

RICHARDSON BAY REGIONAL AGENCY  
ORDINANCE NO. 91-2

AN ORDINANCE OF THE RICHARDSON BAY REGIONAL AGENCY  
ADDING SECTION 15, ENTITLED "NUISANCE CODE"

The Richardson Bay Regional Agency does ordain as follows:

**Section 1.** Section 15 entitled "Nuisance Code" is added to Ordinance 87-1 to read as follows:

**a. Purpose.**

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

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

**b. Nuisance defined.**

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

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

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

(3) Any condition in violation of a constituent agency's Building Code, such as to constitute substandard housing as defined therein, in appropriate waters.

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

(5) Any condition in violation of a constituent agency's Fire Protection Ordinance within appropriate waters.

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

(7) Any other condition located on, or use of, a vessel, barge or object which constitutes a threat to the public peace, health or safety.

**c. Violations and penalties.**

Any person, firm or corporation, whether owner, agent, lessee, sublessor, sublessee or occupant of any vessel, barge or object, who violates any of the provisions of this Code, is guilty of an infraction for each day the violation continues to exist.

**d. Commencement of proceedings.**

Whenever the Harbor Master has inspected or caused to be inspected any vessel, boat, barge or object and believes that the same is in violation of this Code, he may commence proceedings to cause abatement of the nuisance as provided herein.

**e. Hearing Notice/Notice to Abate.**

(1) The Harbor Master shall notify the owner, occupant, agent, or other responsible person of the existence of any condition on the vessel, barge or object that constitutes a nuisance and shall direct that such person or persons shall abate the same or appear before the Agency Board at a stated time and place and show cause why such condition should not be abated by the Agency at the person's expense.

**f. Manner of giving Notice.**

(1) The hearing notice/notice to abate and any amended or supplemental notice shall be served either by personal delivery or by mailing a copy by certified mail, postage prepaid, return receipt requested upon the registered or legal owner or any other person sought to be charged with the responsibility of abatement, at his address as it appears on the latest Department of Motor Vehicles registration form, or as known to the Harbor Master; a copy of the notice shall also be posted on the vessel, barge or object.

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

**g. Hearing.**

(1) **Testimony:** At the time fixed in the hearing/abatement notice, the Agency Board shall hear testimony offered by the Harbor Master and/or his designee/assistant, by the vessel, barge or object owner or by other persons concerning the condition of the vessel, barge or object, or other relevant facts relative to the matter.

(2) **Recording:** The proceedings at the hearing shall be tape recorded. Either party, at his own expense, may provide a certified shorthand reporter to maintain a record of the proceedings.

(3) **Preparation of the Record:** Preparation of a record of the proceedings shall be governed by the California Code of Civil Procedure Section 1094.6 as presently written or hereinafter amended.

(4) **Continuances:** The Agency Clerk may, upon request of the owner, or other person sought to be held responsible for the abatement, grant continuances from time to time for good cause shown, or upon his own motion.

(5) **Oaths:** All testifying witnesses shall be sworn by the Agency Clerk.

(6) **Evidence Rules:** The hearing need not be conducted according to technical rules relating to evidence and witnesses.

(7) **Representation of parties:** Each party may represent themselves, or be represented by any one of their choice.

(8) **Inspection of premises:** The Agency Board may inspect the subject vessel, barge or object before, during or after the hearing, provided that:

aa. Notice of such inspection shall be given to the parties before the inspection is made;

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

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

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

**h. Form and contents of decision: finality of decision.**

The decision of the Agency Board shall be in writing and shall contain findings of fact and a determination of the issues presented.

(1) If the Board determines that Agency staff has shown by a preponderance of evidence that a condition constitutes a public nuisance, the decision shall require the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of its decision, and shall state that the abatement must be completed within such time as specified. The decision shall inform the owner that if the nuisance is not abated within the time specified, the nuisance may be abated by the Agency in such manner as may be ordered by the Agency and the expense thereof, made a personal obligation of the owner.

(2) The Agency's decision declaring that a condition constitutes a nuisance shall also inform the owner that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6.

(3) Once the Agency Board has adopted its decision, the Harbor Master shall post a copy thereof conspicuously on the subject vessel, barge or object, and shall serve a copy on the owner by personal delivery or by mailing a copy by certified mail, return receipt requested upon the owner's address as it appears on the Department of Motor Vehicles registration or as known to the Harbor Master. One copy of the Agency's decision shall also be served on each of the following, if known to the Harbor Master or if disclosed from official public record: the holder of any mortgage or other lien or encumbrance, the owner or holder of any lease of record, and the holder of any other known interest in the subject vessel, barge or object. The Board's decision shall be final when adopted by the Agency.

