

City of St. Helens
ORDINANCE NO. 3285

AN ORDINANCE AMENDING ST. HELENS MUNICIPAL CODE CHAPTER
8.28 REGARDING USE OF THE CITY DOCKS

WHEREAS, the City of St. Helens seeks to improve the recreational boating experience at the city docks; and

WHEREAS, a group of engaged citizens and stakeholders has come together to make recommendations to City Council focusing on improving safety, and encouraging the enjoyment of boating to, and in, the vicinity of St. Helens on the Lower Columbia River; and

WHEREAS, the proposed code section amendments are required so that use expectations are clear and so that the City may educate boaters and minimize unsafe activity.

NOW, THEREFORE, THE CITY OF ST. HELENS ORDAINS AS FOLLOWS:

Section 1. The above recitations are true and correct and are incorporated herein by this reference.

Section 2. The St. Helens Municipal Code Chapter 8.28 is amended to reflect the proposed changes, attached as **Exhibit A** and incorporated herein by this reference.

Read the first time: June 1, 2022
Read the second time: June 15, 2022

APPROVED AND ADOPTED by the City Council this 15th day of June 2022, by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder

Chapter 8.28 CITY DOCKS AND WATERWAYS

Sections:

- [8.28.010 Purpose.](#)
- [8.28.020 Definitions.](#)
- [8.28.030 Use of city docks and waterways.](#)
- [8.28.040 Time limitations.](#)
- [8.28.050 Commercial use of city docks.](#)
- [8.28.052 Public assembly exemption.](#)
- [8.28.054 Registration and commercial moorage agreements.](#)
- [8.28.056 Fees and charges.](#)
- [8.28.060 Prohibited activities.](#)
- ~~[8.28.070 Sanitation and waste disposal.](#)~~
- ~~[8.28.072 Abandoned and derelict vessels.](#)~~
- ~~[8.28.074 Hazardous vessels.](#)~~
- [8.28.080 Penalties.](#)
- [8.28.090 Inspection and citation.](#)
- [8.28.100 Impoundment/tow.](#)
- [8.28.110 Additional remedies.](#)
- ~~[8.28.120 Exclusion](#)~~

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8.28.010 Purpose.

The purpose of this chapter is to assure ~~responsible use of access to~~ city docks and waterways by setting ~~conduct expectations and implementing~~ reasonable time limitations ~~on moorage at the docks~~ and to preserve the recreational purpose of the docks and waterways by limiting their use to ~~registered recreational boats or vessels.~~ (Ord. 2888 § 1, 2003)

8.28.020 Definitions.

~~(1) "Abandoned vessel" means a vessel that has been left without authorization on public or private land, the waters of this state, or any other water. (1) "Abandoned vessel" means a vessel left at the city docks in violation of the time limitations in SHMC 8.28.040 or that otherwise is not authorized to use a city dock as provided in this code or state law.~~

(2) "City" means the city of St. Helens.

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(3) "City administrator" means the person holding the position of city administrator or ~~any agent, employee, or designee authorized to perform the duties of this chapter by the city administrator.~~

(4) "City docks" means all public docks operated by the city of St. Helens, including the Courthouse Docks, Sand Island Marine Park North, and Sand Island Marine Park.

(5) "Commercial" means any profession, trade, occupation, shop, or any calling carried on for profit or livelihood, including but not limited to the rental of commercial or residential property, and those working as independent contractors, whether or not the contractor is paid on an hourly or job basis.

(6) "Hazardous vessel" means any vessel which is unseaworthy or which is in such a state of disrepair that the environment, life, or property could become endangered if such state is unduly prolonged; any vessel which presents a hazard to navigation.

