

Chapter 10 HARBOR AND MARINA REGULATIONS¹

Sec. 10-1. Authority.

- (a) The Town has authority to regulate and enforce laws in Carolina Beach Harbor and the shoreline area adjoining the Town as granted by the North Carolina Session Law 2010-73, Section 2. Specifically, the Town is granted authority to:
 - (1) Operate and manage facilities in Carolina Beach Harbor, the municipal marina, and yacht basin.
 - (2) Enforce navigation, boating, water safety, resource protection, recreation, and public safety laws in the shoreline area in cooperation and coordination with applicable local, state, and federal agencies.
- (b) The Town may adopt ordinances pursuant to G.S. 160A-174 and extend applicable ordinances of the Town so that the ordinances have full force and effect in the shoreline area, subject to the limitation that in the event any ordinance adopted by the Town conflicts with a rule, regulation, or statute adopted by a county, state, or federal agency, then the county, state, or federal rule, regulation, or statute shall prevail over the Town ordinance to the extent of the conflict. The town shall not adopt or extend an ordinance to apply to the shoreline area that would interfere or limit public trust rights of the people of the state or legal rights of access to such public trust areas in any way.
- (c) Town law enforcement officers shall have authority to enforce ordinances adopted or extended in the shoreline area, subject to the limitations of any existing enforcement authority in those areas held by county, state, or federal agencies. The Town may also enter into enforcement and mutual aid agreements with county, state, and federal agencies to cooperatively enforce navigation, boating, water safety, resource protection, recreation, access, and public safety laws and regulations.
- (d) The Town may:
 - (1) Hire one or more special officers to serve as Harbor Master and to patrol and enforce the laws in the Town and shoreline area. The Harbor Master and other officers hired under this section may exercise all the powers of a law enforcement officer generally within the Town, shall be entitled to all powers, privileges, and immunities afforded by law to regularly employed law enforcement officers of the town, and are subject to all provisions of law relating to law enforcement officers, including training requirements and the requirement that an officer must take the oath of office required of a law enforcement officer.
 - (2) Own and operate facilities in the shoreline area, including piers, docks, slips, quays, and bulkheads; boats and water transportation; moorings and mooring fields; boating safety equipment; dredging and channel maintenance equipment; boating access; and traffic control, navigational devices, lighting, and signage, subject to the limitations in G.S. 75A-15 and other applicable county, state, and federal laws.

(Code 1986, § 6-1; Ord. No. 12-883, 2-14-2012)

¹State law reference(s)—Boating and water safety, G.S. ch. 75A; property taxes for ports and harbor, G.S. 160A-209.

Sec. 10-2. Harbor Master.

The Harbor Master shall report to the Town Manager or their designee and have the following duties:

- (1) Be responsible for the administration and enforcement of the provisions of this chapter;
- (2) Process applications for:
 - a. Issue license agreements for boat slips at the Town marina; and
 - b. Mooring permits;
- (3) Enforce all Town ordinances associated with the shoreline area
- (4) Keep proper records of all Town boat slip and mooring applications;
- (5) Inspect all Town-owned facilities to ensure no health or safety issues are present;
- (6) Carry out all other powers and duties authorized to the Harbor Master under various state and federal marine laws;
- (7) As needed, bring forward amendments to this chapter to Town Council for final approval.

(Code 1986, § 6-3; Ord. No. 12-883, 2-14-2012; Ord. No. 20-1139 , 5-12-2020)

Sec. 10-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vessel means:

- (1) A vessel that is moored, anchored, or otherwise located in the shoreline area for more than 30 consecutive days in any 180 consecutive-day period without permission of the Town.
- (2) A vessel that is in danger of sinking, has sunk, is resting on the bottom, or is located such that it is a hazard to navigation or is an immediate danger to other vessels.
- (3) A vessel that has dangerous or derelict conditions where the owner is unresponsive, unwilling, or unable to act to bring the issues back into compliance.

