

Town of Chatham Waterways By-Law Chapter 265

Proposed Changes



**Revised for Public Comment
March 13, 2008**

Deletions to the existing text are shown as ~~strikethrough~~.
Additions to the existing text are shown as *underlined italics*.

NOTE: Any Sections of the existing Waterways By-Law, Chapter 265, not specifically referenced in this Draft remain as-is.

§ 265-1. Application and regulations.

C. Before prescribing ...to the Waterways Advisory Committee, which shall...

§265-2. Definitions

ADD the following New Definitions:

AGGRIEVED PERSON - Any person or entity whose mooring permit has been revoked or not renewed; any person who leases a mooring from a Recreational Boating Facility and whose lease is cancelled or not renewed; any person or entity whose name appears on a Town or private waiting list and who was passed over when a mooring became available.

RECREATIONAL BOATING FACILITY - All marinas, boatyards and yacht clubs who have been assigned multiple moorings by the Town for use by their patrons, customers or members.

COMMERCIAL FISHING CLASSIFICATION - Any mooring permit holder or person or entity on the waiting lists who, in the opinion of the Harbormaster, is engaged in fin or shellfishing as his/her or its principal occupation (i.e. deriving no less than 75% of their income from fishing related activities).

§265-13. Moorings.

B. ~~The owner of the mooring~~ mooring permit holder shall comply with all reasonable requests of the Harbormaster or an Assistant Harbormaster and all mooring and mooring permit regulations and shall ensure that:

(1) ~~Each mooring owned by him meets the requirements of § 35039 of this chapter and any other requirements of the Harbormaster or an Assistant Harbormaster for the service intended~~ a permit holder shall meet the requirements of the Harbormaster "Regulations for Mooring, Mooring Permits and Anchoring."

(2) ~~That each mooring owned by him~~ is maintained in good and serviceable condition on the assigned location for the mooring.

§265-14. Mooring permits.

- A. Before placing in the water or using any mooring, the owner of a mooring tackle shall obtain from the Harbormaster or an Assistant Harbormaster a mooring permit
- D. The Harbormaster shall adopt regulations regarding the period of time that a mooring permit is valid, procedures for renewal and the issuance of new permits. Such regulations shall track the provisions of MGL c. 91 §10A.
- F. When a mooring permit is revoked or expires, ~~or when a mooring permit holder/owner sells or transfers ownership of a mooring, he shall~~ the permit holder/owner shall, within 30 days, surrender the mooring permit and remove or dispose of the mooring.
- G. When a permit holder/owner of a mooring discontinues the use of a mooring for the vessel described in the mooring permit, the permit holder/owner may retain the mooring location for a period of not to exceed two (2) years, and the mooring may be used by another vessel as prescribed in §265-18. If after two (2) years the permit holder/owner does not own a vessel requiring ~~the~~ a mooring, the Harbormaster ~~may~~ shall reassign the mooring location.
- H. The Board of Selectmen, in consultation with the Waterways Advisory Committee, shall set the fees for mooring permits.

ADD the following New Subsections:

I. The Harbormaster shall annually update and publish by category the number and general mooring location of all moorings as follows:

(1) Town controlled and unassigned;

(2) Commercial fishing vessels;

(3) Recreational private;

(4) Boatyards and marinas; and

(5) Clubs, nonprofits, sailing schools.

The Harbormaster shall endeavor to maintain the percentages mix of the above categories as they existed on April 1, 2008 (Percentage mix and date may be changed under Section 265-14A(F)). In the event a mooring assigned to a commercial fishing vessel is converted by the mooring permit holder to a recreational private status, the Harbormaster shall assign the next available,

suitable mooring to a commercial fishing vessel applicant.

- J. Mooring permits may be transferred to members of the immediate family of the permit holder in accordance with the Harbormaster's Mooring Regulations.
- K. Mooring permits are temporary permits as defined in MGL c. 91. The permits are not property rights and as such are only transferable in strict conformity with this bylaw.

