



CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.70 (NUISANCE VESSELS ON OAKLAND WATERS) SETTING RULES FOR ANCHORING VESSELS IN THE OAKLAND ESTUARY AND PROVIDING PROCEDURES FOR ABATING NUISANCE VESSELS**

**WHEREAS**, the Oakland Estuary, the waters between Oakland and Alameda, is Oakland's piece of San Francisco Bay, which, is described as "the most valuable single natural resource of an entire region, a resource that gives a special character to the bay area," by the Legislature in the McAteer-Petris Act; and

**WHEREAS**, vessels use the Estuary irresponsibly, by anchoring in the estuary for extended periods, for use as residences, or by being abandoned in an unseaworthy condition, and are immediate or potential hazards to navigation and the environment, which studies have found a wide variety of impacts from those abandoned or poorly-maintained vessels, let alone threaten that special character of the Bay; and

**WHEREAS**, the Bay Conservation and Development Commission (BCDC), a state agency, administers the San Francisco Bay Plan (the Bay Plan) and issues permits that must be consistent with the plan for shoreline development and any activity placing fill in the Bay, takes the position that abandoned vessels and live-aboard vessels—boats being used as residences—are unpermitted fill; and

**WHEREAS**, BCDC, under the Bay Plan's implementation of the McAteer-Petris Act, takes the position that if such a vessel is anchored in City waters and the City does not remove it, then the City violates the McAteer-Petris Act, and a cease-and-desist order will be issued asserting violations which can result in fines of up to \$6,000 per day; and

**WHEREAS**, State law gives the City and Oakland Police Department (OPD) extensive authority to remove from the Estuary permanently unoccupied vessels or vessels that pose an immediate threat, but under the current code, the City and OPD lack authority to remove occupied vessels; and

WHEREAS, the City seeks to fulfill its duties under the Bay Plan, and this Ordinance gives the City the tools to avoid BCDC's penalty;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this Ordinance.

**SECTION 2.** Oakland Municipal Code Chapter 8.70, Nuisance Vessels on Oakland Waters, is hereby amended to add, delete, or modify sections as set forth below (chapter and section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

**SECTION 3.** This Ordinance shall be referred to as the "Nuisance Vessels on Oakland Waters".

**Chapter 8.70. NUISANCE VESSELS ON OAKLAND WATERS**

**8.70.010 Purpose.**

The purpose of this Chapter is to promote public safety, health, and general welfare of the City's residents and the environment by ensuring that vessels on Oakland's waters are seaworthy and are not stored or occupied long-term.

**8.70.020 Definitions.**

- A. "Anchor" or "Anchoring" means attachment of a vessel to the bottom of or the shore of a body of water using equipment, lines, rope, chain, or cable which is carried onboard the vessel as regular equipment when underway.
- B. "Discharge" means to spill, leak, pump, pour, emit, empty, dump, deposit, or throw.
- C. "Enforcement Official" means the City Administrator or their designee.
- D. "Hearing Officer" means an individual designated by the City Administrator, who shall be qualified by experience and training to evaluate issues that may arise under this Chapter. The employment, performance evaluation, compensation, and benefits of a Hearing Officer, if any, shall not be directly or indirectly conditioned upon the decisions of the Hearing Officer.
- E. "Moor" or "Mooring" means a method of fixing a vessel to the bottom of a body of water in one location, temporarily or permanently, by use of cable, lines, chains or other equipment remaining attached to the bottom of the body of water and not carried aboard such vessel as regular equipment when underway, and through its resistance to drag maintains a vessel within a given radius.

