

POSSIBLE MOTION

I MOVE TO approve Ordinance 2018-52S
on second and final reading.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2018-52S

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING TITLE 13 "PORT AND HARBORS" OF THE SITKA GENERAL CODE BY ADDING CHAPTER 13.16 "COMMERCIAL MARINE TRADE PERMIT" AND AMENDING CHAPTER 13.04 "DEFINITIONS"

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.

3. PURPOSE. The purpose of this ordinance is to add a new chapter 13.16 Commercial Marine Trade Permit and amend chapter 13.04 to add applicable definitions to Title 13. This ordinance will implement a permit for business, commercial entities, or for profit enterprises engaged in offering services, to commercial, charter or private marine users on city and borough owned marine infrastructure at designated harbor work areas. This permit will assist in creating a safe and productive work environment for these services and fines will be imposed when a permit has not been obtained prior to these services being offered in the designated work areas.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Title 13, be amended by adding chapter 13.16, entitled "Commercial Marine Trade Permit", and updating chapter 13.04, entitled "Definitions" to read as follows (deleted language stricken, new language underlined):

**Title 13
PORT AND HARBORS**

Chapters:

- 13.02 General Provisions**
- 13.04 Definitions**
- 13.06 Charges/Fees**
- 13.07 Harbor Use Privileges and Prohibitions**
- 13.08 Reserved Mooring Stalls**
- 13.09 Anchoring**
- 13.10 Float Regulations**
- 13.12 Enforcement**
- 13.13 Nuisances**
- 13.14 Vessel Impoundment and Disposition**
- 13.15 Float Homes**
- 13.16 Commercial Marine Trade Permits**

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**Chapter 13.04
DEFINITIONS**

Sections:

- 13.04.010 Anchor.**

13.04.020	Charter/vessel for hire.
13.04.030	Commercial marine trade.
13.04.040	Designated harbors.
13.04.050	Designated harbor work areas.
13.05.04060	Dinghy/lighter.
13.04.05070	Distress.
13.04.06080	Emergency.
13.04.07090	Float homes.
13.04.080-100	Harbor.
13.04.090110	Harbormaster.
13.04.100120	Hot berth.
13.04.110130	Liveaboard.
13.04.120140	Moor.
13.04.130150	Permanent transient.
13.04.140160	Person.
13.04.150170	Qualifying interest.
13.04.160180	Stall.
13.04.170190	Transient vessel.
13.04.180200	Transfer of cargo.
13.04.190210	Traffic lanes.
13.04.200220	Vessel.
13.04.210230	Vessel length.
13.04.220240	Waterborne structures.

13.04.010 Anchor.

"Anchor" means to secure a vessel to a bed or body of water by dropping a weighted ground line or tackle or by use of a buoy or other means to prevent more than a measurable movement of the vessel.

13.04.020 Charter/vessel for hire.

"Charter/vessel for hire" means any vessel licensed to carry passengers for hire; "bare boat" is a boat rented with or without crew or operator.

13.04.030 Commercial marine trade.

"Commercial marine trade" means any business, commercial entity, or for-profit enterprise engaged in offering services for the commercial or charter marine industry or private marine users in the designated harbors and designated harbor work areas. This can include, but is not exclusive to, welding, fabrication, electrical, and plumbing services, offered by a business operating within the city and borough.

13.04.040 Designated harbors.

"Designated harbors" means any of the city and borough owned harbors listed below where the city and borough infrastructure is used. These areas include; Sealing Cove harbor, Crescent Harbor, ANB harbor, Thompson harbor, and Eliason harbor.

13.04.050 Designated harbor work areas.

"Designated harbor work areas" means any of the areas listed below which the city and borough infrastructure is used. These areas include; Community port wall, Eliason harbor work float, Fishermen's work float, Crescent harbor high load dock, Crescent harbor pole float and the GPIP dock.

13.04.04060 Dinghy/lighter.

"Dinghy/lighter" means a small vessel normally carried aboard a larger vessel or towed as a life boat or tender.

13.04.05070 Distress.

"Distress" means a state of disability or a present or obvious imminent danger which if unduly prolonged could endanger life or property.

13.04.06080 Emergency.

"Emergency" means a state of immediate danger to life or property in which time is of the essence.

13.04.07090 Float homes.

"Float homes" or "float houses" means a floating structure used wholly as a dwelling unit, which is not designed to travel on water and which is otherwise not a vessel, as defined herein, and meets construction requirements as provided in Chapters 13.15, 19.15, 19.16 and 19.17.

13.04.080100 Harbor.

"Harbor" means the Sitka harbor system or all waters, tidal areas and adjacent uplands areas, together with all facilities of a port or maritime nature publicly owned that are primarily used by or for the service of vessels, including docks, pilings, ramps, hoists, parking areas, leased water areas, concessions and/or service facilities located within.

