

**CITY OF GUSTAVUS, ALASKA
ORDINANCE FY13-20**

**AN ORDINANCE FOR THE CITY OF GUSTAVUS ADOPTING A MAJOR
REVISION FOR TITLE 8 MARINE FACILITIES**

BE IT ENACTED BY THE GUSTAVUS CITY COUNCIL AS FOLLOWS:

- Section 1. **Classification** This ordinance is of general and permanent nature and shall become a part of the City of Gustavus Municipal Code.
- Section 2. **Severability** If any section or subsection of this title is determined to be illegal or unenforceable, the remaining provisions shall not be affected, but remain valid and enforceable to the extent permitted by law.
- Section 3. **Enactment** Now therefore, be it enacted by the Gustavus City Council that this major revision of Title 8 deletes Title 8 in its entirety and adopts a new Title 8 that reads as follows:

TITLE 8

MARINE FACILITIES

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**Chapter 8.01
General Provisions**

Section:

- 8.01.01 Purpose**
- 8.01.02 Jurisdiction**
- 8.01.03 Implied Agreement for Use of Facilities; City Liability Denied**
- 8.01.04 Definitions**

8.01.01 Purpose. The purpose of this title is:

- (a) To provide for the safe and efficient use, and orderly management and control of all harbor facilities owned, managed or operated by the City of Gustavus ("City"), including but not limited to the Small Vessel Float System and its interface with the State of Alaska-owned Gustavus Multi-Modal Marine Facility, and the City of Gustavus-owned Salmon River Small Boat Harbor Facility.
- (b) To protect and preserve the lives, health, safety and well-being of persons who use, work or maintain property at the City-owned and maintained harbor facilities;
- (c) To protect public property;
- (d) To prevent fire or health hazards and abate nuisances;
- (e) To prevent the use of the harbor facilities for derelict vessels and property;
- (f) To ensure adequate financial resources are available to acquire, plan, design, construct, equip, operate, maintain or replace harbor facilities through the assessment of user fees or through other means.
- (g) To maintain a user-friendly facility

8.01.02 Jurisdiction.

The City of Gustavus assumes control and jurisdiction over the Small Vessel Float System and the City of Gustavus-owned Salmon River Small Boat Harbor Facility. The provisions of this title shall be construed to supplement federal laws and regulations, in cases of concurrent jurisdiction.

8.01.03 Implied Agreement for Use of Facilities; City Liability Denied.

The use of City-owned and maintained harbor facilities constitutes an agreement by the owner, operator, master and/or managing agent of a vessel comply with this title and any regulation adopted by the City of Gustavus, and to pay all fees and charges provided by this title. The City of Gustavus shall not be liable for loss of or damage to property, or injury to persons within or upon its harbor facilities.

8.01.04 Definitions.

Whenever the words, terms, phrases and their derivations set forth in this section are used in this title, they shall have the meaning set forth in this section.

- (a) **Abandoned Vessel and/or property.** Any vessel whose last registered or documented owner has failed to contact or cannot be contacted by the Harbormaster via the most recent contact information on file. A vessel is deemed abandoned if the last registered or documented owner disclaims ownership, or the owner cannot be determined, or other identification has been obliterated or removed in a manner that precludes identification.
- (b) **Anchor.** To secure a vessel to the bed of a body of water by lowering an anchor or anchors or by using a buoy secured to the bed of a body of water, or by using other ground tackle.
- (c) **Cargo.** Goods or materials that are loaded onto or off-loaded from a vessel.
- (d) **Cargo Carrier.** The vessel hired to carry goods or materials.
- (e) **Charter Vessel.** A vessel used to transport hunters, recreational saltwater or freshwater fishermen, whale watching or wildlife viewing individuals or groups, kayakers and/or kayak hauling for hire or any motor vessel measuring less than 200 tons gross and not more than 24 meters (79 feet) in length engaged in transport of passengers;
- (f) **Commercial Vessel.** A fishing vessel, fish tender vessel or fish processing vessel or any other vessel engaged in commercial activity such as mining, logging, scientific research, or similar activity, whether on a for-profit or non-profit basis.
- (g) **Derelict.** Any vessel or property that the City determines to be, or appears to be forsaken, abandoned, deserted, cast away, unsound, unseaworthy, or unfit for its trade or occupation.
- (h) **Distress.** A condition of a vessel that the City determines evidences disability or a present or obvious imminent danger, which, if prolonged, could endanger life and/or property.

- (i) **Dump.** To discharge, deposit, dump, spill, leak, inject, or place matter into or on any land or water so that such matter or any constituent part thereof enters the waters of the Gustavus Multi-Modal Marine Facility, Small Vessel Float System or Salmon River Small Boat Harbor
- (j) **Emergency.** A condition of a vessel that the City determines evidences imminent or proximate danger to life or property in which time is of the essence.
- (k) **Facility.** The Gustavus Multi-Modal Marine Facility (“Facility”) is owned, operated, and maintained by the State of Alaska Department of Transportation and Public Facilities. The Facility includes the dock and its associated approach, mooring, and transfer structures, the Staging Area Island, and the shore-side infrastructure providing the facility via Dock Road in Gustavus.
- (l) **Floats.** All City-owned and maintained floating walkways located within harbor facilities and designated for vessel moorage or for parking skiffs or kayaks. The City’s floats include:
 - (1) Boat launch ramp float. The City-owned and maintained floating walkway used in conjunction with the Salmon River boat launch ramp.
 - (2) Mooring float. Any City-owned and maintained floating walkway attached to the Gustavus Multi-modal Marine Facility, and designated by signage or otherwise for mooring vessels.
 - (3) Tender mooring space. That portion of the mooring float used for short-term moorage of tenders.
 - (4) Skiff and kayak float. That portion of the Small Vessel Float System that includes the temporary parking of skiffs, kayaks, or canoes on an out-of-water inclined surface.
- (m) **The Gustavus Multi-Modal Marine Facility.** Owned, operated, and maintained by the State of Alaska Department of Transportation and Public Facilities, the Facility includes the dock and its associated approach, mooring, and transfer structures, the Staging Area Island, and the shore-side infrastructure providing access to the facility via Dock Road in Gustavus, Alaska
- (n) **Harbor Appeal Panel.** A group of two council members and one public member appointed by the Mayor and ratified by the City Council to hear appeals from citations issued by the Harbormaster for violations of this Title.
- (o) **Harbor facilities.** Harbor facilities includes all mooring devices, including but not limited to floats, fingers and stalls, grid irons, and other appurtenances located in the small boat harbor, the float system, boat launching ramps, land storage areas and loading areas under the jurisdiction of the City for health, safety or convenience of the public, including the following harbor facilities, or any other harbor facilities later established:
 - (1) The Small Vessel Float System (Floats). All City-owned and maintained floating walkways that are designated for mooring vessels and that are attached to the State of Alaska’s Gustavus Multi-Modal Marine Facility, which Facility includes the dock and

