

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW NO. 5914-07

**BEING A BY-LAW TO GOVERN AND REGULATE THE OPERATION OF
MUNICIPALLY OWNED, LEASED AND OPERATED RECREATIONAL
MARINAS, HARBOURS AND PORTS IN THE TOWN OF WHITBY**

WHEREAS pursuant to Sections 5,8 and 11 of the Municipal Act, S.O. 2001, as amended, The Corporation of the Town of Whitby may pass by-laws regulating the use by the public of lands owned, leased or under the control of the Town;

AND WHERE AS it is deemed expedient to govern and regulate the operation of municipally owned, leased and operated recreational marinas, harbours and ports in the Town of Whitby;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WHITBY HEREBY ENACTS AS FOLLOWS:

For the purposes of this By-Law:

- 1.1 **"Abandoned"** means a Vessel which is moored or anchored in contravention of this By-Law for a period in excess of 24 hours;
- 1.2 **"Commercial Vessel"** means any ship, boat or watercraft which is used to generate revenue by charging a fee for the transportation of goods, the transportation of people, the sale of goods from the Vessel, or any other service provided by the Vessel;
- 1.3 **"Council"** means the Council of the Town;
- 1.4 **"Dangerous Goods"** means dangerous goods as defined in the *Dangerous Goods Transportation Act (Ontario)*;
- 1.5 **"Emergency Personnel"** includes any person, group or organization authorized by municipal by-laws or provincial or federal statute to respond to emergency situations;
- 1.6 **"Emergency Service Vessel"** means a police, fire, search and rescue, or ambulance Vessel;
- 1.7 **"Explosive"** has the same meaning as in the Explosives Act (Canada);

- 1.8 **"Facilities"** means the Marina, Launching Ramp, surrounding shoreline owned by the Town, piers, buoys, channels and all of the harbour water area and land under the water leased by or under the control of the Town;
- 1.9 **"Floatplane"** means an aircraft on floats, whether operated privately or commercially;
- 1.10 **"Goods"** mean tangible personal property other than Vessels;
- 1.11 **"Harbour"** a place of shelter, refuge or protection for Vessels;
- 1.12 **"Launching Ramp"** means an area which serves as an area to launch vessels into or recover vessels from the water, and which is on lands owned, leased or under the control of the Town;
- 1.13 **"Length"** means
- a) in the case of a commercial fishing Vessel, the length shown in the fishing Vessel registration of the Vessel; and
 - b) in the case of a recreational or other Vessel, the horizontal distance measured between perpendiculars erected at the extreme ends of the Vessel;
- 1.14 **"Liquor"** has the same meaning as in the Liquor Licence Act (Ontario);
- 1.15 **"Live aboard"** means a Vessel or commercial Vessel with living accommodation;
- 1.16 **"Loading Zone"** means that area of a dock designated solely for loading and unloading passengers and goods;
- 1.17 **"Marina"** means the Port Whitby Marina and includes the clubhouse, piers, docks, walls, ramp or wharf to secure mooring for Vessels and Commercial Vessels, real property and facilities located thereon;
- 1.18 **"Marina Manager"** means the Supervisor of Marina, or designate;
- 1.19 **"Moor"** means to secure a Vessel by means of lines, cables, chains, anchors or other similar means to a dock, pier, harbour bottom or shoreline;
- 1.20 **"Moorage Contract"** means an agreement for prepaid moorage and includes a rental agreement;
- 1.21 **"Dock"** means any structure connected to land owned or under the control of the Town and used as dock, wharf, pier for Vessel launching or recovery area together with all adjacent and underlying appurtenances related thereto;

