

# **HIGHLAND LAKES MARINA ORDINANCE**

**Amended May 24, 2023**

# HIGHLAND LAKES MARINA ORDINANCE

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## **Section 1. TITLE AND SCOPE**

This Ordinance shall be known and may be cited as the Highland Lakes Marina Ordinance (“the Ordinance” or “HLMO”). LCRA shall not approve an application and issue a Permit unless the application meets the requirements of this Ordinance and the required application fees have been paid. All Marina Facilities and Structures on the Highland Lakes, regardless of the lake levels during droughts or if facilities are aground, are subject to this Ordinance.

## **Section 2. AUTHORITY**

This Ordinance is promulgated under the authority of the LCRA Enabling Act, specifically Texas Special District Local Laws Code Chapter 8503; Texas Water Code Chapters 7, 26, 49, and 51; Texas Parks and Wildlife Code Chapter 31; and other applicable law.

## **Section 3. DEFINITIONS**

**Adjoining Waterfront Property:** A property that has a common property line with the Lot over which a Marina Facility is/will be located and that is either located below the Shoreline or adjoins the Shoreline at lake elevations, measured in feet above mean sea level (feet msl), when the water surface is at or below the following lake elevations:

Lake Buchanan: 1,020 feet msl

Inks Lake: 888 feet msl

Lake LBJ: 825 feet msl

Lake Marble Falls: 738 feet msl

Lake Travis: 681 feet msl

**Affected Person:** Any Person who has a personal, justiciable interest and whose legal rights, duties or privileges may be adversely affected by impacts that are regulated under this Ordinance from any proposed Marina Facility for which a Permit is required under this Ordinance.

**Alternate Low Water Location:** A separate tract of land that is not contiguous with the Lot over which the Marina Facility is located at the 1,020 feet msl contour elevation on Lake Buchanan and the 668 feet msl contour elevation on Lake Travis.

**Appellant:** Any person deemed to have filed a valid Request for Appeal pursuant to Section 12.

**Applicant:** The Person (or their duly authorized designee) who applies for a Permit under this Ordinance.

**Board:** The LCRA Board of Directors.

**Boarding Dock:** A Fixed or Floating Dock that is less than 1,500 square feet, designed and used for the sole purpose of safe loading and unloading of passengers onto watercraft at a boat launch ramp, and is not a Residential Dock or Courtesy Dock affiliated with a Commercial Facility.

**Combination of Structures:** Structures under common use, ownership, or control.

**Commercial Facility:** Any facility or Structure that is used for or affiliated with business or income-producing purposes that is not a Watercraft or a Community Marina. For purposes of this definition, the rental of a residence is not considered a Commercial Facility.

**Configuration:** The arrangement of the separate parts of a Marina Facility that are located over the water surface and the arrangement of such facilities relative to the Shoreline pursuant to this Ordinance.

**Construct:** To erect or install any structural, electrical, plumbing, or fuel portion of a Marina Facility.

**Courtesy Dock:** A Dock, platform, pier, and similar Structure for which no fee is/will be assessed for its use and where the mooring of Watercraft for a period exceeding 24 consecutive hours is/will be prohibited.

**Cove:** A sheltered recess in the Shoreline that is either created by a tributary or is an elongated lowland area that has been inundated by water as a result of the construction of a dam on the Colorado River. Irregularities in the Shoreline are not considered a Cove.

**Designated Swim Area:** A swim area approved under rules adopted by the Board, pursuant to the Texas Water Safety Act and marked with barrier floats.

**Dock:** A Floating or Fixed Dock.

**Emergency Reconstruction:** Construction to repair or replace damaged portions of a permitted Marina Facility necessitated by an emergency including, but not limited to, a Flood Condition, fire, or extreme winds.

**Encapsulated Flotation:** Expanded polystyrene fully enclosed by one of these materials:

- 1) Fiberglass and plastic resins 30 mils thick or more, chemically or securely bonded;
- 2) Rigid (hard) plastics, 50 mils thick or more; or
- 3) Liquid coatings, 30 mils thick or more, chemically or securely bonded.

**End Tie:** A structurally unshielded area of a Marina Facility where a Watercraft is or is intended to be moored.

**Existing Community Marina:** An existing Marina Facility used in lieu of multiple Residential Docks and located where Residential Docks are prohibited by deed restrictions, easements or other legally binding documentation and had an existing permit issued on or before Aug. 17, 2022. A Community Marina shall not occupy more than 8 square feet of Water Surface Area for each linear foot of Shoreline. The linear feet of Shoreline must be owned or controlled by the same entity as the Community Marina and will be measured at 668 feet msl for Lake Travis, 738 feet msl for Lake Marble Falls, 825 feet msl for Lake LBJ, 888 feet msl for Inks Lake and 1,020 feet msl for Lake Buchanan.

**Existing Marina Facility:** A Marina Facility operating in accordance with a valid Permit and subject to the provisions of the Ordinance in effect at the time the Permit was issued or the application was administratively complete.

**Expansion:** Any increase in the Water Surface Area occupied by a Marina Facility.

**Extreme Drought Condition:** When the elevation of Lake Buchanan is below 1,002 feet msl and/or the elevation of Lake Travis is below 640 feet msl.



**Fairway:** Unobstructed Water Surface Area that provides space for maneuvering of Watercraft when exiting or entering wet slips at a Marina Facility.

**Final Inspection and Authorization:** The inspection and authorization required prior to the occupancy or commencement of operation of a Marina Facility or an Expansion or Modification of an Existing Marina Facility as required by Section 7.3 of this Ordinance.

**Fixed Dock:** A rigid Structure or portion of a rigid Structure supported by pilings, retaining wall, or other materials and associated with a permanent foundation either resting or embedded in the lake bottom and designed so as to make relocation impracticable.

**Floating Dock:** A Structure or portion of a Structure supported by flotation or otherwise designed to make relocation possible.

**Flood Condition:** When the elevation of Lake Buchanan is above 1,020 feet msl and/or when the elevation of Lake Travis is above 681 feet msl.

**Flotation Material:** Material such as polystyrene, wood or other material used to support floating Structures on the surface of the water.

**Gangway:** A Walkway or Structure extending from the dock to the shore that, because of its short length, does not require supports by floats or outriggers and which occupies no more than 80 square feet of Water Surface Area.

**Grandfathered Facility:** A Structure that was not required to obtain a permit under prior versions of this Ordinance.

**Highland Lakes:** Includes Lake Buchanan, Inks Lake, Lake LBJ, Lake Marble Falls and Lake Travis on the Colorado River within the Lower Colorado River Authority District.

**Lot:** The parcel of land, or contiguous parcels of land, that are specifically designated by the Permit to be occupied, or intended to be occupied, by a Marina Facility. Except for leased property that comprises the Lot or a portion thereof, the parcel(s) of property that comprise the Lot must be identifiable in public records. Those portion(s) of any Lot that are not otherwise identifiable in public records shall be identified by a metes and bounds description provided by the Applicant.

**Low Water Elevation:** For Lake Buchanan is 1,002 feet msl and Lake Travis is 640 feet msl.

**LCRA:** Lower Colorado River Authority.

**LCRA General Counsel:** LCRA's general counsel or his or her designee.

**LCRA General Manager:** LCRA's general manager or his or her designee.

**Marina Design Elevation:** For each of the Highland Lakes, this term means:

Lake Buchanan: 1,020 feet msl, 1,010 feet msl and 1,002 feet msl

Inks Lake: 888 feet msl

Lake LBJ: 825 feet msl

Lake Marble Falls: 738 feet msl

Lake Travis: 680 feet msl, 660 feet msl and 640 feet msl

**Marina Facility:** Any Structure or Combination of Structures, other than a Residential Dock, located on or over the water surface of the Highland Lakes and located on or over a Lot that is designed or used for the mooring of Watercraft or is a Commercial Facility, Existing Community Marina, Marine Service Station, or Residential Marina Facility. A Floating Dock located on the Highland Lakes that occupies more than 1,500 square feet of Water Surface Area, excluding the square footage occupied by the Gangway, shall be considered a Marina Facility.

**Marine Service Station:** A Commercial Facility, located on or over the water surface of the Highland Lakes that provides fueling services for Watercraft. Portable containers, watercraft, and trailers are excluded from this definition.

**Modification:** Any change, Expansion, addition or alteration in the location, Configuration, Structure, substructure, flotation, plumbing, fuel or electrical services of a Marina Facility, other than routine maintenance and repairs.

**Navigable Passage:** A dedicated space to allow the passage of Watercraft, which for purposes of this Ordinance, is defined as follows:

- 1) At least 75 feet in width and with a minimum depth of 8 feet; or
- 2) For Marina Facilities permitted prior to May 23, 2001, at least 40 feet in width and with a minimum depth of 8 feet under the following circumstances:
  - a. Existing Marina Facilities on Lake Travis when the level of Lake Travis is below the 655 feet msl contour elevation, and
  - b. Existing Marina Facilities on Lake Buchanan when the level of Lake Buchanan is below the 1,015 feet msl contour elevation.

**Non-Substantive Change:** Modifications or Expansions to an Existing Marina Facility or proposed Marina Facility as follows:

- 1) Relocation of Gangways or walkways;
- 2) Expansion of the width of a Fairway so long as such Expansion does not result in the Marina Facility extending further from the Shoreline than allowed under the Permit or as proposed in the original Application;
- 3) Expansions of the width of walkways and/or finger piers;
- 4) Expansion reasonably required to comply with applicable regulations of a governmental entity;
- 5) Revisions of electrical installations;
- 6) Any Expansion of a Permitted or Constructed Marina Facility that does not exceed the lesser of:
  - a. Twenty percent of the square footage, within a five-year period;
  - b. 5,000 square feet capable of mooring 30 or fewer Watercraft, within a five-year period; or
  - c. 1,500 square feet capable of mooring six or fewer Watercraft, within a one-year period;
- 7) Modification of an Existing Marina Facility that is required to temporarily accommodate variable lake levels as shown on the low water Configuration plan;
- 8) Modification or expansion of an Existing Marina Facility that does not exceed the marina's permitted footprint; does not increase the distance from shore; does not further restrict the Navigable Passage in an existing waterway; and does not reduce the adjoining property line setback;
- 9) Addition of a roof to an existing dock; or

- 10) Any other change, as determined by LCRA staff, that would not adversely affect Adjoining Waterfront Property owners, water quality, public use, authorized or lawful access, or public safety.

In any event, a Non-Substantive Change shall not include significant operational or siting modifications, including but not limited to, the addition of a Marine Service Station or restaurant.

**Ordinance:** Highland Lakes Marina Ordinance, as it may be amended from time to time.

**Permit:** An authorization issued by LCRA in accordance with the procedures prescribed in this Ordinance. The term Permit also includes the authorization issued by LCRA to operate a Marina Facility after the Marina Facility, as constructed, has been inspected and found to comply with this Ordinance and the application upon which the Permit is based.

**Permit Amendment:** A revision to a Permit issued by LCRA after an application for such amendment has been received and reviewed, and the expansion or modification plans have been found to be in compliance with this Ordinance. The term Permit Amendment also includes the authorization issued by LCRA to operate a Marina Facility after the Marina Facility, as constructed, has been inspected and found to comply with this Ordinance and the application upon which the Permit Amendment is based.

**Permittee:** A Person authorized to Construct or operate a Marina Facility pursuant to a Permit granted according to the provisions of this Ordinance.

**Person:** Any individual, organization, trust, partnership, firm, association, public or private corporation, political subdivision, or any other legal entity.

**Pollution:** Alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the Highland Lakes or sediments underlying the Highland Lakes or adjoining Coves that render the water in the Highland Lakes harmful, detrimental, or injurious to humans, animal life, vegetation, property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

**Registrant:** The owner of a Grandfathered Facility who has registered with LCRA in compliance with Section 11 of this Ordinance.

