

## Summary of Harbor Codes for Bainbridge Island

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## Chapter 2.46 Harbor Commission

2.46.010 Created.

A. There is created a harbor commission. The harbor commission is designated as the official body of the city empowered to act on all matters pertaining to the harbors and waters of the city consistent with the provisions of this code and other direction of the city council.

B. The harbor commission shall consist of at least five and not more than seven members who shall serve without compensation, appointed by the mayor and confirmed by the city council. The mayor shall also appoint annually one member of the harbor commission to serve as chairperson for a one-year term.

C. Members of the harbor commission shall serve for a period of three years and shall be residents of the city. The initial members shall be appointed for staggered terms.

D. If a vacancy in the harbor commission is created prior to the expiration of any member's term, that vacancy shall be filled by a person appointed by the mayor and confirmed by the city council. A person appointed to fill a vacancy created under this section shall serve the remainder of the unexpired term. (Ord. 99-71 § 1, 1999; Ord. 98-52 § 1, 1999)

2.46.020 Authority.

## Harbor Codes for Bainbridge Island

The harbor commission shall have authority to develop and implement the harbor management rules and regulations adopted by the city council and to govern all harbors and waters within the city's jurisdiction, as authorized by RCW 35A.21.090 and 35.21.160 and as further defined in BIMC 12.40.010. (Ord. 98-52 § 1, 1999)

### 2.46.030 Duties and responsibilities.

As the city's designated agency, the harbor commission shall:

- A. Implement the policies of the harbor management plan through measures which include, but are not limited to, recommendation of ordinances, regulations, and other means;
  - B. Seek ways to implement the goals and policies of the harbor management plan through public education and community outreach;
  - C. Develop and recommend new harbor management policies as needed;
  - D. Coordinate its work with local, state and federal agencies;
  - E. Recommend to the city council sources of revenue to support the harbor commission's activities and to support the management and enhancement of city waters and water dependent and related uses;
  - F. Such other duties and responsibilities as may be assigned by the city council; and
  - G. Report annually to the city council on the progress of the implementation of the harbor management plan and the general state of the harbors and waters of the city.
- This report shall be delivered by the chairperson of the harbor commission. The city council shall review the performance of the harbor commission after three years and evaluate its benefit to the community. (Ord. 98-52 § 1, 1999)

### 2.46.040 Harbormaster – Position created.

There is created the position of harbormaster which shall be filled by appointment by the mayor, subject to the confirmation of the city council. The appointment shall be made from a list of qualified candidates recommended by the harbor commission. The harbormaster shall serve at the pleasure of the mayor and report to the mayor and city administrator. The city, at its discretion, may specify additional terms and conditions of employment in a written agreement approved by the city council. The purpose of the harbormaster is to work in concert with the harbor commission to implement the harbor management plan and manage and protect the waters of Bainbridge Island. (Ord. 98-52 § 1, 1999)

### 2.46.050 Harbormaster – Duties and responsibilities.

The harbormaster shall:

- A. Assist the harbor commission in the implementation of the harbor management plan;
- B. Coordinate with the city's marine officer in the enforcement of rules and regulations governing the harbors and waters of the city;
- C. Collect such fees as may be established by resolution for the management and use of the harbors and waters of the city;

D. Inspect, as allowed by law, boats, buoys, anchorages, or any other watercraft or devices located in city waters to ensure compliance with federal, state and local regulations;

E. Take such measures as the harbor commission deems necessary to promote and protect the public's interest in the waters of the city. The harbormaster may be granted a limited commission by the chief of police. (Ord. 98-52 § 1, 1999)

## **Chapter 12.20 Park Regulations**

12.20.060 Recreational activities.

No person in a park shall:

### **B. Boating.**

1. Operation of Boats. Navigate, direct, or handle any boat in such a manner as to unjustifiably or unnecessarily annoy or frighten or endanger the occupants of any other boat,
2. Attach a boat to a mooring buoy for over a 48-hour period beginning at the first attachment. Anchor a boat over the bed of Eagle Harbor leased for the park in a manner to interfere with any boat attached to a buoy, or for a time exceeding the same time limit for use of the buoys,
3. "Raft" three boats together over the bed of Eagle Harbor leased for the park. This shall apply to boats using the city's mooring buoys, to boats at anchor both where the anchor is on city leased bed of Eagle Harbor and where the anchored boat drifts over city leased bed of Eagle Harbor, and to boats moored to adjacent piers;

## **Chapter 12.24 Waterfront Park**

12.24.010 Definitions.

12.24.010 Definitions.

- A. "City" means the city of Bainbridge Island.
- B. "Moor" or "moored" means to anchor or anchorage.
- C. "City boat dock" means any public city dock located in the Waterfront Park harbor or otherwise in the park harbor.
- D. "Dinghy" or "dinghies" means any small boat, kayak, canoe, or rubber boat whether rowed or with motor, smaller than 16 feet.
- E. "Oil" means oil or liquid, whether of animal, vegetable or mineral origin, or a mixture, compound or distillation thereof.
- F. "Park harbor" means all waters or land under the water within the Waterfront Park and all other waters or land under water within Eagle Harbor that are owned or leased by the city.

G. "Police department" means the law enforcement agency of the city.

H. "Vessel" or "watercraft" means any contrivance used or capable of being used as a means of transportation on water. (Ord. 98-43 § 1, 1998; Ord. 87-12 §§ 1, 8, 1987; Ord. 81-17 § 1, 1981)

12.24.020 Applicability.

The provisions of this chapter shall be applicable to all vessels and watercraft in the park harbor of the city. (Ord. 81-17 § 3, 1981)

12.24.030 Authorization.

The city, in the exercise of its police power, assumes control and jurisdiction over waters within the city's Waterfront Park and otherwise within the park harbor. (Ord. 98-43 § 2, 1998; Ord. 81-17 § 2, 1981)

**12.24.040 Nuisances designated – Removal required.**

A. Sunken vessels or watercraft shall be public nuisances. The owner of any sunken vessel or watercraft shall raise and remove the sunken vessel or watercraft within a reasonable time after the sinking of the vessel or watercraft. The time in which an owner shall have to remove the sunken vessel or watercraft shall be determined by the city, based on the circumstances surrounding the removal, including, but not limited to, weather, the difficulty of removal and the degree of the public nuisance. Failure to raise and remove a sunken vessel or watercraft within the time required by the city shall be a civil infraction. If the owner fails to remove the sunken vessel or watercraft, or if the owner cannot be ascertained, the city may remove the vessel or watercraft and dispose of the vessel or watercraft and its contents in accordance with Chapter 6.32 RCW.

