

ALASKA ASSOCIATION OF HARBORMASTERS
AND PORT ADMINISTRATORS

MODEL HARBOR ORDINANCE

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HARBOR AND PORT FACILITIES

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TITLE 00
HARBOR AND PORT FACILITIES

CHAPTER 1

GENERAL PROVISIONS

00.01.005 Purpose
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00.01.015 Implied Agreement from Use of Facilities
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00.01.025 Definitions

00.01.005 Purpose. The purposes of this title are:

- (a) To maximize the safe and efficient use of the harbor;
- (b) To provide for the orderly management, development, and control of the harbor;
- (c) To protect and preserve the lives, health, safety and well-being of persons who use, work or maintain property in the harbor;
- (d) To protect public and private property;
- (e) To prevent and abate nuisances and fire or health hazards;
- (f) To prevent and discourage the use of the harbor by vessels which have been abandoned or are derelict;
- (g) To assess reasonable fees for the use of harbor facilities; and
- (h) To make uniform the ordinances pertaining to harbors throughout the State of Alaska.

00.01.010 Interpretation. This title shall be construed, to the greatest extent reasonable, in such a manner as to be consistent with applicable federal and state law, regulation, and any conveyances or agreements from or with the State of Alaska pertaining to the harbor.

00.01.015 Implied Agreement from Use of Facilities. The use of the harbor or the presence of a vessel therein shall constitute an agreement by the owner, operator, master and managing agent to conform to the provisions of this title and any rule, regulation or

order made pursuant thereto and to pay all fees and charges provided by this title. The City does not assume responsibility or liability for loss or damage to property, or injury to persons within or upon its harbor. All persons visiting or using harbor do so at their own risk.

00.01.020 Tariff for Use By Common Carriers. This ordinance does not govern use of the harbor by a common carrier by water within the meaning of 46 U.S.C. S 801 and S 1702 unless it is filed with the Federal Maritime Commission. If this ordinance is not so filed, a separate tariff approved by the council and filed with the Commission shall govern such uses.

00.01.025 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.

(a) 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.

(b) Derelict. "Derelict" means any vessel which is or reasonably appears to be forsaken, abandoned, deserted, cast away, unsound, unseaworthy, or unfit for its trade or occupation.

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

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

(e) Harbor. "Harbor" means all waters, tidal areas, and adjacent upland areas more particularly described as follows:

[Insert legal description]

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 docks, floats, pilings, ramps, hoists, parking areas, leased water areas, concessions and/or service facilities located within the area defined herein.

(f) Harbormaster. "Harbormaster" means the individual described in section 00.03.005 and any assistant harbormaster or other person designated by the harbormaster to act in his place.

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

(h) 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 this title.

(i) Nuisance. "Nuisance" means a derelict vessel, a vessel which is not kept and regularly pumped free of excess water inside its hull, or is submerged, or which constitutes a fire, health, safety or navigation hazard. A vessel shall be presumed to constitute a nuisance if:

1. The vessel is sunk or in immediate danger of sinking, or is obstructing waterway, or is endangering life or property and has been left unattended for a continuous period of twenty-four (24) hours; or
2. The vessel has been moored 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; or
 - 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 owners; or
 - C. Vessel registration records of the United States Coast Guard, 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.

(j) 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.

(k) Qualifying Interest. "Qualifying interest" in a vessel means the interest of a person who owns the vessel or under the provisions of written charter or lease has exclusive control over the operation and navigation of the vessel. The 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.

(1) 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 products thereof.

(m) Vessel. "Vessel" means any ship, boat, skiff, barge, dredge, and craft of every kind and description, whether used for pleasure or commercial purposes, which is on the water and is capable of being used as a means of transportation on or through the water, but excluding seaplanes.

CHAPTER 3

ADMINISTRATION

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- 00.03.010 Disclaimer of Liability
- 00.03.015 Harbor Advisory Commission
- 00.03.020 Commission Duties
- 00.03.025 Commission Procedure

00.03.005 Harbormaster. The city manager shall appoint a harbormaster who shall administer the harbor with the powers provided by this title and enforce, as a peace officer of the city, the provisions of this title. The harbormaster may issue regulations not inconsistent with this title for the operation and use of the harbor. Regulations shall be in writing and posted for public review at the City Clerk's and harbormaster's office for 30 days prior to becoming effective. Thereafter, they shall be available for public distribution at the harbormaster's office.

