

**ORDINANCE NO. 340-23
CITY OF DEPOE BAY**

**AN ORDINANCE REPEALING AND REPLACING
ORDINANCE NO. 252, CHAPTER 92, THE CITY OF
DEPOE BAY HARBOR ORDINANCE**

WHEREAS, the City of Depoe Bay has adopted rules for the control and management of the harbor properties and facilities of the City of Depoe Bay (Ordinance No. 252) (Harbor Ordinance); and

WHEREAS, since adoption, the Harbor Ordinance was amended from time to time; and,

WHEREAS, the Depoe Bay Harbor Commission has held several meetings to review and revise the Harbor Ordinance; and,

WHEREAS, the City Council of the City of Depoe Bay finds it necessary that, based on the recommendations of the Harbor Commission, to repeal the existing Chapter 92 of the Depoe Bay Code of Ordinances and replace it with the version attached to this Ordinance as Exhibit "A."

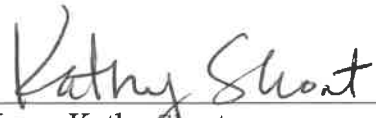
NOW, THEREFORE, the City Council of the City of Depoe Bay hereby ordains that:

1. Section 1. Ordinance No. 252, Chapter 92, the City of Depoe Bay Harbor Ordinance, is repealed in its entirety and replaced with the attached Exhibit "A."
2. Section 3. All personal property on the public docks must be removed within two (2) weeks after the enactment of this Ordinance.

Introduced and passed the first reading in a regular meeting of the City Council of the City of Depoe Bay, Oregon, on this 8th day of August, 2023.

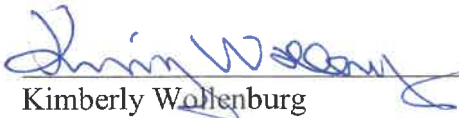
Passed at the second reading, placed on final passage, and adopted by the City Council of the City of Depoe Bay, Oregon, on this 8th day of August, 2023.

Approved by the Mayor of the City of Depoe Bay, Oregon, this 8th day of August, 2023.



Mayor Kathy Short

ATTEST



Kimberly Wollenburg
City Recorder

EXHIBIT “A”

CHAPTER 92: HARBOR REGULATIONS

Section

Rules and Regulations

- 92.01 General provisions
- 92.02 Definitions
- 92.03 Use of harbor facilities
- 92.04 Sanitation
- 92.05 Wheeled vehicles or devices and aircraft operation
- 92.06 Fire, safety, hazardous substances, and operations
- 92.07 Electrical systems
- 92.08 Moorage license agreements
- 92.09 Business at harbor facilities
- 92.10 Vessel categories
- 92.11 Enforcement

Fees, Rates, and Charges

- 92.25 Moorage fees
- 92.26 Waiting list
- 92.27 Utilities
- 92.28 Fuel facility
- 92.29 Launch facility

RULES AND REGULATIONS

§ 92.01 GENERAL PROVISIONS.

- (A) Reference. This chapter shall be referred to as the Harbor Ordinance.
- (B) Purpose. The purpose of these rules and regulations is to secure the most effective control and management of the harbor properties and facilities of the City.
- (C) Application. These rules and regulations are applicable to all harbor properties and facilities of and in the City. All vessel owner/operators and persons entering or using the facilities shall be subject to the policies herein defined.
- (D) Availability of Chapter. Anyone may inspect a copy of these rules at City Hall or the City website, and printed copies may be obtained upon request.
- (E) Construction. Unless otherwise required by the context or any particular provision, the words or phrases defined in § 92.05 of this subchapter shall have the meanings as set forth therein. The use of any gender shall include all genders; the singular shall include the plural, and the plural shall include the singular. When used throughout this chapter, the terms “shall” is mandatory and “may” is permissive, and the provisions of this chapter shall apply to individuals, partnerships, associations, and corporations alike.

(Ord. 292, passed 12-18-2012)

§ 92.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED. A vessel or other personal property shall be deemed abandoned if:

- (1) It is left on or in the harbor facilities either without identification or evidence of ownership and without notification to the City of ownership and:
 - (a) Without notification to the City of intent to leave for more than five days; or
 - (b) Notification to the City of intent to leave, but failure to return within five days of date stated to the City for date of return.
- (2) It is not removed from the harbor facilities within 15 days from date of mailing notice to vacate by the City by regular mail to registered owner at last known address, according to records of the U.S. Coast Guard for federally documented vessels, the Oregon State Marine Board for state licensed vessels, or to owner or person in control as registered with City; or
- (3) The vessel is not registered with the City within 12 hours of commencement of use of the harbor.

EMERGENCY. A state of imminent danger to life, property, or navigation in which time is of the essence.

ENVIRONMENTAL LAW. Any federal, state, or local law, statute, ordinance, or regulation pertaining to hazardous substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, being 42 U.S.C. 9601 et seq., as amended, and the Resource Conservation and Recovery Act of 1976, being 42 U.S.C. 6901 et seq., as amended.

GOOD CAUSE. Exists when it is established by satisfactory evidence that an action, circumstance, or omission was beyond the reasonable control of the person and, under similar circumstances, would be beyond the reasonable control of a reasonable and prudent person exercising ordinary common sense.

HARBOR FACILITIES. All facilities and equipment owned, leased, or operated by the City for the purpose of providing or facilitating usage of the City harbor by vessels and the public, including but not limited to moorage facilities, boat launch facility, vessel fueling facility/dock, fish plant facility, and parking areas.