B. Refuse of all kinds, structures or pieces of any structure, dock sweepings, dead fish or parts thereof, timber, logs, piles, lumber, boxes, empty containers and oil of any kind, and all other substances or articles of a similar nature, floating uncontrolled on the water, shall be public nuisances. It shall be a misdemeanor for any person to throw or place in, or cause or permit to be thrown or placed, any of the above-mentioned articles in the waters within the city's jurisdiction, or upon city shores or in such a position that the same may or can be washed into city waters or shores, either by high tides, storms, floods or otherwise.

C. Abandoned floats, buoys and all other structures used for the purpose of anchoring or mooring vessels or watercraft of any kind shall constitute public nuisances. For the purpose of this section a float or buoy is "abandoned" if it is not registered with the Department of Natural Resources and has not been used for more than 30 consecutive days. Any person causing or permitting such nuisances to be placed in the waters within the city's jurisdiction shall be deemed to have committed a civil infraction and shall immediately remove such nuisances. If the person or persons causing or permitting such nuisances cannot be ascertained or located, the city may remove, or cause to be removed, the nuisances. The methods for disposing of the abandoned

floats or buoys shall be governed by the provisions of Chapter 6.32 RCW.

D. Except as permitted by BIMC 12.24.115, any vessel or watercraft that is left unattended in the park harbor, whether at a city boat dock, linear moorage, or otherwise, for a period exceeding 48 hours shall constitute a public nuisance and the owner of such vessel or watercraft shall be deemed to have committed a civil infraction. The city may remove or cause to be removed these nuisances as provided in BIMC 12.24.050. (Ord. 98-47 § 3, 1999; Ord. 96-33 § 3, 1996; Ord. 87-12 § 4, 1987; Ord. 81-17 § 4, 1981)

#### 12.24.050 Moored or anchored vessels or watercraft.

A. Except as permitted by BIMC 12.24.115, vessels or watercraft shall not be moored, anchored, or left unattended in waters within the park harbor for a period exceeding 48 hours. Vessels or watercraft moored or left unattended in the park harbor in violation of this section shall be subject to the impound rules and regulations contained in Chapter 12.40 BIMC.

B. No person shall moor or tie a vessel or watercraft to the city boat dock or the city linear moorage for more than 48 hours at a time, nor for more than 48 hours within any seven-day period.

Each person who shall moor or tie up a separate vessel or watercraft to the city boat dock or the city linear moorage shall immediately complete and sign a registration form made available by the city at the city boat dock, and shall affix and deposit the same along with the required fee established by resolution in the box provided. It is unlawful to moor or tie up to the city boat dock or linear moorage without complying with this provision, and failure to do so while moored or tied up to the city boat dock or linear moorage shall be prima facie evidence of having moored or tied up to the city boat dock or linea moorage in violation of this chapter.

It is unlawful to moor or tie up any vessel or watercraft to the city boat dock or city linear moorage:

1. For purposes of vessel or watercraft construction;
2. For purposes of sale of a vessel or watercraft, or conducting sales therefrom;
3. Without first protecting the city boat dock or linear moorage from damage or wear and tear with adequate fenders or bumpers;
4. If the vessel or watercraft blocks use of the public boat ramp at Waterfront Park, except during the removal of the vessel or watercraft;
5. For purposes or in connection with a business or commercial venture or if it is a commercial or business craft without a special use permit;
6. If such vessel or watercraft exceeds 70 feet in length at the longest point, without a special use permit;
7. If such vessel or watercraft is a houseboat or barge;
8. By rafting more than two boats deep.

Vessels or watercraft moored or tied up in violation of this section shall be subject to towing and impoundment under Chapter 12.40 BIMC. (Ord. 98-47 § 4, 1999; Ord. 98-43 §

Nothing in this title shall be interpreted to prohibit the city from bringing an action to abate a nuisance in the manner provided by law. The abatement of any public nuisance herein shall not excuse the person responsible therefor from prosecution under this section. (Ord. 98-47 § 5, 1999; Ord. 81-17 § 8, 1981)

**12.24.100 Special events notices and special use permits.**

A. Vessels or watercraft may also use the city boat dock, city linear moorage, or park harbor upon application to the city on appropriate city forms, and approval by the director or his designee, for special events. A special use permit shall be issued, upon such approval, designating that portion of the city boat dock, city linear moorage, or park harbor to be so used. It is unlawful for any person to moor or tie a vessel or watercraft in such an area designated by a special event notice, without first having obtained such special use permit.

B. A special use permit issued hereunder shall include at least the following information:

1. Name and address of vessel/watercraft owners and the group being reserved for;
2. Authorized dates and times of reserved use;
3. Location on city boat dock or in public harbor or reserved use, by cleat number, buoy, or area of designated use;
4. The reserved use shall be limited to the areas designated by the permit or signs;
5. The phone numbers of city departments responsible;
6. The amount of fees or charges to be paid for such reserved use;
7. Overall length of the vessel.

C. It is unlawful to use the designated areas beyond those times or locations authorized by such permits. (Ord. 98-43 § 5, 1998; Ord. 93-32 § 5, 1993; Ord. 87-12 § 6, 1987)

**12.24.110 Use of dinghies.**

A. No person shall moor or tie a dinghy at the city boat dock or city linear moorage, or in the park harbor except in the areas designated for same. Dinghies may be rafted three deep in such designated areas.

B. No dinghy shall be moored or tied by any person so as to block the boat launch ramp, except for immediate loading or unloading.

C. Dinghies shall not be required to register as provided for herein, unless for purposes of a special event.

D. No dinghy shall be left unattended at the city boat dock or city linear moorage, or in the park harbor for more than 48 hours.

E. Any dinghy moored or tied contrary to the provisions of this chapter or of any posted signs shall constitute a nuisance.

F. Dinghies moored, tied, or left unattended in the park harbor or at the city boat dock or city linear moorage in violation of this section shall be removed and impounded in accordance with the procedures for impounding vessels and watercraft in BIMC 12.24.050 through 12.24.085, to the extent applicable; provided, that the notice requirements in BIMC 12.24.050 and 12.24.060 shall not apply to the removal and

impound of dinghies violating subsections B or D of this section if signs notifying the public of the requirements of this section have been posted in a conspicuous place or places on or near the boat dock. (Ord. 98-43 § 6, 1998; Ord. 96-33 § 4, 1996; Ord. 93-32 § 5, 1993; Ord. 88-09 § 3, 1988; Ord. 87-12 § 7, 1987)

### **12.24.115 Unattended vessels or watercraft.**

The city, in its discretion, may designate a specific area within Eagle Harbor for the anchoring or mooring of vessels or watercraft to be left unattended in city waters for more than 30 days. Upon such designation, vessels or watercraft to be left unattended for more than 30 days shall be permitted to anchor in the designated area only, and shall be subject to the anchorage or mooring fees as established by resolution; provided, that this section shall not apply to vessels or watercraft which are properly moored or anchored in private marinas. (Ord. 98-47 § 6, 1999)

#### 12.24.120 Violation – Penalty.

A. Any person committing overtime parking or illegal parking under BIMC 12.24.040, 12.24.065, 12.24.100 or 12.24.110 shall be guilty of a civil infraction and shall be fined in an amount not to exceed \$100.00.