Boat (vessel) means watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, paddle, or other means, used to travel from place to place by water. A boat or vessel shall also include any machine designed or intended to travel over water by self-propulsion.

Certificate of number means the document and permanent identification number issued by the wildlife resources commission for registering a vessel in this state. Out of state vessels shall be registered in accordance with applicable federal law, and/or in accordance with a federally approved numbering system of another state.

Charter boat means any boat not exceeding 65 feet in length and not carrying more passengers than authorized by the Coast Guard certificate.

Commercial dock means the rental or lease of a dock to conduct business.

Commercial vessel means any vessel required to have a license.

Construction/construction equipment means any vessel or piece of equipment that is in the shoreline area for the purpose of conducting work.

Contaminant means any substance which is harmful to plant, marine, animal or human life.

Dangerous conditions shall mean when a vessel has been evaluated by the Harbor Master as subject to cause harm or threat to the safety and security of other boaters, itself, property and/or the environment.

Day docks means areas designated by the Town that allow for transient use to facilitate those wanting to patronize local businesses and activities.

Days means calendar days, where the term is used for computation of time.

Derelict vessel means a vessel that:

- (1) Is in significant disrepair, such that the condition may affect the seaworthiness of the vessel or affect the safety of the public or the environment.
- (2) Does not meet navigational rules of the road.

Dock or pier means a platform extending from a shore over water used to secure, protect, and provide access to boats. Also, a wharf or platform for the loading and/or unloading of materials and passengers.

Floating structure means a barge-like structure, that is not used as a means of transportation on water but which serves purposes or provides services typically associated with a structure on or other improvement to real property used for human habitation or commerce. Incidental movement or the capability of movement upon water does not preclude a structure from classification as a floating structure. Registration of the structure as a vessel in accordance with G.S. Chapter 75A does not preclude a structure from classification as a floating structure.

Headboat means any vessel not exceeding 115 feet in length, and not carrying more passengers than allowed by the Coast Guard certificate.

Junked vessel means an abandoned vessel that also:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move;
- (3) Is more than five years old and worth less than \$500.00; or
- (4) Does not have a current certificate of number or equivalent registration as required by the state under G.S. 75A-4.

Major repair means any activity that could result in deposition of materials into the shoreline area waters.

Marina means boat slips that incorporate the following:

- (1) Parking shall be provided in accordance with the requirements of chapter 40, zoning.
- (2) Separate male and female restroom facilities shall be provided for the exclusive use of the commercial marina patrons.
- (3) Properly screened and adequately sized solid waste disposal facilities shall be provided for the exclusive use of commercial marina patrons.
- (4) A separate, incorporated property owners association shall be established to provide for the maintenance of all common property and facilities.
- (5) Water.
- (6) Electricity.
- (7) Sewer pump out.

Moor means to secure a vessel in a particular place, as by cables, anchors or by lines.

Mooring, freestanding, means any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

Mooring tackle means the hardware used to secure a vessel at a mooring and which is kept in place seasonally.

No-wake speed means idle speed or slow speed creating no appreciable wake.

Occupying vessel means a vessel designated for a specific slip in the Town marina.

Operate means to navigate or otherwise use or occupy any motorboat or vessel that is afloat.

Operator means every person who shall own, physically operate, navigate, or control any vessel.

Owner means a person, other than a lienholder, having the legal or equitable property interest or title to a vessel. The term "owner" includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term "owner" excludes a lessee under a lease not intended as security. Owner shall also include person who holds current registration to a vessel.

Person means an individual, partnership, firm, corporation, association, or other entity.

Pollution means the presence in the waters of the Town of any one or more substances or contaminants which are harmful or injurious to human health or welfare, marine, animal or plant life, or property.

Private vessel means any vessel used for pleasure by the owner or others, where no charge is made for fishing or riding upon or with such vessel.

Rafting means the act of tying a vessel off alongside another vessel that is at anchor.

Restricted area means those portions of Myrtle Grove Sound designated as restricted from mooring or anchoring.

