

Chapter 6.20

MARINA RULES AND REGULATIONS**

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Section 6.20.010 Definitions.

Whenever any of the words hereinafter defined are used in this chapter, they shall be construed to mean the following:

A. "Berkeley Marina," hereinafter referred to as "marina", means the area owned or controlled by the City including the municipal fishing pier, the breakwater, the sea walls and the extensions thereof, located on the Berkeley waterfront, bound by the following:

On the south by a westerly extension of Channing Way

On the north by the north edge of Cesar Chavez Park, and a westerly extension thereof

On the west by a north-south line through the end of the Municipal Fishing Pier

On the east by the east edge of Cesar Chavez Park, and by the west edge of the Meadow area of Eastshore State Park and a southerly extension thereof.

B. "Waterfront Manager," means the person in day-to-day charge of the actual operations of the Berkeley waterfront as designated by the City Manager. "Waterfront Manager" also means his/her designated representative.

C. "Harbormaster," means the person in day-to-day charge of the actual operations of the Berkeley Marina as designated by the City Manager and also means his/her designated representative.

D. "Permittee" means the person who has been authorized by the Harbormaster to berth his/her vessel in the marina.

E. "Vessel" means every description of watercraft used, or capable of being used, as a means of transportation on the water, or a craft designed to float on the water. "Vessel" specifically includes "residential houseboat", and any other watercraft berthed in the marina.

1. "Residential houseboat" means any vessel that is designed to not be capable of getting under way. This type of vessel includes any non-self-propelled vessel such as barges and/or any noncruising type houseboats.

2. "Cruising vessel" means any sailboat, motor driven boat, or cruising houseboat that is specifically designed for operation in open waters and is capable of getting under way.

F. "Residence" means any vessel, located within the marina boundaries upon which a person stays aboard four or more days and nights in any consecutive seven-day period or more than 12 nights during any 30-day period, whether or not consecutive.

G. "Extreme length" means the length from the forward most part of the vessel and equipment to the aft-most part of the vessel and equipment measured horizontally and parallel to the vessel's longitudinal axis. This measurement includes but is not limited to bow and stern rails, bowsprits, anchor chocks, anchors, furling drums, outboard motors, stern drives, propellers, rudders, outboard brackets, antennas, barbecues, dinghies, booms and mizzen booms as stowed for berthing. Outboard motors and stern drives are measured in the tipped-up position, if this is how they are normally stowed for berthing. The measurement does not include dock lines, fenders, or electrical cables.

H. "Personal Watercraft" means any vessel less than 16 feet long, propelled by a water-jet pump or other machinery as its primary source of motor propulsion, designed to be operated by a person sitting, standing, or kneeling on, rather than sitting or standing inside the vessel.

I. "Professional Marine Surveyor" means a person who derives a substantial portion of his or her income from surveying the type of vessel in question, and who advertises these services in local media.

J. "Seaworthy" means capable of independently navigating the central portion of San Francisco Bay in typical summer afternoon weather conditions, in safety and with no significant probability of requiring assistance.

K. "Private Dock" means a dock or berthing space subject to a lease or license agreement that gives an organization or entity other than the City of Berkeley long-term and exclusive control of the dock's use.

L. "Public Dock" means all regular monthly berths in the Marina, and other docks or berthing areas not under exclusive long-term control of an organization or entity other than the City of Berkeley. (Ord. 6925-NS § 1 (part), 2006; Ord. 6645-NS § 1, 2001)

Section 6.20.020 Harbormaster authority.

A. The Harbormaster, acting under the orders and jurisdiction of the Waterfront Manager, the Director of Parks and Waterfront, and as designated by and subject to the authority of the City Manager and City Council, shall have full authority to interpret and enforce this chapter, and to recommend consistent regulations affecting marina operations. All orders and instructions given by him/her in the performance of his/her duties shall be complied with pursuant to this chapter.

B. Every vessel entering the marina shall immediately become subject to this chapter and to the order and direction of the Harbormaster. The Harbormaster has the authority to enter upon any vessel in the marina

when necessary in the performance of his/her duties.

C. Vessels may berth in the marina only with the permission of the Harbormaster. The Harbormaster shall have the authority to designate the berth in which any vessel shall be kept, and reserves the right to require a vessel to be moved from one berth to another berth within the marina, after giving 72 hour notice of such required move.

D. If a vessel is not moved after notice in compliance with subsection C of this section, it may be moved by the Harbormaster and a reasonable towing fee charged. Vessels may be moved without prior notification, if necessary for operational efficiency, benefit to permittees in the marina, or when berthing fees are delinquent.

E. The Harbormaster has the right to refuse the application for use of the marina by and/or cancel a berthing permit for derelict vessels, vessels in need of major overhaul and vessels not in operational order as intended by design. The Harbormaster may require that vessels be inspected to determine whether they are operable and seaworthy.

