

ORDINANCE NO. 3548 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING MONTEREY CITY CODE CHAPTER 17 RELATING TO THE HARBOR AND MARINA TO ELIMINATE OUTDATED AND REDUNDANT LANGUAGE, UPDATE THE PROCEDURE FOR APPEALS OF HARBORMASTER DECISIONS, AND REGULATE THE NUMBER OF TRUCKS AT THE PUMP BUILDINGS

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, Chapter 17 of the Monterey City Code regulates the Harbor and Marina;

WHEREAS, Chapter 17 is currently divided into six Articles. Some Articles, such as Article 2 for the Municipal Wharves, have sections that date back to the 1930's or earlier;

WHEREAS, the City desires to update and modernize Chapter 17, to remove considerable redundancy among Chapter 17's articles, and to provide that appeals of Harbormaster decisions will be heard by the City's Appeals Hearing Board; and

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 17 is hereby amended to read as follows:

**"ARTICLE 1.
HARBORMASTER AUTHORITY; APPEALS.**

Sec. 17-1. Harbormaster Authority.

1. The Harbormaster shall have full authority in the interpretation and enforcement of all rules and regulations affecting the Harbor, including the Monterey Marina, Wharf Nos. 1 and 2, the East Anchorage Area, East Moorings Area, and the Landfill Area.
2. The Harbormaster may delegate his authority to other members of the Harbor and Marina staff as may be appropriate.
3. The Sheriff of Monterey County, the Monterey Police Department, or any acting peace officer shall have full authority to enforce all laws, ordinances and regulations affecting the use of the Monterey Marina, the Harbor, the East Anchorage Area and East Moorings Area, including the power of arrest for violation of the provisions of said laws, ordinances, and regulations; all orders and instructions given by them in the performance of their duties shall have the same force as if issued by the Harbormaster.
4. The Harbormaster is authorized to execute on behalf of the City all licenses and license agreements for berthing space, moorings or anchorage within the Monterey Marina, Harbor, the East Anchorage Area and East Moorings Area provided that all agreements so executed shall be on the terms and conditions contained in this Chapter.
5. The Harbormaster or his or her designee is authorized to issue citations for the violation of any of the provisions of this Chapter.

Sec. 17-2. Appeals.

Administrative citations issued by the Harbormaster may be appealed pursuant to Monterey City Code section 1-9.5. Decisions or orders of the Harbormaster regarding the revocation of or refusal to issue any license or permit under this Chapter may be appealed to the Appeals Hearing Board according to the procedure below. All other decisions of the Harbormaster are final.

1. Appeals shall be filed with the City Clerk's Office within ten days from the date of the Harbormaster's final action. The appeal shall be in writing and set forth specifically the grounds of the appeal and the action that is requested.
2. Only interested parties shall have the right of appeal.
3. Upon receipt of the appeal, the matter shall be set for hearing before the Appeals Hearing Board within 45 days. Notice of the date, time, and place of the hearing shall be given to the appellant at least ten days prior to the date of the hearing. The date of the hearing may be extended upon the written consent of the appellant; however, once begun, a hearing may be continued if the Board needs further information to facilitate a fair and adequate determination of the appeal.
4. The Appeals Hearing Board shall consider any written or oral evidence regarding the matter appealed and may affirm, reverse, or modify the action appealed upon a determination of whether the Harbormaster's decision was supported by a preponderance of the evidence. The rules of evidence shall not apply.

5. The Board shall issue a written decision within thirty days of the hearing.
6. The decision of the Appeals Hearing Board shall be final. Any person aggrieved by an Order of the Appeals Hearing Board may obtain review in the superior court by filing with the court a petition for a writ of mandate pursuant to California Code of Civil Procedure section 1094.6.

ARTICLE 2. DEFINITIONS.

Sec. 17-3. For the purpose of this chapter, certain words and phrases shall be construed as herein set forth, unless it is apparent from the context that a different meaning is intended.

1. Berth means a place to tie a vessel between or along finger floats and headed by a walkway, or at the end of a walkway, as so designated by the Harbormaster.
2. Block means a devise of any construction that is used to secure mooring gear, and a vessel, to the bottom of the harbor.
3. Boat trailer means any wheeled device pulled by a motor vehicle and designed and licensed for transportation of boats.
4. Chain scope means the length of chain, wire rope, or line, which is used between the block and the surface of the water, as calculated at mean low lower water.
5. Commercial activity means the conducting of any activity or service for which a fee or charge is imposed for any purpose whatsoever, including, but not limited to, the loading or unloading of passengers for hire, the professional instruction of diving classes for which students have paid a fee or charge, the sale of any goods or commodity, or other similar commercial sales or services.
6. Dinghy means small boat propelled by oars, sails or motor which is capable of being carried aboard the vessel and which does not exceed twelve feet in length, provided, however, upon prior written authorization from the Harbormaster or his designated representative, said dinghy may be longer than twelve feet.
7. East Anchorage Area means the area bordered by the eastern edge of Monterey Harbor, with the northern boundary extending due east to the City limit of the City of Monterey, and including all water and submerged lands south to the mean high tide line. The East Anchorage shall include the East Mooring Area.
8. East Mooring Area means that area within the East Anchorage Area generally beginning 150 feet east of Wharf II and extending east 1,000 feet which is further identified by the presence of marked, City-owned mooring floats.
9. Fishing means any taking, or attempting to take, any wild fish, mollusk, or crustacean, or any part of spawn thereof, by any means whatsoever, including but not limited to rod and reel, hand line, spear, net or trap.

10. Gray water means shower or sink water that does not have any sewage waste or polluted bilge water within it.
11. Harbor means the area of the Monterey Bay including the Monterey Marina, Wharf Nos. 1 and 2, the East Anchorage Area and East Moorings Area.
12. Immediate family member means a spouse, former spouse, grandparent, grandchild, parent, child, adopted child, brother, or sister, all of these including in-law and step relationships.
13. Landfill or landfill area means that parcel of land located south of the breakwater and easterly of the natural shoreline of Monterey Bay, consisting of three acres, more or less, and includes the launch ramp facility, vehicle parking, and dock.
14. Licensee means the person or persons who have signed a berth license agreement under the authority of the Harbormaster in conformance with these rules and regulations.
15. Liveaboard means a person who sleeps on the vessel three or more nights out of any seven, or if that person declares the vessel to be his/her place of domicile, or if that person attempts to have mail delivered to the Monterey Harbor office on a regular basis.
16. Monterey Marina. The area bounded by the easterly edge of Municipal Wharf No. 1, the southerly edge of the frontal wall, the westerly edge of Municipal Wharf No. 2, and the northerly edge of Municipal Wharf Parking Lot No. 1.
17. Mooring means the act of fixing a floating vessel to the bottom in one location, temporarily or permanently, by the use of cable, lines, chains, or other equipment which remains attached to the bottom, while the vessel may otherwise be underway. Also used as a noun, the place where a moored vessel is kept.
18. Mooring gear means devices used to secure the block to the vessel, usually consisting of chain, wire rope, line, a floating buoy, swivels, clamps, shackles, and chafe gear.
19. Mooring pendant means the line, cable or chain that connects the mooring buoy with the vessel.
20. Operable means capable of safely maneuvering under the vessel's own power from the berth to the 40 fathom line of the open waters of the Monterey Bay and back into its berth.
21. Outer Harbor means the portion of Monterey Bay between the breakwater and Municipal Wharf No. 2, and within a straight line projected from a point 300 feet due east from the outermost point of the breakwater to the outermost point of Municipal Wharf No. 2, excluding Monterey Marina and areas leased to concessionaires of the City.
22. Seaworthy means that the vessel's hull, keel, decking, cabin and mast are structurally sound and generally free from dry-rot, and capable of operating as designed.
23. Sewage means human body waste, either treated or untreated.
24. Standing headroom means a minimum clearance of 5'10" above the floor in the vessel's main cabin.

25. Sublicense means the interim use of a licensee's berth or mooring by anyone other than the licensee or transient berther as assigned by the Harbormaster's office.

26. Swing means the maximum radius of a circle that a vessel may occupy from the mooring block to the stern of the vessel, calculated at mean low lower water plus two feet.

27. Transient use means the interim use of berthing or mooring facilities, assigned by the Harbormaster, by boaters who do not hold a license with the City. Transient boaters may be issued permit for their temporary use of City owned berthing facilities; however, such a permit does not confer the rights associated with a berth license.

28. Transient vessel means a vessel engaged in a transient use of the berthing or mooring facilities.

29. Ton means 2,000 pounds.

ARTICLE 3. HARBOR REGULATIONS

Sec. 17-4. General Harbor Regulations.

The following regulations apply in the Harbor:

1. It shall be unlawful to willfully fail to obey any sign, notice, signal, control device or buoy placed or erected by authorization of the Harbormaster.

2. It shall be unlawful for any person to willfully injure, break, remove or tamper with any part of any vessel in the Harbor, any part of the mooring gear, any waterway or facility thereof, or to climb into or upon any vessel without the consent of the owner unless in the performance of official duties or to protect life or property.

3. For boat and equipment washing, all hoses shall be fitted with operable automatic shut-off nozzles. In no event shall fresh water be allowed to run in an unattended or wasteful manner.