HARBORMASTER. The person appointed by the City to serve as harbormaster and any assistant harbormaster or other employee authorized or designated by the City to enforce the provisions of this chapter.

HAZARDOUS SUBSTANCE. Any hazardous, dangerous, toxic, infectious, or radioactive substance, waste, or material, as defined or listed by any environmental law and shall include, without limitation, petroleum oil, and its fractions.

INDUSTRIAL WASTE. Any liquid, gaseous, or solid waste substance or combination thereof resulting from any process of industry, manufacturing, trade, agricultural, or agricultural operation or business, or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the harbor property or the waters controlled by the City.

LICENSEE. Any business, organization, or individual that has been granted legal permission by another entity to engage in an activity or rent equipment.

LITTER. Any and all types of debris and substances, whether liquid, gaseous, or solid or a combination thereof, including but not limited to garbage, refuse, rubbish, glass, cans, bottles, paper, and paper products, wrappings, decayed wood, sawdust, shavings, bark, cement, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, dead animals or parts thereof, manure, human or animal wastes, putrid, decaying or deleterious substances or matter, petroleum wastes or any machinery, appliances, or automobiles or parts thereof, or any other substances which may render the harbor property or waters controlled by the City unsightly, noxious, or otherwise unwholesome or to the detriment of the public health and welfare.

MOORAGE. Any place where a vessel is moored in an assigned berth made fast (secured) to a dock or finger pier.

(1) RESERVED MOORAGE. A designated moorage as defined above which is specifically assigned to the licensee on an annual basis, reserved for use by the licensee, and which is paid for on an annual basis.

(2) TRANSIENT MOORAGE. An undesignated moorage in which the period of occupancy is not established by a reserved moorage license agreement, and the charges for transient moorage are based upon the period occupied, daily or for one month.

MOORAGE FACILITIES. Those facilities of the City where vessels may moor to docks and finger piers.

MOORAGE LICENSE AGREEMENTS. The two types, being:

(1) Reserved MOORAGE LICENSE AGREEMENT is an agreement between the boat owner or operator and the City for the use of a reserved moorage space;

(2) Transient MOORAGE LICENSE AGREEMENT is an agreement between the owner/operator and the City for daily or monthly moorage for any vessel to use the harbor moorage facility and which belongs to an owner/operator who does not have a reserved MOORAGE LICENSE AGREEMENT in effect. Transient vessels or guest boats include, but are not limited to vessels seeking a harbor of refuge, day(s) use, or overnight(s) use of a moorage facility on a space-as-available basis.

OVERALL LENGTH. The distance from the foremost part of the bow (including the bowsprit or other protruding portion of the vessel) to the aftermost part of the stern including any protruding portion of the vessel except outboard engines or stern drives, regardless of keel length and regardless of registered length.

OVERALL WIDTH. The distance between the outermost part of each side of the hull of the vessel including any protruding portion, regardless of registered width.

OWNER/OPERATOR. Any person who claims lawful care, custody, or control of a vessel by virtue of legal title or equitable interest therein which entitles him or her to possession or has authority over the operation of the vessel pursuant to authority of the legal or equitable owner and has so stated on the moorage license agreement that he or she is the operator of the vessel.

PUBLIC WORKS DIRECTOR. The person appointed by the City Council to serve as the Public Works Director and acting under its direction.

SEWAGE. Water, chemical, or other liquid carried human or animal wastes from vessels, motor vehicles, trailers, residences, buildings, industrial or commercial establishments, or other places with such ground water infiltration and surface water as may be present.

UNDERWAY. The condition of a vessel, not at anchor, without moorings, and not made fast to the shore or ground.

VESSEL. Every description of watercraft in the water used or capable of being used.

VESSEL; COMMERCIAL. Any vessel used or engaged for any type of commercial venture, including but not limited to the display of advertising, commercial fishing, or the carrying of passengers or cargo for hire. Commercial fishing boat is defined as one that holds a valid resident or non-resident commercial fishing boat license and a valid commercial fishing license which authorizes the activity of selling his or her own catch directly from the vessel from which the catch was made and only to the ultimate consumer.

VESSEL; HAZARDOUS. A vessel which is determined by the City to be unseaworthy or in a state of disability which if unduly prolonged could endanger the marine environment or life or property or become a hazard to navigation.

VESSEL; STRAY.

- (1) An abandoned vessel;
- (2) A vessel, the owner/operator of which is unknown;
- (3) A vessel moored without permission; or
- (4) A vessel underway without a competent person in command.

VESSEL; VIOLATION. Any vessel entering and remaining at the harbor without authorization; or remaining at the harbor after moorage license agreement has been terminated; or in violation of any ordinance pertaining to the harbor of the City.

(Ord. 292, passed 12-18-2012)

§ 92.03 USE OF HARBOR FACILITIES.

- (A) Animals. Animals shall not be allowed on the harbor facilities unless securely restrained by a leash, chain, or other device which restricts their freedom and under the control of a responsible person. No person shall leash or tie any animal on any harbor facility in such a manner that would create a danger to any other person using the walkway or other facility or that would obstruct normal traffic on the facility.
- (B) Boat launch. Persons may launch vessels or retrieve vessels from the waters of the harbor of the City from the designated boat launch facility. The use of the boat launch shall be at the vessel owner's or operator's risk. All persons launching or retrieving vessels using the boat launch facility shall exercise reasonable care to avoid damage to the boat launch facility or to other persons or property in or about the boat launch area. Use of the boat launch facility is subject to payment of such fee as may be determined by the City Council by resolution from time to time.
- (C) Children. Children under the age of 14 years shall not be allowed on any harbor facility unless wearing a Coast Guard approved life jacket, or unless accompanied and supervised by a parent, guardian, or other responsible adult.