its associated approach, mooring, and transfer structures, the Staging Area Island, and all related shore-side infrastructure.

(2) The Salmon River Small Boat Harbor Facility (small boat harbor). Parcel No. 3, Government Lot 6, Section 8 of Township 40 S., Range 59 E., Copper River Meridian.

- (p) **Harbor Facilities Use Fees.** All facility use rates, storage fees, penalties and transactions.
- (q) **Harbormaster.** The individual(s) appointed by the Mayor and ratified by the City Council to serve as Harbormaster(s), and/or any deputy Harbormaster or other City employee authorized by the Mayor to assume Harbormaster(s) duties. The Harbormaster is authorized to manage and control the use of all harbor facilities, to enforce this Title, and to issue citations to individuals who violate these ordinances, as set out more fully in Chapter 2 of this Title.
- (r) **Hazardous Substance**
 - (1) an element or compound that, when it enters into the atmosphere or in or upon the water or surface or subsurface land, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;
 - (2) a hazardous substance defined under 42 U.S.C.9601(14);
- (s) **Loading areas.** All of the designated areas of any float, when suitably posted and marked, are to be used only by the general public, without charge, for the purpose of loading and unloading of supplies, equipment and stores. Use of the loading zones is limited to two (2) hours in any 24 hour period.
- (t) **Long-term Storage Zone.** An area designated by resolution of the Gustavus City Council for the non-permanent storage of marine-related equipment.
- (u) **Moor.** To make a vessel fast to the shore or to an anchor.
- (v) **Navigation Clear Zone.** A radius of three hundred feet (300'), or diameter of six hundred feet (600'), from the Gustavus Multi-modal Marine Facility dock face.
- (w) **Oil.** A derivative of a liquid hydrocarbon and includes without limitation crude oil, lubricating oil, sludge, oil refuse, diesel fuel, gasoline or another petroleum-related product or by-product;
- (x) **Open Mooring Space.** A space on the float system which is available on a first-come, first-served basis, used for temporary or short-term mooring. Rafting out might be necessary during peak terms of occupancy.
- (y) **Person(s).** A natural person or a business, corporation, joint venture, partnership, association, organization, trust, society, or governmental agency.
- (z) **Pollutant.** Any substance or material defined as a pollutant under 33 U.S.C. 1362(6).
- (aa) **Public Nuisance.** A vessel and/or property or other item that causes an obstruction to navigation, or that is abandoned or derelict or unfit or unseaworthy or that is unsafe or that is maintained in such a manner as to constitute a fire hazard, or a vessel that is sunken or in imminent danger of sinking.

- (bb) **Public Vessel.** A watercraft that is owned, operated, or chartered by the United States, the State of Alaska, or a political subdivision thereof.
- (cc) **Staging Area Island.** The man-made island lying between the shore and the Gustavus Multi-Modal Marine Facility and connected to the shore and the Gustavus Multi-Modal Marine Facility by a steel approach trestle.
- (dd) **Steel Breakwater Float.** A barrier that breaks the force of waves, attached to the Gustavus Multi-Modal Marine Facility that extends two hundred feet (200') east of the dock face.
- (ee) **Transfer of cargo.** All types of loading, unloading, transfer and/or containerization, or other intermodal handling of any kind of cargo.
- (ff) **Transient.** Transient means using open mooring areas on a temporary basis. The transient areas are available on a "first-come, first served" basis.
- (gg) **Transient Vessel.** A vessel using an open moorage space. Transient vessels include, but are not limited to: vessels seeking a harbor of refuge, day use, or overnight use of a moorage space, as determined by the Harbormaster.
- (hh) **Vessel.** Any watercraft of every kind and description, including but not limited to vessels, ships, boats, skiffs, tenders, barges, dredges or watercraft of any description.
- (ii) **Vessel Operator.** The master, managing agent, person in navigational control of, or other person responsible for the operation of the vessel.
- (jj) **Vessel Owner.** The documented or registered owner of the vessel.
- (kk) **Vessel Seaworthiness.** A state of readiness and safety which each vessel moored or docked in the harbor facilities must meet, including being capable of getting underway under its own power at all times. In order to be deemed seaworthy, a vessel must be constructed and maintained for the primary purpose of navigating the waterways. The Harbormaster may require any vessel to demonstrate seaworthiness by starting its engine or other means of propulsion, navigating away from the dock, and returning to the dock in a safe manner. Any vessel not demonstrating basic seaworthiness in the Harbormaster's judgment may be barred or removed from harbor facilities.

Chapter 8.02
Administration

Section:

- 8.02.01 Harbor Facilities Department, Harbormaster**
- 8.02.02 Powers and Duties**
- 8.02.03 Disclaimer of Liability**
- 8.02.04 Marine Facilities Committee**

8.02.01 Harbor Facilities Department, Harbormaster.

There shall be a Harbor Facilities Department, the head of which shall be the Harbormaster, appointed by the Mayor and ratified by the City Council for an indefinite term.

8.02.02 Powers and Duties.

(a) **Scope of Responsibility.** The Harbormaster shall be responsible for the management and control, operation and maintenance of the City's harbor facilities. The Harbormaster shall stay in close communication with State of Alaska Department of Transportation and Public Facilities personnel regarding the coordination of access and the use of the state-owned and managed Gustavus Multi-Modal Marine Facility.