Shoreline area means the land and water areas extending from the corporate boundaries of the Town to a distance of 200 yards in parallel lines from the corporate boundaries. This area includes Carolina Beach Harbor, the municipal marina, and yacht basin. This area does not include:

- (1) The shoreline areas along the Atlantic Ocean;
- (2) The Intracoastal Waterway and all areas within its right-of-way; and
- (3) Any area within the corporate boundaries of another city or town organized pursuant to G.S. ch. 160A.

Town (municipal) marina means the Town marina and yacht basin as shown on the map for tax parcel # R0 8810-006-026-000 (301 Canal Drive) consisting of 2.9 acres.

Unattended vessel shall mean the owner or operator has not been found on the boat or in its immediate vicinity and has failed to respond to any posting or citation left by the harbormaster.

Wake. A wake occurs when a boat goes above slow minimum speeds and/or produces breaking white water by its means of propulsion.

(Code 1986, § 6-4; Ord. No. 12-883, 2-14-2012; Ord. No. 20-1139, 5-12-2020; Ord. No. 20-1140, 11-10-2020)

Sec. 10-4. General regulations.

The following regulations shall apply to all shoreline areas:

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- (1) It shall be unlawful for any person to anchor, dock, moor, or store any vessel in the shoreline area for more than 30 consecutive days in any 180 consecutive-day period, except at a private dock or marina.
 - (2) For any 30 consecutive days in any 180 consecutive-day period, any transient vessel legally anchored and attended shall be deemed to have anchorage permission for provisioning, repairs, tourism, and recreational use, unless such permission is revoked by the Harbor Master.
 - (3) *Dangerous conditions, derelict and abandoned vessels.* The following regulations are in place to ensure that the shoreline area is protected from vessel (a) dangerous conditions, (b) derelict and (c) abandoned vessels
 - a. Dangerous conditions include but are not limited to the following:
 1. It shall be unlawful for any person to anchor, moor, raft-up or carry on any activity including but not limited to the placing of crab traps, anchor lines, anchors, mooring buoys, pilings or similar objects in a manner which shall constitute a hazard to navigation or interfere with another vessel.
 2. During a hurricane warning, owner's shall enhance their anchorage by:
 - i. Ensuring the anchor line is a minimum of three to five times the depth of water;
 - ii. A snubber or bridle shall be installed with anti-chafing guards; and/or
 - iii. Sails, sprayhoods, bimini, cockpit enclosures, or any other similar appurtenances shall be removed.
 3. No vessel at any time shall be located within 100 feet of:
 - i. Another anchored vessel;
 - ii. The municipal mooring field;
 - iii. The navigation channel; and/or
 - iv. The Town of Carolina Beach pierhead line.
 4. The vessel has dragged anchor, anchored in an unauthorized area, or is anchored in a marked channel;
 5. The vessel is unattended for a period exceeding 24 hours;
 6. The vessel is slept on, but is not equipped with a holding tank or the owner or operator fails to provide the harbormaster with receipts for regular weekly pump outs of the vessel's holding tank and/or the owner fails to adhere to procedures to secure or monitor the holding tank;
 7. Law enforcement officers have responded to complaints of excessive noise, thefts, firearms violations, controlled substance violations, or other disturbances of possible danger to the environment or any person, emanating from the vessel or its crew;
 8. If the Harbor Master, or their designee, determines there are additional dangerous conditions that require denying permission during a particular period of time, or in a particular place, or in a particular manner.
 - b. Derelict vessels include but are not limited to, the following:
 1. Improper, non-working, or no anchor light, which is a hazard to navigation, when combined with an owner/operator who is not tending to the vessel;

