

PORT OF NEWPORT
ORDINANCE NO. 2-1989

AN ORDINANCE RESTRICTING THE LOADING OR UNLOADING OF PASSENGERS FOR HIRE AT THE SOUTH BEACH MARINA; PROVIDING FOR ISSUANCE OF A LICENSE; ESTABLISHING PENALTIES; AND DECLARING AN EMERGENCY

WHEREAS, the Port of Newport maintains a public dock and marina facility on the South side of the Yaquina Bay which facility is commonly known and referred to as "Newport's Marina at South Beach," and

WHEREAS, such facility was established and financed as a "sports facility," and

WHEREAS, unrestricted loading or unloading of passengers for hire, may pose a risk to the passengers being loaded and unloaded, and to the public at large, and

WHEREAS, the Port of Newport has entered into a license agreement establishing a charter fishing office at the facility, and

WHEREAS, compensation to the Port of Newport payable by such licensee is based upon a percentage of the gross sales of the charter office licensee, and

WHEREAS, the license with the operator of such charter fishing office provides that in certain respects such license is exclusive, and it may be unfair to allow others to compete at the facility without bearing such cost, and

WHEREAS, it is hereby found and determined that there are numerous and adequate charter fishing operations on Yaquina Bay to provide adequate competition and to meet the needs of the public, and

WHEREAS, it is hereby found and determined that it is not in the best interests of the public or of the Port of Newport to allow charter fishing vessel services or other operations carrying marine passengers for hire to operate from the Newport Marina at South Beach, except and unless the Port of Newport shall first determine that there is a need for such operations and that such operations will not unreasonably interfere with the other operations of the Marina,

NOW, THEREFORE, the Port of Newport ordains:

Section 1. DEFINITIONS:

"Newport Marina at South Beach" shall hereafter be referred to as the "Marina" and comprises that facility operated by the Port of Newport on the South side of the Yaquina Bay, lying Northerly and Westerly of Oceanography Road and Northerly and Easterly of the Yaquina Bay Bridge.

"Operator" shall mean and include the owner of any vessel, any person having an interest in any vessel, the master of any vessel, any person in charge of and any person operating any vessel.

"Vessel" shall mean and include any boat, ship, vessel, barges or other watercraft.

"Transportation of Passengers for Hire" shall mean that any person shall receive valuable consideration, directly or indirectly, other than a voluntary contribution limited to actual out of pocket costs of the trip, in consideration of the operation of the vessel.

"Passenger" shall include any person on board a vessel (except only such persons as are bona fide paid crew members for whom no consideration is paid and from whom no consideration is received for or by reason of passage on the vessel and such person who are "operators").

Section 2. No person shall load or unload any passenger to or from any vessel in connection with any trip constituting transportation of passengers for hire at or from the Marina or any of its facilities, except in case of emergency, unless the vessel to or from which such passengers embark or disembark shall hold a valid, current license to conduct passenger for hire operations from and at the said Marina facility, nor shall the operator of any vessel permit or suffer any passengers to be so loaded or unloaded.

Section 3. The Port of Newport may, from time to time, upon proper application in such form and with such supporting information and documentation as the Port Manager shall require, and upon a finding and determination that there is a public need for the service proposed and that such service will not unduly interfere with other operations at the Marina, issue a license to conduct passenger for hire services at the Port of Newport. The Port Manager shall review such application, and shall determine whether or not to issue such license and may impose such restrictions, conditions and requirements as he shall deem reasonably appropriate to carry out the objectives and purposes of the Port of Newport as herein set forth. Any such license so issued may be issued for a term not exceeding one year. Upon receipt of any application for such a license, before the Port Manager shall make a decision with respect thereto, the Port Manager shall notify any persons then holding current licenses to conduct such operations, at least ten days prior to making a decision with respect to the granting or denial of such a license, in order that such persons may submit written comments with respect thereto, and shall notify any of such persons who have submitted comments of the decision after it has been made.

Section 4. If any person, including the applicant, shall believe that the decision of the Port Manager is in any way arbitrary, capricious, not in compliance with the ordinance or otherwise unlawful, such person may appeal the decision to the Board of Port Commissioners of the Port of Newport, who may reverse or alter such decision in the event that they shall determine that such decision is arbitrary, capricious, not in accordance with this ordinance or otherwise unlawful. Only the applicant or other persons holding a then valid and current license to conduct such operations and who have submitted comments to the Port Manager prior to his decision shall have standing to take such an appeal. Such appeal may be taken only by delivery of a written notice of appeal to the Port Manager within ten days after such person shall receive notice of the Port Manager's decision. The notice of appeal shall specify with particularity the basis for appeal, including but not limited to the manner in which the action of the Port Manager is deemed to be arbitrary, capricious, contrary to the terms of the ordinance or otherwise unlawful, and the specific facts constituting the basis for such allegation. The applicant and those persons having the right to receive notice of the proceeding and having submitted written comments prior to the decision shall be entitled to receive notice of the decision. If no appeal shall be taken in a timely manner as aforesaid, the decision of the Port Manager shall be deemed final and binding.

