

City Manager..... (802) 334-5136
City Clerk / Treasurer..... 334-2112
Public Works..... 334-2124
Zoning Adm. / Assessor..... 334-6992
Recreation / Parks..... 334-6345
Fax..... 334-5632



City of Newport
222 Main Street
Newport, Vermont 05855
www.newportvermont.org

May 3, 2021

VIA ELECTRONIC MAIL ONLY

Peter LaFlamme
Director
Watershed Management Division
Vermont Agency of Natural Resources
One National Life Drive – Davis 3
Montpelier, VT 05620
pete.laflamme@vermont.gov

Re: Petition Seeking Rulemaking and the Delegation of State Authority to Regulate the Mooring of Vessels in the Public Waters Within the Boundaries of the City of Newport Pursuant to 10 V.S.A. § 1424(f)

Dear Mr. LaFlamme

Pursuant to the vote of its City Council on May 3, 2021, the City of Newport (the “City”) hereby petitions the Agency of Natural Resources (“ANR”) for renewal of ANR’s delegation to the City to regulate the mooring of vessels on portions of public waters within the City’s boundaries, like Lake Memphremagog, the Clyde River and the Black River, pursuant to 10 V.S.A. § 1424(f). The previous delegation of authority is located in Appendix D to the Vermont Use of Public Waters Rules, Environmental Protection Rule Chapter 32, effective November 1, 2016. Notably, Appendix D’s last effective date was December 30, 2011, and the City proposes no changes in this petition from earlier City petitions submitted to the Water Resources Board in 2000 and 2011. If this petition is granted, the City requests that it be renewed for a ten-year period, until December 31, 2031.

Included in this petition are the following:

- (1) This letter, which represents the City’s written request seeking delegation of authority within Mooring Management Zones to be established on all navigable public waters within the City’s boundaries.
- (2) Certificate of Service, certifying the foregoing Petition regarding the City’s Mooring Management Plan, was sent by electronic or first-class mail with the list of distribution.

- (3) A copy of the City's current Ordinance #114 Pertaining To Mooring Management of Public Waters, last amended on September 19, 2005 with Attachments A, B and C.
- (4) Memorandum of Decision of the Water Resources Panel of the Vermont Natural Resources Board, dated October 25, 2011, approving the City's petition for renewal of the Mooring Management Zone.
- (5) Appendix D to Vermont Use of Public Waters Rules, effective November 1, 2016: Rules Regulating the Mooring of Vessels Within Lake Memphremagog and Other Public Waters Within the City of Newport, Vermont, effective December 30, 2011.

By this petition, the City requests the renewal of its delegation on the same terms as was approved by the Water Resources Panel in 2011. The City would like to implement a Mooring Management Plan for navigable waters within City boundaries that define mooring areas, fairways, types of mooring tackle that can be used, access for fishermen and passive users, safe anchoring of boats, a buffer area for public swimming, etc. The annual fee for a Certificate of Registration will be \$185, which is set annually by resolution of the City Council.

The City has operated the Mooring Management Zone for over two decades, and to the best of the City's knowledge, there have been no complaints or other contacts to ANR regarding the City's management. As the Water Resources Panel noted in its 2011 decision to extend the City's delegation, the existing delegation has been a "success," as it has relieved congestion at the City's redeveloped downtown waterfront, improved the circulation of boating traffic, and protected fishing access areas. The Mooring Management Zone has been an important piece of the City's downtown revitalization and is critical to effectuating the City's goal to be the top destination for outdoor recreation in the Northeast Kingdom and Vermont as a whole.

If you have any questions regarding this petition, please do not hesitate to contact City Manager Laura Dolgin (334-5136, laura.dolgin@newportvermont.org), City Attorney David W. Rugh, Esq. (660-2555, drugh@firmspf.com) or myself at 334-5136 or paul.monette@newportvermont.org.

Sincerely,



Paul L. Monette, Mayor

cc: See Certificate of Service

CERTIFICATE OF SERVICE

I certify that today I delivered the City of Newport's Petition Seeking Rulemaking and the Delegation of State Authority to Regulate the Mooring of Vessels in the Public Waters Within the Boundaries of the City of Newport Pursuant to 10 V.S.A. § 1424(f), to the following individuals by electronic mail, or by first-class mail, if no email address is indicated below:

Peter LaFlamme
Director
Watershed Management Div.
Vermont Agency of Natural Resources
One National Life Drive – Davis 3
Montpelier, VT 05620
pete.laflamme@vermont.gov

Oliver Pierson, Program Manager
Lakes and Ponds Management and
Protection Program
Vermont Agency of Natural Resources
One National Live Dr. – Davis 2
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oliver.pierson@vermont.gov

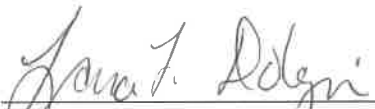
Hannah Smith, Esq.
Attorney
Vermont Agency of Natural Resources
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Northeast Vermont Development
Association
c/o David Snedeker
P.O. Box 630
36 Eastern Ave., Ste. 1
St. Johnsbury, VT 05819
dsnedeker@nvda.net

David W. Rugh, Esq.
Stitzel, Page & Fletcher, P.C.
P.O. Box 1507
171 Battery St.
Burlington, VT 05402-1507
drugh@firmspf.com

DATED at Newport, Vermont, this 4th day of May 2021.

Signature:



Laura Dolgin, City Manager

*Most Recent Version
as of 7/7/17*

Ordinance of the City of Newport, Vermont

Ordinance #114 Pertaining To Mooring Management of Public Waters

Be it ordained by the City Council of the City of Newport that:

Ordinance #114

Enacted by the City Council

On The 19th Day of September, 2005

Pertaining to Mooring Management of Public Waters, be hereby amended to read as follows.

SECTION 1: PURPOSE

1.1 PURPOSE - The purpose of this ordinance is to provide fair and equitable access to all navigable public waters within the City of Newport in the public interest. This ordinance shall govern and regulate the use of all navigable waters of Lake Memphremagog, Clyde River, and Black River within the City limits to ensure the protection of the public health, safety, and general welfare.

SECTION 2: SECTION 2 - SCOPE

2.1 SCOPE - This ordinance shall relate to the use of vessels and the location, construction, installation, maintenance, and use of moorings in all navigable waters within the City limits.

SECTION 3: AUTHORITY, APPLICABILITY AND SEVERABILITY

3.1 AUTHORITY- This ordinance is enacted pursuant to the authority contained in Section 23 of the City of Newport Charter. The authority to enact this ordinance is delegated to the City of Newport by the Water Resources Panel of the Natural Resources Board under the provision of 10 V.S.A. Section 1424(f).

3.2 APPLICABILITY - The provisions of this ordinance, and any rules and regulations adopted under it, shall be applicable to and shall govern all the navigable waters in the City limits. This ordinance shall be subordinate to all applicable federal, state and local statutes and regulations covering these matters and is not intended to preempt such statutes, regulations or permits/licenses issued thereunder. Where this ordinance imposes a greater restriction upon the water, land, buildings or structures than is imposed by any other ordinance or law, the restrictions of this ordinance shall prevail, provided, however, if this ordinance is inconsistent with other state or federal rules or laws, then these rules or laws shall apply. The designation of Mooring Management Zones does not mean that moorings have a preemptive right to be in the waters in those areas or give moorings any priority over other public uses of those waters.

3.3 RULES AND REGULATIONS - The City Council may prescribe rules and regulations to implement the provisions of this ordinance under the authority of Section 23 of the City of Newport Charter. All such rules and regulations shall be adopted, amended or repealed in the same manner as prescribed for an ordinance under the City of Newport Charter.

3.4 SEVERABILITY - If any provision of this ordinance is held invalid or inoperative, the remainder shall continue in full force and effect as though such invalid or inoperative provision had not been made.

SECTION 4: DEFINITIONS

ANCHORING shall mean to secure a vessel by use of an anchor or by attachment to another vessel or object for a period not exceeding seventy-two (72) hours. Vessels anchored within a Mooring Management Zone for a period exceeding seventy-two (72) hours, shall be considered to be moored.

APPLICANT shall mean a person applying in writing for either a Certificate of Registration or a waiver.

BUOY MOORING shall mean a mooring which is an object used to hold the vessel in position without providing a platform for access.

CERTIFICATE HOLDER shall mean a person who has been issued a Certificate of Registration.

CERTIFICATE OF REGISTRATION shall mean a written mooring registration, granted by the City of Newport, and its associated numbered identifying tag that shall be attached above the water in a visible location on each mooring buoy. The Certificate of Registration holder shall not cause the tag affixed to the buoy to be removed.

EXISTING MOORING shall mean any mooring determined by the City to have been established before and including September 18, 2000.

FAIRWAY shall mean the parts of the waterway kept open and unobstructed for free movement for water access.

