

Meeting Date: 11/18/2014

Report Type: Consent

Report ID: 2014-00842

Title: (Pass for Publication) Ordinance Repealing and Adding Chapter 8.112 of the Sacramento City Code Relating to Boating

Location: Citywide

Recommendation: 1) Review an Ordinance repealing and adding Chapter 8.112 of the Sacramento City Code relating to boating; and 2) pass for publication the Ordinance title as required by Sacramento City Charter 3 (c) to be considered on December 2, 2014.

Contact: Kathy Lester, Police Captain, Central Command, (916) 808-0854; William Champion, Police Captain, Contract Services, (916) 808-4500, Police Department

Presenter: None

Department: Police

Division: Central Command

Dept ID: 11001171

Attachments:

1-Description/Analysis

2-Ordinance (Clean)

City Attorney Review

Approved as to Form

Michael Fry

11/6/2014 4:33:58 PM

Approvals/Acknowledgements

Department Director or Designee: Sam Somers - 10/30/2014 11:11:04 AM

Description/Analysis

Issue: The Sacramento Police Department is recommending repealing and completely replacing Chapter 8.112 of the Sacramento City Code relating to boating within the waterways of the City of Sacramento. The rivers are navigable waterways and subject to regulation by the state and federal governments. However, California Harbor and Navigation Code section 660(a) states a local jurisdiction may adopt an ordinance pertaining to “time of day restrictions, speed zones, special use areas, and sanitation and pollution control.” Mooring and anchoring have typically been deferred to local jurisdictions since the regulations address sanitation and pollution control.

The City Code, as it is currently written, is unenforceable with regard to long-term anchoring. For example, the current ordinance states that a person cannot anchor for more than 6 hours in one location for 30 days or more within a 90-day period. Unless someone is watching the vessel the entire time, the current ordinance makes enforcement of long-term anchoring impractical. Moreover, to avoid a potential violation, all a vessel has to do is drift a few feet and it is no longer in the same location.

Recently, the Marine Unit of the Sacramento Police Department has experienced an increase in long-term anchoring by vessels within the waterways of the Sacramento and American Rivers. Several vessels are owner-occupied, in poor condition, and in need of repair. Many of these boat owners also engage in other harmful activities that are difficult to enforce unless actually observed, such as illegal dumping, discarding garbage, and polluting the waterways. Additionally, many of these vessels are in such poor condition that they are unable to quickly move under their own power and present significant hazards to other boaters or emergency response vessels. The City’s existing ordinance for oversight of long-term anchoring does not adequately address vessels that travel up and down the rivers without utilizing a boat slip, dock or marina berth to pump out their waste water. As a result these vessels often discharge their raw sewage directly into the river resulting in contamination to the environment.

As a result, the Sacramento Police Department proposes to replace the current City boating ordinance with a revamped and revised boating ordinance to ensure it contains an updated definition of terms and represents a more comprehensive application to individuals who choose to use the American River and the Sacramento River to moor or anchor their vessels.

Policy Considerations: The City of Sacramento has a long standing commitment to protect its residents including the public’s interest in preserving and promoting the City’s use and access to its waterways. To ensure the commitment to protecting the public’s health, safety, and access in this regard, the proposed changes to the City Code will enhance enforcement efforts against prohibited activities and bring the ordinance up to date to reflect current municipal practices concerning boating.

Economic Impacts: N/A

Environmental Considerations: This project is exempt from CEQA because it concerns law enforcement activities by peace officers and it does not have the potential for causing a significant impact on the environment. (CEQA Guidelines §§ 15061(b)(2), 15061(b)(3), and 15321(b).)

Sustainability: There are no sustainability considerations applicable to repealing and replacing the City Code relating to boating.

Commission/Committee Action: On October 8, 2014, the Law and Legislation Committee approved and forwarded to City Council an ordinance repealing and adding Chapter 8.112 of the Sacramento City Code relating to boating.

Rationale for Recommendation: The purpose of repealing and replacing Chapter 8.112 of the City Code is to update and modernize the ordinance in order to enhance the safety of owners and operators of vessels using the City's waterways. The modified City Code will require vessels identified as being non-compliant with anchoring requirements, to either return to an authorized mooring or anchoring location or else leave the city limits after being at anchor for 96 consecutive hours. These changes are designed to increase public safety, curtail instances of improperly discharged waste, sewage, and graywater, and provide methods to try and remove dangerous, derelict, or unseaworthy vessels from the waterways.

Financial Considerations: There is no financial impact associated with implementing the proposed changes. An appeal fee may be required for individuals who wish to appeal the notice and order issued for certain violations of the ordinance. The fee, set by City Council resolution, will be based on the staff time to process the appeal, appearance at the hearing, and any other administrative requirements necessary for processing the appeal.

Local Business Enterprise (LBE): N/A

ORDINANCE NO.

Adopted by Sacramento City Council

Date Adopted

**AN ORDINANCE REPEALING AND ADDING CHAPTER 8.112 OF THE
SACRAMENTO CITY CODE RELATING TO BOATING**

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

SECTION 1.

Chapter 8.112 of the Sacramento City Code is repealed.