**Residential Dock:** A non-Commercial Facility associated with a single-family residence(s) or multi-family residence(s), including condominium and apartment complexes. This definition also includes swim platforms and piers. However, a Floating Dock, floating swim platform, or floating pier that occupies more than 1,500 square feet of Water Surface Area, excluding the square footage occupied by the Gangway, shall be considered a Marina Facility.

**Residential Marina Facility:** A non-commercial floating Structure, or Combination of Structures: (1) associated with a single-family residence for which no compensation is/will be received by the owner(s) of the dock(s) for its use and (2) that occupies more than 1,500 square feet of Water Surface Area, excluding the square footage occupied by the Gangway.

**Shoreline:** The line at which the water surface of each Highland Lake intersects the land at any given time. The Shoreline will move as the surface elevation of a lake changes.

**Spill:** Any amount of petroleum product, in excess of 0.05 gallons per hour (1.2 gallons per day), that is not accounted for in the fuel system or any amount that reaches the water surface and causes a sheen.

**Standards:** The performance standards found in Section 5 of this Ordinance.

**Structure:** Anything Constructed or otherwise located or operated on or over the water surface of the Highland Lakes; extended over the water surface of the Highland Lakes; affixed to something that is/will be located on the ground and covered by water of the Highland Lakes; or is located on land and is an essential part of the operation or an integral system of a Marina Facility, such as fuel and electrical systems.

**TDLR:** Texas Department of Licensing and Regulation or its successor agency.

**TCEQ:** Texas Commission on Environmental Quality or its successor agency.

**Water Operations Committee:** The Water Operations Committee of the LCRA Board of Directors or any subsequent Board committee established and designated by the Board to consider appeals pursuant to this Ordinance.

**Water Surface Area:** The area including, but not limited to, the width times the length of the Marina Facility's Structures located on or over the water, its open and covered slips, and the maximum area covered by Watercraft, including that portion of the Water Surface Area that is used by Watercraft as a Courtesy Dock and all End Tie areas. Fairways and Gangways are not included in the Water Surface Area measurements.

**Watercraft:** Any craft, vessel, or boat used or capable of being used as means of transportation on or under the water, including vessels such as houseboats and other vessels not used primarily for transportation.

**Youth Camp:** A property or facility that is/will be regulated by the Texas Department of State Health Services, or its successor agency, and licensed under the Texas Youth Camp Safety and Health rules and regulations and for which all water-based Structures and systems are for the sole use of the facility.

## **Section 4. PERMIT DETERMINATION AND EXEMPTIONS**

### **4.1 Permit Required**

#### **(a) Construction and Operation of a Marina Facility**

Except as provided in this section, no person may cause, suffer, or allow Construction of a Marina Facility on any of the Highland Lakes without first obtaining a Permit from LCRA. Except as provided in Section 6.2(e), and after issuance of a Permit or Permit Amendment to the Marina Facility, no person may cause, suffer, or allow the operation of a Marina Facility on any of the Highland Lakes without first obtaining from LCRA a Final Inspection and Authorization to begin occupancy and operation of the Marina Facility as described in Section 7.3 of this Ordinance.

#### **(b) Amendment of a Permit**

Except as provided in this section, no person may cause, suffer, or allow the Expansion or Modification of a Marina Facility on any of the Highland Lakes without first obtaining a Permit Amendment from LCRA pursuant to Section 6.2.

## **4.2 Exemptions**

### **(a) Residential Docks and Boarding Docks**

Residential Docks and Boarding Docks are exempt from the requirements of this Ordinance.

### **(b) Youth Camps**

An Existing Marina Facility permitted prior to May 24, 2023, that is for the sole use of a Youth Camp and is in compliance with all applicable Texas Department of State Health Services (TDSHS), or its successor agency, regulations is exempt from all requirements of this Ordinance except:

- (i) Youth Camps shall comply with Section 5.2(c)-5.2(i), Section 5.4(b), and Section 5.4(c) of this Ordinance.
- (ii) Youth Camps are required to pay the annual Permit fees established by the LCRA Board for all Structures located on or over the surface of the water.

Written verification of compliance with applicable TDSHS regulations shall be submitted to LCRA by June 1 of each year for which the exemption is sought.

New Marina Facilities permitted after May 24, 2023, for the sole use of a Youth Camp and that follow all applicable regulations from TDSHS or its successor agency are subject to all requirements of this Ordinance.

## **4.3 Community Marinas**

New Community Marinas are prohibited after Aug. 17, 2022. Existing Community Marinas are subject to this section of the Ordinance. An Existing Community Marina shall conform to all the provisions of this Ordinance with the following exceptions or modifications:

### **(a) Fees**

All annual permit fees are waived for an Existing Community Marina. An Existing Community Marina is subject to all other fees as described in the fee schedule on [www.lcra.org/hlmo](http://www.lcra.org/hlmo).

### **(b) Location and Configuration**

At locations where the lake or Cove has an unobstructed open water width of 1,000 feet or less, no Existing Community Marina shall, at any time, extend more than 33% of the width of the lake or Cove from Shoreline to Shoreline (measured perpendicular from the Shoreline at the Marina Design Elevation).

### **(c) Public Notice**

The public notice, meeting, and comment requirements of Section 6.1 do not apply to Existing Community Marinas.

**(d) Insurance**

The requirement that LCRA be named as an additional insured on the general public liability insurance policies, as specified in Section 5.4(c), does not apply to an Existing Community Marina with fewer than five mooring slips.

**(e) Amendments**

Existing Community Marinas are eligible for Amendments to their existing permits pursuant to Section 6.2. Existing Community Marina Facilities shall not occupy more than the 8 square feet of Water Surface Area for each linear foot of Shoreline restricted and documented in the application for a permit issued and in effect on or before Aug. 17, 2022.

**4.4 Grandfathered Facilities**

Grandfathered Facilities are subject only to the requirements of Section 11 of this Ordinance.

**4.5 Existing Marina Facilities**

Except as expressly set forth in this section, an Existing Marina Facility is authorized to Construct or operate the facility in accordance with the terms and conditions of the Permit for the Existing Marina Facility and the siting, location, or Configuration requirements of the Ordinance in effect at the time the application for the Existing Marina Facility was accepted by LCRA staff. Existing Marina Facilities shall comply with all performance standards set forth in Section 5, with the exception of the location and Configuration requirements set forth in Section 5.2.

Any Expansion or Modification of an Existing Marina Facility outside of the existing permitted footprint shall be subject to all requirements of this Ordinance, including Section 5.2. Existing Marina Facilities are eligible for Minor Amendments to their existing permits pursuant to Section 6.2(b) within the existing permitted footprint, while remaining subject to the location and configuration requirements of the Ordinance under which they were originally permitted.

**4.6 Residential Marina Facilities**

Construction and operation of a Residential Marina Facility shall conform to all of the provisions of this Ordinance with the following exceptions or modifications:

- (i) Fees: All Ordinance annual permit fees are waived for a Residential Marina Facility. A Residential Marina Facility is subject to all other fees as described in the fee schedule on [www.lcra.org/hlmo](http://www.lcra.org/hlmo).
- (ii) Location and Configuration: Residential Marina Facilities may go aground at low water elevations if engineered to go aground without damage to the structure. At LCRA staff discretion, Residential Marina Facilities may be allowed to use LCRA bathymetry (topographical data) for location and configuration plans to demonstrate adequate depth.
- (iii) Marina Facility description: Residential Marina Facilities are exempt from Section 6.1(c)(ii)(3)(c).

- (iv) Display of Permit or letter authorizing operations: Residential Marina Facilities are exempt from Section 5.6(vi).
- (v) Marina Facility operations: Residential Marina Facilities are not required to comply with the International Fire Code (IFC) and National Fire Protection Association (NFPA) #303 and #30A, with the exception that all facilities are required to have one fire extinguisher with a minimum rating of 2A 20 B:C located in a conspicuous and easily accessible location on the dock(s).
- (vi) Grandfathered Facilities: Residential Marina Facilities constructed and located in their current location and configuration on or over the water surface prior to Aug. 1, 1984, are subject only to the requirements of Section 11 of this Ordinance.
- (vii) Setback Requirements: Residential Marina Facilities are exempt from the setback requirements pursuant to Section 5.2(b).
- (viii) Public notice: Residential Marina Facilities are exempt from Section 6.1(f)(i)-(ii), Section 6.1(g), Section 6.1(h)(i), and Section 6.1(i).

#### **4.7 Floating Habitable Structures**

Pursuant to LCRA Land and Water Use Regulations, floating habitable structures, as they are defined in those regulations, are prohibited within the floodplain of the Highland Lakes. See the LCRA Land and Water Use Regulations for specific definitions and provisions.

### **Section 5. PERFORMANCE STANDARDS**

Except as otherwise expressly stated in this Ordinance, any person who is required by this Ordinance to obtain a Marina Facility Permit or Permit Amendment shall demonstrate compliance with the performance standards set out in this section.

#### **5.1 Pollution Control**

All Marina Facilities shall be designed, Constructed and operated so as to prevent sewage and other pollutants from entering the waters of the Highland Lakes.

##### **(a) Water Quality Protection**

- (i) All Marina Facilities shall comply with the LCRA Highland Lakes Watershed Ordinance and all other applicable local, state, and federal water quality rules, regulations, or ordinances.
- (ii) All Watercraft maintenance, repair, sanding, painting, cleaning, and other types of finishing or re-finishing work shall be performed in a manner and at locations that will prevent, fuel, oil, sewage, paint or other pollutants from entering the waters of the Highland Lakes.
- (iii) Boat painting, paint removal, and high-pressure-bottom-cleaning of wooden boat hulls shall not be performed over or on the water surface at any time.

**(b) Water Quality Analysis Statement**

An Applicant for a Permit or Permit Amendment for the Construction of 50 or more slips, a restaurant over the water surface, or a Marine Service Station shall prepare and submit as part of the application a Water Quality Analysis Statement that analyzes the seven specific impacts listed below and describes in detail the best management practices the Applicant will implement to meet the requirements established below and minimize the impacts on water quality from the facilities for which the Permit or Permit Amendment is sought. The Applicant shall use the results of the Water Quality Analysis Statement to design and operate the Marina Facility with the least amount of water quality impact as can be achieved cost effectively.

(i) Boat sewage:

(1) Minimize the potential for accidental release of boat sewage to surface waters.

(2) Allow ease of access to boat sewage collection facilities and promote the use of such facilities.

(3) Ensure that boat sewage collection facilities are operating properly, and are leak-free and otherwise properly maintained.

(ii) Solid waste collection and disposal: Reduce potential for litter and solid waste to pollute nearby land and water.

(iii) Litter and debris collection and disposal:

(1) Ensure removal of litter and debris at regular intervals.

(2) Ensure prompt removal of abandoned anchors, dock materials, debris, and refuse in and around the Marina Facility.

(iv) Impact to freshwater exchange and water circulation action of a Cove:

(1) Site and design the Marina Facility to ensure that wind and currents will aid in water circulation of the site or renew its water regularly.

(2) Site and design the Marina Facility such that the bottom of the Marina Facility and the entrance channel are not deeper than adjacent navigable water.

(3) Design Marina Facilities to promote circulation within the basin.

(4) Design and locate entrance channels to promote water circulation.

(5) Design Marina Facilities to promote flow-through currents and water circulation.

(6) Consider other design alternatives in poorly flushed water bodies to enhance flushing.

(v) Hazardous or toxic material storage and Pollution precautions: Design liquid materials storage facilities with appropriate containment to prevent toxic or hazardous materials from entering the water in the event of a Spill.



(vi) Marine Service Station operations and Pollution prevention:

(1) Ensure the containment of Spills at fueling stations.

(2) Develop and submit a Spill response plan that includes response to any hazardous or toxic material, or fuel spill, as appropriate.