(D) Condition of vessels and other property.

(1) Every vessel and all other personal property moored at or located on harbor properties or facilities of the City shall be kept and maintained in such condition of repair, maintenance, neatness, and orderliness so as not to constitute a condition of nuisance, substantial danger or risk, or harm to persons or property, or facilities. Every vessel moored at harbor properties or facilities of the City must, at all times, be completely seaworthy, fully operational, and ready for immediate cruising in local waters under its own power. Lack of seaworthiness may result in removal of the vessel as a hazardous vessel unless:

(a) The vessel is undergoing short-term (30 days or less) repairs that render the vessel inoperable; or

(b) Authorization has been obtained from the City to effect repairs rendering the vessel inoperable for longer than 30 days.

(2) In no event shall the vessel be rendered inoperable for a period exceeding 90 days.

(E) Fish cleaning. No person shall clean or process fish or shellfish on any harbor facility or from any vessel secured thereto, except in areas so designated by the City.

(F) Fishing and crabbing. No person shall fish or crab from any harbor facility except from 30 minutes before sunrise to 30 minutes after sunset. All fishing and crabbing gear shall be removed from the harbor facilities within 30 minutes after sunset.

(G) Harbor equipment. All City-owned equipment shall be operated by City employees only. Harbor equipment includes, but is not limited, to the City's boat and hoist. Use of the City's boat or hoist is subject to payment of such fee as may be determined by the City Council by resolution from time to time.

(H) Moorage facilities. No moorage will be allowed unless designated by the harbormaster or his/her representative. The right is reserved to refuse moorage if in the best interest of the City. Prior to using the harbor facilities for moorage by any vessel, the owner/operator shall contact the City and register the vessel and obtain a moorage license agreement for the moorage of the vessel. Licensee shall inspect the moorage space and adjacent premises and accepts them in their present conditions. With the exception of transient moorage, payment for the moorage shall be made in advance prior to the mooring. A transient moorage license agreement shall be obtained and moorage fees paid prior to or within 12 hours of commencement of use of the harbor moorage facilities.

(I) Performance of maintenance.

(1) No person shall perform maintenance on any personal property except in those areas so designated by the City.

(2) No person shall perform any type of maintenance on a vessel except in a safe and workmanlike manner, and shall not create, suffer, or permit any offensive or hazardous conditions while so performing.

(3) No tools, equipment, parts, or materials shall be placed on the public dock or other public space except when transferring from dockside to vessel or vice versa.

(J) Storage/designated storage areas. No person shall store supplies, materials, or equipment on any harbor facility or any other public area of the harbor except in areas designated by the City and with prior consent by the City. Persons may use such storage areas as designated by the harbormaster in accordance with the following provisions:

(1) Storage boxes are not allowed to be stored on the docks.

(2) No other personal property will be allowed on the public docks except for vessel steps and stairways marked with boat name and only during active loading and unloading. When not in use, the steps and stairways will be stowed on the vessel. In the event a person who is storing personal property on harbor facilities fails to remove all items stored, the City shall have the right to move and relocate any personal property left on the harbor facilities, or to declare the property abandoned and proceed with disposition pursuant to § 92.14(B) of this subchapter. The removal and relocation of personal property by the City shall be at the risk of the owner and/or person in lawful possession who failed to remove the items of personal property and the owner and/or person in lawful possession shall pay to the City a fee set by resolution of the Council for said removal and relocation, plus the actual costs of storage incurred by the City. At no time, will the penalty fee be less than \$100.

(K) Structures. No buildings or structures of any nature whatsoever shall be placed or constructed on City properties or facilities without prior written approval of the City.

(L) Swimming and diving. No person shall swim or dive from any harbor facility without written authority from the City. This section shall apply to recreational swimming and diving.

(Ord. 292, passed 12-18-2012) Penalty, see § 11.99

§ 92.04 SANITATION.

(A) Standard. All vessels, personal property, facilities, or equipment on or about, or used on or about City harbor properties or property or water under control of the City, shall be kept at all times in a condition of reasonable cleanliness and sanitation so as not to constitute a common nuisance or existing or potential danger or harm to public health.

(B) Animal wastes or droppings. No person having control of any animal on City facilities shall allow waste or droppings of that animal to remain on any harbor facility of the City. Animal wastes or droppings shall immediately be removed and placed in a waste receptacle.

(C) Fish carcass/fish waste. No person shall cause, suffer, permit, deposit, or dispose of fish carcass or fish waste on or about the City harbor properties, City property, or water under the control of the City, except as specifically allowed in this section.

(1) Commercial users.

(a) Commercial users shall be responsible for disposal of fish carcass and fish waste and shall not use City refuse or waste containers or other City facilities for disposal. Commercial users are persons, businesses, concessionaires, and non-public entities performing any regular or non-incidental activity or event conducted for the purpose of selling products or providing goods or services for a profit or private financial gain.

(b) Commercial uses include, but are not limited to, permanent or portable stores, restaurants, shops, commercial fishing vessels, ocean charter boats, fishing cleaning services, tour or excursion boats, shuttle services, ticket sales, and watercraft rentals.