SECTION 2.

Chapter 8.112 of the Sacramento City Code is added to read as follows:

Chapter 8.112 BOATING

8.112.010 Definitions.

“Anchor” means to secure a vessel within any waterway by dropping an anchor or other ground tackle to the bottom of the waterway.

“Department” means the police department of the city of Sacramento.

“Discharge” means spill, leak, pump, pour, emit, empty, or dump.

“Emergency situation or condition” includes vessels that are sinking, on fire, or disabled, and where time is of the essence.

“Garbage” includes swill, refuse, animal carcass, offal, trash, rubbish, radioactive waste material, and discarded, nonbiodegradable materials.

“Graywater” means wastewater from lavatories, bathtubs, showers, clothes washers, dishwashers, and other similar plumbing fixtures.

“Moor” means to attach, tie, or otherwise secure a vessel to any man-made or natural object above the surface of the water.

“Seaworthy” means in good condition, structurally sound, not likely to sink or become a menace to navigation or a nuisance, and capable of getting underway and safely maneuvering over the surface of navigable waters.

“Sewage” means all waste substance, liquid or solid, associated with human habitation, or which contains, or may be contaminated with, human excreta or excrement, offal, or any feculent matter.

“Shore” means the land in immediate contact with a waterway, including the area between the high-tide and low-tide marks or between high-water and low-water marks.

“Vessel” means any watercraft of any type or size including barges, ferries, boats, yachts, houseboats, floating homes, floating platforms, and rafts.

“Waterway” means any water, lake, river, creek, canal, lagoon, bay, inlet, slough, channel, or tributary situated within the city limits capable of providing access for vessels to travel from one place to another.

“Wharf” means a structure located along the shore of a waterway designed and outfitted for the mooring of vessels, and in compliance with applicable state and local laws.

8.112.020 Pollution and hazards.

No person shall do any of the following:

A. Place, deposit, throw, or discharge any sewage, graywater, or garbage into any waterway, or onto any shore.

B. Cause or maintain any hazardous condition on any wharf, dock, pier, or gangway. A hazardous condition includes, but is not limited to, the following:

1. Any mooring line, water hose, electrical cable, or other service line extended across a wharf, dock, pier, or gangway;

2. Any obstacles such as ladders, tools, canvas, boat gear, or other materials or equipment obstructing free passage along a wharf, dock, pier, or gangway; and

3. Any tank, container, or canister used for flammable or combustible liquids stored or left on a wharf, pier, or gangway, unless the tank, container, or canister is free from explosive vapors or located within a designated storage facility.

8.112.030 Non-seaworthy vessels; emergency situations or conditions; public safety threats.

A. No person shall anchor or moor any vessel that is not seaworthy on any waterway, or attach any vessel that is not seaworthy to any other vessel that is anchored or moored on any waterway, unless the vessel is in an emergency situation or condition.

1. Notwithstanding the provisions of section 8.112.040, any vessel that is not seaworthy and in an emergency situation or condition shall only moor or anchor on any waterway until the situation or condition ends, but in no event shall the vessel be moored or anchored for more than 48 hours.

2. Determinations of seaworthiness shall be made by the department or the United States Coast Guard.

B. If any vessel on any waterway is in an emergency situation or condition, the owner or operator of the vessel shall immediately report the situation or condition to the department. The owner or operator of a vessel in an emergency situation or condition shall comply with the department's directives and shall move or secure the vessel as instructed.

C. If a vessel sinks in a waterway, the owner or operator must mark the vessel immediately with a buoy or daymark during the day and with a light at night, in accordance with Title 33 of the Code of Federal Regulations, Part 64. The markings must be maintained until the sunken vessel is removed.

D. No person shall moor, anchor, or continue to moor or anchor, any vessel in a location on any waterway 48 hours after receiving a notice and order from the department that due to threat of flooding, high waters or other public safety reasons, the vessel must be removed from the location or waterway.

1. Notice. The notice shall be posted in a conspicuous place upon the vessel and a copy shall be mailed to the registered owner, if known. The notice shall order that the boat be removed within 48 hours of posting the notice or it will be towed and impounded at the owner's expense.

2. Removal. Any vessel not in compliance with the notice and order is subject to immediate removal by the department, at the owner's expense.

8.112.040 Mooring and anchoring.

A. Mooring and anchoring. Except as otherwise permitted by this chapter, no person shall moor, anchor, ground, place, or otherwise locate any vessel in any waterway for more than 96 consecutive hours.

B. Permitted mooring locations. Notwithstanding subsection A of this section, a vessel may be moored at the following locations to the extent permitted by law:

1. A marina, provided the marina and the vessel are in compliance with all applicable laws; or

2. A boat slip or berth, provided the boat slip or berth and the vessel are in compliance with all applicable laws; or

3. A wharf, dock, or pier, provided the wharf, dock, or pier and the vessel are in compliance with all applicable laws and the property owner, or owner's authorized representative, has consented to the vessel being moored at the location.

C. Vacating the waterway. Upon notice of a violation of subsection A of this section, the owner or operator shall either move the vessel to a location described in subsection B of this section or leave the city of Sacramento waterway for at least 24 consecutive hours before returning the vessel to the waterway.

