

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATED TO PERCIVAL LANDING MOORAGE, AND AMENDING CHAPTER 12.68 OF THE OLYMPIA MUNICIPAL CODE.

WHEREAS, the City of Olympia operates the Percival Landing Moorage Facility for the benefit of the citizens of Olympia and for visitors; and

WHEREAS, Chapter 12.68 of the Olympia Municipal Code (OMC) governs the operation and use of the Percival Landing Moorage Facility, including the charging of fees for vessels moored at Percival Landing; and

WHEREAS, RCW 53.08.320 grants to the City, as a moorage facility operator, the authority to "adopt all rules necessary for rental and use of moorage facilities and for the expeditious collection of [moorage] charges" and the authority to adopt rules to enforce such rules; and

WHEREAS, it is necessary for the City to update OMC Chapter 12.68 to establish rules necessary for the rental and use of Percival Landing that are consistent with RCW 53.08.320 and to allow the City to enforce such rules under the authority of RCW 53.08.320;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 12.68. Olympia Municipal Code Chapter 12.68 is hereby amended to read as follows:

Chapter 12.68
PERCIVAL LANDING MOORAGE FACILITY

12.68.000 Chapter Contents

Sections:

- 12.68.010 Definitions.
- 12.68.020 ~~Boat-Vessel~~ moorage designated as Percival Landing.
- 12.68.030 ~~Rates-Fees~~ established for overnight moorage.
- 12.68.040 Moorage regulations.
- 12.68.050 Repairs or unattended equipment prohibited.
- 12.68.060 Commercial ~~boats-fishing vessels~~ prohibited.
- 12.68.070 Power of ~~city manager~~director to develop and implement rules and regulations.
- 12.68.080 Violations -- Misdemeanor -- Gross Misdemeanor -- Civil Infraction.
- 12.68.090 Securing vessels for non-payment of moorage fees – Moving and storing nuisance or dangerous vessels.
- 12.68.100 Sale of abandoned vessels.

12.68.010 Definitions

For purposes of this chapter:

A. ~~"Boat" means any scow, skiff, canoe, rowboat, sailboat, motorboat, or any other watercraft which may be used in connection with this facility.~~ "Director" means the director of the Olympia Parks, Arts and Recreation Department, or the Director's designee.

B. "Moored" means vessels being tied to the floats which are a part of the facility or vessels rafted to other vessels previously tied to the floats.

C. "Vessel" means every species of watercraft or other artificial contrivance capable of being used as a means of transportation on water and which does not exceed two hundred (200) feet in length.

D. "Vessel owner" means any natural person, firm, partnership, corporation, association, or organization, or agent thereof, with actual or apparent authority, owning or possessing a vessel.

12.68.020 ~~Boat~~ Vessel moorage designated as Percival Landing

The city ~~boat-vessel~~ moorage facility located at the southerly tip of Budd Inlet within the city is designated as Percival Landing.

12.68.030 ~~Rates~~ Fees established for overnight moorage

~~There is established the rates as set forth in Fees established by the director under Title 4 of this code to be assessed against boats vessels moored overnight at the Percival Landing facility as described above. The schedule of fees shall be prominently posted at Percival Landing so as to reasonably inform the public.~~

For purposes of this chapter, each day constitutes a period of twenty-four (24) hours commencing at the time the vessel is registered and payment made or from the time the vessel is tied up, whichever occurs sooner.

This section ~~shall does~~ not apply to vessel moorage covered by a separate moorage agreement ~~providing for free public tours of a moored vessel which that~~ is in full force and effect between the City and vessel's owner.

12.68.040 Moorage regulations

No persons ~~shall may~~ moor a ~~boat-vessel~~ overnight at the Percival Landing facility unless that person immediately registers and pays the fee established in ~~Section 12.68.030~~ by the director. ~~Notwithstanding the payment of fee, n~~ No person ~~shall may~~ moor a ~~boat-vessel~~ at the facility for more than seven (7) days within a thirty (30) day period. Mooring during daytime hours ~~shall be is~~ allowed without registration or payment of fee, but only in accord with any rules or regulations ~~set by the city manager~~ established by the director.