(2) Non-commercial users. Non-commercial users may dispose of fish carcasses and fish waste:

(a) By proper use of the City refuse or waste containers identified for disposal of fish carcasses at the public fish cleaning stations;

(b) By transferring such carcass or waste to a person or entity that has agreed to dispose of such materials in such a way as to not violate any federal or state law or regulation applicable to the materials;

(c) By removing of such materials from the harbor properties; or

(d) Bait used exclusively for crabbing on harbor properties may be disposed of in the harbor waters.

(D) Industrial waste. No person shall throw, place, leave, deposit, or abandon, or cause or permit to be thrown, placed, left, deposited, or abandoned, any industrial waste, litter, or sewage on any City harbor public property, except in receptacles designed by the City for the disposal of such materials or substances.

(E) Odorous waste. No person shall cause, suffer, permit, place, leave, deposit, or abandon aboard any vessel, in any motor vehicle or trailer, or on any City harbor properties or other public property, litter in the nature of offal, garbage putrid, or decaying or deleterious substances which give off an offensive odor, except in a closed nonporous container.

(F) Off-premises waste. No person shall use City refuse or waste containers for other than wastes or litter generated on City harbor properties or waters controlled by the City and for those wastes or litter generated from a vessel's voyage. See 92.07 (C) above for disposal of fish carcasses.

- (G) Toilet standards. No person on a vessel equipped with a toilet shall use or permit the use of such toilet on waters controlled by the City, unless the vessel is equipped with facilities approved by the U.S. Coast Guard, or other appropriate governmental agency, and such equipment is in good operating condition adequate to treat, hold, incinerate, or otherwise handle sewage in such a manner that is capable of preventing water pollution. Dumping of vessel holding tanks in harbor waters is not allowed. Persons shall use the CVA pump/dump station for dumping of vessel holding tanks located on the fueling dock.

(Ord. 292, passed 12-18-2012) Penalty, see § 11.99

§ 92.05 WHEELED VEHICLES OR DEVICES AND AIRCRAFT OPERATION.

- (A) Aircraft landing. No person shall land any aircraft, fixed or rotary wing, on City harbor properties or facilities except in an emergency or after receiving permission from the City.
- (B) Wheeled vehicles or devices. No person shall use any wheeled vehicles or devices on any harbor facility except if the device is necessary to accommodate a physical handicap or the device is used to transport necessary supply or maintenance items, and such devices are not used in a manner that creates a danger or hazard on the facilities. Wheeled vehicles or devices include, but are not limited to mopeds, motorcycles, motorized wheelchairs, motor assisted scooters, electric mobility devices, bicycles, non-motorized vehicles other than bicycles (skateboards, scooters), wheeled carts, and wagons.

(Ord. 292, passed 12-18-2012) Penalty, see § 11.99

§ 92.06 FIRE, SAFETY, HAZARDOUS SUBSTANCES, AND OPERATIONS.

- (A) Purpose. The provisions of this section are intended to govern the general safety of vessels, harbor facilities, and properties of the City and are not intended to limit the powers of any local, state, or federal agencies.
- (B) Standards. All vessels, personal property, City property, or any items used on or about City properties shall be used in such a manner and maintained in such a condition as not to constitute a fire or safety hazard. The failure to conform to any local, state, or federal regulation or ordinance regarding fire safety or safety operations may be considered in determining violation of this section.
- (C) Combustibles. Combustible materials shall be stored in such place and manner as to prevent accidental combustion and fire, except that rags and waste materials saturated with combustible fluids must be removed from City property immediately after use and may be further limited herein below. No person shall dump, discharge, pump, or allow to be dumped, discharged, or pumped, any oil, gasoline, distillate, any petroleum products, or any other flammable materials onto City properties or into

waters within the boundaries of the City. Persons shall use the waste petroleum recycling facility for disposal of oil, gasoline, distillate, and petroleum products.

(D) Electronic equipment. No person shall knowingly use, repair, or test any electronic equipment on or about the facilities of the City or waters within the boundaries of the City in such manner as to cause interference with other electronic equipment in the area or injury or harm to any person or property in the area.

(E) Environmental compliance; hazardous substances. Persons shall take all practicable measures to minimize the quantity and toxicity of hazardous substances brought into, used, or handled at the properties of the City or upon waters within the boundaries of the City. All persons shall notify the City immediately upon becoming aware of any spill, leak, disposal, or other release of hazardous substances on, under, or adjacent to the harbor. As allowed by law, the City may inspect a person's use of any hazardous substances at the harbor properties at any time upon reasonable notice, or without notice in the event of an immediate threat to the general safety of the harbor.

(F) Fueling. No person shall fuel or cause to be fueled, a vehicle or watercraft on properties of the City or upon waters within the boundaries of the City except at the fuel dock station (Dock five).

(G) Fuel storage. No person shall store or cause to be stored, any fuel for any vehicle or watercraft on or upon the City properties or waters within the boundaries of the City except in tanks or containers designed for that purpose, and in areas where such tanks or containers shall not come into contact with sparks or heat or other conditions which may cause it to ignite.

(H) Welding and fuel torch equipment. No person shall:

- (1) Use any welding equipment on any harbor facility except in such areas as may be approved by the City;
- (2) Do any welding with equipment that fails to meet state safety requirements and without having in his or her possession a fire extinguisher of the kind approved by the United States Coast Guard for use on a commercial vessel;
- (3) Use any blowtorch, acetylene torch, or similar type equipment for the repair or refurbishing of any watercraft in such a manner as to cause injury, harm, or damage to any person or property at or about the area of use; or
- (4) Do any welding without conducting a one-hour fire watch upon completion. A pre- and post-work wash down is required.