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2. Vessel is neglected, or substantially dismantled, or improperly maintained, or is not able to be used for navigation as intended;
 3. Unless exempt pursuant to G.S. 75A-7, the vessel displays no evidence of current state, federal, or foreign registration, or, when asked by the harbormaster, the owner or operator of the vessel fails to present a current registration, cruising permit, or other official documentation of ownership upon which he or she is named as the owner or operator.
 4. Vessel is barnacle-laden;
 5. Vessel interior is exposed to the elements (rain, waves, etc.);
 6. Vessel is listing;
 7. Vessel is aground;
 8. Vessel is in danger or breaking its mooring; or
 9. Vessel is sinking.
- c. Abandoned vessels: Vessels that have been deemed abandoned are immediately subject to enforcement actions.
- (4) *Administration.* Upon identifying a dangerous condition or derelict vessel the Harbor Master shall post a notice on board the vessel, and shall attempt to notify the owner by certified mail or personal delivery of notice. The notice shall:
- a. Describe the vessel and location of the vessel, however, the notice posted aboard the vessel need not include description and location;
 - b. Identify the condition(s) identified that must be corrected;
 - c. Inform the owner that a written plan for correcting identified conditions, or removal of the vessel and restoration of the affected surrounding environmental area must be submitted within ten days of the date the notice is served;
 - d. Inform the owner that the identified conditions must corrected, or the vessel must be removed from the shoreline area and the affected surrounding environmental area restored, within 30 days of the date the notice posted aboard the vessel;
 - e. Inform the owner that failure to meet either the ten-day or 30-day deadlines will result in the vessel being deemed abandoned, subject the owner to civil/criminal penalties, and that all costs associated with removal and disposition of the vessel and restoration of the affected surrounding environmental areas will be the responsibility of the owner.
- (5) *Repairing, fitting out, etc., of vessels.* Routine maintenance and minor repairs necessary for the preservation and seaworthiness of the vessel may be performed within the shoreline area. Major repairs shall not be performed on any vessel within the shoreline area unless approved by the Harbor Master. Routine maintenance and minor repairs are considered to be those which:
- a. Do not disturb the public peace and tranquility of any person aboard any boat under the jurisdiction of the Town.
 - b. Do not contribute to a disorderly or unsightly appearance during the process of repair or maintenance.
 - c. Are capable of accomplishment with hand tools or certain portable power tools normally carried aboard the vessel.
 - d. Are confined to the vessel.

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- (6) *Vessel speed.* All vessels in the shoreline area shall operate at no wake speed.
- (7) *Placement of buoys, markers.* Any entity placing any type of buoy or marker in the shoreline area shall be responsible for obtaining permits from the division of coastal management and all other relevant local, state or federal regulations.
- (8) *Swimming.* Swimming is prohibited in all navigation channels. It shall be unlawful for any person to swim or dive in the waters of the Town marina and mooring field except as authorized by the Harbor Master (i.e., for repairs to vessels) or Town Council (i.e., special event).
- (9) *Fishing.* The placement of crab pots, pot floats, and fish nets is prohibited in all federal navigation channels, the Town mooring field, and Town marina. Fishing shall only be allowed in designated locations where the Town owns land adjacent to Myrtle Grove Sound.
- (10) *Marine debris/waste.* The disposal of treated or untreated boat sewage wastes by any means into the jurisdictional waters of the Town is prohibited. The discharge of any waste, garbage, refuse, petroleum product or byproduct, paint, varnish, dead animals, fish, bait, or any other debris is prohibited under this chapter. It shall be unlawful to utilize any toilet or shower facilities on boats which are not equipped in accordance and compliance with federal regulations on marine waste disposal. Use of the pump out facility located at the fuel dock of the Town marina or some other pump out facility is required on an as needed basis.
- (11) *Living aboard a boat.*
- a. The Town shall continue to prohibit the occupation of public trust waters by floating structures.
 - b. Marinas with designated pump out facilities may allow for live aboard families on vessels located in approved boat slips.
 - c. Marinas shall maintain pump out records for all live aboard vessels. Vessel records shall be kept for two calendar years and shall be available upon request by the Harbor Master.
 - d. Marinas and vessel owners shall comply with the Harbor Master's pumpout monitoring procedures designed to ensure holding tanks are not utilized in the shoreline area.
 - e. Living aboard a vessel at any dock in residential areas or any areas not approved for a marina with adequate facilities to accommodate trash, sewer, and water shall constitute a violation of this section and zoning violation.
- (12) *Special events.* The Town may authorize, in accordance with all appropriate local, state and federal guidelines, certain special events, such as swimming races, regattas, marine parades, or other marine and maritime activities that may from time to time be held on or in the coastal waters and harbor areas under the jurisdiction of the Town. Any proposal shall follow the Town's process for special events.
- (13) *Commercial activities.*
- a. Construction. Any construction in the shoreline area shall have a valid permit from the regulating authority (i.e., local, state, and/or federal). Where no permits are required from another state or federal government agency, the commercial operator shall obtain a permit from the Town authorizing work to be conducted in the shoreline area. The permit shall:
 1. State the work to be done;
 2. List equipment that will be utilized; and
 3. Give a timeframe that the equipment will be needed to complete the job. The Harbor Master shall have the authority to limit the timeframe based on the amount of work being conducted.