~~(7) "Derelict vessel" means a vessel that is within city waterways on the waters of this state and that is:~~

~~(a) Sunk or in imminent danger of sinking;~~

~~(b) Obstructing a waterway;~~

~~(c) Endangering life or property; or~~

~~(d) In such dilapidated condition that it is in danger of becoming a significant environmental hazard as evidenced by repeated and documented instances of leaking fuel, sewage, or other pollutants.~~

~~(8) "Moorage" means any place where a vessel is anchored, made fast to a dock, or laid alongside another vessel ~~made fast to a dock~~, including side and multi-side ties.~~

~~(8) "Moorage agreement" means ~~ana commercial agreement entered into between the city of St. Helens and an owner/operator authorizing use of docks and waterways.~~~~

(9) "Owner/operator" means a person who claims, expressly or otherwise, to have lawful care, custody, control, or possession of a vessel by legal title, equitable interest, lease or charter, or by any other method or manner giving the person lawful care, custody, control or possession of a vessel.

(10) "Person" means an individual, a partnership, corporation, association, or other legal entity recognized by the state of Oregon.

(11) "Recognized boating or yachting organization" means any active, incorporated nonprofit boating or yachting ~~association organization~~ that provides written notice of incorporation to the city administrator.

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(12) "Unoccupied vessel" means a vessel that is without occupant for a period of four or more hours.

(13) "Vessel" means every type of watercraft. (Ord. 3239 § 2 (Exh. A), 2019; Ord. 3087 § 1, 2008; Ord. 2888 § 2, 2003)

(14) "Waterway" means those state-owned submerged and submersible lands as further described in that certain Submerged and Submersible Land Lease 10474-ML, dated July 1, 2021, as amended from time to time, between the State of Oregon, by and through its Department of State Lands, and the city.

8.28.030 Use of city docks and waterways.

(1) Use of city docks and waterways includes the following:

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(a1) Mooring or tying a vessel directly to a city dock;

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(b2) Locating Mooring a vessel within city waterways within five feet of a city dock;

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(c3) Mooring or tying a vessel to a vessel which is moored or tied to a city dock or located within city waterway five feet of a city dock;

(d4) Mooring or tying a vessel to one or more of a group of vessels, one of which is moored or tied to a dock or located within five feet of a city dock. Vessels moored or tied to city docks shall be limited to three abreast, or not more than 40' on each side of the city dock;

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(e5) Fishing in designated fishing zones. (Ord. 3087 § 2, 2008; Ord. 2888 § 3, 2003)

62) All vessels engaged in "use" of using city docks and waterways as outlined above must comply with the following conditions:

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(a) Vessels must have current title, license and registration with the applicable state authority.

(b) Vessels shall be maintained in seaworthy condition, kept neat and clean of debris, and fully operable at all times be completely without hazardous conditions, must be operational and have current title, license and registration, as determined solely by the city administrator or designee, and be ready for cruising in local waters.

(cb) Hazardous vessels Any vessel deemed unseaworthy, as determined by the city administrator or designee, may be boarded to allow for further inspection in order to prevent hazard danger to the environment, life, or property to the docks or waters.

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~~“unoccupied vessel” is a vessel that is without occupant for a period of four hours or more, between sunset and sunrise.~~

~~(32) Any vessel that is moored in violation of this section is hereby deemed **unauthorized to be in violation of this chapter and not authorized to moor at a city dock and and** is, therefore, subject to all penalties and sanctions described herein. In addition to and not in lieu of any other remedy, such vessel may be deemed abandoned as provided in SHMC [8.28.072](#). (Ord. 3239 § 2 (Exh. A), 2019; Ord. 3151 § 1, 2011; Ord. 3147 § 1, 2011; Ord. 3087 § 3, 2008; Ord. 2888 § 4, 2003)~~

8.28.050 Commercial use of city docks.

The city docks shall not be used by commercial vessels or for commercial activity without first ~~entering into a moorage agreement~~[registering the vessel](#), obtaining the necessary permits and business licenses, and paying all [associated](#) fees. (Ord. 3087 § 4, 2008; Ord. 2888 § 5, 2003)