4. It shall be unlawful to unnecessarily sound horns, bells, loudspeaker systems, or other signals, which will disturb other users of the Harbor.

5. If any sign, notice, signal, control device or buoy placed or erected by authorization of the Harbormaster device is damaged by a vessel, either moored or while underway, the owner of the vessel shall be responsible for the cost of repairs or replacement.

6. No person shall carry, store or transfer either gasoline or diesel onto the Marina docks, except for less than three gallons of fuel required of small outboard engines or sealed outboard motor portable tanks. All other fueling shall be done at the fuel pier.

7. No person shall fish or attempt to take any fish or other marine life by rod and reel, spear, net trap or any method whatever within the Monterey Harbor, except for as provided in a concession lease with the City, or for scientific purposes, as approved in advance by the Harbormaster.

8. No person shall swim, dive, water ski, or skin or scuba dive within the Monterey Harbor except by special permit issued by the Harbormaster for the purpose of scientific research; inspection, maintenance, or making of emergency repairs on any vessel or mooring gear; commercial activity associated with a concession license; or ocean cleanup activities.

9. Use of motorcycles, bicycles, skateboards, roller skates, roller blades, or similar devices on any docking facility within the Monterey Marina is prohibited. Bicycles may be walked or carried to a berthing area and temporarily stored on or near a vessel, provided it is not an obstruction or safety hazard to others using the area.

10. All stray vessels, skiffs, rowboats, sunken or dilapidated vessels, or other structures, timbers, or floats found within the Harbor, not in the lawful possession or control of some person, shall be immediately delivered to the possession of the Harbormaster. The possession and custody of such properties shall remain in possession of the Harbormaster until claimed by the property owners or until such property is disposed of according to law. If the owner claims such property prior to disposition thereof, he shall pay all reasonable expenses incurred in connection therewith, including charges for raising, keeping and storing the same.

11. Any vessel of any nature moored, secured or in any manner placed within the confines of the Harbor, whether ashore or in the water for an excess of seven (7) days without first obtaining a license, permit, or required permission therefore, shall be considered to have been abandoned.

12. Any vessel of any nature abandoned, as defined in this Chapter, within the confines of the Harbor, whether registered with the California Department of Motor Vehicles, documented, or not marked or registered in any apparent manner, shall be placed in storage or protective custody by the Harbormaster at a daily storage rate to be set by resolution by the Monterey City Council and shall thereafter be subject to sale under the provisions of either Sections 500 through 505 or Sections 522, 550, and 551 of the Harbors and Navigation Code of the State of California as is appropriate for the circumstances.

Sec 17-5. Disposing of Refuse or Other Matter.

1. No person shall throw, discharge, deposit or leave any material, liquid or solid, be it refuse, garbage, debris, bait, sewage, contaminated bilge water, inflammable liquids or any other matter of any description upon or into the waters of the Harbor, unless as authorized and approved by law.

2. In the event of any waste discharge referenced above or in the event of an oil spill or other petroleum products entering the waters of the Harbor, the Harbormaster and the U.S. Coast Guard shall be immediately notified. The Harbormaster is authorized to contract for the cleanup of such spills or discharges and/or for repairs necessary to stop the discharge, the cost of which is to be paid by the responsible person or vessel owner.

3. Disposal of used lubrication oils shall be made only in designated areas. Toxic waste of this or other types is not to be discharged overboard, placed in trash containers, or left on the docks or wharves.

4. No person shall clean any fish or other products of the sea within the Monterey Marina.
5. All garbage must be deposited in receptacles furnished by the City for that purpose, or removed from the Marina area. Receptacles/trash bins provided by the City shall be used only for refuse generated at the Marina. No garbage, trash, tree trimmings, grass clippings, discarded furniture, appliances, junk, etc. from outside the Marina area shall be placed in trash receptacles, including the parking lot and wharf dumpsters.
6. Only battery chargers rated for marine use may be used within the Harbor, unless the battery is completely isolated from connecting to any ground or electrical system.

Sec. 17-6. Hazardous Vessel Operation.

1. No owner, operator or person in command of any vessel shall operate or allow such vessel to be operated within the Harbor at a speed in excess of five miles per hour in the marked navigation channels, or three miles per hour elsewhere, or in any reckless or negligent manner. Vessel operators and owners acknowledge that they are responsible for any damage or injury produced by their creation of an excessive wake within the Monterey Marina. All vessel operators must comply with California boating law, and must operate their vessels in the best prudent judgment of sailors.
2. No person shall tie up, moor, operate a vessel, or store skiffs or other gear in the Harbor in such a manner as will prevent or obstruct the passage of other vessels, or intentionally or negligently sink any vessel in any channel, or float loose timbers, logs or piles in any channel in such a manner as to obstruct, impede, or create a menace to navigation.

Sec. 17-7. Inoperable Vessels.

1. Vessels berthed, moored or anchored in the Harbor must be operable, maintained in a seaworthy condition, and be of a design suitable for operation on the open waters of Monterey Bay in the typical range of sea conditions. Dinghies side-tied by special permit shall not be required to be seaworthy or operable, as defined in this Chapter, if they are used to access moored vessels within the breakwater.
2. If the Harbormaster has cause to question the operability of a vessel, he may request a demonstration of the vessel's operability. Thirty (30) days written notice shall be given to the vessel's owner for such a request. In cases where a vessel is found to be inoperable, the owner shall have ninety (90) days to effect repairs. If after ninety (90) days the boat is still inoperable, the berth, mooring, or anchorage will be forfeited to the City of Monterey. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his request to test operability as needed.
3. If a dispute over the seaworthiness of a vessel arises, the opinion of a qualified independent marine surveyor, of the City's choosing but at the owner's expense, may be obtained. When the determination is made that a vessel is unseaworthy, 120 days shall be granted to repair the vessel. If after this period of time the vessel is not seaworthy, the berth, mooring, or anchorage of said vessel shall be forfeited to the City of Monterey.

4. Barges, if maintained and regularly used in support of Naval or Cruise industry visits or other commercial uses authorized by the City, and live-bait tanks and mariculture pens which are actively engaged in business, shall be exempted from this section governing "inoperable vessels". It is not the intention of this exemption to allow for long-term storage of unused marine hardware.

Sec. 17-8. Loading of Passengers for Hire.

Except for vessels operating under the terms of a concession or other special permit issued by the City, in a location designated by City Council resolution, no person shall load or allow the loading of passengers for hire on any vessel, commercial or otherwise, within the Harbor. At such time as any vessel is found to be engaged in such activities, the Harbormaster shall notify the person(s) that such activity must cease immediately. Failure to cease the unauthorized loading of passengers for hire shall result in the revocation of the vessel's license agreement or other permit.

Sec. 17-9. Performing Labor, Services.

No person shall perform any work on, or provide any service to, any licensee or vessel within the Harbor for which such person receives a fee, compensation or any other thing of value, unless such person has first obtained a business license issued by the City of Monterey, has received permission to enter the facility by the Harbormaster, and agrees to perform such service or work in conformity with the regulations imposed by the Harbormaster and accepted environmental best management practices.

Sec. 17-10. Pets.

In addition to all other applicable laws and regulations pertaining to animals, pet owners shall be responsible for all actions of their pets in the Harbor area. The presence of pets within the Harbor is a privilege, not a right. As such, it is revocable by the Harbormaster if pets are permitted to roam, threaten the public, defecate, or disturb the peace.

Sec. 17-11. Storage.

1. No person shall store, or cause to be stored, any supplies, materials, accessories, motors, debris, refuse or garbage on any approach ramp, headwalk or finger float in the Harbor, except in containers approved or provided by the Harbormaster, or as is consistent with this Chapter.

2. No person shall leave or store on any walkway, finger float or gangway any dinghy, skiff, row boat, dory, canoe or other craft. When not kept on board the owner's vessel, the berth licensee's dinghies, etc. may be kept in the water at the end of the berth in such a manner that no part extends beyond the limit of the berth. If a dinghy or tender is tied in such a manner inconsistent with maximum lengths as set forth in this Chapter, the licensee will be charged for that space. In no event shall a vessel impinge on the navigability of the fairway or channel and all such craft shall be no longer than twelve feet. Designated space is provided for use by row boats, skiffs, dinghies etc.; a fee for such space as established by resolution of the City Council

shall be charged. Bicycle lockers in the Marina shall be used as such and not primarily for the storage of other materials.

Sec. 17-12. Accident Reports Required.

In addition to any reporting requirements of state or federal governments, any person involved in any activity which causes damage to any other person, boat, property, or Harbor facilities shall make a report of such incident within 12 hours to the Harbormaster. All information shall be provided that is deemed necessary by the Harbormaster.

Sec. 17-13. Vessel Maintenance.