(b) **Power and Duties.** The Harbormaster shall have the following authority:

(1) To board, inspect and move any vessel within the harbor facilities at any time to abate a nuisance, to protect life and property, and to otherwise enforce the provisions of this Title.

(2) To replace defective mooring lines, secure any vessel and/or property with additional mooring lines, and pump vessels that are in a dangerous condition or pose danger to other nearby vessels or property.

(3) To post signs and notices that inform the public of authorized and prohibited uses of the harbor facilities.

(4) To issue notices of violation against any person who violates any provision of the Gustavus Municipal Code.

(5) To require the owner of any vessel to demonstrate that it is in a seaworthy condition as a condition of use of the harbor facilities.

8.02.03 Disclaimer of Liability.

The authority granted to the Harbormaster shall not create an obligation or duty requiring the Harbormaster to take any action to protect or preserve any vessel or property located at or within the harbor facilities, or utilizing the harbor facilities. The City of Gustavus shall not be liable for any loss or damage to vessels or personal property stored at the harbor facilities arising from any cause.

8.02.04 Marine Facilities Advisory Committee

(a) There is established the Marine Facilities Advisory Committee, which shall consist of at least three members appointed by the Gustavus City Council. To the extent possible, appointments to the Marine Facilities Advisory Committee shall include persons having marine, engineering, financial, and other skills relevant to harbor facility affairs.

Appointments shall be for three years, after which a former member is required to wait at least one (1) year before applying for re-appointment. Initial appointments shall be for staggered terms of two and three years.

(b) Each committee member shall be a qualified voter residing in the City of Gustavus.

(c) The Marine Facilities Advisory Committee shall meet at least once each month.

(1) At least one member of the Marine Facilities Advisory Committee shall be physically present at the designated meeting place in Gustavus for each meeting.

(2) Marine Facilities Advisory Committee member(s) physically absent from Gustavus may participate by teleconference for no more than four (4) meetings per year, beginning the date of their appointment.

- (3) If the Marine Facilities Advisory Committee fails to meet for sixty (60) days, the Gustavus City Council shall declare the positions vacant and assume the responsibilities of the committee while recruiting members.
- (d) Duties. The Marine Facilities Advisory Committee shall review with the Harbormaster harbor facility operations, management, administration, ordinances, policies, fees and charges, and shall recommend changes to the Harbormaster and City Council as necessary or appropriate. The Chair of the Marine Facilities Advisory Committee shall report to the Gustavus City Council as necessary, but not less than once each calendar quarter.
- (e) Vacancies. A vacancy in the Marine Facilities Advisory Committee shall exist under the following conditions:
 - (1) If a person appointed to membership fails to qualify and take office within thirty (30) days of appointment;
 - (2) If a member departs from the City of Gustavus with the intent to remain away for a period of one hundred twenty (120) or more days;
 - (3) If a member submits his or her resignation to the Gustavus City Clerk;
 - (4) If a member fails to attend three (3) consecutive Marine Facilities Committee meetings.
- (f) Vacancies declared and filled by Council. A vacancy shall be declared if one of the conditions in (e) prevails. The vacancy shall be filled according to provisions in Title 2.

Chapter 8.03
Registration and Fee Transaction

Section:

- 8.03.01 Registration Required**
- 8.03.02 Harbor Use Fees, Charges and Penalties**
- 8.03.03 Fee Collection and Lien**
- 8.03.04 Reserved**

8.03.01 Registration Required.

- (a) The owner or operator of each vessel using the Gustavus harbor facilities shall register each vessel with the Harbormaster or the City Clerk on forms prescribed by the Harbormaster or City Clerk. The vessel registration form shall require all information deemed pertinent by the Harbormaster or City Clerk.
- (b) Any vessel not currently registered with the City of Gustavus or the Harbormaster may be moved at any time by the Harbormaster, with or without notice to the vessel owner or operator, and the vessel owner or operator shall be charged the applicable fee as set out in the Gustavus Harbor Fee Schedule.

8.03.02 Harbor Use Fees, Charges and Penalties

- (a) The Gustavus Harbor Fee Schedule shall be adopted, and may be amended from time to time, by the Gustavus City Council by resolution.
- (b) Payment of all harbor use fees, including open moorage, storage and other fees, charges, penalties or fines shall be made by check, cash or money order to the City of Gustavus. Use fees must be paid in advance.
- (c) Annual harbor use fees are non-refundable.
- (d) Users who fail to pay past-due harbor use fees, past-due sales tax or past-due fish box tax to the City of Gustavus will be denied use of facilities until paid in full, including any penalties, fees and interest. All delinquent fees, penalties, and interest operate as a lien against the vessel.
- (e) The charges for a cargo carrier for use of the Salmon River Small Boat Harbor must be remitted to the City within 30 days of use and if not so remitted, such payment is delinquent. The postmark shall determine the date of filing payments. In addition, a late payment penalty of five percent (5%) per month or any fraction thereof, not to exceed a total accrual of twenty-five percent (25%), shall be added to all delinquent fees, until such use fees, penalty and interest thereon have been paid. Such penalty shall be assessed and collected in the same manner as the fee is assessed and collected. In addition to these penalties, interest at the rate of fifteen percent (15%) per year on the delinquent use fees is collected.
- (f) If the City Clerk or Harbormaster is unavailable, a temporary moorage form will be available at the Small Vessel Float System. The user's fee shall be deposited in a drop box labeled for that purpose. Payment shall be by cash or cheque. Failure to register with the City Clerk or Harbormaster, or to deposit the required fee in the drop box within 4 hours of arrival in the harbor facilities subjects the vessel owner and operator to a fine of \$25.00. Such fines operate as a lien on the subject vessel.

