

**CITY COUNCIL AGENDA REPORT****Meeting Date:** February 21, 2019**From:** Director of Public Works/City Engineer**Subject:** Amendment to BMC Title 18 (Marina Regulations)**Recommendation**

Adopt Ordinance No. 635, waiving second reading, amending Title 18 of the Brisbane Municipal Code concerning "Marina Regulations."

**Background**

This ordinance was introduced at the regular City Council meeting held on February 7, 2019, and was passed unanimously on the consent calendar with no requested changes.

**Attachments**

1. February 7, 2019 staff report (minus attachments)
2. Final version Ordinance No. 635

Randy Breault, Public Works Director

Clay Holstine, City Manager

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Amendment to BMC Title 18 (Marina Regulations)

DATE: February 7, 2019

### **City Council Goals:**

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

### **Purpose:**

To revise the City's marina regulations found in the Brisbane Municipal Code (BMC) to disallow unpermitted "anchor-outs" and beaching of vessels in city waters.

### **Recommendation:**

Introduce Ordinance No. 635, waiving first reading, amending Title 18 of the Brisbane Municipal Code concerning "Marina Regulations."

### **Background:**

As shown in the attached orthodigital photo, the Brisbane city limits extend quite a distance into San Francisco Bay. Because of the extent of these limits, our authority and responsibility also extend into the bay.

Anchoring of vessels outside the marina (i.e., "anchor-out") is a scenario the Harbormaster deals with on a regular basis. Anchoring in an unprotected area is sometimes a choice made by seasoned sailors, but most of the vessels we encounter are in poor condition, and frequently not under the control of a seasoned captain. Because of the latter situation, we do frequently respond to calls from anchor outs in distress (typically in foul weather conditions that can put our personnel at risk), and we also respond to calls from both the U.S. Coast Guard and the Division of Boating & Waterways (DBW) to remove vessels that have become beached.

While DBW does provide some grant assistance under the Surrendered and Abandoned Vessel Exchange (SAVE) program, the city is required to provide a 10% match to these

funds, and all of the work of supervising the removal and destruction of the vessels (including obtaining liens and ownership of same) falls upon Marina staff.

**Discussion:**

We have observed an increase in the number of anchor-out vessels since the City of Sausalito imposed new restrictions on anchor-outs in Richardson Bay. Unless we choose to address the issue, the number of anchor-outs is expected to rise (and will rise even faster should an economic downturn come to be), and the burden on both our staff and our finances will increase. In January alone, we issued \$20,000 of purchase orders to remove abandoned vessels.

The proposed BMC changes will give the City and its Harbormaster the latitude to permit or restrict anchor-outs, and to take enforcement action against violators.

**Fiscal Impact:**

None as a result of changes proposed herein. It is expected that enforcement of the new regulations will eventually reduce the amount of funds we expend on the SAVE program, or at a minimum, stop that amount from increasing.

**Measure of Success**

The ability to manage anchor-outs within city waters so that only seaworthy vessels with responsible captains are permitted.

**Attachments:**

- Orthodigital showing City Limits in San Francisco Bay
- “Redline” version of Title 18 Marina Regulations
- Ordinance No. 635

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Director of Public Works/City Engineer

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City Manager

**ORDINANCE NO. 635****AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING VARIOUS CHAPTERS OF TITLE 18  
OF THE BRISBANE MUNICIPAL CODE  
CONCERNING MARINA REGULATIONS**

**The City Council of the City of Brisbane hereby ordains as follows:**

**SECTION 1: Chapters 18.02, 18.08 and 18.300 of Title 18 “Marina Regulations” of the Municipal Code are hereby amended to read as follows:**

**Chapter 18.02 - DEFINITIONS**

- **18.02.010 - Generally.**

For the purposes of this title, certain words and terms used in this title are defined in this chapter. Words used in the present tense include the future; words in the singular number include the plural; and words in the plural number include the singular unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory.

- **18.02.011 - Beached.**

"Beached" means the position of a vessel when such vessel rests on the mud or other bottom or does not float freely at ordinary low tide.

- **18.02.012 - Berth.**

"Berth" means the place in which a vessel is moored or secured.

- **18.02.020 - Brisbane Marina.**

"Brisbane Marina" means the area designated as such on that map so entitled, incorporated herein by reference, which map is on file in the office of the city clerk.

- **18.02.030 - City waters.**

"City waters" means any and all waters within the corporate limits of the City of Brisbane and the San Francisco Bay.

- **18.02.040 - Harbormaster.**

"Harbormaster" means the officer designated in charge of vessel movement, safety, security, and environmental issues within the Brisbane Marina and City waters, or her/his duly authorized representative.