13.04.090110 Harbormaster.

"Harbormaster" means the individual described in Section 13.02.020 and any assistant harbormaster or other person designated to act in the harbormaster's place.

13.04.100120 Hot berth.

"Hot berth" means the practice of allowing a vessel to temporarily occupy a stall or space not reserved to said vessel.

13.04.110130 Liveaboard.

"Liveaboard" means any vessel used by one or more persons as a primary residence while moored in the Sitka harbor system, which meets the following requirements. A liveaboard vessel must comply with all requirements imposed on any vessel moored in the harbor system including the requirement that the vessel be powered by an engine of sufficient size to propel the vessel at a speed allowing normal steerage and to maneuver out of and into the harbor. A liveaboard vessel must be registered as such with the harbor department. A liveaboard vessel must have a safe heating system, and food preparation system, and berthing accommodations for all occupants.

13.04.120140 Moor.

"Moor" means to secure a vessel by the use of lines to a dock, pier or other object providing a more secure fastening to a particular location than by anchoring.

13.04.130150 Permanent transient.

"Permanent transient" means a vessel which is on the wait list (Section 13.08.040). The vessel will not have a permanent stall assignment but will be provided moorage and be billed for permanent moorage under Section 13.06.010.

13.04.140160 Person.

"Person" means any natural person, individual, partnership, corporation or governmental agency. A corporation and natural person or individual will be considered the same if the natural person has control over the former.

13.04.150170 Qualifying interest.

"Qualifying interest" in a vessel means the interest of a person who owns the vessel or, under provisions of written charter or lease, has exclusive control over the operation and navigation of the vessel. A person who transfers title to a vessel or enters into a charter or lease of the vessel to another, seasonally or permanently, thereby relinquishes exclusive control over the use and operation of said vessel and ceases to have a qualifying interest in said vessel.

13.04.160180 Stall.

"Stall" means a place to moor individual vessels in the harbor.

13.04.170190 Transient vessel.

"Transient vessel" means any vessel occupying space in the Sitka harbor system for which a regular reserved stall has not been assigned.

13.04.180200 Transfer of cargo.

"Transfer of cargo" means all types of loading, unloading, transfer and/or containerization of any type of cargo including, but not limited to, fish, shellfish and other seafood products thereof.

13.04.190210 Traffic lanes.

"Traffic lanes" (navigation lanes) means those areas specifically set aside for movement to and from other locations and which will be kept open, free of obstructions and not for use for anchoring or mooring.

13.04.200220 Vessel.

"Vessel" means any ship, boat, skiff, barge, dredge and craft of every kind or description, whether used for commercial or pleasure purposes, which is on the water and is capable of being used as a means of transportation on or through the water, excluding seaplanes.

13.04.210230 Vessel length.

The method of determining vessel length within the harbor system: Vessel length will be computed as the actual overall length of any vessel, including bow sprits, outboards (in down position) or other extensions.

13.04.220240 Waterborne structures

"Waterborne structures" means other than a vessel. Examples include but are not limited to barges, float houses, or other, usually unpowered, structures.

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Chapter 13.16

COMMERICAL MARINE TRADE PERMITS

Sections:

13.16.010 Introduction.

13.16.020 Permit required.

- 13.16.030 Rules and regulation.
- 13.16.040 Enforcement and penalties.
- 13.16.050 Use of funds.

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13.16.010 Introduction.

The city and borough owns and operates the harbor system which is under the authority of the harbormaster. This chapter intends to capture all locations where a commercial marine trade permit will be required for operation at designated harbors and designated harbor work areas, as defined in chapter 13.04. In adopting this chapter, the city and borough is exercising its proprietary interests as an owner and operator of all city and borough owned property. Nothing in this chapter, however, limits the city and borough's ability to further exercise its proprietary powers as it deems necessary to protect its interests or those of the public.

13.16.020 Permit required.

A. General. No person shall conduct, offer to conduct, solicit to conduct, or take orders to conduct commercial marine trade services in designated harbors or designated harbor work areas, except as authorized by a valid permit obtained from the city and borough pursuant to this chapter. A permit issued pursuant to this chapter shall be called a "commercial marine trade permit."

B. Terms. An annual commercial marine trade permit shall be valid for the period from January 1st of each calendar year through December 31st of the same calendar year, unless sooner revoked or terminated. A commercial marine trade permit, or any rights or privileges thereunder, may not be assigned or transferred. Acceptance of a permit by the permittee shall constitute an agreement and acknowledgment by such permittee that the permittee has no property right in the permit. Acceptance of a permit by the permittee shall constitute an agreement and acknowledgment by such permittee that the permittee shall indemnify and hold the city and borough, its elected and appointed officers, its employees, and its agents, harmless from and against any and all loss, damage or expense for any injury to or death of any person or persons, or for damage to property, resulting from or arising out of any act or omission of such permittee, or any of the permittees' employees, agents, representatives, customers, or contractors. The city and borough, its elected and appointed officers, its employees, and its agents, make no representations concerning and assume no responsibility for or regarding any services sold or activities by any permittee, or any of permittee's employees, agents, representatives, customers, or contractors.

