

Title 11
HARBORS AND DOCKS

Chapters:

11.04 Valdez Small Boat Harbor

Chapter 11.04
VALDEZ SMALL BOAT HARBOR

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11.04.010 Purpose.

A. The purpose of this chapter is to protect and preserve the lives, health, safety and well being of the people of the city who have property in, or use or work upon the vessels using the facilities of, the Valdez Small Boat Harbor and the Port, or who make sales and deliveries of goods and merchandise to vessels therein, or who use such facilities in the course of visits for commercial or pleasure purposes; to protect the property of such vessel owners by regulating the harbor and its facilities to insure the widest public use thereof; to prevent the maintenance of nuisances, fire and health hazards; to make reasonable charges for the use of certain facilities to enable the city, insofar as possible, to pay the costs of maintenance, operation and supervision of the Valdez Small Boat Harbor facilities from the revenues derived therefrom; that all of the provisions of this chapter shall be liberally construed for the accomplishment of the purposes of promoting the general welfare, and of operating upon a nonprofit basis a public utility consisting of public wharves and appurtenances.

B. It is declared to be the intent of this chapter to favor the use of the facilities of the small boat harbor by commercial fishermen, pleasure craft and by the general public at large. It is further the intent of this chapter to prevent and discourage the use of the facilities of the small boat harbor by vessels which have been abandoned by their owners to the point of becoming derelicts, or becoming a charge and nuisance to the city and the general public, or which are not used, or are not fit to be used regularly for transportation on the water. (Ord. 98-07 § 1 (part))

11.04.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Abandoned property” means personal property which is unattended and is either not registered with the harbormaster or not in a location the harbormaster has designated for its storage.

“Aircraft” means aircraft of every kind or description which are able to alight upon or take off from water.

“Anchor” means to secure a vessel to the bed of a body of water by dropping an anchor or anchors or by using a buoy or other ground tackle.

“Commercial enterprise” means any profession, trade, occupation or calling carried on for a profit or livelihood, including every kind of business, and including the operation of games, machines or mechanical devices.

“City” means the city of Valdez.

“City manager” means the city manager for the city or the designee of the city manager.

“City port director” means the port director for the city or the designee of the port director.

“City treasurer” means the city treasurer for the city or the designee of the city treasurer.

“Derelict” means any vessel which is or appears to be forsaken, abandoned, deserted or cast away, or which, in the opinion of the harbormaster, is unsound, unseaworthy or unfit for its trade, occupation or use.

“Distress” means a state of disability or a present or obvious imminent danger which if unduly prolonged could endanger life or property.

“Dock” means any pier, float, slip, wharf, finger, ramp, gangway, bulkhead, dolphin or sea wall within the small boat harbor that is owned or operated by the city.

“Emergency” means a state of imminent or proximate danger to life or property in which time is of the essence.

“Harbormaster” means the harbormaster for the city, the assistant harbormaster, or other designee.

“Loading zones” means all of the approaches, and designated areas of the floats, when suitably posted and marked, which are to be used only by the general public, without charge, for the purposes of actively loading and unloading of supplies, equipment, stores and passengers.

“Moor” means to secure a vessel other than by anchoring.

“Moorage” means the process of mooring or the state of being moored and, when the context requires, the fees for such acts imposed by this chapter.

“Nuisance” means a derelict vessel, a vessel which is not kept and regularly pumped free of excess water inside its hull, a vessel which is submerged, grounded, disabled, or in immediate danger of sinking, or a vessel which, in the opinion of the harbormaster, creates or constitutes a fire, health, safety or navigation hazard. A vessel shall be presumed to constitute a nuisance if:

1. The vessel is obstructing a waterway or is endangering life or property and has been left unattended for a continuous period of twenty-four hours; or
2. The vessel has been moored, anchored or otherwise left in the small boat harbor and:
 - a. The vessel’s state registration number or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the United States Coast Guard, the state of Alaska, or the small boat harbor; or
 - b. The last registered owner of record disclaims ownership and the current owner’s name or address cannot be determined, or the vessel identification number or other means of identification have been obliterated or removed in a manner that nullifies or precludes reasonable efforts to locate or identify the owner; or
 - c. The Coast Guard, the state of Alaska, or the small boat harbor contain no record of the vessel ever having been registered or documented, and the owner’s name cannot be determined; or
 - d. The vessel does not clear the small boat harbor under its own power at least three times per year.

“Owner” means the registered owner of a vessel or a person authorized to act on behalf of the owner. The following persons are presumed to have authority to act on behalf of the owner of a vessel:

1. The master or operator of the vessel;
2. A person entrusted with the management of the vessel; and
3. An officer or agent appointed by (a) the owner, (b) the caretaker, or (c) an agreed buyer in possession of the vessel.

“Person” means any natural person, partnership, corporation or governmental agency. A natural person and a corporation may be considered the same if the former has control over the latter.

“Qualifying interest” in a vessel means the interest of a person who owns the vessel or, under the provisions of a written charter or lease, has exclusive control over the operation and navigation of the vessel.

“Reserved moorage” means a specific assigned slip the use of which, after payment of annual mooring fees, takes precedence over the use of the slip by any other vessel.

“Small boat harbor tariff” means all fees, charges or rentals for space, storage or services in the small boat harbor as established by city council through resolution which may be revised or changed from time to time. Payment of any such fee, charge or rent does not grant an exclusive mooring or storage privilege.

“Slip” means a vessel’s berth between two piers or floats.

“Trailer” means any movable cradle, structure or device used for moving vessels into or out of the water or used for the storage of vessels.

“Transfer of cargo” means all types of loading, unloading, transfer and containerization of any kind of cargo including, but not limited to, fish, shellfish and other fish products.

“Transient” means any vessel using the mooring space on a temporary basis or which does not have a specific permanent/reserved mooring space.

“Valdez Small Boat Harbor” means that area in the city (of tideland and submerged lands) dredged and constructed as a vessel harbor (by the U.S. Corp of Engineers, the state of Alaska and the city of Valdez), together with its breakwaters, dolphins, docks, wharves, floats, ramps, gridirons, utilities, land storage areas, parking areas, loading areas, approaches and appurtenances, and all support facilities, additions and improvements thereto.

