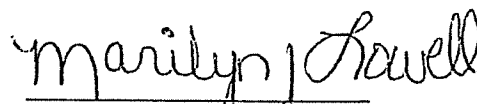


**COASTAL WATERS AND HARBOR ORDINANCE FOR THE TOWN
OF SOUTHWEST HARBOR, MAINE**

Approved 05/03/88
Amended 11/04/14
HC Reviewed/Revised 2/15/20
Approved 07/14/2020
Amended

Attested a true copy


Marilyn J. Lowell, Town Clerk

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SECTION I: ~~GENERAL REGULATIONS~~ PURPOSE AND JURISDICTION

PURPOSE

1. This Ordinance is to establish regulations for marine activities occurring, or directly affecting the area, within the Coastal Waters and Harbor of the Town of Southwest Harbor.
2. This Ordinance is to ensure safety to persons and property, to provide access and use of the valuable public resource, and to create an efficient framework for the administration of that resource.
3. This Ordinance shall be subordinate to existing federal and state laws governing the same matters and is not intended to preempt the current Maine Revised Statutes.

A. JURISDICTION

1. Jurisdiction will be held by the Harbormaster acting under the direction of the Town Manager. Anyone who appeals the Harbormaster's decision may file a complaint to the Town's Appeals Board.
2. In matters of interpretation of any regulation not otherwise fully clarified herein, the Harbor Committee shall review matters at the next regular meeting of the Committee and make recommendations to the Town Manager.

B. HARBORMASTER

1. The Select Board of the Town of Southwest Harbor shall appoint annually a Harbormaster upon the advice of the Town Manager and the Harbor Committee.
2. The Harbormaster, acting under the orders of the Town Manager, shall have full authority in the enforcement of all regulations affecting the Coastal Waters and Harbor of Southwest Harbor to the fullest extent permitted by law, except as otherwise provided herein.
3. The Harbormaster may remove any hazards to navigation that may cause harm or damage to any persons or property within the defined Coastal Waters and Harbor.

C. HARBOR COMMITTEE

1. There shall be a Harbor Committee consisting of not less than five (5) nor more than twelve (12) citizens of the Town of Southwest Harbor at large, appointed by the Select Board for three (3) year terms. A quorum shall consist of a majority of the current members.
2. Said Committee, under the general direction of the Select Board, shall advise in the custody, care, and management of the Harbor and its facilities including public access at Cable Crossing Rd, Lawler Lane, Harbor Ave, N. Causeway Lane, and the Coastal Waters, not to be inconsistent with the duties of the Harbormaster as set forth in the Ordinance or by the Maine Revised Statutes.

3. The Harbor Committee shall serve without compensation.

D. PUBLIC NOTICE

1. Any project, which is to be discussed at a Harbor Committee Meeting, must be placed on the Agenda fourteen (14) days prior to the meeting, and the Agenda must be posted in two (2) places, one of which shall be at the Town Office and the other shall be the Southwest Harbor US Post Office.
2. Any applicant with a project to be discussed by the Harbor Committee must return a completed application at least seven (7) days prior to the Harbor Committee's regular meeting.

SECTION II: DEFINITIONS

1. **ACCESSORY CHANNEL**-Those channels that commence from the Navigational Channel and are designated in the Mooring Plan for Southwest Harbor
 - A. **Southwest Harbor east-west approach to Manset Town Dock.** Southwest from east-west Fairway Marker to Manset Town Dock.
 - B. **Southwest Harbor east-west approach to Upper Town Dock.** East-west approach past Intertidal dredge area by Beal's Lobster Wharf to Lower Town Dock and Upper Town Dock.
2. **ANCHOR** -Any appliance used by a craft for the purpose of anchoring, and for which said appliance is carried aboard such craft when underway as regular equipment.
3. **ANCHORAGE A B and C**
 - A. The Inner Harbor Anchorage shall be limited to the Open Area southwest of Clark Point, and north and south of the designated east-west Fairway south of Greening Island.
 - B. Anchorage B in Coastal Waters shall begin north of the green day mark spindle at Clark Point to the east and west of the Clark Point to Somes Sound Fairway.
 - C. Anchorage C shall be considered first come, first served, and shall be limited to no more than a seven (7) overnight stay per visit to Southwest Harbor.
4. **BREAKWATER** -Any structure or barrier built out into a body of water to protect a harbor from the force of waves. Black Ledge
5. **CHANNEL** - Body of navigable water deep and wide enough to allow vessel traffic to pass without obstruction or danger, generally marked by aids to navigation, and maintained by the Town of Southwest Harbor.
6. **COASTAL WATERS** - Shall include all navigable water that ebb and flow outside the Inner Harbor, but within the limits of Southwest Harbor between Valley Cove and Ship Harbor.

