RICHARDSON BAY REGIONAL AGENCY CODE

TITLE 1

GENERAL PROVISIONS

CHAPTER 1.04

GENERAL PROVISIONS

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1.040.010 Definitions

Adequate vessel sanitation facility: An operable marine sanitation device or portable toilet approved by the United States Coast Guard as suitable to prevent direct discharge of human waste into Richardson's Bay.

Agency: Refers to the Richardson Bay Regional Agency established by Joint Powers Agreement in July 1985, and amended July 2018 to reflect the withdrawal of the City of Sausalito from the Agency.

Anchoring: Attachment of a vessel to the bottom or the shore of Richardson Bay or Belvedere Cove, using equipment, lines, rope, chain, or cable which is carried onboard the vessel as regular equipment when underway.

Anchorage Area: The Richardson Bay Special Anchorage as designated pursuant to 33 CFR § 109.10 . is the area bound by the following coordinates:

37° 51' 56" N – 122° 29' 11"W

37° 51' 23" N – 122° 28' 44"W

37° 51' 33" N – 122° 28' 28"W

37° 51' 37" N – 122° 28' 01.46"

Audubon Sanctuary: The Audubon Sanctuary is that body of water, comprising approximately 900 acres, at the north easterly end of Richardson Bay and bounded

by the following four way-points, and the mean high water line between way points 1 and 4.

1. 37 – 53.645N
   122 – 30.025W
2. 37 – 52.691 N
   122 – 29.683W
3. 37 – 52.567N
   122 – 28.809W
4. 37 – 52.985N
   122 – 28.328W

Code: The Richardson Bay Regional Agency Code.

Discharge: To spill, leak, pump, pour, emit, empty, dump, deposit, or throw.

Eelgrass Protection Zone: the Eelgrass Protection Zone/No Anchoring Area as defined in the Richardson Bay Eelgrass Protection and Management Plan adopted by Board on August 12, 2021 and available in the Agency office.

Enforcement Officer: Any Agency employee or any agent of the Agency with the authority to enforce any provision of this Code, including, but not limited to, the Harbormaster and his or designee, deputy, or assistant pursuant to section 2.040.010(a) of this Code, and any law enforcement officer or other enforcement officer who is employed by or an agent of a member agency.

Floating Home: A structure in the water that has a pontoon, flat-bottomed hull or similar configuration, and is generally not used for recreational or active navigational use or for transportation on the water..

Harbor: Richardson Bay, as defined below.

Houseboat: A motorized vessel that is usually non-planing and designed primarily for multi-purpose accommodation spaces with low freeboard and little or no foredeck or cockpit

Live-aboard: A vessel having capability for active self-propelled navigation moored for an extended period of time and used continuously during that time for private residential use and used on some occasions for recreational or commercial purposes.

Mooring: A means of fixing a floating vessel to the bottom in one location, temporarily or permanently, by use of cable, lines, chains or other equipment remaining attached to the bottom and not carried aboard such vessel as regular equipment when underway, and through its resistance to drag maintains a vessel within a given radius.

Non-anchorage Area: The Audubon Sanctuary and the Eelgrass Protection Zone.

Operable: A vessel's ability to maneuver safely under its own power, using only its usual and customary equipment.

Person: Any person, firm, association, organization, partnership, business trust, corporation or company, singular and plural.

Personal Water Craft: Any motorized vessel which has a motor powering a water-jet pump, or a fully-covered propeller chamber, as its primary source of motor propulsion and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel. This term shall include, but is not limited to, vessels commonly known as "Jet Skis," "Wet Bikes," "Surf Jets", and "Sea-Doo."

Richardson Bay: As defined in the Richardson Bay Special Area Plan dated April 1984, as it may be amended, on file with the Agency and available upon request at the Agency's offices.

Seaworthy: A vessel is seaworthy if, and only if, it satisfies all of the following: possessing operational thru hulls, hoses, and sea cocks; bilge pumps are operational and bilges are free of oil; no loose debris or materials on deck; hull, keel, decking, cabin, and mast are structurally sound and vessel is free of excessive marine growth, excessive delamination, or excessive dry rot that compromises the vessel's integrity to stay intact and afloat without extraordinary measures; capable of operation to avoid striking vessels, persons, or property should it break free from its anchor.

Sewage: Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

Skiff: A vessel with a maximum length of 12 feet.

Transient Vessel: A vessel that is not regularly anchored, moored, or berthed in Richardson Bay.

Vessel: Shall have the same meaning as set forth in California Harbors and Navigation Code Section 550(a) or successor statute as it currently exists or may hereinafter be amended. As of the date of adoption of this ordinance, vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation by water.

1.04.020. Applicability

Provisions of this Code and any rules and regulations adopted pursuant to it shall be applicable and shall govern the Harbor.

1.04.030 Exemptions

The provisions of this Code shall have no application to vessels operated by the United States of America, the State of California, or any governmental entity or its agencies or instrumentalities. Further, this Code shall have no application to any

vessel in an emergency situation as determined at the sole discretion of the Harbormaster or the Harbormaster's designee.