“Vessel owner” or “owner” means the actual or registered owner, master, managing agent, person in navigational control of or other person responsible for the operation or maintenance of a vessel constructed and maintained for the primary purpose of navigating waterways.

“Vessels” means every vessel, ship, vessel, skiff and watercraft of every kind and description. (Ord. 98-07 § 1 (part))

11.04.030 Administration of small boat harbor facilities.

A. The government of the Valdez Small Boat Harbor facilities, and all additions and improvements thereto, whether or not contiguous to the present facilities, shall be under the exclusive jurisdiction of the city council. The Valdez ports and harbor commission shall have the power and authority to initiate studies, investigate complaints and recommendations, review tariffs, policies and procedures, and otherwise process business relating to the improvement, maintenance and operation of the small boat harbor, and upon making its findings thereupon to make recommendations to the city council for final action and decision. The daily administration of the small boat harbor shall be the responsibility of the city manager who shall appoint a harbormaster and assistants as required to maintain, supervise and manage the small boat harbor facilities. (Ord. 98-07 § 1 (part))

11.04.040 Harbormaster—Powers and duties.

A. Appointment. The city manager shall appoint a harbormaster.

B. Duties. The harbormaster shall, under the supervision of the city manager:

1. Administer the small boat harbor with the powers provided by this chapter;
2. Enforce this chapter, issue and enforce regulations for the operation and use of the small boat harbor that are not inconsistent with this chapter, and enforce the terms and conditions of the small boat harbor tariff;
3. Promptly report to the appropriate enforcement entity the violation of any law pertaining in any way to navigable waters or port/small boat harbor facilities including; but not limited to, laws for the protection of navigation and the preservation of navigable waters;
4. Promptly report to the appropriate enforcement entity the violation of any law pertaining to the disposal of hazardous or waste materials and promptly furnish information as necessary to assure that such improper disposal ceases and any nuisance is abated;
5. Collect small boat harbor fees and charges and maintain and operate an accounting system to collect small boat harbor fees and charges that meet with the approval of the city finance department and that will satisfy all controls as may be deemed necessary by the city’s annual audit;
6. Record in a proper register the name, length, draft, beam, type, and identification number, location of each vessel

moored in the small boat harbor, as well as the names and addresses of each vessel's registered owner(s); and

7. In the performance of such duties have the power and authority to issue citations for municipal code violations occurring under Chapter 11.04 of this code.

C. Rules and Regulations. The harbormaster shall submit reports required by the city manager, who shall submit recommendations concerning new rules and regulations to the ports and harbor commission to ensure effective operation of the small boat harbor facilities.

D. Refusal of Moorage Facilities. The harbormaster may, in his discretion, refuse mooring facilities to boathouses, floats, scows, rafts, piledrivers and other cumbersome floating structures, or to any vessel or floating structure which is or may become, or may create a hazard or otherwise become a menace to the safety and welfare or other vessels and their occupants.

E. Assignment of Stalls and Storage Spaces. The harbormaster shall supervise and manage the assignment of all slips and storage spaces to optimize use of the small boat harbor facilities; and, he may from time to time, in his discretion, in the interests of safety, order, convenience or health, require the owner of any vessel to change from one stall or storage space to another, and may himself move or cause to be moved any vessel which is unoccupied or in violation of this chapter.

F. Posting. The harbormaster, with the approval of the city council, shall have the duty and the exclusive power to post signs and to thereby designate the limit of harbor speeds, classification and use of harbor areas, the numbers designating stalls and such other signs and notices as would inform the public at large and all vessel owners of authorized and prohibited uses of the small boat harbor facilities.

G. Traffic Direction. The harbormaster and his assistants are authorized to direct all waterborne traffic, either in person or by means of visible or audible signal in conformance with the provisions of this chapter; provided, that where necessary to expedite waterborne traffic, or to prevent or eliminate congestion or to safeguard persons or property, the harbormaster or his designee, or in the event of a fire or other emergency, such officers and other authorized officers of appropriate governmental agencies or authorities, may direct waterborne traffic as conditions require, notwithstanding provisions of this chapter.

H. Moving Vessels. After reasonable attempts are made to contact the vessel owner, the harbormaster may move or cause to be moved any vessel on which no person is aboard which is in violation of this chapter, or from which moorage or other fees are delinquent, or which is a derelict, a nuisance or abandoned.

I. Authority of Harbormaster to Board Vessel. The harbormaster, or his designee, shall request permission to board any vessel moored in the harbor at any time to inspect same for compliance with this title. In the event of a fire or other emergency affecting the safety of persons and property in the small boat harbor, the harbormaster may board, move, replace inadequate mooring lines on, remove snow from, pump water from, and take any other action to prevent loss of life or property with respect to any vessel in the small boat harbor.

J. Aid. In order to render aid to distressed persons and vessels in the small boat harbor, the harbormaster and any assistants and any police officer of the city shall have the authority to:

1. Perform any and all acts necessary to rescue and aid persons, and protect and save property;
2. Take charge of and protect all property saved from marine disasters until such property is claimed by persons legally authorized to receive it, or until otherwise disposed of in accordance with this chapter or other pertinent ordinances or applicable regulations. (Ord. 01-02 § 1; Ord. 98-07 § 1 (part))

11.04.050 Limitation of liability.

A. The authority granted to the harbormaster pursuant to this chapter shall not create any obligation or duty requiring the harbormaster to take action to protect or preserve any vessel or property located within, or utilizing, the small boat harbor.

B. The city does not accept control of vessels or other property moored or stored in the small boat harbor. When the city assigns moorage space to a vessel or assigns storage space to a vessel or other property, the city is not accepting possession or control of the vessel or other property. Unless the vessel or other property is formally impounded by the city, the vessel or other property shall at all times remain in the exclusive possession and control of the owner of said property and the city is not acting, and shall not be held liable in any manner, as a warehouseman or a bailee.

