



# **PORT OF BROOKINGS HARBOR**

## **ORDINANCE NO. 1 - 1998**

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## ORDINANCE NO. 1 - 1998

### AN ORDINANCE PROVIDING FOR THE CONTROL AND MANAGEMENT OF THE HARBOR PROPERTIES AND FACILITIES OF THE PORT OF BROOKINGS HARBOR, AND AMENDING AND SUPERSEDING ORDINANCE NO. 1 – 1990

Ordinances must comply with notice provision requirements of ORS 198.540 (1), (2).  
The Board of Commissioners of the Port of Brookings Harbor ordain as follows...

**TITLE:** This Ordinance shall be called "Rules and Regulations Governing the Administration of the Properties and Facilities of the Port of Brookings Harbor".

**PURPOSE AND SCOPE:** The purpose of these rules and regulations is to secure the most effective control and management of the harbor properties and facilities of the Port of Brookings Harbor.

**INTERPRETATION:** If any section or part thereof of these rules and regulations is inconsistent with any laws of the State of Oregon, or of the United States, or any rule, regulation or standard established pursuant thereto, such section, or part thereof shall be construed, superseded or governed thereby. Nothing contained in this Ordinance shall be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws or as a limitation of the powers of the Port Commission or management.

**SEVERABILITY:** The provisions of these rules and regulations are declared and, if any portion of the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules and regulations or the application of such remainder to other persons or property shall not be affected.

**APPLICATION:** These rules and regulations are applicable to all properties and facilities of and in the Port of Brookings Harbor. All vessels and persons entering or using the facilities shall be subject to the policies herein defined.

**AVAILABILITY OF ORDINANCE:** Anyone may inspect a copy of these rules and regulations at the Port of Brookings Harbor office and copies may be obtained upon request.

**CONSTRUCTION:** Unless otherwise required by the context or any particular provision, the words or phrases defined in Part I: Definitions, meanings as set forth therein, the use of any gender shall include all genders; the singular shall include the plural and the plural shall include the singular; and the provisions of this ordinance shall apply to individuals, partnerships, associations, and corporations alike.

## PART I: DEFINITIONS

### Applying at the Port of Brookings Harbor and other Port operated properties

- 1.1 **ABANDONED**: Shall mean left or given up with no reasonable appearance of an intent to return or reclaim. A vessel/property or motor vehicle shall be deemed abandoned if left on or in Port facilities without identification or evidence of ownership and without notification to the Port of intent to leave; or without permission to moor at the Port; or without payment of fees for storage or use as required under Section 2.2.
- 1.2 **DISTRESS**: Shall mean a state of disability which if unduly prolonged could endanger life or property or become a hazard to navigation.
- 1.3 **DRAFT**: Shall mean the depth of a vessel keel below the water line especially with a heavy load.
- 1.4 **EMERGENCY**: Shall mean a state of prominent danger to life, property, or navigation in which time is of the essence.
- 1.5 **FEE SCHEDULE**: Shall mean moorage and harbor services, rates, fees and charges as determined from time to time by resolution of the Board of Commissioners of the Port.
- 1.6 **HARBOR AREA**: Shall mean all water and land areas under the ownership of or leased by the Port.
- 1.7 **INDUSTRIAL WASTE**: Shall mean any liquid, gaseous or solid waste substances or combination thereof resulting from any process of industry, manufacturing, trade, agricultural or agricultural operation or business, or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the harbor properties or the waters controlled by the Port of Brookings Harbor.
- 1.8 **LITTER**: Shall mean any and all types of debris and substances, whether liquid, gaseous or solid or a combination thereof including, but not limited to, garbage, refuse, rubbish, glass, cans, bottles, paper and paper products, wrappings, decayed wood, sawdust, shavings, bark, cement, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, dead animals or fish carcasses or parts thereof, manure, human or animal wastes, putrid, decaying or deleterious substances or matter, petroleum wastes, or any machinery, appliances or automobiles or parts thereof, or any other substances which may render the harbor properties or waters controlled by the Port unsightly, noxious, or otherwise unwholesome or to the detriment of the Public health and welfare.

- 1.9 **LIVE-ABOARD**: Shall mean any person sleeping overnight, preparation of food, or any other activity normally connected with temporary or permanent lodging.
- 1.10 **MARINA**: Shall mean the Port of Brookings Harbor and all of its facilities, including the RV Park, parking lots, storage facilities, and docks.
- 1.11 **MOORAGE**: Shall mean any place where a vessel lies when at anchor or is made fast to a dock or is laid alongside another vessel made fast to a dock, and shall include side and multi-side ties.
- 1.12 **MOORAGE FACILITIES**: Shall mean those facilities of the Port of Brookings Harbor where vessels may moor to wharves, docks, pilings, and finger piers in assigned or designated spaces. Fuel dock and fishing piers at the Port of Brookings Harbor shall not be considered designated moorage facilities.
- 1.13 **OVERALL LENGTH**: Shall mean the distance from the foremost part of the bow (including the bowsprit) to the aftmost part of the stern, regardless of keel length and regardless of registered or documented length.
- 1.14 **OVERALL WIDTH**: Shall mean the distance between the outermost part of each side of the hull of the vessel, regardless of registered or documented width.
- 1.15 **PORT**: Shall mean the Port of Brookings Harbor and includes all lands, properties and facilities owned or operated by the Port of Brookings Harbor.
- 1.16 **PORT COMMISSION**: Shall mean that Commission elected by the electorate of the Port District and acting under the Ordinances of the Port of Brookings Harbor to recommend plans, regulations and improvements to the harbor facilities.
- 1.17 **PORT HARBORMASTER**: Shall mean the official hired by the Port to serve as Harbormaster and any deputy Harbormaster, Port security officer or other employee authorized or designated by the Harbormaster or Port Manager to enforce the provisions of this Ordinance.
- 1.18 **PORT MANAGER**: Shall mean that person duly appointed and recognized by the Commission of the Port of Brookings Harbor. The Manager is to administer the functions of all Port facilities. Whenever, by the provisions of this Ordinance, a power is granted to the Manager or a duty is imposed upon him/her, the power may be exercised or duty performed by an assistant of the Manager, unless it is expressly otherwise provided.
- 1.19 **PORT USE AGREEMENT**: Shall mean an agreement between the vessel owner/operator and the Port of Brookings Harbor for the use of and payment for moorage on a long-term basis (annual, monthly, contractual).
- 1.20 **RV PARK**: Shall mean the designated parking area for recreational vehicles at the Port of Brookings Harbor.

