepaid moorage, the vessel owner must make a request, in writing or in person, to the harbormaster. All refunds will be calculated from the date of notice as follows:

(1) *Daily moorage fees.* Refunds for prepaid daily moorage will be limited to the unused moorage days.

(2) *Quarterly moorage fees.* Refunds for prepaid quarterly moorage will be limited to the original payment made minus the applied daily rate for actual moorage days used.

(3) *Semi-annual moorage fees.* If a request for a refund is made within the first 90 days of the term, a refund for prepaid semi-annual moorage will be limited to the original payment made minus the lesser of the applied daily rate for actual moorage days used or the quarterly moorage rate. After the first 90 days of the semi-annual term, the vessel owner will not be eligible for a refund.

(4) *Annual moorage fees.* If a request for a refund is made within the first 90 days of the term, the refund for prepaid annual moorage will be limited to the original payment made minus the lesser of the applied daily rate for actual moorage days used or the quarterly moorage rate. If a request for a refund is made between the 91st day and the 180th day of the term, the refund will be limited to the original payment made minus the lesser of the applied daily rate for actual moorage days used or the semi-annual moorage rate. After the first 180 days of the term, a vessel owner will not be eligible for a refund.

(d) *Delinquent fees.* Fees remaining unpaid after 30 days will be considered delinquent and subject to late fees as allowed by law and as set forth in the harbor tariff. All

delinquent moorage for vessels will accrue charges based on the daily fee as set by resolution of the city council.

(e) *Interest on delinquent fees and fines.* Delinquent fees and fines under this title shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowable by law, whichever is less, from the date they were due until paid in full.

(f) *Collection action.* The city manager is authorized to commence suit or exercise any other legal remedy to collect any delinquent fee or charge. In the event such suit is commenced, the person obligated to pay the fee shall, in addition to any other liability imposed by this title, be liable for the city's actual, reasonable attorney's fees and court costs associated with the collection.

(g) *Lien for unpaid fees.* In addition to all other remedies available by law, the city shall have a lien for any fees and interest provided by this title and costs of collection, including attorney's fees, upon any vessel (including all equipment, tackle, and gear) and property giving rise to such fees. The lien may be enforced by any procedure otherwise provided by law and by the procedure set forth in this title.

(Ord. 95-11)

7.10.620. Penalties.

Penalties for violation of this title may be set by resolution of the city council.

(Ord. 95.11)

Article 7. Impoundment and Disposition of Vessels and Abandoned Property

7.10.710. Lost and abandoned property.

Personal property found in the harbor, whether on land, adrift, or sunken, which is not in the lawful possession or control of some person shall be immediately delivered to the harbormaster, in whose custody the property shall remain until claimed by the proper owner or disposed of as abandoned property.

(Ord. 95-11)

7.10.715. Property which may be impounded.

The harbormaster is authorized to impound abandoned property at any time, and is authorized to impound a vessel under any of the following circumstances:

- (1) The vessel is within the harbor and is derelict or a nuisance as defined in this title;
- (2) The fees for which the city has a lien on the vessel are delinquent for a period of three months, or it appears to the harbormaster that the removal of the vessel from the harbor without payment of the delinquent amount is imminent;
- (3) The vessel is located in the harbor and is in violation of any section of this title or any regulation of the harbor or any provision of the harbor tariff; or
- (4) The owner is not aboard the vessel and the vessel is not properly identified by a name and/or number.

(Ord. 95-11)

7.10.720. Notice to owner.

(a) *Right to notice before impoundment.* Except as provided in subsection (b) of this section, the city shall give at least 20 days written notice of its intent to impound abandoned property or a vessel.

(b) *No right to notice before impoundment.* The city need not give written notice before impoundment, but shall give written notice of impoundment within 24 hours after an impoundment where the harbormaster determines that:

(1) The abandoned property's or vessel's presence in the harbor presents an immediate danger to public health or safety; or

(2) The removal of the abandoned property or vessel to be impounded from the harbor without payment of delinquent fees or other charges is imminent.