C. The city shall not be liable for any loss or damage resulting from use of the small boat harbor or any small boat

harbor facility from any cause whatsoever, except and to the extent solely caused by the city's own negligence or intentional misconduct. The city disclaims any and all other liability, whether for negligence or other tort, in contract or otherwise, and specifically disclaims any warranty of whatsoever kind or nature including, but not limited to any warranty of workmanlike service or performance. The liability of the city for damages caused solely by its own negligence or intentional misconduct shall be limited to the reasonable cost of repairing the vessel or other property that was moored or stored in, or making use of, the small boat harbor or small boat harbor facilities. The owner of the vessel or other property assumes all responsibility for any and all other claims or damages otherwise resulting, including, but not limited to, claims by owners or third parties for property damage, personal injury or death, pollution or discharge of a polluting or hazardous substance (together with clean-up, removal and remediation of same), as well as any direct, indirect, special, consequential or commercial damages, claims for loss of profits or earnings, or other claims or damages of whatever kind or nature.

D. Each owner of a vessel or other property moored or stored in, or making use of the small boat harbor or small boat harbor facilities, releases and agrees to defend, hold harmless and indemnify the city and its officers, employees and agents from and against any and all losses, claims, demands, actions, damages, liabilities or expenses of every kind, character and nature whatsoever (including, but not limited to, personal injuries, death, environmental contamination, property damage or employee liability) arising out of, resulting from, or in any way related to use of the small boat harbor by the owner or owner's agent, employees, invitees, guests or passengers, except where liability for same is caused solely by the city's own negligence or intentional misconduct. Defense shall include payment of actual attorney's fees and costs. The owner waives any right of subrogation against the city which might otherwise arise upon payment of a loss by owner's insurers. (Ord. 98-07 § 1 (part))

11.04.060 Moorage, storage fees and terms.

A. Every vessel owner desiring to guarantee the availability of a mooring space by reserving a slip or to moor temporarily at any vacant slip shall apply therefor to the harbormaster. No such slip shall be used until so reserved or assigned and the appropriate fee therefor is paid in advance and a rental agreement is executed. Possession of a reservation for a specific slip does not imply or guarantee to the holder any right to exclusive use of such slip for the duration of the reservation. Possession of a reservation is a guarantee that the reserved slip shall be available for the use of the holder of the reservation during those periods when the subject vessel is within the small boat harbor and that the reserved slip shall not be used by other than the reservation holder except:

1. At any time that the holder's vessel will be absent from the slip, it may be utilized by the harbormaster for temporary assignment of other vessels.

2. In the event that the holder of a slip reservation returns to the small boat harbor facilities earlier than scheduled, the holder shall contact the harbormaster. The harbormaster shall cause the vessel temporarily assigned to the reserved slip to be moved to another location.

3. The harbormaster shall inform transient users of the absent holder's reservations that the use shall continue only for the duration of the holder's absence, and that the harbormaster is authorized to move the temporarily assigned transient vessel to another location upon return of the holder's vessel. The user shall inform the harbormaster as to where the user can be contacted.

B. Reservation of small boat harbor moorage or storage space shall be accomplished by providing all required information on the moorage agreement form. The vessel owner shall furnish all information required on the moorage agreement form and shall provide the name and address of the vessel owner to which notices shall be sent concerning the vessel. The assignment shall be for a particular vessel, indicated by its Coast Guard identification, length, make or manufacturer, and other identifying information as required by the harbormaster. Such assignment of a slip or space to a specific vessel obligates that vessel and its owner for payment of all rentals, fees or charges incurred. The person signing the space assignment form shall also thereby be obligated for payment of all rentals, fees or charges incurred, whether or not the person is the owner of the vessel identified in the moorage agreement. No vessel other than that vessel to which the space is assigned may use that space without specific written permission from the harbormaster. A copy of the moorage agreement form will be provided to the person in whose name the space is reserved.

C. All fees, charges or rentals for space, storage or services in the small boat harbor are established by city council through resolution which may be revised or changed from time to time. All fees, charges or rentals for space, storage or

services in the small boat harbor will be reviewed by the ports and harbor commission on a biennial basis. Payment of any such fee, charge or rent does not grant an exclusive mooring or storage privilege.

D. All moorage rental is due and payable to the city prior to commencing use of the space. The due date for all annual moorage rentals shall be established by resolution of the city council. Fees for other services shall be paid in advance, except fees for emergency services which shall be due and payable upon billing by the city.

E. Slip Transfer. Moorage space shall not be assigned or transferred by the holder thereof and does not transfer with the sale or disposition of the vessel. Moorage space shall not be involuntarily assigned or transferred by operation of law except as expressly provided in this title. In the case of death of a reserved moorage space holder, the moorage space may be transferred to the heir or devisee of the space holder who receives ownership of the vessel by transfer per the terms of the will, or if no will is in effect at the time of death, a transfer via intestate successions to a family member pursuant to Alaska Statutes.

F. Refunds. Refunds are not automatically available to vessels departing the small boat harbor. Only vessels that no longer require transient or reserved moorage may receive a refund. If a vessel owner desires a refund of prepaid moorage, the vessel owner must make a request, in writing, to the harbormaster. Refunds shall be disbursed as follows:

1. Daily Moorage Fees. Refunds for prepaid daily moorage will be limited to the unused moorage days.

2. Monthly Moorage Fees. Refunds for prepaid monthly moorage will be limited to the original payment made minus the applied daily rate for actual moorage days used.

3. Annual Moorage Fees. If a request for a refund is made within the first ninety days of the term, the refund for prepaid annual moorage will be limited to the original payment made minus the lesser of the applied daily rate for actual moorage days used.

G. Moorage Wait List. If there are more applications received than there are spaces available, the harbormaster shall establish a reserved moorage wait list. A nonrefundable annual fee shall be required to place an application on the list and to maintain the list. Applications will be placed on the list in the order in which they are received. The applicant shall promptly notify the harbormaster of any changes in the information set forth on the application. Wait list priority may not be transferred except between husband and wife or to an applicant's heir or devisee upon death. If an applicant chooses not to accept a reserved moorage space when offered, does not have a vessel suitable for the space, or does not respond for a notice of availability within thirty days, his application shall be moved to the bottom of the moorage waiting list. Once the vessel owner has been notified of the availability of a slip he must provide proof of vessel ownership and a completed vessel moorage agreement to the harbormaster's office. Failure to do so will result in the vessel owner's application being moved to the bottom of the moorage waiting list.

