

CHAPTER 2012-12

No. 131 AN ORDINANCE

AMENDING CHAPTER 11, "HARBOR AND PORT," TO ESTABLISH A HARBOR MANAGEMENT COMMISSION.

Approved February 20, 2012

Be it ordained by the City of Providence:

SECTION 1. The Code of Ordinances of the City of Providence, Chapter 11, "Harbor and Port," is hereby amended as follows:

Sec. 11-1. Harbormaster.

(a) Appointment. In accordance with §46-4-2 of the Rhode Island General Laws, the city council shall appoint a harbormaster for the harbor of the city, defined as all the public waters westerly of the easterly sides of the ship channels in the Seekonk River, Providence River and Harbor and Narragansett Bay from the Pawtucket-Providence city line southerly to the point of intersection of the ship-channel side with a straight line drawn from Rumstick Point on the east shore to Rocky Point on the west shore, excluding that area subject to the jurisdiction of Cranston. The harbormaster shall report to the commissioner of public safety.

(b) Powers and duties. The powers and duties of the harbormaster shall include, but are not limited to administering and enforcing the harbor management plan, enforcing all federal, state, and local laws pertaining to activity in the harbor, recommending rules, regulations, and ordinances pertaining to the harbor to the city council, serving as an ex-officio member of the harbor management commission, and carrying out all other powers and duties authorized to the harbormaster under various state and federal marine laws.

Sec. 11-2. Harbor Management Commission – Establishment and authority

There shall be a harbor management commission, which shall:

- (1) be responsible for preparing a harbor management plan for the harbor of the city, as defined in Sec. 11-1 of this chapter;
- (2) provide for annual review of the harbor management plan;
- (3) recommend any additions or modifications to the plan as may be deemed necessary;
- (4) assist in the evaluation of the city's harbor management operation;
- (5) hear appeals to actions of the city in execution of the plan;
- (6) initiate studies and other actions as may be necessary for proper management of the tidal waters of the city in accordance with the city charter and state enabling legislation;
- (7) be responsible for the development and recommendation of additional policies, rules and regulations for the harbor management plan and subsequent ordinances, subject to approval of the city council and, where applicable, the coastal resources management council.

Sec. 11-3 Harbor Management Commission – Composition

The harbor management commission shall consist of seven (7) voting members, appointed by the mayor and subject to approval by the city council. All appointed members of the commission must be residents of the city. The voting members of the commission shall elect a chairperson by simple majority vote. No current city employee or elected official shall be eligible for appointment to the harbor management commission as a voting member. Such commission shall, to the extent practicable, include a member of the conservation commission or the port commission.

Each ex-officio member shall be a non-voting member of the harbor management commission. The harbormaster, the commissioner of public safety, the superintendent of parks, and the mayor shall serve as ex-officio members of the commission.

Sec. 11-5 Harbor Management Commission – Appointments

Upon enactment of this section, two (2) appointees shall be appointed for a term of one (1) year (expiring December 31, 2012); two (2) appointees shall be appointed for a term of two (2) years (expiring December 31, 2013); three (3) council appointees shall be appointed for a term of three (3) years (expiring December 31, 2014). Upon expiration of these initial terms each subsequent appointee shall serve for a term of three (3) years. All such three-year terms shall expire at the end of their respective third calendar year (December 31st) notwithstanding the actual date of appointment. Vacancies shall be filled as necessary. Any person appointed to fill an unscheduled vacancy shall serve for the remainder of the unexpired term. The commission may also appoint subcommittees to address specific duties of the commission.

Sec. 11-6 Harbor Management Commission – Officers

A chairperson and vice-chairperson shall be elected by the members of the commission. Meetings shall be called by the chairperson or at the request of at least four members of the commission. The commission shall meet monthly and shall conform to open meeting laws.

Sec. 11-7 Harbor Management Commission – Compensation

No voting member of the harbor management commission shall receive compensation for service to the commission.

