

## XXVI. GENERAL HARBOR REGULATIONS

**GENERAL HARBOR REGULATIONS** [*Adopted at the adjourned session of the Annual Town Meeting May 12, 1993, approved by the Attorney General July 26, 1993, and posted according to law August 6, 1993. Amended at the April 24, 2000, Annual Town Meeting, and posted according to law on July 27, 2000. Amended at the April 25, 2005 Annual Town Meeting and posted according to law on June 13, 2005.*]

### **I. PURPOSE**

- A. It is the intent of these regulations to ensure safety to persons and property, to promote availability and use of a valuable, public resource, and to provide for safe navigation.
- B. Regulations governing the safe operation of vessels and regulations protecting the environment are also contained herein.
- C. These regulations apply in all parts of the Merrimack River which are under the jurisdiction of the West Newbury Harbormaster as defined in M.G.L.90B and in Section II.A. below.
- D. The regulations promulgated herein are in addition to the requirements of State and Federal law.

### **II. DEFINITIONS**

- A. *West Newbury "Harbor "* shall be all tidal waters lying within the corporate boundaries of the Town of West Newbury
- B. *Length Overall (LOA):* The length of a vessel inclusive of the bowsprits, booms and boomkins, pulpits, swim platforms, engines or extensions.
- C. *Mooring:* Shall mean any structure or apparatus including floats and rafts held by anchors or bottom moorings.
- D. *Individual Mooring:* Shall mean any mooring placed in West Newbury waters for the owner's private use.
- E. *Person:* Shall include individuals, corporations, clubs, associations, partnerships, including their agents.
- F. *Vessel:* Shall include any ship, boat or any other type of watercraft including personal watercraft, such as jet skis, being used as a means of transportation on the water and other floating structures such as barges and rafts.
- G. *Operator:* Shall mean any person engaged in the operation and navigation of a vessel.
- H. *Harbormaster:* Shall be considered to be the Harbormaster, Assistant Harbormaster or any authorized agent.
- I. *Navigable Channel:* That area of water in the Merrimack River buoyed by the U.S. Coast Guard, and defined by the Army Corps of Engineers.
- J. *Fairway:* Locally designated channels shown on the official West Newbury Harbor map as adopted by the West Newbury Board of Selectmen.
- K. *Waterways:* Means all bodies of water within the territorial confine of the Town of West Newbury
- L. *Headway Speed:* Means minimum speed required for safe steerage of the vessel.

### **III. OPERATION OF VESSELS IN WEST NEWBURY WATERWAYS**

#### *Wake and Speed:*

No vessel shall create a wake or operate at a speed which endangers life, safety or property of any person in West Newbury Harbor. In narrow channels, designated mooring areas, or where posted, the speed of all vessels shall be reduced to the minimum speed required for safe steerage of the vessel.

#### *Unlawful Pollution and Discharges:*

No oil, petroleum products, untreated sewage, rubbish, debris, or garbage shall be disposed of within West Newbury Waterways.

*Operation of Vessels:*

No person shall operate a vessel in West Newbury Waterways so as to endanger the lives, safety or property of others.

*Obstructions:*

Obstructions including, but not limited to, derelict and/or abandoned vessels to safe navigation of the Merrimack River shall be subject to removal by the Harbormaster without notice. Obstructions removed and stored by the Harbormaster shall be at the expense of the owner.

*Races and Regattas:*

1. No boat race or regatta shall be held in West Newbury Harbor without first obtaining a US Coast Guard Permit and notifying the Town Board of Selectmen and the Harbormaster with a copy of the Coast Guard permit for said race or regatta.
2. All races and regattas in West Newbury Harbor must be operated under the supervision of a race or regatta committee. All such committees shall, prior to their activity, file a written statement with the Town Board of Selectmen one month prior to the event, containing the following information:
  - a) The identity, address and telephone number of the group or organization sponsoring the activity.
  - b) A brief description of the activity, time of commencement, an estimate of hours and/or days, location specifying the course to be run, date of the activity and any alternative dates in the event of a weather postponement, and a listing of the fees to be charged.
  - c) A roster of the names and addresses and phone numbers of the members of the committee responsible for the organization and conduct of the activity.
  - d) A brief statement of the efforts by the committee to publicize the activity sufficiently such as will give reasonable notice to the boating public of the time, day, place and nature of the activity and thereby warn the public of courses to be run by participants and areas to be closed to the public during the activity. Warning the public can be accomplished through notice to dock or mooring holders. All races and regattas shall be accompanied by at least one motor-powered committee vessel. Committee boats must keep a constant monitor on VHF Channel 13 and have the ability to monitor on VHF Channel 16 for the duration of the race.

