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## **Ordinance of the City of Newport, Vermont**

### **Ordinance #114 Pertaining To Mooring Management of Public Waters**

**Be it ordained by the City Council of the City of Newport that:  
Ordinance #114**

**Enacted by the City Council  
On The 19<sup>th</sup> Day of September, 2005**

**Pertaining to Mooring Management of Public Waters, be hereby amended to read as follows.**

#### **SECTION 1: PURPOSE**

1.1 PURPOSE - The purpose of this ordinance is to provide fair and equitable access to all navigable public waters within the City of Newport in the public interest. This ordinance shall govern and regulate the use of all navigable waters of Lake Memphremagog, Clyde River, and Black River within the City limits to ensure the protection of the public health, safety, and general welfare.

#### **SECTION 2: SECTION 2 - SCOPE**

2.1 SCOPE - This ordinance shall relate to the use of vessels and the location, construction, installation, maintenance, and use of moorings in all navigable waters within the City limits.

#### **SECTION 3: AUTHORITY, APPLICABILITY AND SEVERABILITY**

3.1 AUTHORITY- This ordinance is enacted pursuant to the authority contained in Section 23 of the City of Newport Charter. The authority to enact this ordinance is delegated to the City of Newport by the Water Resources Panel of the Natural Resources Board under the provision of 10 V.S.A. Section 1424(f).

3.2 APPLICABILITY - The provisions of this ordinance, and any rules and regulations adopted under it, shall be applicable to and shall govern all the navigable waters in the City limits. This ordinance shall be subordinate to all applicable federal, state and local statutes and regulations covering these matters and is not intended to preempt such statutes, regulations or permits/licenses issued thereunder. Where this ordinance imposes a greater restriction upon the water, land, buildings or structures than is imposed by any other ordinance or law, the restrictions of this ordinance shall prevail, provided, however, if this ordinance is inconsistent with other state or federal rules or laws, then these rules or laws shall apply. The designation of Mooring Management Zones does not mean that moorings have a preemptive right to be in the waters in those areas or give moorings any priority over other public uses of those waters.

3.3 RULES AND REGULATIONS - The City Council may prescribe rules and regulations to implement the provisions of this ordinance under the authority of Section 23 of the City of Newport Charter. All such rules and regulations shall be adopted, amended or repealed in the same manner as prescribed for an ordinance under the City of Newport Charter.

3.4 SEVERABILITY - If any provision of this ordinance is held invalid or inoperative, the remainder shall continue in full force and effect as though such invalid or inoperative provision had not been made.

#### **SECTION 4: DEFINITIONS**

ANCHORING shall mean to secure a vessel by use of an anchor or by attachment to another vessel or object for a period not exceeding seventy-two (72) hours. Vessels anchored within a Mooring Management Zone for a period exceeding seventy-two (72) hours, shall be considered to be moored.

APPLICANT shall mean a person applying in writing for either a Certificate of Registration or a waiver.

BUOY MOORING shall mean a mooring which is an object used to hold the vessel in position without providing a platform for access.

CERTIFICATE HOLDER shall mean a person who has been issued a Certificate of Registration.

CERTIFICATE OF REGISTRATION shall mean a written mooring registration, granted by the City of Newport, and its associated numbered identifying tag that shall be attached above the water in a visible location on each mooring buoy. The Certificate of Registration holder shall not cause the tag affixed to the buoy to be removed.

EXISTING MOORING shall mean any mooring determined by the City to have been established before and including September 18, 2000.

FAIRWAY shall mean the parts of the waterway kept open and unobstructed for free movement for water access.

HIGH WATER LEVEL shall mean the ordinary high water level for Lake Memphremagog, which shall be 683.00 feet above mean sea level.