H. Residential Vessel Registration. Residential vessels shall register as such at the small boat harbor office. Residential vessels are those vessels which are used as a dwelling while moored at the small boat harbor facility. Vessels which are only occasionally and incidentally used as a dwelling shall be excluded from this requirement. Vessels which are used for commercial purposes and which house crew members shall be considered residential vessels. (Ord. 02-06 § 1; Ord. 98-07 § 1 (part))

11.04.070 Fees or charges for performance of certain acts by the city.

A. The city may from time to time, but without any obligation or duty to do so and without any liability on its part for failure to do so, render emergency and such other services to vessels that the harbormaster deems necessary for the purpose of protecting that vessel, other vessels, or the Valdez Small Boat Harbor. Such services include, but are not limited to, replacement of defective mooring lines, pumping vessels, removing snow, moving vessels, and any other act or service deemed necessary by the city. The city will render emergency service only, and will not furnish regular services or maintenance to vessels.

B. If practical under the circumstances, the city shall give, or attempt to give, notice to the vessel owner of the immediate need for service. Regardless of notice or lack thereof, the holder of the reserved space, as indicated on the moorage agreement, and the owner of the vessel shall be obligated to pay the city the fee or charge established for the action required. (Ord. 98-07 § 1 (part))

11.04.080 Safe condition of vessel.

A. To remain qualified for a slip or storage space, a vessel must be seaworthy, must be equipped in accordance with Section 11.04.090 and must have sufficient motive power to permit the vessel to be maneuvered and controlled safely in and out of the small boat harbor under wind and water conditions which are not unusual and which do not constitute a hazard to small craft.

B. Whenever the harbormaster has probable cause to believe that a vessel is not qualified under the conditions of this section, he may require, upon seventy-two hours notice to the owner of any such vessel, that such vessel demonstrate that it is or remains qualified. An exception shall be made where repairs are being diligently pursued or where other extenuating circumstances prevent demonstration of qualification, but such exception shall be for only a reasonable time, considering the circumstances.

C. The harbormaster may refuse a slip or storage space to any vessel which does not qualify under this section of the code. It shall be a condition of every moorage agreement that any vessel authorized to moor at a slip or be stored in the small boat harbor shall remain qualified so long as it remains in the small boat harbor. The harbormaster may cancel the moorage agreement for any slip or storage space which is occupied by a vessel which is authorized to occupy such space, but which vessel is not qualified in accordance with this section. Upon failure of vessel to qualify, the harbormaster may require, upon notice to the vessel owner, that the moorage agreement be canceled and that such vessel be removed from the small boat harbor within not less than one week. Any such vessel remaining after the time specified in the notice shall be subject to impoundment or removal as a nuisance.

D. Every vessel must clear the small boat harbor under its own power on at least three occasions each year. Two such occasions must be not less than three months nor more than six months apart. Failure to comply with this subsection shall raise a presumption that the vessel is not qualified. (Ord. 98-07 § 1 (part))

11.04.090 Required equipment.

All vessels shall carry the equipment required by any applicable United States or state of Alaska laws or regulations as now or hereafter amended, and shall be numbered or designated in accordance with any applicable United States or state of Alaska laws or regulations as now or hereafter amended. In the absence of extenuating circumstances, failure of any vessel within the small boat harbor to comply with applicable United States or state of Alaska laws or regulations shall be in violation of this chapter. (Ord. 98-07 § 1 (part))

11.04.100 Unpaid fees and charges.

Unpaid rentals, charges and fees for space and services in the Valdez Small Boat Harbor shall be a personal liability of the vessel owner, holder of the reserved space, and person who incurred the charge. In addition to being a personal liability, these fees, charges and rentals constitute a lien on the vessel and should any such unpaid fees and charges be unpaid or unsecured for thirty consecutive days after due, the moorage agreement may be terminated. Any vessel upon which such charges or fees have accrued may be impounded and sold by the harbormaster for the unpaid charges and fees under the provisions of Section 11.04.110. Interest on delinquent fees and charges shall accrue interest at the rate established under the provisions of Section 3.04.070. (Ord. 98-07 § 1 (part))

11.04.110 Determination of involuntary relinquishment.

A. Right to Notice. The city shall give at least twenty days' written notice of its intent to declare the involuntary relinquishment of moorage space.

B. Content of Notice. A notice of involuntary relinquishment shall be prepared by the harbormaster and shall contain:

1. The name and address of the user or holder of the moorage space last appearing in the records of the harbormaster;
2. A statement that the city intends to declare the moorage space involuntarily relinquished if corrective action is not taken within twenty days from the date the notice is mailed/posted;
3. The reason for the anticipated action;
4. The owner's right to a hearing and the manner in which a hearing can be requested; and
5. The name, address and telephone number of a person at the city to contact in case of questions.

C. Distribution of Notice. The notice of involuntary relinquishment shall be:

1. Mailed by certified mail, return receipt requested, to the user or holder of the moorage space at the user's or holder's

last known address. The notice is effective when mailed. If the harbormaster cannot determine the address of the user or holder of the moorage space, notice shall also be published at least once in a newspaper of general circulation in the city;

2. Posted at or near the moorage space in question, in the harbormaster's office, at City Hall, and in a United States post office in the city.

D. Demand for Hearing. The user or holder of the moorage space which the city intends to declare involuntarily relinquished may obtain a hearing before the ports and harbor commission to determine whether there is probable cause for involuntary relinquishment by filing a written demand with the city clerk within twenty days from the date of the notice.