HIGH WATER LEVEL shall mean the ordinary high water level for Lake Memphremagog, which shall be 683.00 feet above mean sea level.

INDIVIDUAL CERTIFICATE OF REGISTRATION shall mean a Certificate of Registration for a single mooring. (See Section 8.2)

MARINA OR YACHT CLUB CERTIFICATE OF REGISTRATION shall mean a number of moorings, not exceeding six (6), held in common by a group, association or corporation, or by an individual or other person for a commercial purpose. (See Section 8.2)

MEAN WATER LEVEL shall mean the "mean water mark", "mean water level" and "normal mean water mark". For Lake Memphremagog, the mean water level has been established as 681.8 feet above mean sea level and 682.04 feet during the period of June 1 - Sept. 15.

MOOR shall mean to secure a vessel other than by anchoring, as defined above, to any floating object, fixed structure or other device located on or beyond the shoreline.

MOORING shall mean any equipment, structure or system(s) for securing a vessel in the water beyond the mean water level. Each vessel, shall be considered to be attached to a separate mooring for the purpose of counting moorings. A mooring shall not mean docks, that are either exempt or permitted, pursuant to 29 V.S.A. Chapter 11. Mooring shall not mean anchoring.

MOORING LOCATION shall mean the point where the mooring anchor is located.

MOORING STATION shall mean the circular area assigned to a Certificate holder according to the depth of the water, and length and type of vessel registered, and the type of approved mooring system.

MOORING MANAGEMENT ZONES shall mean clearly delineated areas of navigable waters in the City of Newport, in which the City has determined that the placement of moorings requires regulation in the public interest. (See Section 7)

NAVIGABLE WATERS shall mean the waters of Lake Memphremagog, Clyde River, and Black River, including the City of Newport portion of boundary waters, which are navigable under the laws of the State of Vermont.

NEW MOORING shall mean any mooring determined by the City to have been established after September 18, 2000.

OCCUPIED ANCHORING shall mean that some individual(s) is (are) on a vessel while anchoring.

PENNANT shall mean an object that fastens a vessel to a buoy for the purpose of mooring.

PERSON shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other

legal or commercial entity, including a joint venture or affiliated ownership.

SHORELINE shall mean the line where the land interfaces the water at elevation 682.04 feet above mean sea level.

SWING AREA shall mean the circular area whose radius is equal to the maximum a vessel stern will pull away from its mooring anchor.

RAFTING shall mean the temporary securing of two or more vessels to one another.

UNOCCUPIED ANCHORING shall mean that no individual(s) is (are) on a vessel while it is anchoring.

VESSEL shall mean every description of watercraft used or capable of being used as a means of transportation on water including but not limited to amphibian or pontoon aircraft.

WAIVER shall mean permission granted to an applicant by the Harbor Commission to depart from the literal requirements of this ordinance, where it has been determined such waiver will not pose a threat to the public health, safety, and general welfare.

SECTION 5: APPOINTMENT AND POWERS OF HARBOR COMMISSION

5.1 APPOINTMENT AND ORGANIZATION - The Harbor Commission shall consist of no less than five (5) or no more than nine (9) members appointed by the City Council. Each member shall serve for a term of two (2) years. Initially, two (2) members shall serve for a term of one (1) year. Nothing in this section shall prohibit neighborhood marina or yacht club representatives or a representative from a commercial marina industry or other organization from serving on the Commission as long as such members do not exceed two from each respective party.

5.2 POWERS - The Harbor Commission shall: recommend ordinance amendments, and rules and regulations for the adoption by the City Council; review and make recommendations to the City Council on proposed water use activities; conduct or cause to be conducted, with City Council approval, studies of the conditions and operations in the navigable waters in the City of Newport; hear and decide appeals and revocation proceedings initiated under this ordinance; and, hear, grant or deny requests for waivers.

5.3 CONFLICTS OF INTEREST - No member of the Harbor Commission shall participate in any proceeding where he or she has a conflict of interest as defined by City Policy.

5.4 REMOVAL FOR CAUSE - The City Council shall have the power to remove a member of the Harbor Commission at any time the City Council by majority vote of its members finds that the member has violated this ordinance, or acted in a manner contrary to the City's interest.

SECTION 6: APPOINTMENT AND POWERS OF THE HARBORMASTER

6.1 APPOINTMENT - The Harbormaster shall be recommended by the Harbor Commission, approved by the City Council, and sworn in by the City Clerk of the City of Newport.

6.2 POWERS - The Harbormaster shall administer and enforce this ordinance, and any rules and regulations adopted in accordance with Section 3.3 of this ordinance. The Harbormaster shall not have the power to permit any mooring or other activity, which is not in conformance with laws of the State of Vermont, this ordinance, and any implementing rules and regulations.

6.3 SUPERVISION - The Harbormaster will be supervised by the Parks and Recreation Director of the City of Newport.

6.4 REMOVAL - The City Council shall have the power to remove the Harbormaster at any time the City Council by majority vote of its members finds that the Harbormaster has violated this ordinance, or acted in a manner contrary to the City's interest.

SECTION 7: MOORING MANAGEMENT ZONES

7.1 PURPOSE - By virtue of the delegation of authority by the Water Resources Panel of the Natural Resources Board, the City of Newport has established Mooring Management Zones in Lake Memphremagog, Clyde River, Black River, South Bay, Prouty Bay, Pender's Cove, and two bays adjacent to the Long Bridge designated on the Mooring Management Zones map, (See "Attachment A") within the City's limits.

7.2 DESCRIPTION OF EACH ZONE AND SPECIAL REGULATIONS APPLICABLE TO EACH ZONE - There are ten (10) zones (A, B, C, D, E, F, G, H, J, and K) as shown on the Mooring Management Zones map, ("See Attachment A"), and each may have specific restrictions which must be complied with. Zones A, B, and C (See "Attachment C") require that annual Certificates of Registration be acquired and vessels over thirty-six (36) feet in length are not permitted due to space limitations. In zones D and E vessels must be moored between zero feet (0') to four hundred feet (400') from the shoreline, but no annual Certificate of Registration is required. Zones F, G, H, J, and K, do not require an annual Certificate of Registration. The description of each zone is described on "Attachment B".

7.3 REGULATION OUTSIDE DESIGNATED MANAGEMENT ZONES - Moorings are prohibited in all navigable public waters within the City of Newport not specifically identified as Mooring Management Zones in Section 7.2, and "Attachments A and B".

7.4 PROCESS FOR CREATING, MODIFYING, OR REPEALING ZONES AFTER THE EFFECTIVE DATE OF THIS ORDINANCE - The process for creating, modifying, or repealing Mooring Management Zones after the effective date of this ordinance shall be by a majority vote of the members of the City Council. Amendments will be warned in a paper of general circulation in the area of the City of Newport and at three public locations in the City of Newport. In accordance with Title 24 V.S.A. Section 1973, citizens have the right to petition for a vote to disapprove these amendments to the ordinance by filing a petition signed by five percent of the qualified voters of the City of Newport within forty-four (44) days following the adoption of the amendments. If no petition for such vote is filed, the amendments will be effective sixty (60) days from their adoption. Questions regarding said ordinance amendments may be directed to the City Manager, at 222 Main St., Newport, Vt. Telephone is (802) 334-5136.

SECTION 8: MOORINGS AND CERTIFICATES OF REGISTRATION

8.1 MOORINGS REQUIRING A CERTIFICATE OF REGISTRATION - No person shall establish or maintain a mooring in Mooring Management Zones A, B, and C without first obtaining an annual Certificate of Registration from the Harbormaster or his agent.

8.2 CLASSES OF CERTIFICATES OF REGISTRATION -

- a. Individual Certificate of Registration - A Certificate of Registration for a single mooring issued to an individual, for the owner's personal vessel. A mooring location authorized by an Individual Certificate of Registration cannot be rented or sold to another individual. Said Certificate of Registration is not automatically renewable.
- b. Marina or Yacht Club Group Certificate of Registration - A Certificate of Registration issued to and held in common by groups, associations, corporations, or by an individual or other person for a commercial purpose. Said Certificate of Registration is not automatically renewable. Additionally, the following requirements apply:
 - ii) An applicant under sub-part b. may only qualify for one Group Certificate of Registration and the number of moorings per Certificate of Registration shall not exceed six (6) moorings.
 - iii) The applicant must demonstrate in its application that: its operation provides access to public waters, it provides services that facilitate public use of waters (i.e. access to toilets, pump-out station, fuel, fishing and beach areas), it will install space-efficient mooring equipment and system(s), and it will make 33% of its moorings available to daily users.

8.3 CERTIFICATE OF REGISTRATION APPLICATION PROCESS - A non-refundable fee of \$10.00 will be charged in order to file an application for a Certificate of Registration with the Harbormaster. This amount will be applied toward the annual fee if the application is approved by the Harbormaster. The application shall be on a form prescribed by the Harbor Commission and shall provide identification information and information related to fulfillment of the requirements for obtaining a Certificate of Registration.

