



AGENDA REPORT

TO: G. Harold Duffey
Interim City Administrator

FROM: Darren Allison
Interim Chief, OPD

SUBJECT: Nuisance Vessel Ordinance

DATE: February 13, 2023

City Administrator Approval

Date: Feb 15, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Adding Chapter 8.70 To The Oakland Municipal Code, Setting Rules for Anchoring Vessels in the Oakland Estuary and Providing Procedures for Abating Nuisance Vessels

EXECUTIVE SUMMARY

Vessels that are unseaworthy and/or are used as homes pose environmental threats to the Oakland Estuary. They are, moreover, inconsistent with the San Francisco Bay Plan and could lead to a potentially costly enforcement action against the City of Oakland by the Bay Conservation and Development Commission (BCDC). The City does not at present have authority to remedy conditions in the Estuary where there are, at any given time, 10-20 boats illegally anchored in the estuary. The proposed Nuisance Vessel Ordinance would provide the needed authority and its implementation will avoid enforcement action by BCDC.

BACKGROUND / LEGISLATIVE HISTORY

The Oakland Estuary, the waters between Oakland and Alameda, is Oakland's piece of San Francisco Bay. As the Legislature found in the McAteer-Petris Act, the Bay is "the most valuable single natural resource of an entire region, a resource that gives special character to the bay area." Vessels that use the Estuary irresponsibly, by using this public resource as a private home or by unseaworthy operation, threaten that special character.

The Bay Conservation and Development Commission (BCDC), a state agency, administers the San Francisco Bay Plan (the Bay Plan) and issues permits for shoreline development and any activity placing fill in the Bay. Permits must be consistent with the Bay Plan.

BCDC takes the position that abandoned vessels and live-aboard vessels—boats being used as residences—are unpermitted fill. The Bay Plan, in turn, allows live-abords only in marinas.

Vessels nevertheless anchor in the estuary for extended periods, for use as residences. Other vessels are anchored or abandoned in the Estuary in an unseaworthy condition. Such vessels

are immediate or potential hazards to navigation and the environment. Studies have found a wide variety of impacts from abandoned or poorly-maintained vessels:

- Vessels abandoned or that break loose or drag anchors in estuarine zones can contribute to habitat loss and loss of sunlight beneath them. Additionally, boats resting on the Bay floor can “smother” flora and fauna.
- Plastics associated with unseaworthy vessels, such as ropes or nets, can cause entrapment and strangulation. If birds ingest the plastic, it can block their digestive tracts and result in starvation. As these plastics break down further, microplastics enter the environment, organisms, and ultimately the food chain.
- Metals used in paint include copper, zinc, and lead. When paint starts to peel off vessels, these flakes pollute sediment and continue to dissolve and break down into even smaller sources of pollution.
- Flame retardants were frequently utilized in electrical, plastic, and textile components on boats. These pollutants, such as polybrominated diphenyl ethers and organophosphates, can leach into the environment from unseaworthy vessels.
- Asbestos was frequently used in insulation, engines, and elsewhere around boats. Though the effects of asbestos on the environment are unclear, studies suggest that certain wildlife can accumulate asbestos that ends up in the water column.
- Contaminants also include human waste, oil, diesel, contaminated water, flammable liquids, antifreeze, toxic cleaning supplies, and batteries, which are known to contain heavy metals such as mercury.
- Gray water, untreated water used aboard ships for showers and sinks, contains detergent and soaps and can be detrimental to the environment as it leaks from unseaworthy vessels.
- Sewage tanks aboard unseaworthy vessels contain chlorine, ammonia, zinc, and human waste—all of which can wreak havoc on the environment as the vessel breaks down.
- Both gray water and sewage water are linked to eutrophication (buildup of excessive nutrients) and marine kills, as the release of either substance results in a deposit of nutrients into the environment. Eutrophication can kill plant life, releasing stored carbon into the environment and contributing to climate change.

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. Recent OPD policy has formalized this authority and set up procedures for providing notice to owners/occupants and removing such vessels. OPD removed 4 unoccupied vessels from the estuary in 2022.

As noted above, under the Bay Plan’s implementation of the McAteer-Petris Act, a live-aboard vessel is unpermitted fill and not allowed in the estuary. BCDC takes the position that if such a vessel is anchored in City waters and the City does not remove it, then the City is in violation of

the McAteer-Petris Act. This Act gives BCDC authority to issue a cease-and-desist order against violation and if the violation continues, BCDC can levy fines against violators of up to \$6,000 per day. The proposed chapter protects the environment, fulfills the City's duties under the Bay Plan, and gives the City the tools to avoid BCDC's threatened enforcement

Under the current code, the City and OPD lack authority to remove occupied vessels. The proposed Nuisance Vessel Ordinance provides that authority.

