

# ORDINANCE NO. 2006-059

Adopted by the Sacramento City Council

October 17, 2006

## AMENDING CHAPTER 12.76 OF THE SACRAMENTO CITY CODE RELATING TO THE SACRAMENTO MARINA AND SPECIAL USE AREAS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

### SECTION 1.

Chapter 12.76 of the Sacramento City Code is amended to read as follows:

#### Chapter 12.76

#### SACRAMENTO MARINA AND SPECIAL USE AREAS

##### 12.76.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meaning set forth in this section.

"Berth" means a place to tie a vessel as assigned by the Director.

"Berthing area" means the area of the Sacramento marina in which vessels are berthed.

"Berth license fee" means and includes the monthly or daily fee paid by the licensee for the use of the assigned berth.

"Director" means the person designated by the city manager to perform the functions and duties of the Director under this chapter, or the Director's designated representative.

"Float" means and includes any floating platform normally used for the mooring or securing of vessels.

"Licensee" means the person in whose name a specific berth at the Sacramento marina is assigned by the Director pursuant to a berth license agreement.

"Person" means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Personal watercraft" means and includes any motorized vessel that has an internal combustion engine powering a water-jet pump or a fully-covered propeller chamber as its primary source of motor propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than the conventional manner of sitting or standing inside the vessel. This term shall include, but not be limited to, those vessels commonly known as "jet skis," "wet bikes," "surf jets," and "sea-doo's."

"Sacramento marina" means and includes the area within the boundaries of Miller Park that is operated by the City of Sacramento as a facility for the berthing of vessels.

"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.

"Vessel" means and includes every description of watercraft, other than a seaplane on water, that is used or is capable of being used as a means of transportation on water.

#### **12.76.020 Authority of Director.**

A. The Director shall have the authority to promulgate regulations to effectuate this chapter.

B. The Director may refuse entry into the Sacramento marina any vessel that is not seaworthy or that is of inappropriate size to operate within the Sacramento marina, except in cases of extreme emergency, in which case the owner shall be liable for any damage caused by such vessel.

C. Every vessel entering the Sacramento marina shall immediately become subject to the direction and order of the Director. To the extent authorized by law, the Director may enter upon any vessel in the Sacramento marina to make such inspections and to take such actions as may be required to enforce the provisions of this chapter.

D. The Director may designate the area in which any vessel shall be berthed and may require any vessel to change its berth in the marina to such other position as may reasonably be designated. In the event that such orders are not complied with, in addition to any other penalty or remedy provided by law, the Director may cause such vessel to be so moved and the cost of such move shall become due and payable in the same manner and subject to the same regulations as berth license fees.

E. Should an emergency occur in which any vessel is in danger of being seriously damaged, or seriously damaging other boats or any of the Sacramento marina facilities, the Director may take such action as in the Director's sole discretion is necessary for the protection of any property of the city or its licensees. The Director shall render a bill for such services to the vessel owner, and such amount shall become due and payable in the same manner and subject to the same regulations as berth license fees.

F. The Director may execute on behalf of the city all licenses for berthing space within the Sacramento marina.

G. When there is suitable space available, the Director may allow vessels other than those for which a berth license has been issued to berth in the Sacramento marina on an overnight basis. Operators of such vessels shall sign agreements and shall pay fees established by resolution of the City Council.

#### **12.76.030 Registration of vessels.**

Every vessel entering the Sacramento marina must be registered and numbered as provided by the laws of the State of California or any other state, or documented under the laws of the United States. All vessels must remain currently registered by the State of California or any other state, or documented by the United States to retain a berth license. The owner or any person operating a vessel for which a berth license has been issued shall present the registration or identification card or other evidence of registration or documentation of the vessel for examination and copying upon demand of the Director.

#### **12.76.040 Berth license applications.**

A. Berth licenses shall only be issued to the registered or documented owner or owners of a vessel. No berth license will be issued in the name of a partnership (general or limited), corporation, limited liability company, joint venture or other legal entity, provided, however, the Director may establish procedures for the issuance of a berth license for a vessel that is registered, documented or owned by a partnership (general or limited), corporation, limited liability company, joint venture or other legal entity to a natural person whose interest in the vessel (whether by virtue of an interest in the partnership, ownership of stock of a corporation or otherwise) is equal to or greater than that of each of the other partners, stockholders, members or associates.

B. An application for a berth license shall be submitted in writing on the form provided by the Director and shall be accompanied by appropriate fees, vessel specifications, title documentation, credit information, and any other information required by the Director. Only complete applications shall be accepted by the Director for processing.