(vii) Boat cleaning:

(1) Ensure that debris from commercial boat cleaning operations can be captured and disposed of properly.

(2) If boat cleaning will be allowed, establish procedures that will avoid negative impacts to water quality.

**(c) Marine Service Station**

(i) Marine Fuel Facilities shall be located to provide natural protection against prevailing winds or shall have adequate artificial protection, such as a breakwater structure.

(ii) Marine Service Station facilities shall be designed, maintained, and operated to prevent Spills or leaks of fuel and/or petroleum products into any of the Highland Lakes.

(iii) All components of Marine Service Station fuel systems shall be leak free and fuel shall be dispensed in a manner to avoid Spills. If a Spill occurs, it shall be promptly reported and mitigated in accordance with TCEQ requirements. If a Spill or leak of fuel and/or petroleum products occurs, the Marina Facility owner, operator, or other responsible party shall notify LCRA and TCEQ as soon as possible, but not more than 24 hours after the Spill or leak occurs. The Marina Facility owner, Marina Facility operator, or other responsible party, and not LCRA, shall be responsible for providing any required notification to TCEQ.

(iv) Marine Service Station fuel facilities must have an adequate supply of sorbent materials readily available in a clearly marked container to clean up any minor Spills that may occur.

(v) Gravity feed fuel systems shall have a pressure solenoid control valve positioned adjacent to and outside the tank block valve and adjusted so liquid cannot flow by gravity from the tank. A fuel storage tank located more than 100 feet from the Shoreline shall have an additional solenoid valve installed prior to the first flexible connection.

(vi) Fuel lines shall contain the appropriate number and type of valves to prevent Spills while performing repairs, reconfiguring the Marina Facility during periods of varying lake levels, or shutting off the fuel supply in an emergency. When the fuel system is not in use, all valves shall be kept in the closed position.

(vii) Flexible fuel lines and fittings shall be approved by testing laboratories such as Underwriters Laboratories or Factory Mutual. Strain relief devices shall be attached to the fuel hose where the flexible line attaches to a rigid line. Fuel lines shall not be installed on floating marina access bridges or Gangways. All fuel lines shall be located where they are not subject to physical damage. Safety break valves shall be installed on all dispenser hoses exceeding 18 feet in length.

- (viii) No more than two flexible connections shall be allowed on any single fuel supply line. A flexible line connected between two rigid lines shall be considered one flexible connection. Quick-throw valves approved by testing laboratories such as Underwriters Laboratories or Factory Mutual shall be installed on both sides of the flexible connections.
- (ix) Tanks that have been removed from use shall have all valves removed and, except for the tank vent, all piping connections and unused openings at the tank shall be sealed. All combustible or flammable materials must be removed from the tank and the tank shall be properly closed in accordance with TCEQ and International Fire Code (IFC) procedures.
- (x) A Spill control response plan shall be prepared for each Marine Service Station and be readily available and accessible to all Marina Facility personnel.
- (xi) Fuel delivery nozzles shall be equipped with a self-closing control valve that will shut off the flow of fuel when the operator's hand is removed from the nozzle. The use of any device to override this feature is prohibited.

**(d) Boat Sewage**

New Marina Facilities and Expansions of Existing Marina Facilities harboring more than 25 Watercraft and that are required by TCEQ regulations to be equipped with marine sanitation devices shall have an operating boat sewage pumpout facility approved and certified in accordance with TCEQ regulations. Certification shall be displayed per TCEQ regulations.

**(e) Restrooms**

All patrons of Marina Facilities must have access to restroom facilities. Portable facilities located on shore are acceptable.

**(f) Flotation Material**

- (i) New Marina Facilities requiring Flotation Materials must use Encapsulated Flotation Material or materials that do not deteriorate or decompose and impact water quality.
- (ii) Within two years of the effective date of this Ordinance, Existing Marina Facilities with unencapsulated Flotation Materials must:
  - (1) Remove or replace all unencapsulated Flotation Materials with Encapsulated Flotation Material or materials that do not deteriorate or decompose and impact water quality; or
  - (2) If compliance with this subsection creates a grave injustice or an unreasonable hardship, the Existing Marina Facility may enter into an unencapsulated Flotation Material replacement plan approved by LCRA that, at a minimum, includes a plan for funding, timeline for replacement, and status reports to LCRA.
- (iii) Notwithstanding Section 5.1(f)(i) or (ii), Flotation Material will be deemed to need replacement if more than 25% of the float is missing or the float is not providing enough buoyancy to keep the bottom of the dock frame above the water's surface.

- (iv) Flotation Material must be kept free of vegetation, securely attached, and properly maintained to provide buoyancy and structural integrity as designed and permitted. Homemade floats, such as barrels or drums, are prohibited.

## **5.2 Property Control, Location, and Configuration**

Except as otherwise provided in Texas Water Code § 11.097, no Marina Facility shall be located or Configured so as to extend into the waters of any of the Highland Lakes to a distance that would constitute a navigation hazard or a flood control hindrance, or would unreasonably infringe upon public use of and access to the water surface. This standard is satisfied when all the following requirements are met.

### **(a) Property Ownership or Control**

Marina Facilities shall be located on and over a Lot that is owned, leased, or otherwise controlled by the Applicant, and shall not interfere with the legal rights and privileges of an Adjoining Waterfront Property owner, including those conveyed through covenants, deed restrictions, easements, court judgement, or other legally binding documents. For purposes of this Ordinance, establishing ownership or control means that all legal challenges to the control or ownership of the land has been resolved.

- (i) The Applicant shall provide the following documentation:

- (1) A legal description of the Lot and name and address of the owner of the Lot, including that portion of the Lot under the water surface;
- (2) An affidavit, in a form prescribed by LCRA staff, stating that the Applicant owns, leases, or otherwise controls the Lot over which the Marina Facility will be located;
- (3) Copies of public records identifying the parcels of property comprising the Lot and a metes and bounds description for any leased portion(s) of any Lot that are not otherwise identifiable in the public records;
- (4) A lease, easement, or other deed-recorded instrument if the Applicant and the property owner are different individuals or entities. Applicant must supply documentation that Applicant has authority from the property owner to locate the Marina Facility on or over the Lot; and
- (5) Other documentation to demonstrate ownership or control of the lot, if required by LCRA staff. This may include a title opinion from an attorney, a title commitment or any other documentation deemed necessary by LCRA to verify compliance with Section 5.2(a), if such ownership or control is challenged. Any such title opinion shall state that the attorney has reviewed the chain of title or other appropriate documents and found that, in the attorney's professional opinion, the Applicant is the owner or has the legal right to Construct a Marina Facility on or over the Lot in question. An underwater survey performed by a professional land surveyor also may be required by staff if property boundaries are unclear or challenged.

- (ii) LCRA does not have jurisdiction to adjudicate competing property rights claims. This section does not preclude any party from seeking relief in a civil court to resolve disputed property

rights claims. However, LCRA may suspend application processing, technical review, and/or a Permit upon receipt of a valid claim of interference of a property.

**(b) Setback Requirements**

Marina Facilities and Expansions of Existing Marina Facilities shall meet the minimum setbacks for Structures located over or on the water surface as described below.

- (i) Marina Facilities and Expansions of Existing Marina Facilities shall be at least 75 feet from the property line of Adjoining Waterfront Properties, except for:
  - (1) Structures such as anchors and cables located a minimum of 8 feet under the water surface.
  - (2) An Applicant who submits written releases from owners of Adjoining Waterfront Properties stating that the proposed Marina Facility or Expansion will not infringe upon such owner's reasonable ingress and egress on the lake.
  - (3) Expansion of an Existing Marina Facility with existing Structures affixed to realty (not floating) so its relocation is impracticable, provided that any construction shall not be located closer to the Adjoining Waterfront Property lines than the existing Structures.
- (ii) Marina Facilities and Expansions of Existing Marina Facilities shall not be located within 150 feet of an authorized existing public water supply well that is operated in accordance with TCEQ rules and regulations.
- (iii) Marina Facilities and Expansions or Modification of Existing Marina Facilities shall not be located within 200 feet from the edge of the main channel of the Colorado River located nearest to the Shoreline where the Marina Facility is to be located. The edge of the river channel will be measured from the point where the bank intersects with the riverbed.
  - (1) Exceptions:
    - a. The portion of a Marina Facility located in an area dredged for a recessed Marina Facility shall be exempt from Section 5.2(b)(i) and 5.2(b)(iii).
    - b. Staff may approve the location of a Marina Facility in areas where the water currents are slow or non-existent during flood events and where a licensed professional engineer has certified that the Marina Facility's proposed location will not be adversely impacted by strong currents or present a hazard to public safety.
- (iv) Except for Structures such as swim platforms that are located within a Designated Swim Area, no Structure affiliated with a Marina Facility shall be located on or over the water surface within 50 feet from any existing Designated Swim Area. LCRA staff may waive this requirement if the swim area is separated from the Structure associated with a Marina Facility by physical barriers.

**(c) Maximum Distance from Shore**

- (i) No Marina Facility shall, at any time, extend a distance greater than 400 feet from the Shoreline (measured from the Shoreline to the nearest opposite shoreline or structure) or such a distance as to preclude the maintenance of the Navigable Passage of a Cove, whichever is the shorter distance.
- (ii) All Marina Facilities shall maintain a safe and secure walkway providing access from the shore to the Marina Facility and be located as close to the shoreline as practicable to ensure public safety.

**(d) Fairways and Navigable Passage**

- (i) Marina Facilities shall maintain a Navigable Passage at all times.
- (ii) If the Navigable Passage also serves as a Fairway, the width of the passage shall be 1.75 times the longest Watercraft slip or 75 feet, whichever is greater.
- (iii) A Marina Facility must provide a minimum Fairway width between Marina Facility docks of 1.75 times the length of the longest boat slip opening into the common Fairway shared by docks at the same Marina Facility. If a boat exceeds the length of the slip, the fairway distance must be increased to compensate for the increased boat length.
- (iv) Section 5.2(d)(i) does not apply to the placement of personal Watercraft slips when located between the marina structure and the shoreline.
- (v) Where a Navigable Passage of 8 feet of depth does not exist on lakes LBJ, Marble Falls or Inks, Marina Facilities shall not further restrict lake depth and width.

**(e) Height**

No Marina Facility shall, at any time, extend to a height of more than 35 feet above the surface of the water (measured perpendicular to the surface of the water).

**(f) Displacement of Boating Traffic**

Marina Facilities shall not be located or configured in such a way as to displace boating traffic into shallow areas.

**(g) Underwater Topography and Alternate Low Water Locations**

- (i) A Marina Facility shall be maintained at an adequate depth of water down to the Low Water Elevation. For this section, adequate depth of water shall mean the depth necessary to allow wet mooring slips to remain useable while complying with Section 5.2 and not be allowed to go aground. All Marina Facilities and Expansions of Existing Marina Facilities must maintain an adequate depth of water while complying with the provisions of this section without relocating to an Alternate Low Water Location.

- (ii) The requirement in Section 5.2(g)(i) does not apply to Courtesy Docks engineered to go aground without damage to the Structure.

**(h) Lake Locations 1,000 Feet or Less in Width**

At locations where the lake or Cove has an unobstructed open water width of 1,000 feet or less, no Marina Facility shall, at any time, extend a distance of more than 10% of the width of the unobstructed open water from Shoreline to the nearest opposite Shoreline or from the Shoreline to a Structure located on the nearest opposite shore (measured from the Shoreline at the Marina Design Elevation). Measurements to Structures located on the opposite shore will include only those Structures located as permitted by LCRA or otherwise allowed by LCRA rules or regulations and present on the date the application is filed with LCRA. The portion of a Marina Facility located in an area dredged for a recessed Marina Facility shall be exempt from Section 5.2(h).

