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## CHAPTER 16

### HARBOR ORDINANCE FOR THE CITY OF BATH, MAINE

#### ARTICLE I. GENERAL PROVISIONS

##### SECTION A. PURPOSE AND AUTHORITY

This ordinance shall establish regulations for marine activities within the harbor, waterways, and tidal waters of the City of Bath, Maine to ensure the safety of persons and property, to promote availability and use of a valuable public resource, and to create a fair and efficient framework for the administration of that resource. This ordinance shall be subordinate to existing Federal and State laws governing the same matters, and is not intended to preempt or conflict with other valid laws.

This Ordinance is enacted pursuant to the authority granted by the Charter of the City of Bath, the Maine Constitution, Article VIII, Part 2, Section 1, 30-A M.R.S. Section 3001, and 38 M.R.S. Section 1, *et seq.*, as amended.

##### SECTION B. HARBOR LIMITS

“Harbor and waterways” shall include the entire navigable portion of the Kennebec River, inclusive of the waters of Merrymeeting Bay and any associated tributaries, located within the City limits of the City of Bath.

“Tidal waters” shall include all waters which ebb and flow between mean high tide and mean low water within the harbor and waterways of the City of Bath. For the purposes of this Ordinance, mean high tide shall be determined from the most recent data compiled by the National Oceanic and Atmospheric Administration.

##### SECTION C. HARBORMASTER

The Harbormaster shall be appointed by the City Council, upon recommendation of the City Manager, for a term of not less than twelve (12) months, nor more than sixty (60) months. In addition, the Harbormaster, and any Assistant Harbormaster, shall be a sworn officer of the City of Bath Police Department.

An Assistant Harbormaster may be appointed by the Police Chief, upon consultation with the City Manager, for the same term as the Harbormaster.

Certain duties and responsibilities of the Harbormaster are prescribed by 38 M.R.S. Section 1, *et seq.*, and are incorporated herein, as may be amended. The Harbormaster has the additional duty to administer and enforce the provisions of this Ordinance with the authority granted by law and through his/her appointment as Harbormaster. He/she shall make recommendations to the City Manager for maintenance and improvements to all city-owned waterfront facilities. He/she shall have full authority to enforce all harbor regulations affecting the waterfront to the fullest extent permitted by law.

The compensation for the Harbormaster and any Assistant Harbormaster shall be established by the City Manager.

## **SECTION D. INVALIDITY**

If any provision of this ordinance is held invalid or inoperative, the remainder shall continue in full force and effect as though such invalid or inoperative provision had not been enacted.

## **ARTICLE II. DEFINITIONS**

- (1). Anchorage: Shall mean an area of the harbor and waterways located outside of the navigable channel, set aside for permanent moorings or for the temporary anchoring of boats and vessels.
- (2). Auxiliary: Shall mean any vessel having both sails and either an inboard or outboard motor and which may be propelled by its sails or by its motor or both.
- (3). Channel: Channel shall include the navigable channel of the Kennebec River within the limits of the City of Bath, as determined, and marked, by the Army Corps of Engineers and the United States Coast Guard.
- (4). Commercial Fisherman: Shall mean a person or entity who derives more than 50% of annual income from lobstering, fishing, clamming, or any other marine fishery and who has legally obtained all necessary permits, licenses, or approvals.
- (5). Commercial Vessel: Shall mean any vessel used for or engaged in any type of commercial venture, including but not limited to fishing or carrying cargo and/or passengers for hire.
- (6). Distress: Shall mean a state of disability of a present or obviously imminent danger which, if duly prolonged could endanger life or property.
- (7). Emergency: Shall mean a state of imminent or proximate danger to life or property in which time is of the essence.
- (8). Float: Shall mean any floating structure normally used as a point of transfer for passengers and the storage of gear and goods and/or for mooring purposes and includes work floats and fishing floats.
- (9). Headway Speed: Shall mean the minimum speed necessary to maintain steerage and control of the vessel while the vessel is moving.
- (10). Houseboat: Shall mean a raft, hull, barge, or vessel, designed primarily to be used as living quarters, and providing living, sleeping, cooking, and sanitary facilities, whether temporarily or permanently.
- (11). Illegally Berthed: Shall mean docking a vessel without permission or permit from the Harbormaster, and/or the owner of a marine facility.