8.03.03 Fee Collection and Lien

- (a) Penalties for late user fees shall be established by resolution by the City Council.
- (b) The Mayor is authorized to commence suit or exercise any other legal remedy to collect any delinquent fee or fine. In the event such suit is commenced, the person obligated to pay the fee or penalty shall, in addition to any other liability imposed by this title, be liable for the City's actual, reasonable attorney's fees and costs associated with the collection.
- (c) In addition to all other remedies available by law, the City shall have a lien for any fees, interest and costs of collection, including attorney's fees, provided by this title, upon any vessel, equipment, tackle, gear, cargo, vehicle and property giving rise to such fees. The lien may be enforced by any procedure otherwise provided by law.

8.03.04 Reserved

Chapter 8.04

Rules for Use of the Gustavus Harbor Facilities

Section:

- 8.04.01 Conduct in Harbor Facilities – General Rules**
- 8.04.02 Condition of Facilities, Generally**
- 8.04.03 Failure of Owner, Master, Agent or Occupant to Allow Harbormaster to Board Vessel**
- 8.04.04 Persons to Comply with Harbormaster’s Communications**
- 8.04.05 Persons to Obey Lawful Regulations and Meet Accepted Safety Standards**

8.04.01 Conduct in Harbor Facilities – General Rules.

- (a) Vessels moored within the harbor facilities shall be capable of meeting the provisions of 8.07.09 Underway Requirements at all times, unless specifically authorized by the Harbormaster.
- (b) Vessels, when unattended, shall be securely moored with lines, adequate in size and number for the boat, and suitable for weather and other conditions. Lines shall be easily removed by hand.
- (c) Vessels moored within the harbor facilities shall, at all times, be seaworthy and ready for immediate or emergency departure into local waters. At no time may a vessel be chained or locked to any float or other component or structure of the harbor facilities.
- (d) All moorage of vessels in the harbor facilities shall be in accordance with posted signs or as otherwise directed by the Harbormaster or the City of Gustavus.
- (e) All vessels and vehicles in, at or on the harbor facilities shall be parked, moored and maneuvered in a safe and orderly manner.

8.04.02 Condition of Facilities, Generally

Vessel owners or operators using the harbor facilities shall keep vessels, equipment, gear, piers, or floats in the vicinity of their vessels in a clean, orderly and safe condition.

8.04.03 Failure of Vessel Owner, Vessel Operator or Occupant to allow Harbormaster to Board Vessel

Failure of a vessel owner, operator or occupant to allow the Harbormaster to board a vessel pursuant to 8.02.02(b) shall be deemed a violation of this chapter.

8.04.04 Persons to Comply with Harbormaster’s Communications

Any person using the harbor facilities or any harbor facility equipment shall comply with all verbal or written communications of the Harbormaster.

Chapter 8.05
Prohibited Acts

Section:

- 8.05.01 Prohibited Acts**
- 8.05.02 Harbor Facilities Offenses Fine Schedule**
- 8.05.03 Relationship to Other Laws**

8.05.01 Prohibited Acts. It is unlawful for any person using the Gustavus harbor facilities to commit or allow any of the following prohibited acts:

- (a) **Improper Vessel Operation.** It is unlawful for a person to operate or cause to be operated any vessel or watercraft in a reckless or negligent manner or in disregard for the safety of person(s) or property within the limits of the harbor facilities.

It is unlawful for a person to operate any vessel or watercraft in a manner that unreasonably or unnecessarily interferes with other vessels or watercraft, or with the free and proper navigation of the waterways of the harbor facilities.
- (b) **Hazard to Navigation.** No person shall create or fail to remove, after request from the Harbormaster, a hazard to navigation within the harbor facilities.
- (c) **Improper Mooring.** No person shall moor or anchor any boat, vessel or other floating structure:
 - (1) in a manner which obstructs access to or use of the harbor facilities;
 - (2) in the clear zone of the Gustavus Multi-Modal Marine Facility per Section 8.06.03.
- (d) **Improper Use of Harbor Facilities.** No person shall use the harbor facilities for purposes or in a manner contrary to Title 8 of this ordinance.
- (e) **Improper Dressing and Processing of Fish.** It is unlawful to dress or process fish, including but not limited to gutting, filleting, fletching, smoking or steaking except aboard a vessel at the harbor facilities.
- (f) **Improper Waste Disposal.** It is unlawful for any person to dispose of trash, garbage, refuse, human waste, animal carcasses or parts, fish waste or parts, or any similar substance in or on the water or the land of the harbor facilities.
- (g) **Improper Dumping or Discarding of Property.** It is unlawful for any person to discard, dump or otherwise place on or into the harbor facilities or any waterway:
 - (1) batteries;
 - (2) oil;

- (3) hazardous substance(s) including but not limited to solvents, antifreeze, paint (including paint chips, flakes and debris), and detergents or cleaners containing hazardous substance(s); or
 - (4) fuel, or any other petroleum product;
 - (5) refuse;
 - (6) garbage; or
 - (7) other pollutants.
- (h) **Unattended Cargo or Freight.** No person shall deposit or leave any cargo, merchandise, supplies, freight, articles or other objects upon any float, ramp, decline, walk, or other public place at the harbor facilities. Free and unencumbered access to and within the harbor facilities must be maintained at all times.
 - (i) **Control of Animals.** All dogs or other animals shall at all times be under the physical control of the owner or person in charge of the animal. Owners will be responsible for cleaning up after their pets. It is unlawful to leave pet feces on any harbor facility. The owner or caretaker of any pet who violates this section is responsible for the resulting fine.
 - (j) **Posting Written or Printed Matter.** No person shall erect, place, write, post or maintain any written or printed matter, advertising matter or sign at the harbor facilities without having first obtained permission of the Harbormaster. All unauthorized signs shall be removed by the Harbormaster. Written or printed matter authorized by the Harbormaster may remain in place for no more than seven (7) consecutive days. It is unlawful to remove, deface or destroy any sign or printed matter placed by the Harbormaster.
 - (k) **Improper Petroleum Product Disposal.** No person shall release any fuel, oil, their derivatives, wastes or by-products, or other petroleum products into the waters or onto the lands of the harbor facilities.
 - (l) **Improper Fuel Dispensing.** Fueling of vessels shall occur only at a location designated by the State of Alaska Fire Marshal and in accordance with a procedure approved by the State of Alaska Fire Marshal.
 - (m) **Conducting Commercially-oriented Business.** There will be no leased or rented commercial uses of any portion of the land under the State of Alaska Cooperative Resource Management Agreement ADL107456.
 - (n) **Unlawful Construction.** No person shall alter terrain at, or engage in building or construction at any City harbor facilities without the consent of the City Council.

