

## A G E N D A



## Recommendation for Council Action

Austin City Council

Item ID

44969

Agenda Number

3.

Meeting Date:

5/7/2015

Department:

Austin Water Utility

## Subject

Approve an ordinance amending City Code Chapter 6-5 relating to marine toilet requirements.

## Amount and Source of Funding

There is no unanticipated fiscal impact.

## Fiscal Note

A fiscal note is not required.

**Purchasing  
Language:**

**Prior Council  
Action:**

**For More  
Information:**

Daryl Slusher, 512-972-0218; Denise Avery, 512-972-0104

**Council Committee,  
Boards and  
Commission Action:**

**MBE / WBE:**

**Related Items:**

## Additional Backup Information

This ordinance proposal stems from an ongoing Austin Water process examining and rewriting the marine sanitation provisions of City Code Chapter 6-5, Article 3 (Watercraft and Marinas ordinance). It is also related in part to the Parks and Recreation Department's proposed new contract with Lone Star Riverboats, Inc. (April 21 memo to Mayor and Council, "Lone Star Riverboat postponement request and explanation for April 23, Council agenda"). Staff is seeking approval to repeal City Code Sections 6-5-33(A), 6-5-34, and 6-5-35 while Austin Water staff completes a rewrite of the ordinance. That rewrite is planned to be ready for submission into the boards and commission process within 30-45 days.

State law will of course remain in effect during the period that these sections are removed, and, consequently, the City is not endangering public health and safety during the code rewrite process/period while these sections are removed. State law prohibits discharge of sewage from boats or marinas into inland bodies of water. State law also allows sewage from the boats to be pumped out by hauling companies who take the waste to wastewater treatment plants for treatment, a common practice also allowed under state law. On May 21, the Lone Star Riverboat contract will be back on the agenda, and staff will recommend approval with provision that, when the new code is approved, Lone Star and all excursion boat operators will come into compliance within 180 days.

As to the rewrite process, public stakeholders meetings were completed on April 16, 2015. Staff is continuing to

collect public comments and plans to begin the board and commission process, followed by Council.

### **Background**

The Lake Austin Task Force in August 2013 identified that sections of the Watercraft and Marinas ordinance regarding marine sanitation, or sewage disposal regulations for boats and marinas, were not being enforced. The task force recommended that the City begin enforcing the ordinance. Although the City ordinance was not being enforced, it should be noted that state law related to boat sewage disposal has been in effect for the entire time. State rules (30 TAC 321, Subchapter A) cover almost all of the requirements of the Watercraft and Marinas ordinance with provisions specifically addressing allowable discharge practices and the prohibition against discharging sewage from boats or marinas into inland bodies of water in the state, including Lady Bird Lake and Lake Austin.

After the Lake Austin Task Force recommendation, the Special Services Division (SSD) of Austin Water was assigned the administration of the program and enforcement of the ordinance. The Special Services Division then reviewed the existing ordinance, substantially adopted in 1968, and determined that it contained significant flaws. SSD then undertook a series of actions culminating in a code rewrite and the stakeholder process mentioned above, which has just ended.

### **Problems with the existing ordinance**

SSD also found other problems with the existing ordinance. Those include:

1. The authority to enforce existing rules currently resides with the Health Department, not Austin Water.
2. There is no definition of "Excursion Boat" in Chapter 6-5
3. If enforced now, the existing ordinance would result in the shutdown of excursion boats which are currently operating on Lady Bird Lake. Under the existing code, the only allowed way of removing waste from boats is to an on-shore disposal facility (i.e., discharging to a boat pump-out facility connected to either a septic tank or sewer). This option is not available on Lady Bird Lake. PARD, Watershed Protection and Austin Water all recommend against having a boat pump out facility installed on Lady Bird Lake, due to flooding concerns. The standard way that sewage is removed from boats is pump and haul, in which the sewage is pumped by a waste hauler truck and then taken to a wastewater treatment plant. This is a standard process throughout the City and state, but is not allowed under the existing Watercraft and Marinas ordinance. So, due to the absence of pump out facilities and the prohibition of pump and haul, current excursion boats operating on Lady Bird Lake cannot be in compliance with this section of the ordinance. Additionally, more than 60% of the excursion boats operating on Lady Bird Lake do not have the bathrooms required under the current ordinance. An unknown number of excursion boats operating within the planning jurisdiction on Lake Travis may also not be meeting this requirement.
4. Additionally, requirements for gender-neutral restrooms in recently adopted Chapter 4 -16 conflicts with Sections 6-5-34 and 6-5-35 of the existing ordinance.
5. The ordinance requires provision of toilets at all commercial marinas, parks and picnic areas, but prohibits use of temporary toilets at any marina. However, septic tanks and sewer connections may not be allowed at many marinas based on set-back requirements in the Land Development Code. This requirement is also somewhat redundant, because the Land Development Code also addresses required provision of sanitary facilities at marinas.
6. The ordinance includes right of entry for inspections, but does not establish an offense for unreasonably delaying or denying it. Makes access difficult.

Austin Water's goals in the rewrite are to allow safe operation of excursion boats while protecting water quality and public safety and also ensuring comfort for riders by requiring adequate restroom facilities.

Austin Water recommends repealing the above stated sections of the ordinance [6-5-33(A), 6-5-34, and 6-5-35] until the Council takes action after the rewrite process is complete. This will allow excursion boats that are currently operating to continue operating in the interim. It will also make it possible for Council to consider the new Lone Star Riverboats contract which is currently planned to return to the Council agenda on May 21. Moving forward with the proposed temporary amendment to the code, all currently operating excursion boats, including Lone Star, would have to come into compliance within 180 days of passage of a new ordinance, including any requirements similar to those in the sections which are currently proposed to be deleted.

### **Code Evaluation and Rewrite Process**

Following are a few of the activities that the Special Services Division has undertaken as part of the code analysis and rewrite process.

- Confirmed authority with the Texas Commission on Environmental Quality (TCEQ) regarding the City of Austin's authority to create and enforce its Watercraft and Marinas Program without conflicting with current state regulations.
- Conducted site visits to several public marinas in the affected area that were accessible from land to start the regulatory process and to verify if these marinas were currently compliant with the state's Clean Water Certification Program (anticipated revisions will include authority to inspect private and gated community marinas).
- Reviewed documents and other records related to the history of the Watercraft and Marinas Program and are using information from some of those documents in developing the various permit application, inspection, and other forms that will be used for this resurrected program.
- Finalized the art work and design for the logos, and the specifications to be used for the City-issued permit stickers, patterned after the sticker specifications used for the TCEQ's Clean Water Certification Program and the Texas Parks and Wildlife Department's boat registration program.
- Developed the permit and inspection fees that will be used for excursion boats with marine sanitation devices (MSDs) and boat pump-out facilities within the intended area of applicability. These new fees were included in the FY2015 budget, as these fees were no longer a part of the City's Fee Schedule.
- Created a billing process on CC&B to use for these new fees, as these types of fees have not been charged since 2000. Worked with Austin Water Information Technology Department to develop the features and functionality needed in the database that will be used for the program.
- Designed and tested new functionality and features that were recently added to Austin Water's mobile devices to allow their use in the field in support of this new program.
- Acquired specifications and cost estimate for boat, motor, and trailer to be used in support of this program and made some tentative arrangements to use the boat owned and operated by the Watershed Protection Department until the purchase of a boat.

### **Next Steps**

Austin Water will complete the proposed ordinance within 30-45 days and then begin the board and commission process.

The Lone Star Riverboat Inc. contract will be posted on the May 21 Council agenda.

After the board and commission process, the Watercraft and Marinas ordinance will come as a new item to Council. Staff will recommend that the new ordinance include a provision that all excursion boats come into compliance within 180 days of approval.