Sec. 11-8 Harbor Management Commission – Additional powers and duties

The harbor management commission shall be the municipal advisory and appeal body authorized to prepare and to amend, subject to city council approval, a harbor management plan, and to oversee the implementation and enforcement of such plan and subsequent implementing ordinances, regulations, and programs. The harbor management commission shall adopt rules of procedure and operation for its meetings and is authorized to:

- (1) Recommend to the city council the adoption of rules, regulations and other amendments to the harbor management plan and its subsequent ordinances which may be necessary to fulfill the goals and objectives of the harbor management plan and meet the requirements of this article.
- (2) Recommend, as necessary, additional authorities and duties for the harbormaster.
- (3) Assist in the preparation of an annual budget for harbor management in accordance with the provisions of the city charter.
- (4) Recommend the expenditure of budgeted funds to acquire services or materials necessary for the implementation of the harbor management plan, subject to approval of the city council.
- (5) Recommend fees and fines, subject to city council approval, for the implementation of the harbor management plan, including support of the harbormaster's payroll, improvement to moorings, anchorages, accessways, marine sanitation, surveys, studies, and other activities deemed necessary for carrying out the goals, policies, and implementation of the harbor management plan.
- (6) Review and revise as necessary the harbor management plan and subsequent ordinances for city council and coastal resources management council approval. The harbor management plan and its ordinances shall be reviewed and revised at least once every five years. Public participation and input shall be encouraged during each five year review. Significant public notice, which shall include notice in the newspaper, shall be given by the commission for all meetings at which the review and revision of the harbor management plan will be discussed.
- (7) Assist in the coordination of all public and private agencies, commissions and other organizations which have interest or jurisdiction with regard to the tidal waters of the city.

(8) Review for consistency with the harbor management plan any application for a local, state or federal permit for any water-based activity taking place within the jurisdiction of this article, and to respond in a timely fashion with recommendations to the regulating agencies.

(9) Review and make recommendations on proposed water use activities contiguous to the waterfront and in the harbor within the jurisdiction of the city that are received for review by other municipal agencies.

(10) Advise the mayor and city council on the performance and/or the qualifications of the harbormaster.

(11) Coordinate and/or conduct a minimum of one U.S. Coast Guard approved boating safety class per year.

(12) Conduct, with the harbormaster, not less than one meeting per month and one or more public hearings per year. The dates and times are to be determined by the harbormaster and the harbor management commission and are designed to solicit public comments regarding all elements of the harbor management plan.

(13) Members of the public may suggest revisions to the harbor management plan at any meeting of the commission. Each suggested revision shall be noted in the minutes of the commission's meetings. The minutes shall also reflect the actions taken by the commission on the request. The commission shall also, on a semiannual basis, provide to the city council a report of all suggested revisions made by the public and a written statement as to how the commission acted upon the suggested revision.

~~Sec. 11-21.~~ Sec. 11-9. Prohibited activities on and within the waters of the city.

(a) Prohibited activities. It shall be unlawful for any person operating a motorboat or vessel on and within the waters of the city of Providence to:

(1) Operate an unregistered and/or unnumbered motorboat or vessel;

(2) Operate a motorboat or vessel within a water area which has been clearly marked by buoys or some other distinguishing device, as a bathing, swimming or otherwise restricted area; provided, however, that this section shall not apply in the case of an emergency, or to patrol or rescue craft;

(3) a. Operate a motorboat or vessel at a speed of greater than five (5) miles per hour no wake within areas designated by the port commission;
b. Operate a motorboat or vessel within non-designated areas at a speed greater than forty-five (45) miles per hour during the hours from sunrise to sunset and twenty-five (25) miles per hour during periods of darkness or other periods of restricted visibility;

(4) Operate a motorboat or vessel in a manner which shall unreasonably or unnecessarily interfere with any other motorboat or vessel, or with the free and proper navigation of the waters of the city;

(5) Fail to stop and render assistance in the event of a collision, accident or other casualty, and/or fail to provide identification, in writing, to any person injured and to the owner of any property damaged in the collision, accident or other casualty, so far as the operator of any motorboat or vessel involved in a collision, accident or other casualty can do so without serious danger to his or her own vessel, crew and passengers;

(6) Fail to report any accident, casualty, vandalism or theft to the Department of Environmental Management or the police department where such accident, casualty, vandalism or theft involving a motorboat or vessel is in excess of five hundred dollars (\$500.00);

(7) Operate a motorboat or vessel with improper:

- a. Light installation;
- b. Use of lights;
- c. Sound-producing devices;
- d. Personal flotation devices (PFD);
- e. Fire extinguishers; and
- f. Muffling devices. as set forth in state law.