8.05.02 Harbor Facilities Offenses Fine Schedule.

- (a) All fines established under this Title are civil penalties. Proof of liability for any penalty is sufficient if the Harbormaster proves by a preponderance of the evidence that the alleged offense was committed. There shall be no right to a jury trial or appointed counsel to defend against any citation brought under this Title.
- (b) If a fine amount is set for an offense arising under this chapter, a person charged with that offense can dispose of the charge (by mail or in person) by paying the fine amount plus any surcharge required to be imposed by AS 29.25.075 and checking the "no contest plea" box on the back of the

citation. Alternatively, the person may choose to exercise the following appeal rights:

- (c) The first level of appeal shall be to the Harbor Appeal Panel. The question on appeal shall be whether the violation charged in the citation has been proven by the Harbormaster by a preponderance of the evidence.
- (d) Any subsequent appeal shall be taken to the Superior Court of the State of Alaska at Juneau.
- (e) The fine amounts are set forth in resolution by the Gustavus City Council.

8.05.03 Repeat Offenses. Each repeat offense shall carry a fine double the amount of the previous offense. In the case of a repeat offense, at the recommendation of the Harbormaster and confirmation of the City Council, an individual or commercial entity responsible for said acts may be prohibited from using the facility for up to one (1) year.

8.05.04 Relationship to Other Laws

- (a) In addition to the requirements set forth in this Chapter, certain federal, state, local and international laws and regulations, including but not limited to environmental, health, safety and sanitation laws and regulations, are applicable to all Gustavus harbor facilities. All persons are hereby warned and placed on notice that they are responsible for determining their obligations under such laws and that they may be subject to applicable penalties, fines, imprisonment, and other forms of liability for violation of such laws and regulations.
- (b) The dumping of any substance or material prohibited by this Chapter shall not result in liability or penalties under this Chapter if such dumping is authorized by and conducted in full compliance with applicable federal and state permits. The burden shall be on the alleged violator to establish, as an affirmative defense, that such conduct is authorized by and in full compliance with applicable federal and state permits.

Chapter 8.06
Gustavus Multi-Modal Marine Facility and
Small Vessel Float System

8.06.01 Preferential Dock Use at the Gustavus Multi-Modal Marine Facility ("Facility")

- (a) Public Vessels are entitled to priority use of the Facility. In the event of conflicting use by public vessels, Alaska Marine Highway System (AMHS) ferries have first priority.
- (b) On the south face of the Gustavus Multi-Modal Marine Facility, preferential privileges are accorded to berth AMHS ferry vessels in accordance with the AMHS published schedule. Any variance in the AMHS schedule will be provided to the Harbormaster a minimum of six

- (6) hours prior to arrival. Other vessels using the dock will be cleared thirty (30) minutes prior to arrival of the AMHS ferry.
- (c) Any vessel moored in such a manner that it could potentially interfere with the docking of any AMHS vessel shall at all times have onboard competent crew that is capable of moving the vessel away from the dock within fifteen (15) minutes of notice by the Harbormaster.

8.06.02 Security Rules Applicable During Alaska Marine Highway Service Ferry Operations

The following security rules apply to the dock facility south of the man-made island including the Small Vessel Float System, during AMHS vessel operations beginning thirty (30) minutes prior to the vessel's actual arrival and until thirty (30) minutes after its actual departure from the main dock moorage. During that time:

- (a) Only ticketed AMHS passengers, AMHS crew, or others authorized or directed by AMHS employees will be allowed access to and/or from the vessel using the transfer bridge or covered pedestrian walkway on the west side of the transfer bridge.
- (b) Only embarking or disembarking passengers, and commercial or service vehicles authorized or directed by AMHS employees, will be allowed access to or from the vessel using the transfer bridge.
- (c) Access to and from the Small Vessel Float System for authorized small boat harbor users will be limited to pedestrian traffic only via the open pedestrian walkway on the Small Vessel Float System side of the transfer bridge. Users of this access system must follow the directions of the AMHS ferry crew or authorized shoreside personnel directing pedestrian and vehicle traffic to and from the vessel.
- (d) Vehicles parked along the Gustavus Multi-Modal Marine Facility dock face shall be moved to the Staging Area Island or land side (north) of the trestle approach prior to AMHS docking.
- (e) In the case of emergency, authorized law enforcement or emergency response personnel and vehicles will be allowed access to the area south of the man-made island as required.

8.06.03 Navigation Clear Zone around Gustavus Multi-Modal Marine Facility

- (a) The U.S. Army Corps of Engineers and/or the U.S. Coast Guard may establish clear zones at or in the vicinity of the dock area to promote safety for vessels approaching and departing the dock facility.
- (b) Vessels underway to or from the Small Vessel Float System shall remain outside any established clear zone areas and the ferry vessel approach and departure paths to and from the dock.

8.06.04 Unauthorized Vessels Prohibited from Using Floating Support of AMHS Transfer Bridge

No vessel shall be tied to or placed upon the blue floating structure that supports the AMHS transfer bridge.

8.06.05 Open Moorage at Small Vessel Float System.

- (a) Vessels using open moorage areas shall not exceed forty (40) feet in actual overall length, including all engines, bowsprits, anchors, dinghy davits, or other protruding structures.
- (b) All open mooring space is available to members of the public for temporary mooring, on a first-come, first-served basis.
- (c) No vessel owner or vessel operator shall have any exclusive right to open mooring space. Should any vessel moored at such mooring leave such space for any purpose, it shall have no exclusive right to return to the same space if, upon return, it is found that the space is occupied by another vessel.
- (d) Open moorage shall not exceed the times posted on signage at the floats, to be established by the Gustavus City Council by resolution.