#### **12.76.050 Issuance of berth license—Waiting list therefor; Insurance and Indemnity Requirements.**

A. Upon receipt of a complete berth license application, the Director shall determine if a berth of appropriate dimensions to accommodate the vessel is available and if the applicant qualifies for a berth license.

1. If an appropriate berth is available and if the applicant qualifies for a berth license, the Director shall issue a berth license to the applicant upon receipt of the applicable berth license fee, proof of insurance, and a signed license agreement. The license agreement shall be signed by the licensee and the Director.

2. If the applicant qualifies for a berth license, but there is no appropriate berth available, the Director shall place the applicant at the bottom of the waiting list. As berths become available, the Director shall issue licenses to applicants on the waiting list in order of their priority.

B. An applicant shall qualify for a berth license if the Director finds, based on the information provided in the complete application, the following:

1. The applicant is either (i) a natural person and the registered or documented owner of the vessel, or (ii) in the event the registered or documented owner of the vessel is a partnership (general or limited), corporation, limited liability company, joint venture or other legal entity, that the applicant is a natural person whose interest in the vessel (whether by virtue of an interest in the partnership, ownership of stock of a corporation or otherwise) is equal to or greater than that of each of the other partners, stockholders, members or associates, and

2. The vessel is seaworthy and of appropriate size to operate in the Sacramento marina, and

3. The applicant is credit worthy.

C. During the term of a berth license issued pursuant to this chapter, the licensee or owner(s) of a vessel authorized by a license to berth in the Sacramento marina shall maintain in full force and effect at no cost to the City a protection and indemnity insurance policy:

1. In an amount established by the city manager; and

2. Issued by an admitted insurer or insurers as defined by the California Insurance Code; and

3. Providing that the city, its officers, employees and agents are to be named as additional insured under the policy; and

4. Stipulating that the policy will operate as primary insurance and that no other insurance effected by the city or other named insured will be called on to contribute to a loss covered thereunder; and

5. Providing that no cancellation, change in coverage or expiration by the insurance company or the insured shall occur during the term of the berth license, without thirty (30) days written notice to the Director prior to the effective date of such cancellation or change in coverage.

Within thirty days of the effective date of this ordinance, the Director shall provide written notice of the requirements of this subsection C to every person who is a licensee on the effective date of this ordinance. A person who is a licensee on the effective date of this ordinance shall have ninety days from the effective date of this ordinance to comply with the requirements of subsection C.

D. The licensee and owner(s) of a vessel authorized by a license to berth in the Sacramento marina shall assume the defense of, and indemnify and hold harmless, the city, its officers, employees and agents from and against all actions, losses, damages, liability, costs and expenses of every type and description, including but not limited to attorney fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the licensee or owner or the licensee's or owner's agents, officers or employees, directly or indirectly arising from the berthing of the vessel in the Sacramento marina. The foregoing is not intended to and shall not be construed to limit any responsibility or liability that the licensee or owner(s) may be subjected to under other laws.

E. Berth licenses are non-transferable. No person shall gift, sell, assign, or transfer, whether voluntarily or involuntarily, a berth license, and any attempt to do so shall not be recognized or honored by the City, provided, however, the Director may establish regulations authorizing the temporary use of berths. Notwithstanding any other provision of this Subsection E to the contrary, prior to June 1, 2008, those persons who were licensees on March 1, 2005, shall be permitted to transfer a berth license with the sale of the vessel that was subject to the berth license agreement on November 16, 2006, the effective date of Ordinance No. 2006-059.

#### **12.76.060 Revocation of berth license.**

The Director may revoke a berth license if the Director determines that the licensee has failed to comply with any provisions of this chapter, or any regulation promulgated thereunder, or any provision of the license agreement.

#### **12.76.070 Berth license fees.**

The berth license fees at the Sacramento marina shall be established by resolution of the city council.

#### **12.76.080 Delinquent payments.**

All monthly license fees shall be due and payable monthly in advance, on or before the first day of each month, and shall become delinquent on the tenth day of the month for which payment is due. All charges for other services and supplies shall be due on the first day of the month following performance of the service or delivery of the supplies, and shall become delinquent on the tenth day thereafter.

**12.76.090 Access to berthing area.**

A. No person other than licensees, owners of vessels berthed in the Sacramento marina, their invitees, and authorized personnel of the city, shall go upon any of the floats, gangways or vessels within the berthing area.

B. No person shall leave a gate to the berthing area of the Sacramento marina open for a period of time longer than necessary for the person to enter or exit the berthing area.