(c) *Contents.* An impound notice shall be prepared by the harbormaster and shall contain:

(1) The name and/or official number or state registration number of the vessel, where applicable;

(2) The location of the abandoned property or vessel;

(3) The name and address, if known, of the owner;

(4) A statement that the city intends to impound, or has impounded, the abandoned property or vessel;

(5) The reason for the anticipated or actual impoundment;

(6) The intended disposition of the abandoned property or vessel if no action is taken within 20 days from the date of the notice;

(7) The owner's right to a hearing and the manner in which to request such a hearing;

(8) The name, address, and telephone number of a person at the city to contact;

(9) The procedure for obtaining release of the abandoned property or vessel from impoundment or threat of impoundment;

(10) A statement that the abandoned property or vessel is subject to storage charges once impounded; and

(11) If impoundment has already occurred, a statement of the owner's right to obtain immediate release of the impounded property or vessel by posting a bond pending a hearing to determine whether probable cause of impoundment existed, said bond not to exceed the total of all delinquent charges and fees owed the city, including the cost for impoundment and storage.

(d) *Distribution.* The impound notice shall be:

(1) Mailed by certified mail, return receipt requested, to the last known owner of the abandoned property or vessel at the owner's last known address, to any person who is known by the harbormaster to have a qualified interest in the abandoned property or vessel, to all known lienholders, and to any other person designated in the moorage agreement to receive notices regarding a vessel; provided, however, that notice need not be sent to any person whose interest in a vessel is not recorded with a state department or a federal agency and whose name and address does not appear on the moorage agreement for that vessel. If the harbormaster cannot determine the address of the owner of abandoned property or a vessel, notice shall be published at least once in a newspaper of general circulation in the city and, in the case of a vessel, shall be mailed to the U.S. Coast Guard documentation officer of the port of documentation, if such port can be reasonably ascertained.

(2) Posted on the abandoned property or vessel, in the harbormaster's office, at city hall, and in a United States Post Office in the city.

(Ord. 95-11)

7.10.725. Hearing.

(a) *Demand for hearing.* The owner or any other person in lawful possession of the abandoned property or vessel proposed for impoundment has the right to an administrative hearing to determine whether there is probable cause to impound the abandoned property or vessel. The owner or any other person in lawful possession of the abandoned property or vessel that has been impounded has the right to an administrative hearing to determine whether there was probable cause to impound the abandoned property or vessel provided that the owner or person was not afforded the opportunity for a hearing before impoundment occurred. Any such person desiring a hearing shall file a written demand with the city clerk within 20 days after mailing and posting of the impound notice.

(b) *Hearing procedure.* The hearing shall be conducted within 48 hours of receipt of a timely written demand from the person seeking the hearing, unless such person waives the right to a speedy hearing. Saturdays, Sundays, and city holidays are to be excluded from the calculation of the 48 hour period. The hearing officer shall be designated by the city manager and shall be someone other than the harbormaster. The sole issue before the hearing officer shall be whether probable cause to impound the abandoned property or vessel exists. "Probable cause to impound" shall mean such a state of facts as would lead a reasonable person exercising ordinary prudence to believe there are grounds for impounding the abandoned property or vessel. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing has the burden of establishing by a preponderance of the evidence the right to possession of the abandoned property or vessel. The harbormaster has the burden of establishing by a preponderance of the evidence that probable cause to impound the abandoned property or vessel exists. Failure of the owner, or any person in lawful possession of the abandoned property or vessel to request or attend a scheduled hearing shall be deemed a waiver of the right to such a hearing.

(Ord. 95-11)

7.10.730. Decision.

Within three working days after the conclusion of the hearing, the hearing officer shall prepare a written decision. The hearing officer shall only determine whether probable cause to impound exists. A copy of the decision shall be provided to the person demanding the hearing and the owner of the abandoned property or vessel if the owner is not the person requesting the hearing. The hearing officer's decision shall in no way affect any criminal proceedings in connection with the impoundment in question, and any criminal charges involved in such proceedings may only be challenged in the appropriate court. The decision of the hearing officer is final.

(Ord. 95-11)

7.10.735. Impoundment.

In the event the hearing officer determines there is probable cause to impound the abandoned property or vessel and impoundment has not already occurred, the harbormaster may proceed immediately with impoundment of the abandoned property or vessel. The harbormaster may impound the abandoned property or vessel by immobilizing it, removing it, or having it removed, and placing it in public or commercial storage with all expenses of haul out and storage and an impound fee to be borne by the owner of such abandoned property or vessel. In the event the hearing officer determines there is probable cause to impound the abandoned property or vessel and a bond has been posted by the owner, the bond shall be forfeited to the city and no further action to impound the abandoned property or the vessel shall be taken.

(Ord. 95-11)

7.10.740. Release from impound.

(a) Upon a hearing officer's decision reversing an impoundment, the abandoned property or vessel shall be released from impoundment without cost to the owner and any bond posted by the owner released to the owner.