8.06.06 Skiff and Kayak Float.

- (a) Vessels using the skiff and kayak floats shall not exceed eighteen (18) feet in actual length, excluding motor(s), and shall not weigh more than one thousand five hundred (1,500) pounds.
- (b) Open spaces on the skiff and kayak float shall be utilized on a "first-come, first-served" basis. No skiff or skiff owner or operator or kayak or kayak owner or operator, shall have any exclusive right to open skiff and kayak float space. Should any skiff or kayak stored in a skiff and kayak float space leave such space for any purpose, it shall have no exclusive right to return to the same space if, upon return, it is found that the space is occupied by another vessel.
- (c) Open moorage shall not exceed the times posted on signage at the floats, to be established by the Gustavus City Council by resolution.

8.06.07 Breakwater Loading/Unloading and Moorage

- (a) Vessels using the steel breakwater float shall not exceed seventy-five (75) feet in actual overall length, including all engines, bowsprits, anchors, dinghy davits, or other protruding structures.
- (b) Moorage at the steel breakwater float shall not exceed the times posted on signage at the floats, to be established by the Gustavus City Council by resolution

8.06.08 Tender mooring

Tenders may be moored bow-in for daily or overnight moorage on the west side of the inclined skiff/kayak float.

8.06.09 Loading Areas

All of the approaches and designated areas of any float, when posted and marked, are to be used by the general public, without charge, for the purpose of active loading and unloading of supplies, equipment and stores. Use of the Loading Areas is limited to 2 hours in any 24 hour period.

Chapter 8.07
Salmon River Small Boat Harbor

Section:

- 8.07.01 Salmon River Small Boat Harbor Zones**
- 8.07.02 Freight Staging Zone**
- 8.07.03 Long-term Storage Zone**
- 8.07.04 Launching Zone**
- 8.07.05 Vehicle/Trailer Parking Zone**
- 8.07.06 Residential**
- 8.07.07 Historical Wooden Floats**
- 8.07.08 New Construction**
- 8.07.09 Underway Requirements**
- 8.07.10 Accident Report**
- 8.07.11 Duties of Owners/Operators**

8.07.01 Salmon River Small Boat Harbor (“small boat harbor”) Zones.

The Salmon River Small Boat Harbor is comprised of four zones: Launching, Freight Staging, Long-term Storage, and Boat Trailer/Vehicle Parking.

8.07.02 Freight Staging Zone.

Incoming and outgoing cargo and commodities of a size and type not suitable for containerized storage may be neatly stored in areas designated for this purpose.

- (a) Location. Transfer of cargo shall occur only at designated staging zones. In special situations, the location may be extended by the Harbormaster.
- (b) Notification. Cargo carriers shall notify the Harbormaster prior to entering the small boat harbor. All hazardous materials shall be clearly marked and labeled in accordance with state and federal regulations.
- (c) Cargo Transfer Duration. The time for cargo transfer in the Staging Zone shall be limited to the actual transferring of/or loading of cargo.
- (d) Liability and Indemnity. All risk of loss from theft, fire, or other casualty to cargo shall be assumed by the party owning the cargo and the cargo carrier, and not by the City of Gustavus. The cargo carrier loading, transporting and unloading cargo shall defend, indemnify, and hold the City of Gustavus harmless from all claims arising from cargo transfer.
- (e) Cargo Area Cleanup. Cargo carriers shall keep the Staging Zone clean and free of trash, pallets, packaging material, dunnage, or operational equipment associated with cargo service.

8.07.03 Long-term Storage Zone.

- (a) Availability. A person(s) may apply to lease an area of the long-term storage zone by contacting the Harbormaster or City Clerk.
- (b) Any item(s) stored outside the designated storage area will be considered a public nuisance and subject to the provisions of Chapter 8.08.
- (c) Vessels and boat trailers. Boat trailers may be stored in the designated storage zone. Untrailed vessels may be stored in the storage zone, but shall be blocked and supported by means and in a manner that does not create a hazard to persons or property and does not impede relocation if required by the Harbormaster.
- (d) Markings. Items placed in the storage zone, including goods on pallets, shall be clearly marked with the name, mailing address and telephone number of the owner or other responsible person.
- (e) Liability and Indemnity. The user of storage space in the storage zone assumes all risk of loss from theft, fire, or other casualty. Storage areas may not be guarded or enclosed. The user shall defend, indemnify, and hold the City of Gustavus harmless from any and all claims arising from such use of the storage zone.

8.07.04 Launching Zone. The launching of vessels or loading or haul-out of cargo, lumber and logs shall be restricted to the gravel or concrete launch ramps, ramp-barge ramp, or barge ramps. Vessels shall be continuously engaged in launching or haul-out and shall not be left unattended while in the launching area.

8.07.05 Vehicle/Trailer Parking Zone. The Vehicle/Trailer Parking Zone(s) and time limits for use shall be set forth in resolution by the Gustavus City Council.

8.07.06 Residential Use. No portion of the small boat harbor shall be used for camping or residential purposes.

8.07.07 Historical wooden floats. Any float or walkway constructed before 2007 may be used by vessel owners and shall be maintained in a safe and responsible manner. Floats that constitute a safety hazard, as determined by the Harbormaster, shall be repaired or dismantled at the owner/users' expense.

8.07.08 New Construction. There shall be no new construction of wooden or steel floats or walkways, piers, docks or structures on the submerged lands or uplands (State of Alaska Cooperative Resource Management Agreement ADL 107456) in the small boat harbor, unless authorized by the City Council.

8.07.09 Underway Requirements.

On at least two days in each calendar year, separated by at least sixty (60) days, a vessel moored in the small boat harbor shall depart under its own power from the small boat harbor and travel beyond the navigation buoy at the mouth of the Salmon River before returning under its own power. The

Harbormaster may require that this navigation be accomplished at a time when the Harbormaster is available to view it.

8.07.10 Accident Report. Any person utilizing the small boat harbor who is involved in an accident resulting in a serious injury or death of any person, or damage to property, excluding personal property, in excess of two hundred fifty (\$250.00), shall, in addition to any other notices required by law, immediately give oral notice of the accident to the Harbormaster. In addition, the aforementioned person shall, within twenty-four (24) hours after the accident, file a written report with the Harbormaster.