- 1.22 **"Municipal Law Enforcement Officer"** means the person(s) so appointed by the Town for the purposes of enforcing Town By-laws and for the purposes of this By-law shall include the Ontario Provincial Police and Durham Regional Police;
- 1.23 **"Nuisance"** means the parking, placing, storing, or abandoning of Vessels, vehicles or Goods in contravention of this By-law or the rules of the Marina in a location and/or a manner which interferes with the use of the Marina or a Launching Ramp by the other persons or the conduct of the Owner or persons in the Marina or on a Vessel with the Owner's consent interferes with the reasonable use and enjoyment of the Facilities by other persons;
- 1.24 **"Owner"** means a person who owns a Vessel or the person operating or having care and control of a Vessel at any particular time;
- 1.25 **"Raft"** means the mooring of one Vessel along side another;
- 1.26 **"Season of Operation"** means the season of activity for exercising prime operations in the Marina which shall be set as May 1 to October 31 of any calendar year;
- 1.27 **"Town"** means The Corporation of Town of Whitby;
- 1.28 **"Under the control of the Town"** means any land or water including land under the water, that the Town does not own, but has a land-use permit or lease from the Provincial Ministry of Natural Resources, or Federal Department of Fisheries & Oceans, or others;
- 1.29 **"Vessel"** means any ship, boat or watercraft which floats on the surface of the water, motorized or not, and is capable of carrying people and/or goods and includes but is not limited to, pleasure craft, scows, personal water craft, pontoon boats, float planes when on water or land, and Commercial Vessels;

2. LEASES, LICENCES AND AGREEMENTS

- 2.1 No moorage contract, lease licence or agreement shall be for any term exceeding the season of operation except with the approval of Council.
- 2.2 No person shall erect, maintain or occupy a building, structure or other work at the Facilities except under a lease, licence or agreement with the Town.
- 2.3 No person shall, except with the permission in writing of the Marina Manager, install electric power lines, water supply lines or drainage pipes at the Facilities.
- 2.4 No person shall moor, in the Facilities, a Vessel to be used as residence.

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- 2.5 No person shall moor in the Facilities without entering into a Moorage Contract with the Town .
- 2.6 The Town may, subject to subsections 2.1 to 2.5 inclusive:
- a. lease any part of the Facilities to any person;
 - b. grant a licence to any person for the use of the facilities or any part thereof; and
 - c. enter into an agreement with any person for the occupancy and use of the Facilities or any part thereof.
- 2.7 No person shall engage and allow a contractor to work upon a Vessel except in accordance with the following provisions.
- a. A contractor engaged by a person having a Moorage Contract with the Town, may access the Facilities during regular operating hours to undertake repairs and improvements on Vessels.
 - b. The contractor shall comply with all other requirements of the By-laws of the Town and the rules of the Facilities.
 - c. The contractor shall at all times have in force and effect, and shall produce evidence of same upon demand by the Town insurance in the amount of \$2,000,00.00 for general liability and \$2,000,000.00 for vehicles.

3. GENERAL REGULATIONS

- 3.1 The Town may construct and acquire docks, piers, wharves and berths for the operation of the Facilities.
- 3.2 The Town may pay out such monies as may be requisite for any expenses involved in the operation of the Facilities.
- 3.3 No person shall obstruct or interfere with any person or Vessel lawfully using the Facilities;
- 3.4 No person shall behave in a disorderly, dangerous or offensive manner within the Facilities;
- 3.5 No person shall bring Dangerous Goods, into the Facilities unless such goods are required for the ordinary purposes of a Vessel and prior notice has been given to the Marina Manager of the proposed location of such goods and of the manner in which they will be handled and dealt with.
- 3.6 Where the Marina Manager has reasonable grounds to believe that the safety of the Facilities or of the public may be endangered by the proposed location of any Dangerous Goods in the Facilities or by the manner in which such goods are to be handled or dealt with the shall

prohibit the goods from being brought into the Facilities or being so handled or dealt with, as the case may be.

- 3.7 No person shall bring into the Facilities goods, the entry of which has been prohibited pursuant to subsection 3.6, or handle or deal with goods in a manner that has been prohibited pursuant to that subsection.
- 3.8 No person shall, in the Facilities :
- a) have an open fire on a Vessel,
 - b) discharge a firearm, or
 - c) moor a Vessel that, because of its size or dangerous condition, may endanger or damage the Facilities or any part thereof or other Vessels without the approval of the Marina Manager.
- 3.9 Where the Facilities or any part thereof is damaged in any manner by a Vessel or vehicle, or by the use of machinery or equipment, the damage shall be reported forthwith to the Marina Manager by the Owner of the Vessel or the operator of the vehicle, or the person who was in charge of the machinery or equipment at the time the damage occurred.
- 3.10 No person shall store a Vessel in the Facilities except in an area designated by the Marina Manager.
- 3.11 No person shall moor a Vessel or leave materials in the Facilities so that it constitutes a Nuisance.
- 3.12 No person shall keep the motor of a Vessel running at a dock, except when arriving or leaving the Facilities.
- 3.13 No person shall in the Facilities, without the approval of the Marina Manager;
- a. engage in equipment or machinery tests that are likely to endanger the Facilities or any part thereof, a Vessel or a person in the Facilities;
 - b. engage in repairs to the hull, machinery, tackle or gear of a Vessel beyond normal routine maintenance; or
 - c. Use the surface of a dock for any maintenance or repair work;
- 3.14 No person shall supply to, receive into or discharge from a Vessel in the Facilities or a vehicle in the Marina any gasoline or other fuel or oil except at such location, in such manner and at such time as is authorized by the Marina Manager.
- 3.15 No person shall engage in any fishing at or from any dock except that such activities may be undertaken in designated areas in accordance with posted notices;