- (12.) Marina/Marine Facility: Shall mean an all-tide waterfront facility, whose activities include sales, storage, maintenance of vessels, and which provides slips for permanent or transient berthing, sells fuel and supplies for vessels, and/or provides vehicle parking.
- (13). Mooring: Shall mean any appliance used by a craft for anchoring purposes and which appliance is not carried aboard such craft when underway as regular equipment.
- (14). Mooring, Abandoned: Shall mean a mooring that remains unused for a year unless the lack of use has been authorized by the Harbormaster.
- (15). Nonresident: Shall mean all persons who reside outside the City of Bath and who does not own real property within the City.
- (16). Resident: Shall mean any person owning, renting or residing on real property in the City of Bath.
- (17). Riparian Owner: Shall mean an owner of a parcel of land located in the City of Bath which borders upon the harbors and waterways, as described in Article I, Section B.
- (18). Shore: Shall mean that part of the land in immediate contact with a body of water, including the area between the high and low water lines.
- (19). Shall and May: “Shall” is mandatory. “May” is permissive.
- (20). State: Shall mean the State of Maine.
- (21). Stray Vessel: Shall mean (1) an abandoned vessel; (2) a vessel the owner of which is unknown; (3) a vessel underway without a competent or where required, duly licensed person in command or control.
- (22). To Anchor: Shall mean to secure a vessel to the bottom within a body of water by dropping an anchor or anchors or some other ground tackle.
- (23). Underway: Shall mean the condition of a vessel not at anchor; without moorings; and not made fast to the shore nor aground.
- (24). Vessel: Shall mean a watercraft of any kind including boats, scows, dredges, and barges but excluding floats and shellfish cars, and other structures permanently attached to moorings.
- (25). Vessel, Derelict: A vessel shall be considered “derelict” if any of the following circumstances exist: (a) the vessel is fastened to neither a mooring nor an anchor; (b) the vessel lacks any license or registration, from any authority, the possession of which is a prerequisite to the operation of such a vessel; (c) the vessel is submerged to a level substantially above its normal water line, and remains so for a period of at least fourteen (14) consecutive days without reasonable explanation; and (d) the vessel is damaged to such an extent that it cannot be moved under its own power.

(26). Visiting Vessel/Transient: A vessel will be considered visiting or transient if the vessel is not normally moored or does not have a permanent mooring in the harbor.

(27). Waterway: Shall mean any water area providing access from one place to another, principally a water area providing a regular route for water traffic.

### **ARTICLE III. GENERAL BOATING AND TRAFFIC CONTROL REGULATIONS**

#### **SECTION A. TRAFFIC CONTROL AUTHORITY**

The Harbormaster shall have the authority to control waterborne traffic in any portion of the harbor and waterways under his/her jurisdiction by use of authorized State regulatory markers, signal, orders or directions at any time preceding, during and after any race, regatta, parade or other special event held in any portion of the harbor and waterways, or at any time when the Harbormaster deems it necessary in the interest of safety of persons and vessels or other property, and it shall be unlawful for any person to willfully fail or refuse to comply with any authorized State regulatory marker utilized by the Harbormaster, or with any signs, orders or direction of the Harbormaster.

#### **SECTION B. BASIC SPEED LAWS**

The operation of any vessel within the harbor and waterways area in excess of posted speed limits or, in the absence of such limits, in a manner to create a wash which endangers persons or property, shall constitute a violation of this Ordinance; provided that special written permission may be granted by the Harbormaster to conduct or engage in water sports, special events, and regattas in specific designated areas.

### **ARTICLE IV. GENERAL REGULATIONS**

#### **SECTION A. LIABILITY**

(1). Vessel Owner: Any person using facilities within the harbor and waterways shall assume all risk of danger or loss of his property, and the City of Bath assumes no risk on account of fire, theft, act of God, or damages of any kind to vessels within the harbor or on land facilities.