B. Except as provided otherwise in this chapter, any person violating any of the provisions of this chapter shall be guilty of a civil infraction upon a finding or agreement that the infraction was committed and shall be fined in an amount not to exceed \$500.00.

C. Each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this section. Civil infractions under this chapter may be issued by any police officer, parking enforcement officer or code enforcement officer of the city. Infractions issued under this chapter shall be processed in the same manner as those issued under Chapter 1.26 BIMC. (Ord. 96-33 § 5, 1996; Ord. 95-26, 1995; Ord. 87-12 § 5, 1987; Ord. 81-17 § 9, 1981)

## **Chapter 12.40 Watercraft and Floating Homes**

### **12.40.060 Uniform speed limit – Restricted areas – Exceptions – Water skiing – Penalties.**

A. Except as permitted in subsection C of this section, it is unlawful for any person to operate a watercraft at a speed sufficient to create a wake or in excess of five nautical miles per hour, whichever is less, within the restricted areas identified in subsection B of this section, or within 150 feet of any shoreline, dock, or breakwater.

B. Restricted Areas.

1. Aquatic conservancy areas pursuant to BIMC [16.12.140.J](#) or future amendments thereto. Uses within aquatic conservancy areas are also regulated by the shoreline master program (Chapter [16.12](#) BIMC).

2. Eagle Harbor extending west from a line that runs from the Eagle Harbor Ferry Terminal to USCG buoy No. 5 and Bill Point.

3. Port Madison Bay extending out to one-fourth mile north of the port community dock.

4. Manzanita Bay extending south of latitude 47 degrees 40.200 minutes north.

C. Exceptions.

1. Eagle Harbor Water Ski Area. From May 1st through September 15th, a maximum of two watercraft 13 to 22 feet in length operating within the marked water ski course at least 200 feet from shore and docks between Stetson (also known as "Hornbeck") Spit and the aquatic conservancy area at the extreme west end of Eagle Harbor may exceed the uniform speed limit identified in subsection A of this section between 7:00 a.m. and 8:00 p.m. (but not before sunrise or after sunset) while towing a person on water skis or other similar device.

D. Water Skiing. Any watercraft towing a person on water skis or other similar device shall carry at least two occupants, one driver and one observer; use an orange warning flag any time a person is in the water; avoid speeding within restricted areas, except as authorized in subsection C of this section; maintain the operational distance of 150 feet as specified in subsection A of this section, except when beginning or ending a water skiing run, and abide by all other local, state and federal regulations pertaining to watercraft.

E. Penalties. Violation of this section shall be a civil infraction punishable by a fine of up to \$250.00 for each violation. (Ord. 2002-23 1, 2002: Ord. 98-39 2, 1999; Ord. 95-31 1 – 5, 1995; Ord. 94-12 1, 1994)

**12.40.065 Speed limit – Port Madison.**

*Repealed by Ord. 2002-23. (Ord. 98-39 1, 1999)*

**12.40.070 Penalties.**

*Repealed by Ord. 99-24. (Ord. 94-12 1, 1994)*

**12.40.080 Resident anchor-out live-aboard vessels.**

A. For the purposes of this section, "resident anchor-out live-aboard vessel" ("live-aboard vessel") means (1) a vessel licensed, if applicable, and designed for use as a mobile structure, with adequate self-propulsion and steering equipment to be operated as a vessel, but which is principally used as an over-water residence; or (2) floats and barges used as residences that were present in city waters on September 7, 1998. Principal use as an over-water residence means

essentially full-time occupancy within the city's jurisdiction for a total of more than 60 days, whether or not consecutive, in any calendar year.

B. Notwithstanding any other provision in this section, the registration, renewal of registration and location requirements of subsections C through I of this section shall not apply to live-aboard vessels that are properly moored or anchored in any private marina.

C. Those live-aboard vessels which were present in city waters on September 7, 1998, or were registered with the city on or before September 7, 1998, shall be permitted to remain in Eagle Harbor pursuant to the conditions and regulations provided by this chapter; provided, that nothing in this chapter shall be construed as limiting, usurping or prejudicing the Washington State Department of Natural Resource's ownership rights in the bedlands of Eagle Harbor or the department's ability to enforce these rights against the otherwise permitted live-aboard vessels in Eagle Harbor; and provided further, that live-aboard vessels which are permitted to remain in Eagle Harbor pursuant to this chapter shall be subject to any further terms and conditions imposed upon the vessels by the city pursuant to any leasehold interest in the Eagle Harbor bedlands that the city may acquire from the Washington State Department of Natural Resources subsequent to the effective date of the ordinance codified in this section. Except as provided by subsection H of this section, an owner of a live-aboard vessel which was not present in city waters on September 7, 1998 or registered with the city as of September 7, 1998, must immediately remove the live-aboard vessel from the waters within the city's jurisdiction.

D. Those live-aboard vessels which are permitted to remain within the city's jurisdiction pursuant to this chapter may anchor or moor only in Eagle Harbor and only at the location or locations designated by the city, as provided in this section. The general anchorage location of permitted live-aboard vessels within Eagle Harbor shall be determined by the city council upon recommendation of the harbor commission. The specific anchorage location of each individual live-aboard vessel shall be determined by the city administrator. The designated anchorage location or locations shall be limited to an area or areas where the presence of the live-aboard vessels shall not compromise the public's interest in water-dependent navigation, commerce, environmental quality and other related considerations.

Until such time as the city designates the general and specific anchorage locations within Eagle Harbor pursuant to this section, the live-aboard vessels permitted to remain in Eagle Harbor pursuant to this chapter shall remain in the location they occupied as of the passage date of the ordinance codified in this section; provided, that any live-aboard vessels which are not located within Eagle Harbor as of the passage date of the ordinance shall move to a location within Eagle Harbor, as designated by the city administrator.

Upon the city's designation of the general and specific anchorage locations of the permitted live-aboard vessels, each owner of a live-aboard vessel shall move the owner's live-aboard vessel to the designated anchorage location within one

month of the designation and shall not be permitted to moor or anchor the live-aboard vessel in any other area within Eagle Harbor.