8.4 CERTIFICATE OF REGISTRATION FEES - A mooring fee, set annually by resolution of the City Council, shall be paid prior to the issuance of a Certificate of Registration. Revenue generated by this fee shall only provide for the associated cost of administration of this ordinance, (which may include wages, etc., for part time seasonal employees) but shall not be used to pay the City's general budget expenses. If any surplus from Certificate of Registration fees is realized, those funds will remain in a separate account to offset future expenses associated with the Mooring Management of Public Waters. Accumulated surplus shall not exceed 20% of operating cost. Annual fees will be adjusted according to actual and projected expenses and revenues.

- a) All checks are to be made payable to "City of Newport - Moorings".
- b) Full payment must be received by February 28 for the upcoming boating season.
- c) Payment of a mooring registration fee does not give the Certificate holder any right or claim to any specific location. It does give the person the right to a location in Mooring Management Zone A, B, or C that is suitable for the vessel specified on file with the Harbormaster.
- d) The cost of a Marina or Yacht Club Group Certificate of Registration shall be calculated by multiplying the number of moorings authorized by that Certificate by 100% of the annual fee of an Individual Certificate of Registration.

8.5 CRITERIA FOR ISSUING CERTIFICATES OF REGISTRATION - The Harbormaster shall assure that Certificates of Registration are issued in such a manner as to not exclude the public's reasonable use of the public waters within the City limits as provided for by the laws of the State of Vermont. Certificates of Registration shall be allocated on a first-come, first-serve basis for new moorings. Applications must be obtained from the Harbormaster and each application shall require all information deemed necessary and appropriate by the Harbor Commission to determine compliance with this ordinance. The City shall annually publish, a public notice advertising the availability of mooring locations within the designated Mooring Management Zones.

8.6 GRANT OR DENIAL OF A CERTIFICATE OF REGISTRATION; WAITING LIST; NOTIFICATION - An applicant will be notified, within thirty (30) days from the date of application, of the receipt and status of the application (i.e. denial, approval, or placement on waiting list). Each Certificate of Registration issued shall designate the mooring location. If an applicant on the waiting list is contacted by certified mail and offered a Certificate of Registration, that person will have seven (7) days in which to accept or reject the offer. If the applicant rejects the offer or does not respond in a timely manner, that person's position on the waiting list will be relinquished and a new application will be required in order to be considered at a later date. Full payment of the Certificate of Registration fee will be required within ten (10) days of acceptance. Position on the waiting list is determined by date of receipt of application. Vessel size may also be a factor in awarding Certificates of Registration due to size restrictions of the mooring locations that become available for allocation.

8.7 DURATION OF CERTIFICATES OF REGISTRATION; RENEWAL; TRANSFERABILITY - The duration of a Certificate of Registration is one year.

- a) A Certificate of Registration starts on March 1 and terminates on February 28 of the following year.
- b) Renewal notices will be sent out in January of each year. Applications for Certificates of Registration must be received and the required fee paid on or before February 28. Failure to do so will result in the reallocation of the mooring location to a person on the waiting list. Certificates of Registration approved after February 28, will be permitted for the balance of the year at an assigned mooring location.
- c) A Certificate of Registration and location is not transferable in any fashion by the Certificate holder. If the ownership of a vessel changes and the prior owner (the Certificate holder) does not have another vessel to place on the mooring, and the new owner(s) desires that mooring, the new owner(s) must apply to the Harbormaster for a Certificate of Registration with a \$15.00 fee for the remainder of the season. This Certificate of Registration will terminate at the end of the season.
- d) No mooring location identified in an Individual Certificate of Registration can be rented, sold or sub-leased. The Certificate of Registration is only for the owner's vessel identified on the Certification of Registration. The Certification of Registration specifies the model, serial number and length of vessel.
- e) Certificate holders are allowed to change or increase the size of a vessel on their mooring by submitting a new application with a \$15.00 fee and obtaining written approval by the Harbormaster.
- f) An Individual Certificate of Registration is for private, non-commercial use only. Certificate holders are prohibited from chartering, selling, or brokering boats or carrying on any such businesses which involve the commercial or business use of the mooring in any way. (See Section 8.2[b]) A sale between private parties is not prohibited by this provision.
- g) Mooring locations authorized by a Marina or Yacht Club Group Certificate of Registration may be rented

or leased but not sold or sublet.

- h) A person who has timely paid the requisite mooring registration fee and received a Certificate of Registration shall, between March 1 and July 15, install approved tackle at a City-designated mooring location. Said person shall moor an authorized vessel during the one-year duration of the Certificate. This Certificate of Registration, however, is not automatically renewable and an application for renewal may, in fact, be denied.

8.8 EXPANDING CAPACITY; FIVE-YEAR LOTTERY - If and when demand in Mooring Management Zones A, B, and C exceeds their maximum capacity for mooring locations, the Harbor Commission will evaluate the options of expanding the respective zones, requiring more space-efficient mooring equipment or systems, or opening the Certificate of Registration process to a lottery. An annual lottery open to the people on the waiting list plus the people who have already renewed their licenses at least 6 times will be conducted. The lottery process and other options for allocating mooring locations would assure that those on a waiting list will eventually have an opportunity to gain access of a mooring location, thus, insuring reasonable availability of public use of all navigable waters in Lake Memphremagog, Clyde River, and Black River in the City limits.

SECTION 9: GENERAL REQUIREMENTS

9.1 LOCATION AND PLACEMENT - A mooring must be placed by the owner at the location and within the swing area approved by the Harbormaster. Each Certificate of Registration shall designate the mooring location. A mooring system must be placed by a Certificate holder in a location, which does not allow a vessel to swing into another vessel moored on a previously registered and properly placed mooring.

9.2 TACKLE - The ownership, care, maintenance and registration of all mooring tackle is the responsibility of the Certificate holder, not the City. Mooring tackle systems that will be accepted are those that follow common marine practices (i.e. the Hazelett Spar System, Civil Engineering Associates System, or those in the Chapman's Piloting Book in Chapter 11 as a permanent mooring) and must be adaptable to the radius of the mooring station offered. Any other system must be approved by the Harbor Commission. All mooring tackle will be examined and approved by the Harbormaster before being installed and be tagged with mooring numbers.

9.3 BUOY MOORING TAGS - For buoy moorings, a numbered identifying tag will be issued with the written Certificate of Registration. The tags shall be attached above the water in a visible location on each mooring buoy. The Certificate holder shall be responsible for affixing the tag to the buoy. On request by the Harbormaster or his agent, the owner or captain of any vessel secured to a mooring in Mooring Management Zones A, B, and C shall display a valid Certificate of Registration.

9.4 ROWBOATS AND DINGHIES - No person shall make fast or secure a vessel to any mooring already occupied by another vessel, or to a vessel already moored, except that a rowboat or dingy regularly used by a larger vessel for transportation of persons or property to and from shore may be secured to such larger vessel or to the mooring regularly used by such larger vessel.

9.5 SPECIAL CONDITIONS - The Harbormaster has the discretion to authorize certain uses of moorings not otherwise authorized under this ordinance, such as:

- a) Rafting - Rafting is permitted during suitable weather conditions in the Harbormaster's discretion. Rafting will not be permitted on an overnight basis, when boats are unoccupied, or when a threat to safety exists as determined by the Harbormaster. Rafting will not be permitted as a means of circumventing the provisions of Section 8 or the spirit of this ordinance.
- b) Invitees and Guests - Occasional use of moorings by third parties may be allowed with permission of the Certificate holder, provided the period of such use does not exceed five (5) consecutive days and the vessel so secured does not present a safety hazard due to its size or other condition given the type of equipment and/or system(s) authorized by the Certificate of Registration. Moorings on an Individual Certificate of Registration may not be rented.

9.6 INSPECTION - Each year Certificate holders shall have their pennants inspected by and made usable to the satisfaction of, the Harbormaster. Pennant diameter may be increased but the length may not be altered. Visual inspection of mooring equipment above the water line, including the vessel attachment point, will be done monthly or more frequently at the discretion of the Harbormaster. The entire mooring system of each Certificate holder will be

inspected every two years. The Certificate holder will have to repair or replace a mooring within thirty (30) days after being notified in writing by the Harbormaster that the mooring is defective, or within such lesser time as specified by the Harbormaster if circumstances should warrant emergency action.

9.7 LIABILITY - It is the Certificate holder's responsibility, not the City's, to install, repair, replace and remove mooring tackle at the location specified by the Harbormaster. Any person mooring or anchoring a vessel within the public waters subject to this ordinance, shall assume all risk of damage or loss to his property and the City of Newport assumes no risk on account of fire, theft, Act of God, or damages of any kind to a vessel located in public waters within the City limits.