1.04.040 General Penalties

a. Any person violating any of the provisions of this Code shall be guilty of a misdemeanor, unless the violation is otherwise specifically designated an infraction. Every day the violation continues to exist constitutes a separate offense.

b. Notwithstanding the above, any violation constituting a misdemeanor may be charged and prosecuted as an infraction.

c. Whenever an individual has violated any of the provisions of this or any ordinance of the Richardson Bay Regional Agency, the Agency may require proof of correction of the violation as an element of bail.

d. Unless otherwise specified by this Code, a misdemeanor is punishable by a fine not to exceed $1,000, imprisonment for a term not exceeding six months, or by such fine and imprisonment.

e. Unless otherwise specified by this Code, an infraction is punishable by:

i. A fine not exceeding one hundred dollars ($100) for a first violation.

ii. A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year of the first violation.

iii. A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year of the first violation.

1.04.050 Administrative Citations and Fines.

a. Applicability. Whenever an Enforcement Officer determines that a violation of the Code and/or applicable statute, rule, code or regulation has occurred, the Enforcement Officer may issue an administrative citation and assess an administrative fine to any party responsible for the violation or recommend the imposition of an administrative penalty, in addition to any other enforcement remedies authorized by this code.

b. Definitions. For the purposes of this Section 1.04.050, the following definitions apply:

i. Administrative Citation Fines: A fine to be paid in conjunction with issuance of an administrative citation for a violation of this Code.

iii. Hearing Officer: Any person designated by the Board to hear appeals of administrative citations. The Hearing Officer shall not be any Enforcement Officer or a supervisor of such. The employment, performance evaluation, compensation, and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citation penalties upheld by the Hearing Officer.

iv. Responsible Person: Any person who is in immediate control of the vessel, premises, or activity that constitutes a violation of this Code and/or applicable statute, rule, code, or regulation, and any person engaging in prohibited conduct.

c. Administrative Citation Procedure.

i. Whenever an Enforcement Officer determines that a violation of any provision of this Code and/or applicable statute, rule, code, or regulation has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any Responsible Person.

ii Each administrative citation shall contain the following information:

a) Name of Responsible Person(s);

b) The date(s) of the violation;

c) A description of the location where the violation occurred;

d) The name, CF number, or other identifying feature of the Vessel(s) involved in the violation;

e) The section of the Code and/or applicable statute, rule, code, or regulation violated and a description of the violation;

f) A prohibition of the continuation or repeated occurrence of the violation described in the administrative citation;

g) A description of the potential consequences should the violator continue or repeat the violation;

h) The amount of the Administrative Citation Fine for the violation;

i) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid and the process by which the Agency may collect any unpaid amounts owed;

j) A description of the administrative citation review process, including the time within which the administrative citation may be contested and how to obtain a form to contest the administrative citation; and

k) The name and signature of the Enforcement Officer.

d. Service of Administrative Citations.

i. An administrative citation may be served in any of the following ways:

a) By personal delivery to the Responsible Person;

b) By causing a copy of the citation to be sent by certified mail, postage prepaid, return receipt requested, to the registered owner of the Vessel; or

c) By causing a copy of the citation to be sent by certified mail, postage prepaid, return receipt requested, to an address otherwise known to the Enforcement Officer.

ii. Where personal delivery or service by mail upon the Responsible Person cannot be made despite a diligent effort, a copy of the citation shall be conspicuously posted on the Vessel involved in the violation.

iii. The failure of any person to receive a copy of an administrative citation shall not affect the validity of any proceedings or actions taken under this section. Service by certified mail in the manner herein provided shall be affixed to the copy of the citation and retained by the enforcement officer. A copy of any posted notice shall be kept along with a certificate of posting containing the date, time, and identification of the individual performing the posting.

e. Issuance of Administrative Citations. The Enforcement Officer may immediately issue an administrative citation for a violation of the Code and/or applicable statute, rule, code, or regulation subject to the following:

i. Prior to the first administrative citation being issued, a reasonable amount of time, but not less than fifteen calendar days, must be provided, in which to correct or otherwise remedy violations that do not create an immediate danger to health or safety. Notice of the need to correct the violation may be provided to the Responsible Person by Verbal notification, and/or written notification along with certified mailing to address included with DMV registration and/or Drivers License address.

ii. Prior to administrative citations being issued, if the Responsible Person offers proof that he or she has commenced taking action to correct or otherwise remedy the violation, the Enforcement Officer may, in his or her discretion, extend the time in which to correct or otherwise remedy a violation.

f. Administrative Citation Fines.

i. Any person to whom an administrative citation is issued shall be responsible for payment of a fine for violating this Code and/or applicable statute, rule, code, or regulation as specified in this section.

ii. The administrative citation fine assessed in conjunction with the issuance of an administrative citation shall be in accord with California Government Code section 53069.4 as follows:

a) A fine not exceeding one hundred dollars ($100) for a first violation.

b) A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year of the first violation.

c) A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year of the first violation.

iii. If the maximum amounts allowed to be charged in the California Government Code changes, then that change shall become effective with regard to this Section.

iv. Every day the violation continues to exist constitutes a separate offense.

g. Appeal of Administrative Citation.

i. Any recipient of an administrative citation may, within ten business days from the date that service of the administrative citation was completed, contest that there was a violation or that he or she is the party responsible for committing the violation by filing an appeal with the Executive Director for the matter to be heard by a Hearing Officer. Any appeal not timely filed shall be rejected.

