

# **WATERFRONT ORDINANCE**

## **1. GENERAL PROVISIONS**

### **1.1 TITLE**

This ordinance shall be known as the “Waterfront Ordinance of the Town of Kennebunkport, Maine”. It shall be referred to herein as the “Ordinance”.

### **1.2 AUTHORITY**

This ordinance is adopted pursuant to the authority granted by Title 38 M.R.S.A., Chapter 1, as amended, Title 30-A M.R.S.A., §§ 3001, 3007, 3009 and 4452, as amended and the Home Rule provisions of the Constitution of the State of Maine with additions and deletions.

### **1.3 PURPOSE**

Kennebunkport’s waterfront is a limited and valuable resource. The demands on this resource have been increasing for both commercial and recreational uses; therefore, this Ordinance is adopted for the following purposes:

**1.3.1** Ensure that there will always be adequate and usable mooring space for the Kennebunkport Commercial Fishing Fleet.

**1.3.2** Preserve the working waterfront, which includes commercial fishing, marine related businesses and recreational boating.

**1.3.3** Provide Ordinance guidelines and authority for the Harbormaster to administer mooring space and to resolve any conflicts.

**1.3.4** Address dangerous and unsuitable mooring placements.

**1.3.5** Ensure consistency with the policies set by the state of Maine and the US Army Corps of Engineers.

**1.3.6** Plan, establish and maintain the arrangement and utilization of Mooring areas, public landings, boat ramps, harbor channels and other related properties in Kennebunkport Waters.

### **1.4 APPLICABILITY**

The provisions of this ordinance shall apply to all tidal water areas located within the municipal boundaries of Kennebunkport, Maine, with the exception of the Kennebunk River, hereinafter referred to as Kennebunkport Waters.

### **1.5 SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unenforceable by any Court, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

### **1.6 CONFLICT**

Whenever any section, subsection, sentence, cause, phrase or portion of this ordinance is deemed to be in conflict with any existing state law and/or federal rule(s), then the stricter provision shall apply, unless preempted by federal law.

### **1.7 EFFECTIVE DATE**

This ordinance shall become effective immediately upon adoption.

## **2. DEFINITIONS**

For the purpose of interpreting this Ordinance, the following terms, phrases and words shall be defined as set forth below.

**COMMERCIAL FISHERIES BUSINESS:** An enterprise, as defined in Title 12 M.R.S. Section 6001(6-A), which is directly or indirectly concerned with the commercial harvest of wild or aquacultured marine organisms, whose primary source of income is derived from these activities. "Commercial fisheries business" includes, but is not limited to:

- A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;
- B. Persons providing direct services to commercial fishermen, aquaculturists or fishermen's cooperatives, as long as provision of these direct services requires the use of working waterfront property; and
- C. Municipal and private piers and wharves operated to provide waterfront access to commercial fishermen, aquaculturists or fishermen's cooperatives.

**COMMERCIAL FISHING VESSEL:** A vessel used in furtherance of the purposes of a commercial fisheries business, including vessels rigged to engage in the commercial harvest, processing or transport of wild or aquacultured marine organisms as well as supporting vessels such as lobster, crab and shellfish cars.

**FEE:** A charge for the use of Town owned waterfront facilities; all fees described herein are set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting.

**FINE:** A civil penalty for a violation of this Ordinance; all fines are set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting.

**HARBOR MASTER:** A person appointed pursuant to Title 38 M.R.S.A. § 1 and this Ordinance; all references to the Harbor Master shall include any Deputy Harbor Master.

**KENNEBUNKPORT WATERS:** Has the meaning defined by Section 1.4.

**MOORING:** The Means of securing a vessel to a particular location in Kennebunkport Waters, other than temporarily by anchor for a period of no more than 72 hours. Dock, pier, wharf or float tie-ups are not moorings. There are three classes of moorings, Commercial, Recreational and Transient, which are defined below.

**Commercial:** A Mooring issued to and utilized by a Commercial Fisheries Business for the purpose of mooring a Commercial Fishing Vessel. In Cape Porpoise, the mooring permit holder must either be a Cape Porpoise Pier member in good standing or a shorefront owner. This excludes moorings in Paddy Creek, Turbats Creek, Land's End and Langsford Road, as noted by their mooring designation.

**Recreational:** A Mooring other than a commercial mooring that is permitted for the purpose of mooring a specific Vessel. In Cape Porpoise, the mooring permit holder must either be a Cape Porpoise Pier member in good standing or a shorefront owner. This excludes moorings in Paddy Creek, Turbats Creek, Land's End and Langsford Road, as noted by their mooring designation.