**Commercial Fueling**

Commercial fueling is permitted only at licensed fuel docks in accordance with State Fire Marshall Code 527CMR 1-50.

**Excise Tax and Fees**

1. Resident

No mooring space or slip shall be assigned to any person who is in arrears on any boat excise tax, mooring, slip or dockage fees, due and payable to the Town, for any year, present or previous. Proof of said payment shall be submitted with application for mooring/slip.

**Accidents**

1. The operator of a vessel involved in an accident shall render all protocol and necessary assistance to persons affected by the accident to the extent possible without serious danger to life, crew, passengers and vessel.
2. The Harbormaster shall be notified of all accidents which are required to be reported by M.G.L.90B Section 9 and shall also be notified of accidents which result in environmental damage, or navigational obstructions. The Harbormaster shall be notified as soon as possible of the accident. A written report shall be submitted to the Environmental Police within 48 hours of the accident if the accident results in the loss of life, within 5 days if the accident results in injury requiring medical attention, loss of consciousness, property damage in excess of \$500.00, or disappearance of any person onboard under circumstances which suggest any possibility of injury or death. The operator of the vessel(s) is responsible for this report.
3. No vessel, mooring or other object shall be abandoned, sunk or placed where it may constitute a hazard to navigation.
4. Any vessel, mooring or object constituting a hazard to navigation, and any vessel or object improperly secured, swamped, sunk, washed ashore or found in a restricted area, may be removed or relocated at the direction of the Harbormaster if corrective action is not taken by the owner immediately upon being notified by the Harbormaster.

5. The expense of such removal or relocation and liability thereof shall be the responsibility of the owner.
6. Nothing in these sections shall restrict earlier action by the Harbormaster or Assistant Harbormaster, with or without notifying the owner if, in their judgment, such action is necessary to protect life and property.

#### **Other Prohibited Uses**

1. Water skiing is prohibited in mooring areas.
2. Diving or swimming off the Rocks Village Bridge is prohibited.
3. Every scuba diver or group of scuba divers while swimming on or under the surface of the waters of the commonwealth shall display for each diver or group of divers as a warning device to boat operators a diver's flag, so called, constructed of rigidly supported material at least twelve inches by fifteen inches in area of red background with a white diagonal stripe. Such diver's flag shall be displayed on a boat or surface float and shall extend a minimum distance of three feet from the surface of the water. Divers shall remain in an area within one hundred feet of such displayed diver's flag while at or near the surface of the water. A boat operator within sight of a diver's flag shall proceed with caution and within a radius of one hundred feet of such flag shall proceed at a speed not to exceed three miles per hour,
4. Except in the case of emergency, boats are prohibited from tying up to any speed marker float, buoy or navigation aid.

(State Law reference - Municipal authority to regulate motorboats and other lawful vessels, M.G.L.A.c90B, s!5.)

#### **IV. MOORING AND FLOAT REGULATIONS**

- A. *Berthing permits* for slips, floats, moorings or other docking mechanisms shall be issued by the Harbormaster according to the terms and requirements of the application and available space and in accordance with Section III, paragraph G above.
  - B. *Fees for mooring permits* issued by the Harbormaster shall be those authorized in the fees section of these regulations.
- C. *General regulations for Placement of Floats and other Structures*
  1. All permanent structures shall be set back a minimum of twenty-five (25) feet from the projected property line to provide swing area unless a lesser set back is mutually agreed on by the adjacent property owner and submitted in writing to the Planning Board for approval. All structures shall be set back a minimum of twenty (20) feet from the federal channel, navigable channel, fairways and federal turning basins.
  2. Structures requiring an Army Corps General Permit  
All permanent structures requiring a GENERAL PERMIT from the Army Corps of Engineers (including Boats) shall project not more than 200 feet into the Merrimack River from the shore (to be measured perpendicular from the mean high watermark of the outermost portion of the property.)  
  
In certain geographic locations, constraints posed by narrowness or shallowness of the current may not allow the project to extend the full 200 feet into the river.  
  