E. Hearing Procedure. The hearing shall be conducted within twenty working days of receipt of a timely written demand from the person seeking the hearing, unless such person waives the right to a speedy hearing. Saturdays, Sundays and city holidays are to be excluded from the calculation of the twenty working day period. The sole issue before the commission shall be whether there is probable cause to declare that the moorage space was involuntarily relinquished. "Probable cause to declare the moorage space involuntarily relinquished" means such a state of facts as would lead a reasonable person exercising ordinary prudence to believe there are grounds to find that the moorage space has been involuntarily relinquished. The commission shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The harbormaster shall have the burden of establishing a preponderance of the evidence that there is probable cause to declare that the moorage has been involuntarily relinquished. Failure of the user or holder of the moorage space to request or attend a scheduled hearing shall be deemed a waiver of the right to such hearing. In the event the commission fails to meet within the prescribed time, the matter shall be heard by the city council at its next regularly scheduled meeting.

F. Decision. Within five working days after the conclusion of the hearing, the commission shall prepare a written decision which shall only determine whether probable cause to declare the moorage space involuntarily relinquished exists. A copy of the decision shall be provided to the user or holder of the moorage space and the harbormaster.

G. Appeal to the City Council. An appeal from the decision of the ports and harbor commission may be taken by either the user or holder of the moorage space or the harbormaster to the city council. The appeal must be filed with the city clerk within ten days of the date of the commission's decision. The sole issue to be determined by the city council shall be whether there is probable cause to declare that the moorage space has been involuntarily relinquished. The appeal shall be conducted in accordance with Section 11.04.110(E) and (F).

H. Action after Decision. In the event the ports and harbor commission or the city council, if an appeal is taken, determines there is probable cause to declare that the right to the moorage space has been involuntarily relinquished, the harbormaster may eject, remove or require the removal of the vessel from the moorage space and assess charges for such removal in the same manner as ordinary services, and reassign the moorage space without compensation to the prior moorage holder. Moorage fees cease accruing on the date the vessel actually ceases to occupy a moorage space in the small boat harbor. (Ord. 99-03 § 1 (part))

11.04.120 Derelict, nuisance, unseaworthy, wrecked and sunken vessels.

A. No person may bring into or keep within the small boat harbor facilities or property a vessel that is derelict or a nuisance, or in the opinion of the harbormaster, is so unseaworthy or in such a deteriorated condition that it may sink, become a hazard to navigation, or damage docks, floats or other vessels, except as required in an emergency, but only for so long as required by the emergency.

B. In the event a vessel is wrecked or sunk within the small boat harbor, it shall be the owner's responsibility to immediately notify the U.S. Coast Guard and harbormaster, to mark the vessel's position and provide for the raising and disposition of such vessel as soon as reasonably possible, and the owner shall assume all liability for damage to persons or property located in the small boat harbor which is caused by the vessel.

C. Other Nuisances. Refuse of all kinds, structures or pieces of any structure, dock sweepings, dead animals or parts thereof, timber, logs, piles, broom sticks, lumber, boxes, paint, empty containers and oil of any kind floating uncontrolled on the water, and all other substances or articles of a similar nature are declared to be public nuisances, and it is unlawful for any person to throw or place in or cause or permit to be thrown, or place any of the above-named articles or substances in the vessel harbor or upon the shores thereof or in such position that the same may or can be washed into the vessel harbor either by high tides, storms, floods or otherwise. Nets, gear and other material left on any float or dock for

more than ninety-six hours is declared a nuisance. Any person causing or permitting the nuisances to be placed as aforesaid shall remove the same and upon failure to do so, the same may be removed or caused to be removed by the harbor master. When the harbor master has authorized such nuisances to be removed and stored, all costs of such removal and any costs of storage shall be paid by and recoverable from the persons creating the nuisance. The abatement of any such public nuisances shall not excuse the person responsible therefor from prosecution for violation of the law.

D. Abatement or Disposal. Nuisances described under this section constituting a clear and present danger to the public health, safety, morals or general welfare may be summarily abated. Vessels declared a nuisance under subsection A of this section which do not constitute a clear and present danger to the public health, safety, morals or general welfare may be removed, impounded, and disposed of as provided in Section 11.04.130. Other nuisances under subsection C of this section may be removed, impounded, and disposed of as provided in Section 11.04.130. (Ord. 98-07 § 1 (part))

11.04.130 Impound proceedings.

A. Property Subject to Impound. The harbor master is authorized to impound abandoned property at any time, and is authorized to impound a vessel under any of the following circumstances:

1. The vessel is within the small boat harbor and is a derelict or a nuisance as defined in this chapter;
2. The fees for which the city has a lien on the vessel are delinquent for a period of three months, or the harbor master has probable cause to believe that the removal of the vessel from the small boat harbor without payment of the delinquent amount is imminent;
3. The vessel is located in the small boat harbor and is in violation of any section of this chapter or any regulation of the small boat harbor or any provision of the small boat harbor tariff; or
4. The owner is not aboard the vessel and the vessel is not properly identified by a name and/or number.

B. Notice to Owner.

1. Right to Notice Before Impoundment. Except as provided in subsection (B)(2) of this section, the city shall give at least twenty days' written notice of its intent to impound abandoned property or a vessel.

2. No Right to Notice Before Impoundment. The city need not give written notice before impoundment, but shall give written notice of impoundment within twenty-four hours after an impoundment where the harbor master determines that the abandoned property's or vessel's presence in the small boat harbor presents an immediate danger to public health or safety; or the harbor master has probable cause to believe that the removal of the vessel from the small boat harbor without payment of the delinquent fees is imminent.

3. Contents of Notice. An impound notice shall be prepared by the harbor master and shall contain:

- a. The name and/or official number or state registration number of the vessel, where applicable;
- b. The location of the abandoned property or vessel;
- c. The name and address, if known, of the owner;
- d. A statement that the city intends to impound, or has impounded, the abandoned property or vessel;
- e. The reason for the anticipated or actual impoundment;
- f. The intended disposition of the abandoned property or vessel if no action is taken within twenty days from the date of the notice;
- g. The owner's right to a hearing and the manner in which to request such a hearing;
- h. The name, address and telephone number of a person at the city to contact;
- i. The procedure for obtaining release of the abandoned property or vessel from impoundment or threat of impoundment;
- j. A statement that the abandoned property or vessel is subject to storage charges once impounded;
- k. If impoundment has already occurred, a statement of the owner's right to obtain immediate release of the impounded property or vessel by posting a bond pending a hearing to determine whether probable cause of impoundment existed, said bond not to exceed the total of all delinquent charges and fees owed the city, including the cost for impoundment and storage.