9.8 INTERFERENCE - No mooring or its associated tackle or vessel shall be allowed to be placed in such a manner as to constitute a hazard to navigation or interfere with previously authorized moorings, or with yacht clubs, marinas, fairways, boat houses, or any public swimming areas.

SECTION 10: ANCHORING; OCCUPIED ANCHORING; UNOCCUPIED ANCHORING

10.1 ANCHORING - Anchoring a vessel is permitted in the public waters of the City of Newport in a safe and prudent manner so as not to impede public use of said waters for navigation. No transient or visiting vessel may anchor in excess of three (3) days within a Mooring Management Zone. There will be no fees charged for utilization of an anchorage by a transient or visiting vessel.

10.2 OCCUPIED ANCHORING - In areas designated A, B, C, and fairways (See "Attachment C") occupied anchoring is allowed during daylight hours. Occupied anchoring is permitted overnight in areas designated A, B, and C. No overnight occupied anchoring is permitted in designated fairways.

10.3 UNOCCUPIED ANCHORING - No unoccupied anchoring shall occur at all within designated fairways (See "Attachment C"). A transient or visiting vessel may not be fixed to a mooring, except as authorized in Section 9.5 or at a facility owned by a Marina or Yacht Club Group Certificate holder.

SECTION 11: ABANDONMENT

11.1 RELINQUISHMENT; ABANDONMENT; AND FORFEITURE -

- a) A Certificate of Registration holder may relinquish his certificate at any time upon written notification to the Harbormaster. Any mooring tackle not removed within (30) days after receipt of such notification shall be considered abandoned and may be removed pursuant to sub.part c), below.
- b) A Certificate holder may be deemed to have forfeited his certificate by reason of any of the following if not corrected within forty-eight (48) hours of notice in writing from the Harbormaster.
 - i) Placement of the mooring at a location other than that specified on the Certificate of Registration;
 - ii) Failure to pay the annual fee when due;
 - iii) Failure to repair or replace a mooring within thirty (30) days after being advised in writing by the Harbormaster that the mooring is defective or within such lesser time as specified by the Harbormaster if circumstances should warrant.
 - iv) Failure to demonstrate use of a Certificate of Registration by installing mooring tackle by July 15, shall be evidence that the Certificate holder has not used the Certificate of Registration, and, therefore, that Certificate of Registration is expired and the mooring is subject to reassignment.
 - v) Failure to moor an authorized vessel to the assigned mooring location during the one-year duration of the Certificate, shall result in expiration of that Certificate of Registration and will serve as a basis for denial of renewal of a Certificate of Registration for the coming year.
- c) Any abandoned or forfeited mooring tackle or any mooring tackle installed within Mooring Management Zones A, B, and C without permission from the Harbormaster may be removed at the expense of the owner, in the event he fails to remove same, within forty-eight (48) hours after notice in writing from the Harbormaster. The notice shall be secured to the mooring and mailed to the then known address as identified on the owner's Certificate of Registration and if the owner is unknown, then such notice shall be secured to the mooring only.
- d) Unauthorized, or non-standard unusable mooring equipment may be subject to confiscation by the

Harbormaster.

SECTION 12: VIOLATIONS AND ENFORCEMENT

12.1 VIOLATIONS AND ENFORCEMENT - Violation of any rules and regulations promulgated under this ordinance shall be considered a violation of this ordinance. Violations of this ordinance shall be a civil matter enforced in accordance with the provisions of Section 24 of the City Charter and Title 24 V.S.A. Section 1974a and Section 1977 et seq. The following are violations of this ordinance:

- a) Placement of any mooring in the navigable waters of the City of Newport without a Certificate of Registration, except in Mooring Management Zones D, E, F, G, H, and J, and K.
- b) Use of a mooring by anyone other than the certificate holder, his guests or invitees. (See Section 9.5)
- c) Failure to comply with any order issued by the Harbormaster or Harbor Commission pursuant to this ordinance, and/or the Rules and Regulations thereunder.
- d) Failure to comply with the terms of any requirements for a Certificate of Registration.

12.2 PENALTIES - No action may be brought under this section unless the alleged offender has had at least seven (7) days written notice that a violation exists. Each day that a violation is continued thereafter shall constitute a separate offense and shall not require that additional notice be served. Service of said notice shall be as follows: Upon the addressee whose name appears on the Certificate of Registration by certified mail or if the violator does not have a Certificate of Registration, to such addressee as the City of Newport may determine upon investigation.

SECTION 13: REVOCATION OF CERTIFICATE OF REGISTRATION

13.1 GROUNDS FOR REVOCATION - The Harbor Commission shall have the authority to revoke any certificate when it has been determined that:

- a) A Certificate holder has violated this ordinance or Rules and Regulations adopted to implement it pursuant to Section 3.3.
- b) It has become necessary to make a change in fairways or protection zones to correct an unsafe condition, or to prevent actual or potential adverse impacts on recreational and other uses of the waters, including private or public water supplies, Class I and II wetlands, threatened and endangered plant and animal species listed pursuant to 10 V.S.A. Chapter 123, fish or wildlife, underwater historic property, public lands and natural scenic areas. In such cases, the Certificate holder shall be granted an amended certificate assigning another location for the mooring or added to the top of the waiting list.

13.2 NOTICE AND PROCEDURE FOR REVOCATION; EFFECTIVE DATE -

- a) Immediately upon receipt of notification from the Harbormaster of an emergency or an unsafe or hazardous condition or twenty (20) days after receipt of written notice from the Harbormaster for all other reasons, a Certificate holder may file with the Harbor Commission and City Clerk a written statement responding to the stated grounds for revocation and request a hearing.
- b) The Harbor Commission shall within forty-eight (48) hours revoke a Certificate of Registration in any emergency matter, and provide notice and an opportunity for a hearing promptly after revoking the Certificate. The Harbor Commission shall promptly issue an order reinstating a Certificate of Registration revoked on the basis of a notification from the Harbormaster of an emergency or an unsafe or hazardous condition if the Harbor Commission determines after a hearing that revocation was not warranted. Otherwise, the Harbor Commission shall provide notice and convene a hearing, if requested, within thirty (30) days of the Harbormaster's revocation notice. In the absence of notification from the Harbormaster of an emergency or an unsafe or hazardous condition, a Certificate of Registration shall remain valid unless and until the Harbor Commission issues a final order revoking the Certificate.

13.3 REINSTATEMENT - The Harbor Commission may reinstate any Certificate of Registration at such time as the violation or condition causing revocation is corrected, if the Certificate holder is at such time otherwise entitled to such certificate.

SECTION 14: APPEALS; WAIVERS

14.1 APPEALS OF HARBORMASTER'S ACTS OR DECISIONS TO THE HARBOR COMMISSION - The Harbor Commission will serve as a Board of Appeal for any person seeking to contest any decision of the

Harbormaster. When a person is aggrieved by any order of the Harbormaster, such person may appeal to the Harbor Commission by filing a notice of appeal with the City Clerk and a copy with the Harbormaster. Such notice of appeal must be filed within ten (10) days of the date of such decision or act of the Harbormaster. In cases where the action appealed is an enforcement action of the Harbormaster, a person may request simultaneously with the filing of the appeal, a request for a stay of enforcement. The Harbor Commission shall set a date and place for hearing of an appeal under this ordinance, which shall be within thirty (30) days of filing of the notice of such appeal. In a case where a stay of enforcement is requested, the Commission shall meet within seventy-two (72) hours to hear the request and approve or deny the request and set a date for a hearing on the merits of the appeal. The Harbor Commission shall mail to the applicant a copy of such notice at least fifteen (15) days prior to the hearing date. The Harbor Commission may decide the appeal at its next regularly scheduled meeting, or continue the time for decision for not more than fifteen (15) days. All actions taken by the Commission shall be supported by written Findings of Fact and Orders.

14.2 WAIVERS - For good cause, the Harbor Commission may grant a limited waiver of the terms and requirements of this ordinance provided that the circumstances necessitating the waiver are beyond the control of the person requesting the waiver. A request for waiver may be initiated by filing a notice with the City Clerk and a copy with the Harbormaster. The Harbor Commission shall notice and hold a hearing, and issue a decision, in the same manner as appeals pursuant to Section 14.1 of this ordinance.

14.3 APPEALS TO COURT - Any person aggrieved by a final decision of the Harbor Commission, in any proceeding other than an enforcement action, may appeal to the Vermont Environmental Court within thirty (30) days of the date of the written decision pursuant to 10 V.S.A. section 1424(f) and Rule 12 in Appendix D of the Vermont Use of Public Waters Rules. Appeals in an enforcement action shall be taken to according to applicable law.

SECTION 15: AMENDMENT

15.1 AMENDMENT OF THE ORDINANCE - Any proposed amendments to this ordinance shall be submitted to the Water Resources Panel of the Natural Resources Board to assure adequate review, comment, and, if necessary, corrective action to assure that proposed changes are within the authority delegated under 10 V.S.A. Section 1424(f).