**(i) Lake Locations Greater Than 1,000 Feet in Width**

At locations where the lake or Cove has an unobstructed open water width of greater than 1,000 feet, no Marina Facility shall, at any time, extend a distance of more than 20% of the width of the unobstructed open water from Shoreline to the nearest opposite Shoreline or from the Shoreline to a Structure located on the nearest opposite shore (measured from the Shoreline at the Marina Design Elevation). Measurements to Structures located on the opposite shore will include only those Structures located as permitted by LCRA or otherwise allowed by LCRA rules or regulations and present on the date the application is filed with LCRA. The portion of a Marina Facility located in an area dredged for a recessed Marina Facility shall be exempt from Section 5.2(i).

**5.3 Representation of Applicant or Permittee**

An individual designated by the Applicant or Permittee as the Applicant's representative or Permittee's representative shall submit documentation demonstrating his/her authority to represent the Applicant or Permittee.

**5.4 Risk Management**

**(a) Marina Facility Design and Certification**

All Marina Facilities shall be designed and maintained in such a manner as to ensure public safety, including but not limited to:

- (i) All Permit and Permit Amendment applications for Construction or Modification or Expansion of a Marina Facility must contain a signed certification from a professional engineer licensed in the State of Texas stating that the civil, structural, electrical, mechanical and fuel installations and systems of the Marina Facility are designed to ensure public safety and comply with the most recent editions of the following codes: National Electrical Code (NEC), National Electrical Safety Code (NESC), International Fire Code (IFC), and National Fire Protection Association (NFPA) #303, #30, and #30A.
- (ii) Upon completion of Construction, Expansion, or Modification of a Marina Facility, the Permittee shall submit a follow-up certification signed by the engineer and/or master

electrician stating that the Construction, Expansion, or Modification was completed in accordance with above referenced publications and plans submitted to and approved by LCRA.

- (iii) With respect to the electrical requirements only, in lieu of an engineer's certification, a master electrician may design and certify the electrical installations and systems of a Marina Facility comply with the most recent editions of the NEC and NESC.
- (iv) The Marina Facility shall comply with the most recent editions of the following codes, as they may be amended from time to time: NEC, NESC, IFC, and NFPA #303, #30, and #30A. NFPA 303, Section 5.20 requires that an inspection of all electrical wiring, ground connections, conduit, hangers, supports, connections, outlets, appliances, devices, and portable cables installed or used in a marina, boatyard, boat basin, or similar establishment be made at regular intervals to ensure a complete inspection at least annually. All Marina Facilities required to have an inspection conducted in accordance with NFPA 303, Section 5.20, also shall complete a follow-up electrical inspection certification for electrical installations and systems. Follow-up certifications must be completed by a professional engineer licensed in the State of Texas or a certified master electrician. A copy of the current annual electrical inspection shall be provided to LCRA staff at any time upon request, including during inspections.
  - (1) The requirement for fire standpipe systems, fixed extinguishing systems and fire detectors is waived.
  - (2) Residential Marinas are exempt from the electrical inspection certification requirement.

**(b) Lighting**

Marina Facilities shall be continuously lighted from sunset to sunrise and during periods of restricted visibility. The minimum safety lighting shall adequately define the presence of all Structures located on or over the water surface and shall be wired with a photoelectric cell-operated switch so the lights will automatically operate. Lighting shall be located and configured or shielded so as not to present a hazard to navigation. Lighting characteristics must be such that they cannot be confused with aids to navigation or watercraft.

**(c) Insurance**

- (i) Except as expressly stated in this Ordinance, all Marina Facilities shall maintain comprehensive general or public liability insurance providing a minimum coverage of \$1 million per person/per occurrence bodily injury and \$1 million property damage or \$2 million combined single limit.
- (ii) A certificate of insurance shall be provided to LCRA as evidence of the required coverage before Construction may commence and upon request at any time, including during inspections. This certificate shall state that LCRA will be given a minimum of 30 calendar days advance notice of cancellation or material change in coverage.
- (iii) Marina Facilities that do not lease boat slips to the public but provide the slips only as a service to their customers and Residential Marinas shall maintain comprehensive general or

public liability insurance providing a minimum coverage of \$500,000 per person/per occurrence bodily injury and \$100,000 property damage or \$500,000 combined single limit.

- (iv) Any required insurance shall be purchased from an insurance company licensed in Texas or a surplus lines carrier on the list of eligible surplus lines carriers maintained by the Texas Department of Insurance. The insurance company shall be rated at least A- VIII by AM Best credit ratings. Insurance companies not rated by AM Best credit ratings may be required to submit audited financial statements for LCRA's consideration and approval.
- (v) LCRA shall be named as an additional insured in any insurance policy required by this section, except for a Residential Marina Facility that is insured under a homeowner's insurance policy.

## **5.5 Public Education**

Owners and operators of Marina Facilities shall reasonably cooperate with LCRA in its efforts to promote water safety through public education and awareness. This assistance shall include, but is not limited to, the following activities:

- (i) Provide a central location to advertise the availability of maps and boater education courses, and to display educational information, news releases or notices to provide timely distribution of information to Marina Facility patrons.
- (ii) Display posters, warnings and other educational materials as provided by LCRA to the Marina Facility.

LCRA shall cover the production and printing costs of materials associated with complying with this section.

## **5.6 Marina Facility Operations**

- (i) The Marina Facility owner or operator shall provide adequate on-site facilities for the collection of garbage and trash generated at the Marina Facility, and make arrangements for the timely removal of such collection. Receptacles shall be in convenient, accessible areas, but are not required to be located on the dock.
- (ii) Fire extinguishers, with a minimum rating of 2A 20B:C, shall be located along the main walkways so the travel distance to the nearest fire extinguisher is no more than 50 feet.
- (iii) Electrical extension cords shall not be used as a substitute for permanent wiring, shall not be repaired with tape, and shall be kept out of the water.
- (iv) An attendant shall be present at fuel-dispensing areas on weekends and holidays from Memorial Day through Labor Day when the Marine Service Station is open for business. The attendant shall supervise, observe, and control the dispensing of fuel, give immediate attention to accidental Spills and access a fire extinguisher, if needed.
- (v) All rules and regulations of the Marina Facility will be applicable within the Lot and may be enforced by the Marina Facility, provided that such rules do not conflict with LCRA's lake management rules and regulations.



- (vi) The Marina Facility shall display in a prominent location any letter authorizing the Marina Facility to operate pursuant to Section 7.3 and shall make all LCRA permits available for inspection by LCRA and other regulatory agencies at the Marina Facility.

## **5.7 Extreme Drought and Flood Conditions**

- (i) The performance standards in this section always apply to Marina Facilities on lakes Marble Falls, LBJ and Inks.
- (ii) The following performance standards shall not apply to Lake Buchanan or Lake Travis during Extreme Drought Conditions: sections 5.2(a), 5.2(b)(i), 5.2(b)(iii), 5.2(h), and 5.2(i). Section 5.2(c) shall not apply to Lake Buchanan or Lake Travis during Flood Conditions.
- (iii) During Extreme Drought Conditions, Section 5.2(c)(ii) shall not apply to Existing Marina Facilities permitted prior to May 23, 2001 and which have a permitted Alternate Low Water Location.

## **Section 6. APPLICATION PROCESSING**

### **6.1 Permit Process**

#### **(a) Pre-Application Planning Meeting**

A meeting attended by the Applicant and LCRA is required prior to applying for a new Permit or Major Amendment.

#### **(b) Other Requirements**

The Applicant shall obtain other Permits, authorizations, and contracts required pursuant to LCRA's programs and regulations in the order determined by LCRA.

#### **(c) Content and Preparation of Permit Applications**

- (i) Permit applications shall be prepared in accordance with this Ordinance. Additional guidance in preparing the application may be found in the current LCRA HLMO Technical Manual posted on [www.lcra.org/hlmo](http://www.lcra.org/hlmo).
- (ii) Permit applications must include:
  - (1) An application form prescribed by LCRA.
  - (2) Required fees.
  - (3) A description of the project, including:

- a. All necessary drawings, plans, and maps in the format prescribed by LCRA.
  - b. Calculations of water surface area.
  - c. A full description of the Marina Facility, including the services offered and any future plans for development known on the date the Application is filed.
- (4) Documentation necessary to show compliance with Section 5.2.
  - (5) A Water Quality Analysis Statement to address applicable portions of Section 5.1(b).
  - (6) A plan to show compliance with Section 5.6(ii).
  - (7) Documentation required pursuant to Section 5.3.
  - (8) Documentation to show compliance with Section 5.4.
  - (9) Documentation that will be used to comply with Section 6.1(f)(iii).
  - (10) Any other documentation necessary to confirm compliance with this Ordinance.

**(d) Application Fees**

Application fees are described in the fee schedule approved by the Board. The Board may amend the fee schedule from time to time in accordance with Section 14.3 of this Ordinance. The fee schedule is available at [www.lcra.org/hlmo](http://www.lcra.org/hlmo).

**(e) Application Review**

(i) Application acceptance and commencement of administrative review

An application for a Marina Facility Permit shall be considered filed on the date it is stamped received by LCRA staff at the LCRA General Office Complex on Lake Austin Boulevard in Austin, Texas, or if filed electronically, on the date LCRA acknowledges receipt of the application. Applications may not be filed before a planning meeting with LCRA has taken place, if required. Applications must be signed and accompanied by the appropriate application fee or LCRA staff will not accept the application.

(ii) Administratively incomplete applications

Upon receipt of an application, LCRA shall conduct an administrative review to determine whether all required information has been submitted. An administrative review is not a technical or substantive review of the information submitted in an application. If the application is determined to be administratively incomplete, LCRA staff shall notify the Applicant in writing within 10 business days after the date the application is received. The Applicant may submit additional information within 30 calendar days after the date of the letter notifying the Applicant of the deficiencies. If the Applicant does not submit the required additional information within 30 calendar days, the application may be returned to the Applicant and will be considered

withdrawn. LCRA will refund the application fees in accordance with the refund document posted on [www.lcra.org/hlmo](http://www.lcra.org/hlmo).

(iii) Administratively complete application

Upon a determination that an application for which public notice is required pursuant to Section 6.1 is administratively complete, the applicant must publish and mail the required notice within 30 business days from the date the notice from LCRA is sent informing the Applicant that the application is administratively complete.

Upon a determination that an application for which public notice is not required is administratively complete, LCRA shall commence a technical review pursuant to Section 6.1(e)(iv).

(iv) Technical review

After LCRA determines an application is administratively complete, LCRA shall begin a technical review of the Permit application for a period of time not to exceed 45 business days for a new Permit application or an application for a Major Amendment, and 30 business days for an application for a Minor Amendment, unless modified as described below. During the technical review, LCRA staff shall notify the Applicant of any additional information needed to complete the technical review.

(v) Subsequent technical reviews

If more information is needed to complete the technical review or if LCRA determines the application does not meet the required standards, an Applicant shall have 30 calendar days to submit additional information or revise the application from the date of receipt of a written request from LCRA. If the Applicant provides the additional information or revises the application within the 30-calendar day period, LCRA's technical review shall be extended for no more than 30 business days per occurrence.

(vi) Extension of time to provide requested information

An Applicant may request an extension of time to provide the information requested by staff during the administrative or technical review. Requests for extensions shall be in writing and explain in detail the need for additional time. Such extensions shall not cumulatively exceed 180 calendar days. Such requests shall be approved in writing by LCRA, which shall not unreasonably withhold approval. If the Applicant does not provide the additional information within the 180-calendar day period, the application is considered withdrawn and LCRA may return the application and all or part of the fees to the Applicant. In that event, the Applicant must submit a new application with the appropriate fees to have the application considered again.

(vii) Abatement

At LCRA staff's discretion, a technical review may be abated by staff or at an Applicant's request. Such abatement must be requested or re-evaluated annually but shall not exceed a cumulative period of three years, unless supported by good cause. If an extension or abatement

expires without action, the application is considered withdrawn, and the Applicant must submit a new application with the appropriate fees to be considered. The LCRA General Manager will determine if good cause exists.