ii. Failure to timely and properly file an appeal from an administrative citation shall constitute a waiver of all rights to an appeal hearing. The determination that the violation occurred and that the person named in the citation was responsible for the violation shall be deemed final on the date that service of the administrative citation is deemed completed.

iii. All appeals from any administrative citation shall be in writing and shall contain the following information:

a) Name(s) of the appellant(s);

b) A copy of the administrative citation or the reference number of the administrative citation;

c) A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;

d) A brief statement in ordinary and concise language of the relief sought and the reasons why the administrative citation should be rescinded, modified or otherwise set aside; and

e) The signatures of all appellants and their mailing addresses.

iv. Any recipient of an administrative citation contesting the citation must submit to the Executive Director an advance deposit of the total fine amount or an advance deposit hardship waiver application form as described in Section 1.04.050(g)(vii). Any appeal of the

administrative citation filed without payment of the advance deposit or submittal of the advance deposit waiver application shall be deemed incomplete.

v. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten calendar days prior to the date of the hearing.

vi. Collection of fines on any administrative citation shall be stayed during the pendency of an appeal which is properly and timely filed.

vii. Advance Deposit Hardship Waiver.

a) Any person who intends to request a hearing to contest an administrative citation, and who is financially unable to make the advance deposit of the fine as required in Section 1.04.050(g)(iv), may file a request for an advance deposit hardship waiver which shall include a sworn affidavit as described in subsection (c) below.

b) The request shall be filed on an advance deposit hardship waiver application form, available from the Executive Director, in conjunction with submitting the appeal.

c) The Agency may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited person submits to the Agency a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Executive Director or his or her designee the person's actual financial inability to deposit with the Agency the full amount of the fine in advance of the hearing. In determining the cited person's financial ability or inability to deposit the full amount of the fine in advance, the Executive Director or his or her designee shall consider the amount of the fine imposed, the income of the cited person, the expenses of the cited person, and any other factors that are reasonably related to the cited person's ability to deposit the full amount.

d) The requirement of depositing the full amount of the fine shall be stayed unless or until the Agency makes a full determination not to issue the advance deposit hardship waiver. The Agency must make its determination within a reasonable period of time, taking into account the complexity of the data pertinent to the application.

e) If the Agency makes a determination to deny the advance deposit hardship waiver application, a written determination listing the reasons for the denial shall be issued. The written determination to deny the waiver shall be final.

f) The written determination of the Agency's denial of the advance deposit hardship waiver shall be served by mail upon the person who applied for the waiver.

viii. Administrative Citation Appeal Hearing

a) A hearing before the Hearing Officer shall be set for a date that is not less than 15 business days and not more than 60 calendar days from the date that a notice of hearing was issued, unless the Enforcement Officer in his or her discretion determines that the matter is urgent and needs to be heard sooner or that good cause exists for an extension of time.

b) No hearing to contest an administrative citation shall be held unless the fine has been deposited in advance or an advance deposit hardship waiver application has been filed with and accepted by the Agency.

c) The hearing serves to provide the full opportunity of a person subject to an administrative citation to object to the determination that a violation has occurred and/or that the violation has continued to exist and/or that her or she is a Responsible Person.

d) The Hearing Officer shall consider any written or oral evidence submitted that is relevant to the matter. Formal rules of evidence do not apply. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. All hearings shall be open and public.

e) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration, then a copy of this report also shall be served on the person requesting the hearing at least five business days prior to the date of the hearing.

f) The failure of any person subject to or the recipient of any administrative citation to appear at the hearing shall constitute a waiver of any objections to the imposition of a fine or other appropriate remedy imposed by the Hearing Officer, and a failure to exhaust administrative remedies.

g) The Hearing Officer may continue the hearing and request additional information from the enforcement officer or the person(s) accused of a violation prior to issuing a written decision.

ix. Hearing Officer's Decision.

a) Within a reasonable time following the conclusion of the hearing, the Hearing Officer shall make findings and issue a written determination, a copy of which shall be provided to both the Responsible Person and the Enforcement Officer. The determination shall specify the amount of the fine to be imposed and a date by which the fine shall be paid.

b) If the Hearing Officer finds that no violation has occurred or that the violation was corrected within the time period specified or that the person appealing was not a Responsible Person regarding the violation, the Hearing Officer shall issue a written finding of those facts. If the Hearing Officer determines that an administrative citation should be cancelled, the Agency shall promptly refund the amount of the fine deposited. If the Hearing Officer upholds the violation, the Agency shall retain any fines paid or shall be entitled to collect any fines owed but unpaid.

h. Payment of Administrative Citation Fines.

i. The amounts due shall be paid to the Agency within thirty calendar days from the issuance date of the citation or the Hearing Officer's decision, unless otherwise specified.

ii. Payment of any fine shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the Agency for any continuation or repeated occurrence of the violation of the Code and/or applicable statute, rule, code, or regulation violation that is the subject of the original enforcement action.

iii. If unpaid as of the date specified in any decision or order, all amounts due shall be collected by the Agency by use of all available legal means.

iv. In addition to any other remedies provided by law, failure to pay amounts due on or before the date specified shall constitute a violation of this Code punishable as a misdemeanor.

i. Notices. Whenever a notice is required to be given under this Section, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business, residence, or mailing address available to the Agency. Service by mail shall be deemed completed at the time of deposit in the United States mail is made. Where personal service or service by mail upon the Responsible Person cannot be made despite a diligent effort, a copy of any notice shall be conspicuously posted on the Vessel that is the subject of the notice, if applicable. Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

j. Judicial Review. Any person aggrieved by the decision on an administrative citation fine pursuant to Section 1.04.050(g)(ix) may obtain review of the decision by filing a petition for review with the Superior Court in Marin County in accordance with the time lines and provisions set forth in California Government Code section 53069.4.