(b) In the absence of a hearing officer's decision reversing an impoundment, the owner, the representative of an owner, or any person in lawful possession of the abandoned property or vessel may apply to the harbormaster to release the abandoned property or vessel from impoundment at any time before its disposition under this chapter. An application for release from impoundment shall include the following:

(1) Proof satisfactory to the harbormaster that the applicant is the owner of the abandoned property or vessel, or, if the applicant is not the owner, proof satisfactory to the harbormaster of the applicant's authority to represent the owner;

(2) Either (a) payment of all delinquent moorage or other charges for the abandoned property or vessel, including interest and penalties, if any, all costs of towing, appraising, impounding, and storing the abandoned property or vessel, and all costs incurred for any pending sale of the abandoned property or vessel, or (b) the posting of a bond or other security pending resolution of an appeal to the superior court, said bond not to exceed the appraised value of the abandoned property or vessel, if known;

(3) Proof of arrangements satisfactory to the harbormaster for either the removal of the abandoned property or vessel from the harbor, or the placement of the abandoned property or vessel in a location in the harbor approved by the harbormaster.

(c) The harbormaster need not release the abandoned property or vessel from impoundment under this section when:

(1) The harbormaster determines that possession of the abandoned property or vessel would be unlawful or would present an immediate hazard to public health or safety; or

(2) The harbormaster has actual knowledge that ownership or possession of the abandoned property or vessel is in dispute.

(Ord. 95-11)

7.10.745. Disposition of impounded abandoned property or vessel.

(a) The city shall not dispose of impounded abandoned property or an impounded vessel until 30 days after the date of impoundment under this chapter.

(b) Public auction is not required when the appraised value of the abandoned property or vessel, as determined by an independent appraiser, is less than \$500.00. The appraiser

must have at least one year of experience in the sale, purchase, or appraisal of abandoned property or vessels. Upon that determination and after public advertisement has been made once in a newspaper of general circulation, the harbormaster may sell the abandoned property or vessel by negotiation, dispose of it as junk, donate the abandoned property or vessel to a governmental agency, or destroy it.
(Ord. 95-11)

7.10.750. Public auction.

(a) *Notice of sale.* Prior to the sale of any impounded property or vessel, the harbormaster shall prepare a written notice of sale of the property or vessel. The notice shall contain:

- (1) The name and/or official number or state registration number of the abandoned property or vessel, the location of the abandoned property or vessel, and a detailed description of the abandoned property or vessel;
- (2) The date, time, and place of the sale;
- (3) The fees, interest, and costs that are due against the abandoned property or vessel and any bidding terms;
- (4) A statement indicating to whom payment must be made in order for the owner to redeem the abandoned property or vessel prior to sale; and
- (5) A statement indicating that the city may purchase the abandoned property or vessel at the sale for an offset bid in the amount of fees and charges due the city for the abandoned property or vessel.

(b) *Distribution.* At least 20 days before the sale, the notice of sale shall be:

- (1) Mailed by certified mail, return receipt requested, to the last known owner of the abandoned property or vessel at the owner's last known address;
- (2) Posted on the abandoned property or vessel, in the harbormaster's office, at city hall, and in a United States Post Office in the city; and
- (3) Published at least once in a newspaper of general circulation in the city for a total of seven consecutive days.

(Ord. 95-11)

7.10.755. Sale.

(a) *Public auction.* Any time after the distribution of the notice of sale, the abandoned property or vessel may be disposed of by public auction, through oral tenders, or by sealed bids.

(b) *Bids.* The minimum acceptable bid shall be a sum equal to the fees against the abandoned property or vessel, including interest and costs to be paid in cash at the time of sale or within 24 hours thereafter. The proceeds of such sale shall be first applied to the cost of sale, including advertising, then to interest owed the city, then to fees accrued and owed to the city, and the balance, if any, shall be held in trust by the city for the owner of the abandoned property or vessel to claim. If such balance is not claimed within two years, the balance shall be forfeited to the city and paid into the harbor enterprise fund.

(c) *No acceptable bids.* If at the public sale there are no acceptable bids for the abandoned property or vessel, the city may destroy, sell at a private sale, or otherwise dispose of the abandoned property or vessel. The disposition to be made without liability

to the owner, any person in possession of the abandoned property or vessel, or any lienholder of the abandoned property or vessel.

(Ord. 95-11)

7.10.760. Effect of sale.

Upon sale being made, the city shall make and deliver its bill of sale, without warranty, conveying all of the city's interest in the abandoned property or vessel to the buyer.