- 1.21 **RECEIVING DOCK**: Shall mean a platform for the unloading of fish and gear from commercial fishing vessels.
- 1.22 **RESIDENT VESSEL**: Shall mean any vessel holding a long-term (annual or monthly) Port Use Agreement with the Port of Brookings Harbor.
- 1.23 **SEWAGE**: Shall mean water, chemical, or other liquid carried, human or animal wastes from vessels, motor vehicles, trailers, residences, buildings, industrial or commercial establishments or other places with such ground water infiltration and surface water as may be present.
- 1.24 **SHALL AND MAY**: "Shall" is mandatory. "May" is permissive.
- 1.25 **TRANSIENT MOORAGE**: Short-term berthage, for use of moorage facilities, whereby the vessel is granted authority to moor, but does not enter into a Port Use Agreement.
- 1.26 **TRANSIENT VESSEL OR GUEST VESSEL**: Any vessel using a Port moorage facility and which belongs to an owner/operator who does not have a Port Use Agreement with the Port. Transient vessels or guest vessels include, but are not limited to, vessels seeking a harbor of refuge, day(s) use or overnight(s) use of a moorage facility in a space on available basis.
- 1.27 **UNDERWAY**: Shall mean the condition of a vessel, not at anchor, without moorings, and not made fast to the shore or ground.
- 1.28 **VESSEL**: Shall mean every description of watercraft, other than seaplanes, in the water used or capable of being used.
- 1.29 **VESSEL OWNER/OPERATOR**: Shall mean any person who has or claims to have, expressly or otherwise, lawful care, custody, or control of a vessel by virtue of legal title or equitable interest therein which entitles him/her to possession.
- 1.30 **VIOLATION VESSELS**: Any vessel entering and remaining at the Port of Brookings Harbor without authorization; or remaining at the Port of Brookings Harbor after moorage has been terminated.

## **PART II: MOORAGE AND HARBOR SERVICES**

### **Applying at the Port of Brookings Harbor and other Port operated properties**

- 2.1. **REGISTRATION**: All vessels must register with the Port office within two hours after arrival in the harbor and use of Port facilities unless arrival time is after 9 p.m., in which case registration must be made by completing and depositing the required information at the drop-in slot at the Port office. Registration shall be in accordance with the rules and regulations listed under the Port Use Agreement section of this Ordinance. Payment for the initial term of moorage and deposit must be paid at the time of registration.
- 2.1.1 Owner/operator of vessel shall provide to the Port current and valid documentation and/or registration, current billing information, owner/operator's name, residence and mailing address, telephone number, proof of ownership, registrant's valid driver license number, and social security number. The name, number, type, dimension, description and uses of the vessel, as well as the name of the insurance company or agent of record for the vessel shall be provided at the time of registration. If the registering person is an operator, owner authorization for moorage and other charges must be made available upon request of the Port.
- 2.1.2 Owner/operator of vessel shall provide notice to the Port of the physical condition of the vessel, including any structural concerns, which could result in damage if the vessel is towed or dry docked. This notice shall be updated from time to time by the owner/operator when condition of vessel changes, and shall constitute permission for the Port to move or dry dock the vessel for reasons described elsewhere in this Ordinance.
- 2.2 **PORT USE AGREEMENT**: No person(s) shall moor a vessel at the Port of Brookings Harbor facilities without first having entered into a Port Use Agreement with the Port in form and manner provided by the Port. Said Port Use Agreement for the initial period of moorage or storage and thereafter upon pre-payment of fees shall continue as the Port Use Agreement under which the owner/operator of the vessel/property agrees to abide.
- 2.2.1 The Port may issue or renew a Port Use Agreement for up to, but not exceeding, one (1) year. Upon expiration of the period stated therein, the Port Use Agreement and all rights of the permittee thereunder shall automatically terminate unless pre-payment for an additional term has been accepted by the Port. If moorage or storage is not prepaid, the owner/operator of the vessel/property may request installment payments to be determined by the Port Manager. If the Port Use Agreement is not renewed, moorage or storage shall be charged based on the applicable transient rate. No Port Use Agreement shall be renewed unless the conditions of the original issuance are met nor shall a Port Use Agreement



be issued or renewed unless all fees and charges due and payable are paid.

- 2.2.2 The Port Use Agreement shall allow the use of the moorage facility for moorage purposes only, storage for storage only, and shall grant no further rights, privileges or uses. Additional uses shall not be allowed except as specifically permitted by the Port of Brookings Harbor.
- 2.2.3 Port Use Agreements are not transferable. Any such transfer shall be absolutely void. Any person who transfers or attempts to transfer a Port Use Agreement shall be subject to a penalty as provided in this Ordinance. The sale of a vessel covered by a Port Use Agreement transfers no rights or privileges in said agreement, nor does it guarantee licensee issuance of a new agreement.
- 2.2.4 Port Use Agreements shall be issued to a named owner/operator of a vessel/property and shall be valid only for a specific vessel/property in a numbered moorage or storage space.
- 2.2.5 Moorage or storage spaces may be reassigned at the option of the Port if the orderly administration of the moorage or storage facility so requires. Licensees may apply for reassignment, however, reassignment is not a right or privilege of the Port Use Agreement. If, within ten (10) days of mailing a notice to the owner/operator, the owner/operator of the vessel/property does not consent to the reassignment, the Port Use Agreement shall automatically terminate, owner/operator shall remove the vessel/property from the assigned moorage or storage space, and the owner/operator shall receive the vessel/property from the assigned moorage or storage space.
- 2.2.6 A Port Use Agreement may be cancelled by a vessel/property owner/operator upon thirty (30) days written notice to the Port.
- 2.2.7 Transfer of moorage location is allowed only as authorized by the Port Manager.
- 2.3 **PORT USE AGREEMENT RELATIONSHIP:** The Port does not accept the vessel/property for storage and it shall not be liable in any manner for the safekeeping or condition of the same, and is not responsible therefore as a warehouseman. The Port shall not be responsible or liable for any damage or loss to, or of, the said vessel/property, tackle, gear, equipment either upon said vessel/property or upon the premises of the Port, from any cause whatsoever, or for injury to the permittee or invitees occasioned by any cause, upon the Port premises or adjacent thereto, except for the negligence of the Port. By application for moorage, owner/operator of vessel/property accepts the Port facilities as its conditions change.