E. The city administrator or the city administrator's designee shall maintain a registration log of those live-aboard vessels permitted to remain within Eagle Harbor pursuant to this chapter. The city's registration log of permitted live-aboard vessels shall annually be renewed by the city clerk during the month of January. At the time of the annual registration update, owners of permitted live-aboard vessels shall pay a registration renewal fee as established by resolution. The registration renewal fee shall be in addition to any lease payment or permit or licensing fee imposed by the state or the city.

F. An owner of a permitted live-aboard vessel who removes the live-aboard vessel from Eagle Harbor for a period longer than 130 consecutive days, as determined by the chief of police or designee, shall forfeit the live-aboard vessel registration privileges under this section; provided, that vessels used for commercial fishing may be absent for a period of 150 consecutive days without forfeiture. Exceptions for absences supported by good cause, including, but not limited to, emergency rebuilds, may be allowed by the city administrator or designee in the city administrator's or designee's discretion.

G. The registration privileges provided by this section are nontransferable and may not be assigned, conveyed or otherwise transferred to another person.

H. The owner of any live-aboard vessel that is not permitted to remain in Eagle Harbor pursuant to subsection C of this section may apply to the city clerk for live-aboard vessel registration privileges. The city clerk shall maintain a waiting list for those additional live-aboard vessels, and any registration privileges issued after the effective date of the ordinance codified in this section shall be on a first-come, first-serve basis. No additional live-aboard vessels shall be permitted to register with the city, or to moor or anchor in Eagle Harbor, unless and until the future number and permitted location of the live-aboard vessels in Eagle Harbor have been determined by the city council.

I. No more than one access float and two dinghies or skiffs per live-aboard vessel shall be permitted. Ownership of the dinghies and skiffs shall be clearly identified; unidentified dinghies and skiffs shall be impounded. The total surface water coverage for a live-aboard vessel and accompanying float and dinghies or skiffs shall not exceed 1,000 square feet.

J. No owner, operator or occupant of any live-aboard vessel shall discharge sewage or dump garbage into the water. All sewage generated upon any live-aboard vessel shall be properly disposed of at a suitable upland sewage facility.

K. Unless otherwise provided by statute, regulation or ordinance, a violation of any provision of this chapter shall constitute a civil infraction punishable by a civil fine not to exceed \$250.00, which shall be enforced as provided in Chapter [1.26](#) BIMC.

Failure to comply with the provisions of this chapter shall also constitute grounds for the revocation of the live-aboard vessel registration privileges. A notice of revocation of the live-aboard vessel registration privileges shall be in

writing, and shall be served upon the owner or operator of the live-aboard vessel by personal delivery or by certified mail, return receipt requested. Any revocation of live-aboard vessel registration privileges may be appealed to the hearing examiner by the owner or operator of the affected live-aboard vessel by filing a written notice of appeal with the city clerk within 15 days after the notice of revocation is served upon the owner or operator. For the purposes of this section, service of the notice of revocation shall be deemed to have been effectuated on the date of personal delivery or three days after the notice is placed in the mail. (Ord. 99-24 1, 1999; Ord. 98-08 1, 1998; Ord. 96-39 1, 2, 3, 6, 1997)

### **12.40.100 Impoundment.**

A. The city and its local law enforcement officials may take immediate possession of and impound any vessel or watercraft located in any waters within the city's jurisdiction when:

1. The operator or owner of the vessel or watercraft is incapable of safely operating the vessel or watercraft or is incapable of directing the disposition of the vessel or watercraft;

2. The operator or owner of the vessel or watercraft refuses to sign a citation or notice of civil infraction, or refuses or neglects to obey an order of any local law enforcement official to proceed from or to an area following a citation or civil infraction or in an emergency;

3. The operator or owner operates the vessel or watercraft in a negligent, reckless or other manner so as to endanger the safety of others or to unreasonably interfere with the navigation of other watercraft and vessels, and the local law enforcement official believes such operation of the vessel or watercraft would continue unless the vessel or watercraft is impounded;

4. The vessel or watercraft in operation is unsafe for water transportation;

5. The vessel or watercraft is obstructing a launch area, ferry dock or public dock, or is trespassing or blocking ingress and egress on private property;

6. The vessel or watercraft has remained at a city dock or linear moorage for one hour longer than the maximum mooring or anchoring time, or is otherwise moored or anchored in violation of BIMC [12.24.050.B](#); provided, the city shall post signs in a conspicuous manner on or near the city dock and linear moorage which notify the public that vessels anchored or moored in violation of the city's dock or moorage requirements shall be removed or impounded by the city; or

7. An unattended vessel or watercraft is a navigational hazard or threat to public safety, or must otherwise be impounded or removed in response to an emergency situation.

B. The city and its local law enforcement officials may take possession of or impound a vessel or watercraft located in any waters within the city's jurisdiction upon 10 days' notice to the owner of the vessel or watercraft when the vessel or watercraft is abandoned, or is moored or anchored in the park harbor for one

hour longer than the maximum mooring or anchoring time, in violation of BIMC [12.24.050.A](#). For the purposes of this subsection, a vessel or watercraft that is left unattended for more than 30 consecutive days shall be deemed abandoned.

If a vessel or watercraft is to be impounded pursuant to this subsection, the city or its local law enforcement officials shall notify the owner of the vessel or watercraft of the pending impound by posting a notice in a conspicuous manner upon the vessel or watercraft and also by mailing the notice, via U.S. certified mail, return receipt requested, to the registered owner of the vessel or watercraft at the owner's last known address. The notice shall contain the following information:

1. The date and time the notice was attached;
2. The identity of the city official attaching the notice;
3. The nature of the violation for which the vessel or watercraft is subject to removal or impound by the city;
4. A statement that if the vessel or watercraft is not removed within 10 days from the date and time the notice is attached, the vessel or watercraft may be removed or impounded and stored at the owner's expense, and that such expense will constitute a lien on the vessel or watercraft; and
5. The address and telephone number where additional information may be obtained.

Upon the failure, neglect or of any owner to remove the owner's vessel or watercraft within 10 days after the date the notice was posted and placed in the U.S. mail as provided by this subsection, the city and its local law enforcement officials shall be authorized to remove or impound the vessel or watercraft in the manner provided by this section.

C. In lieu of removing or towing a vessel or watercraft pursuant to this section, the city and its local law enforcement officials may impound any vessel or watercraft in place by posting one or more signs or notices in conspicuous places on the vessel or watercraft that read: "POLICE IMPOUND – KEEP OFF." Upon the posting of an impound notice, it shall be unlawful for any person:

1. To move, load, unload, rebuild or enter upon such vessel or watercraft without written permission from the city, other than for necessary maintenance and repair to prevent the deterioration or sinking of the vessel or watercraft; or
2. To remove, mutilate destroy or conceal any notice or sign posted by the city pursuant to this section.