1. Vessel maintenance work within the Harbor shall be limited to that ordinarily required to keep the vessel seaworthy and in good condition. Minor repairs to and routine maintenance of a vessel may be made or accomplished in the assigned berthing or mooring space, provided all work is done within the confines of the vessel and not carried on in any manner whatsoever upon the floats or tiers, into the water, or onto neighboring vessels.
2. Spray painting is strictly prohibited, except for airbrush painting required for boat numbering or names.
3. Major repairs which include, but are not limited to, construction, repair, or replacement of structural members or portions of the vessel are prohibited, except by advance request and written authorization from the Harbormaster. The criteria used for granting such a request shall be largely based on the ability of all materials used by or produced from the project to be completely contained in or on the vessel, and that a nuisance to neighboring vessels will not occur.
4. Use of welding equipment, burning torch or other open flame apparatus requires prior written permission from the Harbormaster.
5. In no event shall maintenance work performed to a vessel result in damage to Harbor facilities, including paint marks, drill holes, burn marks, and spilled fuel, oil, paint, or solvents. The licensee or permittee shall be financially liable for the repair or restoration of any such damage, even if it is caused by relatives, employees, or contract workers, of the owner.

Sec. 17-14. Vessel Security and Hazards.

1. No part of any vessel shall extend more than one foot beyond the main walkway including but not limited to vessels with davits, booms, boomkins or bowsprit.
2. Walkways and fingers may not be obstructed in any manner. Any steps used for access to a vessel must not intrude into more than one-half the width of the finger to which the vessel is berthed.
3. No person shall willfully injure or tamper with, break or remove any part of any vessel without the consent of the owner. No person shall tamper with the lines securing any such vessel or climb into or upon any vessel without the consent of the owner.

Sec. 17-15. Impoundment/Lien Sale for Nonpayment of Fees.

1. No person shall remove or cause to be removed from the Harbor any vessel upon which fees and charges are in arrears until charges are paid in full or the vessel is released by the Harbormaster.
2. Any vessel which has any fees or charges that remain unpaid for a period in excess of ninety days may be impounded by the Harbormaster. To impound any vessel, the Harbormaster may relocate or secure to prevent the vessel from leaving that location until such time as all fees or charges are paid in full, including the impound fees, past due charges, penalties, interest, legal fees and charges accruing for berthing, storage or maintenance of the vessel during impoundment at the direction of the Harbormaster. The Harbormaster may authorize the vessel to be removed from the water, stored, and/or moved to more appropriate facilities for security of the vessel or convenience during such impoundment period. After being impounded for sixty days the vessel may be destroyed or sold at public auction in accordance with the provisions of Article 4 of Chapter 2, Division 3 of the Harbors and Navigation Code. For federally documented vessels, Federal Maritime Law shall apply. Should the vessel have no evidence of state or federal registration, and in the circumstance that the City does not guarantee title to the vessel upon sale, the City may utilize City code sections for the disposal of abandoned property.
3. All fees and charges incurred on behalf of the vessel shall continue to be associated with the vessel and/or the vessel's owner and/or operator at the time charges were incurred until paid in full regardless of changes of ownership or operator of the vessel.
4. Any individual who, or vessel which, has incurred fees or charges to the City which shall remain unpaid for a period in excess of ninety days may be denied future use of any City Harbor facilities.
5. While the vessel is impounded, the vessel owner may not board or use the vessel in any way, except as specially authorized by the Harbormaster.

Sec. 17-16. Non-Liability of City.

The owner of a vessel must assume all liability for loss or damage to property of every kind while within the confines of the Harbor. Removal or relocating of any unauthorized vessel by the Harbormaster due to the vessel being in an unsafe or dangerous condition shall be without liability to the City of Monterey. The owner of such a vessel shall be liable for the costs of removal or securing of the vessel. The City assumes no risk on account of fire, theft, storm, wind, acts of God, or damage of any nature from any cause whatever, to boats or other property.

Sec. 17-17. Failure to Comply.

Compliance with the rules and regulations of the Harbor is the responsibility of vessel owners, their guests and visitors to the Harbor. Violation of any provisions of this Chapter shall constitute a misdemeanor and shall be punished as set forth in Monterey City Code Section 1-7. In addition, violators shall be subject to eviction and/or revocation of their license agreement and/or permit.

**ARTICLE 4
MUNICIPAL WHARVES.**

**DIVISION 1.
GENERALLY.**

Sec. 17-18. Restrictions on deliveries of seafood at the Harbor.

It is hereby declared to be a public nuisance and unlawful for any person to offer for sale or make deliveries of fresh fish or other seafood at the Monterey Harbor or on City-owned parking areas except as provided by the terms of a lease, permit, or contract that has been specifically authorized by the City Council.

Sec. 17-19. Docking, loading, etc., of vessels.

1. When permitted. Except as directed by the Harbormaster, berthing or docking alongside Municipal Wharf No. 1 and Municipal Wharf No. 2 shall be permitted only during the time when nets, equipment or supplies are being loaded or unloaded. At all other times docking shall be prohibited, except at a concession leased to a concessionaire by the City, at which boats may dock without charge when engaged in or carrying on with such business as they are authorized to transact by the City thereat.

2. Designation of Space; Docking Time Allowed. Space at which fishing vessels may be allowed to dock at Municipal Wharves No. 1 and No. 2 will be designated by the Harbormaster.

Sec. 17-20. Wharfage Monterey Municipal Wharf No. 1 and No. 2.

1. Wharfage is defined as the fee charged per ton, per pound, or per item, for the service or use of Monterey Wharf No. 1 or Wharf No. 2 for the passage of seafood products or other ocean resource products thereover or thereunder.

2. Except as provided by the terms of a lease or contract that has been specifically authorized by the City Council, all seafood and other ocean resource products delivered to Wharf No. 1 and Wharf No. 2 are subject to wharfage fees.

3. Except as provided by the terms of a lease or contract that has been specifically authorized by the City Council, wharfage on Monterey Municipal Wharf No. 1 and 2 shall be established by resolution of the City Council.

4. Wharfage shall be paid by the party receiving the goods, and not charged to the party selling the goods.

5. Any dispute as to whether an item is subject to wharfage, or the amount due, shall be determined by the Director of Community Services. Determinations of the Director of Community Services under this section shall be final.

Sec. 17-21. Bonds required for transporting of excessive loads.

The City Manager may require a bond from any person transporting gross loads in excess of ten tons over and across Municipal Wharf No. 1 or Municipal Wharf No 2, such bond to insure

payment of any damage to such wharves because of the transportation of such gross loads in excess of ten tons.

Sec. 17-22. Restrictions on use of wharves for storing, etc., of goods.

No material or merchandise shall be stored or sorted on Municipal Wharf No. 1 or Municipal Wharf No. 2, and no material, merchandise or vehicle shall be placed or parked so as to obstruct any portion of either of such wharves, except in designated concessions. No boats shall be furnished diesel oil or gasoline from tank trucks on either such Wharf, except as specifically authorized by the City Manager.

Sec. 17-23. Overhead Casting.

No person shall cast or throw over his or her head or shoulders any metal or mineral weight or sinker attached to any fishing line or fishing tackle, on or from Municipal Wharf No. 2.

Sec 17-24. Throwing, depositing of garbage, refuse, etc., prohibited; exception.

No person shall deposit or cause to be deposited any garbage, refuse, fish, mollusk or any other waste material of any kind upon Municipal Wharf Nos. 1 or 2, except in containers provided therefore.

**DIVISION 2.
MUNICIPAL WHARF NO. 2**

Sec. 17-25. Operation and use of Vehicles - Speed Limit.

No person shall drive or operate a vehicle on Municipal Wharf No. 2 in excess of ten (10) miles per hour, and in no event at a speed which endangers persons or property.

Sec. 17-26. Use of Vehicles - Restricted in Certain Areas.

No person shall drive or operate a vehicle around the warehouse on the north end of Municipal Wharf No. 2, other than City employees conducting City business or a commercial vehicle for the purposes of transacting business with a concessionaire located in such warehouse.

Sec. 17-27. Parking and Loading Restrictions.

1. Except for commercial vehicles servicing the Wharf No. 2 concessions and trucks servicing the pump buildings as described in subsection 2, no person shall stop, stand or park a vehicle on Municipal Wharf No. 2, other than in designated and marked parking spaces.
2. Between the hours of 6:00 a.m. and midnight there shall be no more than two trucks stopped, parked, standing, loading, or otherwise present at any one time at or adjacent to each of the following locations: Pump Building 1, Pump Building 2, and the Warehouse Pump Operation. Between the hours of 6:00 a.m. and midnight, no trucks except the two authorized per pump building shall be permitted on Municipal Wharf No. 2.
3. No person shall permit any vehicle with a gross vehicle weight in excess of 6,500 pounds under their possession or control to travel or park on the eastern extension of Municipal

Wharf No. 2 located between the foot of Municipal Wharf No. 2 and the easterly prolongation of H-Tier.

4. For purposes of this section "trucks" shall mean vehicles with a gross vehicle weight in excess of 35,000 pounds.

Sec. 17-28. Designation and marking of parking spaces and loading zones.

Parking spaces and loading zones on Municipal Wharf No. 2 shall be marked and designated by the City Manager or his/her designee.

Sec. 17-29. Operation and mooring of boats prohibited in certain areas.

No person shall operate a boat beneath Municipal Wharf No. 2 or within 410 feet of the southerly end thereof, except as specifically authorized by the Harbormaster.

Sec. 17-30. Diving prohibited.

