

# Town of Beaufort Code of Ordinances

## Title IX General Regulations

### Chapter 96 Navigable Waters

#### **96.01 - Authority; scope.**

- (A) This article is adopted pursuant to the authority granted to the board of commissioners in Session Law 1981-710 to regulate the navigable waters within the Town, enforceable pursuant to G.S. 160A-175.
- (B) This article shall apply to all navigable waters within the jurisdictional boundaries of Town of Beaufort, North Carolina, as they presently exist and as they may be modified in the future.
- (C) This article shall not apply to vessels owned or operated in the official performance of duties by any federal, state, or local government authority.
- (D) This article shall not apply to any shipwreck, cargoes, tackle, and other underwater archeological remains that have been in place and unclaimed for more than ten (10) years, and shall not be removed without the approval of the North Carolina Department of Cultural Resources, which is the legal custodian of these properties pursuant to G.S. 121-23.
- (E) This article shall not be construed to obligate the Town to appropriate funds to implement the provisions herein.

#### **Sec. 96.02 - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned vessel* means:

- (1) An unattended vessel that is moored, anchored, or otherwise located for more than ten (10) consecutive days anywhere in the waters of the Town, or without permission of the dock owner;  
or
- (2) A vessel that is in danger of sinking, has sunk, is resting on the bottom, or is located such that it is a hazard to navigation or is an immediate danger to other vessels.
- (3) Shipwrecks, vessels, cargoes, tackle, and other underwater archeological remains that have been in place and unclaimed for more than ten (10) years shall not be considered abandoned vessels unless approved by the North Carolina Department of Cultural Resources, which is the legal custodian of these properties pursuant to G.S. 121-22 and 121-23.

*Days* means calendar days, where the term is used for computation of time.

*Derelect vessel* means a vessel that has been left unattended and is in significant disrepair, such that the condition may affect the seaworthiness of the vessel or affect the safety of the public or the environment.

*Navigable waters* means all waters within the jurisdictional boundaries of the Town that are subject to the ebb and flow of the tide, including rivers, waterways, streams (including intermittent streams), mudflats, sandflats, and wetlands.

*Owner* means a person, other than a lien holder, having the legal or equitable property interest in or title to a vessel, or the person's legal representative. For purposes of this article, where a vessel is determined to have been registered with the North Carolina Wildlife Resources Commission, or an agency of another state responsible for registration, such registration shall create a rebuttable presumption that the owner is the last registered owner of record.

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

*Police Chief* means the Police Chief of Town of Beaufort, or such duly authorized agent of the Police Chief.

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

### **96.03 - Anchoring; docking; mooring: interference with navigation.**

- (A) It shall be unlawful for any person, except in the case of emergency or as required for maintenance dredging, to anchor, moor, raft-up or permit to be anchored, moored or rafted-up, or operate, any vessel or carry on any activity including but not limited to the placing of crab traps, anchor lines, anchors, mooring buoys, pilings or similar objects in a manner which shall constitute a hazard to navigation, interfere with another vessel, or for which a permit has not been issued by the appropriate government agency. Anchoring under bridges or in or adjacent to heavily traveled channels shall constitute interference if done during periods of heavy vessel traffic.
- (B) It shall be unlawful for any person to anchor, dock, moor, or store any vessel in the waters of the Town for more than ten (10) days in a thirty-day period in any calendar year, except at a private dock or marina.
- (C) For its first ten (10) days in Town waters in any thirty-day period in any calendar year, any transient vessel legally anchored and attended shall be deemed to have anchorage permission for provisioning, repairs, tourism, and recreational use, unless such permission is revoked in writing by the Police Chief for any of the reasons given below:
  - (1) The vessel has dragged anchor, or is moored or anchored in an unauthorized area or in a marked channel;
  - (2) Unless exempt pursuant to G.S. 75A-7, the vessel displays no evidence of current state, federal, or foreign registration, or, when asked by the Police Chief, the owner or operator of the vessel fails to present a current registration, cruising permit, or other official documentation of ownership upon which he or she is named as the owner or operator.
  - (3) The vessel is left unattended for a period exceeding twenty-four (24) hours. "Unattended" shall mean for the purposes of this section that the owner or operator has not been found on the boat or in its immediate vicinity and has failed to respond to any posting or citation left by the Police Chief;
  - (4) The vessel is slept on but is not equipped with a holding tank or the owner or operator fails to provide the Police Chief with receipts for regular weekly pump outs of the vessel's holding tank;
  - (5) Law enforcement officers have responded to complaints of excessive noise, thefts, firearms violations, controlled substance violations, or other disturbances of possible danger to the environment or any person, emanating from the vessel or its crew;
  - (6) The vessel is at any time within seventy-five (75) feet of any other legally anchored vessel, or any private, properly permitted mooring or private, properly permitted dock or marina without the written permission of the owner;
  - (7) The vessel does not display proper anchor lights;
  - (8) If the Police Chief, or his designee, determines there are safety-related or environmental reasons for denying permission during a particular period of time, or in a particular place, or in a particular manner.
- (D) Within 4 hours of a hurricane warning being declared, each vessel operator shall secure their vessel to prevent the vessel, and/or its parts or contents from damaging the property of others.

