

**As approved by Council 17 August 2021**

**TOWN OF ROCKY HARBOUR**

**MUNICIPAL PLAN AMENDMENT No. 2, 2019**

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**As approved by Council 17 August 2021** HMJ Consulting Limited

19-002



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**RESOLUTION TO ADOPT; CLERK'S & MCIP CERTIFICATE**

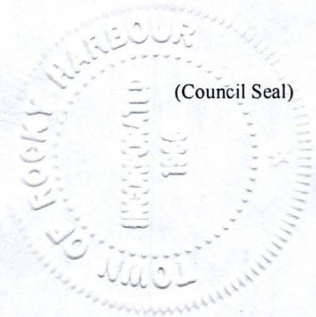
Under the authority of Section 16 of the *Urban and Rural Planning Act 2000*, the Town Council of Rocky Harbour adopts Amendment Number 2, 2019, to the Municipal Plan for 2013-2023.

Resolved by the Town Council of Rocky Harbour on the 2<sup>nd</sup> day of February, 2021.

Signed and sealed this 4<sup>th</sup> day of October, 2021

Mayor: 

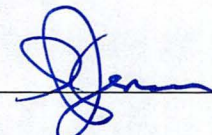
Clerk: 



**MCIP Certificate**

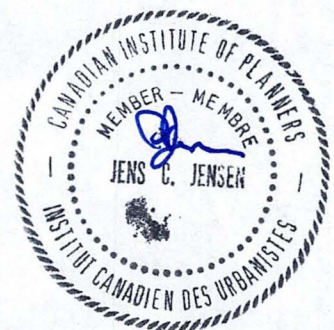
I certify that the attached Amendment Number 2, 2019 to the Municipal Plan document has been prepared in accordance with the requirements of the *Urban and Rural Planning Act, 2000*.

Member of the Canadian Institute of Planners

 \_\_\_\_\_ Jens Jensen, P.Eng., MCIP

(MCIP seal)

Date: 22<sup>nd</sup> day of October, 2021



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**COUNCIL RESOLUTION TO APPROVE; CLERK'S CERTIFICATE**

Under the authority of section 16, section 17 and section 18 of the *Urban and Rural Planning Act 2000*, the Town Council of Rocky Harbour:

- (1) Adopted Amendment Number 2, 2019, to the Municipal Plan for 2013-2023, on 2 February, 2021;
- (2) Gave notice of the adoption of the said amendment by way of the following postings:
  - a. A display advertisement in The Telegram, a St. John's newspaper circulating in the municipal planning area, in the 20 February, 2021 issue, in the absence of any more local hardcopy (paper) newspaper being published at the time due to the COVID-19 pandemic,
  - b. A poster at the Rocky Harbour Post Office, Rocky Harbour Town Office and Parkway Irving Station.
  - c. Posting on the municipal Facebook, and,
  - d. Posting on the municipal website.
- (3) Specified in the said notice that the deadline date for any submissions concerning the proposed amendment was 3:00 pm, 29 March, 2021, and,
- (4) Appointed Mr. Gerard J. Martin, Q.C. to act as a commissioner to consider and report upon any submissions which may be made.

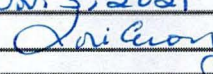
And, whereas no objections or submissions were received by the deadline, and the commissioner recommended that Council proceed with their approval, under section 23 of the *Urban and Rural Planning Act, 2000*, the Town Council of Rocky Harbour approves the Town of Rocky Harbour Amendment Number 2, 2019, to the Municipal Plan for 2013 to 2023, exactly as released by the Department of Municipal and Provincial Affairs.

Resolved by the Town Council of Rocky Harbour on the 17<sup>th</sup> day of August, 2021.

Signed and sealed this 4<sup>th</sup> day of October, 2021.