- 2.4 **PORT CHARGES**: Charges for moorage or storage and all other charges owing or to become owing under a contract between a vessel/property owner/operator and the Port, or under this Ordinance, and shall include, but not be limited to, costs and expenses, including attorney fees, incurred in salvage, termination, removal and/or sale of vessels or their appurtenances, tackle, apparel and furniture, or any part thereof.
- 2.4.1 **PAST DUE**: Any account which remains unpaid in whole, or in part thirty (30) days after invoiced, shall be considered past due and subject to collection procedures as established by Port Ordinance and subject to the collection laws of the State of Oregon.
- 2.4.2 **TERMS OF PAYMENT**: Moorage or storage charges apply against the vessel/property, their owner/operator, or agent and are payable in advance. Invoices covering charges in this Ordinance, as issued by the Port, are due and payable upon presentation.
- 2.4.3 **ATTORNEY'S FEES FOR COLLECTIONS**: The owner/operator of a vessel/property shall be liable for all collection costs and expenses, including attorney fees as established in Port of Brookings Harbor Ordinance 15-1982, if owner/operator fails to pay charges when due. If the Port brings suit for collection of a delinquent account, the prevailing party shall be paid by the other party actual attorney's fees incurred in such suit.
- 2.4.4 **LATE CHARGE**: A late charge fee, as established by Port resolution, shall be charged for open, past-due balances.
- 2.5 **INDEMNITY**: Owner/operator agrees to indemnify and save the Port harmless from any loss or damage by fire, theft, or from any cause whatsoever and to indemnify and save the Port harmless from any and all liability for injury to or death of any person(s) or loss or damage to any property caused or occasioned by or arising out of the use of said Port's facilities by the owner/operator, except for the negligence of the Port.
- 2.6 **CHOICE OF FORUM**: Invitees/users of Port property, or owner/operator of vessel agrees to all claims, demands, suits, actions and proceedings against the Port of every kind and nature including, without limitation, those sounding in contract or tort or for breach of warranty, the laws of the State of Oregon shall be, without exception or limitation, binding and controlling law, and damages shall not exceed the amounts set forth in the Oregon Tort Claim Act. Any and all suits, actions and proceedings, of every kind and nature whatsoever, against the Port shall be filed and maintained exclusively in the Circuit or District Court, as appropriate, of the State of Oregon, for the County of Curry.

If a suit or action is instituted in connection with any controversy arising from the use of or services offered by the Port, the prevailing party shall be entitled to

recover, in addition to costs, such sum as the court may adjudge reasonable attorney fees.

- 2.7 **HAUL-OUT PROCEDURES:** The vessel owner/operator agrees to save, defend, and hold harmless the Port from any liability or claims of damage as a result of the haul-out.

The vessel owner/operator acknowledges that haul-out procedures necessarily cause warpage and may cause leakage, especially with wooden vessels or metal vessels built with rivets.

The vessel owner/operator expressly agrees that vessel owner/operator is assuming the risk of such leakage or damage when the vessel is hauled out by the Port, and agrees to make no claim for any damages whatsoever, but rather assumes the risk themselves. For all claims, demands, suits, actions and proceedings against the Port of every kind and nature including, without limitation, those sounding in contract or tort or for breach of warranty, the laws of the State of Oregon shall be, without exception or limitation, binding and controlling law, and damages shall not exceed the amounts set forth in the Oregon Tort Claims Act. Any and all suits, actions and proceedings, of every kind and nature whatsoever, against the Port shall be filed and maintained exclusively in the Circuit or District Court, as appropriate, of the State of Oregon, for the County of Curry.

If a suit or action is instituted in connection with any controversy arising out of a haul-out, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, at trial or on appeal.

- 2.8 **REMOVAL OF VESSEL/PROPERTY FOR NON-PAYMENT:** When the owner/operator of vessel/property has failed to pay charges owed to the Port within thirty (30) days of the debt, the Port may, solely at its option, take reasonable measures including, but not limited to, the use of chains, ropes, and locks, or removal of a vessel/property, so that the vessel/property is in the possession and control of the Port and cannot be removed from the Port harbor.

These procedures may be used if an owner/operator mooring a vessel/property at the Port fails, after notice is sent to the last address on record with the Port, by certified U.S. Mail, that charges are owing and of the owner/operator's right to commence legal proceedings to contest that such charges are owing, to pay the Port charges owed or to commence legal proceedings to contest the charges. A second notice shall be made by placing in the U.S. Mail a certified letter to the owner/operator at his/her last known address, and by posting a notice on the vessel/property.

Timeline before seizure (first notice - 10 days, second notice - 10 days, and final notice - 10 days, making a total of 30 days). The Port will send notice by certified or regular mail before seizing or filing a claim of lien on federal vessels.

In the case of a transient vessel or where no address was furnished by the owner/operator, the Port need not give such notice prior to securing the vessel. The notice shall set forth the charges owing and shall state that the Port may terminate the moorage and seize the vessel, or its appurtenances, tackle, apparel and furniture, if charges are not paid within twenty (20) days, or legal proceedings are not commenced to contest charges.

At the time of securing the vessel/property, an authorized Port employee shall attach to the vessel/property a notice, which shall contain the following information:

- The date and time the notice was attached;
- A statement that if the account is not paid in full within sixty (60) days of the date the debt became due, the vessel/property and its appurtenances, tackle, apparel and furniture, or a part thereof, may be sold at public auction to satisfy the Port charges; and
- The address and telephone number where additional information may be obtained concerning release of the vessel/property.