Any equipment associated with the work shall be removed from the shoreline area within seven days of the last day listed on the timeline or within seven days of the regulating authority finalizing the work that was completing.

- b. Commercial business allowances shall be reviewed in accordance with the allowances granted by chapter 40, zoning, and as specifically permitted in this chapter.
- (14) *Liability.* The Town assumes no liability for the use of Myrtle Grove Sound which includes all shoreline areas. The Town neither assumes nor accepts responsibility for personal possessions, vessels, dinghies or their contents or use while said vessels are located within shoreline areas. Persons using the shoreline area shall assume all risk of personal injury and damage or loss of their property. The Town assumes no risk due to accident, fire, theft, vandalism, or acts of God.
- (15) *Indemnification.* All users of the shoreline area shall indemnify the Town and all employees from all claims for damages, losses, expenses, and costs of any nature, arising by reason of use of the mooring.

(Code 1986, § 6-5; Ord. No. 12-883, 2-14-2012; Ord. No. 20-1139 , 5-12-2020; Ord. No. 20-1140 , 11-10-2020)

Sec. 10-5. Day docks.

The owners or captains of all vessels utilizing the designated day dock area shall abide by the following conditions:

- (1) *Operational hours.* The hours for operation for the day dock at the Carolina Beach Marina shall be open 24 hours per day seven days per week.
- (2) *Time limitations.* No vessel shall be docked at the facility for greater than three hours.
- (3) *Vessel length.* There shall be no vessel docked at the day dock area longer than 25 feet in length.
- (4) *Commercial business.* There shall be no commercial business use of the day dock area.
- (5) *Refueling.* There shall be no refueling of vessel in the day dock area. Transportation of any fuels must be five gallons or less and in an approved Class I, II, IIIA portable container.
- (6) *Repairs.* No repairs of any vessels shall be conducted on the day dock without the express consent of the Harbor Master.

(Code 1986, § 6-6; Ord. No. 12-883, 2-14-2012; Ord. No. 20-1139 , 5-12-2020)

Sec. 10-6. Town marina.

The owners of all vessels at the Town marina shall be required to execute a license agreement, as appropriate, prior to provision of such accommodations. Licensee shall be subject to all Town codes, and associated terms, rules and regulations as referenced on the license.

(Code 1986, § 6-7; Ord. No. 12-883, 2-14-2012; Ord. No. 16-1038 , 12-13-2016)

Sec. 10-7. Town mooring field.

The Town mooring field was designed to help recreational and pleasure boaters gain access to the Town from the Intracoastal Waterway.