00.03.010 Disclaimer of Liability. The authority granted to the harbormaster shall not create an obligation or duty requiring the harbormaster to take any action to protect or preserve any vessel or property located within the harbor or utilizing the harbor. The City shall not be liable for any loss or damage to real or personal property in the harbor resulting from fire or other casualty, theft, or vandalism.

00.03.015 Harbor Advisory Commission. The Harbor Advisory Commission shall consist of five members appointed by the council, who shall each hold office for a period of three years ending on the first Monday following the annual municipal general election or until their successors have been appointed and have qualified. Commissioners shall serve staggered terms, with a minimum of one commissioner appointed annually.

00.03.020 Commission Duties. The Commission shall advise the harbormaster, manager and council on all matters regarding supervision and control of the harbor facilities. The Commission shall recommend regulations and fees for the use of the harbor and its facilities to the council. The council may adopt or disregard the Commission's recommendations.

00.03.025 Commission Procedure. The Commission shall elect from its own members a chairperson and adopt rules for the notice, time, place, and conduct of its meetings.

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CHAPTER 5

MOORAGE

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00.05.005 Registration Required. Every owner, master or managing agent of a vessel using the harbor is required to register the person's name, address and telephone number, and the vessel's name, home port, official number or state registration number, color, length, breadth and draft, and such other information as the harbormaster may require, with the harbormaster within two (2) hours after such vessel first enters the harbor. Said owner, master or managing agent shall promptly notify the harbormaster of any changes in registration information.

00.05.010 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 such space on a form provided by the harbormaster shall be provided to the harbormaster within the time allowed for registration. Prepayment of fees for such moorage may be required. Approval of such application by the harbormaster confers no rights in the land or water constituting the space. The applicant shall promptly notify the harbormaster of any changes in the information set forth on the application.

(b) Fee Periods. The daily fee period is 8:00 a.m. on the first calendar day to 8:00 am, the next calendar day. The monthly fee period is any calendar month beginning on the first day of the month and ending on the last day of the month. A vessel accumulating greater than ten (10) days transient moorage in any calendar month will be charged on a monthly basis. Annual transient moorage must be requested in advance. The annual fee period is the [calendar] [fiscal] year beginning [insert date] and ending the following [insert date]. A transient moorage holder requesting annual moorage after the start of the fiscal year will be charged a pro-rated annual fee. Vessels may moor in designated transient moorage space without charge for any time during the first daily fee period. A vessel moored in any transient moorage space for any period

of time during the next consecutive daily fee period shall be charged transient moorage fees beginning with the second daily rental period.

(c) No Preferential Right. The transient moorage user receives the privilege of occupying designated or assigned transient moorage on an as-available basis. Users have no preferential right to moor in any particular location in transient moorage, 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 from time to time designated by the harbormaster. Vessels moored in such locations are subject to yet another vessel tethering aside. Each vessel must have at least one line to the float, alternating ends. Dinghies or skiffs or other auxiliary vessels may not be tied alongside of vessels in transient moorage space.

(e) Maximizing Use of 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.

00.05.015 Reserved Moorage.

(a) Availability. Reserved moorage space is available within the harbor at locations designated or assigned by the harbormaster. 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 for such space on a form provided by the harbormaster.

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

(c) Wait List. If there are more applications received than there are spaces available, the harbormaster shall establish and maintain a reserved moorage wait list. A non-refundable, non-interest bearing deposit shall be required to place 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 between husband and wife or to an applicant's heir or devisee upon death.

(d) 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 by the harbormaster, the applicant does not forfeit any priority on the wait list for subsequent space. If an applicant refuses to accept a reserved moorage space when offered on two (2) separate occasions, or fails to respond on two (2) separate occasions, it shall be presumed that the applicant has voluntarily withdrawn the application. The applicant will be removed from the wait list and the applicant's deposit forfeited.

(e) Two Space Limit. As long as there are applicants on the wait list awaiting assignment of reserved moorage space, no person who is currently a holder of two (2) 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.

(f) Notice of Space Availability. When space becomes available, the harbormaster shall notify the applicant who first applied for reserved moorage for a vessel of the size for which space is available. Notice shall be by certified mail, effective upon mailing. An applicant shall have thirty (30) days to respond. If the applicant declines the offered space, or if no response is received within the period allowed, then the harbormaster will notify the next eligible applicant on the wait list and so on until the space is assigned.