8.28.052 Public assembly exemption.

Any use of the city docks by a recognized boating or yachting organization within the time limits established by this chapter shall be exempt from the public assembly permit requirement of [SHMC Chapter 8.08 SHMC](#) so long as no adjacent lands are used by the boating or yachting organization. Assembly permits are required for proposed use outside this exception. Nothing herein shall be interpreted as exempting members of such associations or organizations from all other applicable prohibitions and regulations in city ordinances including regulations concerning use of city docks ~~and waterways facilities~~. (Ord. 3087 § 5, 2008)

8.28.054 Registration ~~and commercial moorage agreements.~~

(1) Permitted Moorage. No ~~commercial~~ vessel will be permitted to be moored at the city docks ~~or in city waterways~~, unless the vessel is properly registered, ~~a moorage agreement entered into,~~ and all fees and charges have been paid. ~~All vessels mooring at city docks shall be seaworthy; upon request by the city administrator or designee, an owner/operator may be required to demonstrate the seaworthiness of the vessel.~~

Commented [MLK4]: Contained with 8.28.030

(2) Registration.

(a) Time for Registration. All vessels must be registered with the city ~~prior to or within two hours after~~[upon](#) arrival, ~~at the facility. Registration will be made with the business office of the city. If the time within which to register is after regular business hours, or if the harbormaster is not on duty, a registration form shall be completed at the start of the next business day.~~ Payment of the fee for the initial term of moorage and any other required fees or charges shall be made at the time of registration.

(b) Information and Authorization Required. At the time of registration, the owner/operator shall provide all information required, including, but not limited to, the vessel's state certificate number (e.g. OR 123 ABC) and hull identification number, on the moorage agreement form. If the person ~~making the registration~~ registering the vessel is an operator only, owner authorization for moorage shall be made available upon request.

~~(c) Notice of Vessel Condition. At the time of registration vessels must be completely without hazardous conditions, must be operational and have current title, license, and registration, and be ready for cruising in local waters.~~

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~~, the owner/operator of the vessel shall provide notice of the physical condition of the vessel, including any structural limitations which could result in damage to the vessel if the vessel is towed or placed in dry dock. Notice of the physical condition of the vessel shall be updated from time to time when the condition of the vessel changes.~~

~~(3) Moorage License Agreements.~~

~~(a) Requirements. No commercial vessel shall be moored at the facility without notifying the business office of the city within two hours of its arrival nor moor at the facility for more than six hours without the owner/operator entering into a moorage agreement with the city, according to the terms and conditions as set forth in the agreement.~~

~~(b) Period. A moorage agreement shall be a transient moorage and shall be limited to the dates and length of time specified in the moorage agreement. A "transient moorage" for a commercial vessel shall be any moorage exceeding one hour, but less than six hours.~~

~~(c) Moorage Space. Registration A moorage agreement does not assign a particular space for the designated vessel and it does not guarantee the owner/operator accommodations at any of the city docks or waterways.~~

~~(4) Renewal. No moorage agreement shall be renewed unless all conditions for the initial issuance of the moorage agreement are still being met, and all fees and charges are paid in full.~~

~~(5) Scope. The moorage agreement vessel's registration shall allow the use of the facility for moorage purposes only, and shall grant no further rights, privileges, or uses.~~

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~~(6) Transferability. Moorage agreements Vessel registration shall be issued only to the owner/operator of the vessel, and shall be valid only for the specific vessel designated in the moorage agreement registration. A moorage agreement Vessel registration may not be assigned, sold, or transferred by any means whatsoever; any such transfer shall be void. Sale of a vessel shall not transfer any rights or privileges under a moorage agreement; a valid moorage agreement does not ensure the transferee will be issued a moorage agreement.~~

(7) Revocation. The moorage agreement may be revoked by the city upon 10 days' written notice if the vessel or owner/operator is in violation of the terms of the moorage agreement or any provision of this chapter.

(a) Notice. Notice of revocation may be by personal delivery or certified mail to the owner/operator at the owner/operator's last known address, and by posting notice on the vessel. The notice of revocation shall state the moorage agreement has been revoked, give the reasons therefor, and state the owner/operator has 10 days from the date of the notice to correct the violation or have the vessel impounded or otherwise secured at the owner/operator's expense.

