

HAINES BOROUGH  
ORDINANCE NO. 09-01-195

**Adopted**

AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE TITLE 16 TO 1)REDEFINE THE BOAT HARBOR ADVISORY COMMITTEE (\$16.08.010), 2)REMOVE ADDITIONAL HARBOR FEES FROM THE CODE THAT ARE REFERENCED IN THE ASSEMBLY-APPROVED HARBOR FEE SCHEDULE (\$16.12.030, \$16.24.050), AND 3)TO CHANGE THE IMPOUNDED BOAT APPEAL HEARING TIMEFRAME (\$16.24.070).

BE IT ORDAINED BY THE ASSEMBLY OF THE HAINES BOROUGH, ALASKA:

Sec. 1. Classification. This ordinance is of a permanent nature and shall be codified into Haines Borough Code.

Sec. 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Sec. 3. Effective Date. This ordinance shall become effective immediately upon adoption.

Sec. 4. Purpose. This ordinance amends Title 16 to redefine the Boat Harbor Advisory Committee (\$16.08.010), remove additional harbor fees from the code that are referenced in the assembly-approved harbor fee schedule (\$16.12.030, \$16.24.050), and to change the impounded boat appeal hearing timeframe (\$16.24.070). The code is amended as follows:

NOTE: **Bolded**/UNDERLINED ITEMS ARE TO BE ADDED  
STRIKETHROUGH ITEMS ARE DELETED

**1)REDEFINE THE BOAT HARBOR ADVISORY COMMITTEE**

**16.08.010 Government of boat harbor facilities.**

A. The ~~government~~ **governance** of the Haines boat harbor facilities and all additions and improvements thereto, whether or not contiguous to the present facilities, shall be under the exclusive jurisdiction of the Haines Borough, its assembly, and its administration.

B. ~~The mayor, with the approval of the assembly,~~ **There** shall be appoint a five member boat harbor advisory committee comprised of ~~the chair of the commerce committee or designee,~~ two commercial boat owners, **two** non-commercial boat owners, and ~~the harbor master~~ a community member at large who has a business related to harbor activities. Such appointments shall be made ~~after the general municipal election each year~~ by the Mayor and subject to assembly confirmation. ~~and the~~ The members appointed

shall serve until the next general municipal election staggered terms of two years. Members shall serve until their successors have been confirmed by the assembly. There shall be no pay for committee membership. The committee shall organize itself and function according to the provisions of HBC Chapter 2.60. The assembly may appoint a liaison who shall serve in an ex-officio capacity. The borough Harbormaster shall also serve in an ex-officio capacity and shall assist the committee administratively.

C. The boat harbor advisory committee shall have the power and authority to initiate studies, investigate complaints and recommendations, and otherwise process business relating to other improvements, maintenance and operation of the boat harbor, and upon making its findings, to make recommendations to the assembly for final action and decision deliberate over matters concerning the construction, improvement, maintenance, use, operation, and regulation of Haines harbor facilities, and may make recommendations regarding these issues to the assembly, either directly or through the manager.

D. The Boat Harbor Advisory Board shall otherwise conduct its meetings and activities in accordance with HBC Chapter 2.60.

2) REMOVE ADDITIONAL HARBOR FEES FROM CODE THAT ARE REFERENCED IN THE ASSEMBLY-APPROVED HARBOR FEE SCHEDULE

**16.12.030 Gridiron use.**

No vessels over 65 feet in length shall use the present grid. Use of the grid shall be under the direction of the harbormaster and fees shall be charged according to the following schedule: ~~\$10.00 for each 24-hour period or portion thereof up to 72 hours. Usage after the first 72 hours: \$25.00 for each 24-hour period or portion thereof~~ most current assembly-approved harbor fee schedule.

**16.24.050 Services of harbormaster - Fees.**

The harbormaster is hereby granted the power and authority to, but without any obligation or duty to do so, and without any obligation or liability on the harbormaster's part or that of the borough for failure to do so, replace defective mooring lines, pump boats which are in dangerous condition for lack thereof, and to move any boat for the purpose of protecting the boat from fire or other hazard, or for the protection of other boats therefrom. Whenever the harbormaster shall perform any of the acts hereinbefore authorized, after having given notice to the boat owner or operator at the registered address of the immediate need therefor, or having attempted to give such notice, the boat and owner thereof is hereby required to pay to the borough the actual personnel cost to the borough for such services plus the

following any applicable fees stated in the most current assembly-approved harbor fee schedule.

~~A. Replacing or securing with additional mooring lines: \$20.00 plus the cost of the line.~~

~~B. Pumping: \$20.00 plus rent of borough pump, if used, at \$12.50/hour (One hour minimum).~~

~~C. Moving: \$30.00.~~

Any call-out for the emergency provision of these services by the harbormaster outside of regular working hours shall be billed at the harbormaster's overtime hourly rate - minimum of two hours - in addition to the above other charges.