7. **WATERCRAFT**- a waterborne vehicle having propulsion, such as sail, motor, oar, or paddle. Can include seaplanes, scows, and barges.
8. **FAIRWAYS** - Shall be defined as any navigable waters designated by aids to navigation or markers.
 - A. Southwest Harbor east-west approach from Kings Point to Inner Harbor.
 - B. Clark Point to Somes Sound northeast from green day mark spindle to green can at the entrance to Somes Sound.
9. **FLOAT**-Any fixed floating structure without propulsion normally used as a point of embarkation/disembarkation, marine storage, and vessel berthing, or holding such as lobster cars.
10. **FLOATING BUSINESS** - Any building or structure on a raft, barge, or hull, which is represented as a place of business, including, but not limited to waterborne hotels, restaurants, marinas, or marine-related businesses.
11. **HOUSEBOAT** - A raft, hull, barge, or vessel, designed or used primarily as living quarters, either for short-term rental or long-term, which provides living, sleeping, sanitary facilities, and/or cooking, whether temporarily or permanently.
12. **INNER HARBOR** - Shall include all navigable waters with ebb and flow between the Clark Point green day mark spindle to the north and Kings Point to the south, and west to the Black Ledge breakwater.
13. **MARINA** - A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for watercraft, and which may also provide accessory services such as boat repair, indoor and outdoor storage of watercraft and marine equipment, marine retail and tackle shops, and marine fuel service facilities.
14. **MOORING** - Any appliance used by a Watercraft or Float for anchoring purposes that is not carried aboard such Watercraft as regular equipment when underway.
15. **OPEN AREA** - shall mean any area for anchoring in the Inner Harbor not designated as a Mooring Field or Fairway.
16. **RESIDENT** - Any person who owns a dwelling with the Town of Southwest Harbor for more than 183 days, or pays real estate taxes to the Town of Southwest Harbor.
17. **RIPARIAN OWNER**-The owner of the land, or an interest in land in Southwest Harbor to high water or low water marks.

SECTION III: DESIGNATED MOORING AREA

The Designated Anchorages A, B, and C within the Inner Harbor are considered commercial mooring areas.

These areas are designated on the Harbor Mooring Plan located in the Town Office.

Commercial vessels, scows, lobster cars, and floats may be moored in these areas.

More than one commercial mooring may be owned and used by a resident for year-round purposes, the number of which shall be at the discretion of the Harbormaster as he/she deems necessary for the purposed activities.

Restrictions and Requirements:

1. No Watercraft shall anchor in this area.
2. No moorings shall be leased or rented within the project areas of the Inner Harbor or Coastal Waters without the required approval of the Harbormaster, and where applicable, the Army Corp of Engineers.
3. Fixed Floats will be equipped with reflective tape along the entire length and width of the working edge and shall be a minimum of 4" in height. Said reflective tape shall be visible from all angles when viewed by vessels in navigable waters.
4. If the Designated Anchorages are filled to capacity, The Harbormaster may displace a non-commercial vessel, provided the Harbormaster has access to a mooring for the displaced vessel.
5. Houseboats are prohibited from mooring or anchoring in any Inner Harbor or Coastal Waters of Southwest Harbor except at marinas that provide the following:
 - a. A permanent float, dock or slip from which the houseboat may be directly boarded;
 - b. A connection to a water supply
 - c. A connection to a sewage system
 - d. All-weather supply of electricity
 - e. Parking, as required by the codes and ordinances of the Town of Southwest Harbor.
6. Floating businesses shall be assigned moorings in limited numbers and in specific areas designated by the Harbormaster.

