

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 20-1517

Being a By-law for Regulating the Use of Municipal Owned Docks

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at section 11(1) 1; Culture, parks, recreation and heritage at section 11(1)5 and Structures, including fences and signs at section 11(1)7;

AND WHEREAS section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act;

AND WHEREAS section 9(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS section 391(c) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

AND WHEREAS section 427(1) of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person’s expense which that person is otherwise required to do under a by-law or otherwise but has failed to do;

AND WHEREAS section 427(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Corporation deems it desirable to, from time to time, set rates for the use of municipal docks located on Lake Temagami directly behind the Municipal Office.


NOW THEREFORE the Council of the Corporation of the Municipality of Temagami enacts as follows:


1. That users of the Municipal Docking Slips pay the appropriate fees in accordance with the “User Fee By-law 20-1512, as amended, Schedule “F”.

2. That the attached Mooring/License Agreement, shown as Schedule "A" attached hereto and forming part of this By-law, be completed prior to the rental of a docking space.
3. That should a boat be found at a municipal docking slip without paying the proper rate as specified in the User Fee By-law 20-1512, as amended, Schedule "F, and/or without filling in the proper documentation as attached as Schedule "A" to this By-law, the municipality is hereby authorized to have it removed at the owner's risk and cost.
4. That should a boat be found at the Day Use Only area overnight, the municipality is hereby authorized to have it removed at the owner's risk and cost.
5. The charge for having a boat moored at a municipal docking slip without authorization is \$250.00.
6. All expenses incurred by the Municipality in connection with the enforcement of this by-law shall be paid prior to the release of the boat from municipal control and in the event of failure to pay the entire amount due and at the discretion of the Municipality, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses occurred.
7. The Municipality may also recover all expenses owing under this by-law by a court action as a debt due to the Municipality.
8. That By-law No. 05-610, as amended, is hereby repealed and replaced by By-law 20-1517.

READ a first and second time this 16th day of July, 2020.

READ a third time and finally passed this 16th day of July, 2020


MAYOR


CLERK

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

Mooring/License Agreement

Covering dockage.

This Agreement made the day of _____ between
 _____ hereinafter called “the Municipality” of the first part and
 _____ address _____
 _____ hereinafter called “the Owner” of the second part.

WARNING TO BOAT OWNERS

YOU SHOULD NOTIFY YOUR BOAT INSURER YOU HAVE SIGNED THIS AGREEMENT AS IT MAY INVALIDATE YOUR INSURANCE UNLESS YOU HAVE THE CONSENT OF THE INSURER IN WRITING

The parties hereto and acknowledge as follows:

The Owner warrants that he is the Owner, or the agent with authority of the Owner of the following Boat ("the Boat"):

BOAT NAME			REGISTRATION OR LICENSE#	
CLASS	POWER	LENGTH	BEAM	DRAFT
TENDER NAME				

The Municipality agrees to supply and the Owner agrees to pay for the following services (the "Services"):

DOCKAGE	DAYS	WEEKS	MONTH \$	SEASON \$
TAXES		DEPOSITS		BALANCE OWINGS
ARRIVAL DATE			DEPARTURE DATE	

ALL FEES AND CHARGES ARE PAYABLE IN ADVANCE OF OCCUPANCY OR SERVICE

The owner agrees to pay for all Services in accordance with the rates as herein set forth. All fees and charges shall be payable in advance (of occupancy) unless otherwise agreed. The Municipality reserves the right to vary the rates, terms and conditions as set forth herein, at its sole discretion, provided that a variation in rates, terms and conditions as herein set forth shall not be binding until the Municipality has given notice of such variation to the Owner in writing (the "Notice"). The Notice may be delivered personally to the Owner whereupon the Owner shall have two (2) days from the date of the Notice is delivered to repudiate this Agreement. The Notice may also be mailed to the Owner by ordinary mail at the address provided herein. The Owner shall repudiate this Agreement. Upon repudiation of this Agreement, the Owner shall be entitled to obtain a pro data refund for all services paid but not utilized. Unless the Owner advises the Municipality, in writing, within two (2) days following receipt of the Notice of his intention to terminate this Agreement, as varied, the Owner shall be deemed to have irrevocably accepted the variations of the rates, terms and conditions for which he received Notice.

The Owner represents and warrants that there are insurance policy or policies currently in force which shall continue in force throughout the term of this Agreement in connection with the ownership and operation of the Boat having limits of not less than \$1,000,000 for third party liability including bodily injury or death to any number of persons in any one accident and property damage.

Insurance Company Policy # _____

THE TERMS AND CONDITIONS ON THE REVERSE SIDE FORM A PART OF THIS AGREEMENT

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED
In the presence of:

(SIGNATURE)

Owner/Agent for Owner

Telephone - Office_____

Residence _____

Accepted: _____
(MUNICIPALITY)

License Only: In respect of the Services provided for in this Agreement, the Owner acknowledges that he is a licensee in respect of the dockage spaces which may be assigned to him by the Municipality from time to time with a right to use facilities, at his own risk, together with all rights to access to those facilities and the Boat for which he is licensed to use those facilities.

Use of Specific Space: This Agreement does not grant or extend rights to the Owner with respect to any specific dockage space throughout the term of this Agreement. The Municipality may require the Owner to move the Boat to another dockage space as the Municipality considers appropriate. The Owner agrees to move the Boat in Accordance with the Municipality's instruction and authorizes the Municipality to move the Boat at the Owners risk when unattended.

Waiver and Indemnity: The Owner agrees to pay the costs of all damage to the Municipality's property and the property of the occupants of the Municipality resulting directly or indirectly from the Owner's negligence or negligence of his agents, invitees, crew, family members or guests. The Owner further covenants to indemnify and save harmless the Municipality against any loss, costs, suit or claim arising out of the use of the Municipality's docking facilities or equipment or the handling of any Boat on the Municipality's premises by the Owner or his agents, invitees, crew, family members or guests. Without limiting the foregoing, the Owner covenants to indemnify and save harmless the Municipality against any loss, cost, suit, claims (including penalties and fines) arising out of or in connection with the discharge or release of any fuel, chemicals, waste or other pollutants, or violation of any statute or regulation relating to the use, operation or ownership of the Boat, by the Owner, his agents, invitees, crew, family members or guests.

No Duty to Inspect or Maintain: The Owner acknowledges that the Municipality does not assume any duty to care for the Boat or to prevent loss or damage thereto while the same is on the Municipality premises. The Owner hereby releases and discharges the Municipality, its employees, agents and representatives from all actions, causes of action, claims and demands in relation to damage to the Boat and any equipment brought onto the Municipality's premises under the Agreement, as well as for personal injury sustained by the Owner, his or her invitees, crew, family and guests or any third party while on the Municipality premises pursuant to this Agreement, unless such damage or injury is caused by the gross negligence of the Municipality.

No Assignment or Subject: The Owner agrees that he/she will not assign this Agreement or subject the space rented herein without the written consent of the Municipality.

Insurance: The Owner agrees that he will not do or permit to be done any act or thing which may make void or voidable and insurance upon the Boat or any property or any part thereof upon the Municipality premises or which may cause any additional premium to be paid for any such insurance. The Owner shall indemnify the Municipality for costs of any increased insurance premium required to be paid by the Municipality.

Rules and Regulations: The Owner agrees that he will not make or permit any unlawful, improper, noisy or otherwise offensive use of the Municipality property. The Owner agrees to conduct himself in compliance with all Rules and Regulations of the Municipality. The Owner shall ensure that his invitees, crew, family members and guests conduct themselves in accordance with the Rules and Regulations of the Municipality. The Municipality shall have the right to amend the Rules and Regulations as it deems appropriate and such amendments shall be effective upon being posted at the Municipality premises. The Municipality shall have the right to immediately terminate this Agreement if the Owner or his invitees, crew, family members or guests fail to comply with the Rules and Regulations. The Owner hereby acknowledges having read and understood the Rules and Regulations of the Municipality.

Termination: This Agreement shall remain in full force and effect for the term set out herein, unless terminated as a result of the following conditions:

- (a) The destruction of the mooring facilities by fire, storm or other calamity.
- (b) Any breach of the Agreement, including the Rules and Regulations by the Owner.

The Municipality shall be entitled to terminate this Agreement immediately upon the occurrence of the above events. The Municipality shall provide the Owner with notice of such termination in writing by delivery in person or by regular mail to the address provided on this Agreement. Notice by regular mail shall be effective eight (8) days after it is mailed. Upon termination, any amount paid to the Municipality under this Agreement shall be applied to any sums owing to the Municipality for dockage and any further amounts owing under this Agreement. The balance of funds, if any, shall be returned to the Owner.

No Waiver: A waiver of any one or more of the terms and conditions herein contained shall not be deemed to be a waiver of any of the other terms and conditions of this Agreement other than those specifically waived and in no event shall any waiver be deemed to be a continuing waiver.

Notice of Replacement Boat: The Owner agrees that the terms of this Agreement shall apply to the Boat, or any additional, or substitute boats brought onto the Municipality premises by the Owner. The Owner hereby agrees to provide the Municipality with notification of any such additional or substitute Boat.

Corporate Authority: If the Owner is a corporation, the person signing this Agreement hereby acknowledges as follows:

- (i) that he or she has the authority to bind the corporation; and
- (ii) that the Owner has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement; and
- (iii) that the execution and delivery of this Agreement and the consummation of the transaction contemplated under it have been duly authorized by all necessary corporate actions on the part of the Buyer.

Executors, Heirs, Administrators: This Agreement shall be binding on each of the parties hereto, their respective heirs, executors, administrators, personal representatives, successors and assigns and, all references to the Owner, shall bind the actual Owner or Owners of the Boat and their respective heirs, executors, administrators, personal representatives, successors and assigns.

Entire Agreement: This Agreement shall constitute the entire Agreement between the parties. There is no representation, warranty, condition or collateral agreement affecting this Agreement other than as expressed herein in writing, and any amendments hereto must be made in writing and signed by the Owner and the Municipality. This Agreement shall be read with all changes of gender and number required by the context.

Jurisdiction: The rights and obligations under this Agreement shall be interpreted and construed in accordance with the laws of the Province of Ontario.