The owner/operator may regain possession of the vessel/property by:

- Making payment to the Port of all Port charges; or
- Agreeing to pay installment payments for the unpaid balance, in addition to future charges when due, and execution of Confession of Judgment, confessing such sums due and providing that the Port shall be entitled to judgment for the unpaid sums due at the time of application for judgment and costs and collection expenses, including attorney fees. Any monies received shall be applied first against sums due which arose after execution of the Confession of Judgment, then to interest accrued on the unpaid balance, and finally to unpaid principal sums; or
- By posting with the Port, a sufficient cash bond or other acceptable security to be held in trust by the Port pending written agreement of the parties with respect to payment by the owner/operator of the vessel/property of the amount owing, or pending resolution of the matter of the Port charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the Port shall receive

so much of the bond or other security as is agreed or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the Port. If personal or real property was pledged as security, it shall be executed upon in the manner provided by law.

If a vessel/property has been secured and the owner/operator does not regain possession by the above methods, the Port may, at its sole option, elect to proceed with foreclosure of its lien in the manner provided by either ORS 87.152 to 87.212 or ORS 783.010 to 783.170.

The Port may bid all or part of its Port charges at the sale and may become a purchaser at the sale. The balance or proceeds from the sale of the vessel/property, after payment of all lawful charges, shall be refunded immediately to the person who posted the security at this person's last known address.

2.9 **REMOVAL OF HAZARDOUS VESSEL/PROPERTY:** Hazardous vessel/property may immediately and without notice be moved by the Port from the Port of Brookings Harbor and placed in storage or sold under the procedure described in Section 2.8 of this Ordinance, or pursuant to ORS 87.152 to 87.212. Notice shall, however, be given prior to moving a vessel/property whenever a non-emergency situation exists. All expenses and risk of loss or damage resulting therefrom shall be borne by the owner/operator of the vessel/property, as shall the cost of any salvage services rendered by the Port. In the event the vessel/property is moved to another moorage, the owner/operator of the vessel/property shall, in addition, be liable to the Port for the prevailing moorage rate and other fees customarily charged at the facility to which the vessel/property is moved.

2.10 **REMOVAL OF ABANDONED VESSEL/PROPERTY:** Any vessel/property, its appurtenances, tackle, apparel and furniture, which has been abandoned (see Definitions) may immediately and without notice be moved, and may be placed in storage or sold under the procedure described in Section 2.8 of this Ordinance or pursuant to ORS 87.152 to 87.212, or as otherwise provided by law.

2.11 **TERMINATION OF MOORAGE:**

2.11.1 Moorage of any vessel/property may be terminated upon ten (10) days written notice if the vessel/property or its owner/operator is in violation of the Port Use Agreement or any part of this Ordinance. Notice of termination of moorage shall be by personal delivery or by mailing by certified mail notice to the owner/operator at the last known address, and by posting a notice on the vessel/property. The notice shall state that moorage is being terminated, that the owner/operator has ten (10) days from the date of the notice to remove the vessel/property from the Port of Brookings Harbor and that the vessel/property will thereafter be

removed and placed in storage by the Port at the owner/operator's expense. Such remedy shall be in addition to any other enforcement procedures, including citation for violation of Port Ordinances.

- 2.11.2 Upon correction of the violation(s) and payment of all costs and charges incurred by the vessel/property, reinstatement of moorage may be applied for and may be permitted by agreement with the Port Manager. If reinstatement of moorage is permitted, a second violation of Port Ordinances within six (6) months shall be cause for termination of moorage with no opportunity for reinstatement.
- 2.11.3 Sale of vessel/property - A Port Use Agreement is personal to the applicant and cannot be assigned, sold, transferred or involuntarily seized, except the owner/operator of the vessel/property may transfer title to a corporation in which the vessel/property owner/operator shall own and maintain ownership of not less than 51 percent of the issued and outstanding stock. Upon transfer of title of the vessel/property, the owner/operator shall notify the Port. The seller is required to notify the Port of sale and pay any moorage or other charges due at that time. The new owner/operator must register with the Port and arrange for moorage.

### **PART III: FEES, RATES, AND CHARGES**

(See Port of Brookings Harbor Resolutions.) Rates, fees and charges are periodically set by review of the Port of Brookings Harbor Board of Commissioners by resolution.

### **PART IV: SPECIFIC RULES AND REGULATIONS**

#### **Applying at the Port of Brookings Harbor and other Port operated properties**

- 4.1 All vessels entering the Port area shall have a valid identification number permanently affixed to the hull and clearly visible from the outside. Coast Guard documented vessels must display Coast Guard documentation numbers and the name of the vessel on the hull. Failure to have either may be cause for refusal of moorage.
- 4.2 All vessels shall be registered with the Port office within two hours of arrival in the harbor. Registration shall be in accordance with the rules and regulations listed under the Port Use Agreement section of this Ordinance. A drop-in registration slot is available at the Port office or contact Port Security after normal working hours.

- 4.3 Anyone visiting or using the Port areas does so at his/her own risk. The Port does not assume any responsibility for loss or damage to property or persons within the Port area.

Vessel/property owner/operator agrees to indemnify and save the Port harmless from any loss or damage to personal property by fire, theft, or from any cause whatsoever and to indemnify and waive the Port harmless from any and all liability for injury to or death of any person(s) or loss or damage to any property caused or occasioned by or arising out of the use of said Port's facilities by the vessel/property owner/operator, agent, employee or guest, except for the negligence of the Port.

- 4.4 The Port may deny the use of any of the facilities of the Port to any person who is not in compliance or shall refuse to comply with said rules and regulations. Any such person may be subject to prosecution as a trespasser to the fullest extent possible under the law.

- 4.5 Vessels must be securely moored with adequate bow, stern, and spring lines. Four (4) or more lines are required. No cross tying of vessels is allowed, except as authorized by the Harbormaster.

- 4.6 Vessels are required to use tendering. The owner/operator of a vessel assigned moorage space may install standardized premolded rubber or vinyl bumpers of commercial manufacture as approved by the Port Harbormaster. Dock-affixed tendering shall not include carpeting, rubber tires, fire hose or similar materials.