(8) Operate a motorboat or vessel, or manipulate water skis, surfboards or similar devices in a reckless manner so as to endanger the life, limb or property of another;

(9) Operate a motorboat or vessel, or manipulate water skis, surfboards or similar devices while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

A person arrested and charged with operating any motorboat or vessel, or manipulating any water skis, surfboard or similar device while under the influence of intoxicating liquor or narcotic or habit-forming drugs shall have the right to be examined at his or her own expense immediately after his or her arrest, by a physician selected by him or her, and the officer so arresting or so charging that person shall immediately inform that person of this right and afford him or her a reasonable opportunity to exercise the same, and at the trial of that person, the prosecution must prove that he or she was so informed and was afforded such opportunity;

(10) Dock or otherwise make fast any motorboat or vessel to any pier, channel marker, buoy, wharf or other shore structure without the consent of the owner, except in the case of an emergency;

(11) Operate a motorboat or vessel on and within the waters of the city for towing a person or persons on water skis, or a surfboard or similar device unless there is in the motorboat or vessel (i) a person at least twelve (12) years of age, in addition to the operator, in a position to observe the progress of the person or persons being towed; (ii) at least one (1) personal flotation device (PFD) for each person being towed;

(12) Operate a motorboat or vessel on and within any waters of the city towing a person or persons on water skis, a surfboard or similar device beginning at one (1) hour after sunset and ending at one (1) hour before sunrise;

(13) Engage in water skiing, surfboarding, or similar activity at any time between the hours beginning at one (1) hour after sunset and ending at one (1) hour before sunrise, or within areas in which said activities are prohibited;

(14) Operate or manipulate any motorboat, vessel, tow rope or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon, to collide with or strike against any object or person;

(15) Conduct a regatta, motorboat, or other boat race, marine parade, tournament, or exhibition, except on the terms and conditions specifically set forth by the port commission;

(16) Refuse to move or stop on oral command of the harbormaster, assistant harbormaster, or police officer operating from a patrol boat identified as such, and exercising the duties lawfully assigned to him or her;

(17) Engage in scuba diving, skin diving, or snorkeling in an area where power or motorboats are operated, unless the proper warning flags, as set forth in state law, are posted;

(18) Operate a motorboat or vessel within fifty (50) feet of any warning flag as set forth in state law;

(19) Construct and/or place a mooring without a permit issued by the port commission;

(20) Throw, dispose of, deposit, or cause to be thrown, disposed of, or deposited, bottles, glass crockery, cans, scrap metal, junk, paper, garbage, refuse or debris of any nature, or any noxious substance in or upon any of the waters within the city;

(21) Deposit or abandon a vessel or structure upon the shore, a public right-of-way or on and within the waters of the city. When any vessel or structure is deposited or abandoned in the waters of the city, the same may be removed by the police department, or its lawfully authorized agent.

a. Notice of removal of vessel/harbor structures. If the person who owns, has an interest in, or exercises any control over the vessel or structure, or otherwise is known, the chief of police, or ~~his lawfully designated agent~~ the harbormaster, shall give written notice by certified mail to said person to remove the vessel or structure within a specified time.

b. Removal of vessel/harbor structures. If the vessel or structure is not removed within the time specified in the notice and in a manner and to a place satisfactory to the chief of police, or the harbormaster, or if no such person is known to the chief of police, or his lawfully designated agent, upon whom the notice can be served, then the chief of police, or ~~his lawfully designated agent~~ the harbormaster, may proceed to remove, or cause the vessel or structure to be removed, in a manner and to a place the chief of police, or his lawfully designated agent, shall deem appropriate.

c. Liability. In the event that such person identified in paragraph (1) above, shall allow a vessel or structure to be removed by the chief of police, or ~~his lawfully designated agent~~ the harbormaster, in accordance with this ordinance, then such person shall be liable to pay the cost and expenses of the removal and storage, or to repay the same when paid by the city. The expense may be recovered in an action brought by the city solicitor against the owner(s). If the owner(s) are unknown or the vessel or structure is unclaimed within ninety (90) days of the removal, the city may sell the vessel or structure. The proceeds from the sale shall be used to defray the cost the city incurred in the removal and storage of the vessel or structure, and in the administration of this section.

(22) Engage in rafting on a single mooring or anchor, unless such rafting does not unreasonably interfere with any adjacent single moorings or anchorages. Motorboats and/or vessels in a raft shall be manned at all times;

(23) Operate a marine toilet at any time so as to cause or permit to pass or to be discharged into harbor waters, any untreated sewage, or other waste matter or contaminant of any kind, and/or dumping of holding tanks containing anything other than fresh water or sea water into harbor waters;

(24) Moor or anchor a houseboat or floating business unless such mooring or anchoring is done within designated areas. In accordance with RIGL 46-22-91, house boats and floating businesses are prohibited from berthing or mooring in coastal ponds and in all CRMC designated Type 1 and Type 2 waters. Houseboats and floating businesses are also prohibited from mooring or anchoring in tidal waters unless within the bounds of a marina.