- 3.16 No person shall dispose of garbage, sewage or wastes at the Facilities except in a place especially provided therefore or as directed the Marina Manager.
- 3.17 No person except the Town and its employees, contractors and agents shall place, post or erect a sign in the Facilities.
- 3.18 No person shall remove, destroy or damage any notices, rules or regulations posted in the Facilities by or under the authority of the Town;

4. MOORING RULES AND REGULATIONS

- 4.1 Vessels coming into the Facilities shall not moor without first obtaining permission from the Marina Manager.
- 4.2 The Owner agrees to abide by all applicable Town By-laws and the rules and regulations of the Marina.
- 4.3 Every Owner of a Vessel moored at the Facilities shall pay in advance the moorage fees as set out by the Town immediately upon mooring the Vessel.
- 4.4 Upon the cancellation of moorage and/or storage, the Owner will remove the Vessel and/or Goods stored immediately and, if not removed, pay the Town in storing, moving or securing the Vessel or Goods.
- 4.5 If moorage and/or storage remains unpaid for 120 days, the Town shall have a lien against the Vessel(s) and/or Goods for moorage and/or storage expenses, notwithstanding that the Vessel may no longer remain in the Facilities.
- 4.6 All Vessels must be clearly marked with the name and registration number as required by law. Emergency contact number(s) should be posted in a visible location on the outside of the Vessel.
- 4.7 Each Owner is responsible for the safe mooring of his Vessel and shall furnish and maintain his own safe line and chaffing gear. Care should be taken not to foul any other berth or access with mooring lines.
- 4.8 No person shall cause any Vessel to remain moored overnight or moored at the Facilities in excess of twelve hours except for:
 - a) a Vessel in respect of which an Owner has prepaid moorage fees and entered into a Moorage Contract; or
 - b) emergency service Vessels and emergency vehicles in the course of emergency situations;

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- 4.9 All Vessels moored at the Facilities shall be moored at the Owner's risk and the Town shall not be responsible under any circumstances for any loss or damage caused or sustained by such Vessel.
- 4.10 The Owner shall release, indemnify and hold harmless the Town from and against all claims, demands and suits, present and future, for damage to the Vessel and/or stored Goods caused by the Town, in an emergency.
- 4.11 The Owner agrees to carry appropriate liability insurance including coverage for sudden and accidental pollution, for the type of Vessel or Goods it is mooring or storing and for the activity that is engaged in by the Owner and those persons who are in the Facilities and /or the Vessel with the consent of the Owner.
- 4.12 The Owner shall moor and operate the Vessel and maintain the Vessel and berth area in a seaman like manner and shall not do or permit any conduct , which in the opinion of the Marina Manager is, may be, or may become, a Nuisance .
- 4.13 The Town and the Marina Manager recognize that in the ordinary course of operations, pollutants, flammable and hazardous material may be aboard the Vessel. The Owner shall stow and look after all such material in a seamanlike manner, to the satisfaction of the Town or Marina Manager and in accordance with the Town's directives. The storage of flammable liquids, oily rags, etc. is prohibited in all other areas of the Facilities.
- 4.14 The Owner shall pay the Town for all utilities and services which may be furnished to the Vessel at the rates established from time to time. The Town will use best efforts to maintain utilities and services, but the Town neither guarantees the continuity of utilities or services nor, with regard to electrical services, the characteristics of such service and its compatibility with the Vessel.
- 4.15 Water may be provided free of charge provided it is not used wastefully. The Town reserves the right to charge, at its discretion, persons who abuse this privilege and any high volume water users. Owners shall abide by all Town water use restrictions.
- 4.16 Owners are advised to check their Vessel regularly, especially after heavy wind or rains. The covering and pumping out of Vessels is the responsibility of the Owner. A charge to the Owner of the Vessel will be made should it become necessary for the Town or its representative to pump same.
- 4.17 Moorage space allocated to an Owner shall not be sublet by the Owner nor shall the Owner permit any other person to use such space for the mooring of a Vessel other than the Owner's Vessel.

