

GENERAL

CHAPTER 538 USE OF CITY ROAD ALLOWANCES AND WATER LOTS

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Article 1
TITLE

538.1.1 Title

This Chapter shall be known and cited as the “Use of City Road Allowances and Water Lot Chapter”. In the text of this Chapter, it is referred to as “this Chapter”.

Article 2
DEFINITIONS

538.2.1 Airboat - definition

“airboat” means a flat-bottomed boat propelled by an aircraft-type propeller and powered by either an aircraft or automotive engine.

538.2.2 Alter - definition

“alter” means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning.

538.2.3 Barge - definition

“barge” means a flat-bottomed boat, designed, used or capable of being used to carry chattels over water, whether self-propelled or not, and without regard to the method of propulsion.

538.2.4 Barge Permit - definition

“barge permit” means a permit issued by the Director to moor a barge in accordance with this Chapter.

538.2.5 Boat - definition

“boat” means every description of boat, vessel, craft, or other contrivance designed, used or capable of being used solely or partly to carry a person and/or chattel over water, whether self-propelled or not and without regard to the method of propulsion, and includes personal watercraft.

538.2.6 City - definition

“City” means the Corporation of the City of Orillia.

538.2.7 Damage - definition

“damage” includes without limitation, harm, injury, disturbance, cracking, cutting, gouging or displacement of or to the pavement, curb, sidewalk, open or contained culvert, boulevard, landscaping, light poles, retaining walls, street signs, street furniture or other objects within the highway.

538.2.8 Designated Emergency Services Mooring Space - definition

“Designated Emergency Services Mooring Space” means a mooring space on a dock located within any City-owned water lot of at least 9.0 metres in length and distinctly indicated by a sign or signs, intended for the use of emergency services.

538.2.9 Director - definition

“Director” means the City’s Director of Environmental Services and Operations, or designate.

538.2.10 Dock - definition

“dock” has the same meaning as provided in the City of Orillia Zoning By-law 2014-44, as amended, or successor legislation.

538.2.11 Highway - definition

“highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, including the area between the lateral property lines thereof, and includes unopened and unassumed road allowances.

538.2.12 Material - definition

“material” includes gravel, soil, sod, bricks, paving stones, landscaping rocks, and wooden planks or boards.

538.2.13 Moor - definition

“moor” means to fasten, affix, tie, park, or anchor a boat, including solely by propulsion, to a dock or pier or part thereof, and/or to City-owned property, and the term “moored” shall have a corresponding meaning.

538.2.14 Obstruct - definition

“obstruct” includes encumber or impede a highway or part thereof, and without limiting the generality of the foregoing includes:

- (a) the allowance of a crane boom or any portion of a stationary tower crane to travel over, hoist, or otherwise occupy the space above a highway or part thereof; or,
- (b) the temporary parking or storage of equipment, vehicles, containers, or any material on a highway or part thereof;

and the term “obstruction” shall have a corresponding meaning.

538.2.15 Officer - definition

“Officer” means a Municipal By-law Enforcement Officer or Police Officer.

538.2.16 Person - definition

“person” includes any individual, corporation, association, sole proprietorship, partnership, company, firm, business, authorized agent, trustee, and the heirs, executors or other legal representatives of a person, or any combination of the foregoing.

538.2.17 Road Occupancy Permit - definition

“road occupancy permit” means a permit issued by the Director to obstruct, alter or damage any highway or part thereof in accordance with this Chapter.

538.2.18 Statutory holiday - definition

“statutory holiday” for the purposes of this Chapter means Victoria Day, Canada Day, Labour Day, and Thanksgiving Day.

538.2.19 Vehicle - definition

“vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road building machine, bicycle, motorized snow vehicle and any vehicle drawn, propelled or driven by any kind of power including muscular power, but does not include cars of electric or steam railways running only upon rails.

538.2.20 Water lot - definition

“water lot” means a parcel or tract of land, the title of which is separately conveyable and which is normally fully or partly submerged under water.

538.2.21 Zoning By-law - definition

“Zoning By-law” means any by-law enacted by the City pursuant to Section 34 of the *Planning Act*, R. S. O. 1990, c. P. 13, as amended.

**Article 3
GENERAL PROVISIONS**

538.3.1 Delegated authority

Delegated authority to administer all or part of this Chapter which includes the signing of documents to issue or deny a barge or road occupancy permit or to revoke a barge or road occupancy permit is set out in Chapter 251 of the City of Orillia Municipal Code - Delegated Authority.

538.3.2 Approval authorities

All applications for a barge permit or road occupancy permit shall be accompanied by a copy of the approval from any other approval authority having jurisdiction.

538.3.3 False or misleading information

No person shall submit false or misleading information or documents or make omissions that may mislead in connection with any application for a barge permit or road occupancy permit, including detail in plans and specifications. Any permit issued based on false, incorrect, or misleading information shall not relieve any person from the responsibility for complying with the provisions of this Chapter.

538.3.4 Permit - non-transferable

No permit issued under this Chapter is transferable.