- 4.7 Owner/operator may connect to electrical service at the Port facility location subject to the following:

4.7.1 The Port of Brookings Harbor specifically does not guarantee continuity of electrical service to any vessel, the characteristics of any service that is provided, or the characteristics of the vessel service circuit breaker.

4.7.2 Use of electrical service shall be at owner/operators own risk. The Port shall not be liable for any damages caused or resulting from inadequate, excessive, or a surge in the electrical voltage or amperage.

4.7.3 Owner/operator agrees to indemnify, defend and hold the Port harmless from any claims or damages arising out of or resulting from owner/operators use of electrical service.

4.7.4 Owner/operator shall not draw more voltage or amperage than posted at the point of connection.

4.7.5 All electrical cords and wiring shall meet underwriter's laboratory approval for marine related electrical services.

- 4.7.6 No cords or wires shall be placed on the dock or fingers in such a manner to cause or contribute to damage or injury to facilities, property or personnel of the Port or to third parties.
- 4.7.7 Owner/operator shall pay to the Port all electrical charges based upon the fee schedule in effect at the time, and the Port shall add such charges to moorage charges to be paid in a manner provided.
- 4.8 All vessels must carry on board U.S. Coast Guard approved and operable fire extinguishers. Fire hoses and other fire fighting equipment are to be used for fire control only.
- 4.9 No person(s) on a vessel equipped with a toilet shall use or permit the use of such toilet on the waters controlled by the Port, unless the vessel is equipped with facilities in good operating condition adequate to treat, hold, incinerate or otherwise handle sewage in such a manner that is capable of preventing water pollution. For the purposes of this section, an acceptable water pollution control device is one, which has been approved by the State Board of Health, State of Oregon.
- 4.10 Vessels moored in a Port facility must be, at all times, completely seaworthy, fully operational and ready for immediate cruising in local waters. Lack of seaworthiness may result in removal of the vessel, unless:
- 4.10.1 Effecting short-term (thirty [30] days or less) repairs that render the vessel inoperable: or
- 4.10.2 Authorization has been obtained from the Port Manager to effect repair rendering the vessel inoperable longer than thirty (30) days.
- If a vessel is removed from a Port facility because it has been determined by the Port to be unseaworthy or inoperable, any costs incurred in said determination (i.e. marine survey, inspection costs) shall be borne by the vessel owner/operator.
- 4.11 The Port has the right, but not the obligation, to pump, tow, secure tie lines, board or move any vessel moored at the Port if such action is determined by the Harbormaster to be necessary for the safety or protection of that vessel, vessels nearby, Port facilities, navigable waterways, or because the vessel is not in its assigned moorage location or has exceeded its authorized moorage time. These services will be charged for according to the fee schedule in effect at the time of the service. All expenses and risk of loss or damage resulting therefrom shall be borne by the vessel owner/operator, as shall the cost of any salvage services rendered by the Port.
- 4.11.1 The Port has the right, upon notification of vessel owner/operator or notice mailed to the last known address of the owner/operator, to move



any vessel moored at the Port if such movement will, in the opinion of the Port Authority, contribute to best utilization of the Port facilities. The cost of movement to improve Port facility utilization will be borne by the Port.

- 4.12 The docks and Port properties are closed between dusk and dawn to the public, except moorage holders, their agents or employees having business to tend to on the vessels. Authorization for public use of Port properties or facilities after dark must be obtained from the Port Manager.
- 4.13 Any person utilizing Port properties shall obey all Port, Municipal, County, State and Federal regulations and laws, and generally accepted safety standards and requirements to insure that a person's actions or vessel do not become a hazard to any person(s) or other vessel(s) on Port facilities and Port properties.
- 4.14 Loud or boisterous conduct, sleeping, lewd or lascivious conduct, unnecessary blowing of horns, shall not be permitted in or about vehicles on the Port's premises. Vessel owners/operators will not maintain anything that may be dangerous to life, limb or property or permit any objectionable noise or odor on his/her vessel, vessel harbor premises, or premises adjacent thereto, and will not create a nuisance or unnecessarily disturb any other vessel owner/operator, guest, lessee or patron of the RV Park.
- 4.15 No one may sell, give or make available any alcoholic liquor to anyone who is visibly intoxicated. Use or possession of any alcoholic beverage(s) by any person under 21 years of age is prohibited. Engaging in the use or being instrumental in the exchange of unlawful controlled substances on Port property is prohibited and shall be cause for immediate expulsion from Port facilities and immediate termination of Port Use Agreement.
- 4.16 Liveaboards must have Port permission after 72 hours in one-week period or more than 15 days in any 30-day period. Application for live-aboard authorization may be obtained at the Port Office. If Port permission is obtained, authorization will be issued for a fee as set forth in the fee schedule in effect at the time of application. The authorization is valid for the length of the Port Use Agreement, unless otherwise specified, and must be renewed immediately upon expiration.
- 4.16.1 Live-aboards must agree to enhance Port Security by calling to the attention of the Port Manager or Port office damage to any vessels or pier, unauthorized persons visiting pier, possible theft, unsafe practices, etc.
- 4.17 Vessel movement within the moorage area shall be in compliance with the posted speed limits, rules and regulations as determined by the Port Manager. A "No Wake" speed limit is determined to be in the best interest of the Port users.