(Ord. 292, passed 12-18-2012) Penalty, see § 11.99

§ 92.07 ELECTRICAL SYSTEMS.

- (A) Damage to system. No person shall do any act which will cause damage to or destroy any part, portion, or the whole of the electrical system on the harbor facilities.
- (B) Use of electrical system. No person shall change, modify, or use the existing electrical system except as specifically authorized by the City. The City does not guarantee the continuity or characteristics of electrical service or its compatibility with the boat's electrical circuit protector, if any. Use of the electrical service is at the licensee's own risk. The City shall not be responsible for any damages caused by licensee's use of the electrical service.
- (C) Excessive use. No person shall draw more amperage from the electrical system or individual outlets or services than as designed and available from one outlet, except that one additional outlet may be used on a temporary basis to operate power tools while the worker is on site making vessel repairs.
- (D) Vehicle or vessel contact prohibited. No person shall cause any vehicle or watercraft to be placed or moored in such a manner that the vehicle or watercraft or any part or extension thereof would come into contact with the electrical system or parts thereof.
- (E) Approved connector. No person shall use other than a marine three-wire plug, 3/12 cord, approved by the City when using electricity from the City's electrical system.
- (F) Electrolysis. No person shall cause, permit, suffer, or maintain any boat that discharges electrical currents in the harbor waters which result in electrolysis in the harbor. The City shall disconnect electrical service to such vessel and deny electrical hookup until the fault is corrected.

(Ord. 292, passed 12-18-2012) Penalty, see § 11.99

§ 92.08 MOORAGE LICENSE AGREEMENTS.

- (A) General. It is the policy of the City that the moorages in the harbor are to be used for the purpose of accommodating vessels operating in conformance with the rules and regulations of the City and full and timely payment of moorage fees and charges.
- (B) Moorage license agreement required. No person shall moor a vessel at harbor facilities without having first entered into a written moorage license agreement with the City in the form and in the manner required by the City.

WAIVER OF RESPONSIBILITY. The liability and obligations of the City are limited to furnishing that portion of a slip or premises reasonably necessary for licensee's moorage use. The City does not accept the boat for storage, and shall not be responsible for or liable in any manner for the safekeeping or condition of the same. The City shall not be responsible or liable for any damage or loss to, or theft of, the vessel, its equipment, gear, contents or other property either upon the vessel or upon the premises of the harbor, from any cause whatsoever, or for injury to licensee, his

employees, agents, or invitees upon harbor premises or adjacent thereto. Licensee shall indemnify and hold harmless the City from any loss, damage or injury resulting from the acts or omissions of licensee, his employees, agents or invitees.

All moorage license agreements with corporate owners or operators must be personally guaranteed by one or more controlling principal(s) of the corporate owner/operator. Any and all guarantor(s) signing the agreement acknowledge that they are personally benefitted by the agreement, and that they unconditionally guarantee the timely performance of all of the licensee's obligations hereunder, including indemnities. The liability of each licensee is continuing, joint and several, and continues until all of licensee's obligations hereunder have been fully satisfied. Licensee(s) shall not be released by or because of the taking, or failure to take, any action that might in any manner or to any extent vary the risks of licensee under the license or that, but for this paragraph, might discharge or otherwise reduce, limit, or modify licensee's obligations under this license. Licensee waives and surrenders to the fullest extent allowed by law any defense to any liability under this license based upon any such action by or on behalf of the City. It is the express intent of licensee that licensee's obligations under this licensee are and shall be absolute, unconditional, and irrevocable. Licensee agrees to pay all reasonable attorneys' fees and all other costs and expenses that may be incurred by the City in the enforcement of the licensee or in the preservation, protection, or enforcement of any rights of the City in any case commenced by or against licensee under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute.

- (C) Vessel must be licensed or documented. As required by state or federal law, all vessels shall be licensed or documented at all times during the period of a moorage license agreement.
- (D) Period of validity and renewal of moorage license agreement.
 - (1) A reserved moorage license agreement shall be issued for one year. Upon expiration of the period stated therein, the moorage license agreement and all rights of the licensee thereunder shall automatically terminate. No reserved moorage license agreement shall be renewed unless the conditions of issuance are met and all fees and charges due and payable have been paid.
 - (2) A transient vessel moorage license agreement may be issued for any period of time at the daily rate, or for a period of 30 days at the monthly rate, as provided by the then current resolution of the City Council.
- (E) Uses permitted. The moorage license agreement shall allow the use of the boat launch and of the moorage facilities for moorage purposes only and shall grant no further right privilege or use. Additional or varying uses shall not be allowed, except as provided in the following divisions in this section.
- (F) Live-aboard. Live-aboard shall mean any person sleeping overnight or any other activity normally connected with temporary lodging. Residing aboard a moored vessel for more than 18 days during any consecutive 30-day period is prohibited.