(Ord. 95-11)

Article 8. Business Activities

7.10.810. Licenses and permits prerequisite to conduct of business.

No business activity shall be conducted within the harbor unless the licensee, permittee, concessionaire, assignee, lessee or sublessee shall have first obtained the necessary permits and licenses from the city; provided, however, that commercial fishing vessels do not require a business license to carry on the normal activities relating to their operation.

(Ord. 95-11)

7.10.815. Business permits--required.

(a) It shall be unlawful for any person to conduct or carry on any business upon any portion of the city facilities, or upon any float, landing stage, or approach thereto in use in connection with the city facilities, or to use, occupy or hold possession of any part of the city facilities, float, landing stage or approach thereto, for any business purpose whatever, except for taking on or landing passengers thereon or thereover unless such person shall have a business permit therefor.

(b) It shall be unlawful for any person to solicit, ask for or request patronage or trade, or display ware or advertise in any way, on the city facilities, or upon any float, landing stage or approach thereto in use in connection therewith, for any business, or to sell tickets of any kind therewith, or to sell any article of merchandise upon any portion of the city facilities, float, landing stage or approach thereto, unless such person shall have a business permit therefor.

(Ord. 95-11)

7.10.820. Business permits--Employees and agents of principals.

Where a business permit is desired for a person to carry on business as an employee or agent for any person, the application for such permit shall be approved by the principal of such person, and such permit may be revoked at any time without notice to the holder thereof upon the request of such principal to do so.

(Ord. 95-11)

7.10.825. Business permits--Application.

The application for a business permit shall be in writing and shall set forth the following information:

(1) The name and address of the applicant and, if the applicant shall be a firm, the names and addresses of the members of such firm, and, if the applicant shall be a corporation, the names and addresses of the officers of the corporation;

(2) The names of the vessels, the description of the business to be carried on by means of such vessels, a reference to the business licenses, if any, held by such applicant, and any other particulars which such applicant may wish to set forth as a reason for granting such permit;

(3) A description of the space on the city facilities of the floats or landing stages the applicant desires to use in carrying on such business; and

(4) A statement to be signed by the applicant that if such permit shall be granted, he will conduct his business thereunder in accordance with the laws of the city in relation thereto, the terms of such permit and all rules and regulations in relation to the city facilities, and that the permit may be revoked at any time by the city council for the violation of the terms of such permit, and that the decision of the city council as to the revocation of any such permit shall be final and conclusive.

(Ord. 95-11)

7.10.830. Business permits--Duration.

The city council shall have the power and authority, in its discretion, to grant a permit to any person to use or occupy certain portions of the city facilities, and any float, landing stage or approach thereto, for a term not exceeding one year, and subject to revocation at any time by the city council for violation of any of the terms of such permit, or of the laws of the city, or of the rules and regulations adopted by the city council for the use of the city facilities.

(Ord. 95-11)

7.10.835. Business permits--Terms and conditions.

All business permits shall be on forms to be adopted by the city council and shall include such terms and conditions, in addition to those set forth in this chapter, as the city council may determine from time to time to be necessary or advisable to preserve the public peace and quiet on the city facilities or to protect the public welfare, and all such terms and conditions included in any such permit shall be binding on the holder of such permit to the same extent as though expressly set forth in this chapter.

(Ord. 95-11)

7.10.840. Business permits--Suspension and revocation.

(a) *Suspension.* The city council may, in its discretion, at any time, as a penalty for the violation of the provisions of any business permit, suspend the same for a period to be fixed in such order of suspension.

(b) *Revocation.* All business permits issued shall be granted and accepted by all persons receiving such permits with the express understanding that the city council may revoke the same at any time if satisfied that any of the conditions of the permit or provisions of this chapter have been violated, or that such permit was obtained by fraudulent representation, or that the holder of any such permit is an unfit person to be entrusted with the privileges granted by such permit; provided, that no permit shall be revoked without first giving the holder an opportunity to appear before the city council in his own behalf, except as to an employee or agent of some other person holding a business permit who requests such revocation.

(Ord. 95-11)

7.10.845. Right of city to inspect leased premises.

The city reserves the right to inspect any of the rented or leased premises at any time.

Failure to inspect shall not be deemed to create any responsibility upon the city.

(Ord. 95-11)

7.10.850. Applicants to release city from liability.

The city assumes and shall be under no liability for anything done or omitted to be done

under or in relation to any of the provisions of this chapter, and applicants for permits

shall release the city accordingly.

(Ord. 95-11)