- 4.18 The Owner shall not carry on any commercial enterprises, without the Marina Manager's prior written permission.
- 4.19 Owners who have reserved moorage and who intend to be absent from the Facilities with their Vessel for a period in excess of 48 hours are required to give the Marina Manager advance notice of departure and time of their return to the Facilities. The Marina Manager may allow the use of the moorage space or utilize it for purposes of the Town during such absence. In the event the Town has permitted the use of such space the Owner may be required to moor his Vessel elsewhere within the Facilities until such space is vacated.

5. VEHICLE PARKING REGULATIONS

- 5.1 The leaving of vehicles at dock approaches, driveways or loading zones is prohibited and vehicles may be towed away at the owner's expense. Operators of vehicles parked in Marina parking lots and dock areas are required to adhere to the time limits and load limits set for such parking. The Town shall not be liable for loss or damage to vehicles or Vessels left in the Marina facilities.
- 5.2 No person shall contravene the regulations for the use of parking lot facilities as prescribed by the Marina Manager.
- 5.3 Owners of vehicles and vehicles with boat trailers must be in possession of a valid daily parking and launching ticket or an annual pass purchased from the Town or Marina Manager. The ticket or pass must be visibly displayed for inspection by the Marina Manager or a Municipal Law Enforcement Officer.
- 5.4 Vehicles parked in violation of the any provision of this By-law or in violation of posted signs may be towed away and impounded in a designated storage area.

6. LAUNCHING REGULATIONS

- 6.1 Prior to using the Launch Ramp , an Owner shall obtain a daily parking and launching ticket or annual pass from the automatic ticket machine or Marina Manager.
- 6.2 Vessels, vehicles and trailers parked without valid permit or parking ticket in contravention of section 6.1 above, may be towed away and impounded in a designated storage area at the owner's expense.
- 6.3 Boat launch areas adjacent to the ramp, including boat launch docks will not be used as a repair area for Vessels.

7. FEES

- 7.1 Where a fee is applicable, payment of that fee is a condition of permission to use the Facilities.
- 7.2 Fees are payable to the Marina Manager at the rates prescribed by the Town.

8. ENFORCEMENT

- 8.1 The Marina Manager or a Municipal Law Enforcement Officer are hereby authorized to enforce this By-law.
- 8.2 In carrying out the duties and functions of a Municipal Law Enforcement Officer within the provisions of this By-law, a Municipal Law Enforcement Officer shall, if so requested, produce the certificate of designation of the Municipal Law Enforcement Officer as such to the Owner, person in control of a vehicle, or the person in control of the Goods in respect of which the officer is acting.
- 8.3 Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, Chapter p.33, as amended.
- 8.4 The owner of a Vessel is liable for compliance with the provisions of this By-law.
- 8.5 When a Vessel is moored in contravention of a provision of this By-law, the Marina Manager or Municipal Law Enforcement Officer may make reasonable efforts to determine who the Owner of the Vessel is. If it can be determined who the Owner is, the Marina Manager or Municipal Law Enforcement Officer may direct that person to move or remove the Vessel. No person shall fail to comply with the directions given.
- 8.7 In addition to the provisions found in subsections 9.3, 9.5 and 9.6, when a Vessel is found to be abandoned and whether the Owner or operator can be identified or not, the Marina Manager or Municipality Law Enforcement Officer may have the Vessel relocated or removed from a dock or a launching ramp.
- 8.8 In addition to the provision found in Section 9.3, when a Vessel or Goods are deemed to be a Nuisance, the Vessel or Goods may be relocated or removed at the direction of the Marina Manager or a Municipal Law Enforcement Officer.
- 8.9 The fee for the relocation or removal of any Vessel or Goods shall be the actual costs of labour or machinery used to accomplish the work, whether carried out by or on behalf of the Town .