**12.76.100 Maintenance of vessels.**

A. Repairs to and maintenance of a vessel may be made or accomplished while the vessel is at its assigned berth, provided that all such work is done within the confines of the vessel itself and is not carried on upon the floats or gangways. All materials used in repair or maintenance work shall be stored within the confines of the vessel when work is not being performed, and shall not be kept upon floats or gangways when the person performing the work is not in attendance at the vessel. Any repairs or maintenance shall be accomplished in such a manner as not to interfere with access to, or use of, any other vessel. No debris, removed parts or fluids from repairs and maintenance may be allowed to accumulate on any dock or enter the Sacramento marina waters.

B. No person shall use welding equipment, a burning torch or any other open flame apparatus within the confines of the Sacramento marina without written permission from the Director. If such permission is given, and welding equipment, burning torch, or any other open flame apparatus is used, care shall be exercised for the safety of all vessels and Sacramento marina facilities, and an approved fire extinguisher of the proper type and of sufficient size shall be readily available. In addition, a water hose attached to an outlet shall also be available as a standby facility. Any work requiring the use of welding equipment, a burning torch, or any other open flame apparatus shall be conducted only in an area designated by the Director.

C. No person shall spray paint a vessel, equipment, or any other portion thereof, within the Sacramento marina.

**12.76.110 Commercial maintenance on vessels within the marina.**

No person shall perform any work on, or provide any service to, any licensee or vessel within the Sacramento marina for which said person receives a fee, compensation, or any other thing of value, unless such person has first complied with the following provisions:

A. Shown the Director proper work authorization from the owner of the vessel, and

B. Shown the Director evidence of the issuance of an applicable business license from the city, and

- C. Obtained permission from the Director to enter the berthing facility; and
- D. Agreed to perform such service or work in conformance with instructions of the Director; and
- E. Shown the Director a statement from the city manager or his or her designee indicating that said person has insurance coverage to include:
  - 1. Workers compensation and employer's liability,
  - 2. General liability insurance,
  - 3. Products and completed operation liability,
  - 4. Broad form property damage liability, and
  - 5. Personal injury liability

The amount of the policy shall be established by the city manager, and it shall name the city, its officers, employees, and agents as additional insureds. The policy shall stipulate that it will operate as primary insurance and that no other insurance by the city or other named insured shall be called on to contribute to a loss covered thereunder. The policy shall also contain a provision requiring a ten (10) days' notice must be given to the Director prior to cancellation, modification or reduction of the limits of the policy by the insured.

#### **12.76.120 Unseaworthy vessels.**

A. It is unlawful and a public nuisance for any person to operate or berth any vessel that is not seaworthy in the Sacramento marina, unless the vessel is in an emergency situation or condition:

- 1. Vessels that are in an emergency situation or condition shall only be operated or berthed in the Sacramento marina until the emergency situation/condition ends, but in no event shall the vessel remain in the Sacramento marina for more than seventy-two (72) hours;
- 2. Determinations of seaworthiness shall be made by the Director.

B. Any vessel that is not seaworthy shall be removed from the waters of the Sacramento marina upon the order of the Director. If the owner of any vessel or the owner's agent refuses to comply with the Director's order, the refusal shall constitute grounds for revocation of any berth license issued by the Director for berthing the vessel. The Director may order the vessel removed and stored for a period not to exceed sixty days. Upon the expiration of the sixty-day period, the vessel shall be sold

at public auction in accordance with the provisions of Article 4 of Chapter 2 of Division 3 of the Harbors and Navigation Code (commencing with Section 500 thereof). The owner of the vessel shall be civilly liable to the City for all costs, fees, damages and expenses incurred by the City in raising, towing, keeping, storing and selling the vessel. All such costs shall be a lien upon the vessel and the proceeds of sale thereof.

#### **12.76.130 Failure or refusal to comply with lawful order of Director**

A. No person shall willfully fail or refuse to comply with any lawful order of the Director to remove a vessel from a berth in the Sacramento marina

B. No person shall willfully fail or refuse to comply with any lawful order of the Director to remove a vessel from the Sacramento marina

C. In the event that such orders are not complied with, in addition to any other penalty or remedy provided by law, the Director may cause such vessel to be so removed and the cost of such removal shall become due and payable in the same manner and subject to the same regulations as berth license fees.

#### **12.76.140 Wrecked or sunken vessels.**

Whenever a vessel is wrecked or sunk within the Sacramento marina, accidentally or otherwise, the owner shall immediately mark its position by a buoy or beacon by day, and by an electric light visible for at least one hundred (100) yards by night, and maintain such markings until the obstruction is removed. The owner of such a wrecked or sunken vessel shall immediately commence removal of said vessel and prosecute the removal diligently to completion, and the failure to do so shall constitute an abandonment of the vessel and subject the vessel to removal and disposition in accordance with the provisions of Section 12 76 120. No person shall return a wrecked or sunken vessel to its berth within the Sacramento marina without the prior approval of the Director. The owner of a sunken or wrecked vessel shall be liable for any damage which results to city property or other vessels in the marina.