**(f) Notice of Receipt of Administratively Complete Application and Intent to Obtain Permit**

(i) Website notice

LCRA shall post a Notice of Receipt of Administratively Complete Application and Intent to Obtain a Permit on its website at [www.lcra.org/hlmo](http://www.lcra.org/hlmo), subject to copyright and trademark protections, and any other applicable exceptions in the Public Information Act.

(ii) Newspaper notice

(1) Applicants shall publish, at their expense, the Notice of Receipt of Administratively Complete Application and Intent to Obtain a Permit in a form prescribed by LCRA. Publication shall be in one newspaper of general circulation within the area of the state where the Marina Facility is or will be located.

(2) The Applicant shall provide LCRA with an affidavit of publication from the publisher within 10 business days of publication.

(iii) Mailed notice

The Notice of the Receipt of Administratively Complete Application and Intent to Obtain Permit, in a form prescribed by LCRA, shall be mailed as set forth below.

(1) Applicants for a Marina Facility Permit shall mail, by first-class mail and at their expense, the Notice of Receipt of Administratively Complete Application and Intent to Obtain Permit to Persons who own property within 500 feet of the Lot over which the Marina Facility is or will be located. The names and addresses of the property owners to receive notice shall be determined by the Applicant based upon records from the appropriate county tax appraisal district obtained no more than 30 calendar days prior to the date the application is filed, or other reliable documentation of ownership submitted as part of a complete application, and which have been reviewed and approved by LCRA staff.

(2) Applicants for a Marina Facility Permit also shall mail, by first class mail and at their expense, the Notice of Receipt of Administratively Complete Application and Intent to Obtain Permit to TCEQ, TDLR, and any local fire departments, city and county governments, and any groups or associations requesting notification. LCRA staff shall provide the Applicant with a list of those entities or persons who should receive notice under this subsection.

(3) The Applicant shall submit to LCRA a sworn affidavit attesting to the completion of Section 6.1(f)(iii) within 10 business days.

**(g) Notice of Draft Permit**

A notice of a Draft Permit will not be issued until LCRA has completed the technical review and the Applicant has reviewed the proposed Draft Permit.

(i) Website notice

After completing a technical review of the application, LCRA shall post notice of staff's Draft Permit, including any variances requested. The notice will include the deadline by which written comments from the public must be postmarked or submitted.

(ii) Mailed notice

Notice of Draft Permit, in a form prescribed by LCRA, shall be mailed as set forth below.

(1) Applicants for a Marina Facility Permit shall mail, by first class mail and at their expense, the Notice of Draft Permit to Persons who own property located within 500 feet of the Lot over which the Marina Facility is or will be located. The names and addresses of the property owners to receive notice shall be determined by the Applicant based upon records from the appropriate county tax appraisal district obtained no more than 30 calendar days prior to the date the Notice of Draft Permit is issued, or other reliable documentation of ownership submitted as part of a complete application, and which have been reviewed and approved by LCRA staff.

(2) Applicants for a Marina Facility Permit also shall mail, by first class mail and at their expense, the Notice of Draft Permit to TCEQ, TDLR, and any local fire departments, city and county governments, and any groups or associations requesting notification. LCRA staff shall provide the Applicant with a list of those entities or persons who should receive notice under this subsection.

(3) The Applicant shall submit to LCRA a sworn affidavit attesting to the completion of Section 6.1(g)(ii) within 10 business days.

**(h) Comments**

Written comments concerning the application and draft permits may be made by any Person.

(i) The Notice of Draft Permit shall state the process to submit comments and the date by which written comments must be submitted to LCRA. To be considered timely, comments must be submitted or postmarked by the date stated in the Notice of Draft Permit.

(ii) Written comments must identify the specific standard(s) in this Ordinance that the proposed Marina Facility will or will not meet.

**(i) Public Meetings for Marina Facility Permit Applications and Draft Permits**

(i) LCRA may require a public meeting to consider a Marina Facility application and draft permit after expiration of the public comment period and upon the request of the Applicant or if LCRA determines that there is substantial public interest. For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by a governmental entity with jurisdiction where the proposed or existing Marina Facility is or will be located, or by a substantial percentage of Affected Persons or businesses with an affected interest. The request must be made in writing and received prior to the close of the public comment period described in Section 6.1(h). The request must include:

- (1) the name, mailing address and phone number of the person making the request;
  - (2) a brief description of the interest of the person making the request, or of persons represented by the person making the request; and
  - (3) identification of the specific standard(s) that the Marina Facility will or will not meet.
- (ii) If LCRA decides to hold a public meeting in accordance with Section 6.1(i), all Persons who have submitted timely written comments or a written request for a public meeting shall be advised of the date, time and place of the public meeting and invited to attend. If LCRA decides to hold a public meeting, it shall occur within 60 calendar days of the decision, subject to meeting location availability.
  - (iii) If a public meeting is scheduled, the comment period shall be extended until the public meeting is concluded.
  - (iv) The Applicant shall bear all costs associated with obtaining a facility for the public meeting. The Applicant or their representative shall attend and participate in the public meeting, as requested by LCRA.

**(j) Permit Decision**

After the close of public comment period, LCRA staff will consider all timely public comments and either issue a Permit, in whole or in part, if the Applicant has demonstrated compliance with the requirements of this Ordinance or deny the Permit application if the Applicant has not demonstrated compliance with the requirements of this Ordinance.

**(k) Notice of Permit Decision**

LCRA will provide a copy of the issued Permit or letter denying the application request to the Applicant and every person who provided written comments within the time limits prescribed by Section 6.1(h) or 6.1(i)(iii).

**(l) Notice and Public Meetings for Multiple LCRA Permits**

If an Applicant requires other permits from LCRA for the Marina Facility that also provide for or require public notice, public comment or public meetings, LCRA may, at its discretion, modify the above notice and comment procedures to allow for a combined notice, comment, and public meeting process.

**6.2 Amendment**

**(a) Major Amendments**

- (i) A Major Amendment requires an application and shall be filed consistent with the Permit application requirements of this Ordinance. The application for amendment shall clearly identify the items sought to be amended and the reasons for the requested change.

- (ii) For purposes of this section, a Major Amendment means and includes: a change that does not qualify as a Minor Amendment, including significant operational or siting modifications, including but not limited to, the addition of a Marine Service Station or restaurant.

**(b) Minor Amendments**

- (i) A Minor Amendment requires an application and shall be filed consistent with the applicable Permit application requirements of this Ordinance. The application for amendment shall clearly identify the items sought to be amended and the reasons for the requested change.
- (ii) Permittees seeking Minor Amendments are not subject to the public notice requirements in Section 6.1. For the purposes of this subsection, a Minor Amendment means and includes but is not limited to, a Non-Substantive Change.

**(c) LCRA Staff-Initiated Amendments**

- (i) Staff may initiate an amendment to a Permit if staff determines such amendment is required to address a change in the laws under which LCRA has issued the Permit.
- (ii) Staff shall provide the Permittee with written notice of the determination stating the grounds for the amendment and provide a copy of a proposed draft amendment.
- (iii) An amendment under this section shall become effective no earlier than the 15th calendar day after notice is provided under this section.
- (iv) The Permittee may appeal an amendment made under this section to the LCRA General Manager by submitting a written concise statement listing the reason or reasons the staff-initiated amendment should not have been issued. The appeal must be received in the office of the LCRA General Manager within 10 calendar days from the date the notice of the staff-initiated amendment is provided to the Permittee in writing. The LCRA General Manager may decide the appeal based on the reasons stated in the appeal or may request additional information from the staff or appellant. The effective date of the staff-initiated amendment shall be abated upon the filing of a valid appeal. If the LCRA General Manager denies the appeal, the effective date of the staff-initiated amendment shall be 10 calendar days from the LCRA General Manager's written decision.

**(d) No Permit Amendment Required**

- (i) No Permit Amendment is required for routine repairs, maintenance, or replacing Flotation Material with Encapsulated Flotation Material or materials that do not deteriorate or decompose resulting in a water quality impact.
- (ii) No Permit Amendment is required to remove Structures from a Marina Facility or to Construct fewer or smaller Structures (including slips) than allowed under a valid Permit so long as the Marina Facility, as Constructed, will not extend farther from the Shoreline than allowed under the existing Permit. If removed Structures are to be replaced with new Structures, a Permit Amendment is required and must be submitted within three years from the date the Structures are removed. Annual Permit fees must continue to be paid to maintain a valid Permit to replace the Structures. A Permittee that removes Structures, or

constructs fewer or smaller Structures, without the need for a Permit Amendment shall submit a revised location and configuration plan to LCRA within 30 business days of completing such removal or construction so that Permit fees may be adjusted accordingly.

(iii) An Existing Marina Facility is not required to apply for a Permit Amendment to make a Modification to address safety, access, or water quality issues, including relocating a gangway or walkway to temporarily accommodate variable lake levels.

(iv) No Permit Amendment is required for Non-Substantive Changes to a pending Application.

#### **(e) Emergency Reconstruction**

A Person who has a Permit for a Marina Facility may commence Emergency Reconstruction of a damaged Marina Facility without first obtaining a Minor Permit Amendment from LCRA. A Marina Facility must submit an application for Emergency Reconstruction within two years from date the damage occurred in order to utilize this provision of the Ordinance. Written notice of the reconstruction activities must be provided to LCRA within 72 hours of commencement of reconstruction. Within 30 business days of commencement of reconstruction, the Marina Facility Permittee shall submit an application for a Marina Facility Permit Amendment pursuant to this subsection. Public notice and application fees will be waived for Permit applications submitted in accordance with this provision of the Ordinance.

Notwithstanding any other provision of this Ordinance, when Emergency Reconstruction is performed, Non-Substantive Changes within the existing permitted footprint also may be made pursuant to the terms of this subsection. Any other Modification or Expansion to the Marina Facility, unless as excepted under Section 6.2(d), shall require an application for a Permit Amendment and payment of applicable fees.

### **6.3 Termination**

(i) The Permittee's right to Construct, Modify, Expand, or operate the Marina Facility is limited to the extent stated in the Permit (including any conditions) and approved plans. Permits shall allow the Construction, Modification, or Expansion to occur for a period of three years from the date of issuance. At LCRA staff's discretion, if construction is delayed due to litigation, disaster, obtaining authorizations from other regulatory agencies, or other extenuating circumstances, the period of Construction, Modification, or Expansion may be extended or abated to allow for the resolution of the issue(s).

(ii) Pursuant to Section 9, a Permit may be revoked upon violation of a Permit condition.

(iii) Any Permit that is issued will automatically expire if Construction, Modification, or other action authorized by the Permit is not completed prior to the expiration of a Permit and any extension or abatement. Construction that has been inspected and certified by LCRA staff as being substantially complete may be authorized to continue for a reasonable amount of time, as determined by LCRA staff, to enable completion of the permitted project.



## **Section 7. PERMITS**

### **7.1 Standard Permit Terms and Conditions**

A Permit shall contain, at a minimum, provisions requiring the Permittee to agree to the standard terms and conditions as set forth below.