4. Distribution of Notice. The impound notice shall be:

- a. Mailed by certified mail, return receipt requested, to the last known owner of the abandoned property or vessel at the owner's last known address, to any person who is known by the harbor master to have a qualified interest in the abandoned property or vessel, to all known lienholders, and to any other person designated in the moorage agreement to

receive notices regarding a vessel; provided, however, that notice need not be sent to any person whose interest in a vessel is not recorded with a state department or a federal agency and whose name and address does not appear on the moorage agreement for that vessel. If the harbormaster cannot determine the address of the owner of the abandoned property or a vessel, notice shall be published at least once in a newspaper of general circulation in the city and, in the case of a vessel, shall be mailed to the U.S. Coast Guard documentation officer of the port of documentation, if such port can be reasonably ascertained;

b. Posted on the abandoned property or vessel, in the harbormaster's office, at City Hall and in a United States post office in the city.

C. Hearing.

1. Demand for Hearing. The owner or any other person in lawful possession of the abandoned property or vessel proposed for impoundment has the right to an administrative hearing to determine whether there is probable cause to impound the abandoned property or vessel. The owner or any other person in lawful possession of the abandoned property or vessel that has been impounded has the right to an administrative hearing to determine whether there was probable cause to impound the abandoned property or vessel, provided that the owner or person was not afforded the opportunity for a hearing before impoundment occurred. Any such person desiring a hearing shall file a written demand with the city clerk within twenty days after mailing and posting of the impound notice.

2. Hearing Procedure. The hearing shall be conducted within five working days of receipt of a timely written demand from the person seeking the hearing, unless such person waives the right to a speedy hearing. Saturdays, Sundays and city holidays are to be excluded from the calculation of the five working day period. The hearing officer shall be designated by the city manager and shall be someone other than the harbormaster. The sole issue before the hearing officer shall be whether probable cause to impound the abandoned property or vessel exists. "Probable cause to impound" means such a state of facts as would lead a reasonable person exercising ordinary prudence to believe there are grounds for impounding the abandoned property or vessel. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing has the burden of establishing by a preponderance of the evidence the right to possession of the abandoned property or vessel. The harbormaster or his/her designee has the burden of establishing by a preponderance of the evidence that probable cause to impound the abandoned property or vessel exists. Failure of the owner, or any person in lawful possession of the abandoned property or vessel, to request or attend a scheduled hearing shall be deemed a waiver of the right to such a hearing.

D. Decision. Within five working days after the conclusion of the hearing, the hearing officer shall prepare a written decision. The hearing officer shall only determine whether probable cause to impound exists. A copy of the decision shall be provided to the harbormaster, the person demanding the hearing and the owner of the abandoned property or vessel if the owner is not the person requesting the hearing. The hearing officer's decision shall in no way affect any criminal proceedings in connection with the impoundment in question, and any criminal charges involved in such proceedings may only be challenged in the appropriate court. The decision of the hearing officer is final.

E Impoundment. In the event the hearing officer determines there is probable cause to impound the abandoned property or vessel and impoundment has not already occurred, the harbormaster may proceed immediately with impoundment of the abandoned property or vessel. The harbormaster may impound the abandoned property or vessel by immobilizing it, removing it, or having it removed and placing it in public or commercial storage with all expenses of haul-out and storage and an impound fee to be borne by the owner of such abandoned property or vessel. In the event the hearing officer determines there is probable cause to impound the abandoned property or vessel and a bond has been posted by the owner, the bond shall be forfeited to the city and no further action to impound the abandoned property or the vessel shall be taken.

F. Release From Impound.

1. Upon a hearing officer's decision reversing an impoundment, the abandoned property or vessel shall be released from impoundment without cost to the owner and any bond posted by the owner shall be released to the owner.

2. In the absence of a hearing officer's decision reversing an impoundment, the owner, the representative of an owner, or any person in lawful possession of the abandoned property or vessel may apply to the harbormaster to release the abandoned property or vessel from impoundment at any time before its disposition under this chapter. An application for release from impoundment shall include the following:

a. Proof satisfactory to the harbormaster that the applicant is the owner of the abandoned property or vessel, or, if the

applicant is not the owner, proof satisfactory to the harbor master of the applicant's authority to represent the owner;

b. Either (i) payment of all delinquent moorage or other charges for the abandoned property or vessel, including, but not limited to, applicable interest and penalties, all costs of towing, appraising, impounding and storing the abandoned property or vessel, and all costs incurred for any pending sale of the abandoned property or vessel, or (ii) the posting of a bond or other security pending resolution of an appeal to the superior court, such bond not to exceed the appraised value of the abandoned property or vessel, if known;

c. Proof of arrangements satisfactory to the harbor master for either the removal of the abandoned property or vessel from the small boat harbor, or the placement of the abandoned property or vessel in a location in the small boat harbor approved by the harbor master.

3. The harbor master may not release the abandoned property or vessel from impoundment following application for release under this section if:

a. The harbor master determines that possession of the abandoned property or vessel would be unlawful or would present an immediate hazard to public health or safety; or

b. The harbor master has actual knowledge that ownership or possession of the abandoned property or vessel is in dispute; or

c. The applicant has failed to satisfy the requirement of Alaska Statutes Section 11.04.230(F)(2).

G. Disposition of Impounded Abandoned Property or Vessel.

1. The city shall not dispose of impounded abandoned property or an impounded vessel until thirty days after the date of impoundment under this chapter.

2. Public auction is not required when the appraised value of the abandoned property or vessel, as determined by an independent appraiser, is less than five hundred dollars. The appraiser must have at least one year of experience in the sale, purchase or appraisal of abandoned property or vessels. Upon that determination and after public advertisement has been made once in a newspaper of general circulation, the harbor master may sell the abandoned property or vessel by negotiation, dispose of it as junk, donate the abandoned property or vessel to a governmental agency or destroy it.