#### **12.76.150 Accident reports**

Any person involved in an activity or collision which causes damage to any other person, vessel, property, or city facilities within the Sacramento marina, of any nature whatsoever, whether said person be at fault, or not, shall fill out an accident report provided by the Director within twelve (12) hours of such incident. The completion of this accident report shall be in addition to such notices and/or reports required by the laws of the state.

#### **12.76.160 Vessel traffic—Speed limit.**

All vessels approaching or within the Sacramento marina shall be operated in a safe and prudent manner and in no event shall the entrance to the Sacramento marina be

blocked by general boating activities or fishing. The speed of any vessel within the Sacramento marina shall not exceed three miles per hour. No person shall operate a vessel upon the waters of the Sacramento marina in such a manner that the speed thereof creates an unnecessary or excessive wake, or interferes with the operation of any other vessel

#### **12.76.170 Children in marina.**

It is unlawful for any child under the age of fifteen (15) years to enter, remain, or be upon any of the floats, gangways, or vessels in the Sacramento marina, unless such child is accompanied by a responsible adult who is authorized to be in the Sacramento marina pursuant to Section 12.76.090 of this chapter

#### **12.76.180 Animals in marina.**

No owner or person in control of any dog or other animal shall permit the animal to run at large within the Sacramento marina. All animals shall be deemed to be running at large unless: the animal is led or restrained by a leash, chain, strap, cord, or other similar device attached to the animal's collar, and which is securely fastened around the animal; and the leash, chain, strap, cord, or other similar device is actually held by a person capable of controlling the animal or made fast to the vessel of the owner or the vessel of the person in control of the animal. Owners shall be responsible for all actions of the animal.

#### **12.76.190 Refuse.**

A. No person shall throw, deposit, discharge, or otherwise place any refuse, garbage, debris, bait, sewage, or waste matter of any description, upon or into the floats or waters of the Sacramento marina.

B. No person shall throw, deposit, discharge, or otherwise place any oil, paint, varnish, spirits, coal tar, contaminated bilge water, inflammable liquid, refuse or residuary produce of coal, petroleum, asphalt, bitumen, or other carbonaceous material or substance, upon or into the floats or waters of the Sacramento marina.

C. All garbage shall be deposited in receptacles furnished by the city for that purpose.

D. No person shall clean fish on the floats or other areas of the Sacramento marina. No person shall place or leave dead animals, fish, parts of fish, shellfish, bait, or other putrefying matter on or along the floats, gangways, or marina structures, or throw or deposit such materials upon or into the waters of the Sacramento marina

#### **12.76.200 Sanitary facilities.**

No person shall discharge sewage in the Sacramento marina. The Director shall require owners of vessels which are used for eating or sleeping purposes to post notices that the toilet facilities aboard may not be used while the vessel is moored or berthed in the marina or is using the waters of the marina, unless such vessel is equipped with a properly functioning sewage holding tank.

**12.76.210 Living on board.**

No person shall live on board any vessel within the Sacramento marina. This prohibition against living on vessels shall not prevent the use of vessels in the marina for eating and sleeping purposes for a period not to exceed three days in any seven-day period. One or more persons on board between the hours of one a.m. and six a.m. shall be considered as living aboard that night; unless the vessel enters or leaves the Sacramento marina during that time.

**12.76.220 Open flame devices.**

No person shall use barbecues, hibachis or other similar open flame devices within the confines of the Sacramento marina.

**12.76.230 Tampering with or boarding vessels.**

No person shall willfully injure, break, remove, or tamper with any part of any vessel or any other private or public property in the Sacramento marina, nor shall any person 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.

**12.76.240 Liability for damage and/or loss of property.**

The owner of a vessel shall assume all liability for damage or loss of any kind to the owner's property while within the confines of the Sacramento marina. The city assumes no risk on account of fire, theft, act of God, or damage of any nature, from any cause whatever, to vessels or other property.

**12.76.250 Advertising and soliciting.**

No person shall advertise or solicit on any vessel or any berthing area within the Sacramento marina, except one sign not to exceed one square foot in area is permitted on any vessel.