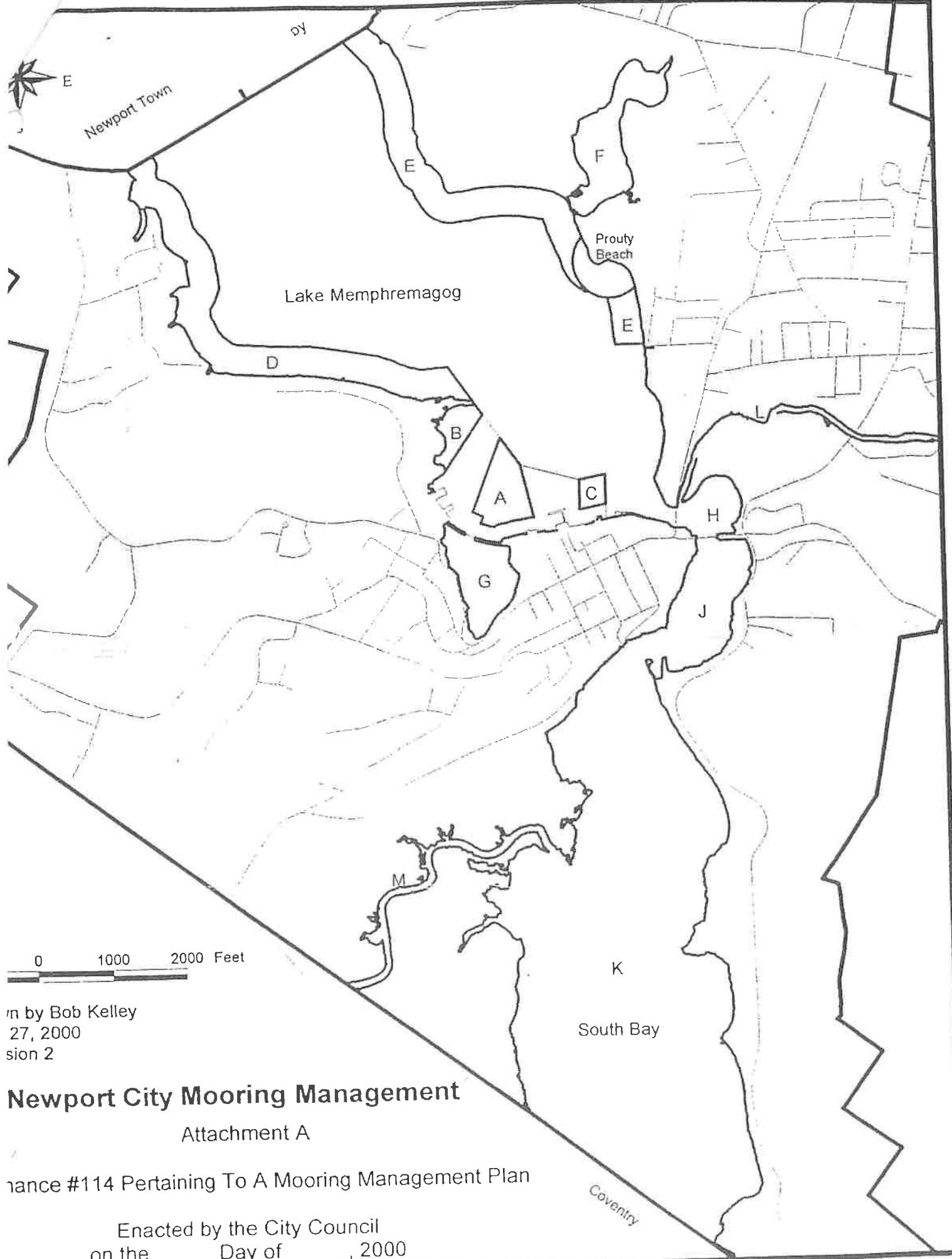
The foregoing ordinance was amended by the City Council on September 19, 2005.

Approved: _____

Mayor

Attested: _____

City Clerk



Map by Bob Kelley
 27, 2000
 Revision 2

Newport City Mooring Management
 Attachment A

Ordinance #114 Pertaining To A Mooring Management Plan

Enacted by the City Council
 on the _____ Day of _____, 2000

Newport City Mooring Management

Attachment B

Ordinance #114 Pertaining To Mooring Management of Public Waters

Enacted by the City Council
On the 4th Day of December, 2000

Zone A:

Beginning at a point that is 200 feet from northeasterly edge of the railroad bridge, Longitude -72° 12' 59.362" Latitude 44° 56' 13.467", then northerly 100 feet to a point, Longitude -72° 12' 58.857" Latitude 44° 56' 14.384", then westerly 150 feet to a point, Longitude -72° 12' 0.773" Latitude 44° 56' 15.001", then northerly 1070 feet to a point, Longitude -72° 12' 55.372" Latitude 44° 56' 24.862", then southeasterly 840 feet to a point, Longitude -72° 12' 51.696" Latitude 44° 56' 21.136", then southerly 400 feet to a point, Longitude -72° 12' 49.389" Latitude 44° 56' 14.185", then westerly along a parallel line 200 feet from the shoreline to the point of beginning.

Zone B:

Beginning at the easterly most point of Farrant's Point, Longitude -72° 13' 0.116" Latitude 44° 56' 29.692", then southerly along the shoreline to a point, Longitude -72° 13' 5.764" Latitude 44° 56' 20.602", then northeasterly 920 feet to a point, Longitude -72° 12' 58.553" Latitude 44° 56' 28.099", then northwesterly 200 feet to the point of beginning.

Zone C:

Beginning at a point 200 feet from the shoreline and 200 feet east of the City dock, Longitude -72° 12' 44.669" Latitude 44° 56' 15.041", then north 400 feet to a point, Longitude -72° 12' 40.649" Latitude 44° 56' 18.991", then easterly 370 feet to a point, Longitude -72° 12' 35.575" Latitude 44° 56' 19.683", then south 400 feet to a point 200 feet from the shoreline, Longitude -72° 12' 35.595" Latitude 44° 56' 15.739", then westerly 370 feet to the point of beginning.

Zone D:

Beginning at the easterly most point of Farrant's Point, Longitude -72° 13' 0.116" Latitude 44° 56' 29.692", then northwesterly along the shoreline to a point at the intersection of the Newport City/Newport Town line, Longitude -72° 14' 3.907" Latitude 44° 57' 1.651", then northeasterly along the Newport City/Newport Town line to a point 400 feet from the shoreline, Longitude -72° 13' 59.101" Latitude 44° 57' 3.635", then southeasterly along a parallel line 400 feet from the shoreline to a point, Longitude -72° 13' 4.848" Latitude 44° 56' 34.503", then southeasterly 595 feet to the point of beginning.

Zone E:

Beginning at a point on the northern edge of the Landing Street Boat Launch, Longitude -72° 12' 27.450" Latitude 44° 56' 36.976", then northwesterly along the shoreline to a point, Longitude -72° 13' 18.305" Latitude 44° 57' 20.550", then south westerly along the Newport City/Derby Town line to a point 400 feet from shoreline, Longitude -72° 13' 22.973" Latitude 44° 57' 18.607", then southeasterly along a parallel line 400 feet from the shoreline to a point, Longitude -72° 12' 33.011" Latitude 44° 56' 36.990", then east 400 feet to the point of beginning. Except no mooring shall be allowed within 500 feet from a point along Prouty Beach, Longitude -72° 12' 33.789" Latitude 44° 56' 48.180" and no mooring shall be allowed within 300 feet of the mouth of Pender Cove.

Zone F:

Pender Cove, which is located east of Zone E and just north of Prouty Beach.

Zone G:

Prouty Bay, which is located south of the Prouty Bay Railroad Bridge, west of the Gateway Center.

Zone H:

The bay located between the Causeway Bridge and Long Bridge.

Zone J:

The bay located between the Long Bridge and the South Bay Railroad Bridge.

Zone K:

South Bay, which is located south of the South Bay Railroad Bridge and extends to the Newport City limits.

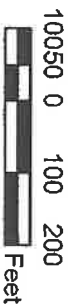
*Note: Mooring Management Zones F, G, H, J, and K are identified on Attachment A.

