

NOTICE OF HEARING

PLEASE TAKE NOTICE that the **Governing Body of the Borough of Atlantic Highlands** introduced **Ordinance 10-2013**, at their Meeting held on **July 10, 2013**. This Ordinance is scheduled to have a **Second Reading and Public Hearing** on **July 24, 2013 at 7:00 PM** at **Borough Hall, 100 First Avenue, Atlantic Highlands, NJ, in the Public Meeting Room**. Anyone interested shall be given the opportunity to be heard concerning this ordinance. **Immediately following the Public Hearing, final Adoption will be considered.** This Ordinance is available for public inspection at **Borough Hall in the Municipal Clerk's office** during regular business hours, **8:30 AM to 4:30 PM, Monday through Friday**.

Dwayne M. Harris
Municipal Clerk

ORDINANCE 11-2013

ORDINANCE AMENDING CHAPTER 196 "HARBOR USE" OF THE CODE OF THE BOROUGH OF ATLANTIC HIGHLANDS TO ADD ARTICLE V PROHIBITING UNAUTHORIZED MOORING/ANCHORAGE OF BOATS WITHIN THE ATLANTIC HIGHLANDS MUNICIPAL HARBOR AND HARBOR REFUGE AREA

WHEREAS, pursuant to N.J.S.A. 40:61-1, the Borough is authorized to improve and maintain places for public recreation, including the construction and operation of waterfront structures and facilities for such purposes, and N.J.S.A. 40:61-22.20 provides that the municipality has the authority to establish rules and regulations for the government and use of such waterfront recreation facilities, and

WHEREAS, pursuant to N.J.S.A. 12:5-9, adopted in 1939, the State Board of Commerce and Navigation was authorized to co-operate with the Federal Government, the County of Monmouth, and the Borough of Atlantic Highlands to jointly fund and have constructed a "harbor of refuge" as a municipal facility, and pursuant to said Legislation the title and operational control to the lands/areas to be used for said Harbor were to be conveyed by the State to the Borough, and

WHEREAS, pursuant to this Legislation and authority, a protective breakwater was constructed and the Atlantic Highlands Municipal Harbor was established under the jurisdiction and control of the Borough; pursuant to N.J.S.A. 40:68-22 and Ordinances (see Code Section 5-1 to 5-7) the operational control of the Harbor was thereafter vested by the Borough by Ordinance in 1942 in

the Atlantic Highlands Municipal Harbor Commission, and the Borough/Harbor Commission has since then operated and maintained the Atlantic Highlands Municipal Harbor facilities, and

WHEREAS, as part of the operation and services available within the Municipal Harbor, the Borough and the Harbor Commission provide and make available to the public various designated dock and mooring areas, subject to compliance with regulations and payment of specified fees, within the protected Harbor for the permanent or seasonal dockage, mooring, or anchoring of boats within the Harbor, and also provides a designated refuge area within the protected Harbor for temporary anchoring of transient boats traveling along the Coast and as a temporary refuge or anchorage for boats in the event of inclement weather, mechanical difficulties, or other emergent reasons, and

WHEREAS, there have recently been placed and located within the protected Harbor, in the refuge area intended to be available and used only as a temporary anchoring for transient boaters and emergent reasons, several unauthorized permanent moorings or anchor equipment, and boats have been moored or anchored on these permanent moorings or anchors on a long term or permanent basis, and these permanent moorings/boats in the refuge area have become an impairment to the intent and use of the refuge area and to the proper operation of the Municipal Harbor, and

WHEREAS, the laws establishing the Municipal Harbor and recent litigation has indicated that the Borough may regulate the protected Harbor area and is not required to provide access for permanent moorings in the refuge area, and the Harbor Commission has recommended, and the Borough Governing Body has determined, that it is appropriate and necessary to adopt regulations so as to preclude the long term or permanent placement of mooring/anchoring equipment and the permanent or long term mooring or anchoring of boats in the refuge area intended and established to be available and used for short term transient or emergent use by boats, and

WHEREAS, the Borough Governing Body has determined that such regulations and provisions are appropriate and necessary to preserve and maintain the proper and safe operation of the Harbor, to assist in preserving the continued financial stability of the Municipal Harbor, to assist in the proper order and protection of persons and property by maintaining the availability of suitable areas for long term mooring/anchoring, and other suitable areas for temporary refuge or anchoring for transient boats and/or in storms and other emergent circumstances, and for the preservation of the welfare, safety, and for the proper functioning of the Harbor and the public that utilizes and patronizes the Harbor and its facilities.