- 4.18 No person(s) shall fuel, or cause to be fueled, a vehicle or watercraft on properties of the Port except at areas designated by the Fire Marshal and approved by the Port Authority for that purpose.
- 4.18.1 No person(s) shall store, or cause to be stored, any fuel for any vehicle or watercraft in or upon any vehicle or watercraft on or upon the Port properties or waters of the Port except in tanks or containers designated for that purpose, and in areas where such tanks or containers shall not come into contact with sparks or excess heat or other conditions which may cause it to ignite.
- 4.19 No person(s) shall throw, place, leave, deposit, abandon, cause or permit to be thrown, placed, left, deposited or abandoned, any industrial waste, litter, or sewage on any Port properties or waters controlled by the Port, except in receptacles designated by the Port for the disposal of such materials or substances. The fact that proper receptacles are not furnished by the Port is not excuse or defense.
- 4.19.1 No person(s) shall use refuse or waste containers provided by the Port for other than wastes, litter, or sewage generated on Port properties or waters controlled by the Port, except for those wastes, litter or sewage generated from a vessel's voyage.
- 4.19.2 Vessel owner/operator shall be held personally liable for any and all costs associated with clean up of wastes, litter or sewage generated on Port properties by their vessel, crew or guest.
- 4.20 No person(s) may operate a Port owned hoist except with specific approval of the Port Authority nor shall said hoist be operated in such a manner that would cause injury, harm or hazard to any person or property at or about said hoist, nor operated in such a manner as to cause harm or damage to said hoist.
- 4.21 No person(s) may tap, connect, disconnect or interfere with any water outlet, waterline, water connection, telephone equipment, TV cable, electrical outlet or electrical device maintained or operated by the Port without first obtaining the permission of the Port Manager.
- 4.22 Every person and every vessel responsible for any damage to any Port property of any kind or character under the jurisdiction of the Port shall be held liable for and charged with the cost and expense of the replacement or repair of the property so damaged or destroyed. The expense of repairing said damage shall be charged against the person or vessel, or both, responsible therefor.

In the event any damage is done to any dock or premises, facility or other property owned by the Port and in the possession of, or under the supervision, management or control of the Port, the person(s) causing, responsible for, or in any way connected with such damage, and the person(s) to whom the dock or

premises, facility or other property may be assigned, or by whom it is being used, and the master, owner/operator, or agent of any vessel, vehicle, or others instrumentally involved in such damage, shall promptly give a full report thereof to the Port Manager, giving the date and hour the damage occurred, the names and addresses, or if unknown, a description of witnesses and other persons, or vessels instrumentally involved in the damage, as well as all other pertinent facts and information that may be available. It shall be unlawful for any person to refuse, neglect or fail to make or give any such report in the form and manner aforesaid, and any such person who so refuses, neglects or fails, may be refused the use of any dock or other facility until the Port has been fully reimbursed for any such damage.

- 4.23 No commercial use of facilities, including the sale of fish from vessels, shall be allowed unless a permit has been granted by the Port of Brookings Harbor. The requirements and conditions for such permits and licenses shall be as prescribed in separate instructions as prescribed from time to time by resolution of the Board of Commissioners of the Port of Brookings Harbor.
- 4.23.1 No commercial use of the boat ramp transient dock in Basin 1 will be allowed. Commercial use includes the offloading of catch for delivery to a business, vehicle or other conveyance.
- 4.24 No person(s) shall clean or process fish or shell fish on any walkways, wharves, docks, barges or piers of the Port, except in facilities and equipment designated for that purpose by the Port.
- 4.25 No person(s) shall fish or crab from the walkway, wharves, docks, floats, barges or piers of the Port, except in areas so designated by the Port.
- 4.26 Children under 12 years of age shall not be allowed on the Port docks unless supervised by a parent or responsible adult and wearing U. S. Coast Guard approved life jackets.
- 4.27 No cooking or open flames shall be allowed on the walkways, wharves, docks, floats, barges or piers of the Port.
- 4.28 No fireworks shall be allowed on the walkways, wharves, docks, floats, barges or piers of the Port. In the event of a fire occurring on board any vessel in the Port, except vessels underway, such vessel must sound five prolonged blasts of the whistle or siren as an alarm indicating a fire on-board or at the dock to which the vessel is moored. Such signal may be repeated at intervals to attract attention, and is not a substitute for, but may be used in addition to, other means of reporting a fire. The words "prolonged blast" used in this rule shall mean a blast of from four (4) to six (6) seconds in duration.

- 4.29 It shall be unlawful for any person to discharge firearms or BB pellet compressed air guns on the walkways, wharves, docks, floats, barges, piers or properties of the Port or while moored to Port facilities.
- 4.30 Swimming, surface and scuba diving from or near to Port docks (except by authorization of the Harbormaster), bicycling, skateboarding or use of motorcycles or any other wheeled vehicle unless said vehicle or device is necessary as a prosthetic device shall not be permitted on the Port docks.
- 4.31 Sandblasting, metal cutting, welding or paint over-spraying is prohibited on Port walkways, wharves, docks, floats, barges, piers or properties without permission of the Port Harbormaster. No person(s) shall do any welding unless done by a person experienced in the art of welding, using equipment having minimum safety requirements and having in his/her possession a fire extinguisher of the kind approved by the U. S. Coast Guard for use on a commercial vessel.
- 4.32 Vessel owner/operator, crew or guest using the Port area or its facilities for moorage or otherwise shall keep their vessel, net areas, and the pier or finger in the vicinity of his/her vessel neat, clean, orderly, and shipshape.
- 4.32.1 No gear, materials, tackle, dock boxes, or other storage or debris shall be left on Port docks or other Port facilities, except as provided in this Ordinance.
- 4.32.2 No gear lockers shall be allowed on Port docks.
- 4.33 Any person using Port facilities or equipment shall comply with any verbal or written signs or communicatives, and with administrative and operational policies and procedures, issued or posted under the authority of the Port Manager or Port Commission.
- 4.34 Non-motorized watercraft such as rowboats, skiffs, dinghies, and rafts under 10ft in length that do not require state boat registration may be stored in a slip assigned to a Port registered vessel. These watercraft may not extend the width of the registered vessel, extend the length of the assigned Port slip, nor may they interfere with the moorage or movement of other vessels in the marina. These watercraft must display the name of the vessel registered with the Port to which they belong and the owner must notify the Port office of said watercraft's location. The watercraft must be covered by the owner's insurance at all times. When not in use, these watercraft must be secured to the dock at all times. There will be no storage of these watercraft on any Port docks or slip fingers. Any watercraft unattached and needing Port assistance will be charged accordingly. Nets, reels, and or other items of equipment shall be stored only in areas designated by the Harbormaster and each item shall bear an identifying mark as to the ownership of the property. Any vessel, items, equipment or gear left without proper storage arrangements will be in violation of the rules and subject to being abated as a nuisance.