8.07.11 Duties of Vessel Owners/Operators. In addition to the duties of registration and identification, every vessel owner or vessel operator using the facilities of the small boat harbor shall keep the vessel securely moored with lines, fenders and chafing gear of sufficient size, condition and number; sufficiently pumped out at all times to keep the vessel afloat; and to otherwise attend the needs of the vessel to avoid need for attention by the Harbormaster.

Chapter 8.08
Control of Nuisance and Derelict Vessel and/or Property,
Impoundment Procedure, and Hearing Procedure

Section:

8.08.01	Nuisances Declared
8.08.02	Abatement of Nuisances
8.08.03	Vessel and/or Property That May Be Impounded
8.08.04	Notice of Intent to Impound
8.08.05	Hearing
8.08.05	Decision
8.08.07	Impoundment
8.08.08	Notice of Sale
8.08.09	Sale

8.08.01 Nuisances declared.

- (a) Derelicts. For the purposes of this title and to protect the public health, safety and welfare, and in the interest of assuring the safe and full use of the harbor facilities by the general public, the City may declare any vessel in the harbor facilities to be a public nuisance if that vessel displays any one or more of the following conditions: The vessel
- (1) is or appears to be derelict, unfit or unseaworthy, abandoned or;
 - (2) is or appears to be maintained in such condition or in such manner as to render it subject to sinking or;
 - (3) has or appears to have insufficient motor or sail power to permit the vessel to be maneuvered and controlled safely in and out of the harbor facilities under wind and water conditions that are not unusual and do not constitute a hazard to vessels or;
 - (4) has been refused moorage privileges by the Harbormaster or;

- (5) is maintained in such condition or in such manner as to constitute a fire, health, safety, or navigation hazard or;
 - (6) is sunken or in imminent danger of sinking;
- (b) **Obstructions.** Any vessel or object that stops, obstructs, interferes with, endangers, or impedes navigation, moored boats, harbor facilities traffic, that otherwise interferes with the normal public use of the harbor facilities, or that has been left unattended on any waterway in or about the harbor facilities in such manner as to stop, obstruct, interfere with, endanger, or impede harbor facilities traffic, or that otherwise interferes with the normal public use of the harbor facilities, is hereby declared to be a public nuisance and subject to abatement and removal from the harbor facilities by the Harbormaster without liability to the City for any damage done by virtue of the removal or for any consequences of such action by the City, including loss of use or profits or other consequential, direct, or indirect damages. For purposes of this chapter, "obstruction" includes logs, log rafts, piling, building material, scows, barges, and any other matter, article or structure found located in, or being towed or adrift in or about the harbor facilities.
- (c) **Other nuisances.** For the purposes of this title and to protect the public health, safety and welfare, and in the interest of assuring the safe and full use of the harbor facilities by the general public, the City may declare the following to be a public nuisance:
- (1) refuse of any kind, structures or;
 - (2) pieces of any structure, dock sweepings or;
 - (3) dead animals or parts thereof or;
 - (4) timber, logs, log rafts, lumber, boxes, paint, empty containers or;
 - (5) nets, gear, cargo, merchandise, supplies or other items left on any float, ramp, decline, walk, or other public place at the harbor facilities for a period of longer than forty-eight (48) hours.
- (d) **Personal conduct.** The vessel owner or vessel operator shall be responsible for the conduct of those using or visiting the vessel. Behavior of the owner, operator or occupants of a vessel that disturbs or creates a nuisance for others in the harbor facilities is prohibited. Examples of conduct that constitutes a public nuisance and are therefore prohibited include but are not limited to:
- (1) making, causing or allowing unreasonable noise so as to cause public inconvenience, annoyance or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort, or repose of a reasonable person of normal sensitivity;
 - (2) causing, provoking or engaging in any fight, or to commit an act in a violent or reckless manner whereby the safety, life, or health of another is placed in immediate jeopardy;
 - (3) operating a vessel or being found under the influence of alcoholic beverages or a controlled substance(s) in such a condition as to be unable to exercise care for their own safety or the safety of others.

8.08.02 Abatement of Nuisances.

- (a) Any vessel, object or obstruction declared a public nuisance under section 8.08.01 is subject to impoundment, removal, and disposal pursuant to sections 8.08.04 through 8.08.09.
- (b) Property of any sort found upon a float, dock, ramp, or approach may be impounded by the Harbormaster. Impounded items will be released upon proof of ownership and payment of any impounding or storage fees established in this title. Such disposition by the Harbormaster shall be without liability to the City for any damage done by virtue of the removal or for any consequences of such action by the City, including for loss of use or profits, or other consequential, direct or indirect, damages.
- (c) Moorage for vessels declared to be public nuisances under section 8.08.01 shall be subject to termination at the discretion of the Harbormaster and, if not removed from the harbor facilities in accordance with the Harbormaster's notice of termination of moorage, the vessel may be impounded, removed, and disposed of pursuant to sections 8.08.04 through 8.08.09.
- (d) Any person causing or permitting public nuisances to be placed as aforesaid shall remove the same, and upon failure to do so, the same may be removed or caused to be removed by the Harbormaster. When the Harbormaster has authorized such nuisances to be removed or stored commercially, all costs of such removal or storage shall be paid by and are recoverable from the person creating or allowing such public nuisance. The abatement of any such public nuisances shall not excuse the person responsible from prosecution hereunder.
- (e) The Harbormaster shall give written notice of the impoundment to the owner of the property if the owner is known, and shall maintain a list in the Harbormaster's office of all property impounded and the date of impoundment. Property that is not claimed within sixty (60) days shall be forfeited to the City and may be sold pursuant to procedures regulating the disposition of other City property.