1. If a vessel owner or operator disputes the Harbormaster's denial of a berthing permit on the basis of a determination that a vessel is not seaworthy, the owner or operator may provide a current vessel survey certified by a professional marine surveyor or perform a sea trial consisting of maneuvering the vessel to a distance of 3,000 feet west and back to the vessel's berth. Such survey must be provided or sea trial conducted within ten days of notification of unseaworthiness by the Harbormaster.

F. Remedial Actions

1. In addition to any other rights and remedies available to the City by law, when any vessel occupies any space in the Marina without authorization for use of that space (i.e. berth), for any length of time, the Harbormaster, or other City representative where designated by the City Manager, is authorized to move (including without limitation by towing); impound (including without limitation by securing, chaining, locking, storing, restricting access to or use of, or removing) such vessel; and/or take any other reasonable remedial actions with respect to the vessel to protect the City's interests. Circumstances in which such remedial actions may be taken include without limitation where no application has been submitted, an application has not yet been approved or has been denied, a permit has expired (for example, a temporary or visitor permit) or been cancelled, and/or where berthing fees are delinquent.

2. The Council may adopt fees for such remedial actions by resolution. Any such fees shall be immediately due and payable upon notice thereof. Unpaid fees of any kind relating to the berthing of a vessel at the Marina (including without limitation berthing fees and fees for remedial actions) shall constitute a lien upon the vessel in favor of the City enforceable by a lien sale of the vessel, as well as a debt personally enforceable against the responsible party, and shall trigger the additional administrative fee provided in subsection C of Section 6.20.040. Where any such fees are unpaid, the City may enforce its right through any and all appropriate means, including without limitation court action, judicial or non-judicial sale of the vessel at auction, and/or proceedings under the Boaters Lien Law of the California Harbors & Navigation Code (H.&N.C. § 500, et seq., as amended from time to time) and/or, where applicable, federal maritime law. Until any unpaid fees are paid in full, or the vessel incurring such fees is released by the Harbormaster, no person shall have such vessel removed from the Marina, and the Harbormaster is authorized to take any reasonable action necessary to prevent the vessel's removal. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.030 Berth applications.

Application for berths in the marina shall be made upon forms furnished by the Harbormaster and shall be granted in the order received to qualified applicants. Current vessel registration, or evidence showing the applicant has legal authority to occupy, use and incur charges to the vessel, must be presented to the Harbormaster before a permit to berth vessel will be issued. All part-owners' names must appear on the application, which may be amended, in writing, at any time. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.040 Berth rates and service charges.

A. The rates for services, supplies and berthing fees at the marina shall be established by resolution of the Council of the City. All vessels berthing at the marina will be charged a berthing fee, unless the Council has

specifically authorized otherwise. Vessels will be charged according to the length of the vessel or the length of the berth, whichever is greater.

B. The Harbormaster may establish a special rate for services, supplies and berthing which are not included in the fee resolution referred to in subsection A of this section. Such fees shall be based upon the reasonable costs of the service provided and be approved in writing by the City Manager. A request by the Harbormaster for application of any such rate shall include a detailed explanation of why such rate should apply, a copy of which shall be provided to the Waterfront Commission.

C. All charges for berthing shall be due and payable monthly in advance on or before the first day of each month, and shall be delinquent on the fifteenth day of the month for which the payments are due. All charges for service and supplies shall be due upon billing and shall be delinquent 15 days thereafter. If any payment is delinquent as provided herein, an administrative fee of 10% shall be added and paid in addition thereto.

D. The City may change monthly berthing fees and other fees and charges after giving at least 30 days written notice to a permittee.

E. Permittees who wish to remove their vessels from the marina for more than 30 days, but less than 12 months, and do not want to permanently release their berths, may pay one-half the monthly berth rate. The Harbormaster may use the berth(s) for temporary and visitor berthing. Fifteen days written notice is required to the Harbormaster prior to placing a berth on one-half rate, and 15 days written notice is required prior to returning the vessel to the berth.

F. Use of a berth is restricted to one vessel only, not including a dinghy or small boat up to 14 feet in length, provided that neither the vessel or the dinghy or small boat extends beyond the limits of the berth width and length, as set forth in Section 6.20.160 subsections J and K, unless permission has been granted by the Harbormaster for berthing more than one vessel in the berth, if the size of the berth will permit its use by two or more vessels.

G. Vessels in "S" section berths (inside tie "skiff" berths that do not have power, water or dock boxes) shall normally be limited to boats not to exceed 24 feet in total length, including rudders, railings and tipped-up outboard motors. When the Harbormaster determines that "S" section berths are suitable for larger power or sailboats, these berths may be assigned to such vessels at the rates normally applicable to regular public berths. (Ord. 6925-NS § 1 (part), 2006; Ord. 6645-NS § 1, 2001)

Section 6.20.050 Nonpayment of charges.

A. No person shall remove or cause to be removed from the marina any vessel upon which charges for berthing, dry storage, or any other charges are delinquent, without first paying all such delinquent charges. The Harbormaster is authorized to take actions necessary to prevent the removal of a vessel in violation of this subsection, including moving, securing, or otherwise detaining the vessel.

B. It is unlawful for any person to violate the provisions of subsection A of this section, or to willfully give false information to the City in order to secure the removal of a vessel.