**Transient:** A Mooring set aside for temporary (7 days or less) use by Vessels cruising along the coast.

**MOORING PERMIT:** An annual permit that is issued by the Harbor Master to a Mooring Permittee, authorizing the placement of a specific class of Mooring at a specific Mooring Site and which expires on May 31 of the year following its issue.

**MOORING PERMITTEE:** A person granted a Mooring Permit.

**MOORING PERMIT WAITING LIST:** A list of persons desiring a Mooring Permit as described in Section 4.3.2.

**MOORING RELOCATION WAITING LIST:** A list of Mooring Permittees desiring relocation of a Mooring Site as described in Section 4.3.2.

**MOORING SITE:** A specific location assigned by the Kennebunkport Harbor Master for placement of a Mooring, defined by GPS coordinates where practicable.

**PERSON:** An individual, a corporation, a firm, partnership, an association or any other

entity.

**SHIP CHANNELS:** Ship channels as described herein and depicted on the NOAA nautical chart and other such channels designated by the Harbor Master which shall be kept open for the passage of watercraft. These channels are maintained by the US Army Corps of Engineers and are depicted on the Corps Condition Survey for Cape Porpoise and the Kennebunk River.

**SHOREFRONT OWNER:** A person who owns Kennebunkport shorefront property with a minimum 100 feet of shore frontage on Kennebunkport Waters who can demonstrate that a Mooring Site fronting their property is both practicable and safe.

**VESSEL:** Any type of watercraft, including a ship, boat, barge, float or craft, other than a seaplane, used or capable of being used as a means of transportation on water. For purposes of this Ordinance, floating docks including commercial work floats and lobster, crab and shellfish cars are vessels.

**VESSEL OWNER:** The person who can demonstrate the controlling interest in a Vessel and who is named on the boat registration or the person identified as the managing owner on the U.S.C.G. Certificate of Documentation.

### **3. HARBOR MASTER**

#### **3.1 APPOINTMENT AND COMPENSATION**

Pursuant to the Kennebunkport Administrative Code, Article III, the Board of Selectmen shall annually appoint a Harbor Master who shall be subject to all the duties and liabilities of that office as prescribed by state law, regulations adopted by the municipal officers and municipal ordinances. Pursuant to the Kennebunkport Administrative Code, Article II, the Town Manager shall establish compensation and may remove the Harbor Master for cause after notice and hearing and appoint another instead.

#### **3.2 POWERS AND DUTIES**

##### **3.2.1 Removal of Vessels**

The Harbor Master, upon complaint from the master, owner or agent of any Vessel, shall cause any other Vessel or Vessels obstructing the free movement or safe anchorage of that Vessel to be removed to a position as designated by the Harbor Master and may, without any complaint being made, cause any Vessels anchoring within the ship channels to be removed to such anchorage as the Harbor Master may designate. If that Vessel has no crew on board or if the master or other person in charge neglects or refuses to move such Vessel as directed by the Harbor Master, the Harbor Master may put a suitable crew on board and move that Vessel to a suitable berth at a wharf or anchorage at the expense and risk of the owner(s) of the Vessel and shall charge a Vessel

Removal Fee plus expenses, to be paid to the Town of Kennebunkport by the master or owner of that Vessel.

Once a Vessel has been removed by the Harbor Master the owner of record shall be notified in writing and mailed a notice via US Mail certified return receipt. Such notice shall give the owner 30 calendar days to relocate the Vessel to a suitable location and pay a Vessel Removal Fee as set by the Board of Selectmen. Should the Vessel not be relocated within the set time period a fine of up to \$100 per day may be assessed until the Vessel is relocated. After 60 calendar days the Vessel may be declared abandoned. Abandoned Vessels may be disposed of at the direction of the Harbor Master.

### **3.2.2 Mooring Removal or Replacement**

In case of neglect or refusal of the Mooring Permittee to remove a Mooring or to replace it by one of a different character when so directed by the Harbor Master, the Harbor Master shall cause the entire Mooring to be removed or shall make such change in the character of the Mooring as required and shall charge a Mooring Removal/Replacement Fee, plus expenses, to be paid to the Town of Kennebunkport by the Mooring Permittee for either of those services rendered. Before removing a Mooring, the Harbor Master shall notify the Mooring Permittee by first class mail, at the address on the current Mooring Application, of the action desired, the fact that the Mooring will be removed, and the amount of the Mooring Removal/Replacement Fee. If the matter is not settled to the Harbor Master's satisfaction within 14 days, the Harbor Master may take any action provided for in this section.