1.04.060 Hardship Waiver.

a. Any person fined under Section 1.04.040(e) or Section 1.05.050(f) of this Code may be granted a hardship waiver reducing the amount of the fine if:

i. The person has made a bona fide effort to comply after the first violation; and

ii. Payment of the full amount of the fine or penalty would impose an undue financial burden on the person.

b. A hardship waiver request shall be filed on a hardship waiver application form, available from the Executive Director, within ten business days of service of the administrative citation levying the fine. A sworn affidavit, together with any supporting documents or materials, demonstrating why the requirements of Section 1.04.060(a) are satisfied must be submitted. If the request and supporting materials demonstrate to the satisfaction of the Executive Director or his or her designee that the requirements of Section 1.04.060(a) are satisfied, the fine shall be reduced as the Executive Director or his or her designee deems appropriate. Any hardship waiver request not timely filed shall be rejected, and the applicant shall be deemed to have waived his or her right to request a waiver.

1.04.070 Injunctive Relief

Any violation of this ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this ordinance, the attorney for the Agency may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this ordinance. Such application for relief may include seeking a temporary restraining order, preliminary injunction, and permanent injunction.

TITLE 2

ADMINISTRATION

Chapter:

2.04. Harbormaster

Chapter 2.04

Harbormaster

Section:

2.040.010 Harbormaster

a. Whenever a power is granted to or duty is imposed upon the Harbormaster, the power may be exercised or the duty may be performed by a designee, deputy, or assistant of the Harbormaster or by a person authorized pursuant to the law by the Agency, unless this Code expressly provides otherwise.

b. The Harbormaster, acting under the orders and jurisdiction of the Agency or its designated representative, shall have full authority in the enforcement of all ordinances and regulations affecting Richardson Bay, including but not limited to, the power to issue citations pursuant to Section 1.04.050 of this Code. The Harbormaster shall have concurrent jurisdiction to issue such citations for violations of member City and County ordinances relative to Richardson Bay. The appropriate Law Enforcement Department of each member City and County is hereby authorized to issue infraction and misdemeanor citations for violations of this and all ordinances of the Richardson Bay Regional Agency.

c. The Harbormaster shall provide information for users of the harbor on the use of moorings, dinghy landings, and shore access and shall be available provide information to and may assist vessels desiring to use the Harbor through published communication channels, including VHF FM Channel 16 and the Agency's published telephone number.

d. The Harbormaster may maintain a current file of information, with the assistance of marina operators and owners, of the transient berths and marina services that may be available and provide this information upon request.

e. Whenever necessary to make an inspection to enforce this Code or whenever there is reasonable cause to believe there exists a Code violation Harbormaster in, or on any vessel/object in the Agency's jurisdiction, or attached thereto, the Harbormaster or his authorized representative may, upon presentation of a valid inspection warrant, issued pursuant to Code of Civil Procedure section 1822.50 et seq., and proper credentials, enter the vessel/object at all reasonable times to inspect the same or to perform any duty imposed upon the Harbormaster by the

Code. The Agency will obtain an inspection warrant where constitutionally required. In general, the Agency is not required to obtain an inspection warrant in the following circumstances:

i. Where the Agency has obtained consent of the owner or occupant of the vessel/object; or

ii. Where there is no reasonable expectation of privacy because the area of concern on the vessel and/or the object of concern is visible from the open water; or

iii. in an emergency.

TITLE 3

VESSELS

Chapter:

3.04 Anchoring, Mooring, and Beaching Vessels

Chapter 3.04

Anchoring, Mooring, and Beaching Vessels

Sections:

3.04.010 Permits, Anchoring, and Mooring
3.04.020 Residential Use of Vessels Prohibited
3.04.030 Fees
3.04.040 Beached/Grounded Vessels
3.04.050 Vessel Condition and Requirements
3.04.070 Unseaworthy Vessels
3.04.080 Relocation of Vessels

3.04.010 Permits, Anchoring, and Mooring

a. Any person may temporarily anchor a single vessel with no more than one attached skiff, for a period of not more than 72 hours, in the Anchorage Area without a permit, subject to the nighttime occupancy limitations of Section 3.04.010(c) below. A skiff may not be separately anchored, but shall remain attached to the vessel. No person may anchor a vessel in the Non-Anchorage Area at any time. The Harbormaster is authorized to require persons to relocate vessels within the designated anchorage areas. After 72 hours have expired, the vessel must leave Richardson Bay for at least seven days before it may temporarily anchor again pursuant to this subsection.

b. A person may anchor or moor a vessel in Richardson Bay for more than 72 hours only with an anchoring permit issued by the Harbormaster.

c. A person may anchor or moor a vessel in Richardson Bay after sunset and before sunrise only under one of the following conditions:
   1. A person capable of operating the vessel continuously occupies the vessel from sunset until sunrise, except that person may leave the vessel for up to four hours once per night.
   2. A person obtains a nighttime anchoring permit issued by the Harbormaster authorizing the person to leave the vessel unattended from sunset until sunrise.