**Article 4
ROAD OCCUPANCY PERMIT****538.4.1 Road occupancy permit - required**

No person shall obstruct, alter or damage, or cause or permit the obstruction, alteration, or damage, of any highway or part thereof or any space above a highway, without first having obtained a road occupancy permit.

538.4.2 Compliance with plans - terms of road occupancy permit

No person shall obstruct, alter or damage, or cause or permit the obstruction, alteration, or damage of any highway or part thereof except in accordance with:

- (a) the plans, documents and any other information on the basis of which a road occupancy permit was issued; and,
- (b) the terms and conditions of the road occupancy permit.

538.4.3 Fees required - road occupancy permit

A road occupancy permit shall not be issued until the required fee set out in Chapter 452 of the Municipal Code - User Fees - Environmental Services and Operations/Development Services and Engineering has been submitted. The fee shall not be pro-rated.

538.4.4 Road Occupancy Permit expiration

Every road occupancy permit issued pursuant to this Chapter, unless sooner revoked shall expire on the 31st day of December after the date of issue.

**Article 5
BARGE PERMIT****538.5.1 Barge permit - required**

No person shall moor a barge or part thereof, or permit a barge or part thereof to be moored, to or within any City-owned property including a water lot, or to any dock that is located partly or wholly within any such water lot, without first having obtained a barge permit.

538.5.2 Compliance with plans - terms of barge permit

No person shall moor a barge or part thereof, or permit a barge or part thereof to be moored, to or within any City-owned property including a water lot, or to any dock that is located partly or wholly within any such water lot, except in accordance with:

- (a) the plans, documents and any other information on the basis of which a barge permit was issued; and
- (b) the terms and conditions of the barge permit.

538.5.3 Fees required - barge permit

A barge permit shall not be issued until the required annual fee of \$500 has been submitted. The fee shall not be pro-rated.

538.5.4 Validity of permit - restricted to barge approved

A permit is only valid for the barge bearing the registration number on the permit for the barge described on the permit.

538.5.5 Barge permit expiration

Every barge permit issued pursuant to this Chapter, unless sooner revoked shall expire on the 31st day of December after the date of issue.

Article 6 BOAT PROHIBITIONS

538.6.1 Boat mooring - hours restricted

No person shall moor a boat or part thereof, or permit a boat or part thereof to be moored, to or within any City-owned property including a water lot, or to any dock that is located partly or wholly within any such water lot, at any time between the hours of 12:00 a.m. and 6:00 a.m.

538.6.2 Airboat mooring - hours restricted

Notwithstanding Section 538.6.1, no person shall moor an airboat or part thereof, or permit an airboat or part thereof to be moored, to or within any City-owned property including a water lot, or to any dock that is located partly or wholly within any such water lot, at any time between the hours of 10:00 p.m. and 7:00 a.m.

538.6.3 Barge mooring - general restrictions

Notwithstanding Section 538.6.1, no person shall moor a barge or part thereof, or permit a barge or part thereof to be moored, to or within any City-owned property including a water lot, or to any dock that is located partly or wholly within any such water lot, at any time between:

- (a) the hours of 8:00 p.m. and 8:00 a.m.; or
- (b) May 16th and October 14th each year, on a Friday, Saturday, Sunday, Monday, or statutory holiday.

538.6.4 Emergency Services - mooring space

No person shall moor a boat or part thereof, or permit a boat or part thereof to be moored within a Designated Emergency Services Mooring Space located within any City-owned water lot, unless the boat is attended by a person with capacity to move the boat in the event that Emergency Services require access to the Designated Emergency Services Mooring Space.

**Article 7
EXEMPTIONS****538.7.1 Exemption - boat moored - Port of Orillia - Couchiching Beach Park**

Sections 538.6.1 and 538.6.2 do not apply to a boat lawfully moored to a dock at the Port of Orillia, or an Aquatic Weed Harvester lawfully moored at the launch ramp at Couchiching Beach Park.

538.7.2 Exemption - barge - emergency

Sections 538.6.3(a) and 538.6.3(b) do not apply to a barge being used for septic system or holding tank failures, or emergency heating/fuel deliveries to the City's residents, provided the City is notified prior to the barge being moored to or within any City-owned property.

538.7.3 Exemption - emergency service personnel

This Chapter does not apply to employees or agents of police, fire and ambulance services acting in the scope of their duties to provide emergency services or enforcement activities.

538.7.4 Exemption - boat moored - medical emergency

Section 538.6.1 does not apply to a boat moored in the event of a medical emergency.

Article 8 REVOCATION OF PERMIT

538.8.1 Revocation of permit

The Director may revoke any permit issued pursuant to this Chapter under any of the following circumstances:

- (a) where the owner of the barge or any other person does not conform to this Chapter;
- (b) where the permit has been issued either in error or due to false or misleading statements or undertakings in the application for permit;
- (c) where the plans, documents and any other information upon which the permit was issued have not been complied with;
- (d) where the terms and conditions of the permit have not been complied with; or,
- (e) with regard to a barge permit, where the barge does not conform to any regulation, law or requirement of any governmental authority having jurisdiction in the area where the barge is situated.

538.8.2 Written notice - revocation

After a decision is made by the Director to revoke a permit, written notice of that decision shall be given forthwith to the permit holder.

538.8.3 Written notice - revocation - requirements

The written notice to be given under Section 538.8.2 shall:

- (a) set out the grounds for the decision;
- (b) give reasonable particulars of the grounds for the decision; and,
- (c) be signed by the Director.

538.8.4 Delivery of notice - service

Any written notice given under this Chapter shall be deemed to be received on the receipt date which is one of the following:

- (a) in the case of mailed documents, five (5) days after the written notice is mailed; and,
- (b) in the case of personal delivery, email or faxed document, the day of delivery.

538.8.5 Notice - last known business or residential address

Where any written notice is mailed under this Chapter, it is sufficient to use the permit holder's last known business or residential address.

**Article 9
ENFORCEMENT****538.9.1 Enforcement**

A Municipal By-law Enforcement Officer or Police Officer is hereby vested with the authority of enforcing the provisions of this Chapter.

538.9.2 Removal - boat

- (a) Where a boat is moored in contravention of the provisions of this Chapter, the Officer may serve an order on the owner of the boat or on a person who is apparently in charge of the boat at the time that the order is served. Service of the order may be either by personal service, or with respect to the said owner by regular post to the said owner's last known address. Such order shall require the person served to correct the contravention as specified in the order within a specified period of time.
- (b) Where service of an order is made by regular post, service shall be deemed to have been made five (5) days after the order is mailed.
- (c) Where service cannot be carried out under Section 538.9.2(a) of this Chapter, the Officer shall place a placard containing the terms of the order in a conspicuous place on the affected boat and the placing of the placard shall be deemed to be sufficient service of the order to whom the order is directed.
- (d) If the said order is not complied with within the specified period of time, the City, by its employees, officers or agents may take all steps necessary to correct the contravention including, but not limited to, entering upon a dock and removing any boat.
- (e) All costs incurred by the City of correcting the contravention shall be done at the expense of the said owner.

538.9.3 Storage - disposal - boat

Where a boat has been removed pursuant to Section 538.9.2(d), no retrieval of the boat may be made without payment of the City's costs of correcting the contravention, and a care and storage fee of \$300. Without limiting the generality of the foregoing, all costs and charges for the removal, care and storage of a boat are a lien upon the boat that may be enforced under the *Repair and Storage Liens Act*.

538.9.4 Hinder or Obstruct

No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer exercising a power or performing a duty under this Chapter, or any person lawfully acting in aid of such an Officer. Without limiting the generality of the meaning of “hinder” or “obstruct”, a person shall be deemed to have obstructed or hindered an Officer in the execution of their duties if he or she:

- (a) provides false information to an Officer; or
- (b) is alleged on reasonable and probable grounds to have contravened any of the provisions of this Chapter, and fails to identify themselves to an Officer upon request.

538.9.5 Penalties

- (a) Any person who contravenes any of the provisions of this Chapter is guilty of an offence and upon conviction is liable to a fine or penalty as provided for in the *Provincial Offences Act*.
- (b) Where a section of this Chapter has been contravened, a director or officer of a corporation who knowingly concurs in the contravention is guilty of an offence.
- (c) Upon conviction, in addition to any other remedy and to any penalty imposed by this Chapter, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

538.9.6 Rebuttable presumption - identification

In a prosecution for a contravention of this Chapter, evidence of identification shall be presumed to be correct and accurate, unless rebutted by evidence to the contrary.

**Article 10
INTREPRETATION****538.10.1 Words - intention**

In this Chapter, unless the contrary intention is indicated, words used in singular shall include the plural and words used in the male gender shall include the female gender and a corporation or vice versa where applicable.

538.10.2 Headings

Headings are inserted for convenience of reference purposes only, form no part of this Chapter and shall not affect in any way the meaning or interpretation of the provisions of this Chapter.

538.10.3 Expression of time

Where any expression of time occurs, or where any hour or other period of time is stated, the time referred to shall be either standard time or daylight savings time, whichever is in effect in the City at the time the Chapter is interpreted.

538.10.4 Conflict - most restrictive - prevails

Where there is a conflict or a contradiction between this Chapter and any other by-law or Chapter of the City, the provision that is most restrictive shall prevail.

538.10.5 Schedules

All Schedules to this Chapter shall form part of this Chapter.

**Article 11
VALIDITY AND SEVERABILITY****538.11.1 Validity and severability**

Every provision of this Chapter is declared severable from the remainder and if any provision of this Chapter shall be declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder.

**Article 12
EFFECTIVE DATE****538.12.1 Effective date**

This Chapter shall come into force and take effect on the date of passing thereof.

Adopting By-law: By-law 2018-34, 23 April 2018.

By-law Amendments: By-law 2020-48, 25 May 2020; By-law 2020-82, 5 October 2020.