The Harbor Master is authorized to remove any unmarked and/or unauthorized moorings. The Harbor Master may remove the mooring immediately and shall charge a Mooring Removal Fee, plus expenses to be paid to the Town of Kennebunkport by the owner of the unmarked and/or unauthorized mooring.

### **3.2.3 Training**

The Harbor Master shall complete training as required by Title 38 M.R.S.A. §1-A, as amended. In addition the Harbormaster shall be required to attend the annual Harbormaster training by the Maine Harbormasters Association.

## **4. MOORINGS**

### **4.1 ANCHORAGES**

No person shall place or allow to anchor or to lay any Vessel in any position in Kennebunkport Waters for more than 72 hours unless written permission has been granted by the Harbormaster. The Harbormaster may designate a specific area available as a general anchoring area.

## **4.2 DESIGNATION OF MOORING SITES**

The Harbor Master shall designate Mooring Sites in accordance with Title 38 M.R.S.A., § 3, as amended. Mooring Sites shall be permitted for the sole use of the Vessel indicated on the application. Any change in the Vessel using the Mooring Site must be in accordance with this ordinance and state law and have the written approval of the Harbor Master.

The Harbor Master shall have the authority to determine the total number of allowed moorings based on available Mooring Sites. The Harbor Master may consult with the Board of Selectmen and any other appropriate authority to determine mooring areas and their capacity. Commercial Moorings shall comprise at least 60% of the total number of Mooring Sites within Cape Porpoise Harbor. If an existing Commercial Mooring becomes available within Cape Porpoise Harbor, it may not be assigned for use as a Recreational or Transient Mooring if such assignment would cause the number of Commercial Moorings to constitute less than 60% of the total number of available mooring sites within Cape Porpoise Harbor. Mooring Sites outside of Cape Porpoise Harbor may be designated commercial, recreational, or transient at the discretion of the Harbor Master.

The Harbor Master may change the location of assigned Mooring Sites when the crowded condition of the harbor, the need to conform with Title 38 M.R.S.A., §§ 3, 7-A, or other conditions render the change desirable.

## **4.3 MOORING PERMIT**

### **4.3.1 Application**

Application for a Mooring Permit shall be made annually and shall contain the information set forth on the application. The applicant must demonstrate that the applicant is the Vessel Owner of the Vessel associated with the Mooring. An application will not be processed unless it is complete, the payment of required fees, including excise taxes or other taxes or charges owed to the Town of Kennebunkport, or its agent, are made prior to May 1st and there be a current Mooring Inspection Certification on file with the Harbor Master. At the time of each annual review of Mooring Permits, existing Mooring Permittees shall be given priority over other applications for a Mooring.

The Harbor Master shall deny any application where incorrect information is submitted, where outstanding Kennebunkport pier use fees or fuel fees are owed to the Town, or where an applicant is not in compliance with this ordinance.

#### **4.3.2 Waiting List**

The Harbor Master shall maintain a Mooring Permit Waiting List and a Mooring Relocation Waiting List each of which shall be available for inspection at the Harbor Master's office. The operation of all waiting lists shall conform to Title 38 M.R.S.A., § 7-A as amended.

All persons desiring mooring space in Kennebunkport Waters shall place their name and the type of mooring desired on the Mooring Permit Waiting List. All Mooring Permittees desiring a different Mooring Site shall place their names and their desired mooring location on the Mooring Relocation Waiting List. A fee may be charged to be placed on the Mooring Permit Waiting List which shall be applied against the mooring permit fee as a credit the year the mooring is placed. The Mooring Permit Waiting List will be operated on a first come first serve basis, priority being given as stated below:

1. Commercial fishing vessel owners.
2. Shorefront property owners.
3. Recreational vessel owners.
4. Transient moorings to be operated by the Town of Kennebunkport.
5. Transient moorings to be operated by any other person. The Mooring Relocation Waiting List will be operated on a first come first serve basis. The Harbor Master shall attempt to accommodate any request for a relocated Mooring Site when, in the Harbor Master's discretion, conditions do not render the relocation undesirable, and the relocation is consistent with Section 4.2.

#### **4.3.3 To Whom Issued**

A Recreational Mooring Permit shall only be issued to the Vessel Owner and a Commercial Mooring Permit shall only be issued to an officer or principal of the Commercial Fisheries Business. A Transient Mooring Permit shall be issued to the person who will maintain and operate the Transient Mooring.

#### **4.3.4 Conversion**

A Mooring shall not be converted from the class of Mooring originally permitted if such conversion would be inconsistent with Section 4.2.