**i. Enforcement of Agency's Decision:**

(1) **Generally:** Once the Agency Board has rendered its final decision pursuant to Section 15 (h) above, no person ordered by the Agency's decision to abate a nuisance shall fail, neglect or refuse to obey such an order.

(2) **Failure to obey decision:** Whenever any person fails, neglects or refuses to obey the Agency's decision pursuant to Section (i)(1) above, the Harbor Master is authorized to institute any appropriate action in order to abate such conditions which the Agency has determined to constitute a public nuisance.

(3) **Failure to complete work:** Whenever the responsible person fails to abate the declared nuisance within the time so specified in the Agency's final decision, the Harbor Master, in addition to any other remedy herein provided, may cause the nuisance to be abated.

(4) **Abatement costs:** The cost of any such abatement shall be made a personal obligation of the owner thereof.

(5) **Extension of date for completion:**

aa. Upon receipt of a written request by the person responsible for abating the declared nuisance, and agreement by such person that he will comply with the Agency's decision if allowed additional time, the Harbor Master may, grant an extension of time, not to exceed an additional ninety days, within which to complete such abatement, provided the Harbor Master determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

bb. The Harbor Master's authority to extend time is limited to the physical abatement of the nuisance or for such other purposes as may be reasonably required by the circumstances of the case, but such extension shall not, in any way affect or extend the time to appeal the Agency's final decision.

**(6) Interference with work prohibited:**

No person shall obstruct, impede or interfere with the Harbor Master or his designee/assistant, or any other authorized contractor or representative of the Richardson Bay Regional Agency whenever such a person is engaged in the work of abating any Agency declared nuisance as required herein, or is performing any necessary act preliminary to, or incidental to any such work.

**j. Summary Abatement**

(1) **Dangerous condition:** Whenever the Harbor Master determines that a condition exists on any vessel, barge or object located in Richardson Bay, which is of such a nature as to be imminently dangerous to the public health, safety or welfare, which if not abated according to the procedures articulated herein, would during the pendency of the proceedings, subject the public to potential harm of a serious nature, the same may be abated forthwith without compliance with the provision of this code.

\* (2) **Approval of Agency Attorney:** No summary abatement shall be undertaken unless the Agency Attorney has first approved the same.

(3) **Post abatement notice and opportunity to contest:** If the Harbor Master exercises his authority under Subsection 15 (j)(1) above, and summarily abates a nuisance, the owner of the vessel, barge or object shall be given notice of the actual abatement and an opportunity to contest the validity of the summary abatement.

(4) **Personal obligation:** The cost of abatement including all administrative costs of any such action, shall become a personal obligation to the owner as provided herein: except, that if the courts shall decide that action taken hereunder was improper, any such obligation shall be null and void.

**k. Recovery of Cost of Abatement:**

**(1) Account of expense; filing of report; contents.**

The Harbor Master shall keep an itemized account of the expense incurred by the Agency in abating nuisances under the provisions of this Code. Upon completion of the work of abatement, the Harbor Master shall prepare and file with the Agency Clerk, a written report specifying the work done, the itemized and total cost of the work, a description of the subject vessel, barge or object and the names and addresses of the owner, lessee, agent or other persons entitled to notice of the forthcoming hearing before the Agency Board.

**(2) Cost report to be heard by Agency:**

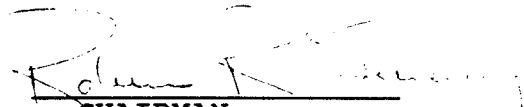
Upon receipt of the Harbor Master's cost report, the Agency Clerk shall fix a time, date and place for the Agency's hearing of the report, and any protests or objections thereto. The Agency Clerk shall cause notice of the hearing to be served by certified mail, return receipt requested, addressed to the persons entitled to notice as specified by the Harbor Master pursuant to subsection 15(k)(1) above. Such notices shall be given at least ten days before the date set for hearing and shall specify the day, hour and place when the Agency will hear and pass upon the Harbor Master's report containing the proposed charge for abatement, together with any objections or protests which may be filed by any person interested in, or affected thereby.

PASSED AND ADOPTED at a special meeting of the Richardson Bay Regional Agency, State of California, on the 29th day of July 1991, by the following vote to wit:

AYES: BOARD MEMBERS RUEDY, ARAMBARU, FRIEDMAN, FONAROW AND  
CHAIRMAN SWEENEY

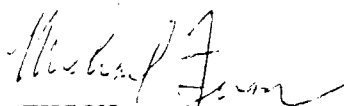
NOES: BOARD MEMBERS, NONE

ABSENT: BOARD MEMBERS, NONE



CHAIRMAN  
RICHARDSON BAY  
REGIONAL AGENCY

ATTEST:



MICHAEL FUSON  
CLERK OF AGENCY