ADD the following New Section:

§265-14A

- A. Mooring permits issued to Recreational Boating Facilities may, consistent with the provisions of this bylaw and the rules and regulations of the Harbormaster, be assigned or leased to patrons and/or members of such facilities, and may be used by such facilities for service or repair of vessels.
- B. Each Recreational Boating Facility shall subscribe to and be bound by the Chatham Commercial/Rental Mooring Fair and Equitable Mooring Assignment Policy (the "Policy") adopted by the Harbormaster, and approved by the Board of Selectmen, dated _____, 2008, a copy of which is on file in the office of the Town Clerk.
 - (1) Dated copies of the policies shall be available at the office of the Harbormaster and Town Clerk and shall be conspicuously posted at each Recreational Boating Facility.
 - (2) The Policy may only be amended by the Harbormaster with approval of the Board of Selectmen after an advertised public hearing, notice of which has been sent in writing to all Recreational Boating Facilities and the Waterways Advisory Committee at least 10 days before the hearing. The notice shall set forth the time and place of the hearing and include a copy of the proposed amendment. Prior to acting on the amendment the Harbormaster and the Board of Selectmen shall seek the recommendation of the Waterways Advisory Committee.
- C. No Recreational Boating Facility shall fail to renew or revoke a mooring rental/assignment without having complied with the applicable provisions of the Policy. Copies of the notice shall be sent to the Harbormaster contemporaneous with the notice to the lessee/assignee. Any person

aggrieved by such non-renewal or revocation shall be entitled to pursue the appeal process outlined in this bylaw without fear on reprisal or retribution.

D. Failure of the Recreational Boating Facility to conform to the requirements of this bylaw may result in the non-renewal of some or all of its mooring permits.

E. Upon the sale or transfer of the Recreational Boating Facility to a new owner the mooring permits assigned to that Recreational Boating Facility may be transferred to the successor owner provided that;

(1) The facility continues to operate at substantially the level of service as previously and as a Recreational Boating Facility; and

(2) That the Harbormaster approves such transfer, which approval shall not be unreasonably withheld.

Sale or transfer shall include any sale or transfer of more than 51% of the stock of any corporate Recreational Boating Facility.

F. The sale or transfer to any person or entity that ceases or fails to operate as set forth in this section will cause the mooring permits to be revoked or not reissued and such permits may be reassigned by the Harbormaster exempt from the requirements of Section 265-14(I). The reassignment of these moorings may create a new percentage mix between the categories and thus establish a new benchmark date for Section 265-14(I).

G. The Harbormaster, at his discretion, may issue "Service Moorings" to boat/repair commercial facilities not qualified under "Recreational Boating Facilities" as required by them to facilitate their normal operations. Permits to be issued at the Harbormasters discretion out of the percentage used in Section 265-14(I)(1), (2) or (4).

§265-15. Waiting Lists for Mooring Location Assignment.

A. In areas that have reached maximum mooring saturation, the Harbormaster may shall, in order to equitably assign mooring locations, establish waiting lists and procedures for the administration of such waiting lists.

B. ~~Failure to comply with the procedures established by the harbormaster will result in removal from the waiting list.~~ Recreational Boating Facilities shall likewise establish waiting lists and procedures similar to the Harbormaster's

for assignment of vacant moorings under its control for those willing to pay the rental fee for such moorings. In the event such facility has no one on its waiting list and no one is interested in renting its available moorings, it shall be offered to the owner of a suitable vessel who is listed first on the applicable Harbormaster Waiting List and is willing to enter into the mooring rental assignment agreement then offered by the Recreational Boating Facility. Recreational Boating Facilities shall be required to submit to the Harbormaster the information set forth in subsections E & F of this section.

C. In the establishment of the written waiting list procedures, the Harbormaster or recreational boating facilities shall comply with the provisions of 310 CMR 9.07(2)(a). The fair and equitable assignment from a waiting list shall at a minimum include:

(1) Date of application;

(2) Physical characteristics of vessels, e.g. size and type;

(3) Purpose of vessel use, e.g. commercial vs. recreational or public v. private; and

(4) In the case of a Recreational Boating Facility, renewal of a mooring rental assignment or issuance of a mooring rental assignment to individual patrons, members or customers of the Facility.

D. A list of all mooring wait lists and assignment lists shall be kept at the Harbormaster's office and posted on the Town website. These lists will have the date an individual first appeared on the wait list. The assignment list will have the date the mooring was assigned to that individual. When the Harbormaster makes any changes either by issuing new moorings or removing moorings then that change will be reflected on the respective list within fifteen (15) days of said change. The Harbormaster's office shall maintain these records as public documents in paper and electronic form and shall keep these records for public review indefinitely or until otherwise instructed by the Board of Selectmen/Town Manager.