No person shall jump or dive from Municipal Wharf No. 2 or from any portion of the structure thereof, into the Marina waters, Monterey Harbor, or the Bay.

Sec. 17-31. Standing on railings prohibited.

No person shall stand on the railings around Municipal Wharf No. 2.

Sec. 17-32. Conditions of Use of Public Hoist.

1. Maximum time limit. The maximum time limit for an individual to use the hoist shall be 20 minutes. Berthing at the hoist staging dock shall be limited to 20 minutes.

2. Weight limit. The maximum weight to be lifted shall not exceed 6,000 lbs.

3. No person shall operate the hoist without prior written approval from the Harbormaster. Such approval will be given only to persons who have received instructions from the Harbormaster on how to use the hoist and who have signed an appropriate release of liability in favor of the City. Any person using the hoist may be required to show proof of this permission and positive identification.

4. Obstructing business or traffic. Hoist users must not obstruct or interfere with the business of Wharf 2 concessionaires, nor may they obstruct traffic.

5. Authorized uses. The following uses are permitted as noted:

a. Boat launching and retrieval. Boats must be rigged with lift eyes.

b. Gear and propulsion machinery, as per the limits described above. Precautions must be made to ensure that no oil, fuel, or other materials are spilled and enter the water or go onto the docks or deck.

c. Fish products. Only boxed or tote-contained fish products may be lifted in drip-proof containers (no brailed fish). Products may only go into vehicles owned by the fisherman. No wholesale or retail sales on Wharf II or other City property or

transfer of fish products to second parties, except through City-authorized concessionaires, or by special permit. No kelp may be unloaded. Hoist user will be responsible to clean up any mess produced.

- d. Limited vessel repair, maintenance and inspection. Only minor vessel repairs, maintenance or inspections, which take less than 20 minutes to complete, can occur on hoisted vessels. No hull cleaning, sanding or painting allowed.
- e. Non-commercial uses. The hoist may not be used for commercial uses except as provided herein.

ARTICLE 5. BERTHING, MOORING, ANCHORING.

Sec. 17-33. General Regulations regarding Berthing and Mooring in the Harbor.

1. Every vessel entering the Harbor shall immediately become subject to the authority and direction of the Harbormaster. The Harbormaster shall direct where each vessel shall be berthed, moored, or anchored.
2. The Harbormaster shall have the right to refuse entry into the Harbor of any vessel which, in his or her opinion, is derelict, unseaworthy, unsafe to its operator or other members of the public, of inappropriate size, that does not have current vessel registration or federal documentation, or is known to owe berthing fees to another California harbor or marina.
3. Documentation and Registration.
 - a. Every vessel entering the Harbor must be California-registered, federally-documented, or registered in accordance with the laws of its state of U.S. residency or foreign government. The vessel owner/operator shall furnish to the Harbormaster any and all vessel registration or documentation requested.
 - b. Written evidence of documentation or registration shall be made available to the Harbormaster by all licensees yearly upon request. Registration or documentation must remain current to continue berthing, mooring, or anchoring privileges. It is the obligation of the licensee to make any changes to the registration or documentation that reflect changes in title or ownership, or other legal interests in the vessel.
4. The Harbormaster shall have authority to temporarily or permanently relocate any vessel from where it may be stored, anchored, berthed or moored when such relocation is required to insure public safety or when it is in the best interests of Harbor operations due to boat damage, dock repair, for non-payment of fees, to minimize use or space conflicts, to maximize vessel length or beam ratio, or for the best allocation of Harbor space. The Harbormaster shall notify the vessel owner that the vessel must be relocated and if the vessel owner fails to comply in a timely manner, may move the vessel and charge the vessel owner for such services. The City shall not be liable for any damage or claim made as a result of such relocation.

5. Current addresses, etc. All licensees and permittees shall at all times keep the Harbormaster informed of any change in current mailing address, telephone number, or change in title, ownership or exchange of the vessel occupying a berth, mooring, or anchorage in the Harbor.

6. Confirmation of Ownership. If it appears that an ownership interest in a vessel has changed and/or said vessel's berth, mooring, or anchoring license has been assigned without the approval of the Harbormaster, Harbormaster may require substantiation of a licensee's maintenance of the requisite ownership interest in a vessel. Said proof may be in the form of records reflecting payment of expenses, insurance, interest payments on loans secured by the vessel, and/or personal property taxes paid on the vessel. All personal financial information submitted to the Harbormaster will be used only for the purpose of enforcing this Chapter and shall otherwise be kept confidential. Failure of the licensee to demonstrate maintenance of the requisite ownership interest in the vessel may result in revocation of the license.

In the event the Harbormaster determines that the documentation submitted pursuant to the foregoing paragraph does not conclusively establish whether a change in vessel ownership has occurred, in lieu of immediate revocation of the license, Harbormaster may require licensee to establish the licensee's continued personal use of the vessel for travel outside the Harbor a minimum of ten times out of any twelve-month period. In the event Harbormaster determines that a licensee has failed to personally use the vessel on a regular basis as set forth in this paragraph, the license shall be subject to revocation.

7. Only One Mooring or Berth License Per Person. A berth or mooring licensee may possess only one mooring or berth license agreement, except:

- a. Multiple mooring or marina berth license agreements may be held by persons if said licenses were issued prior to June 1, 1998.
- b. Commercial fishers may possess multiple mooring and/or licenses to be used exclusively for commercial fishing operations.
- c. Concessionaires of the City may possess multiple berth and/or mooring licenses within the terms of their lease with the City.
- d. The operators of sailing schools who verify instruction of at least 250 different individuals per year, have a City business license, and meet all applicable Coast Guard regulations may possess a maximum of two berth and/or mooring licenses, unless expressly allowed to possess more by the City Council.
- e. The operators of dive charter businesses possessing a Yellow Boat Concession permit who demonstrate loading a minimum of 1,000 passengers a year may possess up to two (2) berth and/or mooring licenses, when used exclusively for the dive charter business.

- f. The operators of non-profit, public serving organizations who demonstrate the need for an additional berth and/or mooring license to conduct their mission may possess up to two (2) berth and/or mooring licenses under sole discretion of City Manager upon recommendation of the Harbormaster.

8. Licensee Leave Option. For berths or moorings released to the City for reassignment to the waiting list, the licensee at the time of the release may obtain an option for a similar berth or mooring, granted ahead of the regular waiting list. The option may be exercised through a written request to the Harbormaster at any time after one year has passed from date of the release. The next available berth or mooring will then be assigned. To obtain a leave option, a fee of one-half month's berthing or mooring for the size of the space released, per year, shall be paid. Failure to pay this fee will result in the loss of the ability to obtain a license apart from the standard waiting list procedure. Once a berth leave option has been utilized, the returning vessel may not transfer the license to a new owner upon the sale of the vessel, unless the vessel has occupied the berth or mooring for at least thirty (30) months.

9. Retention; Trades. A licensee may, upon prior written approval of the Harbormaster, retain berth or mooring license rights and be subject to the regular monthly fees for use by another vessel owned by licensee, provided the vessel size conforms with the size of the berth or mooring and adequate proof of ownership is submitted to the Harbormaster. Two licensees may also trade berths or moorings of the same or differing sizes without invoking the assignment rate increase, unless one or both of them are already paying the assignment rate, in which case that rate will still apply to the licensee(s) paying the assignment rate. If a licensee wishes to trade a berth obtained through the waiting list, he/she must have a waiting list date that is senior enough to qualify for the new berth, if of a differing size, as if it was offered through the waiting list.

10. A license agreement may be canceled by the licensee upon thirty (30) days prior written notice and the licensee shall be entitled to a refund of any prepaid fees.

11. The City may revoke a license upon three (3) days prior written notice where the (1) boat owner is in default of any berth fees or other charges due and owing, or (2) is in violation of any provision of this Chapter as may be amended from time to time, or (3) it is determined that the vessel owner has knowingly, and with intent to deceive, made any false, misleading or fraudulent statements in obtaining the license. If a license is revoked, the licensee shall be entitled to a refund of any prepaid fees.

12. Vessel owners without a liveaboard permit are authorized to reside aboard their vessels for a period not-to-exceed forty-eight (48) hours in a seven day period, or up to 72 continuous hours if the weekend is part of a Federally-recognized legal holiday. Licensees may reside aboard for up to fourteen (14) continuous days out of any three month period upon prior notification of the Harbormaster. No other persons will be allowed to stay overnight on a vessel without the owner(s) being present, except by special permit from the Harbormaster. Such a permit, to be issued in advance of the stay, shall be valid for no more than 120 days, and shall be provided only for good cause. For such a special extended permit, liveaboard fees will apply.

Sec. 17-34. Access to Berthing Facilities.

1. In order to protect the boats and other property of Harbor licensees, access to the berthing facilities shall be controlled by the use of gates equipped with locks or other means as the Harbormaster deems appropriate. Visitors and other persons having lawful business within the berthing area may be allowed access at any reasonable time with permission of the Harbormaster.
2. Gates to the berthing area shall be locked at all times unless otherwise directed by the Harbormaster. Blocking open or climbing over or around the gates is prohibited. The Harbormaster may issue keys to licensees and to visitors and shall charge a reasonable deposit to insure the return of such keys.
3. Children under the age of thirteen (13) years old must be accompanied by a parent or other responsible adult at all times when on the Marina docks and/or vessels.
4. Dockside shore power is available to boaters with regular license agreements. A specific power outlet shall be assigned to each berth and this outlet may be sub-metered. It shall be illegal to use shore power from any other berth's outlet without prior approval of the berth's licensee.