### 3) CHANGE THE IMPOUNDED BOAT APPEAL HEARING TIMEFRAME

#### **16.24.070 Impounded boat - Disposition procedure.**

A. Impoundment of Boats or Vessels for Violations. The harbormaster is hereby authorized to impound any boat or vessel in the boat harbor whose owner, operator, master, or managing agent is not aboard and which is not properly identified by name and number; or any boat or vessel in the boat harbor which is in violation of any of the parking, mooring, or traffic regulations of the boat harbor; or any boat or vessel in the boat harbor whose owner, operator, master or managing agent has not paid the stall rent or any other fee or charge due the borough for the boat or vessel by the due date of such rental, fee or charge; or any boat which has become a nuisance and whose owner, operator, master or managing agent has failed to remove it. The harbormaster may, pursuant to this section, impound a boat by immobilizing it or removing it or having it removed from the water and placed in borough or commercial storage with all expenses and risks of haul-out and storage to be borne by the owner of such boat.

B. Storage Charge. The owner, master, operator or managing agent of any impounded boat shall be subject to and liable for a storage charge, and shall be subject to and liable for all costs incurred by the borough by reason of the impounding or removal.

C. Notice to Owner. At least 10 days prior to impounding any boat, the borough shall cause to be posted on the boat, in the harbormaster's office, the borough clerk's office and on the bulletin board at the entrance of the United States Post Office, notice of such action to be taken by the borough. A copy of the notice shall be mailed to the owner's, master's or registered agent's last known address, which address shall be the same as that furnished in accordance with the provisions of HBC 16.20.010. The notice shall contain the name and number of the boat, the name and address, if known, of the owner, master, operator or managing agent and the location of the boat.

D. As to any boat proposed for impoundment pursuant to this chapter by or at the request of the borough, its agents or

employees, a person in lawful possession of the boat has the right to a pre-impoundment administrative hearing to determine whether there is probable cause to impound the boat if such person files a written demand, on forms so provided for such a hearing, with the borough within 10 days after such person has learned such boat will be impounded or within 10 days after the mailing of such notice required by subsection (C) of this section, whichever occurs first.

E. A hearing shall be conducted before a hearing officer, or officers, designated by the manager within ~~48 hours~~ **five business days** of receipt of a written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. **Calculation of the five days shall commence with the first business day following receipt of the written demand and exclude** Saturdays, Sundays and borough holidays ~~are to be excluded from the calculation of the 48-hour period.~~ The hearing officer(s) shall be someone other than the person who will direct the impounding and storage of the boat. The sole issue before the hearing officer(s) shall be whether there is probable cause to impound the boat in question. "Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was a breach of local, state or federal law rendering the boat subject to impoundment. The hearing officer(s) shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the boat. The harbormaster shall carry the burden of establishing that there is probable cause to impound the boat in question. At the conclusion of the hearing the hearing officer(s) shall prepare a written decision. A copy of such decision and the reasons therefor shall be provided to the person demanding the hearing and the owner of the boat if such owner is not the person requesting the hearing. The hearing officer(s)' decision in no way affects any criminal proceedings in connection with the impound in question and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer(s) is final. Failure of the owner, operator, master or managing agent to request or attend a scheduled pre-impoundment hearing shall be deemed a waiver of the right to such hearing.

F. The hearing officer(s) shall only determine that, as to the boat in question, either there is probable cause to impound the boat or there is no such probable cause. In the event that the hearing officer(s) determine(s) that there is no probable cause, the hearing officer(s) shall prepare and date a certificate of no probable cause, copies of which shall be given to the owner, operator, master or managing agent and to the harbormaster.

In the event that the hearing officer(s) determine(s) that there is probable cause, the hearing officer(s) shall prepare and date

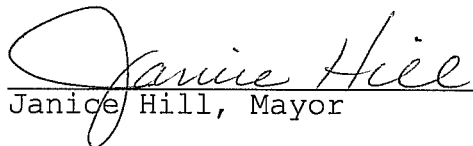
a certificate of probable cause, copies of which shall be given to the owner, operator, master or managing agent and the harbormaster. Upon receipt of such certificate of probable cause, the harbormaster may proceed with impoundment and disposition of the boat by removal, sale or destruction as authorized by this chapter.

G. Notice of Sale. Any boat impounded shall be held by the borough for a period of not less than 30 days during which the borough shall publish in a newspaper of general circulation in the borough a notice describing the boat in general terms, the name and number, if any, the name and address of the owner, master, operator or managing agent, if known, or if not known shall so state, the location of the boat and the intention of the borough to sell the same at public auction, on a day and at a place and time certain, not less than 10 days prior to the sale for cash to the highest and best bidder. At any time prior to the date of the auction, the owner, master, operator or managing agent may redeem the boat by a cash payment of all borough charges against the boat; however, if sold as a derelict vessel, other conditions specified by the harbormaster or hearing officer(s) shall also be met.

H. Sale. The minimum acceptable bid shall be a sum equal to the borough's charges against the boat. The proceeds of the sale shall be first applied to the costs of sale, then to moorage and service fees accrued, and the balance, if any, shall be held in trust by the borough for the owner of the boat to claim; and if not claimed within one year, the balance shall be deposited into the boat harbor fund. Upon the sale being made, the borough shall make and deliver its bill of sale, without warranty, conveying the boat to the buyer.

I. Other Disposition. If at the public sale there are no bidders for the boat, the borough may destroy, sell at private sale or otherwise dispose of the boat. The disposition is to be made without liability to the owner, master or lien holder of the boat.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH THIS 10<sup>th</sup> DAY OF FEBRUARY, 2009.

  
Janice Hill, Mayor

ATTEST:

  
Julie Cozzi, Borough Clerk

Introduction: 01/13/09  
First Public Hearing: 01/27/09  
Second Public Hearing: 02/10/09 - Adopted