C. When any charges upon a vessel are delinquent for 20 days or more the City may post a notice of delinquency and secure the vessel to prevent it from being moved. The City may add a service charge to the berther's account for securing the vessel.

D. When subsequent to securing a vessel for delinquent charges as provided in subsection D of this section, any charges remain delinquent and unpaid, the City may enforce the lien pursuant to the procedures set forth in the Boaters Lien Law of the California Harbors and Navigation Code (H.&N.C. § 500, et seq.), as amended from time to time. (Ord. 6925-NS § 1 (part), 2006; Ord. 6645-NS § 1, 2001)

Section 6.20.060 Cancellation of berths.

A. A permittee who wishes to cancel his/her permit to berth vessel shall give the Harbormaster 30 days written notice thereof in accordance with Section 6.20.090 of this chapter.

B. The Harbormaster may at the request of the permittee, reduce the required 30-day notice of cancellation if there is no financial loss to the City as a result of such reduction.

C. The Harbormaster may cancel the permit to berth vessel after 30 days written notice to the permittee for any violation of this chapter or for continuous late payment of charges. The reason for cancellation shall be

stated in said notice. The Harbormaster may cancel a permit to berth vessel with 24 hours written notice to the permittee if the vessel has been removed from the berth and the charges are delinquent and unpaid. However, the Harbormaster may order the immediate cancellation of a permit to berth vessel if the vessel poses a danger to persons or property during a 30-day cancellation notice period.

D. Permittees who have been forced by the City to vacate their berths for the purpose of marina repairs or construction shall have priority for re-entry into a berth when such repair or construction is completed.

E. Nothing in this chapter shall be deemed to create or to have created a relationship between the City and a permittee other than that of a licensor and licensee. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.070 Assignment or sublicensing of berths.

A. Permittees shall have no right or power whatsoever to assign or sublicense the berth or any part thereof, to any other person, or for use by any other person or vessel. Any permit to berth vessel that is assigned, sublicensed or otherwise transferred will be subject to immediate cancellation. However, when a permittee sells his/her vessel and cancels the permit, and the purchaser wishes to retain the berth for the same vessel, the berth may then be assigned to the new owner, if a new application for permit to berth vessel is executed within five days of cancellation.

B. Once during every calendar year, a permittee may allow another boat owner to use his/her berth for a period not to exceed 30 days. The permittee must give written notice, obtain the Harbormaster's permission, and complete a temporary use of berth form, prior to the effective date of change. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.080 Care in berthing vessels.

A. At all times while a vessel is berthed at the marina, the permittee shall cause it to be safely and properly secured, in a manner acceptable to the Harbormaster. If the Harbormaster deems it necessary to re-secure or move a vessel for any reason, the permittee or the owner may be required to pay a reasonable service charge for doing so, plus the cost of all materials used therefor. However, the City shall have no responsibility or liability for fire, theft, sinking, or any other damage to the vessel, its equipment or any property in or on the vessel, by reason of the Harbormaster's decision whether or not to re-secure or move the vessel, , except only such damage caused by the Harbormaster's willful injury or sole gross negligence.

B. No person shall berth within the marina any vessel of any kind whatsoever that is in such a condition that it is liable to sink or damage docks, floats or other vessels, or that may become a hazard to navigation.

C. In the event a vessel is wrecked or sunk within the marina, it shall be the owner's responsibility to mark its position immediately, and to provide for the raising and disposition of such vessel within 24 hours, and to assume all liability for damage caused to City property or other vessels in the marina. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.090 Registration and numbering--Furnishing information to the Harbormaster.

A. Every vessel entering or berthed in the marina shall be currently registered and numbered or documented, as provided by state or federal regulations or by international treaty.

B. The owners or operators of vessels entering the marina shall furnish all documents relating to the vessel and the ownership thereof, upon request by the Harbormaster. The Harbormaster shall have the authority to obtain vessel registration information from state or federal authorities at any time. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.100 Accident reports.

If injury to any person, or damage to private or public property, results from a boating accident within the marina boundaries, the operators of all vessels involved must complete an accident report, on a form provided by the Harbormaster, within 24 hours of the accident. A copy of any boating accident report required to be filed with the Department of Boating and Waterways, shall be provided to the Harbormaster. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.110 Access to vessels.

The berthing areas of the marina are closed to the general public. Only permittees, their guests, hired personnel and those receiving permission from the Harbormaster may enter upon the docks; except, however, that "K" Dock is open and accessible to the general public during regular marina business hours. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.120 Gear lockers/dock boxes.

One gear locker/dock box may be assigned to a permittee. Individual gear lockers and dock boxes shall be kept in a safe condition and may contain no flammable or combustible liquids, (i.e. gasoline and other fuels, oil and oil based paints, paint thinner and other thinners, epoxy resin and other resins, etc.) or other hazardous materials, (i.e. acids, oxidizers, poisons, etc.), and are subject to inspection by the Harbormaster at all reasonable times. Gear lockers/dock boxes must be emptied upon cancellation of permit to berth vessel. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.130 Disposing of refuse.