SECTION IV. REGULATIONS CONCERNING MOORINGS, DOCKS, FLOATS & MARINAS

A. Mooring Registration Procedure

1. The Harbor Committee shall review the Mooring Plan for Southwest Harbor at least every three (3) years to be sure the Plan meets the needs of harbor users.
2. Each owner of a mooring within the boundaries of Southwest Harbor must annually pay a fee set forth by the Selectmen; said fee must be paid to the Town Office on or before the 15th of May of each year. Failure to comply may result in removal of mooring and loss of berth.

3. Any mooring(s) that have not been occupied with a watercraft for two consecutive boating seasons will lose its registration. The mooring registrant must request and be granted a variance from the Harbormaster if no use is evident. The Harbormaster may request proof of mooring use for the registrant if the mooring is in question.
4. All new applicants must fill out and return an application to the Harbormaster. The Mooring Registration Application form may be obtained from the Town Office, the Harbormaster, or accessed on-line. The Applicant shall pay an annual fee, set by the Selectmen, to remain on a waiting list until their application is approved or denied by the Harbormaster.
5. The Harbormaster shall use the Mooring Plan and shall grant, deny, or defer each application. The Harbormaster may deny an application because of insufficient information on the Mooring Registration Application or because of other reasons as specified by the Harbormaster. The Harbormaster may defer an application because of insufficient space for the desired mooring location or because of other reasons as specified by the Harbormaster. The Harbormaster may grant an application with priority to be given applicants who owned moorings in place (prior to date of Ordinance), and with priority to be given applicants who are riparian owners in the Town of Southwest Harbor.
6. Each applicant shall be notified by the Harbormaster of the action decided upon. The Harbormaster shall keep a written record of each decision made on all applications. The Harbormaster shall issue a Mooring Permit, which shall include location instructions and the Permit Number, to each applicant of a granted application. Each mooring permit shall be valid for a period not to exceed one year.
7. All moorings shall have attached a ball or similar device of at least 18 inches in diameter and be at least 2/3 above water at all times. This device will be marked with owner's initials and permit number in a manageable and legible manner using reflective paint or tape.
8. Each owner of a Mooring Permit shall be responsible for procurement, installation, and maintenance of their mooring, and the mooring must meet the stated mooring specification requirements at all times.
9. All moorings shall be inspected at least every three (3) years by a qualified person. All defects found will be corrected within a reasonable time to be determined by the Harbormaster. A record of all inspections will be maintained by the Harbormaster. The Harbormaster will supply a list of qualified inspectors. No watercraft will be allowed to remain on an unsafe mooring until the mooring is certified corrected.
10. All new moorings and replacement mooring parts shall follow the designated Mooring Specification Sheet. The Select Board may update the Mooring Specification Sheet with recommendations from the Harbor Committee and the Harbormaster.
11. Defective/unregistered/abandoned moorings shall be removed from the Harbormaster within a reasonable time frame after written notification to owners if possible. Such removal will be at the expense of the owner with the mooring becoming the property of the Town. Reasonable time (10 - 30 days) is to be determined by the Harbormaster. All moorings will be set and moved only by direction of the Harbormaster.

12. Mooring permits will only be issued to bona fide boat owners who intend to use such mooring for the boat so documented to that owner. Multiple mooring requests will not be considered unless significant and anticipated long term mooring space is available. Lease/rental moorings will fall

within this same category for approval, plus a federal mooring permit certificate must be made available at time of application request. The Harbormaster will determine this status.

13. Existing year-round mooring users have preference on a first-come basis to vacated moorings unless otherwise determined by the Army Corps of Engineers or the State of Maine.
14. All boat excise taxes must be paid to the Town of Southwest Harbor each year in order to obtain mooring owner status.
15. No person may bring into or maintain in the harbor any derelict watercraft, watercraft for salvage, or abandon any watercraft in the harbor without a permit from the Harbormaster. All vessels utilizing town leased mooring facilities must be able to maneuver under its own power(engine/sail/oars/etc.). At a reasonable request of the Harbormaster, vessel owners must show that their vessel is capable of maneuvering under its own power (within three days).