- (1) Permittee shall comply with the terms and conditions of this permit and with the Highland Lakes Marina Ordinance as it may be amended from time to time, including but not limited to the performance standards set forth in Section 5.
- (2) Marina Facility must be located and configured according to the plan(s) submitted with the application and approved by LCRA.
- (3) Violation of any of the terms and conditions of this permit may result in the reformation, suspension, or revocation of this permit, in whole or in part, and in the institution of such administrative or legal proceedings as LCRA may consider appropriate.
- (4) Permittee shall keep readily available a copy of the Permit authorizing the Marina Facility to operate, all plans provided to and approved by LCRA, and make available for inspection all LCRA permits.
- (5) Permittee shall allow authorized agents or employees of LCRA to enter the marina facility at all reasonable times for the purpose of conducting periodic inspections of the Marina Facility.
- (6) A transfer of ownership of a Marina Facility requires compliance with Section 7.4. The permittee must provide to LCRA written notice of a transfer of ownership prior to such transfer so that LCRA may provide information and forms to assignee that the assignee must file with LCRA within 30 days of the ownership transfer. All conditions and requirements of this Permit shall be binding upon successors and assigns of this Permit.
- (7) If any of the conditions to a Permit are found to be invalid for any reason, this shall not affect the validity of the Permit, as a whole or any part thereof, other than the condition(s) so declared invalid. If a condition is found to be invalid by a court of competent jurisdiction, LCRA shall reform the conditions of the Permit as necessary to conform to the court's judgment. If the Permit cannot be reformed to so conform, it will be revoked.
- (8) If a court of competent jurisdiction determines at any time that the Permittee or its assignee do not own or control the properties necessary for the location and operation of the Marina Facility, this Permit will be amended, modified, or revoked to the extent necessary to comply with the court order or decision.
- (9) Permittee shall at all times observe and comply with all federal, state, and local laws, ordinances, and regulations.
- (10) Permittee is acting independently and not as an agent, employee or representative of LCRA.
- (11) Permittee must maintain insurance as required in Section 5.4(c).

(12) Permittee shall not commence activities authorized under a Permit until all appeals, if any, filed pursuant to this Ordinance, are resolved.

(13) Permittee acknowledges that the elevations of the Highland Lakes and the flow in the Colorado River and its tributaries vary as a result of natural hydrologic events or LCRA's operations of its dams on the Colorado River. The Permittee further understands that these conditions can change dramatically and suddenly with little notice. LCRA reserves the right to operate its dams and associated appurtenances and to use LCRA property or property on which LCRA has flowage or inundation easements for any legal purpose that it sees fit in the operation and maintenance of its dams and reservoirs and makes no guarantee that the level of any lake operated and maintained by it will be retained at any specific lake level for any particular time. LCRA further reserves the right and privilege to inundate with water at any time and as many times as LCRA may see fit all or any areas and Permittee's facilities and equipment that are subject to a flowage or inundation easement, without any liability on the part of LCRA for making such use of said property, or any part thereof.

## **7.2 Additional Permit Conditions**

LCRA may include additional Permit terms and conditions as necessary to achieve compliance with the Ordinance, as set forth below.

(1) Issuance of this Permit authorizes Permittee to Construct, expand or modify the Marina Facility in accordance with the plans, drawings, maps, correspondence, and/or other materials approved by LCRA and attached hereto. Permittee is not authorized to commence any construction, expansion, or modification not directly addressed in the application. Any unpermitted construction, expansion, or modification of the Marina Facility or deviation from the plans reviewed and approved by LCRA may result in revocation of this Permit.

(2) No construction may commence until after the period for filing appeals has expired and staff has indicated that no appeal has been received in accordance with the requirements of the Ordinance.

(3) If Permittee engages in unauthorized construction, expansion, or modification of the facilities for which the permit was sought, or engages in unauthorized construction, expansion, or modification of facilities in violation of this permit during the pendency of any appeal, and the LCRA Board ultimately denies the Permit, Permittee will be required to remove such construction, expansion, or modification and restore the area to its original condition.

(4) Should any party protesting LCRA staff's decision to issue this Permit file a request for appeal in accordance with Section 12, no construction may commence unless and until the later of: (1) the date that the request(s) for appeal are determined to be invalid; (2) the date the Board issues a decision on a valid appeal reaffirming LCRA staff's permit decision, or (3) the date a modified Permit is issued as a result of the Board's decision on appeal.

(5) Construction approved under this Permit must be completed within three years from the date of issuance of this Permit, or if applicable, from the later of: (1) the date that the requests for appeal are determined to be invalid, (2) the date the Board issues a decision on a valid appeal reaffirming LCRA staff's permit decision, or (3) the date a modified Permit is issued as a result of the Board's decision on appeal.

- (6) Members of the general public, other than contractors and employees of the Marina Facility, shall not be allowed on newly constructed portions of this Marina Facility until such portions have successfully passed final inspection by LCRA and have received from LCRA the necessary written authorization to occupy and operate the newly constructed portions.
- (7) On the date of issue of this Permit, this Marina Facility is subject to the siting, location, and configuration requirements of the applicable Highland Lakes Marina Ordinance. Any modifications made to the Marina Facility after the date of issue of this Permit are subject to the requirements of the Ordinance that is in effect either (1) at the time an application to amend the Permit, if required, is submitted, or (2) at the time the modifications are made, if no Permit Amendment is required.
- (8) Should the LCRA land lease evidencing control of the property over which the marina is located expire, be violated or terminated, or otherwise become of no legal effect, this Permit may be revoked. All provisions of the lease agreement for the use of LCRA property must be complied with at all times and lease fee payments must be received by LCRA when due.
- (9) If a fuel spill occurs at a Marine Service Station, it shall be promptly reported and mitigated in accordance with TCEQ, or its successor agency, requirements. If a spill or leak of fuel and/or petroleum products occurs, the Marina Facility owner, operator or other responsible party shall notify LCRA at 800-776-5272, ext. 6843, and TCEQ as soon as possible, but not more than 24 hours after the spill or leak occurs.
- (10) Marine Service Station fuel facilities must have an adequate supply of sorbent materials readily available in a clearly marked container to clean up any minor spill that may occur.
- (11) An attendant must be present at the fuel dispensing area on weekends and holidays from Memorial Day through Labor Day when the Marine Service Station is open for business.
- (12) A spill control response plan shall be prepared for the Marine Service Station and shall be readily available and accessible to all Marina Facility personnel.
- (13) Disposal of Watercraft sewage shall be by discharged into a pumpout facility that has been approved and certified in accordance with TCEQ, or its successor agency, regulations (30 TEX. Admin. Code § 321.9 and 321.10). Certification shall be displayed per TCEQ regulation (Id. § 321.11).
- (14) Permittee is responsible for the operation and maintenance of the boat sewage pumpout facility in accordance with TCEQ, or its successor agency, regulations.
- (15) Such other Permit conditions as LCRA determines may be required as necessary to achieve compliance with the Ordinance.

### **7.3 Operation of Marina Facility - Final Inspection and Authorization Required**

- (i) On issuance of a Permit for a Marina Facility, and upon completion and inspection of Construction, Expansions, or Modifications, the LCRA shall issue authorization to occupy and operate the Marina Facility and/or the Constructed, Expanded, or Modified portions of the Marina Facility. Occupancy and Operation of the Constructed, Expanded, or Modified portions of Marina Facility is prohibited until LCRA staff has:

- (1) Received the certification(s) required under Section 5.4(a) indicating that the Marina Facility has been Constructed, Expanded, or Modified in accordance with the Permit;
  - (2) Conducted an inspection of the Marina Facility to determine compliance with this Ordinance and the terms of the Permit; and
  - (3) Issued a letter authorizing occupancy and operation of the Constructed, Expanded, or Modified portions of the Marina Facility.
- (ii) Operation or occupancy of a Marina Facility prior to Final Inspection and Authorization is a violation of this Ordinance and may be subject to the enforcement provisions of Section 9.

#### **7.4 Transfer of Ownership**

A transfer of ownership of a Marina Facility requires the transfer of the associated Marina Facility Permit(s), and if applicable, buoy permits and LCRA land lease agreements. The Permittee may contact LCRA staff prior to a transfer of ownership to discuss required materials to be submitted. The Permittee shall provide written notice to LCRA of a transfer of ownership and the assignee of the Permit shall submit the items listed below no later than 30 business days after the transfer. Failure to submit the required notice, information, or fees may subject the Permittee and/or the assignee to enforcement pursuant to Section 9.

##### **(a) Materials to be Submitted to Assign Permit**

LCRA shall assign the Marina Facility Permit upon receiving and reviewing the following items from the assignee:

- (i) Completed Marina Facility application form executed by both the assignee and Permittee.
- (ii) Assignee's certificate of insurance that meets the requirements of Section 5.4(c).
- (iii) An affidavit in a form prescribed by LCRA and executed by the assignee stating that the assignee has ownership or control or will have, upon the date of transfer, ownership or control of the property over which the Marina Facility is or will be located.
- (iv) Documents that demonstrate that assignee owns, leases, or otherwise controls the Marina Facility and the property over which it is located in accordance with Section 5.2.
- (v) Payment of the Permit assignment fee and any outstanding Marina Facility or lease fees.

##### **(b) No Expansion or Modification Prior to Assignment**

No application to Expand or Modify a Marina Facility shall be filed until assignment under this section is complete.

## **Section 8. RIGHT OF ENTRY AND INSPECTION**

### **8.1 Right of Entry**

Authorized agents or employees of LCRA shall have the right to enter at all reasonable times any property, whether public or private, for the purpose of inspecting and investigating conditions relating to Construction, Modification, or operation of a Marina Facility or Existing Marina Facility. LCRA authorized agents and employees shall not enter private property having management in residence without first notifying the management or the person in charge at the time of the inspection of their presence and exhibiting proper credentials. Authorized LCRA agents and employees shall observe the rules of the Marina Facility concerning safety and fire protection. Nothing in this section, however, shall preclude an LCRA peace officer from entering the property without notice to investigate suspected criminal activity as might otherwise be allowed under the laws of this state.

### **8.2 Inspection Fees**

Inspection fees shall be as described in the fee schedule approved by the Board and posted on LCRA's website. The Board may amend the fee schedule from time to time in accordance with Section 14.3 of this Ordinance. LCRA may charge a reinspection fee, as authorized by the Board, when a Marina Facility is out of compliance with any of the standards of Section 5 to recover LCRA costs for returning to the Marina Facility to determine if compliance has been achieved.

### **8.3 Inspections**

- (i) Authorized agents or employees of LCRA shall conduct a periodic inspection of each Marina Facility for compliance with the performance standards stated in Section 5 of this Ordinance. LCRA shall provide advance notification for periodic inspections and Permittee or Permittee's representative shall, whenever possible, be present during the inspection.
- (ii) Agents or employees of LCRA may inspect the Marina Facility at any reasonable time.
- (iii) Upon receipt of a report or complaint of possible violation of this Ordinance, agents or employees of LCRA may inspect the Marina Facility.
- (iv) When a Marina Facility Permit is transferred or assigned in accordance with Section 7.4, the staff will conduct an inspection of the Marina Facility to ensure that it is in compliance with all applicable LCRA regulations and that the new owner is familiar with LCRA regulations. The inspection need not be completed prior to the transfer of ownership of the Marina Facility.
- (v) Upon discovery of any violation during an inspection conducted pursuant to Section 8.3(i) or 8.3(ii), LCRA staff shall promptly inform the Permittee of the violations and prescribe a definite time period during which such violations shall be corrected. Failure to correct such violations within the time period prescribed by LCRA staff shall subject the Permittee to enforcement pursuant to Section 9. The notice contemplated by this section is not a prerequisite to any enforcement action under Section 9 deemed necessary to protect the public from an imminent hazard.

## **Section 9. VIOLATIONS AND ENFORCEMENT**

### **9.1 Violations**

#### **(a) General Violations**

- (i) Any Construction, Modification, Expansion, or operation of a Marina Facility that is not authorized by this Ordinance or is contrary to the terms and conditions of a valid Permit or a final court judgment is a violation of this Ordinance.
- (ii) An authorized agent or employee of LCRA shall issue a notice of violation (NOV) by posting a notice in a prominent location at the Marina Facility.