Sec. 17-35. Berthing and Mooring Licenses.

1. **Assignment.** No person shall berth or moor a vessel in the Harbor or Marina without first having been issued a berth or mooring assignment by the Harbormaster and signed a license agreement, been issued a temporary transient assignment and signed a transient vessel license agreement, or in the case of a mooring only, having been issued a sublicense permit. Unauthorized berth or mooring occupancy is prohibited. License fees shall be established by resolution of the City Council. The Harbormaster is authorized to move, secure, cite, and/or impound any vessel occupying an unauthorized berth or mooring. All fees involved in such action will be charged to the vessel's owner.
2. **Berth or Mooring License Issuance.**
 - a. **Waiting List.** A chronological waiting list for berth and mooring assignments will be maintained and available for public inspection. A non-refundable fee, established by resolution of the City Council, will accompany the request to be placed on the waiting list. At the time of the request, a person shall indicate if a Marina berth, Outer Harbor mooring, or East Mooring Area mooring is desired. An annual fee will be required to remain on the list. Each person on the waiting list will be billed annually according to their initial application date on the waiting list. It is the responsibility of the waiting list applicant to provide accurate contact information. Failure to renew by paying the annual fee will result in the applicant being removed from the waiting list. Members of the waiting list shall have the right to transfer their name from one slip or mooring size to another, or from a berth to a mooring or mooring to a berth, and will be placed on the new list in accordance with their original sign-up date. Waiting list applications are not

transferable and only the name(s) listed on the waiting list application and their spouses shall be considered eligible to be a licensee.

Except as provided in Subsection 2, when a berth or mooring becomes available it will be offered first to that person highest on the waiting list for that size berth or mooring, and if refused, in sequence to the person next on the list. The person highest on the waiting list will be offered any available berth or mooring providing the vessel size will not be more or less than allowed for the size of the berth or mooring. Acceptance must be indicated within ten business days of notification and must include payment of the first month's berth or mooring fee and execution of a license agreement.

If, when offered a berth or mooring, the top person on the waiting list owns or wishes to own the vessel in partnership with others who are not listed on the waiting list application, the conditions found in section 17-36(e) will apply.

- b. The Outer Harbor mooring waiting list shall be divided into two subsets: (1) recreational vessels and (2) commercial vessels, which shall be California-resident commercial fishers. Both subsets shall be organized chronologically and by the size of mooring needed.

The commercial list shall always have priority over the recreational list; however, commercial fishers are required to verify on an annual basis to the Harbormaster at least an amount of fish catch, in dollars, as specified in the commercial vessel quota as set by resolution by the City Council.

- c. Before a license agreement can be accepted by the Harbormaster, each vessel owner shall furnish a Certificate of Documentation from the United States Coast Guard or vessel registration from the Department of Motor Vehicles in the licensee's name. No vessel other than the one specified on the license agreement shall be kept in the assigned berth or mooring by the licensee, unless the license agreement is amended as approved by the Harbormaster. If a vessel is rented, chartered or leased by a berth or mooring licensee, the vessel use shall be exclusive to the licensee and a copy of the rental, charter or lease agreement shall be provided to the Harbormaster.
- d. A license for berthing or mooring may only be issued in one of the following manners:
 - i. In the name of an individual or a group of up to four individuals.
 - ii. For berth license agreements entered into after July 1, 1997, and mooring license agreements entered into after June 1, 1998, if a vessel is owned by a corporation, the largest individual shareholder shall be a named licensee under the berth license agreement. The corporation may designate up to three other individual shareholders as licensees.

- iii. If the vessel is owned by a sole proprietorship, the license shall be issued in the owner's name "DBA" the business.
- iv. If a vessel is owned by a partnership or joint venture, the members shall designate up to four individual members to be named as licensees, provided they are all either listed on the waiting list application or are all listed as co-owners of the vessel at the time of license transfer, and as provided in section 17-36 subsection (3) (c).
- v. If the vessel is owned by a trust, the license agreement shall be in the name of the trust, provided that it is the trust that maintains the waiting list application or it is the trust that purchases a vessel already in a berth or mooring and transfers the license into the trust. Licenses may not be changed into the name of a trust after issuance of the license except as provided in section 17-36 (1) or 17-36 (2)

Sec. 17-36. Disposition of Berth or Mooring Upon Sale or Other Transfer of Vessel.

1. Disposition of Berth or Mooring upon Sale of Vessel. At the time of the purchase of any interest in an existing vessel occupying a berth or mooring in the Monterey Harbor pursuant to a license agreement:

- a. If the original licensee no longer wishes to utilize the berth or mooring for a vessel of his/her own pursuant to section 17-34 herein, the berth or mooring shall revert to the City for reassignment. The original mooring licensee may remove privately owned mooring gear, provided it is removed within ten (10) days of the release of the mooring. If the mooring gear is not removed, the City shall assume ownership of the gear and retain or dispose of the gear in its sole discretion.
- b. If the new vessel owner does not wish to obtain a berth or mooring, the Harbormaster shall assign the berth or mooring to the next person on the waiting list.
- c. If the new vessel owner does wish to berth or moor the vessel in the Monterey Harbor, a suitable berth or mooring will be provided. When the Harbormaster approves a new license for the owner(s) of a purchased vessel, the berth or mooring that is provided to the new vessel owner shall suit the vessel and be comparable to the prior berth or mooring, but may not necessarily be the same as held by the former berth licensee. The new vessel owner will be charged the berth or mooring assignment rate, as set by City Council resolution, to be paid until such time as the new vessel owner may be offered a regular berth or mooring, respectively, from the waiting list, except that if the new vessel owner intends to use the berth or mooring for commercial fishing operations, such purchase shall be exempt from paying the assignment rate and instead shall be charged the regular rate provided that, for each year after the vessel purchase, the commercial fishing quota, as set by City Council resolution, can be attributed to the vessel using the berth or mooring, or if it is a "light boat", by the larger

vessel it supports. If the commercial fishing quota is not verified as requested by the Harbormaster, the assignment rate will go into effect.

- d. For the City to provide a berth or mooring the purchased vessel must:
 - i. Be seaworthy and operable as defined in this Chapter.
 - ii. Remain in the berth or mooring provided by the Harbormaster for at least thirty (30) months to continue the license agreement. Additionally, for every two (2) months which that individual has been on the Monterey berth or mooring waiting list, one (1) month may be deducted from the required wait for vessel replacement, as calculated at the time of the license transfer. Exceptions will be made to this provision if the vessel departs on an extended voyage, including commercial fishing operations, provided it is still owned and operated by the licensee upon its return to Monterey, or if the vessel is damaged to the extent it is no longer feasible to remain in the Harbor.

2. Disposition of Berth or Mooring Upon Assignment of Vessel.

- a. For purposes of this subsection, "assigned" or "assignment" shall refer to the gift, bequest, or any other type of transfer of ownership of a vessel without any consideration.
- b. If a vessel occupying a berth or mooring pursuant to a license agreement is assigned, such assignment shall not be subject to the provisions of this Chapter regarding vessel sales, provided that the berth or mooring is used only for the assigned vessel. Berths or moorings used for commercial fishing operations shall be exempt from the prohibition of replacing the assigned vessel, provided the new vessel is used primarily for commercial fishing.
- c. Berths or moorings acquired through assignment may be subsequently sold, subject to the vessel sale provisions of this Chapter, to a new owner.
- d. Berths or moorings acquired through assignment may be subsequently assigned, subject to the vessel sale provisions of this Chapter, to a new owner.
- e. New partners in the vessel will not be allowed following the assignment.

3. Vessel Partnership. For vessel partnerships involving the partial transfer of any interest in the vessel to another person or legal entity and entered into after July 1, 1997, with a licensee who obtained his or her berth or mooring prior to that date in order to retain a berth or mooring:

- a. A written partnership agreement shall be provided with a new DMV registration or Coast Guard document showing all owners' names;
- b. The berth or mooring assignment rate, as applicable, will apply;
- c. New vessel partners will not be added to the license agreement except in the circumstance where the new partner has been on the waiting list long enough to

obtain a berth or mooring on his/her own. The City's legal relationship remains solely with the licensee, except as provided herein; and

4. For vessel partnerships for a vessel which has not previously occupied a berth or mooring, the original licensee partner(s) shall demonstrate at least a 51% financial interest in the vessel, contribute a commensurate share to the continuing expenses of the vessel, and personally use the vessel for travel out of the Harbor a minimum of ten times out of any continuous twelve-month period. The licensee's financial interest may not be gifted from the non-licensee boat partner(s) or attributed to any value assigned to possessing a berth license. The Harbormaster shall have the right to review the financial records of the vessel and request confirmation of personal use in order to confirm satisfactory compliance with the requirements herein. Failure to comply with this section shall result in the forfeiture of the berth or mooring to the City. Personal Economic Gain Disallowed. The fact that a berth or mooring may be provided to a new vessel owner through the sale of a vessel shall result in no economic gain to the original licensee. Likewise, the purchaser of any interest in a vessel shall not pay any amount nor be liable for any cost or consideration of any kind to the original owner for the assignment of the berth or mooring into his/her name. Additionally, both the original licensee and purchaser shall sign a statement, under penalty of perjury, stating the total sales price of the vessel and affirming that no value has been exchanged between them for the berth or mooring assignment. The Harbormaster may require evidence in the form of an independent appraisal or comparable boat sales figures to verify the value of the vessel for which a license will be transferred. The Harbormaster has the authority to deny the transfer of a license should it be determined that the vessel's value has been inflated by the value of the transferred berth or mooring license.