INDIVIDUAL CERTIFICATE OF REGISTRATION shall mean a Certificate of Registration for a single mooring. (See Section 8.2)

MARINA OR YACHT CLUB CERTIFICATE OF REGISTRATION shall mean a number of moorings, not exceeding six (6), held in common by a group, association or corporation, or by an individual or other person for a commercial purpose. (See Section 8.2)

MEAN WATER LEVEL shall mean the "mean water mark", "mean water level" and "normal mean water mark". For Lake Memphremagog, the mean water level has been established as 681.8 feet above mean sea level and 682.04 feet during the period of June 1 - Sept. 15.

MOOR shall mean to secure a vessel other than by anchoring, as defined above, to any floating object, fixed structure or other device located on or beyond the shoreline.

MOORING shall mean any equipment, structure or system(s) for securing a vessel in the water beyond the mean water level. Each vessel, shall be considered to be attached to a separate mooring for the purpose of counting moorings. A mooring shall not mean docks, that are either exempt or permitted, pursuant to 29 V.S.A. Chapter 11. Mooring shall not mean anchoring.

MOORING LOCATION shall mean the point where the mooring anchor is located.

MOORING STATION shall mean the circular area assigned to a Certificate holder according to the depth of the water, and length and type of vessel registered, and the type of approved mooring system.

MOORING MANAGEMENT ZONES shall mean clearly delineated areas of navigable waters in the City of Newport, in which the City has determined that the placement of moorings requires regulation in the public interest. (See Section 7)

NAVIGABLE WATERS shall mean the waters of Lake Memphremagog, Clyde River, and Black River, including the City of Newport portion of boundary waters, which are navigable under the laws of the State of Vermont.

NEW MOORING shall mean any mooring determined by the City to have been established after September 18, 2000.

OCCUPIED ANCHORING shall mean that some individual(s) is (are) on a vessel while anchoring.

PENNANT shall mean an object that fastens a vessel to a buoy for the purpose of mooring.

PERSON shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other

legal or commercial entity, including a joint venture or affiliated ownership.

SHORELINE shall mean the line where the land interfaces the water at elevation 682.04 feet above mean sea level.

SWING AREA shall mean the circular area whose radius is equal to the maximum a vessel stern will pull away from its mooring anchor.

RAFTING shall mean the temporary securing of two or more vessels to one another.

UNOCCUPIED ANCHORING shall mean that no individual(s) is (are) on a vessel while it is anchoring.

VESSEL shall mean every description of watercraft used or capable of being used as a means of transportation on water including but not limited to amphibian or pontoon aircraft.

WAIVER shall mean permission granted to an applicant by the Harbor Commission to depart from the literal requirements of this ordinance, where it has been determined such waiver will not pose a threat to the public health, safety, and general welfare.

**SECTION 5: APPOINTMENT AND POWERS OF HARBOR COMMISSION**

5.1 APPOINTMENT AND ORGANIZATION - The Harbor Commission shall consist of no less than five (5) or no more than nine (9) members appointed by the City Council. Each member shall serve for a term of two (2) years. Initially, two (2) members shall serve for a term of one (1) year. Nothing in this section shall prohibit neighborhood marina or yacht club representatives or a representative from a commercial marina industry or other organization from serving on the Commission as long as such members do not exceed two from each respective party.

5.2 POWERS - The Harbor Commission shall: recommend ordinance amendments, and rules and regulations for the adoption by the City Council; review and make recommendations to the City Council on proposed water use activities; conduct or cause to be conducted, with City Council approval, studies of the conditions and operations in the navigable waters in the City of Newport; hear and decide appeals and revocation proceedings initiated under this ordinance; and, hear, grant or deny requests for waivers.

5.3 CONFLICTS OF INTEREST - No member of the Harbor Commission shall participate in any proceeding where he or she has a conflict of interest as defined by City Policy.

5.4 REMOVAL FOR CAUSE - The City Council shall have the power to remove a member of the Harbor Commission at any time the City Council by majority vote of its members finds that the member has violated this ordinance, or acted in a manner contrary to the City's interest.