#### **(b) Violations for Addition of Slips**

- (i) When a Marina Facility has added slips to a Marina Facility without first having obtained the Permit required by this Ordinance, the Marina Facility, after obtaining the necessary Permit for the unauthorized slips, may be prohibited from filing a subsequent application for that Marina Facility for a period of five years from the date the NOV was posted for adding slips without a Permit, except as provided in subsection (iii) below.
- (ii) If LCRA staff accepts an application for an Expansion to a Marina Facility, except one limited to curing the violations identified in subsection (i) above, and later determines that additional slips were added in violation of the Ordinance, the Applicant shall be required to amend its application to include the unauthorized slips and, after obtaining the necessary Permit for the unauthorized slips, may be prohibited from filing a subsequent application for that Marina Facility for a period of five years from the date the Permit is issued except as provided in subsection (iii) below.
- (iii) Notwithstanding the limitations set forth in subsections (i) and (ii) of this subsection, a Marina Facility may conduct Emergency Reconstruction in accordance with Section 6.2(e) for any portion of the Marina Facility for which a valid Permit has been issued. In addition, a Marina Facility subject to the limitations set forth in subsections (i) and (ii) may file an application to make any Non-Substantive Changes to a Marina Facility.

#### **(c) Other Violations**

Except as provided in Section 9.1(b) above, when an Applicant or Marina Facility has received an NOV pursuant to Section 9.3(a) and has failed to correct such violations as required by Section 9.3(b), the Applicant is prohibited from filing an application until such violation is corrected. If a violation of the Ordinance is discovered during the processing of the application, LCRA staff shall have the discretion to suspend processing of the application for up to six months, during which time compliance must be achieved. If the violations are not cured during this time period, staff shall return the application and refund the application fee in accordance with the refund document posted on [www.lcra.org/hlmo](http://www.lcra.org/hlmo).

### **9.2 Revocation of Permit – Grounds**

A Permit may be revoked as prescribed in this section, whenever:

- (i) The Permit was issued on the basis of false or incorrect information;
- (ii) The Marina Facility is being Constructed, Modified, Expanded, or operated in violation of one or more of the requirements of this Ordinance, a condition of the Permit, or a final court judgment or decision;
- (iii) The required fees have not been paid; or
- (iv) A term(s) of the Permit conflicts with a judgment from a court of competent jurisdiction and such term cannot be amended to conform to the judgment.

### **9.3 Enforcement Procedure**

#### **(a) Notice of Violation**

Whenever any Construction, Modification, Expansion, or operation of a Marina Facility occurs in violation of this Ordinance, or contrary to the terms and conditions of a valid Permit, or contrary to the terms and conditions of a final court judgment, an authorized agent or employee of LCRA shall issue an NOV by posting in a prominent location at the Marina Facility.

#### **(b) Response to Notice of Violation**

- (i) A Permittee or Registrant shall have 15 business days from the date the NOV is posted to comply with this Ordinance or the terms and conditions of the Permit. If a Permittee or Registrant fails to cure the violation within this time period, LCRA may revoke the Permit and/or seek penalties provided for in this Ordinance. Requests for exceptions to the 15-day time frame shall be in writing and explain in detail the need for additional time and what measures are being taken to ensure the health and safety of the public is not compromised until the violation can be corrected. Staff has the discretion to grant requests for extensions, which shall be approved in writing.
- (ii) Any person Constructing, Modifying, Expanding, or operating a Marina Facility without a Permit for such activities, as required by this Ordinance, shall upon receipt of an NOV immediately cease such activities until such time the required Permit is obtained.

### **9.4 Penalties**

All penalties provided for herein are civil penalties and shall be determined by a civil court of competent jurisdiction. Appeals of penalties also must be determined by a court of competent jurisdiction and will not be decided by the LCRA Board.

- (i) Any person violating or failing to comply with any provision of Section 5.1 of this Ordinance (Pollution Control) may be subject to a penalty of not less than \$200 nor more than \$10,000 for each such violation. Each day the violation continues from the date the NOV is posted at the Marina Facility shall constitute a separate offense.
- (ii) Any person violating or failing to comply with any performance standard or requirement other than Section 5.1 of this Ordinance (Pollution Control) may be subject to a civil penalty

not to exceed \$5,000. Each day that such a violation continues from the date the NOV is posted at the Marina Facility shall constitute a separate offense.

- (iii) No penalties will be assessed for violations corrected within 15 business days from the date the NOV is posted at the Marina Facility or when the owner or operator of a Marina Facility is complying with the terms of any extension of time approved in accordance with this Ordinance.

## **9.5 Permit Reformation**

- (i) If a Permittee receives three or more NOVs in a 12-month period, LCRA staff may, at its discretion, and with the Permittee's consent and in lieu of penalties, reform the Permit by adding additional terms and conditions intended to better guarantee compliance with the Ordinance.
- (ii) If a court of competent jurisdiction issues a judgment that affects a Marina Facility that has a Permit, LCRA shall reform the Permit, subject to the provisions of this Ordinance, to the extent necessary to conform to the court's judgment. If the Permit cannot be reformed to conform, LCRA staff shall revoke the Permit.
- (iii) If a Permittee fails to substantially complete Construction, Expansion, or Modification of a Marina Facility within the time limits specified in the Permit or any extension of time granted pursuant to this Ordinance, LCRA may reform the Permit to allow completion of any portions of the Marina Facility within a reasonable amount of time, as determined by LCRA staff.

## **9.6 Emergency Orders**

Notwithstanding the notice periods set forth elsewhere in this section, LCRA may at any time issue an emergency order to address an imminent and substantial endangerment to human health and safety. The emergency order shall order the Permittee or, in the case of an unpermitted Marina Facility, the owner or operator of the Marina Facility, to immediately isolate the hazard from the public by closing off portions of the Marina Facility or isolating systems until such time as the hazardous condition can be corrected and order that the condition be corrected within a specified time period. The emergency order shall be in writing and shall be prominently posted at the site. The Permittee or, in the case of an unpermitted facility, the owner of the facility, may appeal the emergency order to the LCRA General Manager by submitting in writing a concise statement of the reasons for believing that the emergency order should not have been issued and citing the specific performance standards or Permit conditions from which the Marina Facility should be exempt. An appeal of the emergency order must be received by the office of the LCRA General Manager prior to the deadline for performance prescribed by order. The LCRA General Manager may decide the appeal based upon the reasons stated in the appeal or may request additional information from LCRA staff or the person filing the appeal. Appeals under this subsection are not subject to the requirements of Section 12.

## **9.7 Injunction**

Nothing in this Ordinance shall prevent LCRA from seeking injunctive relief or any other remedy in law or equity at any time against any person allegedly violating this Ordinance.



## **9.8 Appeals of Certain Enforcement Actions**

Decisions by LCRA staff that result in the revocation or reformation of a Permit shall be appealable in the same manner as a decision denying a Permit as described in Section 12.

## **Section 10. VARIANCES**

### **10.1 Variance**

LCRA staff shall have the discretion to grant a variance to the provisions of this Ordinance in cases where strict adherence to one or more of the provisions would result in a grave injustice or an unreasonable hardship to the Applicant. Granting the variance must not significantly increase boat traffic in or around the Marina Facility, create significant adverse impacts to Adjoining Waterfront Property owners, or compromise water quality or public safety.

### **10.2 Requests for Variance**

A request for variance shall be made prior to public notice commencing and shall be reviewed and processed in accordance with all of the procedures contained in this Ordinance, including those related to application processing, Permit issuance, and appeals. Receipt of a variance request after public notice commences may result in an extension of the technical review period.

## **Section 11. GRANDFATHERED FACILITIES**

### **11.1 Registration of Grandfathered Facilities**

The owner of a Grandfathered Facility shall register with LCRA by submitting a completed registration form prescribed by LCRA staff. Such form shall, at minimum, require submission of an Affidavit stating that the Registrant owns, leases, or otherwise controls the Lot over which the Grandfathered Facility is located; and the size, location, and Configuration of the Grandfathered Facility. Failure to submit a registration form in accordance with this section may result in enforcement pursuant to Section 9.

### **11.2 Inspections of Grandfathered Facilities**

Authorized agents or employees of LCRA shall have the right to enter Grandfathered Facilities in accordance with Section 8.1 for the purposes of verifying information submitted pursuant to Section 11.1, as deemed necessary by LCRA staff. In addition, LCRA staff may conduct an inspection of the Grandfathered Facility to assist the Registrant in identifying potential health and safety hazards. Nothing in this section shall limit LCRA staff's right to inspect, in accordance with Section 8.3, a Grandfathered Facility that has been Expanded or Modified.

### **11.3 Expansion or Modification of a Grandfathered Facility**

Any Expansion or Modification of a Grandfathered Facility shall subject the expanded or modified section to all requirements of this Ordinance. Safety related modifications, as determined by staff, shall be permitted without forfeiting the grandfather status of the facility.

## **Section 12. APPEALS OF PERMIT DECISIONS**

### **12.1 Requesting an Appeal**

An Applicant or an Affected Person may appeal a decision by LCRA staff regarding the granting, denial, or revocation of a Permit under this Ordinance in accordance with the requirements of this section.

### **12.2 Filing of Appeal**

An Applicant or Affected Person must file a request for appeal within 15 calendar days after the date of the action on the Permit. The request for appeal shall be filed with the LCRA General Counsel in accordance with the procedures outlined in Section 12. The request for an appeal must be in writing and contain a concise statement of the reasons for the appeal and cite the specific standards that were stated to be met or not met in the Permit or letter affirming the denial of the Application.

### **12.3 Notice of Appeal**

Notwithstanding Section 12.10(a), the LCRA General Counsel shall send written notice of receipt of any request(s) for appeal to the Board, LCRA staff, the Applicant, and any Persons filing a request for appeal, within three business days after expiration of the date for filing requests for appeals. Such notice shall identify the parties, generally describe and summarize the issues raised by the appeal, and advise of the prohibition against ex parte contacts. In addition, the LCRA General Counsel may advise the Board of the receipt of a request for appeal at any time prior to the expiration of the date for filing requests for appeals as necessary to prevent ex parte contacts.

### **12.4 Form of Appeal**

A request for appeal must be in writing, timely filed, submitted pursuant to the Notice of Permit Decision, and not exceed 20 pages in length, including exhibits or attachments. The request for appeal shall include the following information:

- (1) Name and address of the Person(s) filing the request for appeal;
- (2) Name of the Applicant, if different than Section 12.4(1);
- (3) A concise statement of how the Person filing the appeal is affected by the issuance, denial or revocation of the Permit, or by one or more of the terms or conditions of the Permit;
- (4) If appealing a recommendation for Permit approval, which specific standards in Section 5 are not being met; and
- (5) Information required by Section 12.5.

### **12.5 Validity of Appeal**

For an appeal to be valid, the request for appeal must meet all the following criteria:

- (1) Be filed in accordance with Section 12;

- (2) Demonstrate that the Applicant or Affected Person requesting the appeal provided written comments to staff in accordance with Section 6 or provided comments during a public meeting held pursuant to Section 6. If the Applicant or Affected Person did not provide written comments in accordance with Section 6 or comments during a public meeting held pursuant to Section 6, the Applicant or Affected Person must provide a compelling reason why their request for appeal should be considered;
- (3) If appealing a recommendation for Permit approval, only raise matters or issues that were presented in writing pursuant to Section 6 or provided during a public meeting held pursuant to Section 6, or as part of the Permit application;
- (4) For appeals filed by Affected Persons, allege the failure of specific standard(s) in Section 5 or as further required by the Permit;
- (5) Provide credible evidence in support of the allegations raised by the request for appeal;
- (6) Demonstrate how such allegations, if taken as true, would change the terms and conditions of the Permit or affect the issuance of the Permit; and
- (7) Demonstrate that such allegations are related to a matter that LCRA has jurisdiction to consider. For example, LCRA may not consider effects on property values, increases in vehicle traffic, noise, or incompatibility of land uses in the evaluation of a permit application under this Ordinance.

## **12.6 Determination of Validity of Appeal**

### **(a) Commencement of Permit Activities and Construction**

Once an appeal has been filed, all new activities authorized by the Permit or Permit Amendment must cease until the appeal is resolved.