Newport City Mooring Management

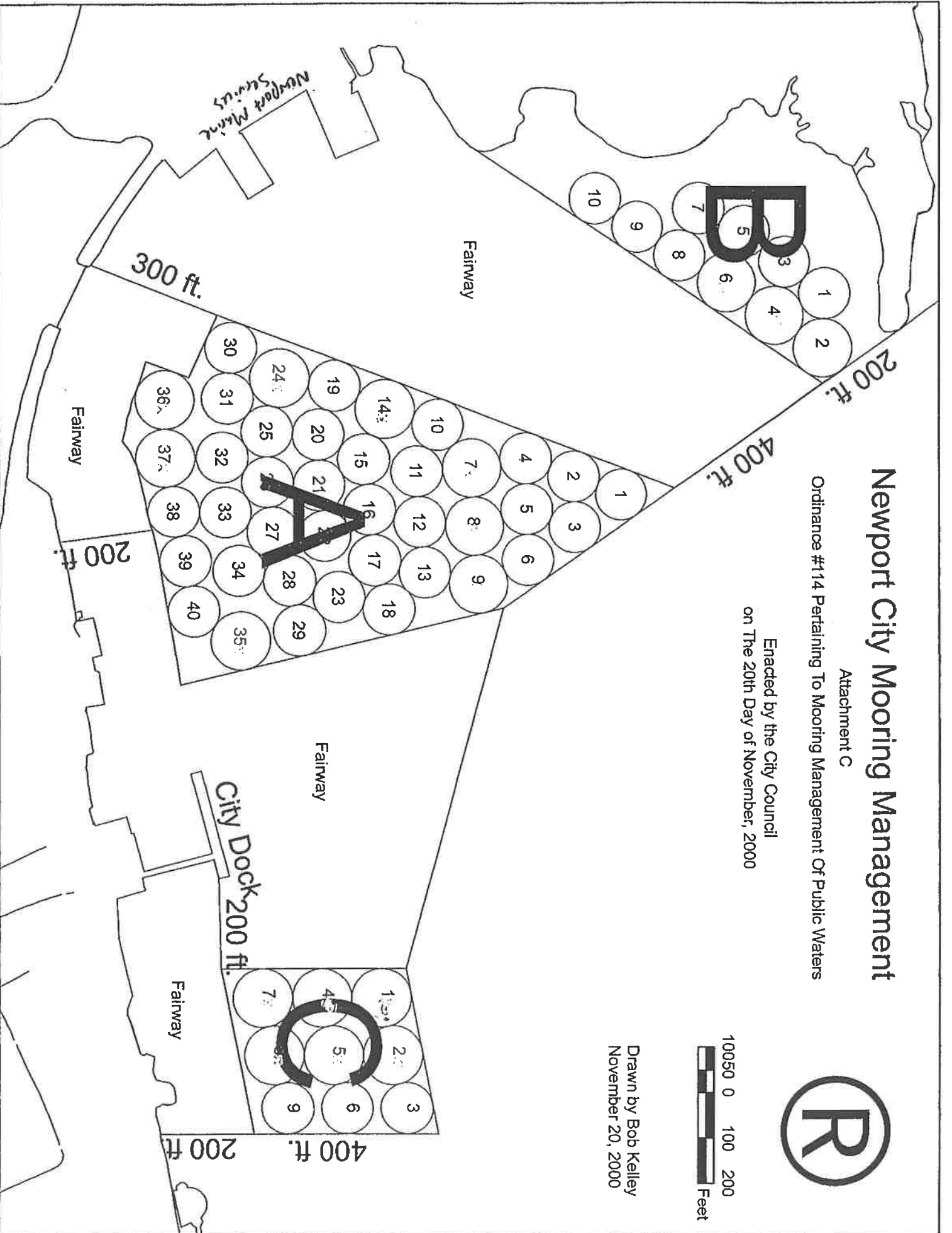
Attachment C


Ordinance #114 Pertaining To Mooring Management Of Public Waters

Enacted by the City Council
on The 20th Day of November, 2000



Drawn by Bob Kelley
November 20, 2000



RECEIVED & RECORDED
On 10/31/11
At 9:47 A. M.
Book 15 Page 229-231

City Clerk, City of Newport, VT

State Of Vermont
Vermont Natural Resources Board
Water Resources Panel

In re City of Newport, Vermont
Mooring Management Zone
Lake Memphremagog
No. UPW-11-02

VT Proposed Rule 11P021

MEMORANDUM OF DECISION

This proceeding involves a petition, filed pursuant to 3 V.S.A. §806, which requests that the Water Resources Panel (Panel) of the Vermont Natural Resources Board issue a rule, pursuant to its authority under 10 V.S.A. §§1424 and 6025(d)(4), to amend the existing Appendix D to the Vermont Use of Public Waters Rules and extend the time period for the delegation of authority to the City of Newport, Vermont to administer a Mooring Management Zone in Lake Memphremagog.

For the reasons stated below the Panel will extend the delegation to January 2021.

I. History

On January 8, 2011, John O. Ward, Jr., City Manager, on behalf of the City of Newport, Vermont, filed a petition, pursuant to 10 V.S.A. §1424, asking the Panel to amend Rule 16 of Appendix D to the Vermont Use of Public Waters Rules to extend the delegation of authority to the City to administer its Mooring Management Zone (MMZ) in Lake Memphremagog for an additional five years, to January 2016.

Present UPW rules delegate to the City the authority to run a MMZ in Lake Memphremagog. See, Vermont Use of Public Waters Rules, Appendix D. This delegation expired on January 1, 2011.

On May 10, 2011, the Panel voted to propose an amendment to Rule 16 in Appendix D to the Use of Public Waters Rules to extend indefinitely the delegation of authority to the City. Following this meeting, based on comments received from the Agency of Natural Resources suggesting that an indefinite extension might be inadvisable, the Panel modified its initial proposal and proposed to amend the expiration date in Rule 16 of Appendix D to January 1, 2021.

The Panel filed the proposed amendments with the Interagency Committee on Administrative Rules (ICAR) and, on June 13, 2011, the Panel appeared before ICAR.

On June 14, 2011, the Panel received ICAR's approval of the rule proposal, and on June 16, 2011, the Panel filed the rule proposal with the Secretary of State's Office.

The proposed rule reads:¹

Rule 16. This delegation shall expire on January 1, ~~2014~~ 2021. The Board may terminate this delegation, for cause or without cause, upon six months notice to the City as provided for in 10 V.S.A. § 1424(f)(2).

On July 7, 2011, the Panel sent notice of the proposed rule to various persons or organizations with an interest in public waters in Vermont, including local and regional officials, lake users and state agencies. In addition, the Panel posted the proposed rule on its web site. The proposed rule was published by the Secretary of State in newspapers of record on June 30, 2011, advising the public of public hearings and the opportunity to comment on the rule.

Public hearings on the proposed rule were convened on July 26, 2011 at approximately 7:00 p.m. in Barnard, Vermont, and on August 2, 2011 at approximately 7:00 p.m. in Poultney, Vermont. A total of thirty-seven people signed the attendance sheets for these public hearings; no person who attended the hearings provided comment on the proposed amendment to Rule 16 of Appendix D.

The deadline for filing written comments was August 31, 2011. One written comment was filed by the Agency of Natural Resources.

The Panel deliberated at its meeting on October 11, 2011.

II. Discussion

Only one comment on the rule was filed. In May 2011, responding to the Panel's request for input before the proposed rule was filed, the Agency of Natural Resources suggested that there should be an expiration date to the delegation of authority, so that the Panel can continue to monitor the City's management of the MMZ. The Agency did not suggest a specific date, but noted that perhaps an extension of five years might not be long enough.

The Panel agreed with the Agency and therefore modified the proposed rule to establish January 1, 2021 as the expiration date for the present delegation of authority

¹ Present language is struck; proposed new language is underlined.

to the City in Rule 16 of Appendix D. This date is longer than the extension requested by the City.

The City has been administering the MMZ for several years. In that time, the Panel has received no complaints or other contacts concerning the MMZ or the City's management thereof.

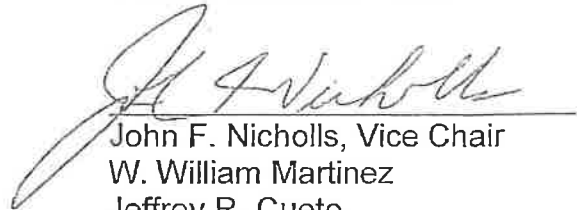
III. Conclusion

The proposed rule amends Appendix D and extends the delegation of authority to the City to administer its Mooring Management Zone (MMZ) in Lake Memphremagog from January 1, 2011 to January 1, 2021.

The Panel will proceed to file the amendments to the existing rule as a proposed final rule with the Secretary of State and the Legislative Committee on Administrative Rules with the intention of adopting the proposed final rule as a final rule.²

Dated at Montpelier, Vermont this 25th day of October 2011.

Natural Resources Board
Water Resources Panel



John F. Nicholls, Vice Chair
W. William Martinez
Jeffrey R. Cueto
Peter F. Young, Jr.

² Panel Member William Boyd Davies has recused himself from this decision because he is the attorney for the City of Newport.

APPENDIX D

RULES REGULATING THE MOORING OF VESSELS WITHIN LAKE MEMPHREMAGOG AND OTHER PUBLIC WATERS WITHIN THE CITY OF NEWPORT, VERMONT

10 V.S.A. § 1424(f)

Initial Rules Adopted November 2, 2000.