**SECTION 6: APPOINTMENT AND POWERS OF THE HARBORMASTER**

6.1 APPOINTMENT - The Harbormaster shall be recommended by the Harbor Commission, approved by the City Council, and sworn in by the City Clerk of the City of Newport.

6.2 POWERS - The Harbormaster shall administer and enforce this ordinance, and any rules and regulations adopted in accordance with Section 3.3 of this ordinance. The Harbormaster shall not have the power to permit any mooring or other activity, which is not in conformance with laws of the State of Vermont, this ordinance, and any implementing rules and regulations.

6.3 SUPERVISION - The Harbormaster will be supervised by the Parks and Recreation Director of the City of Newport.

6.4 REMOVAL - The City Council shall have the power to remove the Harbormaster at any time the City Council by majority vote of its members finds that the Harbormaster has violated this ordinance, or acted in a manner contrary to the City's interest.

**SECTION 7: MOORING MANAGEMENT ZONES**

**7.1 PURPOSE** - By virtue of the delegation of authority by the Water Resources Panel of the Natural Resources Board, the City of Newport has established Mooring Management Zones in Lake Memphremagog, Clyde River, Black River, South Bay, Prouty Bay, Pender's Cove, and two bays adjacent to the Long Bridge designated on the Mooring Management Zones map, (See "Attachment A") within the City's limits.

**7.2 DESCRIPTION OF EACH ZONE AND SPECIAL REGULATIONS APPLICABLE TO EACH ZONE** - There are ten (10) zones (A, B, C, D, E, F, G, H, J, and K) as shown on the Mooring Management Zones map, ("See Attachment A"), and each may have specific restrictions which must be complied with. Zones A, B, and C (See "Attachment C") require that annual Certificates of Registration be acquired and vessels over thirty-six (36) feet in length are not permitted due to space limitations. In zones D and E vessels must be moored between zero feet (0') to four hundred feet (400') from the shoreline, but no annual Certificate of Registration is required. Zones F, G, H, J, and K, do not require an annual Certificate of Registration. The description of each zone is described on "Attachment B".

**7.3 REGULATION OUTSIDE DESIGNATED MANAGEMENT ZONES** - Moorings are prohibited in all navigable public waters within the City of Newport not specifically identified as Mooring Management Zones in Section 7.2, and "Attachments A and B".

**7.4 PROCESS FOR CREATING, MODIFYING, OR REPEALING ZONES AFTER THE EFFECTIVE DATE OF THIS ORDINANCE** - The process for creating, modifying, or repealing Mooring Management Zones after the effective date of this ordinance shall be by a majority vote of the members of the City Council. Amendments will be warned in a paper of general circulation in the area of the City of Newport and at three public locations in the City of Newport. In accordance with Title 24 V.S.A. Section 1973, citizens have the right to petition for a vote to disapprove these amendments to the ordinance by filing a petition signed by five percent of the qualified voters of the City of Newport within forty-four (44) days following the adoption of the amendments. If no petition for such vote is filed, the amendments will be effective sixty (60) days from their adoption. Questions regarding said ordinance amendments may be directed to the City Manager, at 222 Main St., Newport, Vt. Telephone is (802) 334-5136.

## **SECTION 8: MOORINGS AND CERTIFICATES OF REGISTRATION**

**8.1 MOORINGS REQUIRING A CERTIFICATE OF REGISTRATION** - No person shall establish or maintain a mooring in Mooring Management Zones A, B, and C without first obtaining an annual Certificate of Registration from the Harbormaster or his agent.