A. No person shall discharge or deposit or cause to be discharged or deposited, from any vessel or from the shore, dock, float or gangway, or otherwise, any refuse matter of any kind whatsoever into or upon the waters or land area of the marina.

B. No person shall discharge or cause to be discharged oil (including emulsified oils and excessive, unburned fuels from engine exhaust), spirits, flammable liquids or contaminated bilge water onto the waters or lands of the marina, or into any drains in the marina.

C. All garbage must be deposited in receptacles furnished by the City for that purpose.

D. No person shall discharge or deposit any matter into the sanitary sewer system except as provided in Berkeley Municipal Code Chapter 17.16, Sanitary Sewers. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.140 Hazardous conditions prohibited.

Floats, gangways, tops of lockers and docks shall be kept clear at all times of skiffs, dinghies, boat gear, debris, hazardous or flammable materials, and other equipment. Only boarding steps approved by the Harbormaster are permitted on the docks. No boarding step shall be more than 18 inches wide and three feet long, unless written permission is obtained from the Harbormaster upon his/her determination that steps exceeding these measurements are necessary. Boarding steps shall be easily movable, and shall not be used as a storage locker and may not obstruct passage on any dock or float. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.150 Maintenance of vessel.

A. Repairs to and maintenance of a vessel may be made or accomplished while such vessel is at its assigned berth, provided all such work is done within the confines of the vessel itself and is not carried on in any manner whatsoever upon floats, gangways or docks in accordance with Section 6.20.140 of this chapter. Repairs on vessels may not interfere with any other vessels. No debris or fluids from repairs or maintenance, including paint chips and sanding dust, may be allowed to accumulate on any dock or enter the marina waters.

B. No person shall use welding equipment or a burning torch on or near any dock or vessel in the marina, other than at areas designated by the Harbormaster.

C. No person shall use spray paint or sand blasting equipment in the marina, other than at areas designated by the Harbormaster.

D. An individual or entity receiving compensation for repairing or maintaining a vessel berthed at the marina must possess proper work authorization from the permittee and a City business license. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.160 Marina restrictions.

- A. Vessels and vessel operators must comply with California Harbors and Navigation Code Division 3, Chapter 5, "Operation and Equipment of Vessels" (Sections 650 et seq.), as amended from time to time.
- B. All vessels and vessel operators must comply with applicable sections of Berkeley's Uniform Fire Code, Berkeley Municipal Code Chapter 19.48 as amended from time to time.
- C. The permittee is legally responsible for the conduct of his/her crew, hired personnel and guests. All persons shall comply with applicable sections of Berkeley's Community Noise Code, Berkeley Municipal Code Chapter 13.40 as amended from time to time.
- D. Gates to berthing area are to be locked at all times. Blocking open or climbing over gates is prohibited.
- E. Except when on board a vessel, animals must be on a leash not to exceed six feet in length. Violators may be cited and fined, and repeated or continuous violations may result in cancellation of the permit to berth vessel. All animals in the marina are subject to the provisions of Berkeley Municipal Code Title 10, Animals.
- F. No person shall willfully injure, break, remove or tamper with any part of any vessel in the marina, nor shall any person climb into or upon any vessel without consent of the owner, unless in performance of official duties or to protect life and/or property.
- G. No person shall land on or take off from any land or waters of the marina in any helicopter, seaplane or other aircraft without prior approval of the Harbormaster except in an emergency.
- H. All vessels must keep a minimum of 200 feet from the Berkeley Municipal Fishing Pier, except when using the designated boat passage at the end of the fishing pier.
- I. No structure may be built for the purpose of berthing, anchoring or mooring vessels within the marina, without advance permission from the Harbormaster, provided however, that floating lift docks are permissible if the berther signs an agreement that he or she will remove failed or damaged lift dock equipment at his or her sole expense.
- J. Length of the vessel means the extreme length of the vessel as defined in 6.20.010G above, as berthed. At the discretion of the Harbormaster, the length of a vessel may exceed the nominal length of its berth by up to 10% of the nominal berth length. In cases where there is no opposite berth or the berth is an inside corner, length may exceed nominal berth length by up to 20% at the discretion of the Harbormaster.
- K. Vessels may not extend beyond the limits of the berth width.
- L. No vessel may anchor in the marina without prior authorization from the Harbormaster.
- M. No fires of any type are allowed in the marina, except in designated fire pits and barbecues and in properly and safely operated barbecues on the docks and vessels.
- N. No part of any vessel may at any time extend over any portion of any dock in the Marina. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.170 Vessel traffic within the marina.

- A. All vessels approaching or within the marina area must be operated in a safe and prudent manner and in no event shall the entrance to the marina be blocked by general boating activities or fishing.
- B. The speed of any vessel within the marina breakwaters shall not exceed five miles per hour, and no person shall operate a vessel upon the waters of the marina in such a manner that the speed thereof creates an unnecessary or excessive wake.
- C. No vessel shall be operated in such a manner as to interfere with the operation of another vessel. (Ord. 6925-NS § 1 (part), 2006: Ord. 6674-NS § 1, 2002: Ord. 6645-NS § 1, 2001)

Section 6.20.180 Prohibited activities.