(b) Reinstatement. Upon proof of correction of any violation and payment of all costs and charges, the owner/operator may apply for reinstatement of the moorage agreement, which may be permitted by the city. If reinstatement is permitted, and a second violation occurs at any time within the next six months, the moorage agreement shall be immediately revoked, and no reinstatement shall be allowed.

(8) Cancellation. A moorage agreement may be cancelled by the owner/operator upon 10 days' written notice to the city, which shall provide an address where the owner/operator can be reached after the termination of the moorage agreement for return of any refund as hereinafter provided.

(9) Denial. The city may deny a moorage agreement to a vessel which is a hazard to health or safety, or if the owner/operator is delinquent on any fee or charge under this chapter, or any other city ordinance, or if the owner/operator is unwilling or unable to provide the city with the required registration information. Immediately after a moorage agreement has been denied, the owner/operator shall remove the vessel from the facility, and the city shall not moor the vessel nor permit the vessel to be moored until all hazards to health or safety have been corrected and proof of such correction has been provided to the city, all such fees and charges are paid in full, and the required information has been completely provided. (Ord. 3087 § 6, 2008)

Commented [RB6]: These sections, 8.28.054 (7) through (9) are covered in the "Use" section 8.28.030 (6)

8.28.056 Fees and charges.

(1) Establishment. Moorage rates, fees, and other charges shall be established by resolution of the city council, and may be reviewed by the city council from time to time and raised or lowered as deemed appropriate.

(2) Terms of Payment. The vessel's owner/operator shall be liable for all moorage rates, fees and other charges assessed under this chapter. Moorage rates shall be paid in advance, or upon registration arrival, unless otherwise agreed upon in writing by the city. Invoices for all other fees and charges are due and payable at time of presentation to the owner/operator.

~~(3) Late Charges. A late fee shall be assessed for late payments for each month or part of a month that payments are late. An account is past due if the moorage rate, fee or other charge remains unpaid in whole or in part for a period of 30 days.~~

(34) Attorney's Fees and Costs. The owner/operator shall be liable for any and all collection costs and expenses, including reasonable attorney's fees, necessary to collect delinquent moorage rates, fees, or other charges or to enforce any other provision of this chapter. (Ord. 3087 § 7, 2008)

8.28.060 Prohibited activities.

(1) No person shall swim ~~from or~~ within 50 feet of the docks.;

(2) No person shall obstruct a vessel from ~~docking~~ mooring.;

(3) No person shall cut, drill holes in, or attach in any manner any object ~~to~~, other than a vessel with mooring lines, ~~to~~ the docks without written permission from the city administrator.;

(4) No commercial activity ~~will shall~~ occur on city docks without specific authorization ~~in the moorage agreement~~.;

(5) Vehicles are not allowed on city docks, except ~~for the immediate transport of a bicycle to and from a vessel or the use of a vehicle that is when~~ necessary ~~due to to accommodate~~ a disability. Vehicles include, but are not limited to, bicycles, scooters, skateboards, rollerblades, mopeds, motorcycles, or other self-propelled units.;

(6) Vessels ~~are shall~~ not ~~allowed to~~ use ~~any~~ docking space(s) designated ~~only~~ for emergency craft use, ~~which are~~. ~~Such docking space is designated identified~~ by a yellow stripe on the edge of the dock, ~~or~~ by a sign, or by both. ~~The use of such space by craft other than government emergency craft is prohibited~~.;

(7) ~~No person shall fish~~ Fishing is allowed in the ~~any~~ docking space designated for emergency ~~craft vessel~~ use; ~~however, such use is permitted when~~ ~~when~~ emergency ~~craft vessels~~ are not present. ~~Persons who are fishing must yield to emergency craft~~.;

~~(8) Use of a city dock for an abandoned or derelict vessel as defined herein or by state law is not allowed;~~

~~(9) No person shall sell any alcoholic beverages on city docks or waterways, except under a concession contract or lease agreement, or by permit. Visible intoxication is considered disruptive activity under this section.~~

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(10) No person shall sell, distribute, make available, or otherwise offer to provide a controlled substances or prescription drugs to another on city docks or waterways. Visible intoxication is considered disruptive activity under this section.