The city and its local law enforcement officials, in their discretion, may appoint the owner or operator of the facility or property at which the vessel or watercraft is moored or anchored as custodian of the impounded vessel or watercraft.

D. At the time of the impound of a vessel or watercraft pursuant to subsections A through C of this section, the city or its local law enforcement officials shall provide the owner or operator of the vessel or watercraft written notice of the impound. If the owner or operator is not present, the notice shall be mailed, via certified mail, return receipt requested, to the registered owner of the

vessel or watercraft at the owner's last known address. Such notice shall state the date and time of the impound, the identity of the city official impounding the vessel or watercraft, the nature of the violation for which the vessel or watercraft was impounded, information on how and where to redeem the impounded vessel or watercraft, the owner's right to a hearing on the impound pursuant to Chapter [12.40](#) BIMC, a hearing request form, and the address and telephone number where additional information may be obtained.

E. The city and its local law enforcement official shall have the authority to remove or tow any vessel or watercraft pursuant to this section by using such methods necessary to prevent unnecessary damage to the vessel or watercraft. Alternatively, the city and its local law enforcement officials may assign the removal and impound of the vessel or watercraft to a private corporation.

F. The city shall not be responsible for damages incurred as a result of the impoundment of a vessel or watercraft.

G. Notwithstanding any other provisions of this chapter, this section shall not apply to resident anchor-out live-aboard vessels. (Ord. 98-47 1, 1998)

#### **12.40.110 Creation and foreclosure of lien.**

A. The expenses incurred by the city in removing, impounding and mooring any vessel or watercraft pursuant to this chapter shall be borne by the owner of the vessel or watercraft. When a vessel or watercraft is moored or impounded at a city facility, the city shall assess a reasonable moorage charge established by resolution. The expenses incurred by the city in removing, impounding and mooring the vessel or watercraft, and the city's moorage charge, if applicable, shall constitute a lien against the vessel or watercraft and shall be paid in full by the owner of the vessel or watercraft prior to the city's release of the vessel or watercraft.

B. If an impounded vessel or watercraft is not redeemed within 60 days after the date of impoundment, the lien upon the vessel or watercraft arising under this chapter may be foreclosed by the city pursuant to Chapter 60.10 RCW.

C. Funds received from the sale of a vessel or watercraft pursuant to this section shall be applied towards payment of the costs and fees incurred by the city in removing, impounding and mooring the vessel or watercraft, to the city's moorage charges, if applicable, and to the costs of foreclosure, including reasonable attorney's fees. The city may maintain an action against the owner of the vessel or watercraft to recover the expense of removing, impounding and mooring the vessel or watercraft, the city's moorage charge, and the costs of foreclosure of the lien, if not fully satisfied by the sale of the vessel or watercraft.

D. Any remaining proceeds from the foreclosure sale of a vessel or watercraft shall be remitted to the owner of the vessel or watercraft, if known. If the city is unable to locate the owner of the vessel or watercraft, the remainder of the proceeds from the sale shall be retained by the city for six months, and shall be released to the owner upon sufficient proof of ownership. If the six-month period expires without the owner of the vessel or watercraft claiming the remainder of

the proceeds from the sale, the funds shall be deposited into the general fund of the city. (Ord. 98-47 2, 1998)

**12.40.120 Impound hearing.**

A. Any owner of a vessel or watercraft that has been impounded pursuant to this chapter may request an impound hearing in the Bainbridge Island municipal court to contest the propriety of the impound and the amount of the impound and storage fees.

B. Any request for an impound hearing pursuant to this section shall be made in writing on the form provided by the city, and must be received by the municipal court within 21 days of the date that the notice of the right to a hearing, was provided to the person seeking to challenge the impound or amount of the impound and storage fees. If the impound hearing request is not received by the municipal court within the 21-day period, the right to a hearing is waived and the owner of the vessel or watercraft is liable for any removal, storage or impound charges permitted by this chapter. Upon receipt of a timely request for an impound hearing, the municipal court shall proceed to hear and determine the propriety of the impound.

C. The municipal court, within five days after it receives a request for an impound hearing, shall notify the person requesting the hearing and the city in writing of the hearing date and time.

D. At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the removal, impound, or storage fees charged were not proper. The city has the burden of proving a valid impound and reasonable fees by a preponderance of the evidence.

E. At the conclusion of the hearing, the municipal court shall determine whether the impound was proper, whether the removal, impound or storage fees charged were proper, and who is responsible for the payment of the fees.

F. If the impound is found proper, the removal, impound and storage fees as permitted under this chapter together with court costs may be assessed against the person or persons requesting the hearing

G. If the impound is found to be in violation of this code, then the owner of the impounded vessel or watercraft shall not be responsible for any removal, impound or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impound shall be liable for any removal, storage or other impoundment fees permitted under this chapter. (Ord. 98-47 3, 1998)

## **SMP 16.12**

### ***Chapter 16.12.180 Boating facilities.***

A. Applicability. Boating facilities include marinas (both backshore and foreshore, dry storage, and wet moorage types), boat launch ramps, covered moorage, marine railways, and marine travel lifts (refer to Part II for definitions). Community, yacht club, camp, and resort moorage facilities must comply with boating facility requirements if they provide moorage for six or more vessels. Both marina and nonmarina boating facilities, including single-family, must comply with BIMC [16.12.340](#), Piers, docks, recreational floats, and mooring buoys. Other portions of Part VI may also apply.

Accessory uses found in marinas may include fuel docks and storage, boating equipment sales and rental, repair services, boat launches, bait and tackle shops, potable water, waste disposal, administration, parking, and grocery and dry good shops. Uses which are not clearly accessory are also subject to their respective provisions in this section. (Examples right include commercial, industrial, or transportation facilities.) Boating facilities are also subject to Part III, General Regulations, and to Part IV, Environment Designations, including the standards in Table 4-2.

Regulations governing boating activities in the bays and harbors of Bainbridge Island are contained in city harbors and waters code and may also apply. See BIMC [16.12.340](#) for regulations governing mooring buoys.