**12.76.260 Findings re special use area.**

The council of the city finds as follows:

A. The Sacramento marina, as described in Section 12.76.010 of this chapter, is designated as a "special use area," as defined in the Harbors and Navigation Code,

Section 651(aa). The Sacramento marina is operated by the city as a facility for the berthing of vessels. Local regulation of the Sacramento marina is required to prevent accidents and to facilitate the use of the marina for its primary purpose of berthing licensee vessels.

B. The areas within two hundred (200) feet of the Miller Park boat launch ramp and courtesy dock and within two hundred (200) feet of the Garcia Bend boat launch ramp are hereby designated as "special use areas," as defined in the Harbors and Navigation Code, Section 651(v). The boat launch ramps and courtesy dock are operated by the city for the launching and delaunching of vessels and for the coming and going of vessels using the courtesy dock on a temporary basis. Local regulations of the area within two hundred (200) feet of the boat launch ramps and courtesy dock is necessary to prevent accidents and to facilitate the use of the boat launch ramps and courtesy dock for their primary purpose.

C. The configuration of the Sacramento marina, and the large number of boats berthed therein, which navigate in and out of the marina, make use of the marina area by persons other than marina berth licensees incompatible with the primary use of the marina by licensees. The presence of nonlicensee vessels within the Sacramento marina reduces the city's ability to provide a safe channel to navigate in and out of the Sacramento marina, because it increases the likelihood of collisions, and reduces the city's ability to protect licensees' boats and other property.

D. The presence of persons fishing from shore or from vessels that are not properly berthed within the Sacramento marina is incompatible with the primary use of the marina by licensees. Fishing by nonlicensees within the Sacramento marina reduces the city's ability to provide a safe channel to navigate in and out of the Sacramento marina, because it increases the likelihood of collisions, and reduces the city's ability to protect licensees' boats and other property.

E. The presence of nonlicensees' personal watercraft within the Sacramento marina is incompatible with the primary use of the marina by licensees. The presence of nonlicensees' personal watercraft within the Sacramento marina reduces the city's ability to provide a safe channel to navigate in and out of the Sacramento marina, because it increases the likelihood of collisions, and reduces the city's ability to protect licensees' boats and other property.

F. The presence of personal watercraft within two hundred (200) feet of the boat launch ramps and courtesy dock, other than for launching and delaunching, presents a threat to public safety, in that wakes produced by the personal watercraft endanger the safety of other vessels which are launching and delaunching, and the presence of personal watercraft increases the likelihood of collisions between personal watercraft and other vessels.

G. The regulations contained in Sections 12 76 260 through 12 76 280 of this chapter are necessary to promote public safety and to protect the property of those

vessels licensed by the city to berth in the marina and vessels using the boat launch ramps and courtesy dock.

H. This chapter is adopted pursuant to the police powers of the city granted by the California Constitution, Article XI, Section 7, and the statutory authority conferred upon local governments by the Harbors and Navigation Code, Sections 268(a) and 660(a)

**12.76.270 No nonlicensed vessels in Sacramento marina.**

It is unlawful for any person to operate within the Sacramento marina a vessel for which a Sacramento marina berth license has not been issued, except with prior approval, provided, however, that it shall not be unlawful to enter the marina for the purpose of navigating directly to and from the fuel dock to purchase fuel or other supplies.

**12.76.280 No fishing in the Sacramento marina.**

It is unlawful for any person to fish within the Sacramento marina, whether from a vessel or from the shore; provided, however, that berth licensees and their invitees may fish from properly berthed vessels.

**12.76.290 No personal watercraft in Sacramento marina or within two hundred feet of the Miller Park boat launch ramp/courtesy dock or Garcia Bend launch ramp.**

A It is unlawful for any person to operate a personal watercraft within the Sacramento marina, provided, however, that berth licensees and their invitees may operate personal watercraft within the Sacramento marina.

B. It is unlawful for any person to operate a personal watercraft within two hundred (200) feet of the Miller Park boat launch ramp or courtesy dock or within two hundred (200) feet of the Garcia Bend boat launch ramp, except to launch or delaunch the personal watercraft.

**12.76.300 Violation—Penalty.**

Any person violating Section 12.76.220, 12.76.270, 12.76.280 or 12.76.290 of this chapter is guilty of a misdemeanor. Any person violating any other provision of this chapter is guilty of an infraction.

Adopted by the City of Sacramento City Council on October 17, 2006 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Waters, and Mayor Fargo.

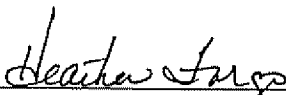
Noes: None.

Abstain: None.

Absent: Councilmember Tretheway.

Attest

  
Shirley Concolino, City Clerk

  
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Mayor, Heather Fargo

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