(g) Preference. Approval of an application for reserved moorage space and assignment of 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.

(h) Temporary Use by Other Vessels. The harbormaster shall have full discretionary authority to allow other vessels to occupy an empty reserved moorage space anytime the assigned vessel is absent without compensation to the reserved moorage holder.

(i) Duration. A holder's rights to reserved moorage space, once assigned, continues until the holder voluntarily or involuntarily relinquishes the space.

(j) Retention When Vessel is Sold, Lost, Destroyed or Stolen. A reserved moorage 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 six (6) months and registers the new vessel with the harbormaster pursuant to 14.12.010. The harbormaster may, for cause, grant an extension not to exceed an additional six (6) months if the vessel was lost, destroyed or stolen. If the holder obtains a qualifying interest in another vessel that is smaller than the minimum vessel size established by the harbormaster for the assigned space, the holder may retain and use the reserved moorage for the smaller vessel until reserved moorage space of the correct size becomes available in the same harbor, unless another space is acceptable to the holder. If the holder obtains a qualifying interest in another vessel that is larger than the maximum vessel size established by the harbormaster for the assigned space, the holder will not be permitted to use the space for the larger vessel. If the holder intends to also obtain an appropriately sized vessel, he may continue to hold the assigned reserved moorage for the time periods noted above.

(k) Death. In the case of the death of the holder of reserved moorage space, the space may be transferred to the heir or devisee who obtains ownership of the vessel, if a request is made to the harbormaster with appropriate documentation.

(1) Relinquishment. A reserved moorage space holder may voluntarily relinquish reserved moorage at any time by notifying the harbormaster in writing.

00.05.020 Moorage Conditions and Restrictions.

(a) Qualified Interest Required. Moorage 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 may only be assigned to an applicant who has no delinquent fees or unpaid fines.

(c) One Space. No vessel may be assigned to more than one transient or reserved moorage space or to a transient and reserved space.

(d) Use by Assigned Vessel Only. Reserved moorage space may only be used by the holder for the assigned vessel.

(e) No Assignment or Transfer. Moorage space shall not be assigned or transferred by the holder thereof and does not transfer with the sale or other disposition of the vessel. Moorage space shall not be involuntarily assigned or transferred by operation of law except as expressly provided in this title.

00.05.025 Refusal of Moorage. The harbormaster may refuse moorage 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.

00.05.030 Required Equipment. All vessels moored in the harbor shall carry the equipment including, but not limited to, firefighting equipment required by any applicable United States laws or regulations, and shall be numbered or designated in accordance with any applicable United States laws or regulations.

00.05.035 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.

00.05.040 Authority of Harbormaster to Board and Move Vessel. The harbormaster may board any vessel moored in the harbor at any time to inspect same for compliance with this title. In the event of a fire or other emergency affecting the safety of persons and property in the harbor, the harbormaster may board, move, replace inadequate mooring lines on, remove snow from, pump water from, and take any other action to prevent loss of life or property with respect to any vessel in the harbor.

00.05.045 Forfeiture of Space.

(a) Causes. A moorage space holder's right to an assigned space shall be involuntarily forfeited and the right to use the assigned space terminated if:

1. The holder supplies misleading or false information in the space application;
2. The holder fails to pay all fees as provided by this title without a prior written agreement to pay such fees on other terms acceptable to the harbormaster,
3. The holder fails to maintain a qualified interest in the assigned vessel or substitute qualified vessel within the period allowed;
4. The holder fails to use the space for the assigned vessel at least two (2) months each calendar year;
5. The holder fails, upon request of the harbormaster, to provide proof of a qualifying interest in the vessel assigned to the space;
6. The holder fails to maintain on the vessel the equipment required by section 00.05.030 above; or
7. The vessel to which the space is assigned is impounded pursuant to Chapter 13 of this title.

(b) Notice. Prior to forfeiting any moorage space holder's right to an assigned space for the causes stated in subsections (a)(1)-(6), the harbormaster shall prepare written notice of such intent, identifying the space involved and the cause for forfeiture. The notice shall be sent regular mail to the name and address listed on the moorage application (unless the harbormaster has received written notice of a different name and address) not less than ten (10) days prior to forfeiture.

(c) Hearing. The moorage space holder may request a hearing on the forfeiture. The procedure provided by section 00.13.015 shall apply to such requests, except that the issue shall be whether one or more of the causes set forth in subsection (a) of this section exist.