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- F. “Nuisance Vessel” means a vessel that the Enforcement Official has determined is a public nuisance pursuant to Section 8.70. (A) [order to abate].
- G. “Oakland’s Waters” means any body of water under the City of Oakland’s jurisdiction, whether exclusively or concurrently.
- H. “Operable” means a vessel is able to maneuver safely under its own power, using only its usual and customary equipment
- I. “Responsible person” means the owner, operator, or occupant of a vessel.
- J. “Seaworthy” means in good condition, structurally sound, not likely to sink or become a menace to navigation or a nuisance, and capable of getting underway and safely maneuvering over the surface of navigable waters.
- K. “Vessel” has the same meaning as set forth in California Harbors and Navigation Code Section 550(a) or successor statute as it currently exists or may hereinafter be amended. As of the date of adoption of this ordinance, “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation by water.

#### **8.70.030 Applicability.**

This Chapter applies to vessels located in Oakland’s waters.

#### **8.70.040 Anchoring/Mooring.**

No person may anchor or moor a vessel for a period of more than twelve consecutive hours in Oakland’s waters. A vessel must leave Oakland’s waters for seven days before returning to anchor or moor again.

#### **8.70.050 Prohibition on residential use of Vessels.**

Living aboard a vessel anchored or moored in Oakland’s waters in violation of Section 8.70.040 is prohibited.

#### **8.70.060 Prohibition on beached or grounded vessels.**

Except in an emergency, it shall be unlawful for the owner, operator, or other person in control or custody of any vessel to ground or beach, or allow to be grounded or beached, a vessel in the tide or submerged lands of Oakland’s waters. If a vessel is beached in an emergency or other mishap, the registered or legal owner or other Responsible Person shall remove the vessel from its beached location within five calendar days of its original beaching. Vessels in violation of this section shall be subject to the Marine Debris provisions of the Harbor and Navigation Code sections 550 to 552.

#### **8.70.070 Vessel condition.**

- A. No vessel shall anchor or moor in Oakland’s waters that is not seaworthy and operable.

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- B. No vessel shall anchor or moor in Oakland’s waters unless it has current and valid registration with the California Department of Motor Vehicles or current and valid documentation with the United States Coast Guard.

**8.70.080 Prohibition on discharge.**

Overboard discharge of human or animal waste anywhere in Oakland’s waters is strictly prohibited.

**8.70.090 Enforcement responsibility—Delegation of authority.**

The Enforcement Official and his or her designees shall be responsible for the enforcement of this Chapter and shall make such inspections and take such actions as may be required to enforce the provisions of this Chapter. The Enforcement Official is authorized to establish guidelines and interpretations to enforce the provisions of this Chapter.

**8.70.100 Violation, Enforcement, and Abatement.**

- A. Any violation of this Chapter is hereby declared to be a public nuisance. When the Enforcement Official determines that a vessel operated in violation of Chapter constitutes a public nuisance, the Enforcement Official may elect to proceed as outlined in Section 8.70.120 or Section 8.70.140, in addition to other enforcement remedies authorized by this code or law.
- B. Violation of this Chapter shall constitute a misdemeanor pursuant to section 1.28.010 of this code.
- C. A person violating the chapter may be subject to civil penalties pursuant to Chapter 1.08 of this code, administrative citations pursuant to Chapter 1.12 of this code, abatement pursuant to this Chapter, or injunctive or other judicial relief, in addition to any other remedy available to the City.

**8.70.110 Authority for entry.**

The Enforcement Official or their authorized deputies or representatives may, with the consent of the occupant of a vessel, or, as to an unoccupied vessel, with the consent of the owner, or pursuant to a lawfully issued warrant, enter any vessel at any reasonable time to perform any duty imposed by this Chapter.