Mayor: 

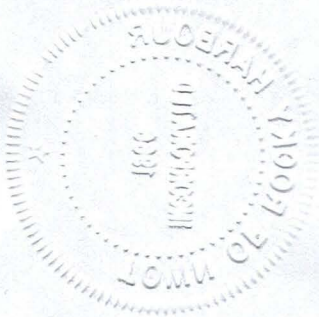
Clerk: 

Municipal Plan/Amendment	
<b>REGISTERED</b>	
Number	<u>4245-2021-003</u>
Date	<u>Nov 3, 2021</u>
Signature	<u></u>



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**TOWN OF ROCKY HARBOUR  
MUNICIPAL PLAN FOR 2013-2023  
PROPOSED AMENDMENT No. 2, 2019**

**BACKGROUND**

The Town Council of Rocky Harbour proposed to make an amendment to its Municipal Plan. The Development Regulations are proposed to be amended concurrently in like fashion.

The reason for the proposed amendment relates to development of a non-permitted land use at 48 Main Street South, Rocky Harbour. On 15 June, 2017, the Town of Rocky Harbour approved permit 015-2017 to permit the construction and use of a storage shed on the property. Subsequently, the owner or occupant proceeded to establish and operate a commercial garage at which motor vehicles are repaired as an enterprise. Such as use would fall in the definition of “general garage” in the Development Regulations (*GENERAL GARAGE: Land or buildings used exclusively for repair, maintenance and storage of motor vehicles and may include the sale of gasoline or diesel oil.*). That land use is not a permitted use at that location.

The Town of Rocky Harbour issued a Stop Work Order in a letter dated 7 November, 2017 to a Mr. Charlie Wight to direct him to stop the development and submit proper applications for a development permit and a business permit. Those applications would then be reviewed but not necessarily approved as the details of the proposed use may not be approvable. The letter advised him of his right to appeal the Order within a set period of time, which he did not do.

Mr. Wight has not applied for a development permit or business license for his enterprise, which is unfortunate as there may have been a permissible outcome. The non-permitted land use has continued, which is disappointing to Council as the ensuing time to date has given Mr. Wight ample opportunity to change his business activities on the site to something else which would be permissible. The period also afforded him sufficient time to explore alternative locations for his enterprise.

Council met with Mr. Wight on 15 January, 2019 and the Town’s solicitor followed up by letter dated 5 April, 2019, both times to seek resolution, both actions without satisfaction. It is now clear to Council that they have two alternatives:

1. Proceed with legal action to enforce the Stop Work Order, pursuant to the *Urban and Rural Planning Act*, seeking to see compliance with the Stop Work Order.
2. Make special purpose amendments to the Municipal Plan and Development Regulations which would effectively lead to the approval of the activity which is not permissible, perhaps with conditions attached, to apply only to the subject property and not as a matter of general policy which would similarly apply to other properties.

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This document provides the specific amendment upon which Council eventually decided, ie: to pursue the second option.

## **PUBLIC CONSULTATION AND AMENDMENT PROCESS**

The Town of Rocky Harbour conducted a public consultation process to present the proposed amendments and hear the views of the public. This began with an advertised public meeting held on 29 July, 2019, which was followed by a further public meeting on 7 October, 2019. The following measures to notify the public of the meetings were taken as follows:

- Display advertisements in The Western Star, a newspaper circulating in the municipal planning area, in the 19 July, 2019 issue for the July meeting and in the 25 September, 2019 issue for the October meeting.

In conjunction with the newspaper ads, the following were placed by municipal staff:

- A poster at the Rocky Harbour Post office, in advance of each meeting,
- Posting on the municipal Facebook, in advance of each meeting,
- Posting on the municipal website, in advance of each meeting,
- A group email to the Town's business directory addressees in advance of the July meeting, and
- A poster sent through the post office to all residential and business postal boxes within the community in advance of the October meeting.

Presentations at the public meetings included clarifying to those attending that approvals of the amendments are not in themselves a permit to develop. The amendments only make it possible for Mr. Wight to successfully apply for a permit, but it would be approved only if his application complies with the conditions which the amendments will impose.

After the October meeting, Council deliberated upon its course of action, which could have included not proceeding with the proposed amendments. Council chose to make the amendment to the Municipal Plan (and the concurrent amendment to the Development Regulations), including minor revisions to the proposed amendment to the Development Regulations, in composing the final versions to submit to the Department of Municipal Affairs and Environment for review and release.