H. Public Auction.

1. Notice of Sale. Prior to the sale of any impounded property or vessel, the harbor master shall prepare a written notice of sale of the property or vessel. The notice shall contain:

a. The name and/or official number or state registration number of the abandoned property or vessel, the location of the abandoned property or vessel, and a detailed description of the abandoned property or vessel;

b. The date, time and place of the sale;

c. The fees, interest and costs that are due against the abandoned property or vessel and any bidding terms;

d. A statement indicating to whom payment must be made in order for the owner to redeem the abandoned property or vessel prior to sale; and

e. A statement indicating that the city may purchase the abandoned property or vessel at the sale for an offset bid in the amount of fees and charges due to the city for the abandoned property or vessel.

2. Distribution. At least twenty days before the sale, the notice of sale shall be:

a. Mailed by certified mail, return receipt requested, to the last known owner of the abandoned property or vessel at the owner's last known address;

b. Posted on the abandoned property or vessel, in the harbor master's office, at City Hall, and in a United States post office in the city; and

c. Published in a newspaper of general circulation in the city for a total of two consecutive weeks.

I. Sale.

1. Public Auction. Anytime after the distribution of the notice of sale the abandoned property or vessel may be disposed of by public auction, through oral tenders, or by sealed bids.

2. Bids. The minimum acceptable bid shall be a sum equal to the fees against the abandoned property or vessel, including interest and costs to be paid in cash at the time of sale or within twenty-four hours thereafter. The proceeds of such sale shall be first applied to the cost of sale, including advertising, then to interest owed the city, then to fees accrued and owed to the city, and the balance, if any, shall be held in trust by the city for the owner of the abandoned property or vessel to claim. If such balance is not claimed within two years, the balance shall be forfeited to the city's harbor fund.

3. No Acceptable Bids. If at the public sale there are no acceptable bids for the abandoned property or vessel, the city may destroy, sell at a private sale, or otherwise dispose of the abandoned property or vessel. The disposition is to be made without liability to the owner, any person in possession of the abandoned property or vessel, or any lienholder of the abandoned property or vessel.

J. Effect of Sale. Upon the sale of the vessel, the city shall make and deliver its bill of sale, without warranty, conveying all of the city's interest in the abandoned property or vessel to the buyer. (Ord. 98-07 § 1 (part))

11.04.140 Boat harbor fund.

The city finance department shall maintain a separate account entitled "Valdez boat harbor fund." All mooring rentals and other fees arising out of the operation of the small boat harbor by the city shall be deposited to this fund and used exclusively for such costs of operation, maintenance and supervision of the small boat harbor as the city council may from time to time authorize; except, that when advances are made to such fund by the city general fund, the Valdez Small Boat Harbor fund may reimburse such general fund by approval of the city council. (Ord. 98-07 § 1 (part))

11.04.150 Duties of vessel owners.

A. Every vessel owner using mooring or storage facilities of the boat harbor is required to register his name, telephone number, post office and street address, and the name and number of the vessel, its length, its breadth and registered tonnage, if any, with the harbormaster, on forms to be provided for that purpose, immediately after such vessel enters and moors at any float in the boat harbor.

B. Every vessel owner desiring to moor at a slip or utilize slip vessel storage areas shall apply therefor to the harbormaster. No such slip or space shall be used until so assigned and the rental therefor is paid in advance.

C. In addition to the duties of registering as above provided, every such owner of any vessel using the mooring or other facilities of the boat harbor shall:

1. Use all reasonable precautions in keeping the vessel and adjacent floats in a reasonably clean and sanitary condition, with special attention to pure water and sanitary toilets;
2. Use all reasonable precautions in keeping the vessel free from fire and safety hazards of any type or nature;
3. Use all reasonable effort and precautions in keeping the vessel well secured, securely moored with lines in reasonably fit condition, sufficiently pumped out at all times to keep the vessel afloat and to otherwise attend the needs of the vessel to avoid attention by the harbormaster;
4. Use adequate precautions to lock up and stow and otherwise safeguard all movable gear and tackle;
5. Promptly pay all rentals, charges, fees and taxes assessed or levied according to law upon or against the vessel or its owner, and all rentals and charges for utilities required and ordered by the vessel or its owner;
6. Fully comply with all federal, state and local laws and regulations which pertain to boating requirements, including but not limited to identification procedures, safety devices or equipment and water pollution control;
7. Vessel owner shall provide a local contact person who will act on behalf of owner in his/her absence to insure vessel safety. (Ord. 98-07 § 1 (part))

11.04.160 Violations and prohibited acts generally.

A. No owner or other person in charge of the operation of a vessel using the facilities of the Valdez Small Boat Harbor shall commit any of the following prohibited acts:

1. To operate or cause to be operated any vessel within the limits of the Valdez Small Boat Harbor either in excess of three miles per hour or at such speed as to leave a wake, wash or wave action that can cause damage, endanger or cause undue distress to any other vessel or occupant thereof regardless of established speed limits, whichever is less;
2. To operate or cause to be operated any vessel in a reckless manner in wilful and wanton disregard for the safety of persons or property within the limits of the Valdez Small Boat Harbor;
3. To operate or cause to be operated any vessel in a negligent manner likely to endanger the safety of persons or property within the limits of the Valdez Small Boat Harbor;
4. To dispose of trash, garbage, refuse, human or animal waste, or any similar substance into the water of the harbor or on the harbor grounds, except in receptacles or locations designated by the harbormaster;