- (E) It shall be unlawful to anchor vessels without ground tackle to hold the vessel at anchor. Vessels at anchor shall maintain a firm anchor and the operator shall ensure that the vessel is not slipping anchor and changing its location.
- (F) When necessary, the Police Chief may act or may join in action with other agencies to determine and abate any unsafe or environmentally hazardous conditions, by towing, relocating, removing any vessel, or taking any other action reasonably necessary.
- (G) The Police Chief shall post unattended vessels which are in violation. The Police Chief shall then continue to monitor the violating vessel until ten (10) days have elapsed from the date of the posting. If the person in control of the vessel returns, or contacts the office of the Police Chief, and abates the violation within that time, no further actions, other than payment of accrued fees, need to be taken.
- (H) If the owner of any unattended vessel anchored, moored docked or stored in Town waters fails to respond to notices or pay fines and fees as required by this section for more than ten (10) days from the posting, the vessel may be taken into custody by the Police Chief and stored in a safe place of storage.
- (I) The owner shall be responsible for the costs of towing and storage of the vessel. Any vessel towed, removed, relocated or impounded shall be subject to a lien pursuant to G.S. 44A.

#### **96.04 - Derelict vessels prohibited.**

- (A) It shall be unlawful to anchor, moor or ground on the public land or waters of this Town or on private property without permission of the property owner, any derelict vessel. Indicators that a vessel is derelict, include but are not limited to, the following:
  - (1) Improper, non-working, or no anchor light, which is a hazard to navigation, when combined with an owner/operator who is not attending the vessel;
  - (2) Vessel is neglected, or substantially dismantled, or improperly maintained, or is not able to be used for navigation as intended;
  - (3) Vessel does not comply with current registration requirements, when combined with an owner/operator who is not attending the vessel;
  - (4) Vessel is barnacle-laden;
  - (5) Vessel interior is exposed to the elements (rain, waves, etc.);
  - (6) Vessel is listing;
  - (7) Vessel is aground;
  - (8) Vessel is in danger or breaking its mooring; or
  - (9) Vessel is sinking.
- (B) Upon identifying a derelict vessel, the Police Chief shall post a notice on board the vessel, and shall attempt to notify the owner by certified mail or personal delivery of notice. The notice shall:
  - (1) Describe the vessel and location of the vessel, however the notice posted aboard the vessel need not include description and location;
  - (2) Identify the condition(s) that must be corrected;
  - (3) Inform the owner that the identified conditions must be corrected, or the vessel must be removed from the waters or public lands and the affected surrounding environmental area restored, within ten (10) days of the date the notice is posted aboard the vessel;
  - (4) Inform the owner that failure to meet the ten-day deadline will result in the vessel being deemed abandoned, subject the owner to civil/criminal penalties, and that all costs associated with removal and disposition of the vessel and restoration of the affected surrounding environmental areas will be the responsibility of the owner;