5. A licensee may acquire a second vessel in a second berth or mooring without invoking the rate increase described in 17-36(1)(c), provided the original berth or mooring is released to the waiting list within twelve (12) months of acquiring the second vessel. The original berth or mooring may not be transferred to another individual or entity with the sale of the original vessel, but must be returned to the City for reassignment to the waiting list.

Sec. 17-37. Berthing Regulations.

1. Minimum and maximum vessel sizes. Vessels which are granted berth licenses must be no shorter than six feet of the berth size. For boats larger than the berth, the maximum overage for each slip size is as follows:

| Slip Size | (Alternate Maximum Boat Size) |
|------------------|--------------------------------------|
| 20' | 23' |
| 25' | 28' |
| 30' | 34' |
| 35' | 39' |
| 40' | 45' |

45'

50'

50'

60'

Likewise, the beam of a vessel must fit within the licensee's assigned berth.

For the purpose of this section, the vessel measurement shall include all functional structures such as, but not limited to, bow sprits, self-steering vanes, davits, swim steps, rudders, outboard motors, and dinghies. Oversized vessels shall be tied in the slip so that no more than one foot of any structure projects over the walkway.

The storage of net skiffs behind working commercial fishing vessels may be exempted from this section provided that, in the judgment of the Harbormaster, such storage is for the best overall use of space in the Marina.

A new licensee must occupy his slip with an appropriately-sized vessel within six months of approval of the berth license. For vessel replacement, a continuing licensee's new vessel must fit the above listed size limitations, including the beam of his assigned slip. A licensee may, with prior written approval of the Harbormaster, temporarily berth a new differing-sized vessel in the existing berth for a maximum of six months, at which time the vessel shall be removed by the licensee and the license shall expire, unless a suitably-sized vessel is purchased and berthed by licensee. The Harbormaster, at his discretion, may refuse to grant any interim berthing in the slip if the new boat is so oversized as to obstruct the walkway significantly reduce the navigable waterway, or otherwise create a safety concern.

The above-cited regulations notwithstanding, certain dock areas are recognized to be situated in such a manner as to allow for even larger boats than listed. For these special areas, as determined by the Harbormaster, prior written application must be made to the Harbor Office and approval granted before placing a boat in the slip which exceeds the maximum length or beam of this regulation.

2. Use of berth by multiple vessels. Use of the licensee's berth by any person other than the licensee for a skiff, dinghy, canoe, day sailor or a vessel of any other type shall only be permitted if approved by both the berth licensee and the Harbormaster and shall be subject to standard berthing rates for a vessel of that size and type. Public agencies and/or accredited schools with sailing programs shall be exempted from this subsection. If the berth licensee wishes to place an additional vessel of any type into the berth without paying additional fees, the vessel must be solely owned and used by the licensee and the vessels must be able to fit into the allocated berthing space.

3. Maintenance and care of berths. Boat owners are responsible for the safe and secure berthing of their vessels and are liable for damage to their own vessel, to the Marina facilities and to other vessels, caused by their negligent or willful actions. Boat owners will be billed for labor and materials required to secure vessels which are improperly or inadequately secured, or to repair Marina facilities which are damaged due to their negligence or willful misconduct.

4. Subletting. Subletting by berth licensees is not permitted. The City retains the right to sublicense berths that are temporarily vacated. A licensee shall notify the Harbormaster of his/her intent to temporarily vacate the berth.

5. Utilization. Berths must be utilized by the licensee for at least six months out of every twelve-month period, with the exception of a leave of absence granted by the Harbormaster. A leave of absence may be granted when:

- a. There is a defined time period for the leave; and
- b. The owner's vessel will be located continuously outside of the Monterey Harbor or if the owner is in a prolonged period of finding, constructing, securing, or delivering a new boat to Monterey Marina. For new boat purchase or construction, the Harbormaster may require evidence of this transaction.

Vessels berthed under a license agreement will be eligible for a credit to their account for each day a transient vessel uses the berth. The amount of credit applied to specific berth sizes shall be set by resolution by the City Council. In no event will transient credits applied to a berth licensee's account total more than the monthly berthing fee charged by the City. Any credit shall be shown on the following monthly or annual statement, dependent upon the berth licensee's payment schedule.

6. Stray electrical current. No vessel shall transmit stray current. Compliance with this requirement will be satisfied when it is shown that when testing the vessel shore power, there is no AC ground fault from the hot and neutral wires or galvanic or DC current on the ground wire. The vessel ground must be isolated from marina shore power by the use of an ABYC approved isolation transformer or galvanic isolator. The ground wire shall not be disconnected from the vessel's bonding conductor in an attempt to isolate the shore power ground from the vessel's bonding system.

If a vessel is found to be producing stray current, notice shall be given to the owner, who shall have 10 days to correct the problem. The preceding sentence notwithstanding, the Harbormaster shall have the authority to disconnect the vessel from shore power immediately if the level of stray current being produced poses a real and immediate threat to personal safety or the rapid corrosion of the vessel and/or its neighboring vessels/structures. If a vessel is disconnected from shore power, every effort will be made to promptly notify the vessel's owner as to the action taken. The Harbormaster, however, shall assume no liability whatsoever for any losses or damage suffered from the denial of shore power to a vessel producing stray current.

If the problem is not corrected in 10 days, the Harbormaster will have the right to disconnect the vessel from shore power and deny further use of shore power until corrective action is taken. Continued re-connection to shore power, if the vessel's fault has not been corrected, may result in the cancellation of the berth license agreement.

Shore power cords shall be compliant with current ABYC and National Electric Code standards and must be in operable condition. Cords that are found to be a significant hazard to personal safety will be unplugged immediately.

7. The Harbormaster shall provide 30 days advance written notice to the licensee of a new berth assignment, except in cases where there exists an immediate public safety concern.

Sec. 17-38. Modification of Berths.

No steps or boxes, other than dock boxes, shall be placed or fastened to the dock without the Harbormaster's consent. Carpeting or any attachments that retain moisture or prevent ventilation are expressly forbidden. No modifications to the berth will be allowed except those done by the City staff, or performed by vessel owners with prior written approval of the Harbormaster. Vessel owners will be billed for any labor and materials necessary to correct violations of this section.

Sec. 17-39. Mooring Regulations.

1. **Vessel Size.** The Harbormaster shall keep a record of the maximum or minimum-sized vessel, measuring all permanent structures, allowed for each mooring location. Vessels larger than the maximum or smaller than the minimum allowed will not be permitted, except by advance written permission from the Harbormaster, or, as relocated by the Harbormaster. The purchase of a vessel larger than can be accommodated in the mooring space does not obligate the Harbormaster to provide a new, larger space.

2. **Use of Mooring.** Except for dinghies, only one boat is allowed on a mooring at any one time. A mooring permit shall authorize the holder thereof to use the facilities for mooring purposes only and grants no further rights, privileges or uses. Additional or varying uses shall not be allowed except as provided in the ordinances or with the written permission of the Harbormaster.

3. **Blocks.** The Harbormaster shall have the authority to require the use of a City owned and maintained block.

4. **Maintenance and Care of Mooring.** Licensees are responsible for their mooring gear and for the safe and secure mooring of their vessel(s), except as provided in a sub-license agreement. They are liable for damage to their own vessel and to other vessels, if caused by their reckless action, inattention, or other failure to maintain their gear. Boat owners will be billed for labor and materials to secure vessels which are improperly or inadequately secured, or to repair mooring facilities which are damaged due to their negligence.

- a. **Number display.** Mooring licensees are required to display at all times, their assigned mooring number on two (2) opposite sides of the mooring buoy in easily visible letters at least four (4) inches high.
- b. **Gear Inspection.** It shall be the responsibility of the mooring licensee to have all of the mooring gear inspected by someone competent to assess its condition at least on an annual basis. The results of the inspection shall be provided to the Harbormaster.
- c. **Inadequate Mooring Gear.** If, in the opinion of the Harbormaster, a mooring licensee is using gear that is not of sufficient strength to safely secure the

vessel, and even if the gear is in good condition, the Harbormaster shall have the authority to require the licensee to supply stronger gear suitable for the size of the vessel. If the mooring licensee does not supply stronger gear in a timely manner, the Harbormaster shall have the authority to provide and install storage gear and the licensee shall be responsible for the cost of this service.

5. **Swing.** The Harbormaster shall have the authority to set the maximum sized vessel, including the mooring gear.

Sec. 17-40. Mooring Sub-Licenses.