### **8.2 CLASSES OF CERTIFICATES OF REGISTRATION** -

- a. Individual Certificate of Registration - A Certificate of Registration for a single mooring issued to an individual, for the owner's personal vessel. A mooring location authorized by an Individual Certificate of Registration cannot be rented or sold to another individual. Said Certificate of Registration is not automatically renewable.
- b. Marina or Yacht Club Group Certificate of Registration - A Certificate of Registration issued to and held in common by groups, associations, corporations, or by an individual or other person for a commercial purpose. Said Certificate of Registration is not automatically renewable. Additionally, the following requirements apply:
  - ii) An applicant under sub-part b. may only qualify for one Group Certificate of Registration and the number of moorings per Certificate of Registration shall not exceed six (6) moorings.
  - iii) The applicant must demonstrate in its application that: its operation provides access to public waters, it provides services that facilitate public use of waters (i.e. access to toilets, pump-out station, fuel, fishing and beach areas), it will install space-efficient mooring equipment and system(s), and it will make 33% of its moorings available to daily users.

**8.3 CERTIFICATE OF REGISTRATION APPLICATION PROCESS** - A non-refundable fee of \$10.00 will be charged in order to file an application for a Certificate of Registration with the Harbormaster. This amount will be applied toward the annual fee if the application is approved by the Harbormaster. The application shall be on a form prescribed by the Harbor Commission and shall provide identification information and information related to fulfillment of the requirements for obtaining a Certificate of Registration.

**8.4 CERTIFICATE OF REGISTRATION FEES** - A mooring fee, set annually by resolution of the City Council, shall be paid prior to the issuance of a Certificate of Registration. Revenue generated by this fee shall only provide for the associated cost of administration of this ordinance, (which may include wages, etc., for part time seasonal employees) but shall not be used to pay the City's general budget expenses. If any surplus from Certificate of Registration fees is realized, those funds will remain in a separate account to offset future expenses associated with the Mooring Management of Public Waters. Accumulated surplus shall not exceed 20% of operating cost. Annual fees will be adjusted according to actual and projected expenses and revenues.

- a) All checks are to be made payable to "City of Newport - Moorings".
- b) Full payment must be received by February 28 for the upcoming boating season.
- c) Payment of a mooring registration fee does not give the Certificate holder any right or claim to any specific location. It does give the person the right to a location in Mooring Management Zone A, B, or C that is suitable for the vessel specified on file with the Harbormaster.
- d) The cost of a Marina or Yacht Club Group Certificate of Registration shall be calculated by multiplying the number of moorings authorized by that Certificate by 100% of the annual fee of an Individual Certificate of Registration.

**8.5 CRITERIA FOR ISSUING CERTIFICATES OF REGISTRATION** - The Harbormaster shall assure that Certificates of Registration are issued in such a manner as to not exclude the public's reasonable use of the public waters within the City limits as provided for by the laws of the State of Vermont. Certificates of Registration shall be allocated on a first-come, first-serve basis for new moorings. Applications must be obtained from the Harbormaster and each application shall require all information deemed necessary and appropriate by the Harbor Commission to determine compliance with this ordinance. The City shall annually publish, a public notice advertising the availability of mooring locations within the designated Mooring Management Zones.

**8.6 GRANT OR DENIAL OF A CERTIFICATE OF REGISTRATION; WAITING LIST; NOTIFICATION** - An applicant will be notified, within thirty (30) days from the date of application, of the receipt and status of the application (i.e. denial, approval, or placement on waiting list). Each Certificate of Registration issued shall designate the mooring location. If an applicant on the waiting list is contacted by certified mail and offered a Certificate of Registration, that person will have seven (7) days in which to accept or reject the offer. If the applicant rejects the offer or does not respond in a timely manner, that person's position on the waiting list will be relinquished and a new application will be required in order to be considered at a later date. Full payment of the Certificate of Registration fee will be required within ten (10) days of acceptance. Position on the waiting list is determined by date of receipt of application. Vessel size may also be a factor in awarding Certificates of Registration due to size restrictions of the mooring locations that become available for allocation.

**8.7 DURATION OF CERTIFICATES OF REGISTRATION; RENEWAL; TRANSFERABILITY** - The duration of a Certificate of Registration is one year.