(2). Marine Facility Owner and/or Operator: It shall be the responsibility of the owner, licensee, lessee, or operator of any marine, anchorage, repair yard, or other marine facility, located with the harbor or waterways, to maintain the physical improvements under his jurisdiction in a safe and clean condition at all times, to provide adequate security and fire prevention measures and appropriate firefighting equipment as required by law. Failure to correct unsafe or otherwise unsatisfactory conditions within thirty (30) days of receipt of a written notice from the Harbormaster shall be a violation of this Section.

## **SECTION B. LAUNCHING AND RECOVERY OF VESSELS**

(1). None other than the driver may occupy a motor vehicle while it is present upon the area known as a launching ramp located within the City of Bath. All motor vehicles using said ramp must securely block at least one rear wheel of said motor vehicle while it is standing upon said ramp.

## **SECTION C. PERMITS AND REGISTRATION PROCEDURE**

All permits granted under the authority of this Ordinance shall be valid only for such period as may be determined by the Harbormaster, and permits of unqualified duration shall not be granted.

Each mooring owner will annually submit a mooring permit application and pay a fee set by Resolution of the City Council of the City of Bath, which fee shall be specified in the Schedule of Harbor Fees. This fee shall be paid to the City Treasurer on or before May 1<sup>st</sup> of each year. Failure to comply will incur late fees and may result in removal of mooring and loss of berth. Mooring applications are located at Bath City Hall.

Each year, if all available mooring permits have been issued, a waiting list for mooring space shall be created. New applicants must fill out and return a mooring waiting list application with payment to the City Treasurer. The applicant shall pay an annual waiting list fee set by the City Council of the City of Bath, which fee shall be specified in the Schedule of Harbor Fees, to remain on a waiting list until a mooring space is approved or denied by the Harbormaster. Mooring applications shall be processed on a first come, first serve basis.

## **SECTION D. DAMAGE TO HARBOR OR OTHER PROPERTY**

It shall be unlawful to willfully or negligently destroy, damage, disturb or interfere with any public or private property in the harbor or waterway.

## **SECTION E. TAMPERING WITH OR BOARDING VESSELS WITHOUT PERMISSION**

It shall be a violation of this Ordinance for any person to willfully board, break into, move or tamper with any vessel or part thereof, located within the harbor unless authorized by the rightful owner of such vessel. Violation of this provision shall constitute a misdemeanor, punishable by the penalties herein above provided for violations of this Ordinance and to additional penalties not to exceed the aggregate of \$1,000. Any person violating this provision shall, in addition, be responsible to the rightful owner of any such vessel for any damage caused by such violation and to the reasonable cost of any attorney's fees incurred as a result thereof.

## **SECTION F. SIGNS AND MAINTENANCE**

The Harbormaster may place and maintain, cause to be placed and maintained, either on land or water such signs, notices, signal buoys or control devices as he/she deems necessary to carry out the provisions of this Ordinance, or to secure public safety and the orderly and efficient use of the harbor or facilities.

## **SECTION G. GENERAL RESTRICTIONS**

For the safety of the vessels and the general public the following activities are not allowed:

- (1). Casting stones, rocks or other material into the waters of the harbor on or adjacent to City or marine facilities.
- (2). Swimming from vessel launches, waterfront parks, the City floats, or from any vessels that are secured to the floats.
- (3). All types of fishing, with the exception of fly fishing, are permitted from the floats however, the fishing lines shall in no way hamper the tying up of vessels and of those approaching the floats.
- (4). Use of the launching ramps for more than twenty (20) minutes without the permission of the Harbormaster.
- (5). Tying a vessel to the City floats for more than three (3) hours without permission of the Harbormaster.
- (6). Grounding out, tying up or permitting to be grounded out, any vessel on the City launching ramps.
- (7). The placing of any skid, trailer, boat or any other craft on the waterfront grounds are allowed in designated areas only, or by permission of the Harbormaster.
- (8). Tying a vessel in excess of One Hundred (100) tons or One Hundred (100) feet to the City floats without Harbormaster permission.

## **SECTION H. HARBORMASTER'S BOAT**

Any vessel provided by the City for the Harbormaster's use shall be for the safety and maintenance of the City harbor and waterways. Any other use is forbidden without the approval of the City Manager. The vessel shall be under the direct control of the Harbormaster or Assistant Harbormaster.