C. Application. A person or entity seeking a permit shall file a written application on a form provided by the city and borough. The application shall contain the following information:

1. Name, mailing address, and telephone number of the applicant and all principals;
2. Name, mailing address and telephone number of the operations manager;
3. Type of commercial marine trade services to be provided; and
4. An acknowledgment by the applicant that applicant agrees to be bound by all of the terms, conditions and provisions set forth in this chapter, and such additional rules and regulations established by the harbormaster.

D. Insurance. Each permittee shall at all times during the period of operations maintain a current commercial general liability insurance policy in the amount of not less than one million dollars combined single limit, which policy shall name the city and borough, its elected and appointed officers, its employees, and its agents, as additional insured. The policy shall not contain any self-insured retention, and shall include a provision requiring written notification to be given to the city and borough by the insurance company not less than thirty days before the policy is canceled, modified, or terminated for any reason. Permittees shall submit a copy of the policy, or, at the option of the city and borough, other satisfactory proof of insurance, prior to operations under the permit.

E. Issuance of Permit. The harbormaster shall grant the application upon finding that the applicant is fit, willing, and able to comply with the law. The permit shall state the name and address of the permittee, the date of issuance and such additional terms, conditions, provisions and limitations. A decision to deny an application for a permit may be appealed by the applicant to the city and borough administrator no later than seven days after such denial is delivered to the applicant. A letter sent to the applicant's mailing address by first class mail shall constitute delivery. An appeal from the decision of the city and borough administrator may be taken to the superior court for the state of Alaska no later than thirty days after the administrator sends notice of such denial to the applicant.

F. Terms of Renewal. Each permit issued under this chapter shall expire on the last day of December following its issuance. Permits once issued and approved prior to start up of operations may be renewed and reissued by the city and borough upon application to the city and borough. Permits will not be renewed unless the finance department certifies that all sales taxes have been paid.

13.16.030 Rules and regulation.

The harbormaster may establish rules and regulations necessary for the safe and orderly operation of the commercial marine trade services authorized by a commercial marine trade permit. The harbormaster shall provide prior written notice to all permittees of such rules and regulations, before they may be enforced.

13.16.040 Enforcement and penalties.

A. The harbormaster has the authority to enforce this chapter and the rules and regulations established under this chapter. The harbormaster shall issue a written notice of violation to the permittee or offender, which includes the fine imposed and/or action taken. Within seven days after the date of delivery of written notice of such fine and/ or action, the permittee may appeal the decision of the harbormaster to the city and borough administrator or his/her designee. Appeal from the administrator's decision may be made no later than thirty days after such decision to the superior court for the state of Alaska in Sitka.

B. The permittee is responsible for all violations of this chapter and the rules and regulations established under this chapter committed by the permittee, its employees, agents, representatives, customers, or contractors. The maximum penalty for violation of this chapter is five hundred dollars.

C. Conducting commercial marine trade services in violation of a permit is punishable by a fifty dollar fine for the first offense, a one hundred dollar fine for the second offense, and a fine of up to five hundred dollars for any subsequent offenses as determined by the harbormaster in

his/her sole discretion. Such fines are separate from any revocation imposed pursuant to Section 13.16.040.E. For the purposes of this section, prior offenses must be within the previous five years.

D. Conducting commercial marine trade services without a permit is punishable by a one hundred dollar fine for the first offense, a two hundred dollar fine for the second offense, and a fine of up to five hundred dollars for any subsequent offenses as determined by the harbormaster in his/her sole discretion. For the purposes of this section, prior offenses must be within the previous five years.

E. Revocation. The harbormaster may at any time revoke a permit issued under this chapter for noncompliance with any term, condition, or provision of the permit, or violation of any provision of this chapter or other applicable local, state, or federal law, ordinance, rule, or regulation. The harbormaster may also revoke such a permit upon a determination that the operation of the permittee is causing a hazard, or a disruption of pedestrian, vehicular, or watercraft traffic, or that the area affected by the permit is required for another public purpose. The permittee shall be given written notice of the proposed revocation of the permit. Within seven days after the date of delivery of written notice of proposed revocation, the permittee may appeal the decision of the harbormaster to the city and borough administrator or his/her designee. Appeal from the administrator's decision may be made no later than thirty days after such decision to the superior court for the state of Alaska in Sitka.

13.16.050 Use of funds.

All fines collected under the terms of this chapter shall be deposited into the Harbor Fund.

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5. EFFECTIVE DATE. This ordinance shall become effective January 1, 2019.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska, this 11th day of December, 2018.

Gary L. Paxton, Mayor

ATTEST:

Sara Peterson, MMC
Municipal Clerk

Substitute ordinance
1st reading 11/27/18
2nd and final reading 12/11/18