- a) A Certificate of Registration starts on March 1 and terminates on February 28 of the following year.
- b) Renewal notices will be sent out in January of each year. Applications for Certificates of Registration must be received and the required fee paid on or before February 28. Failure to do so will result in the reallocation of the mooring location to a person on the waiting list. Certificates of Registration approved after February 28, will be permitted for the balance of the year at an assigned mooring location.
- c) A Certificate of Registration and location is not transferable in any fashion by the Certificate holder. If the ownership of a vessel changes and the prior owner (the Certificate holder) does not have another vessel to place on the mooring, and the new owner(s) desires that mooring, the new owner(s) must apply to the Harbormaster for a Certificate of Registration with a \$15.00 fee for the remainder of the season. This Certificate of Registration will terminate at the end of the season.
- d) No mooring location identified in an Individual Certificate of Registration can be rented, sold or sub-leased. The Certificate of Registration is only for the owner's vessel identified on the Certification of Registration. The Certification of Registration specifies the model, serial number and length of vessel.
- e) Certificate holders are allowed to change or increase the size of a vessel on their mooring by submitting a new application with a \$15.00 fee and obtaining written approval by the Harbormaster.
- f) An Individual Certificate of Registration is for private, non-commercial use only. Certificate holders are prohibited from chartering, selling, or brokering boats or carrying on any such businesses which involve the commercial or business use of the mooring in any way. (See Section 8.2[b]) A sale between private parties is not prohibited by this provision.
- g) Mooring locations authorized by a Marina or Yacht Club Group Certificate of Registration may be rented

or leased but not sold or sublet.

- h) A person who has timely paid the requisite mooring registration fee and received a Certificate of Registration shall, between March 1 and July 15, install approved tackle at a City-designated mooring location. Said person shall moor an authorized vessel during the one-year duration of the Certificate. This Certificate of Registration, however, is not automatically renewable and an application for renewal may, in fact, be denied.

**8.8 EXPANDING CAPACITY; FIVE-YEAR LOTTERY** - If and when demand in Mooring Management Zones A, B, and C exceeds their maximum capacity for mooring locations, the Harbor Commission will evaluate the options of expanding the respective zones, requiring more space-efficient mooring equipment or systems, or opening the Certificate of Registration process to a lottery. An annual lottery open to the people on the waiting list plus the people who have already renewed their licenses at least 6 times will be conducted. The lottery process and other options for allocating mooring locations would assure that those on a waiting list will eventually have an opportunity to gain access of a mooring location, thus, insuring reasonable availability of public use of all navigable waters in Lake Memphremagog, Clyde River, and Black River in the City limits.

## **SECTION 9: GENERAL REQUIREMENTS**

**9.1 LOCATION AND PLACEMENT** - A mooring must be placed by the owner at the location and within the swing area approved by the Harbormaster. Each Certificate of Registration shall designate the mooring location. A mooring system must be placed by a Certificate holder in a location, which does not allow a vessel to swing into another vessel moored on a previously registered and properly placed mooring.

**9.2 TACKLE** - The ownership, care, maintenance and registration of all mooring tackle is the responsibility of the Certificate holder, not the City. Mooring tackle systems that will be accepted are those that follow common marine practices (i.e. the Hazelett Spar System, Civil Engineering Associates System, or those in the Chapman's Piloting Book in Chapter 11 as a permanent mooring) and must be adaptable to the radius of the mooring station offered. Any other system must be approved by the Harbor Commission. All mooring tackle will be examined and approved by the Harbormaster before being installed and be tagged with mooring numbers.

**9.3 BUOY MOORING TAGS** - For buoy moorings, a numbered identifying tag will be issued with the written Certificate of Registration. The tags shall be attached above the water in a visible location on each mooring buoy. The Certificate holder shall be responsible for affixing the tag to the buoy. On request by the Harbormaster or his agent, the owner or captain of any vessel secured to a mooring in Mooring Management Zones A, B, and C shall display a valid Certificate of Registration.