The Harbormaster shall review for approval, all general permits on a case-by-case basis.
  3. Structures requiring an INDIVIDUAL PERMIT from the Army Corps of Engineers.  
All structures requiring an individual permit from the Army Corps of Engineers will be reviewed for approval on a case-by-case basis by the Harbormaster to determine maximum projection into the river. The setback between structures shall be required in Section 4 C.I. above.
- D. Individual Mooring Permits

1. No person shall establish a mooring or float (including temporary floats) within the waters of the Merrimack River in West Newbury without first obtaining an annual permit from the Harbormaster. Applications for mooring permits may be submitted to the Harbormaster from January 1 of any calendar year to December 31 and shall contain such information and be in such a form as prescribed by the Harbormaster. Applications may be obtained from the Harbormasters Office.
2. Floats, rafts, and the mooring of boats held by anchors or bottom moorings installed without permission from the Harbormaster shall be considered a public nuisance and may be removed by the Harbormaster at the expense of the owner in the event he/she fails to remove same after notice from the Harbormaster.
3. No permit may be issued without prior payment of all appropriate fees by the applicant including, but not limited to, annual boat excise tax as applicable.

**E. Issuance of Mooring Permit: Waiting List**

1. Permits will be denied if the Harbormaster determines that the mooring will constitute a hazard to navigation, will not conform to the requirements of these regulations, or will otherwise not conform to the requirements of law or rights of the public. Permits will be issued for one calendar year only.
2. Individual mooring permits are not transferable except when directly adjacent to the waterfront property at the time of change of ownership.
3. Upon issuance of a permit, the Harbormaster will assess a mooring location and specify the marking and number of the mooring. Moorings shall be installed prior to June 1<sup>st</sup> each season for permits issued prior to May 7. For permits issued after May 7<sup>th</sup>, moorings shall be installed within 15 working days following issuance.
4. The Harbormaster will keep a chart available for public inspection at the Town Offices which clearly indicates the mooring areas permitted.
5. The Harbormaster shall keep a waiting list for available space and does not discriminate against any person based upon race, religion, sex or other illegal distinction.

Priority for the issue of permits to persons on the waiting list will be in this order: date of application and assignment to the waiting list and subject to the size and type of boat related to the space available.

Allocation of space shall be made based on date of application and may be subject to the size and type of boat related to the space available. Copies of the up to date waiting lists must be made available to the public by the Harbormaster upon request.

**V. SAFETY REGULATIONS**

1. **Speed Limit.** No motorboat shall be operated at any time on the waters of the Commonwealth at a speed greater than is reasonable and proper having regard to the lives and safety of the public; the state of visibility; the traffic density; the maneuverability of the vessel; the state of wind, water and current; and the proximity of navigational hazards. On the inland waters of the Commonwealth (as defined by M.G.L.c. 131, s.1) and in the absence of a specified speed limit established by federal, state, or local law for the particular water body or area, speed by a motorboat in excess of forty-five (45) miles per hour shall be presumed to be in excess of a reasonable and proper speed. The Provisions hereof shall not apply to vessels engaged in or practicing for organized competitive racing pursuant to a permit issued under 323 CMR 2.09. (323 CMR 2.07 (11))
2. **Headway Speed.** A motorboat shall not be operated at more than headway speed:
  - a) When the operator's vision is obscured under a bridge or by bends or curve or in any other manner.
  - b) When the motorboat is operated within one hundred fifty (150) feet of a marina, boat launching facility, raft or float;
  - c) When the motorboat is operated within three hundred (300) feet of a shoreline which is being used as a swimming area, whether public or private, unless operating in an area designated for water skiing (see also 323 CMR 2.07 (1) (c)); or

- d) When the motorboat is in a channel, unless a duly authorized local, state or federal marine enforcement agency has (1) permitted otherwise; and (2) placed markers in the channel indicating the permitted speed.
- e) When the motorboat is operated within one hundred and fifty (150) feet of a swimmer.