Amended Rules Effective December 30, 2011

Rule 1. All public waters in Lake Memphremagog, the Clyde River, and the Black River within the city limits of the City of Newport, Vermont (“City”), are hereby designated a Mooring Management Area. The Mooring Management Area is depicted on a map, entitled “Newport City Mooring Management - Attachment A, Ordinance #114 Pertaining To Mooring Management of Public Waters (September 11, 2000 Revision 4),” hereby incorporated and referred to as the City’s “Attachment A.”

Rule 2. Within the Mooring Management Area, ten (10) Mooring Management Zones (“MMZ”) are hereby created and designated as depicted in Attachment A by the letters A, B, C, D, E, F, G, H, J, and K described by coordinates in a document, entitled “Newport City Mooring Management - Attachment B, Ordinance #114 Pertaining To Mooring Management of Public Waters (September 11, 2000), hereby incorporated and referred to as “Attachment B.”

Rule 3. Pursuant to 10 V.S.A. § 1424(f), the Board delegates authority to the City to regulate mooring and anchoring in the Mooring Management Area to protect the public health, safety, and general welfare by prohibiting impediments to navigation and conflicts with normal uses of public waters. The City shall not restrict swimming, fishing, boating, and any other public uses conducted in accordance with state law, except mooring, in the Mooring Management Area. This delegation shall be implemented through the MMZ created by Rule 2. Moorings are prohibited in all navigable public waters within the City not specifically identified as MMZ in Rule 2.

This delegation shall be effective only when both of the following requirements are met:

- a. The City has duly adopted an Ordinance for implementing this delegation pursuant to Section 23 of the City Charter; and

- b. The Board has determined in writing that the implementing Ordinance, is consistent with the provisions of 10 V.S.A. § 1424, any general management policies pertaining to the use of public waters adopted by the Board, and these Rules.

Rule 4. When the delegation to the City is in effect, moorings are prohibited in the Mooring Management Area except as may be allowed in the MMZ under the implementing ordinance.

Rule 5. The City's implementing ordinance shall contain the following provisions:

- a. No existing moorings shall be "grandfathered" in the Mooring Management Area. However, in the first year that the Ordinance is in effect, first priority in the issuance of Certificates of Registration shall be given to persons with existing moorings as of September 18, 2000, to assure an orderly transition to management of moorings within the MMZ.
- b. Within any MMZ, the City may prohibit new moorings or require relocation of existing moorings taking into consideration the actual or potential adverse impacts on fairways, recreational and other uses of the waters, including, but not limited to, private or public water supplies, Class I and II wetlands, endangered plant and animal species as provided for in 10 V.S.A. Chapter 123, fish or wildlife habitat, underwater historic property, public lands and natural scenic areas.
- c. Certificates of Registration authorizing moorings shall be for a specified period of time determined by the City with due regard for the economic considerations attending the regulated activity. All such Certificates of Registration shall expire within a period not to exceed one year if not used. All Certificates of Registration shall be issued for a period not to exceed the term of this delegation.

Rule 6. The City's implementing Ordinance shall identify classes of applicants, describe the process for obtaining Certificates of Registration, establish criteria for granting Certificates of Registration, set forth the grounds for forfeiture and revocation of Certificates of Registration and address enforcement of the implementing Ordinance.

Rule 7. The City's implementing Ordinance shall ensure that the general public is able to compete for available mooring capacity in all MMZ on an equitable basis with City residents: After the first year the Ordinance is in effect, Certificates of Registration shall be allocated on a first-come, first-serve basis for all moorings. If maximum mooring capacity within regulated MMZ is reached, the City

shall institute a lottery or such other measures as are necessary to assure that all applicants will eventually be allocated mooring locations.

Rule 8. The City shall require all applicants to demonstrate that:

- a. Moorings are located within a reasonable distance of a point of access;
- b. The point of access has adequate on-shore support facilities for the number of moorings served; and
- c. The point of access support facilities are consistent with applicable zoning requirements and state law.

Rule 9. The City may establish and collect reasonable fees for Certificates of Registration. However, said fees shall be established only to meet the administrative costs of the City directly related to the regulation of moorings within the MMZ. Any schedule of fees shall be adopted on an annual basis by the City Council, posted at the City Clerk's office, and be provided to the public upon request made to the City Clerk or Harbormaster.

Rule 10. The City may enforce the implementing Ordinance through its general police power, consistent with the penalty and enforcement provisions of the City Charter.

Rule 11. The City may appoint a Harbormaster to administer and enforce the implementing Ordinance and a Harbor Commission to, among other things, hear appeals, hear and decide revocation proceedings, consider waiver requests, recommend Ordinance amendments and proposed Rules and Regulations to the City Council, and conduct studies and make recommendations to the City Council on water use and the conditions of navigable waters within the City limits.

Rule 12. The City's implementing Ordinance shall provide for a process by which a person in interest aggrieved by a decision or act of the Harbormaster may appeal to the Harbor Commission. The Ordinance also shall specify that appeals from any final action of the City, other than an enforcement action, shall be filed with the Environmental Court within 30 days.

Rule 13. The City may, from time-to-time, amend the implementing Ordinance consistent with its delegated authority and pursuant to Section 23 of the City Charter, provided that a copy of any proposed amendment(s) is filed with the Secretary at least 45 days prior to it/their adoption by the City

Council. The Secretary shall review, submit written comment, and, if necessary, recommend corrective action to assure that proposed changes are within the authority delegated under 10 V.S.A. § 1424(f) and consistent with these Rules. Failure to timely notify the Secretary of proposed Ordinance amendments or to take corrective action may constitute grounds for termination of the delegation authorized by these Rules.

Rule 14. The City may adopt Regulations to facilitate the administration of the implementing Ordinance, provided that these Regulations are consistent with powers expressly delegated to the City by these Rules and the provisions of the Ordinance. Such Regulations may be adopted, amended, or repealed in the same manner as prescribed for any ordinance under the Section 23 of the City Charter. A copy of any proposed Regulations shall be filed with the Secretary and the Secretary reserves the right to file written comment and take corrective action as provided for in Rule 13.

Rule 15. Any powers not expressly delegated to the City by these Rules and incorporated in the implementing Ordinance as approved by the Secretary under Rule 3 and, if amended, under Rule 13, shall be retained by the Secretary. If another state or federal agency has jurisdiction over the navigable waters within the City limits otherwise subject to regulation under 10 V.S.A. § 1424, the other agency's rules shall apply if inconsistent with, or more restrictive than, the implementing Ordinance.

Rule 16. This delegation shall expire on January 1, 2021. The Secretary may terminate this delegation, for cause or without cause, upon six months notice to the City as provided for in 10 V.S.A. § 1424(f)(2).

Rule 17. The Secretary may propose rules extending and/or expanding the scope of this delegation of authority to the City when the City petitions the Secretary under 10 V.S.A. § 1424(f) for such an extended and/or expanded delegation.

Rule 18. For purposes of these Rules, the terms below shall have the following meanings:

- a. Anchoring shall mean to secure a vessel by use of an anchor or by attachment to another vessel or object for a period not exceeding seventy-two (72) hours. Vessels anchored within a MMZ for a period exceeding seventy-two (72) hours shall be considered to be moored.
- b. Certificate of Registration shall mean a written mooring registration, granted by the City, and its associated numbered identifying tag that shall be attached above the water in a visible location on each mooring buoy.

- c. Existing Mooring shall mean any mooring determined by the City to have been established before and including September 18, 2000.
- d. New Mooring shall mean any mooring determined by the City to have been established after September 18, 2000.
- e. Mooring shall mean any equipment, structure or system(s) for securing a vessel in the water beyond the mean water level. Each vessel shall be considered to be attached to a separate mooring for the purpose of counting moorings. Mooring shall not mean docks that are either exempt or permitted pursuant to 29 V.S.A. Chapter 11. Mooring shall not mean anchoring.
- f. Mooring Management Zones (MMZ) shall mean clearly delineated areas of navigable waters within the City limits, in which the Board or Secretary and City have determined that the placement of moorings requires regulation in the public interest.
- g. On-shore Support Facilities include, but are not limited to, roads or other means of access, parking areas, sanitary waste disposal facilities and trash disposal.
- h. Rule or Rules mean “Rules Regulating the Mooring of Vessels within Lake Memphremagog and Other Navigable Waters of the City of Newport, Vermont,” adopted by the Board or Secretary.
- i. Vessel shall mean every description of watercraft used or capable of being used as a means of transportation on water including but not limited to amphibian or pontoon aircraft.