- (G) Non-transferability of moorage license agreements. Reserved moorage berths may not be sublet or in any other way beneficially assigned. Reserved moorage license agreements are non-transferable, except when authorized by the harbormaster under the following conditions:
- (1) If a vessel is sold as the result of the death or disability or illness of the licensee, the moorage license agreement may be transferred with the vessel when sold. Only one transfer under this provision per part-owner or owner/operator shall be allowed;
 - (2) If two or more vessels are being traded between boat owners so the net result does not change the moorage configuration within the harbor;
 - (3) If a vessel owner sells a vessel and replaces it with another vessel that may, in the judgment of the harbormaster, be safely moored in the same berth or in a suitable, available berth on the public docks when no one is on the waiting list for such berth;
 - (4) If a vessel owner transfers title to a corporation in which the vessel owner owns and maintains ownership of not less than 51% of the issued and outstanding stock;
 - (5) Upon the sale of a working charter boat with a valid City business license to an individual who shall continue working in the harbor as an active licensed charter boat, the purchaser of said vessel shall have the first right of refusal on said vessel's existing moorage space at the time of the sale;
 - (6) Upon the sale of a licensed actively working commercial fishing boat to an individual who shall continue working in the harbor as a licensed active commercial fishing boat, the purchaser of said vessel shall have the first right of refusal on said vessel's existing moorage space at the time of the sale. For the purposes of this exception, "commercial fishing boat" is defined as one that holds a valid resident or non-resident commercial fishing boat license and a valid commercial fishing license which authorizes the activity of selling his or her own catch directly from the vessel from which the catch was made and only to the ultimate consumer; or
 - (7) If a vessel owner/moorage licensee of a reserved moorage space removes the licensed vessel from the assigned moorage space to conduct repairs on said vessel, the vessel owner/moorage licensee may use the assigned moorage space for a same class size, or smaller class size, vessel owned or controlled by the vessel owner/moorage licensee until the licensed vessel is repaired. Prior to mooring the alternate vessel, the vessel owner/licensee shall obtain and maintain a valid moorage license agreement for the alternate vessel pursuant to division (I) below.
- (H) Grace period. In the event the licensee of a reserved moorage space sells or involuntarily loses the vessel, except by foreclosure by the City, the reserved moorage license agreement shall remain with the original licensee, providing that the licensee

has purchased or purchases within one year of the date of the sale or loss, another vessel that is compatible to the size of the berth previously occupied and pays the reserved moorage fees at time of renewal. Prior to mooring the new vessel, licensee shall obtain a valid moorage license agreement for the new vessel pursuant to the requirements of this chapter.

(I) Acquisition of moorage.

- (1) All reserved moorages will be assigned by the harbormaster at such time as appropriate moorage space is available. Except as provided by division (G) above, reserved moorage license agreements will be granted to the applicant who is the highest on priority (determined by time) on the waiting list and who owns a vessel that is compatible to the berth that is available. Any person refusing to accept an assigned reserved moorage berth without good cause as determined by the harbormaster may be dropped from the waiting list.
- (2) All transient moorage license agreements for a period exceeding three days shall be granted upon proof of insurance and payment of charges provided there is no violation of any City ordinance and there is sufficient transient moorage space available, on a first come basis. There is no waiting list for transient moorage.
- (3) Applicants for the waiting list for a reserved moorage license agreement shall certify the following information: true dimensions (overall length and overall width); applicant's name, address, telephone number, document, or certificate number and name or proposed name of vessel. At the time of assignment of reserved moorage, a reserved moorage license agreement shall be granted upon proof of insurance and payment of charges provided there is no violation of any City ordinance. Signatures of both the licensee and the City employee will be required for a valid moorage license agreement on all new and yearly renewals of moorage.
- (4) All licensees for new or renewed reserved and transient moorage use for a period exceeding three days shall have in force and effect watercraft liability-protection and indemnity insurance and pollution liability insurance in an amount not less than \$500,000 for the term of the moorage license agreement. All such insurance policies required under this section shall name the City as additional insured and shall include a provision governing notifying the City prior to any early cancellation of the policy. Proof of all such insurance policies required under this section shall be provided to the City as a condition of issuance of a moorage license agreement. The certificate of insurance provided as proof shall clearly identify the insurance coverage and name the City as "additional insured" on the policy. Non-motorized vessels are excluded from the requirement to carry pollution liability insurance, all other requirements of this section shall apply.
- (5) All transient moorage license agreements for a period of three days or less shall be granted upon receipt by the City of licensee's signed indemnification and hold harmless agreement and payment of charges provided there is no violation of any

City ordinance and there is sufficient transient moorage space available, on a first come basis. There is no waiting list for transient moorage.

- (J) Additional rights not implied. The issuance of a transient moorage license agreement does not grant any rights or privileges to a licensee with regard to consideration for the granting of an annual moorage license agreement. Transient licensee must apply for a position on the waiting list for reserved moorage in the same manner as those not having a transient moorage license agreement.
- (K) Waiting list. The City shall maintain a waiting list of applications for reserved moorage license agreements. The waiting list shall be divided into categories determined by the City, based upon the various sizes of berths or moorages available in the harbor.
- (L) Applicability of moorage license agreements.
 - (1) Reserved moorage license agreements shall be issued to a named owner/operator of a vessel and shall be valid only for a specific vessel in a designated moorage.
 - (2) Transient moorage license agreements shall be issued to the owner/operator and are valid only for a specific vessel.
- (M) Reassignment. Any moorage space may be reassigned at the option of the harbormaster if the orderly administration of the moorage facility so requires, notwithstanding the prior designation of a specific moorage berth in the moorage license agreement. Licensee may apply for reassignment, however granting reassignment is at the option of the harbormaster. A reassignment determination by the harbormaster may be appealed to the Harbor Commission. A written appeal shall be filed with the City no later than within five business days of the date of reassignment determination. An appeal, timely filed, will be presented to the Harbor Commission at the first regular Harbor Commission meeting following filing of the appeal. Appeals are de-novo. Moorage reassignment may also be made by the harbormaster if a vessel's size in relationship to the size of the assigned berth does not permit maximum and efficient public utilization of harbor facilities or if a reassignment will in any other manner increase the efficient public utilization of moorage facilities.
- (N) Temporary assignment and reassignment. Licensee may be temporarily assigned or reassigned to other berths or spaces to accommodate repairs, improvements, maintenance, construction, emergencies, or special events.
- (O) Licensee's mailing address. The licensee shall at all times keep the City informed of his or her current mailing address and telephone number, and an alternate telephone number. Licensee shall notify the City at least five business days prior to any sale of the vessel and prior to any transfer of title to the vessel. The vessel must be removed, or the new owner accepted as a licensee by the harbormaster in writing. Licensee shall notify the City immediately upon vacating the moorage assigned by the City. Failure to keep the City informed is a breach of covenant of the moorage license agreement and