- A. It is unlawful for any person to swim, bathe, wade or windsurf in any portion of the marina except at Shorebird Park, and in South Sailing Basin.
- B. Prohibited use of personal watercraft:
 - 1. No jetski or personal watercraft of any kind may be operated within 1,500 feet of the Berkeley shoreline or the Berkeley Fishing Pier except in the 200-foot wide access corridor for personal watercraft designated by the Harbormaster from a boat launch at the marina to a point further than 1,500 feet from the shoreline.

2. The access corridor shall be marked by buoys or designated by other means chosen by the Harbormaster, and the speed limit in the corridor shall be 15 miles per hour.

3. Signs summarizing relevant provisions of this section shall be erected at the location from which personal watercraft are permitted to launch, as provided in paragraph (B)(1).

4. The restrictions imposed by this section shall not apply to the use of personal watercraft by Fire Department, Police Department, or Coast Guard personnel in the performance of their official duties.

C. Nothing in this section shall prevent a permittee or his/her authorized representative from working on his/her vessel under water at the vessel's berth. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.190 Cruising vessels used as a residence.

To provide additional security and assistance in emergency situations, the Harbormaster may designate a limited number of berths as residences. These berths will be dispersed throughout depending upon the total number of berths in a section, and will be subject to the following conditions:

Staying aboard a vessel four or more days and nights in any seven consecutive day/night period, or more than 12 nights, whether or not consecutive, during any 30-day period, shall be considered residing on a vessel and is prohibited except as provided below. The Harbormaster will consider written requests for temporary use of a vessel for residency; for purposes of vacation, temporary or visitor's berthing, or extenuating circumstances or other reasonable use. Unauthorized use of a vessel as a place of residence may result in cancellation of the permit to berth vessel.

A. The Harbormaster will grant residential privileges only for a cruising vessel minimum 24 feet in length, kept in good repair and in seaworthy condition. The vessels must not be permanently attached to the dock and must leave the marina waters at least once each 180-day period.

B. Any emergency situation, unusual event, or violation of this chapter or any regulations promulgated hereunder noted by a permittee with residence privileges shall be reported to the Harbormaster.

C. Only a permittee with residential privileges and up to three other persons may use the vessel as a residence on a continuing basis. Persons who are not permittees may reside on the vessel only when a permittee is in residence. The Harbormaster is to be notified in writing of the names of all persons residing on the vessel. A cruising vessel may not be rented for residential purposes.

D. Residence privileges are not transferable with the sale of the vessel. Permittees who have residence privileges may purchase a new vessel and still retain these privileges, provided that a suitable berth for the new vessel is available, and the vessel otherwise meets the requirements in subsection A of this section.

E. The owner of a pet that creates a public nuisance will be required to remove the pet from the marina permanently.

F. Permission to use a vessel as a residence will be revoked if complaints are received by the Harbormaster of loud, boisterous, or inappropriate conduct that disturbs others, by those on board, or for violation of this chapter or the regulations promulgated hereunder.

G. The vessel must be equipped with a sink and marine head and must be equipped with a holding tank designed to retain all sewage from the marine head until these wastes can be discharged into a sanitary sewer system or otherwise discharged in accordance with law. The permittee shall allow the Harbormaster to inspect such holding tanks from time-to-time upon demand. No waste matter from marine heads, holding tanks or any other receptacles shall be discharged into the waters of the marina, and no waste or other matter shall be discharged or thrown into said water.

H. Permittees receiving residential privileges shall keep the area immediately surrounding their vessels in a sanitary and orderly condition in order to assure the preservation of the public health and safety. Failure of any person residing on a vessel in the marina to abide by these requirements shall be cause for revocation of the residence privilege.

I. Payments of berthing fees and all other residence related charges must be kept current. If any charges become delinquent for 35 days, the residence privilege will be revoked unless there are extenuating circumstances.

J. On June 30th and December 31st of each year, a permittee granted residence privileges must submit to the Harbormaster a log of his/her vessel's trips out of the marina and a log of the dates the holding tank

pump-out station was used by the permittee.

K. Permittee must reside at least 50% of the year in his/her vessel or his/her residence privilege shall be revoked.

L. Persons residing on board a vessel must obtain a permit from the Harbormaster to park his/her vehicle in a marina parking lot on a regular basis. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.200 Residential houseboats.

To provide additional security and assistance in emergency situations, the Harbormaster may designate a limited number of berths as residential houseboat berths. Nothing in this section shall alter the obligation at all times of Permittees and renters with vessels occupying such berths to be in compliance with applicable conditions set forth in the permit issued to the City by the San Francisco Bay Conservation and Development Commission ("BCDC"), as described in Section 6.20.280. The vessels occupying these berths may have permanent sewer hookups and are subject to the following conditions:

A. Residential houseboat owners and renters shall have no right or power whatsoever to assign, sublet or sublicense any part of the houseboat or berth to any other party except a residential houseboat may be rented for no more than two months in any 12-month period. The Harbormaster shall be given prior written notice, including names, of such rental. The Harbormaster may permit a residential houseboat to be rented for an additional four months if he/she determines there is good cause. If permission is denied for any rental, a permittee may appeal to the City Manager. All appeals must be filed with the Harbormaster within 30 days of the date of the notice of denial. Only an owner of a houseboat may be granted a permit to berth a residential houseboat.