3.04.020 Residential Use of Vessels Prohibited

Living aboard a vessel, floating home, or houseboat anchored or moored in Richardson Bay is prohibited. The Harbormaster may issue a permit to transient vessels to anchor in the designated anchorages, or to moor at designated moorings, for more than 72 hours pursuant to Section 3.04.010(b), provided that the Harbormaster determines that no permanent residential use is intended. In such cases, the Harbormaster shall issue a permit valid for up to 30 days. This permit may be renewed for two additional 30 days periods at the Harbormaster's discretion. The Harbormaster may issue permits for temporary residential use at RBRA-owned moorings, at the Harbormaster's discretion, which may be for greater than the periods set forth in this Section.

3.04.030 Fees

a. Fees for anchoring or mooring a vessel in any part of the harbor shall be established by the Agency by resolution after public hearing. All fees shall be reasonable, so that persons of varying financial means may enjoy the use of the harbor.

b. The Agency shall provide the mode and procedure for collecting all mooring and anchoring fees, and the identification by tag or plate or otherwise of all vessels upon which fees are currently paid, if such identification will aid enforcement and collection.

When the lessee of any mooring is delinquent in payment of fees for fifteen (15) days or more, the Harbormaster may cancel the permit upon five (5) days written notice to the permittee by first class mail to the address shown on the permit.

3.04.040 Beached/ Grounded Vessels

Except in an emergency, it shall be unlawful for the owner or person in control or custody of any vessel to ground or beach, or allow to be grounded or beached, a vessel in Richardson Bay tide or submerged lands without express prior permission of the Harbormaster. If a vessel is beached in an emergency or other mishap, the registered or legal owner shall remove the vessel from its beached location within five calendar days of its original beaching.

3.04.050 Vessel Condition and Requirements

a. Vessels anchored or moored in Richardson Bay shall be seaworthy and operable. Exceptions may be granted by the Harbormaster to Agency-only regulations at his/her discretion following his/her determination that the owner of the vessel is using the bay as a temporary safe harbor and making a good faith effort

to bring the vessel into compliance with Agency regulations. The Harbormaster has no authority to grant exceptions to any state or federal regulations.

b. Vessels anchored or moored in Richardson Bay shall have current and valid registration with the California Department of Motor Vehicles or current and valid documentation with the United States Coast Guard.

c. Richardson Bay is a Federal No Discharge Zone, and overboard discharge of human waste is strictly prohibited. Each vessel must have a functional adequate marine sanitation device. Discharge of pet waste overboard within Richardson's Bay is also prohibited. Marine sanitation device overboard discharge valves must be closed and secured. In addition to the penalties set out in this Code, the Agency may notify the Coast Guard of any violation of this subdivision.

3.04.060 Sunken and Abandoned Vessels

a. Prohibition. No person may allow or cause a vessel to sink or become beached or aground in violation of Section 3.04.040, without first securing written permission from the Agency to do so.

b. Removal Required. An owner of a vessel in violation of Section 3.04.060(a) shall have the vessel immediately removed, as conditions allow, at his or her sole expense. The vessel owner shall also be held responsible for any property damage, injury, or of loss of life caused by said vessel or facility while it is in a sunken, abandoned, or disabled condition.

c. Agency Removal.

i. If the owner of a vessel in violation of Section 3.04.060(a) fails to remove the same as required by this section, within 10 days, the Agency may have the vessel removed at the owner's expense, and the owner shall reimburse the Agency for all costs incurred in connection with the removal or pollution remediation efforts.

ii. After the Agency causes the vessel to be removed, if no person claims an abandoned vessel within 10 days , the Agency may remove such abandoned vessel to drydock (if feasible) and proceed to demolish the vessel as provided by law.

iii. The owner of an abandoned vessel may redeem the vessel before sale or demolition occurs upon satisfactory proof of ownership and payment to the Agency of all costs of mooring, moving, storing, and selling of that vessel incurred prior to redemption.

3.04.070 Unseaworthy Vessels

a. Public Nuisance. The Agency declares that any vessel or property that is unseaworthy (that is, it does not meet the definition of "Seaworthy" under this Code) is a hazard to life, limb, and property and constitutes a public nuisance.

b. Removal of Vessel. Any vessel permitted to fall into the conditions described in this section may be treated in accordance with California Harbors and Navigation Code Section 522.

c. Unseaworthy Vessels Not to be Moored. Vessels determined to be unseaworthy by the Harbormaster, or his or her designee, may not be allowed to moor within Richardson Bay.

d. Proof of Ability to Operate. At the discretion of the Harbormaster, any vessel moored or anchored within Richardson Bay may be required to prove its ability to get underway and safely operate under its own power to the satisfaction of the Harbormaster or his or her designee.

e. Declaration of Marine Debris. Should any vessel fail to prove its ability to operate as described in Subsection (c) within 60 days from date of request, the Harbormaster may deem said vessel marine debris, and said vessel may be removed and disposed of by the Agency pursuant to Harbors and Navigation Code Sections 550 and 551.