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(11) No person shall package, possess, or otherwise store a controlled substances on city docks or waterways without a valid prescription. Visible intoxication is considered disruptive activity under this section.

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(12) No person shall possess on city docks or waterways property anything specifically designed for and presently capable of causing, or carried with the intent to threaten or cause, bodily harm to another. Things prohibited under this Section This includes, but are is not limited to: any firearm, pellet gun, spring-loaded weapon, stun gun or taser, any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any knife with a blade longer than 3-½ inches, any dirk, dagger, ice-pick icepick, sling shot, slungshot, metal knuckles, nunchaku, studded hand-coverings, swords, straight razors, tear gas containers, saps, sap gloves, hatchets or axes. The prohibitions of this Section do not apply to handgun firearm lawfully carried by persons exempt from local regulation under ORS 166.173. The prohibitions of this Section do not apply to any thing possessed or used to carry out actions authorized by any contract or permit on city docks or waterways.

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(13) No person shall engage in any disruptive activity at the city docks or waterways. Disruptive activity includes, but is not limited to, any behavior, conduct or activity that obstructs, disrupts, or interferes with the operation or business being conducted by the City, or authorized users, or other permitted activities on or near city docks. Quiet time shall be observed between the hours of 10 pm and 8 am.

(14) No person shall moor or berth a watercraft of any type a vessel in a city owned or operated park, dock facility, or leased waterway except in designated areas and at designated facilities.

(15) No person shall throw, place, leave, deposit, abandon, cause, or permit to be thrown, placed, left, deposited, or abandoned, any industrial waste, litter, or sewage at the facility or adjacent property or into the Columbia River, except in receptacles specifically designated for such purpose by the city.

(162) No person shall use, cause, or permit the use of a toilet that is not equipped with a device in good operating condition, adequate to treat, hold, incinerate, or otherwise handle sewage in such a manner which will prevent pollution on a vessel moored at the city docks or underway in the Columbia River. For the purposes of this section, an acceptable control device is one approved by the U.S. Coast Guard for such purpose.

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(179) Violation of any other provisions of this chapter, including but not limited to the time limits in SHMC [8.28.040](#), (Ord. 3239 § 2 (Exh. A), 2019; Ord. 3147 § 2, 2011; Ord. 3087 § 8, 2008; Ord. 2888 § 6, 2003)

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8.28.070 Sanitation and waste disposal ~~REPEALED~~.

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(1) No person shall throw, place, leave, deposit, abandon, cause, or permit to be thrown, placed, left, deposited or abandoned, any industrial waste, litter, or sewage at the facility or adjacent property or into the Columbia River, except in receptacles specifically designated for such purpose by the city.

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(2) No person shall use, cause, or permit the use of a toilet that is not equipped with a device in good operating condition, adequate to treat, hold, incinerate or otherwise handle sewage in such a manner which will prevent pollution on a vessel moored at the city docks or underway in the Columbia River. For the purposes of this section, an acceptable control device is one approved by the U.S. Coast Guard for such purpose.

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(3) The owner/operator of the vessel shall be personally liable for any and all cleanup costs, fines and penalties assessed by any other governmental unit, resulting from a violation of this section. (Ord. 3087 § 9, 2008; Ord. 2908 § 1, 2004; Ord. 2888 § 7, 2003)

Commented [RB9]: Removed, incorporated in 8.28.080, below

8.28.072 Abandoned and derelict vessels.

~~No person shall leave an abandoned or derelict vessel at the city docks. Any abandoned or derelict vessel may be removed in accordance with ORS [830.907](#) through [830.944](#), [830.927](#) regarding abandoned boats, floating homes, and boathouses. (Ord. 3087 § 10, 2008) ~~REPEALED~~~~

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8.28.074 Hazardous vessels ~~REPEALED~~.