- **18.02.050 - Licensee.**

"Licensee" means the person(s) in whose name a specific berth at the Brisbane Marina is assigned by the harbormaster pursuant to a marina license agreement.

- **18.02.060 - Live aboard.**

"Live aboard" means the use or occupancy of a boat for overnight accommodations for more than three (3) nights in a seven (7) day period.

- **18.02.061 - Live aboard boat and live aboard vessel.**

"Live aboard boat" and "live aboard vessel" is a boat or vessel that is not a transient boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence as that term is defined in California Government Code Section 244.

- **18.02.062 - Marina license agreement.**

"Marina license agreement" means a maritime contract for private wharfage between the City of Brisbane and the licensee.

- **18.02.064 - Marine debris.**

"Marine debris" shall have the same meaning as set forth in California Harbors and Navigation Code Section 550(b) or successor statute as it currently exists or may hereinafter be amended. As of the date of adoption of this Ordinance, "marine debris" means "a vessel or part of a vessel, including a derelict, wreck, hulk, or part of any ship or watercraft or dilapidated vessel, that is unseaworthy and not reasonably fit or capable of being made fit to be used as a means of transportation by water.

- **18.02.066 - Moor.**

"Moor" means the fixing of a vessel in one location temporarily or permanently by mooring, anchoring, grounding or any other means.

- **18.02.070 - Slip.**

"Slip" means berth.

- **18.02.080 - Vessel.**

"Vessel" shall have the meaning as set forth in California Harbors and Navigation Code Section 550(a) or successor statute as it currently exists or may hereafter 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.

- **18.02.082 - Wharfage.**

"Wharfage" means the provision of berthing services for a vessel.

## **Chapter 18.08 - GENERAL REGULATIONS**

- **18.08.010 - Disposing of refuse or other matter.**

A. No person shall throw, discharge, deposit or leave any material, liquid or solid, be it refuse, sewage, contaminated bilge water, or any waste or other matter of any description upon or into the water, banks, walls, piers, floats or grounds within the boundaries of City waters.

B. No person shall clean fish or cut bait except at specifically designated places.

C. All vessels are required to have approved marine sanitation devices which shall be operated and maintained in compliance with federal and state laws and regulations pertaining thereto.

D. Debris from vessel repair, oil, fish or human waste shall not be deposited in refuse receptacles.

E. In the event of any waste discharge referenced above or in the event of an oil spill or other petroleum products entering the waters of the Brisbane Marina, the harbormaster shall be immediately notified. The harbormaster is authorized to contract for the cleanup of such spill or discharge, the cost of which is to be paid by the responsible person or vessel owner.

F. Violation of any portion of this section is grounds for immediate termination of any license agreement and expulsion from the marina property.

- **18.08.020 - Hazardous conditions.**

A. Any condition aboard or around a vessel, float, pier or parking area caused by a licensee, which in the opinion of the harbormaster constitutes a fire hazard, health menace or danger to public safety shall be immediately corrected.

B. No part of any vessel including equipment thereto shall extend beyond the end of the slip or over the header float without permission of the harbormaster.

C. Mooring lines shall be of sufficient number and strength to insure that the vessel shall be secure in the highest winds that can reasonably be expected.

- D. Use of bicycles, skateboards or similar devices on piers or floats is prohibited.
- E. Platforms used for boarding, with the approval of the harbormaster, shall not be over eighteen (18) inches wide, be of open construction and may not be used for storage.
- F. Storage on flotation shall be limited to dock boxes.

- **18.08.030 - Vessel maintenance.**

- A. Vessel maintenance work shall be limited to that ordinarily required to keep the vessel seaworthy and in good condition. Minor repairs to and routine maintenance of a vessel may be made or accomplished in the assigned berthing space, provided all work is done within the confines of the vessel and not carried on in any manner whatsoever upon the floats or piers.
- B. Spray painting is strictly prohibited.
- C. Major repairs which include, but are not limited to, construction, repair, or replacement of structural members or portions of the vessel or propulsion system, or scraping or sanding of paint are prohibited when the vessel is in an assigned space.
- D. Use of welding equipment, burning torch or other open flame apparatus requires written permission from the harbormaster.
- E. Sandblasting is strictly prohibited.
- F. All vessels are required to be maintained and in operable condition. The harbormaster may require, on ten (10) days' written notice, a demonstration of the vessel's operability. An inoperable vessel may be expelled from the harbor and the lease terminated.
- G. Always follow Brisbane Marina's best management practices, which are available at no charge in the marina office.