#### 4.4 MOORING IDENTIFICATION

All Moorings shall have the number of the Mooring Permittee indicated on the float or buoy above the water line for the purposes of identification. Such number and name shall be displayed in at least three (3) inch letters and be legible at all times. Mooring buoys shall be white with a single blue horizontal band clearly visible above the water line.

#### 4.5 PLACEMENT OF MOORINGS

No person shall place a Mooring of any type within the boundaries of Kennebunkport Waters without a Mooring Permit issued by the Town of Kennebunkport's Harbor Master.

#### 4.6 SIZE AND CONSTRUCTION

All Moorings shall be of a suitable size and construction for the Vessel. Mushroom or pyramid anchors are recommended, unless the owner can demonstrate holding power adequate for his boat. Blocks are permitted however they may only be granite; concrete or cement blocks are not allowed. The weight of the Mooring anchor shall conform to the requirements of either the chart or formulas below. Chain size shall conform to the chart below, regardless of whether the weight conforms to the chart or formulas below.

Length of Boat	Weight of Mooring Anchor	Chain Size
(Feet)	(Pounds)	(Minimum)
20' Or Less	500	1/2"
20' To 30'	1000	1"
30' To 40'	1500	1 1/4"
40' To 60'	2000	1 1/2"

Mooring weight: To determine the minimum weight of a mushroom or pyramid anchor, multiply the length on deck (ft.) by the beam (ft.) by 1.5. The product is the minimum mooring weight in pounds.

Example: Boat length 31 ft., beam 10 ft.  
 $31 \times 10 \times 1.5 = 465$  lbs. minimum weight. Round up to the next even mooring size.

Shallow water (restricted) moorings: are set in less than less than 6 feet of water at high tide for boats twenty (20) feet or less. Minimum Requirements shall be length x beam = anchor weight for mushroom or pyramid anchors (minimum weight 50 pounds).

Dead weight anchors length x beam x 1.5 x 2 = dead weight.



#### **4.7 INSPECTION OF MOORINGS**

The Board of Selectmen shall have the authority to approve regulations to establish a program requiring the inspection of moorings.

#### **4.8 DENIAL**

The Harbor Master may deny the replacement or use of a Mooring if in the judgment of the Harbor Master, the Vessel is:

**4.8.1** Structurally unsafe;

**4.8.2** Emitting obnoxious fumes, oils, or any other substance detrimental to the safety or comfort of others, including any pollution of its waters, shores and flats;

**4.8.3** Of inappropriate size for the Mooring; or

**4.8.4** Causing damage to Town owned waterfront facilities.

#### **4.9 NON-USE OF MOORINGS**

If a Mooring Permittee fails to use the assigned Mooring Site or Mooring for the Vessel listed on the current Mooring Permit during the term (June 1 to May 31) of that permit, the Mooring Permit shall not be renewed. A Mooring Permittee may appeal such non-renewal to the Board of Selectmen pursuant to Section 10 of this Ordinance.

#### **4.10 MOORING ASSIGNMENTS**

**4.10.1** There shall be no transfer of a Mooring Permit or an assigned Mooring Site and no renting of a Recreational or Commercial Mooring, except for good cause with the prior written approval of the Harbor Master and, if otherwise required by law, the Army Corps of Engineers, or as otherwise noted in this ordinance. Municipal and Commercial Transient moorings are permitted to be rented.

**4.10.2** A Mooring Permittee shall promptly notify the Harbor Master of a proposed change of Vessel on a Recreational or Commercial Mooring. Such change of Vessel shall be permitted only with the prior written approval of the Harbor Master.

**4.10.3** Any assigned Mooring Site used for commercial fishing purposes may be transferred only at the request or death of the Permittee, and only to a member of the Permittee's family and only if the mooring assignment will continue to be used for commercial purposes. For the purpose of this section, "member of the permittee's family" means a Permittee's parent, child, or sibling, by birth or by adoption including a relation of the half blood or an assignee's spouse.

**4.10.4** As of the effective date of this Ordinance a vessel may only be assigned to a single mooring site.

## **5. FEES AND FINES**

The Board of Selectmen shall establish and provide for the collection of Fees including but not limited to Fees for Mooring Permits and the Mooring Permit Waiting List, and may establish and provide for the collection of Fees for the inspection of moorings. The Board of Selectmen may establish and provide for the collection of Fines for violations of this Ordinance. Such Fees may be a flat amount or vary according to the size of the Vessel. Fines may be a flat amount or vary according to the infraction or violation. The Vessel Removal Fee and Mooring Removal/Replacement Fee shall be consistent with Title 38 M.R.S.A. §§ 4.5. A schedule of the Fees and Fines established under this section shall be available at the Town Office and from the Harbor Master. Fees and Fines shall be set by the Board of Selectmen annually and will be effective upon adoption by the Board of Selectmen at a public meeting. If a Fee and Fine is not paid in the prescribed time, after billing, the Mooring Permit will be void and the Mooring Site reassigned to the next eligible individual on the Mooring Permit Waiting List.