**9.4 ROWBOATS AND DINGHIES** - No person shall make fast or secure a vessel to any mooring already occupied by another vessel, or to a vessel already moored, except that a rowboat or dingy regularly used by a larger vessel for transportation of persons or property to and from shore may be secured to such larger vessel or to the mooring regularly used by such larger vessel.

**9.5 SPECIAL CONDITIONS** - The Harbormaster has the discretion to authorize certain uses of moorings not otherwise authorized under this ordinance, such as:

- a) Rafting - Rafting is permitted during suitable weather conditions in the Harbormaster's discretion. Rafting will not be permitted on an overnight basis, when boats are unoccupied, or when a threat to safety exists as determined by the Harbormaster. Rafting will not be permitted as a means of circumventing the provisions of Section 8 or the spirit of this ordinance.
- b) Invitees and Guests - Occasional use of moorings by third parties may be allowed with permission of the Certificate holder, provided the period of such use does not exceed five (5) consecutive days and the vessel so secured does not present a safety hazard due to its size or other condition given the type of equipment and/or system(s) authorized by the Certificate of Registration. Moorings on an Individual Certificate of Registration may not be rented.

**9.6 INSPECTION** - Each year Certificate holders shall have their pennants inspected by and made usable to the satisfaction of, the Harbormaster. Pennant diameter may be increased but the length may not be altered. Visual inspection of mooring equipment above the water line, including the vessel attachment point, will be done monthly or more frequently at the discretion of the Harbormaster. The entire mooring system of each Certificate holder will be

inspected every two years. The Certificate holder will have to repair or replace a mooring within thirty (30) days after being notified in writing by the Harbormaster that the mooring is defective, or within such lesser time as specified by the Harbormaster if circumstances should warrant emergency action.

9.7 **LIABILITY** - It is the Certificate holder's responsibility, not the City's, to install, repair, replace and remove mooring tackle at the location specified by the Harbormaster. Any person mooring or anchoring a vessel within the public waters subject to this ordinance, shall assume all risk of damage or loss to his property and the City of Newport assumes no risk on account of fire, theft, Act of God, or damages of any kind to a vessel located in public waters within the City limits.

9.8 **INTERFERENCE** - No mooring or its associated tackle or vessel shall be allowed to be placed in such a manner as to constitute a hazard to navigation or interfere with previously authorized moorings, or with yacht clubs, marinas, fairways, boat houses, or any public swimming areas.

#### **SECTION 10: ANCHORING; OCCUPIED ANCHORING; UNOCCUPIED ANCHORING**

10.1 **ANCHORING** - Anchoring a vessel is permitted in the public waters of the City of Newport in a safe and prudent manner so as not to impede public use of said waters for navigation. No transient or visiting vessel may anchor in excess of three (3) days within a Mooring Management Zone. There will be no fees charged for utilization of an anchorage by a transient or visiting vessel.

10.2 **OCCUPIED ANCHORING** - In areas designated A, B, C, and fairways (See "Attachment C") occupied anchoring is allowed during daylight hours. Occupied anchoring is permitted overnight in areas designated A, B, and C. No overnight occupied anchoring is permitted in designated fairways.

10.3 **UNOCCUPIED ANCHORING** - No unoccupied anchoring shall occur at all within designated fairways (See "Attachment C"). A transient or visiting vessel may not be fixed to a mooring, except as authorized in Section 9.5 or at a facility owned by a Marina or Yacht Club Group Certificate holder.