Commented [RB12]: Section covered above, 8.28.072 and ORS 830.907 through 830.944.

~~(1) In the event of an emergency, a hazardous vessel may, immediately and without notice by the city, be secured or removed from the facility. If removal is required, the city may take reasonable efforts to notify the owner/operator prior to moving a hazardous vessel. If the city moves a hazardous vessel without prior notice, notice indicating the vessel has been moved shall be given as soon as practicable. In all other cases, the city shall give written notice to the owner/operator, requesting removal of hazardous vessels within 10 days of the date of such notice. Notice shall be posted on the hazardous vessel, and delivered by personal delivery to the owner/operator or by certified mail, return receipt requested, to the last address provided by the owner/operator to the city.~~

~~(2) All risk of loss or damage resulting from securing or removing the vessel shall be borne by the vessel owner/operator. In the event the vessel is moved to another location, the vessel and its owner/operator shall be liable for any and all costs associated with removal and storage of the vessel.~~

~~(3) In the event any vessel capsizes, sinks or is otherwise disabled in such a manner as to be a hazard to navigation or use of city facilities, all loss, damage or cost of removing the same shall be chargeable to the vessel owner/operator.~~

~~(4) A hazardous vessel which remains at the facility in excess of 10 days from the date of notice requesting removal may be deemed an abandoned vessel. (Ord. 3087 § 11, 2008)~~

8.28.080 Penalties.

(1) Violation of any portion of this chapter shall be punishable as a class B violation. Notwithstanding the above, violation of SHMC ~~8.28.060(67)~~ (improper use of designated emergency craft space) ~~and SHMC 8.28.060(8) (violation of time limitations of SHMC 8.28.040 and exemptions under SHMC 8.28.070)~~ shall be a class A violations. Any person in violation of this chapter can be served with a park ban notice in addition to any other citation. (Ord. 2919 § 2, 2004; Ord. 2888 § 8, 2003)

~~(2) In addition to any other penalty authorized under this section (3) The owner/operator of the vessel shall be personally liable for any and all cleanup costs, fines and penalties assessed by any other governmental unit, resulting from a violation of this section. (Ord. 3087 § 9, 2008; Ord. 2908 § 1, 2004; Ord. 2888 § 7, 2003)~~

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8.28.090 Inspection and citation.

(1) Investigations and Inspections. The following people are hereby authorized by this chapter to make such investigations and inspections as are necessary to enforce the provisions of this chapter: any law enforcement officer, including without limitations any city police officer, ~~city code enforcement officer~~, sheriff's deputy, or state police trooper, and city officials, such as the city building official, city planning administrator, city engineering manager, ~~city code enforcement officer~~, and such other ~~designees employees~~ of the city of St. Helens ~~as are specifically identified in an order or resolution of the city council~~. Nothing herein shall be interpreted as prohibiting privately initiated violation citations as provided in ORS Chapter ~~153~~.

(2) Citations. The following people are hereby authorized by this chapter to issue citations to individuals or entities to appear in the St. Helens municipal court: any law enforcement officer, including without limitations any city police officer, city code enforcement officer, sheriff's deputy, or state police trooper.

(3) Service of Citations. Unless the ~~law enforcement police officer or other authorized person issuing the citation~~ witnesses the mooring of ~~the a~~ vessel, a rebuttable presumption exists that a vessel moored in violation of this chapter was moored by the ~~registered owner/operator~~ of the vessel and the citation issued for the violation may be placed upon the vessel. If the mooring of the vessel is witnessed by the ~~law enforcement police officer or other person authorized to issue a citation for the offense~~, the operator of the vessel shall be the person responsible for violations of this section. (Ord. 3147 § 3, 2011; Ord. 3087 § 12, 2008; Ord. 2919 § 3, 2004; Ord. 2888 § 9, 2003)

8.28.100 Impoundment/tow.

(1) Law enforcement officers ~~are authorized to may call for seizure seize and hold of~~ a vessel, ~~including a tow or impoundment of any vessel when it is discovered that a vessel's identification number has been removed, defaced, covered, altered, or destroyed,~~ as ~~provided authorized by~~ in ORS ~~830.875 to 830.895.~~

(2) ~~Law enforcement officers may seize an abandoned or derelict vessel as authorized by and in accordance with concerning boat numbering and~~ ORS ~~830.908~~ through ~~830.944 concerning abandoned or derelict vessels.~~ boats, floating homes and boathouses.