- (5) Inform the owner that within ten (10) calendar days of the posting of the notice above-described he may request a hearing before the Town's Manager regarding the status of the vessel, with the right to appeal any order adverse to such owner within ten (10) calendar days to Carteret County District Court.
  - (6) The notice provisions of this section may be waived by the Police Chief in circumstances in which identifying the owner of a vessel is impractical [by way of example, for vessels not displaying state or federal registration/documentation] or under circumstances in which posting a notice on a vessel is impractical [by way of example, for vessels which are completely or mostly submerged or located such that approaching the vessel for the purposes of affixing or posting a notice gives a risk of damage to a Town vessel or a risk of harm to the Police Chief or other Town representative].
- (C) Failure of the owner to correct the dangerous condition, or remove the vessel from the waters or public lands of the Town within ten (10) days, after notice, shall cause the vessel to be defined as an abandoned vessel, and disposed pursuant to section 96.05.

**96.05 - Abandoned vessels prohibited.**

- (A) It shall be unlawful to abandon a vessel on the public land, submerged land, or waters of this Town or on private property without permission of the property owner. This section does not apply to persons who abandon a vessel in an emergency for the safety of the persons onboard; however, after the emergency is over, the owner and operator of the abandoned vessel shall notify the Town Police Chief's office or the United States Coast Guard and must remove the vessel within ten (10) days.
- (B) Upon identifying an abandoned vessel, the Police Chief shall post a notice on board the vessel, and shall attempt to notify the owner by certified mail or personal delivery of notice.
  - (1) Describe the vessel and location of the vessel, however the notice posted aboard the vessel need not include description and location;
  - (2) Inform the owner that the vessel must be removed from the waters or public lands and the affected surrounding environmental area restored, and/or claimed upon payment of all fines and fees, within ten (10) days of the date the notice is posted aboard the vessel;
  - (3) Inform the owner that failure to meet the ten (10) day deadline will result in the vessel being deemed abandoned, subject the owner to civil/criminal penalties, and that all costs associated with publication of notice, removal and disposition of the vessel and restoration of the affected surrounding environmental areas will be the responsibility of the owner.
  - (6) Inform the owner that within ten (10) calendar days of the posting of the notice above-described he may request a hearing before the Town Manager regarding the status of the vessel, with the right to appeal any order adverse to such owner within ten (10) calendar days to Carteret County District Court.
  - (7) The notice provisions of this section may be waived by the Police Chief in circumstances in which identifying the owner of a vessel is impractical [by way of example, for vessels not displaying state or federal registration/documentation] or under circumstances in which posting a notice on a vessel is impractical [by way of example, for vessels which are completely or mostly submerged or located such that approaching the vessel for the purposes of affixing or posting a notice gives a risk of damage to a Town vessel or a risk of harm to the Police Chief or other Town representative].
- (C) After the notice and hearing provisions described above, any abandoned vessel located on or below any navigable waters, or beached, or grounded adjacent thereto may be removed or relocated and impounded by the Police Chief.

- (D) The owner shall be responsible for all costs of towing, relocation, removal and storage of the vessel, and restoration of the area surrounding the vessel, including costs owed to a third party, and costs incurred by the Town or the Police Chief. Any vessel towed, removed, relocated or impounded shall be subject to a lien pursuant to G.S. 44A.

#### **96.06 - Enforcement responsibility and authority.**

- (A) The Police Chief of the Town, or any law enforcement officer with territorial jurisdiction is authorized and empowered to enforce this article.
- (B) Upon obtaining an administrative warrant in accordance with the provisions of North Carolina General Statute Ch. 15, Art. 4A (G.S. 15-27.2), the Police Chief is authorized to board any vessel as required to enforce the provisions of this article, or any federal or state law, and such boarding in the performance of official duties shall not constitute a trespass.
- (C) The Police Chief is authorized to seize, tow, remove or relocate from the public waters, and to store or dock the vessel in a safe place that, as a result of arresting the operator, or taking any enforcement action that would render the vessel unattended, or without an operator of suitable age, discretion and competence.
- (D) The Police Chief is authorized to remove and dispose of crab traps, anchor lines, anchors, mooring buoys, pilings or similar objects which violate the provisions of section 96.03(A) above.
- (E) The Town or the Police Chief may use staff, equipment, and material under its control or provided by any cooperating federal, state, or local government or agency; may authorize or contract with any private agent or contractor it deems appropriate; or may authorize or contract with any federal, state, or local government or agency for the removal, storage, or disposal of an abandoned vessel and restoration of the affected area.
- (F) The method of removal, storage or disposal of the abandoned vessel, whether by the owner, a third party, the Police Chief, the Town or the state, must comply with all applicable federal and state laws, regulations, and rules.
- (G) The owner shall be responsible for all costs of towing, relocation, removal and storage of the vessel, including costs owed to a third party, and costs incurred by the Town or the Police Chief.
- (H) The Town, elected officials, the Town Police Chief, any law enforcement officer, or any contractor or any employee or agent thereof, acting under this article to remove or relocate a vessel from public waters shall be held harmless for all damages to the vessel resulting from such removal or relocation, unless the damage results from gross negligence or willful misconduct.