- (1) *Mooring registration.*

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- a. All vessels with the intention of utilizing the mooring field shall register with the office of the Harbor Master, regardless of the planned length of stay.
 - b. It shall be the duty of each owner or person in charge of such vessel to register the vessel with the Town and to supply in writing the following information regarding the vessel:
 1. Name and residence of the owner of the vessel.
 2. Mailing addresses of the owner if different from above.
 3. Name, residence, and mailing address of the captain or other person in charge of the vessel if the owner is not on board vessel.
 4. Name, registration number and homeport for the vessel if documented with United States Coast Guard, or name, registration number and place of registration for vessels not so documented.
 5. Overall length, beam, and draft of the vessel.
 6. Type and color of vessel.
 7. Duration of desired stay.
- (2) *Fees.*
- a. A mooring fee shall be established annually in the Town budget as a user's fee for the anticipated length of use and to provide for continued garbage services; rest room facilities; sewage pump out for vessels; dingy docks; and maintenance of these facilities and other boater-related recreational facilities. All fees shall be nonrefundable.
 - b. No vessel shall be authorized to occupy a mooring for more than ten days.
- (3) *Mooring permits nontransferable.* An assigned mooring shall be used only by the boat registered to it. Exception to this shall be made at the Harbor Master's discretion. No vessel shall occupy any mooring berth without the approval of the Harbor Master or his designee.
- (4) *Securing to a mooring.*
- a. The method of mooring vessels shall be by attaching the provided pennant line to the bow of the vessel or by extending the provided pennant line with a tie line attached to the bow. In no instance shall the total length of line from the mooring buoy to the vessel be any greater than 15 feet in length.
 - b. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. There shall be no dropping or placement of additional anchors or anchor systems from any vessel.
 - c. Vessel owners are responsible for ensuring/reporting mooring lines are in good condition and are maintained tangle free.
- (5) *Vessels allowed in the mooring field.*
- a. Permitted vessels shall be no less than 26 feet and no greater than 55 feet in length. All vessels, except dinghies, associated with permitted vessels are not allowed to remain in the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed.
 - b. Every vessel with an enclosed cabin and berthing facilities shall be equipped with a toilet. On a vessel other than a houseboat, the toilet may be portable or permanently installed.

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- c. It shall be unlawful for any person or entity to operate a personal watercraft within the mooring field, except for the limited purpose of ingress or egress to or from a vessel for which a permit has been granted for use of the mooring field.
 - d. Vessels engaged in commercial activities are prohibited from utilizing the moorings. No advertising or soliciting shall be permitted on any vessel within the managed mooring field with the exception of one "for sale" sign, not exceeding four square feet.
- (6) *Mooring inspection.* The Town shall provide mooring inspections in accordance with specifications and a schedule as are established from time to time.

(Code 1986, § 6-8; Ord. No. 12-883, 2-14-2012)

Sec. 10-8. Enforcement provisions.

(a) *Criminal penalties.*

- (1) A violation of this chapter shall be deemed a class 3 misdemeanor punishable to the extent provided in G.S. 14-4, and shall carry a fine in accordance with the Town's annually adopted rates and fees schedule. A violation that either reoccurs or continues without cessation 24 hours after a person has been criminally charged, either by arrest or citation, shall constitute a separate offense.
- (2) A conviction under this section does not bar the assessment and collection of the civil remedies provided in this article.

(b) *Civil remedies.* In addition to, or in lieu of any criminal penalties set forth herein, any person, firm or corporation violating any provisions of this article shall be subject to civil penalties as follows:

- (1) A violation of this chapter shall be subject to a civil remedy in accordance with the Town's rates and fees schedule. A violation that either reoccurs or continues without cessation after a 24 hour period shall constitute a separate offense.
- (2) Civil remedies shall be used in the recovery of the costs expended enforcing this article.
- (3) Any civil remedy may be appealed to the Town Manager, or their designee, within 30 days of the issuance of the civil remedy.

(Ord. No. 20-1139 , 5-12-2020)

Ord. No. 20-1139 , adopted May 12, 2020, repealed the former § 10-8 and enacted a new § 10-8 as set out herein. The former § 10-8 pertained to violations and penalties and derived from Code 1986, § 6-9; Ord. No. 12-883, adopted Feb. 14, 2012; and Ord. No. 13-915, adopted June 11, 2013).