## **6. ABANDONMENT**

No person shall cause to be abandoned any Vessel, floating device, cradle, or any other obstruction on the shore within Kennebunkport Waters. Any such object left within the confines of Kennebunkport Waters and which has been unattended for a period of ninety (90) days shall be deemed to be abandoned. The Harbor Master shall then order the last owner of any such abandoned Vessel, floating device, cradle or other obstruction, if such owner is ascertainable, to remove same within thirty (30) days. Upon refusal or failure to do so, the Harbor Master shall cause its removal or destruction at the cost of the said last ascertainable owner. Any violation of the above shall be considered a Class E crime pursuant to Title 38 M.R.S.A. § 9, and further punishable as set forth in this Ordinance.

## **7. POLLUTION**

Except in case of emergency imperiling life or property or unavoidable accident, collision, or stranding, no person shall discharge, or suffer, or permit the discharge of sewage, garbage, trash or other refuse of any kind, by any method, means, or manner into or upon Town wharves or docks or Kennebunkport Waters.

## **8. RULES AND REGULATIONS**

The Harbor Master shall recommend to the Board of Selectmen for adoption such rules and regulations as shall be necessary to implement the intent of this ordinance.

## **9. ENFORCEMENT**

### **9.1 ENFORCEMENT BY THE HARBOR MASTER**

It is the duty of the Harbor Master to enforce the provisions of this Ordinance. No person shall fail to observe any lawful order of the Harbor Master with reference to the navigation and disposition of Vessels or Moorings within Kennebunkport Waters. If, after investigation, the Harbor Master finds that any provision of this Ordinance is being violated, he or she shall give written notice delivered by hand, if the owner agrees to sign a receipt for the notice, or by certified mail, return receipt requested, to the person responsible for such violation, and/or to the owner and/or to the operator of such Vessel. The notice shall indicate the nature of the violation and order the action necessary to correct it, including discontinuance of illegal use of moorings, or work being done, removal of illegal moorings, fishing equipment and abatement of nuisance conditions. The notice shall demand that the violation be abated within some designated reasonable time. If after such notice, the violation is not abated within the time specified, the Harbor Master shall take appropriate measures to enforce this Ordinance including notifying the Selectmen of the need to institute appropriate action in the name of the Town of Kennebunkport to prevent, enjoin, restrain or abate any violation of this Ordinance. A copy of each such notice of violation shall be submitted to the Board of Selectmen and be maintained as a permanent record.

### **9.2 ENFORCEMENT BY LAW ENFORCEMENT OFFICERS**

In addition to the Harbor Master, any law enforcement officer vested with the authority to carry a weapon and make an arrest shall have the authority to enforce the provisions of this Ordinance.

### **9.3 MISDEMEANOR FINES; SEPARATE VIOLATIONS**

Any person who violates any provision of this Ordinance or a lawful order of the Harbor Master shall be subject to a Fine. Each day that a violation continues, without action to effect abatement after receipt of notification by the Harbor Master, shall be considered a separate violation for purposes of this section. Pursuant to 38 M.R.S.A. § 13, an intentionally, knowingly, or recklessly failing to obey any lawful order of the harbormaster is a Class E Crime.

### **9.4. LEGAL ACTION**

The Harbor Master may impose Fines as approved by the Board of Selectmen as may be appropriate to enforce any provision of this Ordinance. The Board of Selectmen, upon notice from the Harbor Master, are hereby authorized and directed to institute any and all action and proceedings, either legal and/or equitable, including seeking injunctions of violations and the collection of Fees or Fines as may be appropriate or necessary to enforce the provisions of this ordinance in the name of the Town. In any such action in which the town prevails, the town shall be awarded reasonable attorney's fees and the cost of suit in addition to any other relief to which it may be entitled.

## **10. APPEALS**

The Board of Selectmen shall hear and decide appeals alleging error by the Harbor Master in the administration of this ordinance. The aggrieved person must make a written appeal within thirty (30) days of the date of the decision being appealed and the Board of Selectmen shall hold a public hearing within thirty (30) days from the date of receipt of the appeal. The Board may establish additional rules and procedures for such hearings. A party aggrieved by the decision of the Board may appeal it to Superior Court within thirty (30) days from the date of the original decision pursuant to Maine Rules of Civil Procedure, Rule 80B.