City Manager..... (802) 334-5136
City Clerk / Treasurer..... 334-2112
Public Works..... 334-2124
Zoning Adm. / Assessor..... 334-6992
Recreation / Parks..... 334-6345
Fax..... 334-5632



City of Newport
222 Main Street
Newport, Vermont 05855
www.newportvermont.org

June 1, 2020

Oliver Pierson
Lakes and Ponds Program Manager
1 National Life Drive, Davis 3
Montpelier, VT 05620-3522

Dear Mr. Pierson,

We write in response to your May 14th request for supplemental information needed to render a completeness determination regarding the City of Newport's (the "City") May 3rd petition under the Vermont Use of Public Waters Rules for delegation of authority to regulate the mooring of vessels on portions of public waters within the City's boundaries, like Lake Memphremagog, the Clyde River and the Black River, pursuant to 10 V.S.A. § 1424(f) (the "City Petition"). The City is hopeful that the following information is sufficient for the Agency of Natural Resources ("ANR") to render a formal determination that the City Petition is administratively complete.

In response to your specific requests, the City responds as follows:

1. ANR Request: Please verify that the petition includes copies of all documents the City intends to submit in support of the delegation, and that there are no additional or more recent pieces of information that could support the petition process, such as updated maps of the mooring management zones or any other factors that impact the content of Ordinance 114 (September 19, 2005).

City Response: Other than the updated list of parties potentially interested in the City Petition attached hereto and provided in response to Request #2, below, the City does not have any more recent information regarding the proposed mooring management zones, and as noted in its Petition, the City does not propose any changes to the mooring management zones from what was approved in the previous delegation issued in 2011. Unless ANR makes a specific request for information or requests a specific change to the proposed mooring management zones, the City believes the information that was previously provided is sufficient to support the delegation of authority proposed in the City Petition.

2. ANR Request:

- a. Please provide a list of the categories of people, enterprises, and governmental entities potentially affected by the proposed extension of the delegation, and
- b. The estimated costs and benefits anticipated. I anticipate that this request or calculation of costs, which stems from the NRB Rules of Procedure, Section 15(a)(6), should be straightforward for the City to provide, as the City sets the mooring fees, keeps records of who pays them, and how much revenue the fees generate each year. This information will facilitate the upcoming rulemaking process, as the rulemaking filing forms focus heavily on the economic impact of a proposed rule and we typically receive questions along these lines during legislative committee review.

City Response:

- a. Please find a proposed Certificate of Service attached hereto that includes contact information for people, enterprises, governmental entities other than ANR that may be affected by the proposed petition. Please note that the City included the names of some shoreline property owners, tenants of condominiums and owners of boathouses proximate to the current mooring management zones and current users of the moorings. The City did not include, however, all individuals who own property along Lake Memphremagog, media organizations or members of the Legislature in this list. If the ANR would like names of City property owners, the City can provide an excerpt of its Grand List in a supplemental response.
- b. The mooring management zones and their use by seasonal and transient boaters have significant direct and indirect benefits to the City. As to direct benefits, users of the City's moorings pay fees for depending on their level of use of the moorings, and the City sets fees for seasonal, monthly, weekly and daily use. In a typical year, the City has roughly 25-30 seasonal users of its moorings. In 2020, seasonal and general use of the moorings decreased as a result of the COVID-19 pandemic and the related closure of the Canadian border; however, the City still had approximately 20 seasonal mooring users. Since 2020 may be viewed as an outlier, the City has calculated the direct benefit from its mooring management zone over the last five years. After deducting maintenance expenses, the City recognized over \$4,000 in direct income from mooring use fees over the last five years. While this figure may not seem large, the City recently performed substantial maintenance of its mooring field in 2019, which investment it expects to be amortized over the next ten years and which will lead to additional revenue from the moorings as boater traffic is likely to increase as the City recovers from the pandemic.

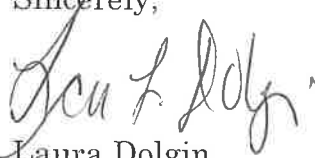
In addition to direct economic benefits, the mooring management zones undoubtedly have indirect economic benefits to the City and its downtown merchants, restaurants and businesses. The users of the moorings bring tourists, visitors and new guests to downtown Newport, all of whom spend money and drive traffic to downtown businesses, restaurants and shops. The increase in economic activity resulting from mooring-related traffic both from seasonal and transient mooring users is very important to the City as it and its downtown seek to recover from the disappointment of the EB-5 Program and the failure of the Main Street development site.

3. **ANR Request:** Please provide any information about public outreach the City has conducted to date regarding this petition. This includes consultation with governmental entities, affected municipalities, lake associations, regional planning commissions, affected recreational user groups, environmental and conservation organizations that have expressed an interest, and the public. If outreach is still pending, please provide us with information regarding your plans to complete this outreach during the upcoming petition review period.

City Response: The City has held at least one publicly warned City Council meeting at which the mooring management petition was discussed on May 2, 2021. In addition, the City's mooring management zone has been in use for over two decades, and the City has never received a complaint or concern from community members or interested organizations regarding the mooring management zones or the prior delegations of authority to manage public waters within the City's boundaries. Moreover, the City is holding a Community Summit on June 16th. Lake Memphremagog will be a topic of discussion at the Community Summit, and the Memphremagog Watershed Association will be making a presentation regarding the health of the lake at this Summit.

In conclusion, the City anticipates that these supplemental responses are sufficient for ANR to make a determination that the City Petition is administratively complete. The City looks forward to working with ANR and its partners to renew ANR's delegation of authority requested in the City Petition and to ensure continued viability of its mooring management zones over the next decade.

Please contact me with further questions.

Sincerely,

Laura Dolgin
Newport City Manager

**List of Individuals and Entities Potentially Interested in City of Newport
Petition for Delegation of Authority Over Public Waters Within City Boundaries**

City of Newport
% Jessica Booth, Parks & Rec Director
222 Main Street
Newport, VT 05855

City of Newport
% Laura Dolgin, City Manager
222 Main Street
Newport, VT 05855

City of Newport
% Paul Monnette, Mayor
222 Main Street
Newport, VT 05855

Newport Harbor Commission
% James Johnson, Chair
222 Main Street
Newport, VT 05855

Northeastern Vermont Development Assoc.
% David Snedecker, Executive Director
194 Main St, Suite 219
Newport, VT 05855

Richard Manzi
244 Fyfe Drive #3
P.O. Box 117
Newport, Vt 05855

Donald Baldic
244 Fyfe Drive
Newport VT 05855

David Cairelli
244 Fyfe Drive
Newport VT 05855

Hunt Family Trust
244 Fyfe Drive
Newport VT 05855

Marcia Parsons
244 Fyfe Drive
Newport VT 05855

Robert Rancourt
244 Fyfe Drive
Newport VT 05855

Gerald Rossier
244 Fyfe Drive
Newport VT 05855

Michael Hamblett
225 Logan Dr
Newport VT 05855

Jim Russell
74 Central St
Newport VT 05855

Scott Dechamps
123 Allendale St
Newport VT 05855

Bob Baker
359 Lake Rd
Newport VT 05855

Daniel Coutu
86 Bigelow Bluff Rd
Newport VT 05855

Elizabeth Cummings
PO Box 136
Passumpsic VT 05861

Agency of Natural Resources
% Peter Walke
One National Life Drive
Montpelier, VT 05620-3901

Agency of Natural Resources
% Julie Moore
1 National Life Drive
Montpelier, VT 05620-3901

State Historic Preservation
One National Life Drive
Montpelier, VT 05620-3901

Newport Daily Express
178 Hill Street
Newport, VT 05855

Caledonia Record
1940 Federal St
St Johnsbury, VT 05819

Barton Chronicle
133 Water St
Barton, VT 05822

Casella Waste Systems
403 Landfill Lane
Coventry, VT 05825

Vermont Federation of Sportsmen's Clubs
% Chris Bradley, President
454 South Main Street
Northfield, VT 05663

Federation of Vermont Lakes and Ponds
% Jackie Sprague, President
P.O. Box 766
Montpelier, VT 05601

Vermont League of Cities and Towns
% Ted Brady, Executive Director
89 Main St, Suite 4
Montpelier, VT 05602

UVM Kayak Club
% Cortland Fischer
8 Colchester Avenue
Burlington, VT 05404

MadDog Chapter of Trout Unlimited
% Jared Carpenter, President
P.O. Box 892
Montpelier, VT 05601

Green Mountain Audubon Society
P.O. Box 4333
Burlington, VT 05406

Ducks Unlimited
One Waterfowl Way
Memphis, TN 38120

Memphremagog Watershed Association
% David Converse, President
P.O. Box 513
Newport, VT 05855

Uniak Outdoor Outfitters
849 South Main St
Stowe, VT 05672

Clyde River Recreation
2355 VT RTE 105
West Charleston, VT 05872

Trout Unlimited
Central Vermont Chapter #138
% Chase Whiting, President
P.O. Box 892
Montpelier, VT 05601

DUMP LLC
PO Box 1402
Newport, Vt 05855

Vermont Lakes & Ponds Program
% Kimberly Jensen
1 National Life Drive, Davis 3
Montpelier, VT 05620-3901

PO Box 242
Cabot, VT 05647