9. REMOVAL AND IMPOUNDMENT OF VESSELS, MATERIALS AND OBSTRUCTIONS

- 9.1 The Marina Manager or a Municipal Law Enforcement Officer may remove and impound, or cause to be removed and impounded, any Vessel, Goods or obstruction that occupies the Facilities .
- 9.2 Any Vessel, Goods or obstruction removed and impounded under this section may be recovered by the Owner upon presenting proof of ownership and upon payment in full of all costs incurred by the Town in removing and impounding (including storing) and any fines owing by the Owner under this By-law.
- 9.3 If any Vessel, Goods or obstruction is removed and impounded, the Marina Manager or a Municipal Law Enforcement Officer shall make reasonable efforts to obtain the name and address of the owner thereof and:
- a) if the name and address of the Owner is determined, the Marina Manager or a Municipal Law Enforcement Officer shall give written notice delivered in person to the Owner or sent by registered mail to the Owner advising the Owner of the removal and impoundment, the sum payable to release the Vessel, Goods obstruction and the date for sale by public auction or disposition under section 9.4, as applicable, if unclaimed; or
 - b) if the identity of the Owner is not determined, the Marina Manager or a Municipal Law Enforcement Officer shall cause a notice to be posted at the Marina advising of the removal and impoundment, the sum payable to release the Vessel, Goods or obstruction and the planned date for sale by public auction or disposition under section 9.4, as applicable, if unclaimed.
- 9.4 The fees, cost and expenses payable by the Owner of a Vessel, Goods or obstruction for the relocation or removal of any Vessel, Goods or obstruction shall be the actual costs of labour or machinery used to accomplish the work, whether carried out by or on behalf of the Town .
- 9.5 The Town may engage the services of a bailiff to remove, impound and auction any Vessels, materials or other obstructions under this section and Section 10.

10. PUBLIC AUCTION

- 10.1 Any Vessel, Goods or obstruction not claimed by its owner, including where the Marina Manager or Municipal Law Enforcement Officer has been unable to determine the Owner's identity, within 120 days notice under section 9.3 may be sold at a public auction and such auction shall

be advertised at least once in a newspaper distributed at least weekly in the Town .

- 10.2 The proceeds of such auction sale shall be applied firstly to the cost of the sale, and secondly to all unpaid fees, costs and expenses levied in accordance with this By-law.
- 10.3 If any Vessel, material or obstruction is not offered for sale or purchased at public auction under this section, the expenses incurred in the removal, impoundment or disposal, are recoverable as a debt due to the Town from the Owner.
- 10.4 If the Marina Manager or Municipal Law Enforcement Officer considers that a Vessel, Goods or obstruction removed and impounded from the Marina is of insufficient value to warrant an auction, the Marina Manager or Municipal Law Enforcement Officer may dispose of the Vessel, material or obstruction if unclaimed after 2 months following notice under section 10.1 and any money obtained through such disposition shall be dealt with in accordance with section 10.3.

11. SPEED AND NOISE

- 11.1 No person shall operate a Vessel within Facilities at speeds exceeding
- a. In the case of the harbour channel- 10 kilometres per hour
 - b. In the case of launch approach- 6 kilometres per hour
 - c. In the case of channels between piers-6 kilometres per hour.
- 11.2 No person shall undertake activity, including operating a Vessel, which generates noise to a level which would be considered a Nuisance.

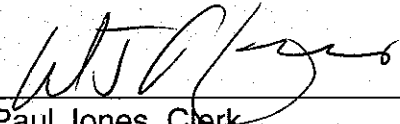
12. VALIDITY

- 12.1 If a court of competent jurisdiction declares any section or part of a section of this By-law invalid, it is the intention of Council that the remainder of this By-law shall continue in force.

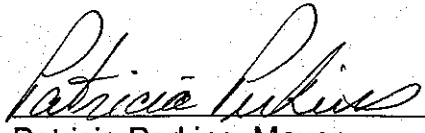
13. INTERPRETATION

- 13.1 Words importing the singular number or the masculine gender only, include more person, parties or things of the same kind than one and females as well as males and the converse.
- 13.2 A word interpreted in the singular number has a corresponding meaning when used in the plural.
- 13.3 That the effective date of this By-law shall be the date of final passage thereof.

BY-LAW READ A FIRST, SECOND, AND THIRD TIME AND FINALLY PASSED
THIS 23rd DAY OF APRIL, A.D., 2007.



Paul Jones, Clerk



Patricia Perkins, Mayor