8.08.03 Vessels and/or Property That May Be Impounded.

The Harbormaster is authorized to impound a vessel and/or property under any of the following circumstances:

- (a) The vessel or property is within the harbor facilities and has been declared to be a public nuisance under this title;
- (b) The vessel or property is located at the harbor facilities and is in violation of this title;
- (c) Any and all property including but not limited to engines, machinery, equipment, nets, line, skiffs, gear, buoys, or all other personal property that the City has determined to be or appears to be abandoned at any of the harbor facilities.

8.08.04 Notice of Intent to Impound

- (a) **Notification.** Prior to impounding any vessel or property, the Harbormaster shall prepare a written Notice of the Intent to Impound the vessel or property. The notice shall contain:
 - (1) The name and/or official number or state registration number of the vessel;
 - (2) The name and address, if known, of the owner, operator, master or managing agent;
 - (3) The location of the vessel or property;
 - (4) The basis or reason for impoundment.

- (b) **Distribution.** The notice of intent to impound shall be, at least fifteen (15) workdays before impoundment,
 - (1) Mailed by USPS certified mail, return receipt requested, to the last known address of the last known owner, master, or managing agent of the vessel and/or property;
 - (2) Posted on the vessel and/or property and in three public places, including the Gustavus City Hall and the Gustavus Public Library.

8.08.05 Hearing

- (a) **Demand for Hearing.** The vessel owner, the vessel operator, or any other person in lawful possession of a vessel or property proposed for impoundment has the right to a pre-impoundment hearing to determine if there is cause to impound the vessel or property. Any such person desiring a hearing shall file a written demand with the City of Gustavus City Clerk within fifteen (15) workdays following the date the City mailed and posted the Notice of Intent to Impound.

- (b) **Hearing Procedure.** The hearing shall be conducted within seventy-two (72) hours of receipt of a written demand from the person seeking the hearing, unless such person waives the right to a speedy hearing. Saturdays, Sundays, and City of Gustavus holidays shall not be included in the calculation of the seventy-two (72) hour period. The hearing shall be conducted by the Harbor Appeal Panel. The sole issue before the Panel shall be if there is probable cause to impound the vessel or property in question. "Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe there was a breach of federal, state, or municipal law or regulations, or any agreement entered into pursuant thereto, rendering the vessel or property subject to impoundment. The Panel shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vessel or property. The Harbormaster shall carry the burden of establishing probable cause to impound the vessel or property in question.

8.08.06 Decision

The Panel shall only determine that as to the vessel and/or property in question either that there is probable cause to impound the vessel and/or property or that there is no such probable cause. In the event that the Panel determines that there is no probable cause, the Panel shall prepare and date a Certificate of No Probable Cause, copies of which shall be provided to the owner or operator and to the Harbormaster. Upon receipt of a Certificate of Probable Cause, the Harbormaster may proceed with impoundment and disposition of the vessel and/or property by removal, sale, disposal, or destruction as authorized by this title.

At the conclusion of the hearing, the Panel shall prepare a written decision. A copy of the decision shall be provided to the person demanding the hearing and the owner of the vessel and/or property if the owner is not the person requesting the hearing. The Panel's decision in no way affects any criminal proceeding in connection with the impound in question, and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the Panel is final and may only be appealed to the Superior Court. Failure of the owner or operator to request or attend a scheduled pre-impoundment hearing shall be deemed a waiver of the right of such hearing.

8.08.07 Impoundment.

- (a) In the event the Panel determines there is cause to impound the vessel and/or property, the Harbormaster may proceed immediately with impoundment. The Harbormaster may impound the vessel and/or property by immobilizing it, removing it, or having it removed from the water or land, and placing it in public or commercial storage, with all expenses of haul out and storage and an impound fee to be borne by the owner of the vessel and/or property. At any time, prior to the sale, disposal, or destruction of the vessel and/or property, the owner, operator, master or managing agent, or person in lawful possession of the vessel and/or property may redeem the vessel and/or property by a cash payment of all fees, including interest and costs.
- (b) The Notice of Public Nuisance in the Gustavus Harbor Facilities form shall be adopted by resolution of the Gustavus City Council.

8.08.08 Notice of Sale

- (a) Notification. Prior to the sale of any impounded vessel or property, the Harbormaster shall prepare a written notice of sale of the vessel or property. The notice shall contain:
 - (1) the name and/or official number or state registration number of the vessel and/or property;
 - (2) the date, time and place of the sale;
 - (3) the fees, interest, and costs due against the vessel and/or property;
 - (4) the bidding terms provided by Section 8.08.09 of this title.

- (b) **Distribution.** The notice of sale shall be, at least thirty (30) workdays before sale:
- (1) Mailed by USPS certified mail, return receipt requested, to the last known address of the last known owner, master, or managing agent of the vessel and/or property.
 - (2) Posted on the vessel and/or property, and in three public places, including the Gustavus City Hall and Gustavus Public Library.
 - (3) Published in a newspaper of general circulation in Gustavus, Alaska, if such a publication exists, and/or the *Juneau Empire*, at least once.

Section 8.08.09 Sale

The City may offer an impounded vessel and/or property for sale at public auction or by sealed competitive bid. Continued moorage of an impounded vessel at the City harbor facilities shall be at the discretion of the Harbormaster. If the City intends to refuse further moorage of the vessel, the notice of sale shall so state, and the sale shall be conditioned upon the purchaser making satisfactory arrangements to remove the vessel from the harbor facilities, and providing the City with security acceptable to the Harbormaster for the vessel's proper and timely removal. Upon sale being made, the City of Gustavus shall make and deliver its bill of sale, without warranty, conveying the vessel and/or property to the successful buyer. The proceeds of such sale shall be first applied to the cost of the sale, then to interest, then to fees accrued, and the balance, if any, shall be held in trust by the City of Gustavus for the owner of the vessel and/or property to claim. If such balance is not claimed within six (6) months, the balance shall be forfeited to the City of Gustavus.

Date Introduced: May 9, 2013
Date of Public Hearing: June 13, 2013
Date of 2nd Public Hearing: July 11, 2013

Passed and APPROVED by the Gustavus City Council this 11th day of July, 2013.



Lou Cacioppo, Mayor

Attest: 

Paul Berry, Interim City Clerk