3.04.080 Relocation of Vessels

Notwithstanding the provisions of Chapter 4.05 of this Code, the Agency reserves the right to relocate, remove, or store any vessel secured to any pier, dock, landings, or mooring within the control of the Agency when, in the opinion of the Harbormaster or his or her designee such vessel is deemed a hazard or a hindrance to any operations of the Harbor. The cost, if applicable, of such relocation, removal, or storage shall be at the vessel owner's expense.

TITLE 4

VESSEL TRAFFIC REGULATIONS

Chapter:

4.04 Speed and Safety
4.05 Audubon Sanctuary
4.06 Vessel Impound

Chapter 4.04

Speed and Safety

Section:

4.04.010 Regulations Concerning Speed and Safety

a. Within the limits of the anchorage areas: in Belvedere Cove; in the area of the harbor west of the Richardson Bay Bridge; and in the Sausalito Channel, starting at Spinnaker Point in the east, extending to Richardson Bay Bridge west, bound on the north by the Starboard Channel markers and extending southerly to the shoreline, in the navigation channel in the Audubon Sanctuary as described in 4.050.010(a) below, no vessel shall exceed a speed limit of five (5) miles per hour. Within the harbor, due caution must be observed at all times. No person shall operate a vessel within the harbor in a reckless or negligent manner, nor shall any person operate any vessel at a speed which will endanger life, limb, property, or wildlife.

b. No person shall operate a vessel within the harbor north of the Starboard Channel markers at a speed in excess of five (5) miles per hour under the following conditions: 1) within two hundred (200) feet of any person who is swimming bathing, sail boarding, or rowing a boat; or 2) within two hundred (200) feet of any (a) beach or lifeline; or (b) swimming float, diving platform or lifeline; or (c) dock, way or landing float to which vessels are made fast or which is used for embarking or discharging of passengers; or 3) within two hundred (200) feet of any home.

c. Personal Water Craft are not permitted to operate on Richardson Bay.

Chapter 4.05

Audubon Sanctuary

Section:

4.05.010 Vessel Restrictions

a) A navigation channel exists on the westerly side of the Sanctuary, approximately 90 fee wide as measured from the mean high water mark.

b) The Audubon Sanctuary is closed to all anchoring at all times.

c) The Audubon Sanctuary, with the exception of the navigation channel, is closed to all vessel activity between 12:01 a.m. October 1 to 11:59 p.m. on March 31. This includes kayaks, paddleboards and sail or motorized vessels of any sort.

Chapter 4.06

Vessel Impound

Section:

4.06.010 TOWING, IMPOUND, AND STORAGE

The Harbormaster and his or her designee are hereby authorized to remove and/or impound any vessel or other object found in violation of any of the provisions of this Code or any other ordinance of the Agency. Except as provided in Sections 3.04.060, 3.04.070, and 3.040.080 of this Code, or in any other circumstance governed by the Harbors and Navigation Code, removal or impoundment is subject to the following procedures:

a. The registered and legal owners of record, or the agent of any such vessel or object so removed and impounded, shall have the right to secure the release of such vessel or object after furnishing proof of such ownership to the Agency and after payment to the Agency of the reasonable costs and expenses for such removal, impound, and/or storage.

b. If the owner or agent of any such vessel, watercraft or object cannot be found within Thirty (30) days or refuses upon demand to pay the lawful costs and expenses incurred by the Agency, the Agency may sell the property at public auction after publication of the sale is advertised in a newspaper of general circulation at least Five (5) days prior thereto, or the Agency may keep, destroy, or otherwise dispose of such property.

c. The Executive Director or his or her designee is authorized to enter into contracts on behalf of the Agency with parties for the removal and impounding of any vessel, watercraft, or object found in violation of this Code or any other ordinance of the Agency.

d. It is unlawful to move, remove, or in any way tamper with an official RBRA impound buoy and/or anchor and any vessel attached and impounded thereto, or to move, remove, or in any way tamper with any vessel in a marina marked or designated as an impounded vessel.

TITLE 5

ENVIRONMENTAL PROTECTION

Chapter 5.04

Prohibition on Overboard Discharge

Section:

5.04.010 Discharge of Refuse

It shall be a violation of this Code to discharge or permit a discharge into the waters of the harbor any refuse, debris, treated or untreated sewage, petroleum matter, paint, varnish, or other noxious chemicals or foreign matter of any kind.

Chapter 5.04

Eelgrass Protection

5.05.010 Damage to Eelgrass

It shall be unlawful to cut, remove, damage, or disturb eelgrass (*Zostera*) within Richardson Bay except for specifically permitted research or educational activities.

TITLE 6

NUISANCE CODE

Chapter 6.04

Nuisance Abatement

Sections:

6.04.010 Purpose
6.04.020 Nuisance Defined
6.04.030 Determination of Public Nuisance
6.04.040 Notice and Order to Abate Nuisance
6.04.050 Report of Costs
6.04.060 Appeals of Notice and Order to Abate Nuisance and Report of Costs
6.04.070 Authorization to Proceed With Abatement
6.04.080 Emergency Abatement

6.04.010 Purpose

The Richardson Bay Regional Agency hereby adopts this Nuisance Code for the purpose of providing for the identification and abatement of public nuisances within the Agency's jurisdiction.

The provisions of this ordinance are supplementary and complementary to all of the provisions of state law and any law cognizable as common law or in equity. Nothing herein shall be read, interpreted, or construed in any manner so as to limit any existing right or power of the Richardson Bay Regional Agency to abate any and all nuisances.