B. Renters must abide by the rules and regulations set forth in this chapter, and any violations will result in appropriate action taken against the permittee in accordance with this chapter.

C. A residential houseboat cannot be replaced by another residential houseboat once a berth is vacated, unless the Permittee has obtained prior written approval from BCDC for the replacement vessel. Prior to the Permittee submitting any plans to BCDC for approval of a replacement vessel, the Permittee must obtain written approval from the Harbormaster for any such proposed replacement vessel. No more than thirteen residential houseboats may be berthed in the marina at any time.

D. Permittees receiving residential houseboat privileges shall keep the areas immediately surrounding such residential houseboats in a sanitary and orderly condition in order to assure the preservation of the public health and safety. Failure of any person living on a residential houseboat in the marina to abide by such requirements shall be cause for revocation of the privilege of using such berth for residential purposes.

E. No external modifications which result in additions in overall height, width or length of the houseboat may be made, unless the Permittee has obtained prior written approval from BCDC for the external modifications. Prior to the Permittee submitting any plans to the BCDC for approval for external modifications to a houseboat, the Permittee must obtain written approval from the Harbormaster for any such proposed external modifications.

F. No permittee may be granted more than one permit to berth a residential houseboat.

G. All permittees and persons residing on board a residential houseboat must obtain a permit from the Harbormaster to park his/her vehicle in a marina parking lot on a regular basis.

H. Only a permittee with residential privileges or a renter authorized by the Harbormaster pursuant to subsection A of this section and up to three other persons may use the residential houseboat as a residence on a continuing basis. Persons who are not permittees may reside on the vessel only when a permittee is in residence. In all cases, the Harbormaster is to be notified in writing of the names of all persons residing on the residential houseboat. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.210 Sanitary facilities.

Sanitary facilities (marina toilet, head, sinks, etc.) shall not be used while a vessel is in the marina unless the vessel is equipped with an approved or acceptable operating device for containment of sewage and gray water (i.e., holding tank). It is unlawful for any person to discharge or cause to be discharged any solid or liquid wastes (including bilge water, sewage or gray water) or other pollutants into the waters of the marina.

Vessels in the marina, and the areas immediately surrounding the vessel, shall be kept in a clean, neat and orderly condition at all times. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.220 Children in marina.

It is unlawful for any child under the age of 16 years to go, remain, or be upon any of the docks, gangways, floats or vessels in the Berkeley Marina, unless such child is accompanied by a parent or other adult person, or unless such child has the written permission of the owner of any vessel located at the marina to go upon such vessel. Permanent written permission may be left on file with the Harbormaster. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.230 Fishing in marina prohibited--Unloading, cleaning and disposal of fish.

It is unlawful for any person to fish from any vessel, structure, float, dock or shoreline in the marina, the marina breakwaters or in the marina entrance. Fishing is allowed from the Berkeley Municipal Fishing Pier and any other area so designated for fishing.

No fish caught with a commercial license may be unloaded within the marina other than at designated fish unloading areas. No person shall dispose of fish, fish parts or bait into any trash receptacle in the marina, or onto the marina waters or lands, from any shore, dock, float, gangway or vessel. Fish cleaning is not permitted on vessels, floats or any other area of the marina, except at designated fish cleaning areas. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.240 Damage and/or loss of property.

The owner of a vessel must assume all liability for loss to his/her vessel and any other property, while it is within the limits of the boundary of the marina. The City assumes no risk on account of fire, theft, act of God, or damages of any nature to vessels. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.250 Vehicle or trailer parking in marina areas.

A. Permission from the Harbormaster must be obtained prior to parking any vehicle, trailer or boat in the parking areas within the marina area for a period exceeding 72 consecutive hours. If permission is not requested or granted, the vehicle, trailer or boat may be cited and removed from the marina area at the owner's expense.

B. Any vehicle, trailer, or boat/trailer combination parked in restricted areas, in limited parking areas beyond the allowed time, or in driveways, walks, or breezeways, may be cited and removed from the marina at the owner's expense.

C. The use of any vehicle for the sole purpose of storage while parked in the marina area is prohibited.

D. No person shall perform repairs to a motor vehicle anywhere in the marina except in an emergency.

E. Use of all bicycles, skateboards, roller skates, roller blades, and motor-driven or sail-propelled vehicles, except wheelchairs for the disabled and City maintenance and police vehicles, is prohibited on any path, sidewalk, pier, dock, float or gangway in the marina, other than on paths so designated for their specific use. The use of any vehicle for eating or sleeping for over four hours per day while parked in the marina is prohibited. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.255 Vehicle, trailer, heavy duty commercial and over-sized vehicle parking prohibited on public streets in the marina area.