#### **96.07 - Penalties for violation.**

- (A) *Criminal penalties.*
  - (1) A violation of this Chapter shall be deemed a class 3 misdemeanor punishable to the extent provided in G.S. 14-4, and shall carry a fine of one hundred dollars (\$100.00) per offense. A violation that either reoccurs or continues without cessation twenty-four (24) hours after a person has been criminally charged, either by arrest or citation, shall constitute a separate offense.
  - (2) A conviction under this section does not bar the assessment and collection of the civil remedies provided in this article.
- (B) *Civil remedies.* In addition to, or in lieu of any criminal penalties set forth herein, any person, firm or corporation violating any provisions of this article shall be subject to civil penalties as follows:
  - (1) A violation of sections 96.03, 96.04, and 96.05 of this article shall be subject to a civil remedy in the amount of five hundred dollars (\$500.00) per offense. A violation that either reoccurs or continues without cessation after a twenty-four (24) hours period shall constitute a separate offense.

- (2) Civil remedies shall be used in the recovery of the costs expended enforcing this article.
- (3) Any civil remedy may be appealed to the Town Police Chief, or his designee, within ten (10) days of the issuance of the civil remedy. A hearing shall be held within fifteen (15) working days of the appeal.
- (4) Any decision of the Town Police Chief, or his designee, may be appealed to the District Court of Town of Carteret County within ten (10) days.

#### **96.08 - Disposition/disposal of abandoned vessels.**

- (A) A vessel having an estimated value less than two thousand dollars (\$2,000.00) may be disposed at any suitable solid waste facility.
- (B) A vessel having an estimated value of two thousand dollars (\$2,000.00) or greater shall be disposed as provided in G.S. 44A, with the proceeds paying for the towing, removal, and storage charges, accrued civil fines, environmental restoration costs. The remaining proceeds, if any, shall be deposited into the general fund of the Town and designated for use to abate, or remove abandoned vessels and restore environmental damage resulting from abandoned vessels.
- (C) Any vessel, cargo, tackle, or equipment remaining unsold after being offered at public sale, may be disposed at any suitable solid waste facility.
- (D) Within ten (10) days following the disposal or public sale of any vessel previously registered in any state, or meeting the requirements for registration prior to operation in North Carolina, the Police Chief shall provide notice to the North Carolina Wildlife Resources Commission, and the agency responsible for registration in the state of any previously registered vessel. The contents of the notice, shall include, if available:
  - (1) Vessel registration number;
  - (2) Manufacturer, model, year;
  - (3) NC title number (if applicable);
  - (4) Hull identification number;
  - (5) A description of the reason for being disposed or sold as an abandoned vessel;
  - (6) Type of disposition and location (e.g. Public sale—Town of Beaufort Police Chief's Office, or Discarded—Carteret County Landfill);
  - (7) Full name and address of the purchaser (if applicable); and
  - (8) Date of sale and sale price (if applicable).

#### **96.09 - Severability.**

If any article, section, subsection, sentence, or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article. It is hereby declared that this article would have been passed, and each article, section, subsection, sentence, or clause hereof, irrespective of the fact that any one (1) or more articles, sections, subsections, sentences, or clauses might be adjudged to be unconstitutional or for any other reason invalid.