D. Services. No person shall furnish or supply electrical services, natural gas, fresh water, or a sewer connection to any vessel anchored or moored in violation of this section.

E. Lights. No person shall anchor or moor a vessel between sunset and sunrise without displaying lights as prescribed by federal and state laws, rules, and regulations regarding anchor lights in inland waters.

F. Buoys. No person shall moor a vessel at a buoy in violation of California Harbors and Navigation Code sections 307 and 308.

G. Exemptions. Subsection A of this section does not apply to any vessel operated by the United States of America, the state of California, or any governmental entity, its agencies, or instrumentalities, or any vessel operating on behalf of any of these entities in connection with the dredging of any waterway, channel, harbor, or marina; flood protection projects; or levee repair, maintenance, or construction.

8.112.050 Removal of vessel.

If a person maintains a vessel in violation of this chapter, the department may issue a notice and order to the vessel's owner or operator to move the vessel from a location or to remove the vessel from a waterway.

8.112.060 Appeal of notice and order.

A. An owner aggrieved by a notice and order issued pursuant section 8.112.050, may appeal the notice and order by submitting a written appeal to the chief of police of the department within 10 calendar days from the date of service of the notice and order. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific order protested and any material facts supporting the contentions of the appellant;
2. A brief statement in ordinary and concise language of the relief sought, and the reasons why the protested order should be reversed or set aside;
3. The signatures of all parties named as appellants and their official mailing addresses; and

4. A declaration under penalty of perjury by at least one appellant as to the truth of the matters stated in the notice of appeal.

B. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

C. Upon receipt of any appeal filed pursuant to this section, the chief of police shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

1. If the appeal is received by the chief of police at least 15 days prior to the next regularly scheduled appeal hearing date, it shall be calendared for hearing on that date.

2. If the appeal is received by the chief of police less than 15 days prior to the next regularly scheduled appeal hearing date, it shall be calendared for hearing on the next subsequent appeal hearing date.

D. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

E. The department may collect and require an appeal fee to be paid at the time the written appeal notice is filed. The appeal fee shall be set by resolution of the city council. The fee shall be calculated to recover the total city costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, hearing examiner compensation, preparation and service of notices and staff appearance in the appeal hearing. The chief of police may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice and order, and other factors indicating good faith attempts to comply.

F. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and the notice and order shall be final.

G. Only those matters or issues specifically raised by the appellant in the written notice of appeal shall be considered in the appeal hearing.

8.112.070 Hearings—Generally.

A. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of department staff or city personnel, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The hearing examiner may, upon his or her own accord or upon request of the appellant or the department, for good cause shown, grant continuances.

D. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

8.112.080 Conduct of hearing.

A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. Subsections (a), (b) and (c) of California Government Code section 11513, apply to hearings under this chapter.

B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;

2. To introduce documentary and physical evidence;

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

4. To impeach any witness regardless of which party first called the witness to testify;

5. To rebut the evidence presented against the party; and

6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city.

8.112.090 Form and contents of decision—Finality of decision.

A. If it is shown, by a preponderance of the evidence, that one or more reasons for issuance of the order under this chapter exist, the hearing examiner shall

affirm the department's order. The decision of the hearing examiner shall be in writing and contain findings of fact and a determination of the issues presented.

B. The decision shall inform the parties that the decision is final and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

8.112.100 Redemption of removed vessels- Unclaimed vessels.

A. Redemption. Any vessel removed pursuant to the provisions of this chapter may be redeemed within 30 days of removal, upon proof of ownership and payment of all costs incident to removal and storage.

B. Unclaimed Vessels. Any vessel not redeemed pursuant to subsection A of this section, is subject to disposal or sale pursuant to article 4 (commencing with section 500) of chapter 2 of division 3 or section 522 of the California Harbors and Navigation Code.

C. Costs. The registered owner of the vessel is civilly liable for all costs, fees, damages, and expenses incurred by the city in removing, storing, selling, or otherwise disposing of the vessel. These costs are a lien upon the vessel and may be recovered from the proceeds of the sale.

D. Liability. The city, its employees, agents and officers are not liable for damages of any nature whatsoever arising out of, or in any way connected with, the removal or disposition of a vessel or other property in accordance with the provisions of this chapter.

8.112.110 Violation and enforcement.

A. Misdemeanor. Any person violating any provision of this chapter is guilty of a misdemeanor. The person is guilty of a separate offense for each and every day on which a violation of this chapter occurs.

B. Public Nuisance. Violations of this chapter are a public nuisance and the city attorney is authorized to prosecute an action in a court of competent jurisdiction to enjoin the violations and recover costs.

C. Enforcement. In addition to any other remedies allowed by law, any person who violates any provisions of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

D. Immediate Threat to Public Health and Safety. Nothing in this chapter is intended to alter, affect or restrict the right of the department to remove any vessel to address an immediate threat to public health and safety or emergency condition or situation.

SECTION 3.

If any provision of this ordinance or its application to any person or circumstance is held invalid by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of the ordinance. The City Council declares that it would have passed this ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.