## **SECTION I. DATES HARBOR OPEN**

The City of Bath Harbor will be open from approximately May through November of each year, or as may be determined by the Harbormaster.



## **ARTICLE V. ANCHORING, MOORING AND SECURITY OF VESSELS**

### **SECTION A. PLACEMENT OF PRIVATE MOORINGS OR FLOATS**

It shall be a violation of this Ordinance to place any mooring or float in the harbor without a permit from the Harbormaster, or in a location not approved by the Harbormaster.

### **SECTION B. MINIMUM MOORING REQUIREMENTS**

All moorings shall conform to specifications or regulations deemed appropriate by the Harbormaster, but at a minimum, all moorings shall be constructed of materials and be of a size to have sufficient holding power given the conditions of the City harbor and waterways.

The Harbormaster may permit variations from specifications or regulations, if in his/her judgment, the proposed mooring has sufficient holding power.

All mooring buoys shall conform to Coast Guard regulations and are to show at all tides.

The Harbormaster, in his discretion, shall maintain a plot plan of all mooring locations showing depth of water at mean low tide for each mooring and owner of each mooring.

The owner of a mooring that has been set in the City harbor shall not sublet the mooring or mooring space to any other person, except with express written permission of the Harbormaster and a permit from the Army Corps of Engineers.

After a reasonable attempt to notify the owner, an abandoned mooring, as determined by the Harbormaster, shall be removed and disposed of at owner's expense.

### **SECTION C. USE OF A CITY MOORING OR FLOATS**

(1). Permission may be granted by the Harbormaster for a private vessel to use any City mooring temporarily without charge for up to 24 hours. Private vessels in excess of thirty feet (30') docked at City facilities for a period in excess of three (3) hours shall pay docking fees as provided in the Schedule of Harbor Fees.

(2). Docking is limited to four (4) consecutive days, unless otherwise approved by the Harbormaster, followed by an absence of 4(4) consecutive days.

(3). No person shall store traps, bait, fishing gear, boats or waste material on the floats at any time. Said gear may be loaded and unloaded only in a speedy fashion.

### **SECTION D. VESSELS MAKING FAST**

No person shall make fast or secure a vessel to any mooring already occupied by another vessel, or to a vessel already moored except a rowboat, dinghy or yacht tender regularly used by such a larger vessel. If tied within a slip, such rowboat, dinghy or tender shall not extend into the waterway beyond the larger vessel if such larger vessel is also occupying the slip, or otherwise beyond the slip itself.

The owner of any vessel moored or anchored within the City harbor shall be responsible for causing such vessels to be tied and secured with proper care and equipment and in such manner as may be required to prevent breakaway and/or dragging of mooring and resulting in damage to other watercraft and property.

#### **SECTION E. MOORING VESSELS TO BUOYS**

No person shall moor any vessel to any buoy, beacon or other marker placed in the harbor to mark and define the harbor channels, or in any manner to make said vessel fast thereto or to willfully destroy any such buoy, beacon or other marker.

#### **SECTION F. MOORING REPLACEMENT**

(1). If the Harbormaster determines that a mooring needs to be removed or replaced, at the owner's expense, the Harbormaster may so direct the master or owner of the vessel whose mooring it is to do so.

(2). If the owner or master of the vessel neglects or refuses to comply with the Harbormaster's order, the Harbormaster may cause the entire mooring to be removed, the buoy removed and the chain dropped to the bottom, or shall make such change in the character of the mooring as required and collect from the master or owner of that boat or vessel a penalty of One Hundred Dollars (\$100.00) for services rendered, together with the necessary expenses.

#### **SECTION G. HOUSEBOATS AND FLOATING BUSINESSES**

Notwithstanding any other provisions of this Ordinance to the contrary, houseboats and floating businesses are prohibited from mooring or anchoring in the City Harbor except at marinas which provide the following:

- (1). A permanent float, dock or slip from which the houseboat may be directly boarded from land;
- (2). Connection to a public water supply by means of an individual anti-backflow valve;
- (3). A sewer connection to a public sewage system;
- (4). A year-round, all weather supply of electricity;
- (5). Compliance with any and all other applicable land use requirements.

Any such structure requires a permit from the Harbormaster and the Army Corps of Engineers.