Headway speed is the slowest speed at which a motorboat may be operated and maintain steerage way, but not to exceed six miles per hour

- 3. Classes of motorboats; required lighting, signaling and fire extinguishing and control devices
  - a) Motorboats subject to the provisions of this chapter shall be divided into four classes as follows:-
    - Class A. Less than sixteen feet in length.
    - Class 1. Sixteen feet or over and less than twenty-six feet in length.
    - Class 2. Twenty-six feet or over and less than forty feet in length.
    - Class 3. Forty feet or over.
  - b) Every motorboat in all weathers from sunset to sunrise shall carry and exhibit the following lights when underway, and during such time no other lights which may be mistaken for those prescribed shall be exhibited.
    - 1. Every motorboat of classes A and 1 shall carry the following lights:-
      - First. A bright white light aft to show all around the horizon
      - Second. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.
    - 2. Every motorboat of classes 2 and 3 shall carry the following lights:-
      - First.** A bright white light in the fore part of the vessel as near the stem as practical, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on each side.
      - Second.** A bright white light aft to show all around the horizon and higher than the white light forward.
      - Third.** On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw light from right ahead to two points abaft the beam on the port side. The said lights shall be fitted with inboard screens so set as to prevent these lights from being seen across the bow.
  - 3. Motorboats of classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by subsection b.) 1.) of this section. Motorboats of classes 2 and 3, when so propelled, shall carry the colored lights, suitably screened, but not white lights prescribed by subsection b.) 2.) of this section. A motorboat of classes A, 1, 2, or 3 of subsection (a) of this section when propelled by sail alone if not otherwise required or authorized by this section to carry one or more lights visible from aft, shall carry at her stern a white light, so constructed that it shall show an unbroken light over an arc of the horizon of twelve points of the compass, so fixed as to show the light six points from right aft on each side of the vessel. Such light shall be carried as nearly as practicable on the same level as the sidelights. In a small motorboat propelled by sail alone, if it is not possible on account of bad weather or other sufficient cause for this light to be fixed, an electric torch or lighted lantern shall be kept at hand ready for use, and shall, on the approach of an overtaking vessel, be shown in sufficient time to prevent collision.
  - 4. Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subsection, when applied to lights, shall mean visible on a dark night with clear atmosphere.
  - 5. When propelled by sail and machinery every motorboat shall carry the lights required by this section for a motorboat propelled by machinery alone.

- c) Any vessel may carry and exhibit the lights required by the Federal Regulations for Preventing Collisions at Sea, Federal Act of October 11<sup>th</sup>, 1951 (33 USC 143-147D); as amended in lieu of the lights required by subsection (b) of this section.
- d) Nothing in this section shall be construed as permitting or requiring, on waters within the marine boundary of the Commonwealth which have been designated by the Commandant of the Coast Guard as international waters, the display of lights other than those required by the laws of the United States.
- e) Every motorboat of class 1, 2 or 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.
- f) Every motorboat of class 2 or 3 shall be provided with an efficient bell.
  - g) Every motorboat shall carry at least one personal flotation device, as defined in section one, for each person aboard. Every motorboat of Class A, 1, 2, or 3 shall carry at least one personal flotation device of Type I, II or III for each person on board. Such devices shall be clearly labeled or imprinted as such and placed so as to be readily accessible in the motorboat and maintained in good and serviceable condition and appropriate size for whom it is intended. Devices designed to be thrown, such as a ring buoy or buoyant cushion shall be readily available on the motorboat. Devices which use kapok or fibrous glass for flotation material shall have such material encased in plastic covers. Every motorboat carrying passengers for hire shall carry at least one Coast Guard approved life preserver or Type I personal flotation device for each person on board so placed as to be readily accessible for use.
  - h) Every motorboat shall be provided with such number (as specified in this subsection), size and type of fire extinguisher capable of promptly and effectually extinguishing gasoline, as may be prescribed by the regulations of the director; which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Outboard motorboats less than twenty-six feet in length of open construction, not carrying passengers for hire, are not required to carry fire extinguishers.
- i) The provisions of subsection (e), (f) and (h) shall not apply to motorboats propelled by outboard motors while competing in any race, or while engaged in such navigation as is incidental to the tuning up of boats and engines for such race.
- j) Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the director for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.
- k) No person shall operate or suffer or permit the operation of any motorboat which is not equipped as required by this section or modification thereof.

#### 4. Exhaust; use of cutouts

The exhaust of every internal combustion engine on any motorboat shall be effectively muffled by a muffler or underwater exhaust of a type or types approved by and used in conformity with the rules and regulations of the director. The use of cutouts is prohibited, except for motorboats competing in a race previously approved by the director, and for such motorboats while on trial runs during a period not to exceed forty-eight hours immediately preceding such race, and for such motorboats while competing in official trials for speed records during a period not to exceed forty-eight hours immediately following such race.