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CHAPTER 7

TRANSFER OF CARGO, STORAGE AND OTHER ACTIVITY

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- 00.07.015 Fish Processing
- 00.07.020 Repairs
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- 00.07.040 Parking
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- 00.07.055 Accident Report

00.07.005 Transfer of Cargo.

[These provisions are not intended to govern common carrier cargo operations.
See section 00.01.020.]

(a) Location. Transfer of cargo may occur at the following locations within the harbor:
[Describe Locations.]

(b) Application. Berths at [this/these] locations] shall be assigned by the harbormaster upon 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, of the berth and the quantity and kind of cargo to be transferred. Transfers which occur on a regular basis may be approved in advance on such basis.

(c) Prepayment. The harbormaster may require prepayment of the estimated fees due under this title prior to any cargo transfer.

(d) Berthing Duration. A vessel may berth for transfer of cargo for up to [insert number of hours] without applying and paying for transient moorage, but must apply and pay for transient moorage within two (2) hours thereafter.

(e) 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.

(f) Manifests. 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.

(g) Persons Responsible for Fees. Vessels, their owners, agents, masters, shippers and consignees of cargo transferred within the harbor shall be jointly and severally liable for all fees due for activities described in this section, notwithstanding any contrary provisions, any bills of lading, charter party agreements, contracts, or other agreements.

(h) Cargo on Which Fees Have Become Delinquent. Cargo on which fees have become delinquent may, after ten (10) days written notice to the shipper, carrier, or consignee of such cargo, be sold at public or private auction without advertising.

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

(j) 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.

00.07.010 Storage.

(a) Availability. Storage space may be available in the harbor in such areas as may be designated by the harbormaster by regulation. A person may apply to use storage space in the harbor by completing an application on a form provided by the harbormaster.

(b) Assignment of Storage Space. Storage space shall be assigned on a first-come, first-served basis by the harbormaster. The harbormaster may establish fixed-size storage areas or lots. A person desiring to use a particular storage area on a long-term basis may negotiate an agreement with the harbormaster subject to council approval. Areas designated by the harbormaster for storage are subject to change. The harbormaster shall cause to be erected or placed appropriate signs or pavement markings which give notice the area is designated for storage.

(c) Use Period. Storage charges shall be computed on a daily basis. The daily period is 8:00 a.m. on the first calendar day to 8:00 a.m. on the next calendar day. Items may be placed

in storage areas for up to [insert number] days without charge, but all items left in such storage areas beyond that period will be charged for storage beginning on the next daily rental period.

(d) Specific Types of Storage. The following requirements apply to the kind of storage indicated:

1. Storage containers. Storage containers must be:

A. Completely enclosed with four walls (one of which is able to function as a door), a roof, and a floor;

B. In good condition and repair;

C. Neat, safe, and clean; and

D. Not be attached or affixed permanently to any storage space, but must be able to be moved by reasonable means within twenty-four (24) hours of notice to move it.

2. Trailers. Property may be stored in or on a trailer or any similar type of wheeled conveyance which is capable of being pulled or drawn from the storage, area within twenty-four (24) hours after notice is given by the harbormaster. The contents shall be completely covered so the stored property is not visible from the outside. Clear plastic materials are not acceptable as coverings. Boats and boat trailers may be stored in their manufactured state, provided they do not create a safety hazard to persons or property.

3. Vessels. Vessels may be stored without trailers, but must be blocked and properly supported so as not to create a safety hazard.

4. Other Cargo. Incoming and outgoing cargo and commodities of a size and type not suitable for containerized storage may be neatly stored in the open at areas designated by the harbormaster.

(e) Markings. Items placed in a storage area, including goods on pallets, shall be clearly marked with the name of the owner or responsible person, mailing address, telephone number, and a general description of the item.

(f) Liability and Indemnity. The user of storage space in the harbor assumes all risk of loss from theft, fire, or other casualty. Storage areas in the harbor may not be guarded or fenced. The user shall defend, indemnify, and hold the City harmless from all claims arising from storage within the harbor.

00.07.015 Fish Processing. Fish or shellfish may be cleaned or processed within the harbor only in areas, and with equipment and provision for waste disposal, approved by the harbormaster.

00.07.020 Repairs.

[Insert provisions governing use of facilities such as gridirons and boat lifts which may be available in the particular harbor.]