#### **B. Regulations – General.**

1. Boating facilities, including marinas, shall be allowed as follows:
  - a. Boating facilities shall be permitted in the urban environment and allowed as a conditional use in the semi-rural and rural environments.
  - b. Boating facilities shall be prohibited in the natural, conservancy, and aquatic conservancy environments.
  - c. Boating facilities shall be permitted in the aquatic environment if permitted in the adjacent upland environment, allowed as a conditional use if so allowed in the adjacent upland environment, and prohibited if prohibited in the adjacent upland environment.
  - d. Boating facilities shall be permitted in public parks designated conservancy environment and in the adjacent aquatic environment.
2. Boating facility development and/or renovation shall comply with all other applicable state and federal agency policies and regulations including, but not limited to, the Department of Fish and Wildlife, Federal Marine Sanitation standards (Environmental Protection Agency 1972) requiring water quality certification from the U.S. Army Corps of Engineers (Section 10), U.S. Army Corps of Engineers dredging standards (Section 404), and state and federal standards for the storage of fuels and toxic materials.
3. The city shall require the following information in its review of marina proposals:

- a. Existing natural shoreline and backshore features and uses and bathymetric contours (one-foot increments);
- b. Geohydraulic processes and flushing characteristics, volume, rates, and frequencies;
- c. Biological resources and habitats for the backshore, foreshore, and aquatic environments;
- d. Area of surface waters appropriated, and leased areas;
- e. Site orientation; exposure to wind, waves, flooding or tidal/storm surges; and type and extent of shore defense works or shoreline stabilization and flood protection necessary;
- f. Impact upon existing and created demand for shoreline and water uses including physical access, recreation, and views;
- g. The regional need for additional facilities;
- h. The design of the facilities including sewage disposal, restrooms, solid waste disposal, proposed signage, proposed exterior lighting, a proposed landscaping plan, and proposed use of noise-generating equipment;
- i. Management and operations including accommodation of live-aboard vessels, including houseboats, provisions for the prevention and control of fuel spillage, and restrictions related to disposal of wastes and toxic materials; and
- j. Other information that may be requested by the director.

4. Accessory uses at a marina or public launch shall be limited to those which are water-dependent, related to boating, necessary for marina operation, or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.

5. Shoreline permits for marinas shall be conditioned to include boater education addressing boater impacts on water quality and other shoreline resources, boater safety and requirements for boater use of sewage pump-outs.

6. New marinas and expansion areas in existing marinas shall not have covered moorage.

7. Floating homes shall be prohibited in all marinas and elsewhere in the shoreline jurisdiction of Bainbridge Island. Live-aboard vessels, including houseboats, shall be permitted in marinas. No more than 25 percent of the surface area of a marina or 25 percent of its slips, whichever is less, shall be devoted to live-aboard vessels, including houseboats.

#### C. Regulations – Location.

1. When new sites are considered, sufficient evidence must be presented to show that existing marinas are inadequate and cannot be expanded to meet regional demand.

2. Marinas shall be sited to prevent any restrictions in the use of commercial and recreational shellfish beds. The specific distance shall be determined in conjunction with the Washington State Department of Health Services, the Washington State Department of Ecology, and other agencies with expertise. Criteria for determining the specific distance may include:

- a. The size and depth of the water body;
- b. Tidal flushing action in the project area;
- c. Size of the marina and projected intensity of use;
- d. Whether fuel will be handled or stored;
- e. Existence of a sewer hook-up; and
- f. Expected or planned changes in adjacent land uses that could result in additional water quality impacts or sanitary treatment requirements.

3. Marinas and public launch ramps shall be allowed only on stable shorelines where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach enhancement, and other harbor and channel maintenance activities.

4. Marinas and launch ramps shall be located only in areas where there is adequate water mixing and flushing and shall be designed so as not to retard or negatively influence flushing characteristics.

5. Boating facilities shall not require fixed breakwaters.

6. Marina and boat launch entrances shall not be located closer than 1,000 feet from beaches commonly used for swimming, or from valuable areas for commercial or recreational fishing or shellfish collection.

7. Marinas and launch ramps shall not be located at or along:

- a. Significant littoral drift sectors, including resource material areas such as, feeder bluffs and accretion beaches, points, spits and hooks;

9. Marinas shall not extend seaward farther than the following limits:

- a. In Eagle Harbor, the construction limit line.

- b. Elsewhere, the offshore ends of the adjacent marinas where present, and in no instance 200 feet beyond extreme low tide or the -3 fathom contour, whichever is less. (WAC 332-30-122(1)(ii) or its successor and WAC 332-30-142(8)(d) or its successor.)

### ***Chapter 16.12.340 Piers, docks, recreational floats, and mooring buoys.***

G. Regulations – Mooring Buoys and Recreational Floats.

1. Mooring buoys and recreational floats shall be prohibited in the aquatic conservancy environment. Mooring buoys and floats for recreational use shall be permitted in the aquatic environment offshore from conservancy, rural, semi-rural, and urban environments and shall be prohibited offshore from the natural environment. Mooring buoys for commercial use shall be permitted only as conditional uses offshore from the urban environment.

2. Buoys shall not interfere with navigation, shall be visible in daylight 100 yards away, and shall have reflectors for night visibility.

3. If a buoy is located offshore of the extreme low tide line, the owner shall obtain a lease for the bed of navigable waters from Department of Natural Resources. (WAC 332-30-122(1)(ii) or its successor.)

4. Buoys shall lie between the waterfront property side lot lines extended beyond the shoreline, except those on Department of Natural Resources tidelands. Vessels moored to the buoys shall not swing across the extended side lot lines. Where the configuration of the waterfront lot precludes these requirements, a mooring buoy owner shall file with the city a written statement from the affected, adjacent, waterfront property owners agreeing to the buoy placement.

5. Mooring buoys shall be installed at least 20 yards from other permitted piers, docks, floats, or buoys so as not to interfere with or obstruct existing piers, docks, floats, or buoys.

6. Owners of waterfront property are permitted to install one mooring buoy per waterfront lot, except that where the waterfront lot is owned in community, the city may permit upon the owners' application additional mooring buoys with the total not more than one per owner in the community. (WAC 332-0-122(1)(ii) or its successor.)

7. Buoys shall be located offshore no farther than the construction limit line in Eagle Harbor, and elsewhere not more than 200 feet beyond extreme low tide, the -3 fathom depth contour (-18 feet at mean low water), or the line of navigation, whichever is closest to shore. (WAC 332-30-148(2) or its successor.)

8. The owners or lessees of waterfront property zoned for commercial or industrial use may install mooring buoys for commercial vessels, subject to obtaining a shoreline conditional use permit from the city for each mooring buoy.

9. A contractor doing waterfront work involving floating equipment may place a temporary mooring buoy convenient to the work site, provided it is the responsibility of the contractor to ensure that all necessary permits are obtained from all agencies with jurisdiction.

10. Recreational floats shall be located as close to shore as possible. They shall be located no farther than the following limits:

a. In Eagle Harbor, the construction limit line.

b. Elsewhere, the distance necessary to obtain a depth of four feet of water as measured at extreme low tide at the landward end of the float, or the line of navigation, whichever is closer to shore.

11. Recreational floats must be built so that the deck surface is one foot above the water's surface and shall have reflectors for night visibility.