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**PLANNING POLICY ANALYSIS**

Council intends the proposed ad hoc amendment (and the concurrent amendment to the Development Regulations) as actions which will lead to the approval of the illegal enterprise which Mr. Wight has commenced. In short, Council judges that the property is capable of accommodating the uses which are subject to the Stop Work Order plus all existing uses, without substantial conflict or offence to the neighboring property owners.

Making amendments to achieve that objective must satisfy an important requirement in the Municipal Plan. Section 2.3 speaks about ad hoc amendments by saying:

*The Municipal Plan may be amended at any other time, in whole or in part, for legitimate reasons that may have been unforeseeable at the time it had initially been drafted. Any such amendment must be consistent with the Municipal Plan as the amendment will be read together with and become part of the Municipal Plan.*

The first part of this analysis reviews general policies in the Municipal Plan to demonstrate that such a lenient action can be justified if Council judges it to be the best way to address the issue.

**Consistency with Municipal Plan**

The planning goals are set out in Section 5.2, *Goals for the Town of Rocky Harbour*, in which the following parts are relevant (the significant points in each are bolded and underlined):

***A) Growth and Urban Structure***

***Goal:*** *To provide for orderly growth and development within the community.*

***Objectives:***

- *Council will undertake to use this Municipal Plan to guide its exercise of powers and responsibilities for the provision of services, the allocation of land uses, and the general development of the community.*
- ***Land uses will be allocated so as to encourage economic development and to preserve and enhance positive features reflecting the heritage and amenities of the community***, while also recognizing natural constraints and limitations, in order to improve quality of life in the community and protect life and property, and to minimize effects on the natural environment.
- ***Compact development of the community will be promoted***, in

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*order to provide municipal services to properties as efficiently as possible.*

***C) Employment and Economic Development***

**Goal:** *To encourage institutional, commercial and industrial activities that will meet the community's employment needs and provide needed goods and services, and in particular to press for strengthening the economic base and employment opportunities in the Town and surrounding communities.*

**Objective:**

- *To monitor developments concerning the fishery, the National Park, and other economic sectors, with a view to representing the community promptly and responsibly on points affecting investment, government regulation, environmental impact and community development.*
- ***To provide for flexibility and rapid response to development proposals, particularly those related to small business startups and expansions, so as to facilitate business development.***
- *To designate sufficient lands suitably located and serviced for commercial and industrial development, to achieve an adequate land base for economic development and a more efficient land use pattern.*

The amendment is consistent with the Municipal Plan in that:

1. The amendment acts to encourage economic development while not materially degrading the surrounding area.
2. The development is a compact infill between existing developments and requires no additional municipal services.
3. Council has demonstrated flexibility in its response to the issue, and is favoring a small business initiative which will enhance the local economy.

The Section of the Municipal Plan which follows the statements of goals is the development concept, in Section 6.1. It presents a general view of the community's development pattern followed by policies specific to the various land use designations set out in the Municipal Plan, as well as policies applicable to all areas in the community. In its opening lines, Section 6.1 says "...the need to proactively accommodate growth for tourism and other commercial and industrial development is becoming clear and in fact represents the economic future of the

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*community.*” This would strongly support the goal of supporting business initiatives.

Section 6.1 goes on to say that:

*“The historic main road through the community Main Street (North and South) features a long-established mixed use pattern, comprising residential, commercial, light industrial, and institutional uses. The strip is fairly compactly built up, and it represents an ongoing opportunity for small business startups, especially for tourism related facilities such as shops and accommodations. Further development needs to be carefully controlled such that the ambiance of the area is not degraded.”*

Here, the specific reference to Main Street (North and South) is helpful, in describing the opportunity which it represents for small business startups such as that of Mr. Wight. It does call attention to the need to control development there so that the positive quality of the area is not degraded.