(25) Swim in any navigation fairways, city dock areas, or launch areas. In mooring fields and transient anchorage areas swimming is prohibited, with the exception of vessel owners or crews or persons contracted to do maintenance on the boat or its mooring tackle within a reasonable distance of said boat. Waterskiing shall be prohibited in all designated channels, fairways and mooring areas.

(b) Miscellaneous provisions. Any time the chief of police, or ~~his lawfully designated agent~~ the harbormaster, directs that a motorboat or vessel be towed pursuant to this ordinance, there shall be a fee assessed to the owner of said motorboat or vessel for said towing. Said fee shall be one hundred dollars (\$100.00) and shall be subject to annual revision by the commissioner of public safety, or his lawfully designated agent. Should the towing be performed by a commercial towing service, this fee shall be in addition to the towing fee charged by the towing service.

(c) Definitions. As used in this section, unless the context clearly requires a different meaning:

Houseboat means a building constructed on a float, raft, or barge ~~or hull~~ that is used primarily ~~habitation~~ for single- or multiple-family habitation; if used for transportation, this use is secondary.

Floating business means a building constructed on a raft, or hull that is represented as a place of business, including but not limited to waterborne hotels, restaurants, marinas or marina-related businesses.

Motorboat means any vessel whether or not the vessel is propelled by machinery. For the purposes of this chapter, motorboat shall not include houseboats as defined in the General Laws of Rhode Island, any ferry, canoes and rowboats twelve (12) feet in length or less.

Operate means to navigate or otherwise use a motorboat or vessel.

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

Vessel means every description of watercraft other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(d) Enforcement authority.

(1) The city or its lawfully designated agent the harbormaster shall have the authority to enforce the provisions of this section and in the exercise thereof, shall have the authority to stop and board any motorboat or vessel subject to this section.

(2) Such enforcement authority as set forth in (1) above shall be concurrent with that possessed by the department of environmental management, pursuant to sections 46-4-2 and 46-22-17 of the General Laws of Rhode Island.

(e) Penalties for violation.

(1) The general penalties provided for by section 1-10 of the Code of Ordinances shall apply to violations of this chapter, except that any person electing to appear before the clerk of the court, or in lieu of a personal appearance electing to enter an appearance by mail, and admitting the violations charged shall be punished by a fine as set forth for each violation as follows:

- a. Any person who violates any provision of subsections (a)(3)a., (7) or (18) of this section shall be subject to a fine of fifty dollars (\$50.00) for each violation.
- b. Any person who violates any provision of subsections (a)(1), (5), (7), (15) or (16) of this section shall be subject to a fine of one hundred dollars (\$100.00) for each violation.
- c. Any person who violates any provision of subsections (a)(11), (12), (13) or (14) of this section shall be subject to a fine not to exceed two hundred dollars (\$200.00) for each violation.
- d. Any person who violates the provisions of subsection (a)(3)b. of this section shall be subject to the following fines:

MPH In Excess of Speed Limit	Fine
1—10	\$ 25.00
11—15	50.00
16—20	75.00
21—25	100.00
26 and above	5.00 per mile in excess of speed limit

e. Any person who violates the provisions of subsection (a)(3)b of this section shall be required to attend a boating safety course in addition to the payment of any fine. In the event a fine as set forth for each violation is not paid or a plea of not guilty is not entered by any person charged with any violation prior to the fourteenth day after the date of the violation, said fine shall be doubled.

In the event a fine as set forth for each violation is not paid or a plea of not guilty is not entered subsequent to the fourteenth day after the date of violation, said fine shall be tripled.

(2) Any person who violates any provision of subsections (a)(6), (19), (20), (21), (22) or (23) of this section shall be guilty of a petty misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00), or imprisonment not to exceed thirty (30) days, or both for each violation.

(3) Any person who violates any provision of subsections (a)(2), (4), (8), (9), (10) or (24) of this section shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one thousand dollars (\$1,000.00), or imprisonment not to exceed one (1) year, or both for each violation.