00.07.025 Launching. Vessel launching shall be restricted to areas designated by the harbormaster by regulation. Vessels shall be continuously engaged in launching or haul out and shall not be left unattended while in the launching area. The vessel launching fee shall be paid prior to the vessel entering the launching area.

00.07.030 Floatplanes. No aircraft shall land or take off within the confines of the harbor, except in areas and in such manner as the harbormaster shall designate by regulation. Aircraft shall be operated so as not to cause any wake, wash, or wave action which creates an unreasonable risk of injury to other vessels or users of the harbor.

00.07.035 Restricted Areas. The harbormaster may by regulation restrict areas of the harbor from use by one or more classes of vessels, for certain activities and for longer than specified periods.

00.07.040 Parking. The council may establish by resolution designated off street parking lots for users of the harbor. Each parking lot shall be governed and parking .enforced according to [insert cross reference to any local parking ordinance].

00.07.045 Residential Use. No portion of the harbor or cargo within the harbor shall be used for residential purposes. Vessels within the harbor [may be used for residential purposes.] [shall not be used for residential purposes, except that they may, incidental to their operation or repair, be occupied for not more than () consecutive twenty-four hour (24-hour) periods and not more than () total days per month.]

00.07.050 Signs. Signs or other printed matter shall not be placed on any part of the harbor without the prior approval of the harbormaster.

00.07.055 Accident Report. Any person operating any vessel involved in an accident within the harbor resulting in the death or injury of any person or damage to property in excess of Five Hundred Dollars (\$500) shall, in addition to any other notices required by law, immediately give oral notice of the accident to the harbormaster. In addition, the person shall, within twenty-four (24) hours after the accident, file a written report with the harbormaster on such form as the harbormaster may provide.

CHAPTER 9

PROHIBITED PRACTICES

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- 00.09.055 Water Sports
- 00.09.060 Failure to Report

00.09.005 Speeding. No person shall operate or cause to be operated a vessel within the harbor in excess of three (3) miles per hour or in a manner which causes an excessive wake.

00.09.010 Operating Under the Influence. 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 conditions.

00.09.015 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.

00.09.020 Failure to Register. No person shall fail to register a vessel operated by that person with the harbormaster within two (2) hours of entering the harbor.

00.09.025 Improper Mooring. No person shall moor a vessel:

- (a) In reserved moorage space assigned to another;
- (b) In any area not designated for transient moorage;
- (c) Without permission of the harbormaster;
- (d) In an area not designated for that size vessel; or
- (e) Without otherwise complying with Chapter 5 of this title.

00.09.030 Inadequate Equipment. No person shall operate or moor a vessel within the harbor who does not have the equipment specified by section 00.05.030.

00.09.035 Improper Use of Facilities. No person may use portions of the harbor for purposes or in a manner contrary to Chapter 7 of this title.

00.09.040 Improper Waste Disposal. No person shall dispose of trash, garbage, refuse, human or animal waste, or any similar substance into the water of the harbor or on the harbor grounds, except in receptacles or locations designated by the harbormaster.

00.09.045 Improper Petroleum Product Disposal. No person shall release any fuel, oil, their derivatives, wastes or by-products, or other petroleum products into the waters or onto the lands of the harbor.

00.09.050 Improper Care and Control of Animals. No person shall have or bring a dog or animal within the harbor, unless the dog or animal is on a leash or confined to a vessel.

00.09.055 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 the permission of the harbormaster. Diving for the purpose of vessel repair and inspection or for law enforcement purposes is not prohibited by this section.

00.09.060 Failure to Report. No person shall fail to make the report required by section 00.07.055.

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CHAPTER 11

FEES AND PENALTIES

- 00.11.005 Fee Schedule
- 00.11.010 Fee Collection and Lien
- 00.11.015 Penalties

00.11.005 Fee Schedule. The following fees shall be charged for the uses indicated:

[This schedule is intended merely to suggest how to cross-reference other parts of the ordinance. Actual schedules will define the manner of calculating the charges in much more detail.]

<u>Use</u>	<u>Fee</u>
(a) Transient Moorage (00.05.010)	\$ _____
Daily	\$ _____
Monthly	\$ _____
Annually	\$ _____
(b) Reserved Moorage (00.05.015)	\$ _____
Wait List Deposit	\$ _____
Annual	\$ _____
(c) Electric Utility Service	\$ _____
Water	\$ _____
(d) Cargo Transfer (00.07.005)	\$ _____
Berthing	\$ _____
Wharfage	\$ _____
Demurrage	\$ _____
(e) Storage (00.07.010)	\$ _____
(f) Launching (00.07.025)	\$ _____
(g) Impound Fee (00.13.005)	\$ _____

00.11.010 Fee Collection and Lien.

(a) Invoicing. Invoices for fees shall be due on the fifth day after they are sent or delivered. 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) Refunds.