Mooring licensees must occupy their moorings with a vessel they own for a minimum of six months out of any twelve month period, except as described below.

No mooring licensee may sub-lease, sub-rent, or sub-license the mooring to another person or entity except through the Harbormaster's Office and according to the procedure set forth. The use of a mooring by any boat other than the licensee's must be approved by the Harbormaster, and must be reported promptly to the Harbor Office.

- a. **Other Person's Use.** Use of a licensee's vessel by any person other than the licensee, in the form of a charter, rental agreement, lease or any other arrangement, whereby some person other than the mooring licensee is afforded the use of the licensee's vessel and mooring, shall constitute a sub-license of the mooring and shall be subject to the provisions of this section. The details of such an agreement shall be notarized and filed at the Harbor Office.
- b. **Sub-license Permits.** Sub-license permits may be granted for a maximum of six months in any twelve-month period, except extensions of time beyond six months as expressly permitted by the Harbormaster for such reasons as extended cruising, out of area commercial fishing, extended boat repairs, boat building or purchase efforts, or for other commercial uses as approved by the Harbormaster. For sub-licenses of a duration of six months or less out of any twelve month period, the mooring licensee may select anyone of his/her choosing to sublet the mooring provided the vessel fits within the allotted space. The financial obligation for the mooring shall remain with the regular licensee. Reimbursement by the sub-licensee to the licensee will be the responsibility of the two contracting parties. The sub-license rate, however, shall not exceed the standard fee schedule currently used by the City of Monterey, as adopted by resolution by the City Council, plus a reasonable amount for the maintenance of the mooring equipment.
- c. **Sub-license Time Extensions.** If the Harbormaster approves additional time beyond the six month limit, the Harbormaster shall have the right to provide the sublicense opportunity to individuals who have senior status on the City's mooring waiting list. No right to continuing occupancy of a mooring in the Harbor or to higher waiting list priority shall result from such use. In circumstances where the Harbormaster approves a time extension, and places an individual

from the waiting list on the mooring, the City shall be responsible for the collection of mooring fees and for the maintenance of the mooring during such use.

- d. Sub-license Agreement. Sub-license permits will be issued by the Harbormaster on the basis of a joint agreement executed at the Harbor Office between regular licensee and sub-license.
- e. Mooring Gear Maintenance During Sub-licensing. The responsibility to maintain safe and secure mooring gear, except for the mooring pendant, shall remain the licensee's, except as mutually agreed upon by the two contracting parties, or as conditioned above.
- f. Mooring Pendant. The responsibility to maintain a safe and secure mooring pendant shall be the vessel owners.

Sec. 17-41. Anchoring.

In no circumstances may any vessel anchor inside the mooring area or the Fairway Channel as marked. No person shall allow his moored vessel to obstruct the Harbor's marked navigation channels. If a vessel does block a channel, it and/or its mooring gear may be moved by the Harbormaster at the vessel owner's expense.

The Harbormaster may direct vessels to anchor outside the small boat mooring area of the Harbor where it appears safe, given the conditions of vessel traffic, wave action, and the maneuvering capability of the vessel requesting anchorage.

Visiting vessels may stay at anchorage for up to thirty-one days in any six month period where space is available.

Sec. 17-42. Transient Berthing or Mooring.

- 1. All visitors wishing to berth or moor in the Harbor shall check in with the Harbormaster and sign a transient vessel license agreement prior to being assigned a space. Transient spaces shall be assigned on a first-come, first-served basis and subject to a fee set by resolution of the City Council.
- 2. Transient vessels may stay in a berth for up to two consecutive weeks in any thirty (30) day period where space is available. Visiting vessels may be assigned the temporary use of a mooring for up to 31 days in any six month period. Extensions may be approved in writing by the Harbormaster.
- 3. No transient vessel in the Harbor shall use their vessel for overnight lodging more than fourteen (14) consecutive nights without said transient vessel then being subject to the rules found in Section 17-43 herein.
- 4. The City shall not create differing rates for transient vessels based on the residency of the owners.

5. The temporary use of berths for transient vessels shall in no way create any right to permanent or future berthing outside of the regulations set forth in this Chapter for the issuance of berth licenses.

Sec. 17-43. Living Aboard.

1. It is unlawful for any person to liveaboard in the Harbor without having been issued a valid liveaboard permit by the Harbormaster.

2. A maximum of fifteen liveaboard vessels will be permitted to occupy berths in Monterey Marina and a maximum of fifteen liveaboard vessels will be permitted to occupy moorings in the Harbor. Following the adoption of this Ordinance, no further liveaboard permits shall be issued for the moorings until such time as the number of permittees is reduced below the allowable limit of fifteen. However, all individuals possessing a valid liveaboard permit at the time of the adoption of this Ordinance may continue to liveaboard subject to the rules and regulations herein.

3. **Waiting list.** A waiting list for liveaboard permits shall be maintained and available for public inspection. Only current licensees are eligible to participate in the liveaboard permit waiting list. Liveaboard permits shall be issued according to application date and availability of liveaboard permits. When a liveaboard permit becomes available it shall be offered to the first person on the waiting list. Notification will be mailed to the most current address on file in the Harbormaster's office. It is the sole responsibility of the applicant to keep the address on file with the Harbormaster current. Acceptance must be made within thirty (30) days of the mailing of the notification. If a liveaboard permit is offered and not accepted within thirty (30) days, the applicant's name will be removed from the list. Fees paid to be included on the liveaboard waiting list are non-refundable.

4. A liveaboard permit may be issued only if all of the following standards are met:

- a. Applications, on a form to be provided by the Harbormaster, for a liveaboard permit must be submitted to the Harbormaster. Failure to make said application in advance of living on the vessel shall be grounds for denial.
- b. At least one applicant must have a berth or mooring license agreement. The application must list all other occupants who will be living aboard. The vessel shall be equipped with an operable Marine VHF radio and he/she shall maintain such radio in good working order during the term of his/her residence. An operable cellular phone may substitute for a marine radio. Either the radio or the telephone should be on when the vessel is occupied.
- c. Each vessel shall be equipped with a permanently-installed Coast Guard-approved head and a waste holding tank with a capacity of no less than ten gallons. The City shall have the right upon reasonable notice, to inspect the interior of any such vessel to verify compliance with this condition. Portable toilets are not considered installed devices. Waste may only be disposed of in Harbor via the City-owned pump facility. The City shall have the right to require

that liveaboard vessels demonstrate the regular use of the Harbor sewage pump, and/or place dye tablets inside the vessel's holding tank.

- d. For liveaboard applicants after the effective date of this ordinance, the vessel must have standing headroom and at least 29 feet in length. Vessel length for purposes of this section shall be the length listed on the vessel's registration or federal document.
- e. For liveaboard applicants after the effective date of this ordinance, the vessel must be self-powered. No barges or houseboats will be permitted. Any vessel used exclusively as a residence shall be considered to be a houseboat, regardless of its design. Liveaboard vessels must be designed for usage and able to be used on the open waters of the Monterey Bay in its typical range of sea conditions.
- f. Living aboard shall be considered incidental to regular use of the open waters. The liveaboard applicant must be able to personally demonstrate the ability to operate the vessel before a liveaboard permit will be issued and at the request of the Harbormaster thereafter.

5. Regulations for Living Aboard.

- a. The total number of occupants of the vessel must not exceed the number of beds provided by the original manufacturer, and in no event may there be more than five occupants of a liveaboard vessel.
- b. In no case may a person solely occupy as a liveaboard a vessel registered to another. Other individuals may reside aboard a vessel, with a valid liveaboard permit, but only as long as the berth or mooring licensee also resides aboard.
- c. A liveaboard permittee shall pay a monthly liveaboard fee set by resolution of the City Council. This fee shall be in addition to the monthly berthing or mooring fee.
- d. A liveaboard permit may not be transferred to another person, but may be transferred by the liveaboard permittee to a new vessel of the original liveaboard permittee with prior written approval of the Harbormaster.
- e. The liveaboard permittee shall notify the Harbormaster of liveaboard guests if their anticipated stay is 7 days or longer. The liveaboard permittee is responsible for the actions and conduct of his/her guests. Any violation of these rules and regulations by a guest shall be considered a violation by the liveaboard.
- f. The Harbormaster shall have the authority to inspect liveaboard vessels for compliance with this section. Inspections shall occur only with a minimum of seven (7) days advance written notice to the liveaboard.
- g. If any legal action is required to remove or evict a liveaboard, the permittee shall be liable for reasonable attorney fees, costs and expenses incurred by the City.

- h. Liveaboard permits are not transferable upon the sale of a vessel. The new owner must apply a liveaboard permit and may not live aboard until such approval is granted. Possession of a liveaboard permit for the Marina or a Mooring does not entitle the liveaboard to transfer from one area to another, unless liveaboard permits are available in the other area.
- i. No more than two (2) monthly waterfront or Wharf II parking permits for vehicles of any type will be issued for liveaboard permittees, except as authorized by the Harbormaster on a short-term basis. Liveaboards may apply to the City's Parking Division to park additional vehicles in other City lots or structures.