6.04.020 Nuisance Defined

The Agency hereby declares that it is a public nuisance for any person owning, leasing, occupying, or having charge or possession of any vessel, barge, or object within the Agency's jurisdiction to maintain the same in such a manner that any one or more of the conditions or activities described in the following subsections are found to exist:

a. The keeping, storage, depositing, or accumulation on, or attachment to, a vessel, barge, or object of any personal property, including but not limited to abandoned, wrecked, dismantled, or inoperative boats or boating equipment, engine parts and equipment, appliances, furniture, containers, scrap metal, wood, building materials, junk, rubbish or debris, in a manner that constitutes a serious threat to the public health and safety.

b. Any dangerous condition which is detrimental to the health, safety, or welfare of the public.

c. The overboard discharge of any refuse, treated or untreated sewage, petroleum or petroleum matter, paint varnish, or any other noxious chemical or foreign matter.

d. Any condition recognized in law or in equity as constituting a nuisance, including but not limited to any condition that constitutes a nuisance under Civil Code Sections 3479 and 3480.

e. Any other condition located on, or use of, a vessel, barge, or object which constitutes a threat to the public.

f. Any violation of this Code.

6.04.030 Determination of Public Nuisance

When an Enforcement Officer has inspected any vessel, barge, or object within the Agency's jurisdiction and has found and determined that such condition on such vessel, barge, or object constitutes a public nuisance, the Enforcement Officer may elect to proceed as outlined in Section 6.04.040 or Section 6.04.080, in addition to other enforcement remedies authorized by this Code or law.

6.04.040 Notice and Order to Abate Nuisance

a. Upon determining that a condition constitutes a public nuisance, an Enforcement Officer shall notify the owner, occupant, agent, or other responsible person (any of which are considered a "Responsible Person" for the purposes of this Chapter 6.04) of the existence of any condition on the vessel, barge, or object that constitutes a nuisance that the Enforcement Officer has determined that a public nuisance exists.

b. The Notice and Order shall contain all of the following:

i. A description sufficient for the identification of the vessel, barge, or object that constitutes a nuisance.

ii. A statement that a condition deemed to be a public nuisance as defined in Section 6.04.020 has been found to exist, with a brief and concise description of the conditions found to constitute a public nuisance under the applicable provisions of this Code.

iii. An order specifying:

a) The curative action to be taken, and

b) The time in which completion of the curative action must occur, as determined by the Enforcement Officer. Any subsequent order, if issued, may require immediate compliance if a notice of violation has previously been served concerning the same violation of the code.

iv. A statement advising that if the work to abate the nuisance is not commenced within the time specified, and diligently pursued until completion, the Agency may proceed to abate the nuisance and charge the costs thereof against the Responsible Person, and that such remedy shall be in addition to any other rights, remedies, or actions available to the Agency by reason of the same violation as described in the notice and order.

v. A statement indicating whether the Agency has elected to seek, as a part of abatement costs, reasonable attorneys' fees incurred in abating the nuisance. Such notice shall also state that if the Agency elects to seek reasonable attorneys' fees, the prevailing party may be entitled to seek reimbursement of reasonable and necessarily incurred attorneys' fees, provided any such fees awarded against the Agency shall not exceed the amount of reasonable attorneys' fees incurred by the Agency.

vi. A statement advising:

a) That the Responsible Person may appeal the notice and order to abate the nuisance pursuant to Section 6.04.060;

b) That such appeal must be filed within ten business days from the date of service of the notice and order; and

c) That failure to appeal will constitute a waiver of all rights to an administrative hearing to contest the determination of nuisance and required abatement.

b. Service of the notice and order shall be made on the Responsible Person and owner (if identifiable) of the vessel, barge, or object as provided in Section 1.04.050(d), and such notice and order shall also be posted on the vessel, barge, or object.

c. Proof of service of the hearing/abatement notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made.

6.04.050 Report of Costs

a. The Agency shall keep an itemized account of the expense incurred by the Agency in abating each nuisance under the provision of this Code. Upon completion of the work of abatement, the Enforcement Officer shall prepare a written report specifying the work done, the itemized and total cost of the work, a description of

the subject vessel, barge, or object and the names and addresses of the owner. Following completion of all abatement work, the Agency shall prepare a final itemized written report of costs showing the total abatement costs.

b. A notice accompanying the report of costs shall provide that the Responsible Person must pay the Agency for the cost of abatement within thirty days of service of the report of costs, or appeal the reasonableness of the costs within ten business days of the date of service, pursuant to Section 6.04.060.

c. Service of the report of costs shall be made as provided in Section 1.04.050(d).