### **ARTICLE VI. COMMERCIAL ACTIVITY**

No person shall tie up, or permit to be tied up, to the City floats any vessel for any commercial purpose except with the permission of the Harbormaster.

## **ARTICLE VII. SANITATION REGULATIONS**

### **SECTION A. DISCHARGE OF REFUSE**

It shall be a violation of this Ordinance to discharge or permit the discharge into the water of the harbor or waterways of any refuse, waste matter from toilets, petroleum or petroleum products, paint, varnish or any other foreign matter, including dead animals, fish and bait.

### **SECTION B. RESPONSIBILITY FOR SANITATION OF VESSELS**

The owner, lessee, agent, captain, master or person in charge of a vessel within the City harbor shall be responsible for any costs of clean-up. Should the Harbormaster find that any vessel or watercraft is not complying with this Ordinance he/she shall, in writing, notify the said owner, lessee, agent or captain or other person in charge of said vessel to immediately halt such action and commence to prosecute to completion of the correction or the unsanitary condition to the satisfaction of the Harbormaster. Failure to do so with reasonable dispatch shall be in violation of this Section, and the Harbormaster may then cause the condition to be corrected and the cost of such correction shall be charged to said owner, lessee, captain, master or any other person in charge.

## **ARTICLE VIII. SAFETY AND MAINTENANCE**

### **SECTION A. FLAMMABLE AND COMBUSTIBLE LIQUIDS AND/OR MATERIALS**

Within the harbor area, including parking areas, no person shall sell, offer for sale or deliver in bulk any class of flammable liquid or combustible material, nor dispense any flammable or combustible liquids in the fuel tanks of a vessel except when in compliance with all requirements of the N.F.P.A. Code 31, fire code and any other laws or regulations applicable thereto.

### **SECTION B. OBSTRUCTION TO DOCKS AND WALKWAYS**

Obstruction to docks and walkways within the harbor area by mooring lines, water hoses, electrical cables, boarding ladders, permanently fixed stairs or any other materials is strictly prohibited.

### **SECTION C. MOTOR VEHICLES**

Motor vehicles are not to be left unattended on or near launching ramps. All motor vehicles are to be parked only in designated areas, unless otherwise notified by the Harbormaster. Motor vehicle operators are to comply with all parking regulations as posted by the City of Bath.

### **SECTION D. OBSTRUCTING CHANNELS**

It shall be a violation of this Ordinance to knowingly or willfully obstruct the free use of any channel or waterway within the City harbor or to fail to report to the Harbormaster any collision between vessels or other accident or incident causing damage to persons or property.

## **SECTION E. UNSAFE BERTHING**

If any vessel shall be found, in the judgment of the Harbormaster, to be anchored or moored within the harbor facility in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels or to persons or property, the Harbormaster shall order and direct measures to eliminate such unsafe or dangerous condition. Primary responsibility for such compliance with such orders and directions shall rest with the owner of the improperly anchored or moored vessel or his authorized agent. In the absence of such owner or agent, said responsibility shall rest with the authorized operator of the facility at which the vessel is anchored or moored. In an emergency situation in the absence of any such responsible person, the Harbormaster shall forthwith board such vessel and cause the improper situation to be corrected, and the owner of the vessel shall be liable for any costs incurred by the City of Bath in effecting such correction.

## **ARTICLE IX. FEES**

From time to time, and upon recommendation of the Harbormaster and the City Manager, the City Council of the City of Bath by Resolution shall set all fees associated with and pertaining to the City of Bath Harbor. The amount of said fees shall be set forth in the Schedule of Harbor Fees.

## **ARTICLE X. ENFORCEMENT**

### **SECTION A. PENALTIES**

Except where stricter penalties are provided for elsewhere in this Ordinance, or under State or Federal law, any violation of this Ordinance shall be a civil offense punishable pursuant to 30-A M.R.S. Section 4452, as amended, and 38 M.R.S. Sections 12 and 13, as amended. Each day that such violation continues to exist shall constitute a separate violation. The Harbormaster, assistant Harbormaster, and any law enforcement officer vested with the authority to carry a weapon and make arrests shall have the authority to enforce this Ordinance. All civil prosecutions under this Ordinance shall be prosecuted by the City Attorney pursuant to the Charter of the City of Bath and all fines and penalties shall enure to the City of Bath.