An obvious question is whether the street is regarded as an area which is intended or expected to eventually become more commercial or industrial, versus mainly residential. The answer is found in Section 6.2.1, which details the policies most directly applicable to the area, as follows:

#### **6.2.1 Mixed Development**

*As said in the historical sketch given earlier in this document, the focus of the initial settlement pattern of the community was naturally the harbour and the fishery infrastructure that grew up on the waterfront. Immediately inland was the principal commercial street along which retail and service establishments were located, together with the primary public services such as the post office, municipal building, and churches. That shoreline area is still characterized as a mixture of residential and commercial development, and is expected to continue in that way for the foreseeable future.*

*Almost the entire length of Main Street, North and South, from the fish plant at the southwest end and almost to the Town boundary just beyond Spring Lane at the other end, is therefore designated as Mixed Development. The residential uses there may over time be superseded by commercial development, but this is not foreseeable within the ten year span of the proposed Municipal Plan.*

A couple of paragraphs later in the Section, the general policies are set out for the Mixed Development Area, as follows:

*As Mixed Development areas have the potential to accommodate small business startups in existing buildings, and redevelopment of existing larger commercial and light industrial buildings to other uses, great flexibility is needed in the ability of Council to*

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*promptly consider approval of applications for non-residential uses related to economic development and non-traditional residential uses. It is the intention of Council to permit a wide variety of development types, while ensuring the amenity and safety of existing residential uses.*

*The following policies will guide the growth and development of the Mixed Development area:*

- 1. The Mixed Development areas are established as indicated on the Future Land Use Maps.*
- 2. Development of these lands for single and double dwelling residential uses as well as recreational open space will be permitted as of right. Assembly, special care institutional, all other residential uses, all Group D business and personal service uses, and mercantile uses may be permitted as discretionary uses provided public safety and the amenity of established residential uses are protected.*
- 3. Small scale business uses may be permitted to occupy a minor part of a residence.*
- 4. Commercial uses must be compatible in scale and appearance to surrounding residential uses. Commercial uses will be limited to those that will not be a hazard or nuisance to residences and will be separated an adequate distance from adjoining residences. [underlining added for emphasis]*

There are three more policy points in the above list, but they do not relate to the subject. The policy requirements are clear: if the amendment is to be consistent with the Municipal Plan, the potential negative effects on neighboring owners and residents must be addressed. Matters of scale, appearance, external lighting, noise, dust, hours of operation and the like are to be taken into account.

Section 6.3.6 concerns visual effects of development, as follows:

*6.3.6 Visual Effects of Development*

*Where a proposed development is of a size or nature that could in any way have negative effects beyond the boundaries of the site upon which it is located (such as the creation of noise, smoke, dust, fumes or unsightliness), Council may hold an advertised public briefing to ensure interested persons are aware of the potential effects of the proposal and that their concerns are taken into consideration before any decision is made on a development application, whether or not the proposed use is permitted as of right. Screening through such means as retention of original trees and other plant growth or erection of fences or any other measures to render off-site effects acceptable will be required.*

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There is no doubt that continuation of the illegal use would have some negative effects beyond the lot boundaries, as the outdoor storage of motor vehicles and their comings and goings will be visible. As the business grows, increasing numbers of customers and vehicles would likely occur, and the amount of the property which is devoted to business uses will likely grow as well.

Council has followed the direction of the first part of Section 6.3.6, in the form of the public consultation meetings which preceded making this amendment, to present the proposal and consider the views of the public. The second part of the Section clearly points to the usual remedies to minimize negative effects on neighboring areas.

The rest of this document describes the terminology and approach used in the proposed amendment and sets out the actual amendment.

### **Terminology**

The illegal development would fall under the definition found in the Development Regulations for "*GENERAL GARAGE: Land or buildings used exclusively for repair, maintenance and storage of motor vehicles and may include the sale of gasoline or diesel oil.*"

A similar, but somewhat different, type of land use is the "*SERVICE STATION: Any land or building used exclusively for the sale of petroleum products, automotive parts and accessories, minor repairs, washing and polishing of motor vehicles.*"

The difference between a general garage and a service station is one of proportion of use between *mechanical repairs, maintenance and storage* of vehicles on one hand and on the other the *sale of petroleum products* and other items at retail. A general garage would see sale of fuels as an optional or incidental business, whereas in a service station the focus is on sale of fuels and items at retail plus incidentally minor repairs and maintenance. Both types are classed as "industrial" in the Development Regulations because of the nature of the business, which in either case includes storage and use of inflammable goods (fuels), presence of motor vehicles for service, and the emission of dust, noise, fumes and the like.