6. Termination. A liveaboard permittee may terminate his or her permit upon thirty (30) days prior written notice of termination to the Harbormaster. The Harbormaster may terminate a liveaboard permit upon thirty (30) days prior written notice for any of the following reasons:

- a. Discharge of sewage or other waste into the Monterey Bay.
- b. Failure to maintain a seaworthy, operable vessel and/or an operable Marine VHF radio or cellular telephone. If within fourteen (14) days following notice of termination for failure to maintain a seaworthy, operable vessel and/or an operable marine radio or cellular telephone, the permittee provides proof of correction of the violation to the satisfaction of the Harbormaster, the Harbormaster shall rescind the notice of termination. This correction period may only be utilized once in a twelve (12) month period.
- c. Failure of the permittee and his or her guests to comply with all applicable local, state, and federal laws and all Harbor rules and regulations.
- d. Failure to reside on the vessel for fourteen (14) continuous days out of any three month period.
- e. Engaging in behavior that endangers the permittee, permittee's guests, or other users of the Harbor.
- f. Failure to pay the monthly liveaboard permit fee for a period in excess of thirty (30) days after written notice.

7. Vessels covered by a liveaboard permit may not be rented, all or in part, as overnight accommodations or lodgings.

8. A liveaboard permittee whose liveaboard permit is terminated by the Harbormaster may not apply for another liveaboard permit until six months after the date upon which the liveaboard permit is terminated.

9. The Harbormaster shall have the sole discretion to decide whether to issue another liveaboard permit or not. The Harbormaster's decision shall be final and not subject to appeal.

Sec. 17-44. Dinghy Docks and Permits.

1. The berthing of dinghies or other vessels on the City owned and operated docks shall be by permit only as issued by the Harbormaster. The City Council shall set, by resolution, fees

for the storage of dinghies. Only licensees or authorized sub-licensees shall be eligible for permits to store dinghies in the Harbor. The dinghies must be owned by licensees or authorized sub-licensees and used to reach their moored vessels. These provisions notwithstanding, the Harbormaster may issue special use permits for other dinghy uses as needed.

2. Transient vessels anchoring outside of the Harbor may request short term dinghy space. Such requests will be accommodated if space is available; advance approval by the Harbormaster and space assignment is required.

3. Dinghies must comply with California Boating Law for registration and safety equipment.

4. Dinghy permittees shall provide ten (10) days prior written notice to terminate the dinghy storage arrangement. Charges for dinghy storage will be due and payable to the City until such notice is received.

ARTICLE 6 LANDFILL AREA

Sec. 17-45. Parking in Designated Stalls or Areas.

No person shall stop, stand, or park any vehicle upon the landfill paved parking area except within designated stalls.

Sec. 17-46. Use of "Vehicle with Trailer" stalls.

No person shall stop, stand, or park any vehicle within any stall designated for use by vehicles with boat trailers in tow unless said vehicle is accompanied by an attached boat trailer.

Sec. 17-47. Use of Dock.

The dock facility adjacent to the landfill area is for the temporary dockage of boats while loading and unloading passengers and equipment only. No person shall dock any vessel to said facility for a period in excess of thirty (30) minutes, and no person shall allow vessel to remain unattended at said facility for a period in excess of ten (10) minutes.

Sec. 17-48. Prohibition.

Commercial activity upon that portion of the landfill not leased by the City of Monterey to any individual or entity is expressly prohibited, unless, in the discretion of the City Council, permission to so operate is granted. Such permission shall be granted only where it is found that said commercial activity is consistent with the primary purpose of the landfill area, which is to provide a public boat launching facility and related parking. As a condition of such discretionary approval, the Council may require the applicant to demonstrate that his proposed activity will not impact the shortage of parking in this area, may require payment of a user fee, and may impose such further conditions as are reasonable and necessary to assure consistency and compatibility with the launch ramp use. In all such cases of approval, the commercial entity shall comply with applicable City business license requirements.

ARTICLE 7
YELLOW BOAT CONCESSION

Sec. 17-49. Definition.

For the purposes of this Article, the term "Yellow Boat Concession" shall refer to two loading platforms adjacent to Wharf No. 2, as so designated on that certain plat map of Monterey Municipal Wharf No. 2, date May, 1956, and to areas inside Monterey Marina, as authorized by resolution of the City Council.

Sec. 17-50. Permit Required

No person shall use the Yellow Boat Concession for berthing, or for loading and unloading of passengers, cargo, equipment or materials without first securing a permit from the Harbormaster.

Sec. 17-51. Permit Issuance - Requirements

The Harbormaster shall issue annual permits for use of the Yellow Boat Concession on the following terms and conditions or as otherwise established by City Council resolution:

1. Permits shall be issued to licensed passenger-for-hire vessels only and must be renewed annually.
2. The fee for the use of the Yellow Boat Concession shall be established by the City Council, by resolution. A delinquent fee of 10% per month shall be added to past-due accounts. When permit fees are sixty (60) days delinquent, the permit shall be void automatically.
3. The permittee must annually submit evidence of possession of all licenses, certificates, business licenses, permits, registrations or other similar documents required by law for legal operation of the vessel(s) which will utilize the facility. Permittees must provide a certificate of commercial general liability insurance coverage in an amount established by the City's Risk Management Office. The certificate must list the City of Monterey as additionally insured and include a 30-day written notice of cancellation.
4. The use of the Yellow Boat Concession by each permit holder is limited to one (1) vessel per day, on a non-exclusive basis, for loading and unloading purposes only. Use of the facility by permittees on a first-come, first-served basis and continuous use of the facility by one user shall not exceed thirty (30) minutes without yielding to any waiting permit holder; permittees shall abide by all rules, regulations and laws of the City of Monterey while using the Yellow Boat Concession. Shared use of the Yellow Boat Concession is required unless precluded by physical limitations or valid safety concerns.
5. A parking management plan must be submitted by a Yellow Boat Concession applicant prior to issuance of the permit for review and approval by the Director of Community Services. This plan shall demonstrate that the parking requirements of the permittee will be met in locations other than on Wharf II, and that the parking and/or traffic impact on Wharf II will be minimal. Violation of the terms of the parking plan, as approved, will be grounds for the

cancellation of the permit. The requirement to obtain an approved parking management plan shall apply only to permits issued after adoption of this ordinance.

6. It is the intent of the City that Yellow Boat Concession permits be actively used and not be inactive for periods of time. A permittee who does not operate in a ninety (90) day period will automatically be subject to a review by the Harbormaster. For purposes of this section, "operate" shall mean that a minimum of twelve (12) paying passengers have been carried during a ninety (90) day period. Evidence of this minimum level of operation shall be provided upon the City's request. Following non-operation for a second consecutive ninety (90) day period permit shall be revoked immediately upon written notification by the Harbormaster.

7. The Harbormaster may grant temporary permits, with such restrictions as deemed necessary by the Harbormaster and charge fees as established by City Council resolution, for use of the Yellow Boat Concession.

Sec. 17-52. Transfer of Permit

The transfer, assignment, or sub-letting of Yellow Boat Concession permits shall not be allowed, except in the circumstance wherein all of the assets of an operating business are sold or transferred to another. Such assets must include the charter vessel, which is operable, seaworthy and insured, all necessary equipment, and a customer list. Advance written consent must be obtained from the Harbormaster before the Yellow Boat Concession permit can be transferred to a new business owner. The City will not consent to any sale wherein it is only or primarily the Yellow Boat Concession permit that is sold.

For partnerships in charter businesses operating with a Yellow Boat Concession permit formed after the adoption of this ordinance, the permittee of record must maintain at least a 51% interest in the business, continue to actively manage the business, and shall be the only person with whom the City will deal with for Yellow Boat Concession permit business.

Sec. 17-53. Permit Waiting List

A waiting list shall be established and maintained by the Harbormaster. The annual fee for placement on the waiting list shall be established by the City Council, by resolution. A revoked or forfeited permit will be offered to the first applicant on the waiting list. Acceptance of a permit must be indicated with twenty (20) days of notification by payment of fee and execution of permit agreement. The Permittee must begin operation within 120 days of permit issuance.

Sec. 17-54 Use of the Yellow Boat Concession

Use of the Yellow Boat Concession shall be available to all persons possessing valid Yellow Boat Concession permits on an equal basis as conditioned here, with such uses normally conducted on Wharf I by passenger-for-hire concessionaires pursuant to Resolution 9000 C.S. prohibited. Allowable uses of the Yellow Boat Concession include scuba dive charters, sailing lessons, sailing cruises and the scattering of human ashes at sea. For sailing lessons, sailing cruises, and the scattering of human ashes at sea, the maximum passengers allowed per trip shall be twenty-four (24) persons. Except for scuba dive charters, all other charter activity shall

be allowed only from the Yellow Boat Concession or from within the marina, if the Yellow Boat Concession is not usable.”

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 20th day of September, 2016 by the following vote:

| | | | |
|----------|---|-----------------|---|
| AYES: | 5 | COUNCILMEMBERS: | Barrett, Downey, Haffa, Smith, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | None |
| ABSENT: | 0 | COUNCILMEMBERS: | None |
| ABSTAIN: | 0 | COUNCILMEMBERS: | None |

APPROVED:

ATTEST:



Mayor of said City