- 4.35 The Port reserves the right to inspect any of the rented or leased premises at any time. Failure to inspect shall not be deemed to create any responsibility upon the Port.
- 4.36 Nets may be repaired in designated parking lot areas on Port property.
  - 4.36.1 The Harbormaster or his/her authorized agent must authorize and be notified upon arrival of any net to be repaired on Port facilities.
  - 4.36.2 Net repair space will be allotted on an as-available basis.
  - 4.36.3 The Port shall not be held liable for any loss or damage to nets being repaired on Port facilities.
- 4.37 Gear repair will be handled as follows:
  - 4.37.1 The Harbormaster or his/her authorized agent must authorize and be notified upon arrival of any gear to be repaired on Port facilities.
  - 4.37.2 All gear being repaired on Port facilities must be marked with readily visible owner/operator name, vessel name and documentation or registration number.
  - 4.37.3 Gear repair space will be allotted on an as-available basis.
  - 4.37.4 The Port shall not be held liable for any loss or damage to gear being repaired on Port facilities.
- 4.38 Lot storage will be handled as follows:
  - 4.38.1 No gear shall be left upon Port properties without the written permission of the Port office, except pursuant to a completed and accepted Port Use Agreement. The Port must be notified of the proposed storage prior to use of Port properties for storage.
  - 4.38.2 Short-term storage for working gear only (as defined by the Port) will be allowed. The Port reserves the right to assign location of gear storage.
  - 4.38.3 The resident fleet will be given priority on lot storage space.
  - 4.38.4 Each item stored at Port facilities shall be marked with a tag containing the name and number of the vessel to which the gear belongs, and the name and address of the registered owner/operator. A single tag may be utilized for each group of crab pots or similar fishing gear if the tag specifies the number of crab pots or similar fishing gear included in the group.

- 4.38.5 Removal of fishing gear must have owner approval (the owner may delegate, in writing, a representative, i.e. the skipper of the vessel).
- 4.38.6 Port equipment used for the movement or placement of gear shall be operated by Port personnel only unless otherwise authorized by the Harbormaster.
- 4.38.7 The Port reserves the right to move stored property for better utilization of Port properties or to protect the property of others. The Port assumes no liability for loss or damage to stored property. The vessel owner/operator is responsible for any and all additional charges incurred by impoundment or removal.
- 4.38.8 Unidentified gear shall be deemed abandoned and may, immediately and without notice, be moved and placed in storage or sold in the manner provided by this Ordinance or pursuant to ORS 87.152 to 87.212.

Impounded gear may be redeemed by:

- Presenting proof of ownership, and
- Payment of all fees or making arrangement with the Port for payment of all fees in the manner provided in Section 2.8 of this Ordinance.

4.39 Parking shall be for Port patrons only.

- 4.39.1 There shall be no public parking except in areas so designated by the Port of Brookings Harbor. Areas where public parking is expressly prohibited include: the launch ramp parking area except as designated for daily use by vehicles towing boat trailers and single car parking in designated areas: the boat wash lanes and approach lanes except when washing a trailered boat; other areas deemed necessary to insure compliance with grant agreements.
- 4.39.2 No person(s) shall stop, park or permit to remain a motor vehicle on the walkway for a period longer than 15 minutes without specific permission of Port authorities.
- 4.39.3 No person(s) shall stop, park or permit to remain a motor vehicle in front of a launch ramp, walkways or turnaround of the Port of Brookings Harbor.
- 4.39.4 No person(s) shall stop, park or permit to remain a motor vehicle in fire lanes, the gear storage area or any other area where parking is prohibited.

- 4.39.5 Long-term parking (more than three [3] days) of a vehicle shall be by permit only and shall be in a designated long-term parking area. All vehicles parked more than three (3) days must have and display a parking sticker, which may be applied for upon registration with the Port office. Registration with the Port office and provision of owner identification and proof of liability insurance is required. All vehicles parked in long-term parking must be owned by persons working on a vessel. If a vehicle will be parked on Port property on a long-term basis, the owner is required to provide the Port with a contact person and/or key to the vehicle. The key may be reclaimed upon removal of the vehicle.
- 4.39.6 The term "vehicle" does not include vessels, vessel trailers or travel trailers for the purpose of this section. Vessels are not allowed in long-term parking. Travel trailers may not be parked, at any time, on Port properties, except in designated areas at the Recreational Vehicle Park at the Port of Brookings Harbor. Vessel trailers may be parked at the Port of Brookings Harbor in designated areas only after a permit has been obtained from the Port office.
- 4.39.7 No person(s) shall stay overnight in any vehicle, recreational vehicle, trailer, camper or other vehicle while said vehicle is parked on Port properties, except in designated areas at the Port of Brookings Harbor. Overnight parking is available for Port patrons only.
- 4.39.8 Operation of a motor vehicle on Port properties in excess of the posted speed limit or in a manner which creates a hazard to motor or foot traffic or property is prohibited.
- 4.39.9 Any vehicle parked in violation of these regulations is subject to impoundment and may be towed from Port properties and stored at the owners risk and expense thereof in the manner provided by ORS 98.805 to 98.818. Abandoned vehicles or watercraft shall be disposed of as provided by Section 2.10 of this Ordinance or pursuant to ORS 87.152 to 87.212. The Port assumes no liability for loss or damage to vehicles parked on Port properties .
- 4.39.10 Vehicle disassembling and maintenance is prohibited on Port properties.
- 4.40 No animal(s) shall be allowed on Port properties or on Port docks unless said animal is on a leash and controlled by the owner, or on/in private property.
- 4.40.1 Animals shall not be allowed on the docks except to go directly to or from a vessel and must be on a leash and controlled by the owner. No animal(s) shall be tied to any portion of the Port docks or properties.