NOW THEREFORE BE IT ORDAINED by the Borough Governing Body of the Borough of Atlantic Highlands that the Code of the Borough of Atlantic Highlands, Chapter 196, "Harbor Use" is hereby amended to add the following:

ARTICLE V

MOORING OR ANCHORING

§196-37 – Unauthorized Mooring/Anchoring Prohibited

Other than at an authorized mooring/anchoring location designated by the Harbor Commission within the designated Harbor mooring fields and pursuant to a proper authorization/agreement with the Harbor Commission or Harbor Manager for use of a designated mooring space or location, no person or entity without the approval of the Harbor Manager shall:

- a. locate or place within the protected Harbor (the area within the Harbor breakwater) any privately owned permanent or fixed mooring or helix anchor equipment,
- b. moor or anchor any boat within the designated mooring fields in the protected Harbor,
- c. moor or anchor any boat within the area of the protected Harbor designated as the Refuge Area for a period of more than 48 hours without complying with the registration requirement of §196-29.

§196-38 – Time Period for Temporary Mooring/Anchoring; Extensions of Time

Any owner or operator of a boat moored or anchored in the Harbor in the Refuge Area or in an area other than a designated mooring space in the Harbor mooring fields as authorized by an agreement with the Harbor Commission, and proposing to continue to moor/anchor the boat for more than 7 days (the 7 days commencing on the date the boat was first moored/anchored within the Harbor/Refuge Area), shall prior to the expiration of the 7 days apply to the Harbor Manager for a permit to continue to temporarily anchor/moor the boat in the Harbor for a period beyond the 7 days permitted. The owner/operator shall supply documentation showing a substantial reason, such as adverse weather conditions, mechanical work underway, etc., supporting a need for an extension of permission to moor/anchor the boat in the Harbor/Refuge Area. The Harbor Manager may in his discretion authorize such permit for a period of such additional time as he deems reasonable for the reasons demonstrated to be resolved and the boat to be removed. If the boat is not removed at the expiration of the 7 days or such additional time as extended by permit by the Harbor Manager, the boat and/or the owner/operator of the boat shall be subject to summons and fine for violation of this Ordinance. The application fee for each application for a permit or an extension of that permit is \$80.

§196-39 – Unauthorized Mooring/Anchoring Removed

Any permanent unauthorized mooring or anchoring equipment placed or located within the protected Harbor, and/or any boat that remains moored or anchored within the protected Harbor without authorization or authority from the Harbor Commission or Harbor Manager for longer than permissible 7 day period or such additional time as may be approved by permit from the Harbor Manager, may be removed at the direction and order of the Harbor Manager. The

Harbor Manager may provide the notice as provided in §196-31 in his discretion, but such notice is not required if the Harbor Manager determines that circumstances indicate prompt removal of the boat and/or unauthorized mooring or anchoring equipment is appropriate. Removed mooring/anchoring equipment and boats shall be taken or towed to a holding area or location as determined by the Harbor Manager. The owner and/or operator of the boat shall be responsible for and pay all towing/removal charges and storage costs incurred by the Borough/Harbor and/or any contractor or agent engaged by the Harbor to remove the equipment/boat. Those charges and costs shall be paid by the owner and/or operator or other responsible party prior to the equipment and/or boat being released by the Borough/Harbor. This power and authorization for the Harbor Manager to have the equipment or boat removed is in addition to the authority to issue Summons.

§196-37 – Violations and Penalties

An owner or operator of a boat who violates the provisions of this article shall be liable to a penalty of not less than \$200 nor more than \$1,250. Each day upon which the violation continues shall constitute a separate offense. The civil penalty imposed pursuant to this section shall be collected pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et. seq. in a summary proceeding in the Borough Municipal Court. A penalty recovered under the provisions of this section shall be recovered by and in the name of the State by the Borough of Atlantic Highlands and shall be paid into the treasury of the Borough of Atlantic Highlands.

§196-41 – Issuance of Summons; Disposition of Fines

The Harbor Manager or his designee, or other designee as appointed by the Harbor Commission or the Borough, or any member of the Borough Police Department, is authorized to issue a summons for a violation of the provisions of this Article and may serve and execute all process with respect to its enforcement.