E. The Town Clerk's office will be responsible for archiving the records. The Harbormaster's office will provide it with updated lists every six (6) months. Records shall be available for the public to review upon request. All records submitted to the Town Clerk's office by the Harbormaster's office shall be kept indefinitely or until otherwise instructed by the Board of Selectmen/Town Manager.

F. When a new mooring is assigned, a copy of the assignment letter is to be sent to the Waterways Advisory Committee and the Board of Selectmen/Town Manager within fifteen (15) days of said assignment. Should the Harbormaster elect to assign additional moorings to its own inventory of available town moorings, the notification procedure of this section shall be followed.

G. All new assignments of the moorings shall be taken from the first suitable vessel on the waiting list. If the vessel selected for a mooring is not the next in line on the wait list then the Harbormaster shall provide a written reason for such a selection to the Board of Selectmen/Town Manager, the Waterways Advisory Committee, and to all individuals on the waiting list who have been passed over within fifteen (15) days of such an assignment.

§265-16. Moving, relocating, removal and inspection of moorings.

F. All moorings shall be inspected ~~pass an inspection~~ by a qualified person before being placed in service, and ~~at not less than every two years thereafter~~ further inspected, and pass such inspection, at intervals of not more than every two (2) years thereafter. A qualified person is an individual who has received written approval to inspect moorings from the Harbormaster or an Assistant Harbormaster. Moorings may continue to be self-inspected by the individual mooring permit holder in accordance with the Harbormaster's mooring inspection regulations as from time to time amended.

§265-17. Lost moorings.

B. ~~If after six months,~~ during a period not to exceed six (6) months, the permit holder/owner fails to locate, mark and properly identify a lost mooring, he shall have relinquished his right to the approved location, and the mooring may be removed by the Harbormaster or an Assistant Harbormaster may request permission from the Harbormaster to install a new mooring and tackle at his approved location.

ADD the following New Section:

§265-23. Appeals

A. Statutory Appeals

Any individual or entity aggrieved by a decision of the Harbormaster shall have the right to pursue and appeal to the Division of Waterways as more fully set forth in MGL c. 91 §10A and 310 CMR 9.07(5)(a). If an aggrieved person elects to utilize the local appeals process, any decision by the Harbormaster shall not become final until seven (7) days following the decision of the Mooring Appeals Board at which time the thirty (30) day appeal period in MGL c. 91 §10A will commence to run. The decision to utilize the local appeals process shall not constitute a waiver of the statutory appeal process.

B. Local Appeals

- (1) The Board of Selectmen shall hear and rule upon all appeals initiated under this bylaw.
- (2) The Board of Selectmen is authorized to hear and decide appeals initiated by any aggrieved person as defined in this mooring bylaw. The appeal shall be filed with the Town Clerk and the Harbormaster within ten (10) days of the action of either the Harbormaster or a Recreational Boating Facility from which the aggrievement arises. The Board of Selectmen shall hold a hearing within twenty-one (21) days of the filing of the appeal and shall render its decision and file the same with the Town Clerk and Harbormaster within twenty-one (21) days of the conclusion of its hearing.
- (3) Any party to the local appeals process aggrieved by the decision of the Board of Selectmen may appeal pursuant to MGL c. 91 §10A or 310 CMR 9.07(5)(a) providing they qualify for such appeal. All other appeals of the Board of Selectmen shall be to the Superior Court of Barnstable County by way of certiorari.
- (4) Any further appeal to the Division of Waterways shall include the decision of the Board of Selectmen which shall have prima facie evidence of its correctness.
- (5) The filing of a local appeal under this bylaw shall stay the enforcement of the action or actions appealed from until such time as the appeal is finally adjudicated or resolved and until the Board of Selectmen has rendered its decision.
- (6) In ruling upon appeals, the Board of Selectmen shall determine:

- (1) Whether there has been compliance with the provisions of this bylaw, the regulations of the Harbormaster, and, if applicable, the Policy referenced in Section 265-14A as the same may be amended from time to time.
- (2) Whether the action or decision of the Harbormaster or the Recreational Boating Facility was arbitrary or capricious.