12. Single property owner recreational floats shall not exceed eight feet by eight feet.

13. All recreational floats shall include stops which serve to keep the floats off the bottom of tidelands at low tide. (Ord. 96-38, 1996)

## **DVRP from [www.dnr.wa.gov/](http://www.dnr.wa.gov/)**

### **Notices of Intent to Obtain Custody**

It is the intent of the authorized public entities (APEs) listed in the pending actions below to take custody of the vessels as shown. Once the APE takes custody of the vessel, they may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to any owners.

The owner of any vessel listed below (identified for seizure) may prevent the action by assuming control of the vessel and moving it to authorized moorage, removing it from the water, or removing it from the water and disposing of it in an environmentally sound manner. Once custody is seized, the owner of the vessel is responsible for reimbursing the APE for all reasonable and auditable costs associated with the removal and/or disposal of the vessel. If these costs are not paid within 30 days of notification, the APE may bring a court action to recover their costs.

A person seeking to reclaim a vessel already seized may commence a lawsuit in the superior court of the county in which the vessel was seized to contest the decision to seize custody or to contest the amount of reimbursement owed. The lawsuit must commence within 20 days of the date the APE took custody of the vessel or the right to a hearing is deemed waived and the vessel's owner is liable for any costs incurred by the APE.

## **Chapter 79.100 RCW Derelict Vessels**

### **RCW 79.100.005**

#### **Findings. (Effective January 1, 2003.)**

The legislature finds that there has been an increase in the number of derelict and abandoned vessels that are either grounded or anchored upon publicly or privately owned submerged lands. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Washington's waterways, and threaten the environment with the potential release of hazardous materials. The legislature further finds that the costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the costs associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public.

[2002 c 286 § 1.]

### **RCW 79.100.010**

#### **Definitions. (Effective January 1, 2003.)**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

## Harbor Codes for Bainbridge Island

(1) "Abandoned vessel" means the vessel's owner is not known or cannot be located, or if the vessel's owner is known and located but is unwilling to take control of the vessel, and the vessel has been left, moored, or anchored in the same area without the express consent, or contrary to the rules, of the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five day period. For the purposes of this subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(3) "Authorized public entity" includes any of the following: The department of natural resources; the department of fish and wildlife; the parks and recreation commission; a metropolitan park district; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located.

(4) "Department" means the department of natural resources.

(5) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

(a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW 79.01.760 or rules adopted by an authorized public entity;

(b) Has been left on private property without authorization of the owner; or

(c) Has been left for a period of seven consecutive days, and:

(i) Is sunk or in danger of sinking;

(ii) Is obstructing a waterway; or

(iii) Is endangering life or property.

(6) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(7) "Vessel" has the same meaning as defined in RCW 53.08.310.

[2002 c 286 § 2.]

**RCW 79.100.020**

**Chapter not exclusive remedy. (Effective January 1, 2003.)**

This chapter is not intended to limit or constrain the ability and authority of the authorized public entities to enact and enforce ordinances or other regulations relating to derelict and abandoned vessels, or to take any actions authorized by federal or state law in responding to derelict or abandoned vessels. This chapter is also not intended to be the sole remedy available to authorized public entities against the owners of derelict and abandoned vessels.

[2002 c 286 § 3.]

**RCW 79.100.030**

**Authority of authorized public entity -- Owner retains primary responsibility. (Effective January 1, 2003.)**

(1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority.

[2002 c 286 § 4.]

**RCW 79.100.040**

**Obtaining custody of vessel. (Effective January 1, 2003.)**

(1) Prior to exercising the authority granted in RCW [79.100.030](#), the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW [79.100.030](#), the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW [79.100.060](#).

(3) If a vessel is in immediate danger of sinking, breaking up, or blocking navigational channels, and the owner of the vessel cannot be located or is unwilling to assume responsibility for the vessel, an authorized public entity may tow, beach, or otherwise take temporary possession of the vessel. Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department and the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. Immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW [79.100.050](#).

[2002 c 286 § 5.]

### **RCW 79.100.050**

#### **Use or disposal of vessel. (Effective January 1, 2003.)**

(1) After taking custody of a vessel, the authorized public entity may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to

any owners, but must give preference to uses that derive some monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the vessel, the authorized public entity must give preference to the least costly, environmentally sound, reasonable disposal option. Any disposal operations must be consistent with the state solid waste disposal provisions provided for in chapter 70.95 RCW.

(2) If the authorized public entity chooses to offer the vessel at a public auction, either a minimum bid may be set or a letter of credit may be required, or both, to discourage future reabandonment of the vessel.

(3) Proceeds derived from the sale of the vessel must first be applied to any administrative costs that are incurred by the authorized public entity during the notification procedures set forth in RCW [79.100.040](#), removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. If the proceeds derived from the vessel exceed all administrative costs, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel, the remaining moneys must be applied to satisfying any liens registered against the vessel.

(4) Any value derived from a vessel greater than all liens and costs incurred reverts to the derelict vessel removal account established in RCW [79.100.100](#).

[2002 c 286 § 6.]

#### **RCW 79.100.060**

##### **Reimbursement for costs. (*Effective January 1, 2003.*)**

(1) The owner of an abandoned or derelict vessel is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW [79.100.030](#), all administrative costs incurred by the authorized public entity during the procedure set forth in RCW [79.100.040](#), removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel.

(2) Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity.

[2002 c 286 § 7.]

**RCW 79.100.070**

**Contract with private company/individual. (Effective January 1, 2003.)**

An authorized public entity may enter into a contract with a private company or individual to carry out the authority granted in this chapter.

[2002 c 286 § 8.]

**RCW 79.100.080**

**Chapter not exclusive. (Effective January 1, 2003.)**

The rights granted by this chapter are in addition to any other legal rights an authorized public entity may have to obtain title to, remove, recover, sell, or dispose of an abandoned or derelict vessel, and in no way does this chapter alter those rights, or affect the priority of other liens on a vessel.

[2002 c 286 § 9.]

**RCW 79.100.090**

**Contest custody/reimbursement -- Lawsuit. (Effective January 1, 2003.)**

A person seeking to redeem a vessel that is in the custody of an authorized public entity may commence a lawsuit to contest the authorized public entity's decision to take custody of the vessel or to contest the amount of reimbursement owed. The lawsuit must be commenced in the superior court of the county in which the vessel existed when custody was taken by the authorized public entity. The lawsuit must be commenced within twenty days of the date the authorized public entity took custody of the vessel under [RCW 79.100.040](#), or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

[2002 c 286 § 10.]

**RCW 79.100.100**

**Derelict vessel removal account. (Effective January 1, 2003.)**

(1) The derelict vessel removal account is created in the state treasury. All receipts from [RCW 79.100.050](#) and [79.100.060](#) and those moneys specified in [RCW 88.02.030](#) and [88.02.050](#) must be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account shall be used by the department to reimburse authorized public entities for seventy-five percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. During the 2001-2003 biennium, up to forty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter. In each subsequent biennium, up to twenty percent of the expenditures from the account

may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) If the balance of the account reaches one million dollars as of March 1st of any year, the department must notify the department of licensing and the collection of any fees associated with this account must be suspended for the following fiscal year.