6.04.060 Appeals of Notice and Order to Abate Nuisance and Report of Costs

a. The Agency Board may designate a Hearing Officer to hear appeals under this section. The Hearing Officer shall not be any Enforcement Officer or supervisor of such. The employment, performance evaluation, compensation, and benefits of a Hearing Officer, if any, shall not be directly or indirectly conditioned upon the decisions of the Hearing Officer.

b. The Responsible Person may within ten business days of service of the notice and order to abate a nuisance or report of costs, or within ten business days after commencement of work to abate an emergency nuisance pursuant to Section 6.04.080, appeal the notice and order to abate the nuisance, the reasonableness of the report of costs, or the need for an emergency abatement by requesting, in writing, an appeal hearing. The written request for appeal hearing must state briefly the appealing party's grounds for objection. Any appeal not timely filed shall be rejected and the applicant shall be deemed to have waived their right to appeal.

c. The Agency shall schedule an appeal hearing to be held within thirty days after an appeal is received by the Agency, before the designated Hearing Officer. The Agency shall provide notice of the hearing as provided in Section 1.04.050(d). Such notice shall be served not less than five business days prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail.

d. Any person filing an appeal to a report of costs, instead of or in addition to appearing in person at the hearing, file a written report of the objections with the Agency at any time prior to the time set for the hearing on the report of costs. Each such objection must contain a description of the grounds of the objection. However, in the event that the appealing party fails to appear at the hearing or file written objections, the hearing shall be deemed waived, and based on whether the appeal is for a notice and order to abate or report of costs, would constitute an admission by said party of the nuisance charge or correctness and reasonableness of the report of costs.

e. The Hearing Officer may inspect the subject vessel, barge, or object before, during, or after the hearing, provided that:

    i. Notice of such inspection shall be given to the parties at least 72 hours before the inspection is made;

ii. The parties are given an opportunity to be present during the inspection;

iii. The Hearing Officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom; and

iv. Each party shall have an opportunity to rebut or explain the matters so stated by the Hearing Officer, relative to inspection, either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing.

f. The proceedings at the hearing may be recorded. Either party, at its own expense, may provide a certified shorthand reporter to maintain a record of the proceedings.

g. The designated Hearing Officer shall hear and rule on the appeal. The appellant and the Agency each may be represented at the hearing by an attorney. The formal rules of evidence shall not apply. All witnesses shall be sworn, and each party shall have the right to cross-examine adverse witnesses. The hearing may be continued from time to time.

h. The designated Hearing Officer shall issue a final decision within ten business days of the appeal hearing, which shall rule on each of the appealing party's objections. The final decision may modify the report of costs if the Hearing Officer deems it appropriate.

i. For appeals of a notice and order to abate a nuisance, the final decision shall include a finding of whether any attorneys' fees incurred by the prevailing party were reasonably and necessarily incurred, provided, however, in no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the Agency. The final decision shall direct the Responsible Person to abate the nuisance within a specified, reasonable time period and notify the owner that if he or she fails to do so, the Agency will do so at a Responsible Person's expense. The final decision shall be served on the Responsible Person, the owner (if identifiable), and any other appealing party as provided in Section 1.04.050(d).

j. For appeals of the reasonableness of a report of costs, the final decision shall determine whether any attorneys' fees incurred by the Agency and assessed for the abatement costs were reasonably and necessarily incurred. The final decision shall direct the Responsible Person to pay the costs within thirty days of the date of the final decision. The final decision shall be served on the Responsible Person and the owner (if identifiable) as provided in Section 1.04.050(d).

k. Once the Hearing Officer has adopted his or her decision, the Enforcement Officer shall post a copy thereof conspicuously on the subject vessel, barge, or object and shall serve a copy on the owner as provided in Section 1.04.050(d). One copy of the decision shall also be served on each of the following, if known to the Agency or

if disclosed from official public record: the holder of any mortgage or other lien or encumbrance; the owner or holder of any lease of record; and the holder of any other known interest in the subject vessel, barge, or object.

l. Any person aggrieved by the Hearing Officer's final decision may only seek judicial review pursuant to a timely petition for writ of administrative mandamus in accordance with California Code of Civil Procedure sections 1094.5 and 1094.6.

6.04.070 Authorization to Proceed With Abatement

a. If an appeal of the notice and order to abate nuisance is not timely filed, or if the Hearing Officer has upheld the determination of nuisance and proposed abatement, or for abatement of a nuisance pursuant to Section 6.04.080, the Enforcement Officer is authorized to cause the nuisance to be abated, subject to the provisions of this Section.

b. The abatement work may be performed by the Agency's own employees or by independent contractors, or any combination thereof. Prior to commencement of the abatement work by or on behalf of the Agency, the Responsible Person may abate the nuisance at his or her own expense.

c. If the Responsible Person fails to consent to the Agency abating the nuisance, the Agency may seek a warrant to the extent legally required and proceed with the abatement.

6.04.080 Emergency Abatement

a. Dangerous Condition. Whenever the Harbormaster determines that a condition exists on any vessel, barge, or object located in Richardson Bay which is of such a nature as to be imminently dangerous to the public health, safety, or welfare or materially interferes with public travel or passage, the Harbormaster or his designee may summarily abate such nuisance pursuant to Section 6.04.070.

b. Approval of Agency Attorney. No summary abatement shall be undertaken, unless the Agency Attorney has first approved the same; such approval may be verbal, when followed by written confirmation, via e-mail or on attorney's letterhead.

c. Costs. Reporting of costs of an emergency abatement under this section shall be conducted pursuant to Section 6.04.050.

d. Appeal. Once summary abatement has been completed, the owner of the vessel, barge, or object may appeal the need for abatement and the report of costs as provided in Section 6.04.060.

e. Personal obligation. The cost of abatement including all administrative costs of any such action shall become a personal obligation to the owner as provided herein unless ordered otherwise by a court of competent jurisdiction.

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