Notwithstanding the provisions of this section, vessels ~~which that~~ are actively involved in any water oriented festival event may be moored at the facility during such event without registration or the payment of fees

established by ~~Section 12.68.030~~ the director. For purposes of this section, "water oriented festival event" includes any festival, celebration, fair, or similar event ~~which that is~~ approved by the director, locally-sponsored by a local nonprofit organization, and has a bona fide-maritime theme.

This section shall not apply to ~~boat-vessel~~ moorage covered by a separate agreement providing for free public tours of a moored vessel ~~which that is~~ in full force and effect between the City and vessel's owner.

12.68.050 Repairs or unattended equipment prohibited

No person ~~shall may~~ conduct major repair work or outfitting, painting, sandblasting, or welding on ~~boats vessels~~ at the Percival Landing facility.

No unattended equipment, gear, fuel, or other items ~~shall may~~ be left on the Percival Landing dock or floats.

12.68.060 Commercial ~~boats~~ fishing vessels prohibited

No commercial fishing ~~boat vessel~~, whether licensed as such or not, may be ~~registered or tied to~~ moored at the Percival Landing facility for any purpose without written permission of the director.

12.68.070 Power of ~~city manager~~ director to develop and implement rules and regulations

The ~~city manager is empowered to~~ director may develop and implement rules and regulations regarding the operation and the maintenance of the ~~facilities~~ Percival Landing, ~~in accord with this chapter and other ordinances of the city and with any applicable state and federal laws.~~ The regulations may include rules regarding the registration of boats, the payment of fees therefor, ingress and egress of boats and persons ~~from the facility and any other aspects of operation or maintenance of the facilities.~~ Such rules and regulations shall be prominently posted on the moorage facility so as to reasonably inform the public.

12.68.080 Violations -- Misdemeanor -- Gross Misdemeanor -- Civil Infraction

A. Any person, firm, or corporation who knowingly violates ~~or fails to comply with~~ any term or provision of this chapter ~~shall be deemed to have committed~~ commits a misdemeanor, and if found guilty, ~~shall be~~ is subject to a fine not to exceed One Thousand and no/100 Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days ~~shall constitute~~ are a gross misdemeanor punishable by a fine not to exceed Five Thousand and no/100 Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment. Continuing violation ~~shall means~~ the same type of violation which is committed within a one (1) year of the initial violation.

B. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate ~~or fail to comply with~~ any term or provision or regulation promulgated by the ~~City Manager~~ director and

~~conspicuously posted of this chapter.~~ Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 Fifty and no/100 Dollars (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 One Hundred Twenty-Five and no/100 Dollars (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 Two Hundred Fifty and no/100 Dollars (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Code Enforcement.

12.68.090 Securing vessels for non-payment of moorage fees -- Moving and storing nuisance or dangerous vessels

A. Securing vessels for non-payment of fees: If a vessel owner fails to timely pay the moorage fees established by the director for a vessel moored at Percival Landing, the director is authorized to take reasonable measures to secure the vessel, including by chains, ropes, or locks, or by removing the vessel from the water to a storage area. At the time of securing the vessel, the director shall attach a notice to the vessel. The notice shall be of reasonable size and shall contain the following information:

1. The date and time the notice was attached to the vessel;
2. A statement that if the moorage fees owing and any storage fees incurred in securing the vessel are not paid in full within ninety (90) days from the date the notice was attached, the vessel may be sold at public auction to satisfy the moorage fee and storage fee delinquency.
3. The address and telephone number where additional information can be obtained concerning release of the vessel.

After the vessel is secured, the director shall make a reasonable effort to notify the vessel owner by registered mail, providing that information contained on the notice attached to the vessel. The vessel owner is responsible for payment of any and all fees or costs associated with the moving and storage of a vessel secured under this subsection.

B. Moving to shore and storing of nuisance or dangerous vessel: The director may move a vessel moored at Percival Landing if the vessel is, in the opinion of City personnel, a nuisance or if the vessel is in danger of sinking or causing damage to Percival Landing, to other vessels, or to the environment. A vessel moored in violation of this chapter or of rules adopted by the director under this chapter may be considered a nuisance. A vessel moved to shore under this subsection must be stored on property under the control of the City or at a private facility acting on behalf of the City. After the vessel is moved and stored, the director shall make a

reasonable effort to notify the vessel owner by registered mail of such movement and storage. Such notice shall provide the date the vessel was moved and stored, the reason for such movement and storage, and the address and telephone number where additional information can be obtained concerning release of the vessel. The vessel owner is responsible for any and all fees or costs associated with the moving and storage of a vessel under this subsection. The City may elect to 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 City pursuant to RCW chapter 79.100, rather than moving to shore and storing a vessel under this subsection.