The illegal use could have been considered at Council's discretion under the current Development Regulations if it were seen as a service station, but two aspects would forbid that view: first, the definition would need to be bent quite a lot because of the focus in the definitions (Mr. Wight wants to repair motor vehicles, not sell fuels). Second, the Development Regulations say that a service station could be considered except that the phrase "*...excluding repair or storage of vehicles...*" is very clear (yes to a service station but only one which does not include storage and repair of vehicles).

The fundamental issue is that of repair and storage of motor vehicles. The specific type of service station which the current Regulations say may be approved at Council's discretion would

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be a gas bar, ie: featuring sale of fuels but without mechanical service or storage of vehicles.

**Approach**

The general policies cited earlier clearly call for Council to be flexible in accommodating non-residential business initiatives, as long as the neighborhood effects would be tolerable. The discretionary uses in the current Development Regulations include a wide variety of land uses that could be considered, such as stores, offices, personal service, small appliance repair and the like, and as said above, gas bars. The industrial group which includes both general garage and service station (with mechanical service and vehicle storage), are not included.

The proposed use lies in the industrial category, which was not seen at the time of preparing the Municipal Plan five years ago to be acceptable. Therefore, to be open to consideration of those types of uses is a change of policy and must be explicitly stated in the Municipal Plan.

The proposed amendment would make the land use class of "general garage" a permitted use in the Mixed Development area but ONLY at that specific address, and only in accordance with conditions uniquely applicable to it that would be included in the Development Regulations. Making "general garage" a permitted use means that the repair, maintenance and storage of motor vehicles would be permitted, unless conditions are attached to limit activities.

The conditions are intended to address the potential negative effects on nearby properties, such as the scale of buildings, presence of vehicles parked outdoors, improvements to the yards to deal with dust control, fencing to shield the activities on the site from the neighbors, and the like.

The conditions would include a prohibition on the sale of motive fuels, to prevent the operation from effectively becoming a service station with sale of fuels, which would continue to be not permissible. The next section describes the procedure following the amendment, leading to the approval of a permit.

**STEPS TO LEAD TO A PERMIT**

When the amendment and the concurrent amendment to the Development Regulations come into legal effect, they will make the presently unpermitted land use of "general garage" a permissible land use, with conditions, at that property. The amendment to the Municipal Plan is reflected in the concurrent amendment to Development Regulations, which state the conditions which an application must satisfy. The permit would only be approved if the conditions were satisfied.

Once the amendments to the Municipal Plan and Development Regulations come into legal effect, Mr. Wight still needs to follow through on the directions in the Stop Work Order to submit an application for a permit pursuant to the Development Regulations. As a separate item, the Stop Work Order also referred to an application for a business license. If Council does

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not approve the permit, if for example he refuses to respect the conditions in his application, Mr. Wight can appeal their refusal to the appeal board established pursuant to the *Urban and Rural Planning Act 2000*.

Conversely, if Council approves the permit, any interested person or an association of persons aggrieved of the decision can appeal, seeking to have the approval of the permit overturned.

**THE PROPOSED AMENDMENT**

The actual text of the amendment to the Municipal Plan, is shown below. As noted, a concurrent amendment to the Development Regulations is involved to achieve Council's objective.

**Amendment No. 2 - 2019 to the Municipal Plan**

Section 6.2.1 Mixed Development point 2 is revised as follows:

1. Insert "and general garage at 48 Main Street South (subject to conditions)" after "recreational open space" in the second line thereof.
2. Insert the following text at the end of the existing text: "An extraordinary case involving development of a general garage at 48 Main Street South was made approvable by way of Amendments No. 2 made to the Municipal Plan and Development Regulations in 2021, which added that use (subject to conditions) at that location to the permitted uses lists. The Conditions included in the amendment to the Development Regulations, such as fencing, restrictions on range of goods for sale, landscaping, signage, and the like, are devised to minimize off-site impacts or address potential negative impacts of the said development."



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