It is unlawful for the operator of any vehicle to stop, stand, park, or leave standing such vehicle, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or other authorized officer, or traffic sign or signal, on Seawall Drive, Spinnaker Way, Marina Boulevard and University Avenue between Frontage Road and Seawall Drive.

A. Heavy duty commercial or over-sized vehicles are prohibited from parking in the above areas at all times. For purposes of this section a heavy duty commercial or over-sized vehicle is a single vehicle or combination of vehicles, with a commercial license plate, having more than two axels; a single vehicle or combination of vehicles 25 feet or more in length regardless of type of license plate; or a trailer or semi-trailer

with commercial license plate or trailer identification plate. Heavy duty commercial vehicle or trailer shall include, but shall not be limited to, truck tractor, semi-trailer, trailer, trailer bus, trailer coach, camp trailer, mobile home, gantry truck, dump truck, moving vans and pole or pipe dollies. Excluded are commercial pickup trucks, tour buses, school buses, public transit buses, and paratransit buses.

B. All other vehicles and trailers not defined as heavy duty commercial or over-sized vehicles in subsection A above are prohibited from parking in the above areas between the hours of 2:00 a.m. and 6:00 a.m. daily. (Ord. 6925-NS § 1 (part), 2006; Ord. 6803-NS § 1, 2004; Ord. 6711-NS § 1, 2002)

Section 6.20.260 Overnight camping in marina land areas prohibited.

A. Use of marina land areas for overnight camping or sleeping is prohibited.

B. Use of campfires in the marina land areas other than in designated areas, without prior written permission of the Harbormaster, is prohibited. (Ord. 6925-NS § 1 (part), 2006; Ord. 6645-NS § 1, 2001)

Section 6.20.270 Solicitation and advertising.*

A. Solicitation of patronage for private or commercial business in the marina without a permit is prohibited pursuant to Berkeley Municipal Code Chapter 9.40 as amended from time to time.

B. The Harbormaster shall establish and maintain bulletin boards for posting commercial and noncommercial literature. Literature may not be posted in any other place within the marina except as designated by the Harbormaster.

C. No distribution of commercial or noncommercial literature (brochures, pamphlets or other material) is permitted in the marina area at any point more than six feet from any trash, litter or refuse receptacle. Such receptacle may be furnished by the distributor of the literature.

D. No person shall row, propel, navigate or maintain any vessel or float in the marina for the purpose of advertising.

E. No sign advertising commercial use of a vessel shall be displayed on any vessel, float, dock or other structure; except, however, that properly licensed commercial vessels operating from the marina on Dock K may have the vessel's name, telephone number and message displayed on the vessel. (Ord. 6925-NS § 1 (part), 2006; Ord. 6645-NS § 1, 2001)

*For provisions on business licensing, see Chapter 9.04 of this code.

Section 6.20.280 San Francisco Bay Conservation and Development Commission permit.

All persons using the marina shall comply with the provisions of BCDC Permit No. 5-79 granted to the City by the San Francisco Bay Conservation and Development Commission (BCDC), as amended from time to time, and with any additional or successive permits as may be issued by said commission. Copies of said permit(s) and amendments thereto shall be available for inspection at the office of the Harbormaster during regular business hours. Any application for an amended, additional or successive permit may be made only by the City. In the event that the City makes such an application on behalf of an individual Permittee (e.g., for a proposed modification to a residential houseboat), the individual will be responsible for an equitable portion of the application fee actually charged by BCDC and any other costs associated with the application. Amendments to this section shall be retroactive to January 1, 2006. (Ord. 6925-NS § 1 (part), 2006; Ord. 6645-NS § 1, 2001)

Section 6.20.290 Notice.

Unless otherwise provided in this chapter, notice or communication given pursuant to this chapter shall be in writing, and may be delivered personally or be sent by first class mail, postage prepaid and deposited in the United States mail.

All notices to the Harbormaster shall be addressed as follows:

Berkeley Harbormaster
201 University Avenue
Berkeley, CA 94710

All notices to permittee shall be addressed to the residence or business address shown on the application form for a permit to berth vessel as provided for in Section 6.20.030 of this chapter.

Notices and communications sent as provided above shall be deemed given when received by the party to whom addressed; provided, however, if sent by registered or certified mail, postage prepaid, and deposited in the United States mail, such notices and communications shall be deemed given three business days after being deposited in the mail. A party may change its address to which notices and communications are to be given by giving written notice thereof to the other party. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.300 Administrative regulations.

The City Manager is authorized to promulgate any rules and regulations necessary or appropriate to carry out the purpose and requirements of this chapter. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.310 Penalty.

Violations of this chapter are misdemeanors but may be charged as infractions in the discretion of the enforcing officer, as provided in the Berkeley Municipal Code Chapter 1.20. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.320 Appeals.