Section 5. Any holder of any license agreement authorizing the maintenance of a charter fishing office on the Marina premises shall be deemed to have and hold a license to conduct passenger for hire operations hereunder with respect to all vessels operated from such charter office pursuant to the terms of the license agreement, for the period of such license agreement, and no further application shall be required hereunder.

Section 6. It is expressly determined that the Port of Newport has no obligation to grant a license to any person or entity, or to permit charter operations or passenger for hire operations to take place or be conducted at, upon or about the Marina facility, and the Port of Newport has the right to deny any and all applications for such a license, or to grant only those which the Port deems to be to its economic or other benefit. The grant of such a license is a matter of franchise or privilege, and not of right, and the Port of Newport shall not be obligated to issue a license to any person, nor shall the Port of Newport be required to show cause in order to revoke such a license.

Section 7. Any license granted hereunder may be summarily revoked by the Port Manager in the event the Port Manager shall have probable cause to believe that any licensee is guilty of any violation of law in connection with the operations hereunder or shall have failed to comply with any term, provision or requirement of this ordinance or of any term, condition or requirement imposed in connection with the granting of such a license. Following such summary suspension of the license, or whenever there may be probable cause to terminate such license, whether or

not the Port Manager shall have summarily suspended such license, the Port Manager shall have the right to terminate such license, upon first notifying the holder of such license of his intent to do so, including a summary of the basis for such termination. Following receipt of such notice, the license holder shall have ten days in which to request a hearing before the Port Manager, and if no such hearing shall be requested in a timely manner, the Port Manager may proceed to make a final decision in the matter, based upon such information as shall be available to the Port Manager. If the license holder shall request a hearing, the Port Manager shall give the license holder reasonable opportunity to appear before him to give testimony and present such evidence as the Port Manager shall reasonably deem relevant, and Port Manager shall render his decision only after considering the evidence of the holder of the license and such other information and evidence as Port Manager shall have before him. Any such hearing shall be carried out on an informal basis, but the license holder shall have a right to appeal such decision in the same manner as provided for denial of a license application.

Section 8. Unless waived by the Board of Port Commissioners, each licensee hereunder shall pay a license franchise fee equal to five percent (5%) of gross revenues from transportation of passengers for hire to, from or at the Marina, plus an initial license application fee of \$50.00.

Section 9. Nothing herein shall be construed to prohibit the moorage at the Marina facility of any vessel used for charter fishing, transportation of passengers for hire or other commercial purposes, so long as no passengers are boarded or discharged at the Marina facility.

Section 10. If any term, provision or requirement hereof shall be found or determined to be void, voidable or in any manner contrary to any law, statute or regulation of any governmental body having jurisdiction hereof, such provision shall be deemed severable, and the rest, remainder and residue of this ordinance shall remain in full force and effect.

Section 11. Any violation of this ordinance shall constitute a civil infraction, and shall be punishable by a civil fine not to exceed \$500.00.

Section 12. This ordinance is made and adopted by the Port of Newport to preserve and protect the interests of the Port of Newport, and is not necessarily intended to confer any benefit upon the public, it being the responsibility of the government of the United States, acting by and through the United States Coast Guard, and of the State of Oregon, acting by and through the Oregon State Marine Board and the law enforcement agencies of the State of Oregon, to adopt and enforce measures relating to boating passenger safety, and the Port of Newport does not hereby assume any responsibility to enforce or insure the public safety,

nor to provide any assurance that persons engaged in the transportation of passengers for hire will do so in a safe and careful manner or maintain financial responsibility to pay any damages for which they might become liable as a result of such activities, and no right of action against the Port of Newport shall arise by reason of the adoption of this ordinance, and it shall be the sole and separate responsibility of any licensee to comply with and abide by any and all laws, rules and regulations applicable to the conduct of operations of such licensee.

Section 13. This Ordinance is found to be immediately necessary for the peace and welfare of the Port District, and an emergency is therefore declared to exist, and this ordinance shall be effective immediately upon its passage.

Adopted by the following vote at a regular meeting of the Board of Commissioners of the Port of Newport on the 20th day of June, 1989:

AYES:	<u>4</u>
NAYS:	<u>0</u>
ABSTENTIONS:	<u>0</u>
ABSENT:	<u>1</u>

APPROVED:

Tom Coffield
President of the Board of
Port Commissioners

ATTEST:

Burton J. Lippman
Asst Secretary of the Board of
Port Commissioners