5. To release any fuel, oil, or their derivatives into the water or onto the lands of the harbor;
6. To fail to register with the harbormaster any vessel on which stall or space rental is not currently being paid, occupying any of the Valdez Small Boat Harbor facilities;
7. To create or maintain any nuisance within the Valdez Small Boat Harbor facilities, or to conduct or carry on any unlawful business or occupation therein;
8. For any owner or person in charge of any dog or animal to allow or permit such dog or animal to run at large or to be tethered or restrained to any part of a float or dock within the Valdez Small Boat Harbor facilities, or to become a nuisance therein;
9. To deposit, place or leave any cargo, merchandise, supplies, freight, articles or thing upon any float, ramp, decline, walk or other public place in the Valdez Small Boat Harbor facilities, except at such places as may be designated as loading and unloading spaces. Materials used in repairing or rebuilding vessels shall not be stored on any float or dock;
10. To tap, connect, disconnect, interfere with or tamper with any water outlet, water pipe, water connection or any electrical wiring, electrical outlet or electrical device of any kind installed or maintained in the Valdez Small Boat Harbor facilities by the city, or any public utilities, without first having obtained the permission of the harbormaster; or to interfere with or tamper with any wharf, float, gangplank, ramp or any other facility of the Valdez Small Boat Harbor facilities;
11. To write or post any written or printed matter or sign upon any bulletin board constructed or maintained by the city in the Valdez Small Boat Harbor facilities, without first having obtained permission from the harbormaster;
12. To erect, place, post or maintain any advertising matter, sign or other printed matter, other than legal notices, on any part of the Valdez Small Boat Harbor facilities, without approval thereof first being obtained from the harbormaster. All unauthorized advertising and signs shall be removed by the harbormaster;
13. To disregard, deface, remove, tamper with or damage any sign or notice posted or erected by direction of the city council relating to the use of mooring areas or other uses of the Valdez Small Boat Harbor facilities;
14. For a vessel owner who possesses a reservation for a slip or mooring space, to sublease to or in any other manner permit the use of such slip or space to any other vessel owner except as provided in this code;
15. For any user of the small boat harbor to fail to comply with the approved policies and procedures statement.
 - B. Complaints of any violations of such prohibited acts shall be made to the harbormaster, or to the port director, or to any police officer of the city, or to any member of the Valdez ports and harbor commission.
 - C. Children under the age of twelve years of age must be accompanied by an adult when on the docks or floats.
 - D. Operating bicycles, skateboards and rollerblades is prohibited upon any small boat harbor ramp or float.
 - E. Fines shall be levied for violations listed in this section in accordance with the fee schedule established in the small boat harbor tariff.
 - F. All of the provisions of this code and any other ordinances of the city defining offenses and prescribing penalties for the violation thereof are expressly extended to the Valdez Small Boat Harbor facilities. (Ord. 01-02 § 2; Ord. 98-07 § 1 (part))

11.04.170 Use of wharf areas.

The designated wharf areas in the Valdez Small Boat Harbor are to be used only by the general public, without charge, for the purposes of loading and unloading of fisheries products, supplies, equipment, stores and passengers. No vessel shall be moored in such designated areas for any period longer than is reasonably required for such loading and unloading, and no vessel shall be left unattended at such designated areas. Fueling operations will not be permitted within the small boat harbor except at designated fueling facilities. (Ord. 98-07 § 1 (part))

11.04.180 Low sulfur fuel required.

Upon the first occurrence of either: (a) a determination made by Environmental Protection Agency approved monitoring procedures that sulfur dioxide levels anywhere in the city exceed National Ambient Air Quality Standards, or (b) a protection made by Environmental Protection Agency approved methods that existing sulfur dioxide levels, when combined with sulfur dioxide levels expected to be produced by any industry which has made a commitment to locate in the city, will exceed National Ambient Air Quality Standards, then it is thereafter unlawful for any vessel which has gross

weight of more than fifteen thousand tons to pump its ballast tanks while docked or berthed at any dock, port or terminal within the city limits where the fuel used in such pumping has a sulfur content in excess of seven-tenths of one percent. The city manager or his designee shall have the authority to inspect all vessels subject to the terms of this section to determine whether permissible fuel is being used for such pumping operations. (Ord. 98-07 § 1 (part))

11.04.190 Presence in certain areas of container terminal prohibited.

A. No person shall enter or remain in or upon the causeway, trestle, marshalling yard, ramps, or dock of the Valdez container terminal without authorization from the city manager or his designee.

B. The city manager is authorized to post and maintain signs at the Valdez container terminal to advise the public that entry without authorization is prohibited by law. (Ord. 98-07 § 1 (part))

11.04.200 Aircraft in Valdez Small Boat Harbor.

No aircraft, particularly no floatplane, shall land or take off within the confines of the Valdez Small Boat Harbor or from the entrance area between the breakwaters. Any aircraft within those confines shall not be operated in excess of three miles per hour, or at such speed as to leave a wake, wash or wave action that can damage, endanger or cause undue distress to any other vessel or occupant thereof regardless of established speed limits, whichever is less. (Ord. 98-07 § 1 (part))

11.04.210 Use of harbor—Implied agreement.

The mooring, use or presence of any vessel within the boat harbor shall constitute an agreement by the owner, operator, master and managing agent of the vessel to conform to the provisions of this chapter and any amendments, and any rule, regulation or order made pursuant thereto. (Ord. 98-07 § 1 (part))

11.04.220 Smoking prohibited on docks, ferry slips, etc.

No person shall smoke in or about the municipal dock and ferry slip of the city, nor in or on any approach, entrance, exit or appurtenance thereto. The city may designate such areas within the dock and port area where smoking may be permitted, which areas shall be clearly designated as such by appropriate signs. (Ord. 98-07 § 1 (part))

11.04.230 Igniting of combustible materials on docks, etc.

No person shall ignite or cause to be ignited any combustible material in or upon the municipal dock and ferry slip, or in or on any approach, entrance, exit or appurtenance thereto, but this provision shall not apply to the operation of internal combustion engines of any type. (Ord. 98-07 § 1 (part))

11.04.240 Pollution control.

All vessels will comply with applicable local, state and federal regulations. (Ord. 98-07 § 1 (part))

11.04.250 Commercial enterprises.

A. Commercial businesses, enterprises or activities will not be allowed within the small boat harbor facilities, or from vessels within the small boat harbor. This should not be construed as an absolute prohibition of any type of commercial transaction in the Valdez Small Boat Harbor conducted on an occasional basis, but rather a prohibition of business enterprises locating and operating in the boat harbor. A commercial fishing vessel, charter boat operators, fishing vessels when selling or distributing fish or other products of the sea and water craft rental would not be considered a commercial business enterprise. (Ord. 98-07 § 1 (part))