#### **SECTION 11: ABANDONMENT**

##### **11.1 RELINQUISHMENT; ABANDONMENT; AND FORFEITURE -**

- a) A Certificate of Registration holder may relinquish his certificate at any time upon written notification to the Harbormaster. Any mooring tackle not removed within (30) days after receipt of such notification shall be considered abandoned and may be removed pursuant to sub.part c), below.
- b) A Certificate holder may be deemed to have forfeited his certificate by reason of any of the following if not corrected within forty-eight (48) hours of notice in writing from the Harbormaster.
  - i) Placement of the mooring at a location other than that specified on the Certificate of Registration;
  - ii) Failure to pay the annual fee when due;
  - iii) Failure to repair or replace a mooring within thirty (30) days after being advised in writing by the Harbormaster that the mooring is defective or within such lesser time as specified by the Harbormaster if circumstances should warrant.
  - iv) Failure to demonstrate use of a Certificate of Registration by installing mooring tackle by July 15, shall be evidence that the Certificate holder has not used the Certificate of Registration, and, therefore, that Certificate of Registration is expired and the mooring is subject to reassignment.
  - v) Failure to moor an authorized vessel to the assigned mooring location during the one-year duration of the Certificate, shall result in expiration of that Certificate of Registration and will serve as a basis for denial of renewal of a Certificate of Registration for the coming year.
- c) Any abandoned or forfeited mooring tackle or any mooring tackle installed within Mooring Management Zones A, B, and C without permission from the Harbormaster may be removed at the expense of the owner, in the event he fails to remove same, within forty-eight (48) hours after notice in writing from the Harbormaster. The notice shall be secured to the mooring and mailed to the then known address as identified on the owner's Certificate of Registration and if the owner is unknown, then such notice shall be secured to the mooring only.
- d) Unauthorized, or non-standard unusable mooring equipment may be subject to confiscation by the

Harbormaster.

## **SECTION 12: VIOLATIONS AND ENFORCEMENT**

**12.1 VIOLATIONS AND ENFORCEMENT** - Violation of any rules and regulations promulgated under this ordinance shall be considered a violation of this ordinance. Violations of this ordinance shall be a civil matter enforced in accordance with the provisions of Section 24 of the City Charter and Title 24 V.S.A. Section 1974a and Section 1977 et seq. The following are violations of this ordinance:

- a) Placement of any mooring in the navigable waters of the City of Newport without a Certificate of Registration, except in Mooring Management Zones D, E, F, G, H, and J, and K.
- b) Use of a mooring by anyone other than the certificate holder, his guests or invitees. (See Section 9.5)
- c) Failure to comply with any order issued by the Harbormaster or Harbor Commission pursuant to this ordinance, and/or the Rules and Regulations thereunder.
- d) Failure to comply with the terms of any requirements for a Certificate of Registration.

**12.2 PENALTIES** - No action may be brought under this section unless the alleged offender has had at least seven (7) days written notice that a violation exists. Each day that a violation is continued thereafter shall constitute a separate offense and shall not require that additional notice be served. Service of said notice shall be as follows: Upon the addressee whose name appears on the Certificate of Registration by certified mail or if the violator does not have a Certificate of Registration, to such addressee as the City of Newport may determine upon investigation.

## **SECTION 13: REVOCATION OF CERTIFICATE OF REGISTRATION**

**13.1 GROUNDS FOR REVOCATION** - The Harbor Commission shall have the authority to revoke any certificate when it has been determined that:

- a) A Certificate holder has violated this ordinance or Rules and Regulations adopted to implement it pursuant to Section 3.3.
- b) It has become necessary to make a change in fairways or protection zones to correct an unsafe condition, or to prevent actual or potential adverse impacts on recreational and other uses of the waters, including private or public water supplies, Class I and II wetlands, threatened and endangered plant and animal species listed pursuant to 10 V.S.A. Chapter 123, fish or wildlife, underwater historic property, public lands and natural scenic areas. In such cases, the Certificate holder shall be granted an amended certificate assigning another location for the mooring or added to the top of the waiting list.