ANALYSIS AND POLICY ALTERNATIVES

To remain consistent with BCDC's Bay Plan, the proposed ordinance sets a 12-hour limit for vessels to anchor or moor in the Estuary and bars living aboard a vessel there. The 12-hour limit will allow recreational uses while ensuring that the rule is effective. (A longer anchoring period could allow vessels to shuttle between the City and neighboring jurisdictions, particularly the City of Alameda, evading the anchoring limit while effectively continuing to live permanently in the Estuary.) The proposed ordinance additionally requires vessels in the estuary to be seaworthy and operable, and it bars beaching or grounding a vessel outside of an emergency.

The proposed code provides authority for the City, acting through OPD, to inspect vessels with occupants' or owners' consent or with a court-issued warrant. This will allow the City to determine whether a vessel is out of compliance with the Chapter 8.70 and therefore a nuisance. The City may then provide the owner or occupant of the vessel notice and order to abate the nuisance vessel, requiring the owner or occupant to bring it into compliance, by correcting the vessel's problems and/or by leaving the Estuary. The owner or occupant may appeal the nuisance determination, which will be subject to hearing before a neutral hearing officer. If the hearing officer agrees that the vessel is a nuisance (or if there is no appeal), the City may abate the nuisance itself, taking any necessary actions to correct the violations of the Nuisance Vessel Ordinance, including removing the vessel.

In addition to being a nuisance that may be abated, a violation of the Nuisance Vessel Ordinance would additionally be a misdemeanor and subject to civil penalties and administrative citation and fines.

The City Council must weigh the cost to the small number of individuals who presently live aboard vessels in the Estuary or who operate unseaworthy vessels against the potentially severe fiscal impact on the City if BCDC pursues enforcement, along with the environmental costs of the present use of the Estuary.

Adoption of the proposed Nuisance Vessel Ordinance advances the Citywide priorities of:

1. **Holistic community safety** by reducing the dangers posed by unseaworthy vessels.
2. **Vibrant sustainable infrastructure** by protecting the Estuary and its resources.
3. **Responsive trustworthy government** by implementing the Bay Plan and avoiding BCDC enforcement action.

FISCAL IMPACT

Adoption of the proposed Nuisance Vessel Ordinance would not create any new costs, but it would create new enforcement tools that would require OPD and City Attorney staff time. If successful in reducing or eliminating live-aboard and unseaworthy vessels that are inconsistent with the Bay Plan, the ordinance could avoid potentially costly enforcement action by BCDC.

PUBLIC OUTREACH / INTEREST

The City of Oakland has received numerous complaints about these vessels and the impact they have on the estuary. People involved in rowing on the estuary have registered complaints about the release of raw sewage from these boats that contaminate their boats as they are rowing. Marina residents who legally anchor at docks and marinas note the concern that the derelict boats pose a direct safety concern for their residences, especially if they break free during storms and crash into legally docked boats. The vessels also pose a risk when anchored in the travel lanes. The majority of complaints have been filed through BCDC and staff from the City Administrator's Office, Police Department, and Office of the City Attorney have attended numerous BCDC Enforcement Committee meetings where members of the public have urged BCDC to take action against the City of Oakland.

COORDINATION

The City Administrator's Office, OPD, and the Office of the City Attorney will work in coordination to implement the Nuisance Vessel ordinance. In researching this ordinance, staff consulted regularly with representatives from BCDC and with the neighboring jurisdictions that share the estuary including the City of Alameda, and the East Bay Regional Park District.

SUSTAINABLE OPPORTUNITIES

Economic: Reducing unseaworthy and live-aboard vessels will improve the attractiveness of the Estuary, one of Oakland's great natural resources. A clean and safe Estuary could be a spur to a vibrant waterfront.

Environmental: As noted above, the current occupation of the Estuary by unseaworthy and live-aboard vessels has potentially serious environmental consequences. Removing and remedying those vessels can help put the Estuary on a path to sustainability.

Race & Equity: The Oakland Estuary runs alongside neighborhoods with some of the lowest equity indicators. Efforts at making the shoreline accessible to these communities for outdoor recreation, such as the construction of Union Point Park and the further development of the Bay Trail are enhanced by a well-maintained estuary.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (If Applicable)

Adoption of the Nuisance Vessels Ordinance is exempt from CEQA pursuant to California Code of Regulations, title 14 section 15321, as it is an action by the City to enforce the requirements of the Bay Plan and the McAteer-Petris Act.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Ordinance Adding Chapter 8.70 To The Oakland Municipal Code, Setting Rules for Anchoring Vessels in the Oakland Estuary and Providing Procedures for Abating Nuisance Vessels.

For questions regarding this report, please contact Lt. William Febel, wfebel@oaklandca.gov.

Respectfully submitted



Darren Allison
Acting Chief of Police
Oakland Police Department

Reviewed by:

Lt. William Febel
OPD, Support Operations Division

Officer Kaleo Albino
OPD, Support Operations Division

Officer Felicia Cervantes
OPD, Policy and Publications Unit

Prepared by:
Tracey Jones, Police Services Manager
OPD, Research and Planning