C. Redemption of secured or moved and stored vessel: If a vessel is secured under subsection A of this section, or moved and stored under subsection B of this section, the owner may regain possession of the vessel by:

1. Making arrangements satisfactory to the director for the immediate removal of the vessel from Percival Landing or the area where the vessel is stored; and
2. Paying all moorage fees and storage fees and other costs owing, or by posting with the City a sufficient cash bond. Such a bond may be posted pending resolution of a civil action regarding the fees and costs owing, or under an agreement between the owner and the director for payment of fees and costs owing. When a bond is posted pending a civil action, the bond will be held in trust by the director pending resolution of such action. After final resolution of such civil action, the trust shall terminate and the City shall receive so much of the bond as is necessary to satisfy the judgment, including interests and costs awarded to the City in such, action and the balance shall be refunded immediately to the owner at the owner's last known address. When a bond is posted under an agreement between the owner and the director, the trust shall terminate and the bond shall be redeemed under the terms of such agreement.

D. Secured or moved and stored vessels not redeemed by owner: If a vessel secured under subsection A of this section is not redeemed by its owner under subsection C of this section within ninety (90) days of the director notifying or attempting to notify the owner by registered mail under subsection A, the vessel shall be deemed abandoned. The director may deem abandoned a vessel moved and stored under subsection B of this section if the vessel has not been redeemed by its owner under subsection C of this section within ninety (90) days of the director notifying or attempting to notify the owner by registered mail under subsection B and the director has received no indications the owner intends to redeem it.

E. Lawsuit to challenge securing or moving and storage of vessel: Any person seeking to redeem a vessel secured under subsection A of this section, or moved and stored pursuant to subsection B of this section, may commence a lawsuit in Thurston County Superior Court to contest the validity of such securing or moving and storing or the amount of fees or costs owing. Such lawsuit must be commenced within (10) ten days of the date of the director notifying or attempting to notify the owner by registered mail under subsection A that the vessel had been secured, or within ten (10) days of the date of the director notifying or attempting to notify the owner by registered mail under subsection B that the vessel had been moved and stored. If such lawsuit is

not so commenced, the right to a hearing shall be deemed waived and the owner shall be liable for any fees or costs owing. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

12.68.100 – Sale of Abandoned Vessels

A. If a vessel secured under Section 12.68.090 A or moved and stored under 12.68.090 B is deemed abandoned, the Council may by resolution authorize the director to sell the vessel at public sale to the highest and best bidder for cash. The director shall prepare and submit to the Council for its consideration a resolution authorizing the director to conduct such a public sale.

B. More than ten (10) but not more than twenty (20) days prior to the public sale of the vessel, the director shall cause to be published notice of the sale at least once in a newspaper of general circulation in the City. Such published notice shall include the name of the vessel, if any, the last known owner of the vessel and the owner's last known address, and a reasonable description of the vessel. At least twenty (20) days prior to the public sale, the director shall provide notice of the public sale of the vessel to the owner of such vessel. Such notice shall be provided by registered mail to the owner's last known address, if the name and address of the owner is known. The notice shall include the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of fees and other costs owing with respect to the vessel.

C. In conducting the public sale, the director may establish a minimum bid or may require a letter of credit, or both. The director may bid all or part of the fees and costs owing with respect to the vessel at the sale and may become the purchaser at the sale.

D. The proceeds of a public sale of an abandoned vessel under this section shall first be applied to the payment of fees and costs owing with respect to the vessel. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the director within one (1) year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the fees and costs owing with respect to the vessel, the City is entitled to assert a claim for a deficiency.

E. In the event no one purchases the vessel at the public sale, or a vessel is not removed from the premises or other arrangements are not made within ten (10) days of sale, title to the vessel will revert to the City and the director may dispose of the vessel as deemed appropriate, or put the vessel to City use.

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: