

Proposed by:	Borough Assembly
Attorney Review:	08/11/2020
First Reading:	08/20/2020
Referred to Civic Affairs:	09/03/2020
Second Reading:	09/17/2020
Vote: 6 Aye	0 Nay 0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA  
ORDINANCE NO. 20-21**

**AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA REPEALING AND REPLACING TITLE 12 HARBORS AND PORTS TO DEFINE THE PORT OF SKAGWAY AND ESTABLISH ITS STRUCTURE.**

**WHEREAS**, due to upcoming changes and projects at the Port of Skagway, the Municipality of Skagway recognizes the need to define and combine the separate areas of the Port of Skagway in municipal code and establish its overall structure; and

**WHEREAS**, the powers and duties of the Port Director and Harbormaster must be detailed in municipal code; and

**WHEREAS**, the Municipality wishes to reference the Port of Skagway tariff document in municipal code, which will detail the business operations for each area of the port; and

**WHEREAS**, the Municipality intends to establish a single Ports and Harbors Advisory Board to combine the functions of the Harbors Advisory Board and the Port Commission;

**NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:**

**Section 1. Classification.** Section 3 of this ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

**Section 2. Purpose.** To repeal and replace Title 12 Harbors and Ports to define the Port of Skagway and establish its structure.

**Section 3. Repeal and Replace.** Title 12 Harbors and Ports is hereby repealed and replaced with the following:

Title 12  
HARBORS AND PORTS

Chapters:

- 12.01 Port of Skagway.
- 12.02 Ports and harbors advisory board.
- 12.03 Port director.
- 12.04 Harbormaster.

Chapter 12.01  
PORT OF SKAGWAY

Sections:

- 12.01.010 Port of Skagway defined.
- 12.01.030 General provisions.
- 12.01.070 Port fund.
- 12.01.080 Port of Skagway tariffs.

12.01.010 Port of Skagway defined.

The Port of Skagway includes all areas of ingress into the Municipality of Skagway Borough, including but not limited to the following: docks, harbors, ferry and barge facilities, airports, highways, Waterfront (W) zoned lands, pipelines, unzoned waterfront land, and rail lines. The user shall obtain and maintain at its expense all licenses, permits, approvals, consents, and certificates from local, state, and federal authorities which may be necessary or appropriate for its actual use.

12.01.030 General provisions.

- A. Accidents and reports.
  - 1. The operator of any boat, vehicle, or equipment involved in an accident within the Port of Skagway resulting in injury or death to a person or in damage to property shall remain at the scene of such accident and shall render such aid as he is capable of rendering.
  - 2. The master, owner or operator of any boat, vehicle, or equipment shall file a report within one (1) hour, with the port director, harbormaster, or a municipal police officer, of any accident involving death or personal injury requiring medical treatment or involving property damage in any amount, or upon striking any other boat, float or property, in which such boat, vehicle, or equipment has been involved in the Port of Skagway.
- B. Aiding and abetting violations. It is unlawful to counsel, aid or abet the violation of or failure to comply with any of the provisions of this title.
- C. Enforcement and penalties. The port director shall have authority to enforce all provisions of this title, to issue directives to users of port facilities to comply with such provisions, and to abate any act of violation. For violations of this chapter refer to Chapter 1.20, General Penalty. Violations are subject to civil fines established by resolution.
- D. Posting of Port of Skagway code. A copy of this title shall be posted in a conspicuous place at the boat harbor (harbormaster's office or bulletin board). Such posting shall be deemed to have provided to all lessees and users of the Port of Skagway adequate notice of all legal duties contained in this title.
- F. Access. Within the constraints of federal, state, and local laws, the Port of Skagway shall be open to all. No special preference shall be granted to accommodate one (1) type of user over another. The extensions of the municipal streets and sidewalks and public access to the port shall be maintained at all times. Unless otherwise permitted by the Port of Skagway tariff document, commercial

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enterprises or businesses shall not be permitted to conduct business of a permanent or continuing nature within the port, or from a vessel using the facilities.

- G. Use of Port -- Implied Agreement. The mooring or use or presence of any vessel within the Port of Skagway shall constitute an agreement by the owner, operator, master or managing agent to conform to the provisions of this title.

12.01.070 Port fund.

- A. The Port of Skagway shall be operated in a businesslike manner such as other public utilities and enterprises and shall be operated from a fund separate from the general fund. An accounting system for this fund shall be established within the general accounting system of the municipality, and shall be set up and maintained so as to reflect the financial condition of the enterprise and its income and expense. All balance sheets and statements of income and expense (profit and loss) shall be made for this enterprise annually and as often as the assembly may require, and published annually in a condensed form.
- B. None of the income, money, resources or property of the Port of Skagway shall be placed in the general fund or be used for the benefit of anything outside of the fund to which it belongs without due compensation or due value received in return; provided, that this shall not prohibit payment into the general fund by the port fund of an amount in lieu of taxes reasonably estimated to be the amount which the enterprise would pay in taxes if it were privately owned. A portion of monies in the port fund may be allocated to the general fund to reimburse for services provided to the Port of Skagway by other municipal departments such as police, fire, emergency medical, garbage, water, and sewer services.
- C. Dedication of revenues. All revenues generated by municipally operated port facilities shall be dedicated to the port fund, for use in paying costs of operation, maintenance and repair of the port facilities.
- D. Fees related to use of the Port of Skagway shall be established in the Skagway Port Tariff document.

12.01.080 Port of Skagway tariffs.

All rates, charges, excise taxes, rules and regulations for wharfage, dockage, passenger fees and other port services within the Port of Skagway shall be established by the borough assembly through adoption by resolution of a Port of Skagway Tariff document.

Chapter 12.02

PORTS AND HARBORS ADVISORY BOARD

Sections:

- 12.02.010 Establishment.  
12.02.020 Membership.  
12.02.030 Qualifications.  
12.02.040 Appointment.  
12.02.050 Terms.  
12.02.060 Vacancies.

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- 12.02.070 Officers.
- 12.02.080 Meetings.
- 12.02.090 Subject to Alaska Public Records and Open Meetings Laws.
- 12.02.100 Rules and procedures.
- 12.02.110 Function and duties.
- 12.02.120 Limitations on the powers of the ports and harbors board and individual members.

12.02.010 Establishment.

A ports and harbors advisory board shall advise the assembly and the borough manager on matters relating to planning, maintaining, expanding, developing, financing, administering, or operating the Port of Skagway. The assembly retains complete authority over the Port of Skagway and the assembly acts and serves as the port authority for the Port of Skagway, unless and until a new port governance structure is adopted by ordinance.

12.02.020 Membership.

The ports and harbors advisory board shall be comprised of five (5) members, one of which shall be a member of the assembly.

12.02.030 Qualifications.

A member shall be a registered voter of the Municipality of Skagway.

12.02.040 Appointment.

A. Members.

1. The mayor shall appoint members from among persons who either apply or are recommended for the positions, subject to confirmation of the assembly by majority vote. A motion shall not be required to appoint a member.
2. Members serve at the pleasure of the borough assembly and without compensation. The mayor may remove a member, subject to confirmation of the assembly by majority vote. A motion shall be required to remove a member.
3. Assembly member. The mayor shall appoint annually one (1) assembly member to serve as voting member of the board, and liaison between the assembly and the board, subject to confirmation of the assembly by majority vote. A motion shall not be required to appoint an assembly member. The assembly member may serve more than one (1) term.

B. Liaisons.

1. Yukon Territory Liaison. The mayor shall appoint one (1) representative of the Yukon Territory, nominated by the Yukon Territory government, to serve as a liaison between the Yukon Territory and the board. The Yukon Territory liaison shall serve a three (3) year term. The Yukon Territory liaison may serve more than one (1) term. The Yukon Territory Liaison may attend all

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meetings of the board and shall have the privilege of the floor, but shall not have the right to vote on matters before the board.

12.02.050 Terms.

- A. Regular members, except for the Assembly member of the board, serve three (3) year terms; however, a member serves until a successor takes office. The term of office begins in October.
- B. The Assembly member of the board shall serve a one (1) year term.
- C. The terms shall be staggered so that regular members are appointed each year. Terms shall be first established by randomly drawing one (1) for a one (1) year term, two (2) for two (2) year terms, and one (1) for a three (3) year term.
- D. A member appointed to fill a vacancy shall serve the unexpired portion of the term.

12.02.060 Vacancies.

- A. A vacancy on the ports and harbors advisory board shall be declared and filled as above provided when a member:
  - 1. Resigns and the mayor accepts that resignation;
  - 2. No longer meets the qualifications for being a member;
  - 3. Is physically or mentally unable to attend board meetings for a period of more than ninety (90) days unless excused by vote of the ports and harbors board;
  - 4. Misses three (3) consecutive regular board meetings and is not excused by the chair; or
  - 5. Is convicted of a felony.
  - 6. Any member may be removed in accordance with Section 12.02.040(A)(2) at any time regardless of whether that person's term on the board has expired.
- B. The secretary of the ports and harbors advisory board shall keep attendance records and notify the mayor when vacancies occur.

12.02.070 Officers.

- A. The ports and harbors advisory board shall elect annually a chair, vice-chair and secretary at its first meeting following the mayor's appointment and the assembly's confirmation of members. The Assembly member of the board shall not serve as an officer.
- B. The term of office for the chair, vice-chair and secretary shall be one (1) year; however, officers may serve more than one (1) term.
- C. The chair shall preside over the ports and harbors advisory board and shall have the right to vote.
- D. The vice-chair shall perform the duties of the chair in the absence or disability of the chair.
- E. The secretary shall be responsible for taking minutes and providing those minutes to the borough clerk in a timely manner.

12.02.080 Meetings.

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- A. The ports and harbors advisory board shall meet at least quarterly at a regularly established time and location determined by the board. The chair or at least three (3) members may call additional meetings.
- B. The ports and harbors advisory board will provide at least five (5) days of public notice of all its meetings, except that it may call an emergency meeting upon not less than twenty-four (24) hours' prior oral or written notice to all members. Public notice shall go through the borough clerk's office.
- C. The ports and harbors advisory board shall provide an opportunity for the public to be heard at all meetings.
- D. A majority of voting members constitutes a quorum. A member disqualified by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum any member may recess or adjourn the meeting to a later date.
- E. Actions of the ports and harbors advisory board are adopted by a majority of the total membership of the board. Each member shall vote on every question, unless required to abstain from voting on a question by law. The final vote of each member on each motion shall be recorded "yes" or "no," except that if the vote is unanimous it may be recorded "unanimous."
- F. The port director and borough manager have the right to be present in all executive sessions.
- G. The ports and harbors advisory board shall maintain minutes of its official proceedings. The minutes shall be filed with the borough clerk and shall be retained as a public record.

12.02.090 Subject to Alaska Public Records and Open Meetings Laws.

The ports and harbors advisory board is subject to AS 40.25.110 through 40.25.220 and AS 44.62.310 through 44.62.312, as amended.

12.02.100 Rules and procedures.

The ports and harbors advisory board may adopt such rules and procedures as may be necessary to carry out its duties subject to approval by the assembly. Robert's Rules of Order will govern unless other procedures are approved by the assembly.

12.02.110 Function and duties. The ports and harbors advisory board shall have the following functions and duties:

- A. Recommend, in writing, to the borough manager and the assembly, as appropriate, policies, plans or actions to promote and support commercial and industrial development throughout the Port of Skagway.
- B. As the board deems necessary, but not less than annually during September, recommend in writing to the borough manager and the assembly allocations of borough resources through the borough's annual budget process for studying, planning, developing, administering, financing and operating the Port of Skagway.
- C. Solicit input from individuals, groups, agencies, businesses and industries on matters relating to local and regional transportation systems, facilities and services.

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- D. Develop, upon concurrence or request by the assembly, or review plans, studies, programs, policies, ordinances, state and federal legislation, regulations, grant applications, and other documents concerning development, financing, administration and operation of local and regional transportation systems, facilities and services; and advise the borough manager and the assembly, as appropriate.
- E. Within sixty (60) days following the end of each fiscal year, submit a written report to the assembly outlining the board's activities and recommendations during the preceding fiscal year, and outlining the board's recommendations for future assembly and borough manager action.
- F. Perform such other functions and duties as the assembly may require.

12.02.120 Limitations on the powers of the ports and harbors advisory board and individual members.

- A. In accordance with its function as solely an advisory board, the board has no authority to:
  - 1. Act on behalf of the municipality of Skagway;
  - 2. Enter any oral or written agreements or contracts of any kind on behalf of the municipality of Skagway;
  - 3. Make any promises, whether oral or in writing, to any person, partnership, joint venture, government agency, or private entity.
  - 4. Direct staff.
- B. In accordance with their service on the board in solely an advisory role, individual members:
  - 1. Do not have any actual or apparent authority to represent the municipality in any discussions with private persons, partnerships, joint ventures, governmental agencies, or private entities, unless specifically authorized in writing by the mayor as directed by the assembly;
  - 2. Do not have any actual or apparent authority to enter into any oral or written agreements with any person, partnership, joint venture, governmental agency, or private entity on behalf of the municipality;
  - 3. Do not have any actual or apparent authority to make any promises to any person, partnership, joint venture, governmental agency, or private entity on behalf of the municipality.

Chapter 12.03  
PORT DIRECTOR

Sections:

12.04.010 Powers and duties.

12.04.010 Powers and duties.

The position of port director established in SMC Chapter 3.02 under the Skagway Port Department is responsible for the management and control, operation and maintenance of the Port of Skagway.

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- A. Scope of Responsibility. The port director shall be responsible, subject to the control and supervision of the borough manager and the policies established by the borough assembly, for the management, operation, and maintenance of the Port of Skagway.
- B. Powers and Duties.
  - 1. Enforcement. The port director is charged with the duty of enforcing all of the provisions of this title and any rules and regulations lawfully adopted, and is empowered to do so.
  - 2. Aid. In order to render aid to distressed persons and vessels in the port, the port director, any of his authorized assistants, and any police officer of the municipality shall have the authority to:
    - a. Perform any and all acts to rescue and aid persons and to protect and save property;
    - b. Take charge of and protect all property saved from marine disaster until such property is claimed by persons legally authorized to receive it or until otherwise disposed of in accordance with this title or other pertinent laws or regulations.
  - 3. Rules and Regulations. The port director shall prepare and submit reports required by the borough manager, and shall submit recommendations concerning new rules and regulations, as necessary, to ensure safe and effective operation of the municipality's port facilities.
  - 4. Assignment of Moorage Facilities. The port director shall supervise and manage the assignment of all mooring spaces in the municipally operated port facilities; and he may from time to time in his discretion in the interests of safety, order, convenience and health require the owner or operator of any boat, vessel or floating structure to change from one (1) mooring space to another, and may himself move any boat which is unoccupied and in violation of this title.
  - 5. Refusal of Moorage Facilities. The port director may, in his/her discretion, refuse mooring facilities to any boat, vessel or floating structure which is or may become or create a fire hazard, or otherwise become a menace to the safety and welfare of other boats and their occupants. When the moorage facilities are crowded, he/she may refuse mooring facilities to floats, scows, rafts, pile drivers, boat shelters and other cumbersome floating structures. Upon refusal of mooring facilities, the boat owner, operator, master or managing agent shall be entitled to a pro rata refund of moorage fees paid in advance, less any other fees or charges the municipality may have against the boat, its owner, operator, master or managing agent. Houseboats and floating storage buildings not self-propelled are prohibited.
  - 6. Posting. The port director shall have the duty and the exclusive power to post signs and to designate the limit of port speeds, the classification and use of port areas, and the numbers designating exclusive mooring spaces within the mooring areas where such is allowed, and such other signs and notices as would inform the public at large and all boat owners and operators of authorized and prohibited uses of the boat harbor facilities, as



established by the borough manager or the borough assembly. The port director shall have the power to order the making of signs to make effective all orders and decisions of the borough assembly, and rules and regulations relating to the use of the facilities.

7. Traffic Direction. The port director and port department staff are authorized to direct all waterborne traffic, either in person or by means of visible or audible signal, in conformance with the provisions of this title; provided, that where necessary to expedite waterborne traffic, or to prevent or eliminate congestion or to safeguard persons or property, the harbormaster or designee (or in the event of a fire or other emergency, such other authorized officers of governmental agencies or authorities) may direct waterborne traffic as conditions may require, notwithstanding provisions of this title.
  8. Moving Boats. The port director may move any boat on which no person is aboard which is in violation of this title, or from which moorage or other fees are delinquent, or which is a derelict, a nuisance or is abandoned.
- C. Services of port director -- Fees. The harbormaster is granted the power and authority, from time to time, but without any obligation or duty to do so, and without any obligation or liability on the part of the municipality for failure to do so, to replace defective mooring lines, pump boats which are in dangerous condition for lack of adequate mooring lines, and move any boat for any purpose of protecting the boat from fire or other hazard, or for the protection of other boats within the harbor. Whenever the port director performs any of the acts authorized, after having given notice to the boat owner or operator by hand delivery or at the registered address of the boat owner or operator of the immediate need or having attempted to give such notice, the boat and owner shall be required to pay to the municipality such fees as are set forth by the borough assembly by resolution.

Chapter 12.04  
HARBORMASTER

Sections:

12.04.010 Powers and duties.

12.04.010 Powers and duties.

The position of harbormaster established in SMC Chapter 3.02 under the Skagway Port Department is responsible for the management and control, operation and maintenance of the Small Boat Harbor and the municipality's side of the ferry/barge facility.

- A. Scope of Responsibility. The harbormaster shall be responsible, subject to the control and supervision of the port director and the policies established by the borough assembly, for the management and, operation and maintenance of the Small Boat Harbor and the municipality's side of the ferry/barge facility.
- B. Powers and Duties.

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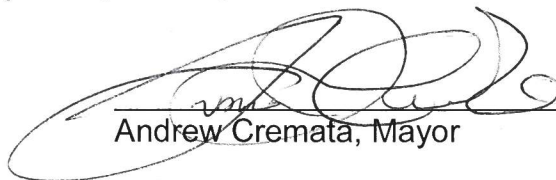
1. Enforcement. The harbormaster is charged with the duty of enforcing all of the provisions of this title and any rules and regulations lawfully adopted, and is empowered to do so.
2. Aid. In order to render aid to distressed persons and vessels in the harbor, the harbormaster, any of his authorized assistants, and any police officer of the municipality shall have the authority to:
  - a. Perform any and all acts to rescue and aid persons and to protect and save property;
  - b. Take charge of and protect all property saved from marine disaster until such property is claimed by persons legally authorized to receive it or until otherwise disposed of in accordance with this title or other pertinent laws or regulations.
3. Rules and Regulations. The harbormaster shall prepare and submit reports required by the borough manager, and shall submit recommendations concerning new rules and regulations, as necessary, to ensure safe and effective operation of the municipality's harbor facilities.
4. Assignment of Moorage Facilities. The harbormaster shall supervise and manage the assignment of all mooring spaces in the municipally operated harbor facilities; and he may from time to time in his discretion in the interests of safety, order, convenience and health require the owner or operator of any boat, vessel or floating structure to change from one (1) mooring space to another, and may himself move any boat which is unoccupied and in violation of this title.
5. Refusal of Moorage Facilities. The harbormaster may, in his/her discretion, refuse mooring facilities to any boat, vessel or floating structure which is or may become or create a fire hazard, or otherwise become a menace to the safety and welfare of other boats and their occupants. When the moorage facilities are crowded, he/she may refuse mooring facilities to floats, scows, rafts, pile drivers, boat shelters and other cumbersome floating structures. Upon refusal of mooring facilities, the boat owner, operator, master or managing agent shall be entitled to a pro rata refund of moorage fees paid in advance, less any other fees or charges the municipality may have against the boat, its owner, operator, master or managing agent. Houseboats and floating storage buildings not self-propelled are prohibited.
6. Posting. The harbormaster shall have the duty and the exclusive power to post signs and to designate the limit of harbor speeds, the classification and use of harbor areas, and the numbers designating exclusive mooring spaces within the mooring areas where such is allowed, and such other signs and notices as would inform the public at large and all boat owners and operators of authorized and prohibited uses of the boat harbor facilities, as established by the harbormaster or the borough assembly. The harbormaster shall have the power to order the making of signs to make effective all orders and decisions of the borough assembly, and rules and regulations relating to the use of the facilities.

7. Traffic Direction. The harbormaster and port department staff are authorized to direct all waterborne traffic, either in person or by means of visible or audible signal, in conformance with the provisions of this title; provided, that where necessary to expedite waterborne traffic, or to prevent or eliminate congestion or to safeguard persons or property, the harbormaster or designee (or in the event of a fire or other emergency, such other authorized officers of governmental agencies or authorities) may direct waterborne traffic as conditions may require, notwithstanding provisions of this title.
  8. Moving Boats. The harbormaster may move any boat on which no person is aboard which is in violation of this title, or from which moorage or other fees are delinquent, or which is a derelict, a nuisance or is abandoned.
- C. Services of Harbormaster -- Fees. The harbormaster is granted the power and authority, from time to time, but without any obligation or duty to do so, and without any obligation or liability on the part of the municipality for failure to do so, to replace defective mooring lines, pump boats which are in dangerous condition for lack of adequate mooring lines, and move any boat for any purpose of protecting the boat from fire or other hazard, or for the protection of other boats within the harbor. Whenever the harbormaster performs any of the acts authorized, after having given notice to the boat owner or operator by hand delivery or at the registered address of the boat owner or operator of the immediate need or having attempted to give such notice, the boat and owner shall be required to pay to the municipality such fees as are set forth by the borough assembly by resolution.

**Section 4. Severability.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

**Section 5. Effective Date.** This ordinance shall become effective immediately upon adoption.

**PASSED AND APPROVED** by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 17<sup>th</sup> day of September, 2020.

  
Andrew Cremata, Mayor

ATTEST:

  
Emily A. Deach, Borough Clerk

(SEAL)