A. The Harbormaster and Waterfront Manager have full authority to interpret and enforce all the rules and regulations affecting the Marina. Their decisions and those of their designated representatives shall be final, except that such decisions shall be subject to appeal only when they result in (1) cancellation of a berthing permit, or (2) any other action for which an appeal is required in order to accord due process. All other actions shall be final and unappealable.

B. An individual directly affected by and who wishes to dispute a decision subject to appeal under paragraph (A) of this section may file a written appeal with the City Manager within ten calendar days of the date notice of said decision is mailed by first class mail or equivalent means. To be considered, an appeal must be timely and comply fully with the requirements of paragraph (C) below. The City Manager shall have the discretion, where in the City's best interests, to stay and/or modify further enforcement of the disputed decision, including without limitation the collection of fees, pending resolution of an appeal; however, any such interim stay or modification shall not impact other remedies, if any.

C. Appeals must include

1. A heading in the words, "Appeal Pursuant to B.M.C. Chapter 6.20, Marina Appeals Procedure";
2. The names and mailing addresses of all parties to the appeal (appellant(s));
3. A signed and dated verification, by declaration under penalty of perjury;
4. A brief statement, in ordinary and concise language, of the specific order or decision being disputed, together with any material facts claimed to support the appellant's contentions, including the affected vessel's registration or documentation number (state and/or federal as appropriate);
5. A brief statement setting forth each appellant's legal interest in the vessel(s) involved in the dispute, and including without limitation identification of all owners, part-owners, lessees, occupants, and anyone else known to have a financial interest in the vessel;
6. A copy of any written decisions of, correspondence with, Marina or other City staff, and any other relevant documentation, including permit(s), regarding the subject matter of the appeal;
7. A brief statement, in ordinary and concise language, of the relief sought, and the reasons why it is claimed the disputed order or decision should be reversed, modified, or set aside;
8. Any appeal fee authorized by the City Council;
9. If the notice provided pursuant to Section 6.20.290 includes as a basis for the decision a determination that the vessel is not seaworthy, the appeal must also include a current vessel survey certified by a professional marine surveyor.

D. Where a timely and complete appeal has been filed, the City Manager shall, within ten calendar days, set the appeal for hearing before a Hearing Officer to be designated by the City Manager. Notice of the time,

place, and any other information the City deems necessary regarding such hearing shall be mailed to the appellant(s) not less than five business days prior to the time set for hearing. The formal rules of evidence shall not apply to such hearings, but the Hearing Officer shall ensure that evidence presented is reliable and protects the rights of the parties in that regard. The Hearing Officer shall serve a written decision upon the appellant within ten calendar days of the hearing, with a copy to the Waterfront Manager and the City Manager. The Hearing Officer's decision shall be final when mailed. Where the appeal includes a current vessel survey certified by a Professional Marine Surveyor, the Hearing Officer shall accept the conclusions of that survey.

E. Any person entitled to submit an appeal but who fails or chooses not to file an appeal as provided herein, or who files an untimely or incomplete appeal, or who fails to appear for any scheduled hearing regarding the appeal, waives any right to appeal a disputed decision of Marina staff. Only those matters or issues specifically raised by an appellant pursuant to these procedures shall be considered in the processing of his/her appeal.

F. The provisions of Section 1094.6 of the California Code of Civil Procedure, as amended from time to time, shall apply to the judicial review, if any, of a final decision made under this chapter; except that, where a shorter statute of limitations applies pursuant to state or federal law, it shall control. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)

Section 6.20.330 Charter vessels.

A. Charter vessels may use or operate from public docks in the Berkeley Marina only as set forth in this section and pursuant to a charter permit.

B. Upon application therefor, the Harbormaster or Waterfront Manager may issue a charter permit. Charter permits shall require compliance with all applicable provisions of federal, state and City laws, ordinances and regulations, current commercial general liability insurance naming the City as additional insured in an amount not less than one million dollars (which amount shall be subject to adjustment by the Risk Manager) and payment of all fees and taxes required by City ordinances.

C. Use of slips for charter vessels shall be in accordance with assignments made by Harbormaster or Waterfront Manager, who may establish procedures for orderly reservation, assignment and allocation of slips. Operators of charter vessels shall pay a slip use and passenger loading fee established by resolution of the City Council.

D. Charter vessels which use or operate from private docks in the Berkeley Marina shall pay a Marina use fee established by resolution of the City Council. The purpose of said fee is to compensate the City for services and benefits provided to such vessels through maintenance and improvement of the Berkeley Marina and associated public facilities.

E. Upon three violations of this section within any 12-month period, the operator of a charter vessel shall be prohibited from operating any charter vessel in or from the Berkeley Marina for one year. For purposes of this section, conviction of an infraction shall be conclusive evidence of violation. In addition, for purposes of this section, written notice of violation by the Harbormaster or Waterfront Manager in the manner set forth in Section 6.20.290 shall also constitute conclusive evidence of violation, provided that said notice shall be subject to appeal as set forth in Section 6.20.320.

F. As used in this section, "Charter vessel" means any vessel used to carry passengers for consideration, direct or indirect. (Ord. 6925-NS § 1 (part), 2006: Ord. 6645-NS § 1, 2001)