1. Transient Moorage. There shall be no refunds of unused daily or monthly transient moorage fees paid for or agreed to in advance. Upon written request, the harbormaster shall refund an amount up to ten (10) month's transient moorage fees computed from the end of the calendar month in which a written request for a refund is received.

2. Reserved Moorage. Upon written request, the harbormaster shall refund to a holder who voluntarily relinquishes reserved moorage space an amount up to ten (10) month's unused moorage fee computed from the end of the calendar month in which the written request is received. Upon written request, the harbormaster shall refund to a holder who involuntarily forfeits reserved moorage space an amount up to ten (10) month's unused moorage fee computed from the end of the calendar month in which the written request is received, less any cost incurred by the harbormaster, including legal and administrative costs of processing the involuntary forfeiture.

(c) Delinquent Fees and Fines. Fees are delinquent when they are more than thirty (30) days past due. Fines are delinquent on the day after they are imposed by the court, unless the court provides otherwise. The harbormaster may, but need not, give notice of any delinquent fees or fines.

(d) 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 from the date they were due until paid in full.

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

(f) Lien for Unpaid Fees. In addition to all other remedies available by law, the City shall have a lien for any fees, interest and costs of collection, including attorney's fees, provided by this title, upon any vessel (including all equipment, tackle, and gear) cargo 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 Chapter 13 of this title.

00.11.015 Penalties.

(a) Schedule. The following penalties shall be imposed for the violation indicated:

[An offense created by municipal ordinance may not be punishable by imprisonment for longer than ninety (90) days or by a fine in excess of One Thousand Dollars (\$1,000).]

<u>Section</u>	<u>Violation</u>	<u>Fine</u>	<u>Imprisonment</u>
00.09.005	Speeding	\$ _____	_____
00.09.010	Operating Under the Influence	\$ _____	_____
00.09.015	Hazard to Navigation	\$ _____	_____
00.09.020	Failure to Register	\$ _____	_____
00.09.025	Improper Mooring	\$ _____	_____
00.09.030	Inadequate Equipment	\$ _____	_____
00.09.035	Improper Use of Facilities	\$ _____	_____
00.09.040	Improper Waste Disposal	\$ _____	_____
00.09.045	Improper Petroleum Product Disposal	\$ _____	_____
00.09.050	Improper Care and Control of Animals	\$ _____	_____
00.09.055	Water Sports	\$ _____	_____
00.09.060	Failure to Report	\$ _____	_____

Each day that a violation continues constitutes a separate offense.

(b) Mental State. Any violation for which only a fine may be imposed occurs if the person acts negligently, knowingly, or intentionally. Any violation for which a fine and imprisonment may be imposed occurs if the person acts recklessly, knowingly or intentionally, but negligent acts shall be a lesser offense punishable by fine only. The mental states referred to herein shall be the same as those defined by AS 11.81.090(a).

(c) Citation. A person committing a violation of this title shall be issued a citation, unless otherwise required by law or the immediate circumstances.

(d) Mail-In Fine Procedure. If the violation for which the citation is issued is one for which only a fine may be imposed, the person to whom it is issued may plead no contest or guilty to the offense without a court appearance by signing the appropriate blank on the citation and paying the specified fine. Acceptance of payment of the prescribed fine is complete satisfaction for the violation, and the offender shall be given a receipt which so states, if requested.

(e) Promise to Appear. The citation form shall contain a place for the accused to sign acknowledging receipt of the citation and promising to appear in court at a time specified on the citation. If the accused person refuses to accept the citation or refuses to sign acknowledgment of receipt and promise to appear, the peace officer shall proceed in the manner provided by law for

violations. If the accused accepts the notice, but fails to pay the fine or appear in court as required, the citation shall be considered a summons for the charge of a violation and the accused shall be proceeded against in a manner prescribed by law.