### **(b) Staff Review**

- (i) Within 15 calendar days after the expiration of the date for filing requests for appeal, LCRA staff shall evaluate the request for appeal to determine if the request meets the requirements of Sections 12.1, 12.2, and 12.4.
- (ii) If the appeal does not meet the requirements of Sections 12.1, 12.2, and 12.4, staff shall return the request for appeal and the staff's Permit decision will become final.
- (iii) If the request for appeal meets the requirements of Sections 12.1, 12.2, and 12.4, staff shall forward the Permit and the application, together with such requests for appeal and the staff's statement as to the elements of the request for appeal, to the LCRA General Manager for consideration of the validity of the request for appeal.

**(c) General Manager Review**

The LCRA General Manager shall determine the validity or invalidity of the request for appeal within 15 calendar days from receipt of the information provided pursuant to Section 12.6(b)(iii).

**(d) General Manager's Decision Final**

The LCRA General Manager's determination of the validity or invalidity shall be final. Upon a determination that a request for appeal is invalid, the staff's Permit decision shall become final.

**(e) Valid Appeal and Notification**

If the LCRA General Manager decides that the appeal is valid, the LCRA General Counsel shall immediately provide written notice of the LCRA General Manager's decision to staff and send such notice by first class mail or email to all Persons filing a request for appeal and the Applicant. Any notice regarding valid appeals shall include information regarding the mediation requirements contained in Section 12.6(f).

**(f) Mediation Required Prior to Hearing of Valid Appeal**

- (i) Within 30 calendar days of the LCRA General Manager's decision that an appeal is valid, the Person(s) with a valid request for appeal ("Appellant(s)"), Applicant, and LCRA staff shall complete mediation of the disputed issues.
- (ii) Mediation shall be conducted by mediator selected by agreement of the parties, or if the parties fail to agree, by a mediator selected by the LCRA General Counsel.
- (iii) Costs of mediation shall be shared equally among all the parties to the mediation, including LCRA.
- (iv) The mediator shall submit a written report, including a recommendation on the alignment of parties, informing the LCRA General Counsel of the result of the mediation within five business days after completing the mediation.
- (v) If the mediation does not result in the withdrawal of an appeal, further consideration of any unresolved appeal shall proceed under Sections 12.7 and 12.8. Any party that fails to participate in the required mediation or fails to pay its share of required costs of mediation is precluded from further participation as a party in any appeal of the staff's Permit decision.

**12.7 Responses to Valid Appeals**

**(a) Staff Response to Valid Appeal**

Staff shall prepare a written response to the appeal within 10 business days after the receipt of the mediator's report required under Section 12.6(f). Any response shall not exceed 20 pages in length, including exhibits and attachments, and shall be submitted to the LCRA General Counsel and mailed by certified mail, return-receipt requested, to the Applicant and all Appellants.

**(b) Applicant Response to Valid Appeal**

The Applicant, if not the Appellant, may submit a written response to the appeal to the LCRA General Counsel within 10 business days after the receipt of the mediator's report required under Section 12.6(f). Any response shall not exceed 20 pages, including exhibits and attachments, and shall be mailed by certified mail, return-receipt requested, or emailed to all Appellants.

**(c) Valid Appeal Forwarded to Committee Chair**

Upon expiration of the deadline for the Applicant to submit a response pursuant to Section 12.7(b), the LCRA General Counsel shall forward to the Water Operations Committee chair a copy of the Permit, all valid appeals, the staff response and the Applicant's response, if any.

**12.8 Water Operations Committee Consideration of Valid Appeal**

**(a) Forum**

Taking into consideration the complexity of the issues, the number of Appellants, and the need to develop an adequate evidentiary record, the Water Operations Committee chair shall determine the most appropriate forum for consideration of an appeal.

The Water Operations Committee chair may:

- (i) Consider all the written information forwarded by the LCRA General Counsel and direct staff to issue the Permit;
- (ii) Forward the appeal to the Water Operations Committee with a recommendation that the committee consider all the written information submitted and allow each party an allotment of time to present oral arguments; or
- (iii) Forward the appeal to the Water Operations Committee with a recommendation that the committee consider the appeal using another method agreed to by all the parties.

**(b) Scheduling of Hearing**

Upon the direction of the Water Operations Committee chair, as specified in Section 12.8(a)(i), a hearing before the Water Operations Committee may be held to consider a valid appeal. Such hearing shall be scheduled no later than 90 calendar days after receipt of the mediation report or the next meeting of the Water Operations Committee, whichever occurs later.

**(c) Written Information Provided**

No later than 15 calendar days prior to the date scheduled for the hearing, the LCRA General Counsel shall forward to the members of the Water Operations Committee the following materials:

- (i) All written information received from Appellants relative to a valid appeal and in accordance with Section 12;

- (ii) The staff's response prepared in accordance with Section 12.7(a); and
- (iii) The Applicant's response submitted pursuant to Section 12.7(b), if any.

**(d) Open Hearing**

The hearing shall be open to the public.

**(e) Participants**

Only the Applicant/Permittee, LCRA staff, the Appellant(s), or any of their designated representatives, shall be allowed to participate in the hearing.

**(f) Alignment of Parties**

Subject to the approval of the LCRA General Counsel, the parties shall establish their own alignments. In cases where parties fail to establish alignments, the LCRA General Counsel shall align parties (other than staff) according to their positions in support of, or opposed to, staff's Permit decision. Except for an Applicant appealing a condition in a Permit, those Appellants opposed only to specific parts of the staff's Permit decision shall be aligned with those Appellants generally opposed to the staff's Permit decision. An Applicant appealing a condition in a Permit shall be separately aligned from other Appellants, if any, opposed to the staff's Permit decision. Each of the aligned parties shall designate a spokesperson to speak on their behalf. If any of the aligned parties cannot agree to a spokesperson, the LCRA General Counsel shall designate one.

**(g) Procedure**

The hearing process is as follows:

(i) Staff summary

The Water Operations Committee shall convene in open session and shall receive a presentation by staff not to exceed 15 minutes summarizing the position of each party to the appeal, including the staff's position. The staff summary shall be based upon all written information validly received from Appellants in accordance with Section 12, the application and the information contained in the Applicant's or Permittee's file.

(ii) Oral arguments

If oral arguments are requested by the Water Operations Committee chair pursuant to Section 12.8(a)(ii):

- (1) The parties in opposition to the staff's Permit decision, as aligned by the LCRA General Counsel, will follow and will collectively have a total of 20 minutes to make their argument(s).
- (2) The parties in support of the staff's Permit decision, as aligned by the LCRA General Counsel, will follow and will collectively have a total of 20 minutes to make their argument(s).

(3) Staff shall have 15 minutes to rebut the argument(s) of the parties aligned in opposition to the staff's Permit decision.

(4) Each group of aligned parties shall have five minutes to summarize their respective positions.

(iii) Presentation of additional evidence

If approved by the Water Operations Committee chair, any party may, as part of their presentation, offer additional evidence in the form of written information or documentation, provided the information has been provided to all other parties at least seven calendar days in advance of the hearing date.

(iv) Questions by the committee

The Water Operations Committee may ask questions of any party or Person that has registered with the LCRA General Counsel and is a member or representative of a valid party to the appeal at any time during the proceeding.

(v) Committee deliberation

The Water Operations Committee shall deliberate in open session, taking into consideration the presentations of staff and the parties, if any, and all written materials submitted to the committee as a valid part of the appeal process. Notwithstanding the foregoing, the Water Operations Committee may confer with the LCRA General Counsel in Executive Session for the purpose of receiving legal advice concerning the appeal.

**(h) Water Operations Committee Recommendation**

The Water Operations Committee shall make a recommendation based on written information provided to the committee prior to the hearing, documents contained in the application file, and any other evidence or information submitted at the hearing, if recommended by the chair to be considered by the Water Operations Committee.

The Water Operations Committee may recommend:

- (1) Issuance of the Permit;
- (2) Denial of the Permit; or
- (3) Modification of the Permit.

**(i) Procedures May Be Altered as Justice Requires**

The Water Operations Committee may alter the procedures, including the hearing process, set forth in Section 12.8, if necessary, to develop an adequate record, to afford full opportunity for public participation or comment by the Applicant or staff, or if in the public interest.

### **12.9 Board Consideration of Water Operations Committee Recommendation**

The Water Operations Committee's recommendation shall be forwarded to the full LCRA Board for consideration within 90 calendar days of the committee's recommendation. The Board shall consider the Water Operations Committee's recommendation and may, at its discretion, ask questions of the parties. Parties may not make additional arguments or comments to the Board without the permission of the Board. The Board may take the following action:

- (1) Affirm the Water Operations Committee's recommendation;
- (2) Reject the Water Operations Committee's recommendation; or
- (3) Modify the Water Operations Committee's decision.

### **12.10 Ex Parte Communications**

#### **(a) Prohibition**

Any communication by an Applicant/Permittee, party requesting an appeal or their representatives, or LCRA staff member with the Water Operations Committee or other member(s) of the LCRA Board on the merits of any pending appeal or decision affecting a Permit or Permit Amendment from the date the Permit or Permit Amendment is issued by staff until the date the appeal is decided in accordance with Section 12, other than at a hearing or in a public meeting of the committee or the Board, is strictly prohibited. Notwithstanding the foregoing, the LCRA General Counsel may consult with the Board or any of its members regarding the appeal.

#### **(b) Effect of Violation**

Any person who violates this provision may be subject to sanctions including:

- (1) Return of the application if the violation is from the Applicant or their representative;
- (2) Return of all or a portion of the application fee if the violation is from LCRA staff; or
- (3) Automatic rejection of the appeal if the violation is from a Person requesting an appeal or a Person otherwise opposed to the application.

### **12.11 Effect of Pending Appeal on Permit Expiration**

The expiration date stated in a Permit issued after an appeal shall be based on the date the appeal is resolved.

## **Section 13. FEES**

The Board shall establish Permit and other fees for Marina Facilities regulated by this Ordinance. These fees shall be evaluated periodically.

All required fees shall be paid prior to issuance or assignment of a Permit and shall be calculated based on the total Water Surface Area occupied by floating and fixed Structures of the Marina Facility.



## **Section 14. OTHER LAWS, SAVINGS CLAUSE, AMENDMENTS, EFFECTIVE DATE**

### **14.1 Relationship to Other Laws**

Whenever regulations or restrictions imposed by this Ordinance are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule, or regulation, the regulations, rules, or restrictions that are more restrictive or which impose higher standards or requirements shall govern.

### **14.2 Savings Clause**

If any word, clause, sentence, process or provision of this Ordinance or the application thereof to any Person or circumstance is held to be invalid, the remainder of the Ordinance to that Person or circumstance and the application of such provision to other Persons or circumstances, shall not be affected thereby.

### **14.3 Amendment or Suspension of the Ordinance, Technical Manual or Fee Schedule**

The Board may amend this Ordinance and/or the fee schedule from time to time after notice and reasonable opportunity for public review. The HLMO technical manual may be periodically amended by the LCRA General Manager. The Board may suspend all or any portion of the processing of applications and/or issuance of Marina Facility Permits, whenever the Board determines such suspension to be in the public interest.

### **14.4 Effective Date**

The Ordinance, as amended by the Board on May 24, 2023, shall become effective May 24, 2023. [This Ordinance was originally adopted July 19, 1984 (effective Aug. 1, 1984), and was amended Aug. 24, 1984; Jan. 24, 1985; Oct. 24, 1985; Sept. 18, 1986; June 18, 1987; Dec. 14, 1989 (effective Feb. 1, 1990); June 24, 1993 (effective July 1, 1993); Sept. 19, 1996 (effective Oct. 9, 1996); May 23, 2001; Feb. 18, 2004; Nov. 17, 2004 (effective Nov. 17, 2004); and Sept. 21, 2011.]