moorage license agreement will be terminated. All billings will be deemed delivered when mailed to the address of the record supplied by licensee.

- (P) Cancellation of the moorage license agreement for berth repair or elimination. The City may deny issuance or the reissuance of a reserved moorage license agreement when a berth is unusable, modified, eliminated, or in need of repairs.
- (Q) Termination of moorage license agreement. If after notice, the licensee fails to remedy any breach of the duties, covenants, or conditions of the moorage license agreement or to cease and desist from violating or permitting the violation of these rules and regulations, the City may terminate the licensee's moorage license agreement and take appropriate enforcement procedures. In addition to the foregoing, the City may terminate a moorage license agreement for a deliberate misstatement or willful failure to disclose any material fact in a moorage license agreement.

(Ord. 292, passed 12-18-2012; Ord. 298, passed 9-20-2013) Penalty, see § 11.99

§ 92.09 BUSINESS AT HARBOR FACILITIES.

No business or commercial enterprise shall be conducted on or from any harbor facilities except as specifically authorized and permitted by the provisions hereof and on the conditions stated as follows.

- (A) The licensee of a valid moorage license agreement may, upon the conditions set forth herein, load and unload passengers from charter boats on the City's docks and may sell fish directly from commercial fishing vessels to the public on the City's docks.
- (B) No fish shall be sold directly from vessels to the public on the public docks nor shall passengers be allowed to board or depart from charter vessels unless the vessel from which the fish are being sold or passengers boarding or departing is secured directly to the City's docks in accordance with the vessel's moorage license agreement.
- (C) No business shall be conducted on or from the harbor facilities pursuant to this section until the owner/operator of the moorage license agreement for the vessel from which the business shall be conducted has applied for and received a City business license authorizing the type of business to be conducted. No business license shall be issued until the applicant has provided to the City written verification that:
 - (1) All applicants who use or employ shore-based workers which, if injured, come within the provisions of the federal Longshore and Harbor Workers' Compensation Act, being 33 U.S.C. § 901 et seq., shall obtain and maintain during such time as the workers are used or employed or for such time as a claim may be brought, insurance for coverage under the Longshore and Harbor Workers' Compensation Act in an amount not less than \$500,000. All such insurance policies required under this section shall name the City as an additional insured and shall include a provision governing notifying the City prior to any early cancellation of the policy; and

(Ord. 292, passed 12-18-2012) Penalty, see § 11.99

§ 92.10 VESSEL CATEGORIES.

Vessel categories shall be established by the resolution of the City Council.

§ 92.11 ENFORCEMENT.

NON-WAIVER AND JURISDICTION: The failure of the City to enforce all or any part of a moorage license agreement shall not constitute a waiver of any rights, including that which may have failed to enforce, under a moorage license agreement. The agreement shall be construed under the laws of the State of Oregon.

- (A) Manner of enforcement. This chapter may be enforced in the manner provided by Chapter 11 of this Code of Ordinances, or as such ordinance may be hereafter amended, providing for general enforcement of ordinances of the City. Upon determination that a violation of this chapter exists, the City shall provide a written notice by personal delivery, or by placing in the U.S. mail a letter to the person in violation at the last known address provided to the City. If mailed, the notice shall be sent by certified mail, return receipt requested. The notice will include a statement that the violation must be corrected within 15 calendar days from the date of the notice.
- (B) Removing or securing vessels or property. The City may, at its sole option, employ the following procedures in cases of abandonment; or when an owner/operator fails to maintain their vessel in a manner sufficient to not be hazardous; or when an owner/operator fails to obtain or maintain a valid moorage license agreement by failure to register with the City, pay moorage, storage, or electric fees causing them to be delinquent, or provide proof of insurance.
 - (1) At least 30 calendar days prior to securing or removal of a vessel or personal property, the City shall provide notice to the owner/operator of the vessel or personal property setting forth the statement of violation and that the City may seize the vessel and other property if the violation is not corrected within 30 calendar days of the date of the notice. The notice shall be delivered by posting the notice on the vessel or other personal property, and by personal delivery to the owner/operator, or by certified mail, return receipt requested, to the last known address provided to the City by the owner/operator. In the case of abandoned vessels or property, or where no address was furnished by the owner/operator, the City is not required to give the notice prior to securing or removing the vessel or personal property.
 - (2) The City may take reasonable measures including, but not limited to, the use of chains, ropes, and locks, removal from the water, or removal to storage areas to secure vessels and other personal property so that the same are in the possession and control of the City. At the time of securing a vessel or other personal property,

an authorized City employee shall attach to such vessel or property a notice which shall contain the following information:

- The date and time the notice was attached;
- A statement that if the account, together with all expenses incurred in securing the vessel and the City's collection costs, is not paid in full and/or any ordinance violation is not resolved within 60 days of the date of the notice, the vessel or personal property may be sold at public auction with proceeds applied to satisfy the City charges and costs; and
- The address and telephone number where additional information may be obtained concerning release of the vessel or personal property.