(3) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(4) The department must keep all authorized public entities apprized of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (4) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(5) An authorized public entity may contribute its twenty-five percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

(6) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action.

[2002 c 286 § 11.]

### **RCW 79.100.900**

#### **Severability -- 2002 c 286.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2002 c 286 § 25.]

**RCW 79.100.901**

**Effective date -- 2002 c 286.**

This act takes effect January 1, 2003.

[2002 c 286 § 26.]

**WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW [79.01.471](#)).**

(1) Aquatic lands determined to be state owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental.

[Statutory Authority: RCW [43.30.150](#), 80-09-005 (Order 343), § 332-30-127, filed 7/3/80.]

**WAC 332-30-171 Floating House Moorage**

(a) **Classifying floating house moorage under RCW [79.90.465](#)(2).** In classifying floating house moorage under RCW [79.90.465](#)(2), the department will apply the following rules:

(i) If a floating house moorage site had a floating house moored there under a department lease on October 1, 1984, or if a floating house was moored there for at least three years before October 1, 1984, then the department will classify that site as a water-

dependent use for the purposes of determining rent. Such sites may be referred to as "grandfathered" sites.

(ii) If a floating house moorage site did not have a floating house moored there under a department lease on October 1, 1984, nor for at least three years before October 1, 1984, then the department shall classify that site as a nonwater-dependent use. Such sites may be referred to as "nongrandfathered" sites.

(iii) The classification of a grandfathered or nongrandfathered floating house moorage site applies to the specific aquatic land being utilized for moorage of the floating house, not to the floating house itself.

(iv) The department shall classify each individual floating house moorage slip within a moorage facility as a separate site. This may result in a marina containing both grandfathered and nongrandfathered floating house moorage sites.

(v) If a floating house vacates a grandfathered moorage site and either returns within thirty days or is replaced with another floating house within thirty days, then the moorage site will remain grandfathered.

(vi) If a floating house vacates a grandfathered moorage site and does not return within thirty days, future moorage of that floating house in the same or a different site shall be nongrandfathered, unless the floating house qualifies as a replacement floating house under (a)(v) of this subsection.

(vii) After October 1, 1984, if a grandfathered site ceased or ceases being used for floating house moorage for more than thirty consecutive days, then the site shall no longer be grandfathered.

(viii) When counting the thirty days described in (a)(v) through (vii) of this subsection, the department will exclude any reasonable time needed for repair of the floating house.

(ix) If a lessee redesignates a grandfathered floating house moorage slip within the lease area, consistent with the lease requirements, and notifies the department in advance of where the slip is to be relocated, then the slip will remain grandfathered. However, if a nongrandfathered site has a floating house relocated to it after the effective date of this rule, the site shall not be designated as grandfathered as provided in this subsection, (7)(a)(ix).

(x) If a floating house was moored at a grandfathered site on October 1, 1984, but was relocated to a site authorized by the department so that on the effective date of this rule the floating house is moored at a nongrandfathered site, then the department may classify this new location as a grandfathered site if the floating house meets all of the following criteria:

(A) The floating house was on state-owned aquatic land leased on October 1, 1984, or was on state-owned aquatic lands for three years prior to October 1, 1984;

(B) The floating house was continuously on state-owned aquatic lands from October 1, 1984, until the effective date of this rule, except for any reasonable time needed for repair of the house; and

(C) The department receives, within one year after the effective date of this rule, a request to have the current moorage site classified as a grandfathered site.

(b) **Managing grandfathered floating house moorage.** Floating houses moored in

grandfathered sites that meet all applicable laws and rules, and are consistent with all lease requirements, may remain. The department shall charge the water-dependent rental rate for such moorage.

(c) **Managing nongrandfathered floating house moorage.**

(i) The department may authorize floating house moorage at a nongrandfathered site only if the department determines that the following conditions are met:

(A) All conditions as set forth in this section;

(B) The specific sites and circumstances for floating house moorage have been identified in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and

(C) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.

(ii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection, but the site is authorized by a department lease and the floating house and moorage meet all conditions as set forth in this section and is consistent with all lease requirements, then the floating house may remain until the termination of the lease or one year after the effective date of this rule, whichever is later. Thereafter, unless at that time the floating house meets the conditions in (c)(i) of this subsection, the floating house must vacate the nongrandfathered site.

(iii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection and is not authorized by a department lease, then the floating house must vacate the site within one year from the effective date of this rule, unless at that time it meets the conditions in (c)(i) of this subsection and the department chooses to grant a lease.

(iv) For nongrandfathered floating house moorage sites, the department shall charge the nonwater-dependent rental rate. If a leased area contains both nongrandfathered floating house moorage along with grandfathered floating house moorage or other water-dependent uses, then the nonwater-dependent rental rate shall be applied to a proportionate share of any common areas used in conjunction with the nongrandfathered floating house moorage, including, but not limited to, docks, breakwaters, and open water areas for ingress and egress to the facility.

(8) **Open water moorage.** For the purposes of this section, open water moorage and anchorage areas are defined in WAC [332-30-106](#)(45).

(a) Vessels used for residential use and floating houses shall be moored, anchored, or otherwise secured only at a marina, pier, or similar fixed moorage facility that is connected to the shoreline, or in open water moorage and anchorage areas described under WAC [332-30-139](#)(5) and subject to the restrictions therein. Vessels used for residential use and floating houses shall not be moored, anchored or otherwise secured in open waters above state-owned aquatic lands away from a fixed moorage facility that is connected to the shoreline, nor be moored, anchored, or otherwise secured to any natural feature in the water or on the shoreline, except within an open water moorage and anchorage area. A vessel used for residential use or floating house may moor in areas

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prohibited by this subsection (8)(a) when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(b) Any vessel used for residential use or floating house that is moored on state-owned aquatic lands on the effective date of this rule, and complies with all other applicable laws and all lease requirements, but does not comply with (a) of this subsection, may remain until one year after the effective date of this rule or until the termination date of the existing department lease, whichever is later. Thereafter, unless at that time it meets the conditions in (a) of this subsection, the vessel used for residential use or floating house must vacate the site. The department shall not authorize or reauthorize any moorage for vessels used for residential use or floating houses that do not comply with (a) of this subsection.

[Statutory Authority: RCW [79.90.455](#), [79.90.460](#). 02-21-076 (Order 710), § 332-30-171, filed 10/17/02, effective 11/17/02.]