- 4.40.2 No person(s) having control of any animal on Port facilities shall allow waste or droppings of that animal to remain on any wharf, dock, barge, pier or walkway of the Port. Animal waste or droppings shall be immediately removed and placed in the nearest waste receptacle.
- 4.40.3 The Harbormaster or his/her designated employee shall be authorized to contact local law enforcement agencies to impound any animal in violation of this Ordinance.
- 4.41 Regulation of Signs: No person(s) may write or post any written or printed matter in any place on Port of Brookings Harbor properties, except upon bulletin boards constructed for that purpose and only after obtaining permission from the Port.
- 4.42 Peddling Prohibited: It shall be unlawful for any person to peddle or sell any goods, wares or merchandise upon the docks, roadways or other lands under the jurisdiction of the Port without having a concession agreement to do so from the Port Manager.
- 4.43 It shall be unlawful for any person to willfully or carelessly destroy, damage, disturb, deface, or interfere with any buoy, float, life preserver, sign, notice, or any other municipal property whatsoever under the jurisdiction of the Port.

**ENFORCEMENT:** The Port Commission authorizes the Port Manager and/or his/her designee to enforce these regulations by written or verbal instructions. The Port Manager may request persons violating these regulations to leave the Port area and/or obtain the assistance of law officers to protect property, lives or preserve the peace. The Port Manager may interpret the reasonable intent of these regulations to carry out the purposes of these regulations. If a vessel/property, the owner/operator of which has been notified to remove the vessel/property from the Port area, is not removed immediately, it may be impounded by the Port Manager, and may be removed by a private contractor, charges for which will be assessed against the vessel/property and/or its owner/operator as well as storage charges thereafter.

- 4.43.1 The Port Manager and/or his/her designee shall be deputized to enforce this Ordinance or any other ordinance, resolution or motion of the Commission of the Port of Brookings Harbor, in accordance with ORS 777.190. Ordinances, resolutions, rules and regulations of the Port shall be enforced by any peace officer of the State of Oregon, County of Curry, or the Port of Brookings Harbor.
- 4.43.2 Any person violating the regulations herein or any regulations adopted by the Board of Commissioners of the Port of Brookings Harbor in accordance with ORS 777.120 or ORS 777.190 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500, or imprisonment not to exceed 30 days, or both. Each



day such violation shall continue shall constitute a separate offense thereunder.

4.43.3 Violation of any section herein may be enforced civilly in any manner set forth as follows:

Enforcement may include, but is not limited to, any of the following:

- Suit in equity for specific performance.
- Suit for injunctive relief enjoining the prohibited matter or affirmatively requiring performance.
- Any breach may be treated as a default under any lease or purchase agreement of Port property, and the Port shall have all remedies for such default under the lease or sale agreement or as otherwise permitted by law.
- Suit for any legal damages to the Port for all such monetary damage as caused in whole or in part by the failure to comply with this Ordinance.
- If, within thirty (30) days of written notice to the tenant, tenant has not begun to repair or correct the deficiencies stated in the notice, the Port may enter into a contract for the repair or correction of such deficiencies, and the tenant shall reimburse the Port for the costs of such repairs or corrections plus 10 percent for the Port's administrative expenses. Failure to pay such amounts within thirty (30) days of invoice shall be deemed a default and subject to interest as stated in the Port Use Agreement.

With prior notice, the Port reserves the right for the Port or its designee to enter upon the premises for the purpose of inspection, repairing, or correcting deficiencies.

4.44 Sleeping and Camping on Port-owned property.

4.44.1 Policy.

It is the policy of the Board of Commissioners to implement regulations for Port-owned property that adhere to the Ninth Circuit Court of Appeal's ruling in Martin v. Boise while at the same time ensuring that the general public and Port visitors are allowed to continue to enjoy the services and amenities of the Port.

4.44.2 Camping — Defined.

"Camping" is defined for purposes of this ordinance as the erection of any tent or similar temporary structure for use as a means of shelter.

- 4.44.3 Camping - Prohibited.  
Camping is prohibited on all Port-owned properties except in areas designated as a campground.
- 4.44.4 Camping — Exception.  
Persons who are homeless shall not be issued a criminal citation for violating section 4.44.3, including a citation for criminal trespass, if:
- (1) said person is camping on Port-owned property between the hours of 10 p.m. and 6:00 a.m.; and
  - (2) said person is sleeping or lying down for purposes of rest; and
  - (3) there are no local overnight shelter beds available. In addition, said camping activities may not obstruct any pedestrian or vehicular pathway, including the boardwalk and entrances and exits to buildings, nor cause damage to any Port property. If said person does obstruct pedestrian or vehicular pathways, including the boardwalk or entrances or exits to buildings, or cause damage to any Port property, then he or she may be issued a criminal citation for violating this section 4.44.4 and may be criminally trespassed from the property.
- 4.44.5 Sleeping Prohibited.  
Sleeping is prohibited on all Port-owned properties except in areas designated for such activity.
- 4.44.6 Sleeping — Exception.  
Persons who are homeless shall not be issued a criminal citation for violating section 4.44.5, including a citation for criminal trespass, if:
- (1) said person is sleeping on Port-owned property between the hours of 10:00 p.m. and 6:00 a.m.; and
  - (2) said person is sleeping or lying down for purposes of rest; and
  - (3) there are no local overnight shelter beds available. In addition, said person may not obstruct any pedestrian or vehicular pathway, including the boardwalk or entrances or exits to buildings, nor cause damage to any Port property. If said person does obstruct pedestrian or vehicular pathways, including the boardwalk or entrances or exits to buildings, or cause damage to any Port property, then he or she may be issued a criminal citation for violating this section 4.44.6 and may be criminally trespassed from the property.

All of the conditions and restrictions contained herein shall be construed together but if, at any time, any one of these conditions or restrictions becomes invalid or for any reason unenforceable, no other condition or restriction shall be thereby affected or impaired.

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## **ORDINANCE FOR THE PORT OF BROOKINGS HARBOR**

### **APPENDIX A**

#### **AMENDMENTS TO THE ORDINANCE**

<b>ORD. NO.</b>	<b>WORKING TITLE</b>	<b>ADOPTION</b>	<b>EFFECTIVE</b>
21	4.23.1 Transient Dock Boat Ramp	October 16, 2018	November 16, 2018
21	4.39.1 Public Parking	October 16, 2018	November 16, 2018
22	4.44 Sleeping and Camping on Port Property	December 18, 2018	January 18, 2019
23	4.16 Live-Aboards	August 20, 2019	September 20, 2019
24	4.34 Dinghies	October 15, 2019	November 15, 2019