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(3) ~~An owner may reclaim a seized vessel by paying all costs incurred by the city in salvaging, towing and storing the vessel; and establishing to the city administrator's satisfaction that the owner is able to move the vessel to a place where the vessel can be lawfully kept. -If Any seized vessel is not reclaimed -seized-~~ pursuant to this chapter, ~~title to the vessel and all personal property found in the vessel shall vest in the city, and the city may sell or otherwise dispose of the vessel and the personal property, and state law and not reclaimed as provided by state law shall be disposed of in accordance with ORS 98.245.~~ (Ord. 3239 § 2 (Exh. A), 2019; Ord. 3087 § 13, 2008; Ord. 2888 § 10, 2003)

8.28.110 Additional remedies.

Any removal of a vessel pursuant to this chapter is in addition to, and not in lieu of, any other civil, criminal, or administrative penalty, sanction, or remedy otherwise authorized by law. (Ord. 3087 § 14, 2008)

8.28.120 Exclusion

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(1) ~~In addition to other remedies provided for violation of this Code, or of any of the laws of the State of Oregon, any Peace Officer as that term is defined under ORS 133.005 law enforcement officer may exclude any person who violates any applicable provision of law at the city docks and leased waterways from the property in accordance with the provisions of this Section. Nothing in this Section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or~~

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federal constitutions. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law, shall be subject to exclusion as provided by this Section.

(2) For purposes of this Section, "applicable provision of law" includes any applicable provision of this Code, of any ~~C~~city ordinance, any applicable criminal or traffic law of the State of Oregon, any law regarding controlled substances or alcoholic beverages, or any applicable County ordinance or regulation. For purposes of this Section, "applicable" means relating to the person's conduct at the ~~d~~Dock or on the waterways.

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(3) An exclusion issued under the provisions of this Section shall be for 30 days. If the person to be excluded has been excluded from the ~~d~~Dock or waterways at any time within two years before the date of the present exclusion, the exclusion shall be for 90 days. If the person to be excluded has been excluded from the ~~D~~ock or waterways on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.

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(4) Before issuing exclusion under this Section, a ~~P~~ace Officer law enforcement officer shall first give the person a warning and a reasonable opportunity to cease and desist from the violation. An exclusion shall not be issued if the person promptly complies with the ~~d~~irection and desists from the violation warning. Notwithstanding the provisions of this Subsection, no warning shall be required if the person is to be excluded for engaging in conduct that:

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(a) Is classified as a felony or as a misdemeanor, or as an attempt, solicitation or conspiracy to commit a felony or misdemeanor, under the laws of the State of Oregon;

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(b) Has resulted in physical injury to any person or damage to any property; or

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(c) Is conduct for which the person previously has been warned or excluded for committing on the ~~D~~ock or waterways.

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(5) (d) Written notice shall be given to any person excluded from the ~~d~~Dock or waterways under this Section. The notice shall specify the date, length and place of the exclusion, shall identify the provision of law the person has violated and shall contain a brief description of the offending conduct. The notice shall inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal. It shall be signed by the issuing party. Warnings of consequences for failure to comply shall be prominently displayed on the notice.

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(6) A person receiving such notice of exclusion may appeal to the city's municipal court in accordance with the provisions of this Code. The municipal court judge shall uphold the exclusion if, upon the conducting de novo review, the preponderance of evidence

admissible under the provisions of this Code convinces the judge that, more likely than not, the person in fact committed the violation, and if the exclusion is otherwise in accordance with law.

(6) No person shall enter or remain on city docks or waterways at any time during which there is in effect a notice of exclusion issued under this Section.

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