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CHAPTER 13
IMPOUNDMENT

00.13.005 Vessels Which May Be Impounded
00.13.010 Notice to Owner
00.13.015 Hearing
00.13.020 Decision
00.13.025 Impoundment
00.13.030 Notice of Sale
00.13.035 Sale

00.13.005 Vessels Which May Be Impounded. The harbormaster is authorized to impound a vessel under any of the following circumstances:

- (a) The vessel is within the harbor and is a derelict or a nuisance as defined in this title;
- (b) The fees for which the City has a lien on the vessel are delinquent;
- (c) The vessel is located in the harbor and is in violation of this title, a regulation of the harbor, or a state or federal law; or
- (d) The owner, operator, master or managing agent is not aboard the vessel and the vessel is not properly identified by a name and/or number.

00.13.010 Notice to Owner.

(a) Contents. Prior to impounding any vessel, the harbormaster shall prepare a written notice of intent to impound the vessel. The notice shall contain:

1. The name and/or official number or state registration number of the vessel;
2. The name and address, if known, of the owner, operator, master or managing agent, the location of the vessel;
3. The basis or reason for impoundment; and
4. The reserved moorage space, if any, which will be forfeited if the vessel is impounded.

(b) Distribution. The notice of intent to impound shall be, at least twenty (20) days before impoundment:

1. Mailed by certified mail, return receipt requested, to the last known owner, master, or managing agent of the vessel at his last known address; and

2. Posted on the vessel, in the harbor master's office, and in a United States Post Office in the City.

00.13.015 Hearing.

(a) Demand for Hearing. The owner, master or managing agent or any other person in lawful possession of a vessel proposed for impoundment has the right to a pre-impoundment administrative hearing to determine whether there is cause to impound the vessel. Any such person desiring a hearing shall file a written demand with the City Clerk within ten (10) days after mailing and posting of the notice of intent to impound.

(b) Hearing Procedure. The hearing shall be conducted within seventy-two (72) hours of receipt of a written demand therefor 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 seventy-two (72) hour period. The hearing officer shall be designated by the City Manager and shall be someone other than the harbor master. The sole issue before the hearing officer shall be whether there is cause to impound the vessel in question. "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 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 shall have the burden of establishing that he has the right to possession of the vessel. The harbor master shall have the burden of establishing there is cause to impound the vessel. Failure of the owner, operator, master or managing agent to request or attend a scheduled pre-impoundment hearing shall be deemed a waiver of the right to such a hearing.

00.13.020 Decision. At the conclusion of the hearing, the hearing officer shall prepare a written decision. The hearing officer shall only determine that as to the vessel in question, either that there is cause to impound the vessel or that there is no such cause. A copy of the decision shall be provided to the person demanding the hearing, and the owner of the 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.

00.13.025 Impoundment. In the event the hearing officer determines there is cause to impound the vessel, the harbor master may proceed immediately with impoundment of the vessel. The harbor master may impound the vessel by immobilizing it, removing it or having it

removed from the water 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 vessel. At any time prior to the sale of the vessel, the owner, operator, master or managing agent, or person in lawful possession of the vessel may redeem the vessel by a cash payment of all fees against the vessel, including interest and costs.

00.13.030 Notice of Sale.

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

1. The name and/or official number or state registration number of the vessel;
2. The date, time, and place of the sale; and
3. The fees, interest, and costs which are due against the vessel and the bidding terms provided by section 00.13.035.

(b) Distribution. The notice of sale shall be, at least thirty (30) days before the sale:

1. Mailed by certified mail, return receipt requested, to the last known owner, master, or managing agent of the vessel at his last known address.
2. Posted on the vessel, in the harbormaster's office, and in a United States Post Office in the City a notice of such action to be taken; and
3. Published in a newspaper of general circulation in the City at least once.

00.13.035 Sale.

(a) Bids. The minimum acceptable bid shall be a sum equal to the fees against the vessel, including interest and costs to be paid in cash at the time of sale or within twenty-four (24) hours thereafter. The proceeds of such sale shall be first applied to the cost of sale, then to interest, then to fees accrued, and the balance, if any, shall be held in trust by the City for the owner of the vessel to claim. If such balance is not claimed within two (2) years, the balance shall be forfeited to the City. Upon sale being made, the City shall make and deliver its bill of sale, without warranty, conveying the vessel to the buyer.

(b) No Bids. If at the public sale there are no acceptable bids for the vessel, the City may destroy, sell at a private sale, or otherwise dispose of the vessel. Such disposition shall be without liability to the owner, master or managing agent, person in possession of the vessel, or lienholder of the vessel.