(4) Any person charged with any violation set forth in subsections (a)(3)a., b., (5), (7), (11), (12), (13), (14), (15), (16), (17) or (18) of this section and notified in writing by a police officer to appear to answer such charge before the Providence Municipal Court may, in lieu of such appearance, elect to appear in person or by one duly authorized by him in writing, before the clerk of said court, admit the truth of said charge, and pay to said clerk the designated fine; provided that such appearance, admission and payment be made at the office of said clerk during regular business office hours, within sixty (60) days of such notification, and failure to so appear shall be deemed a waiver of the right to dispose of such charge without personal appearance in court.

(5) In those cases where mail is used for payment of such fine, the payment shall be by check or by money order, and in those cases where payment is attempted with a check drawn against insufficient funds, an additional payment of twenty-five dollars (\$25.00) shall be imposed against the violator to defray administrative costs. Page 7

(6) The payment of a fine to the clerk of the municipal court as herein provided for any violation set forth in subsections (a)(3)a., (5), (7), (11), (12), (13), (14), (15), (16), (17) and (18) shall operate as a final disposition of the charge.

(7) Notice of any violation set forth in subsections (a)(3)a., (5), (7), (11), (12), (13), (14), (15), (16), (17) and (18) shall indicate the offense charged, a schedule of fines for such violation, the time within which such fine by mail may be exercised, the place to which such fine may be mailed and such other information as will enable the person charged to take advantage of the provisions hereof.
(Ord. 1993, ch. 93-30, § 3, 9-24-93)

~~Sec. 11-1.~~ **Sec. 11-10. Port commission—Powers and responsibilities.**

The port commission, established in accordance with Section 1016 of the city charter, shall have the following powers and responsibilities in addition to those granted by the charter:

(1) To study and plan for the growth and expansion of the maritime trade in Providence and to file such studies and plans with the mayor, the city council, the harbor management commission, and the city plan commission for consideration;

~~(2) To prepare a harbor management plan for the city and to submit said plan to the city plan commission and the city council for review and approval;~~

~~(3) To serve as the harbor commission to implement the harbor management plan;~~

(4) (2) To seek federal, state, local or private grants for the development of port and working waterfront improvements;

(5) (3) To raise public awareness of the port, working waterfront and industrial maritime activities;

(6) (4) To promote and market the port and the working waterfront of Providence;

(7) (5) To work to expand maritime trade and water-dependent development in the port and the working waterfront;

(8) (6) To assist as needed in the expansion or reconfiguration of the port by leasing, buying and selling land;

(9) (7) To buy, sell and lease equipment and materials as needed for port operations;

(10) (8) To contract the planning and maintenance for any properties or materials that have been acquired;

(11) (9) To maintain and reinvest any revenues generated by the port and the working waterfront, the operation of the commission or by activities that promote the mission of the commission.

~~Sec. 11-2.~~ **Sec. 11-11. Port commission—Advisory opinion.**

The port commission may offer advisory opinions to the mayor, the city council or any agency, board or commission on any development proposals, plans and regulations that are being proposed in the port district.

~~Sec. 11-3.~~ **Sec. 11-12. Port commission—Operation of the Port of Providence.**

In 1994, the operation and management of the Port of Providence was transferred and the port commission was relieved of all responsibilities spelled out in Section 1016 of the city charter relative to the operation of the port. When this transfer expires, the port commission shall resume the operation of the port.

The department of planning and development shall supply staff services to the port commission. The mayor may assign another department(s) to supply staff services if deemed appropriate.

~~Sec. 11-5, Sec. 11-14.~~ Port district.

The port district shall consist of the area bounded on the south by the Providence Cranston city line, on the west by Narragansett Boulevard, Ernest Street and Interstate 95, on the north by Interstate 195 and on the east by the Providence East Providence city line. The Port District consists of the port of Providence and the Fields Point area; portions of the Washington Park Neighborhood; the Allens Avenue Corridor; and Fox Point.

~~Secs. 11-14-6—11-20.~~ - Reserved.

SECTION 2. This ordinance shall take effect upon passage.

IN CITY COUNCIL
JAN 03 2012
FIRST READING
READ AND PASSED

Ch. M. Stebbins CLERK

IN CITY
COUNCIL

FINAL READING
READ AND PASSED

M. Stur
PRESIDENT
Louis J. Hayes
ACTING CLERK

I HEREBY APPROVE

April Thomas
Mayor

Date: 2/20/12