**13.2 NOTICE AND PROCEDURE FOR REVOCATION; EFFECTIVE DATE** -

- a) Immediately upon receipt of notification from the Harbormaster of an emergency or an unsafe or hazardous condition or twenty (20) days after receipt of written notice from the Harbormaster for all other reasons, a Certificate holder may file with the Harbor Commission and City Clerk a written statement responding to the stated grounds for revocation and request a hearing.
- b) The Harbor Commission shall within forty-eight (48) hours revoke a Certificate of Registration in any emergency matter, and provide notice and an opportunity for a hearing promptly after revoking the Certificate. The Harbor Commission shall promptly issue an order reinstating a Certificate of Registration revoked on the basis of a notification from the Harbormaster of an emergency or an unsafe or hazardous condition if the Harbor Commission determines after a hearing that revocation was not warranted. Otherwise, the Harbor Commission shall provide notice and convene a hearing, if requested, within thirty (30) days of the Harbormaster's revocation notice. In the absence of notification from the Harbormaster of an emergency or an unsafe or hazardous condition, a Certificate of Registration shall remain valid unless and until the Harbor Commission issues a final order revoking the Certificate.

**13.3 REINSTATEMENT** - The Harbor Commission may reinstate any Certificate of Registration at such time as the violation or condition causing revocation is corrected, if the Certificate holder is at such time otherwise entitled to such certificate.

## **SECTION 14: APPEALS; WAIVERS**

**14.1 APPEALS OF HARBORMASTER'S ACTS OR DECISIONS TO THE HARBOR COMMISSION** - The Harbor Commission will serve as a Board of Appeal for any person seeking to contest any decision of the



Harbormaster. When a person is aggrieved by any order of the Harbormaster, such person may appeal to the Harbor Commission by filing a notice of appeal with the City Clerk and a copy with the Harbormaster. Such notice of appeal must be filed within ten (10) days of the date of such decision or act of the Harbormaster. In cases where the action appealed is an enforcement action of the Harbormaster, a person may request simultaneously with the filing of the appeal, a request for a stay of enforcement. The Harbor Commission shall set a date and place for hearing of an appeal under this ordinance, which shall be within thirty (30) days of filing of the notice of such appeal. In a case where a stay of enforcement is requested, the Commission shall meet within seventy-two (72) hours to hear the request and approve or deny the request and set a date for a hearing on the merits of the appeal. The Harbor Commission shall mail to the applicant a copy of such notice at least fifteen (15) days prior to the hearing date. The Harbor Commission may decide the appeal at its next regularly scheduled meeting, or continue the time for decision for not more than fifteen (15) days. All actions taken by the Commission shall be supported by written Findings of Fact and Orders.

**14.2 WAIVERS** - For good cause, the Harbor Commission may grant a limited waiver of the terms and requirements of this ordinance provided that the circumstances necessitating the waiver are beyond the control of the person requesting the waiver. A request for waiver may be initiated by filing a notice with the City Clerk and a copy with the Harbormaster. The Harbor Commission shall notice and hold a hearing, and issue a decision, in the same manner as appeals pursuant to Section 14.1 of this ordinance.

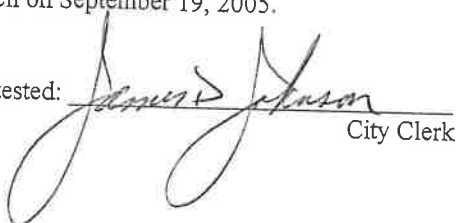
**14.3 APPEALS TO COURT** - Any person aggrieved by a final decision of the Harbor Commission, in any proceeding other than an enforcement action, may appeal to the Vermont Environmental Court within thirty (30) days of the date of the written decision pursuant to 10 V.S.A. section 1424(f) and Rule 12 in Appendix D of the Vermont Use of Public Waters Rules. Appeals in an enforcement action shall be taken to according to applicable law.

**SECTION 15: AMENDMENT**

**15.1 AMENDMENT OF THE ORDINANCE** - Any proposed amendments to this ordinance shall be submitted to the Water Resources Panel of the Natural Resources Board to assure adequate review, comment, and, if necessary, corrective action to assure that proposed changes are within the authority delegated under 10 V.S.A. Section 1424(f).

The foregoing ordinance was amended by the City Council on September 19, 2005.

Approved:   
 Mayor

Attested:   
 City Clerk