(3) Notice of securing a vessel or personal property shall be sent to the owner/operator by certified mail, return receipt requested, at the last known address provided to the City by the owner/operator.

(4) The owner/operator of a vessel or personal property secured by the City may regain possession as follows:

- Establishing good cause for any ordinance violation where that is the issue;
- Correcting and resolving the violation to the satisfaction of the City; or
- Making payment to the City of all City charges.

(5) If a vessel or other personal property has been secured and the owner/operator does not regain possession by the above methods, the City may, at its sole option, elect to sell the vessel or personal property at public sale.

(6) For all sales of vessels and other personal property under this section, the City shall proceed with foreclosure and sale in the manner provided by O.R.S. 87.152 to 87.212 or 783.010 to 783.170. The City may bid all or part of charges and expenses at the sale and may become a purchaser at the sale. Sale proceeds shall first be applied to the costs of sale, including attorney's fees, then to discharge of moorage and other charges owed by the owner/operator, and the balance, if any, shall be paid as provided by state statute.

(Ord. 292, passed 12-18-2012)

Fees, Rates, and Charges

§ 92.25 MOORAGE FEES:

(A) All moorage rates (daily, monthly, and annual) shall be effective each July 1 and thereafter, and adjusted annually to reflect inflation costs by applying the U.S. city average consumer price index for all urban consumers percent of change from the

previous year. This annual adjustment shall not be less than five percent each fiscal year.

(B) In addition to this annual adjustment, all moorage rates may be revised from time to time by resolution of the City Council.

(C) Due dates for moorage use fees.

(1) Reserved moorage license agreement fees shall be paid in advance by a new licensee before a berth is occupied. The moorage period for the first year or moorage shall be the first day such use is permitted through June 30 (end of the fiscal year).

(2) Reserved moorage licensees will be billed by the City on or about June 1 for a renewal period of one year starting July 1. This annual fee is due on July 1 for the annual period for which the renewal is issued, together with any delinquent charges owed to the City. If all charges and fees are not paid on or before July 10 (or the next regular business day if July 10 of the particular year is a Saturday, Sunday, or legal holiday), such failure shall subject the licensee to a late payment charge of 10%. Failure to pay monies by July 20 (or the next regular business day if July 20 falls on a Saturday, Sunday, or legal holiday) shall result in termination of a licensee's moorage license agreement, unless a petition for hardship has been filed with the City Recorder on or prior to July 1 (or the next regular business day if July 1 is on a Saturday, Sunday, or legal holiday), and in such event termination of the licensee's moorage license agreement shall be stayed until the petition for hardship has been either granted or denied. In no case shall payments be allowed to be delayed more than 45 days. If billing is not done on or about June 1, the dates shall be adjusted accordingly so payment is due one (1) month following the bill's issuance. All bills will reflect charges for the year starting July 1 no matter when the bill is received.

(3) The one-year annual moorage period shall begin on July 1 (beginning of the fiscal year) and end June 30 (end of the fiscal year), except for the first year of reserved moorage. For purposes of the first year of reserved moorage, the beginning date shall be the first day such use is permitted and ends June 30 (end of the fiscal year). In the event the licensee wishes to terminate the moorage license agreement and seek a refund of a portion of moorage paid, the determination of a refund, if any, shall be as follows: the difference between the annual moorage amount paid and the transient daily rate multiplied by the number of days from the prior renewal date to the date of termination. If the moorage amount paid by licensee exceeds the calculated figure, the City shall refund the difference.

(4) Transient moorage fees shall be made in advance or within 12 hours of commencement of use of harbor moorage, the owner/operator shall obtain a moorage license agreement and pay the moorage fees.

(5) If monies due the City are not paid when due, the City may take such enforcement or collection action as it deems appropriate against the delinquent licensee at any

time thereafter. If charges and fees are not paid when due, such failure shall subject the licensee to a 10% late service charge and result in termination of the moorage license agreement.

§ 92.26 WAITING LIST

All new and renewing waiting list applications shall be subject to payment of such fee as may be determined by the City Council by resolution from time to time.

§ 92.27 UTILITIES

ELECTRICITY

Electricity rates and charges shall be established and amended by the resolution of the City Council.

WATER

Included in the moorage rate. All water hoses must be fitted with a shut off nozzle. Any water hose found running shall be subject to a fine as set by resolution of the City Council.

Water rates and charges shall be established and amended by resolution of the City Council.

TRASH

Included in the moorage rate.

Trash rates and charges shall be established and amended by resolution of the City Council.

§ 92.28 FUEL FACILITY

Fuel rates and charges for the harbor fueling facility shall be established and amended by the resolution of the City Council.

In the event that a vessel owner/operator requests fuel at a time outside of regularly scheduled work hours that would involve a call-out (overtime) for the harbormaster or other City staff, in addition to the cost of the fuel the vessel owner/operator shall pay an after-hours surcharge.

§ 92.29 LAUNCH FACILITY

The continued use of the launch-facility will require either the purchase of an annual pass or the daily launch fee. Rates and charges for the launch facility shall be established and amended by the resolution of the City Council.