### **SECTION B. NON-PAYMENT OF FEES**

If the Harbormaster determines that a fee, charge for service, or forfeiture or penalty imposed by the City of Bath under this Ordinance has not been paid, the Harbormaster shall notify the master or owner of a vessel by mailing the notice to the last known address by first class mail, or if no current address is known, by leaving a copy of the notice on the vessel if the vessel is in the City Harbor.

If the Harbormaster determines that a fee, charge for service, or forfeiture or penalty imposed by the City of Bath under this Ordinance has not been paid from a previous season, the Harbormaster may refuse to assign mooring privileges to any vessel, boat owner, or master until all such amounts due are paid in full.

### **SECTION C. ISSUANCE, SUSPENSION, OR REVOCATION OF PERMITS**

A violation of Federal or State law, or the provisions of this Ordinance or any other applicable City Ordinance, by any permittee, including the non-payment of all fees and charges for service, shall be grounds for suspension, revocation, or non-issuance of such permits.

### **SECTION D. REMOVAL AND CUSTODY OF ILLEGALLY BERTHED OR ABANDONED VESSELS**

The Harbormaster may assume custody of a vessel and cause it to be removed under any of the following circumstances:

- (1). If any unattended vessel shall be found to be secured, or moored illegally, or moored without permission or permit within the harbor.
- (2). The mooring is deemed unsafe; or
- (3). If the Harbormaster has reasonable cause to believe that a vessel has been abandoned within the harbor.
- (4). If the Harbormaster concludes that a vessel poses an immediate threat to the health, safety, or welfare of persons using either the harbor or lands adjoining the harbor, the Harbormaster has directed the master or owner of such vessel to immediately move the vessel and the master or owner of such vessel has refused.
- (5). Upon receiving a complaint from the owner of a vessel that another vessel is obstructing the free movement or safe anchorage or owner's vessel, the Harbormaster shall direct the master or owner of such vessel to move the vessel to a position to be designated by the Harbormaster and the master or owner of such has refused.
- (6). If the Harbormaster finds any vessel anchoring within the channel lines as established by the City of Bath, or other relevant maritime authority, the Harbormaster shall direct the master or owner of such vessel to remove such anchorage and the master or owner of such vessel has refused.

The City of Bath and its officials shall not be held liable for any damage to such vessel or liable to its owners before or after assuming custody. Vessels so taken into custody shall be released to the owner by the Harbormaster only after satisfactory proof of ownership has been presented and full reimbursement made to the City for all costs incident for recovery, movement, and/or storage.

## **SECTION E: PROCEDURES FOR IMPOUNDING VESSELS**

If a 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 Harbormaster, the Harbormaster may put a suitable crew on board and move that vessel to a suitable berth at a wharf or anchorage, at the cost and risk of the owners of the vessel and shall charge One Hundred Dollars (\$100.00) to be paid by the master or owner of that vessel, which charge, together with the cost of the crew for removing that vessel may be collected by civil action by the City.

Within 24 hours of such action, the Harbormaster shall notify the master or owner of the vessel at the owner's last known address.

## **ARTICLE XI. APPEALS**

Any action or decision of the Harbormaster as to which this Ordinance expressly provides a right of appeal may be appealed to the City Manager pursuant to this Article X. No other action, non-action, decision or determination of the Harbormaster is appealable under this Ordinance.

An appeal must be submitted in writing to the City Manager no later than thirty (30) days after the action or decision appealed from. Upon receipt of a written appeal, the City Manager shall schedule an appeal hearing, giving notice to the applicant and to the Harbormaster of the date, time, and place of the hearing. The appellant and the Harbormaster each shall have the opportunity to be heard and to present written and oral evidence. After the hearing, the City Manager shall promptly issue a written decision.

## **ARTICLE XII. REPEAL OF PREVIOUS REGULATIONS**

This Ordinance repeals and replaces Chapter 16, Mooring Ordinance, Chapter 10, Public Safety, Article 2, Operation of Vessels, and Chapter 2, Administration, Section 2-14, Harbormaster Division, and any other prior Ordinances, rules or regulations inconsistent herewith.