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### **8.70.120 Order to abate.**

- A. When an Enforcement Official determines that a vessel constitutes a public nuisance, the Enforcement Official shall notify the Responsible Person(s) that the Enforcement Official has determined that a public nuisance exists and order the nuisance abated.
- B. The notice and order to abate shall contain the following:
1. A description sufficient to identify the Nuisance Vessel.
  2. A statement that the Enforcement Official has determined pursuant to this Chapter that the Responsible Person(s) is operating a vessel in violation of this Chapter and that the vessel constitutes a public nuisance.
  3. A statement ordering the Responsible Person(s) to abate the public nuisance condition, and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.
  4. A statement advising that if the work to abate the nuisance is not commenced within the time specified, and diligently pursued until completion, the City may proceed to abate the nuisance and charge the costs thereof against the Responsible Person(s), and that such remedy shall be in addition to any other rights, remedies, or actions available to the City by reason of the same violation as described in the notice and order.
  5. A statement indicating whether the City has elected to seek, as a part of abatement costs, reasonable attorneys' fees incurred in abating the nuisance. Such notice shall also state that if the City elects to seek reasonable attorneys' fees, the prevailing party may be entitled to seek reimbursement of reasonable and necessarily incurred attorneys' fees, provided any such fees awarded against the City shall not exceed the amount of reasonable attorneys' fees incurred by the City.
  6. A statement advising the Responsible Person(s) of the right to appeal the notice and order to abate pursuant to Section 8.70.160; that such appeal must be filed with fourteen calendar days from the date of service of the notice and order; and that failure to appear will constitute a waiver of all rights to an appeal and hearing to contest the determination of the nuisance and required abatement. The City may charge appellate fees as outlined in the Master Fees Schedule.
- C. The notice and order shall be served on the Responsible Person(s) in one or more of the following ways:
1. Any method set forth in Section 1.08.050(B) of this Code; or
  2. Where service pursuant to Section 1.08.050(B) cannot be made despite a diligent effort, a copy of the notice and order shall be conspicuously posted on the Nuisance Vessel.

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- D. It is unlawful for the Responsible Person(s) to fail or neglect to comply with such notice and order of abatement. In the event that the Responsible Person(s) does not promptly proceed to abate said nuisance condition, as ordered by the Enforcement Official, the City may pursue abatement pursuant to this Chapter.

**8.70.130 Authorization to proceed with abatement.**

- A. If an appeal of the notice and order to abate the nuisance is not timely filed pursuant to Section 8.70.160, or if the Hearing Officer has upheld the determination of nuisance and proposed abatement, or for abatement of a nuisance pursuant to Section 8.70.140, the Enforcement Official is authorized to cause the nuisance to be abated, subject to the provisions of this Section.
- B. The abatement work may be performed by the City's own employees or by independent contractors, or any combination thereof. Prior to commencement of the abatement work by or on behalf of the City, the Responsible Person may abate the nuisance at his or her own expense.
- C. If the Responsible Person fails to consent to the City abating the nuisance, the City may seek a warrant to the extent legally required and proceed with the abatement.

**8.70.140 Emergency abatement.**

- A. Whenever the Enforcement Official determines that a condition exists on any vessel in Oakland's waters which is of such a nature as to be imminently dangerous to the public health, safety, or welfare or materially interferes with public navigation or passage, the Enforcement Official or his or her designee may summarily abate such nuisance pursuant to Section 8.70.130 without further authorization except as provided in this section.
- B. No emergency abatement shall be undertaken unless the City Attorney or their designee has first approved the same.
- C. Reporting of costs of an emergency abatement under this section shall be conducted pursuant to Section 8.70.150.
- D. A Responsible Person subject to emergency abatement may appeal the need for emergency abatement and/or the report of costs, after such abatement has occurred, pursuant to Section 8.70.160.

**8.70.150 Report of costs.**

- A. The City shall keep an itemized account of the expense incurred by the City in abating each nuisance under this Chapter. Following completion of all abatement work, the Enforcement Official shall prepare a written report specifying the work done, the itemized and total cost of the work, a description of the subject vessel, and the name and address of the owner.
- B. Following completion of all abatement work, the City shall deliver to the Responsible Person(s) a notice accompanying the report of costs prepared pursuant to Section 8.70.150(A). Service of the notice and report of costs shall be made as

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provided in Section 1.08.050(B). The notice shall provide that the Responsible Person must pay the City for the cost of abatement within thirty days of service of the report of costs, or appeal the reasonableness of the costs within fourteen calendar days of the date of service, pursuant to Section 8.70.160.