- **18.08.040 - Unnecessary disturbances.**

- A. The owner of the vessel is responsible for his/her crew and guests. No person shall cause loud and/or unnecessary noise which is disturbing to others.
- B. Except when on board an owner's vessel, animals shall be on a leash no longer than six (6) feet in length. No animal shall be tethered or tied to or upon public property.
- C. All engines shall be equipped with approved mufflers.
- D. As the berthing area of the Brisbane Marina is closed to the general public, no person shall use, walk or enter vessels, piers, header floats or gangways unless such person is a licensee or authorized guest. The harbormaster may authorize access to piers and header floats.
- E. Gates to the berthing area shall be locked at all times. Blocking open or climbing over gates is prohibited.
- F. Swimming, bathing, skin diving, wading and movement of vessels for purposes other than entering or leaving the harbor is prohibited within the Brisbane Marina harbor. Cruising within the harbor is prohibited.
- G. Digging for bait or other purposes and raking or disturbing the soil surface in any manner is prohibited unless such action is to perform maintenance to public property and has the written approval of the harbormaster.

- **18.08.050 - Marine debris.**

Marine debris may be removed, destroyed and disposed of in accordance with California Harbors and Navigation Code Sections 550 through 552, or successor statutes.

- **18.08.052 - Public nuisance.**

A. Public nuisance defined. It is a public nuisance for any person owning, leasing, occupying or having charge or possession of any vessel in City waters 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:

1. The keeping, storage, depositing, or accumulation on, or attachment to, a vessel, barge, or object for an unreasonable period of any personal property, including but not limited to abandoned, wrecked, dismantled, or inoperative vessel(s) or equipment for a vessel, engine parts and/or equipment, appliances, furniture, containers, scrap metal, wood building materials, junk, rubbish, or debris, which constitutes a serious threat to public health, and/or safety.
2. Any dangerous condition that is detrimental to the public health, safety, or welfare.
3. Discharge of refuse and/or other substances in violation of Section 18.08.010.

B. Public nuisance abatement. Any public nuisance shall be abated in accordance with the provisions set forth in Chapter 8.36 of this Code with the following modifications:

1. The notice required under Sections 8.36.050 and 8.36.100 shall be served on the registered or legal owner or any other person sought to be charged with the responsibility of abatement at his or her address as it appears on the latest Department of Motor Vehicles registration form or as known to the Harbormaster or City employee giving notice. A copy of the notice shall be posted on the vessel.
2. The term "person" as used in Chapter 8.36 of this Code shall refer to the registered or legal owner or any other person sought to be charged with the responsibility of abatement.

- **18.08.054 – Limitations to Moor or Beach a Vessel.**

Other than those vessels lawfully permitted to be within the Brisbane Marina, it is unlawful for any person to moor or beach any vessel in City waters in excess of 10 hours without first obtaining the written permission of the Harbormaster.

- **18.08.056 - Beached vessels.**

Except in an emergency and except for those vessels lawfully docked in harbor and marina facilities, it shall be unlawful for the owner or person in control or custody of any vessel to



beach in City waters or upon the dike forming the southern boundary of the former Sierra Point landfill.

- **18.08.060 - Establishment and promulgation of additional rules.**

The berthing of vessels and other activities and operations of and in the Brisbane Marina not herein regulated shall be in conformance with reasonable regulations established by resolution of the city council of the city. Such regulations shall be based upon the maintenance within the marina of sanitary and sightly conditions, orderliness, the preservation of public health, safety, peace and welfare, and the convenience of the public in the use of such area for the purpose for which it is established. All licensees shall be given a copy of the ordinance codified in this title and a copy of any additional rules which may be promulgated pursuant to this section. A copy of these documents shall be posted in the harbormaster's office.

## **Chapter 18.300 - PENALTIES**

- **18.300.010 - Violation—Penalties.**

The violation of any of the provisions of this title shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

- **18.300.020 - Impoundment.**

The city shall have the right and power to remove or impound the vessel of any person violating the rules and regulations or failing to pay required fees, or leaving any vessel in City waters or beached for 72 or more hours, at the sole cost and expense of the owner. The registered and legal owner of the vessel so removed and impounded shall have the right to secure the release of such vessel upon furnishing proof of ownership and payment of the costs and expense of removal, impoundment and/or storage of the vessel. In addition, the provisions of the Boater's Lien Law, currently set forth in California Harbors and Navigation Code Section 500 et seq., shall apply. Impound fees shall be established by resolution of the city council of the city. Impound fees will be assessed daily.

- **18.300.030 - Responsible parties.**

Compliance with the rules and regulations established or authorized by this title is the responsibility of vessel owners, their guests, and visitors to the Brisbane Marina.

**SECTION 2:** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council

of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

**SECTION 3:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

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Madison Davis, Mayor

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The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