#### 5. Jet ski, surf jet or wetbike operation

No person shall operate a jet ski, surf jet or wetbike (a) on waters of the commonwealth unless the person is sixteen years of age or older, (b) within one hundred and fifty feet of a swimmer, shore or moored vessel, except at headway speed, (c) on waters of the commonwealth of less than seventy-five acres, (d) without wearing an approved personal flotation device or (e) between sunset and sunrise. For the purpose of this section, the term, "headway speed", shall mean the slowest speed at which a personal watercraft, jet ski, surf jet or wetbike can be operated and maintain steerage way.

#### 6. Negligent Operation

No person shall operate a personal watercraft in a negligent manner. The following are prohibited as examples of negligent operations:

- a). Unreasonably jumping, or attempting to jump, the wake of another vessel;
- b). Following within one hundred and fifty (150) feet of a water skier;
- c). Weaving through congested vessel traffic;
- d). Speeding in restricted areas;
- e). Crossing unreasonable close to another vessel;
- f). Operating a personal watercraft in such a manner that it endangers the life, limb or property of any person.
- g). Towing a water skier or any person in any manner from a personal watercraft; and
- h). Operating a personal watercraft during the evening, as defined by 323 CMR 4.03(4).

## **VI. PENALTIES AND ENFORCEMENT**

A mooring permit may be denied or revoked by the Harbormaster at any time for failure to comply with any or all bylaws as set forth, and any or all of the laws of the Commonwealth of Massachusetts. Such revocation subject to a hearing before the Board of Selectmen if requested.

Whoever violates any of the bylaws of these Articles, or refuses or neglects to obey the lawful orders of a Harbormaster, or resists him in the execution of his duties, shall subject the offender to a fine of not more than one hundred dollars (\$100.00)

Each day of violation shall constitute a separate offense. Fines for acts constituting a violation are as follows:

Placement of a mooring, float or dock without obtaining a mooring permit	\$100.00
Invalid or no vessel registration	20.00
Exceeding Speed Limit	50.00
Loud or Unmuffled Exhaust	50.00
Required Equipment Violations	25.00
Exceeding five (5) MPH in a designated mooring area (State Law)	25.00
Reckless/negligent operation of a vessel	50.00
Water skiing in a designated mooring area	50.00
Pollution of waterways	100.00
Unauthorized moving/tampering of moorings	100.00
Failure to remove derelict, abandoned, sunk and/or unsafe vessel after notice has been given	100.00
Other violations of the Rules and Regulations not specifically listed	50.00

This section shall be included within the scope of the provisions of Massachusetts General Laws, Chapter 40, Section 21D, adopted at the fourth session of the 1995 Annual Town Meeting held on May 15, 1995, as Section XXVII, Enforcement of Town Bylaws. In addition to police officers, Harbormaster and Assistant Harbormasters shall also be an enforcing person for this section.

### **FEE STRUCTURE FOR MOORING PERMITS**

#### **MOORING FEES:**

The minimum fee for a mooring permit is \$50.00

#### **FLOATING DOCKS OR RAFTS:**

The minimum fee for a dock or float is \$50.00.

## **VII. HARBOR COMMITTEE:**

- A. The Board of Selectmen shall appoint three registered voters of West Newbury to serve as a Harbor Committee. Initial appointments shall be for one, two, and three years with each subsequent term to be three years. The Harbor Master shall be an ex-officio member of the Committee.

- B. The Committee is advisory and shall report to the Board of Selectmen from time to time to make recommendations on any and all matters related to marine activity afloat or ashore.

Amendment adding Section VI. to the General Harbor Regulations voted at the third session of the 1994 Annual Town Meeting held on June 16, 1994. Approved by the Attorney General on August 26, 1994, and posted according to law on August 31, 1994.

Amendment to rescind the original § I-V and adopt the new § I-V voted at the April 24, 2000, Annual Town Meeting, approved by the Attorney General on July 24, 2000, and posted according to law on July 27, 2000.

Amendment increasing mooring fees in the to the General Harbor Regulations voted at the second session of the 2005 Annual Town Meeting held on May 5, 2005. Approved by the Attorney General on May 25, 2005, and posted according to law on June 9, 2005.