**8.70.160 Appeals.**

- A. Appeals under this Chapter shall be heard by the Hearing Officer.
- B. A Responsible Person may within fourteen calendar days of service of the notice and order to abate a nuisance or report of costs, or within fourteen calendar days after commencement of work to abate an emergency nuisance pursuant to Section 8.70.140, appeal the notice and order to abate the nuisance, the reasonableness of the report of costs, or the need for an emergency abatement by requesting, in writing, an appeal hearing. The written request for appeal hearing must state briefly the appealing party's grounds for objection. Any appeal not timely filed shall be rejected and the right to appeal deemed waived.
- C. The City shall schedule an appeal hearing to be held as soon as practicable after an appeal is received by the City, before the designated Hearing Officer. The City shall provide notice of the hearing as provided in Section 1.08.050(B). Such notice shall be served not less than seven calendar days prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail.
- D. Any person filing an appeal, instead of or in addition to appearing in person at the hearing, may file a written report of objections with the City at any time prior to the time set for the hearing. Each such objection must contain a description of the grounds of the objection. However, in the event that the appealing party fails to appear at the hearing or file written objections, the hearing shall be deemed waived, and based on whether the appeal is for a notice and order to abate or report of costs, would constitute an admission by said party of the nuisance charge or correctness and reasonableness of the report of costs.
- E. The proceedings at the hearing may be recorded. Either party, at its own expense, may provide a certified shorthand reporter to maintain a record of the proceedings.
- F. The designated Hearing Officer shall hear and rule on the appeal. The appellant and the City each may be represented at the hearing by an attorney. The formal rules of evidence shall not apply. All witnesses shall be sworn, and each party shall have the right to cross-examine adverse witnesses. The hearing may be continued from time to time.
- G. Final Decision.
  - 1. The designated Hearing Officer shall issue a written final decision within fourteen calendar days of the appeal hearing, which shall rule on each of the appealing party's objections. The final decision may modify the report of costs if the Hearing Officer deems it appropriate.

2. For appeals of a notice and order to abate a nuisance, the final decision shall include a finding of whether any attorneys' fees incurred by the prevailing party were reasonably and necessarily incurred, provided, however, in no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City.
3. The final decision shall direct the Responsible Person(s) to abate the nuisance within a specified, reasonable time period and notify the owner that if he or she fails to do so, the City will do so at a Responsible Person's expense.
4. Once the Hearing Officer has adopted his or her decision, the Enforcement Officer shall post a copy thereof conspicuously on the subject vessel and shall serve a copy on the Responsible Person(s) as provided in Section 1.08.050(B). One copy of the decision shall also be served on each of the following, if known to the City or if disclosed from official public record: the holder of any mortgage or other lien or encumbrance; the owner or holder of any lease of record; and the holder of any other known interest in the subject vessel.

H. A party aggrieved by the Hearing Officer's final decision must seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

**8.70.170 Joint and several liability.**

All Responsible Persons are all jointly and severally liable for violations of this Chapter.

**SECTION 4.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 5.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoptions.

IN COUNCIL, OAKLAND, CALIFORNIA, PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –  
ABSENT –  
ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California



## **NOTICE AND DIGEST**

### **ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.70 (NUISANCE VESSELS ON OAKLAND WATERS) SETTING RULES FOR ANCHORING VESSELS IN THE OAKLAND ESTUARY AND PROVIDING PROCEDURES FOR ABATING NUISANCE VESSELS**

This Ordinance will add Oakland Municipal Code Chapter 8.70 (the Nuisance Vessels on Oakland Waters Ordinance) which will set rules for anchoring vessels in the Oakland Estuary. This Ordinance will further provide procedures for the city to abate nuisance vessels.