B. Docks/floats

1. Docking time at all town floats and docks shall not exceed two (2) hours within a twenty-four (24) hour period. The Harbormaster may permit longer docking time on a case by case basis due to extenuating circumstances. The burden to notify the Harbormaster regarding extenuating circumstances lies on the owner of the docked boat.
2. Time limit at the head of all town floats will be load/unload only, not to exceed twenty (20) minutes. The Harbormaster may permit otherwise on a bona fide emergency basis.
3. Absolutely no gear of any type, to include rowboats, fish/dragging equipment, or any other type may be left unattended on town floats. The Harbormaster may permit otherwise on a bona fide emergency basis.
4. No type of repair, maintenance, cleaning, operation, storage or business will be conducted on any town float. Work may be done aboard a vessel tied to a float, but not on the float itself, unless authorized by the Harbormaster. Commercial fishing boat use of floats and docks will receive priority over non-fishing boats which are tied to a float for any cleaning or other work being done.
5. All town launching ramps will be used for launch and haul purposes only. All obstructions will immediately be removed from ramp.

6. Town dock priority load/unload - Priority access to the Lower Town dock, and the Manset Town dock will be given to commercial fishing vessel loading/unloading requirements as the tide/access level permits. Vessels that are moved or disturbed to provide this priority service, have first priority to return to their original berth upon completion of loading/unloading.
7. Within the waters of Southwest Harbor, no dock, pier, bridge, and/or float will extend beyond the six foot mean low-water line as defined by 12/14/88 Harbor Mooring Plan unless the applicant can show the Harbor Committee that:
 - a. To be usable, the dock, pier, and/or float must be extended beyond this point;
 - b. The intended use is shown and the specific requirements of this use proved;
 - c. The extension will not jeopardize the safety and navigation in the Harbor;
 - d. Displaced moorings can be relocated in a reasonable manner; and
 - e. The extension will meet any and all special regulations of the Federal, State and Local Governments.
 - f. No present dock or pier may be extended by any means if its length presently meets or exceeds this six foot (ML W) rule unless it meets the same criteria.
8. Owners of floats in harbor not attached to piers, i.e., Lobster cars must have reflective tape on 3 sides facing throughfare.

C Use of Docks and Floats

1. In order to more efficiently regulate the use of the Town docks and floats, each user is required to comply with the Harbor Ordinance. Violations may lead to loss or suspension of all Harbor privileges.
2. If a user has acquired 3 or more tickets during the calendar year for any violations of the Harbor Ordinance, the user's harbor privileges will be suspended for a time period of 90 days from the time of the last violation.
3. Any ticket that is unpaid after 14 days will result in suspension of harbor privileges until all fines are paid.
4. Leased Floats- The Town of Southwest Harbor does not lease municipal floats.
 - a. ~~Lessee will use reflective paint to paint the name holder on the float~~

- b. ~~Leased floats may be used 24 hours a day if a qualified operator is on board the craft during the hours of darkness.~~
- c. ~~If the leased float is not being used by the lessee, with the permission of the lessee, the float may be used for loading and unloading by the public as long as the craft is attended by a qualified operator.~~
- d. ~~Established leases will be given priority to those with prior year lease, unless notice is given to lessee or leaser stating the reason for termination of this arrangement.~~
- e. ~~Dockage fees: leased dock fees at Town docks for the months of May through September are due before May 1. Public dock user fees will be determined by the Board of Selectmen after referral from the Harbor Committee.~~

D. Commercial Use of Town Docks, Piers

1. Embarkation or disembarkation of passengers at the Manset Town Pier, the Lower Town Dock or the Upper Town Dock, or any floats, to or from any vessel for hire such as a tour boat, day sailor or a charter vessel, shall not be permitted. Such vessels shall not originate, operate, or disembark from any municipal pier or float, which also includes ferrying passengers from the municipal pier or float to a vessel for hire moored in the Harbor. Any unscheduled landings by a vessel for hire must get permission from the Harbormaster to load or unload passengers from any Town dock, provided that Southwest Harbor is not the vessel's home port. This privilege will only be granted to vessels if no other private dock space is available or for an emergency situation.
2. ~~Ferry service on a regular schedule may be permitted with approval from Selectmen. However such ferry service will be limited to the Upper Town Dock. A seasonal fee will be assessed and must be paid prior to the use of facility. The Selectmen reserve the right to approve or deny any application after receiving comments from the Harbor Committee, the Harbormaster and the general public.~~

E. Marinas

1. No marina may extend beyond the six-foot mean low-water line as defined by the 12/14/88 Harbor Mooring Plan unless the criteria in B.7 have been met.
2. A detailed feasible and effective evacuation plan of all watercraft located at any commercial marina within the Harbor must be submitted to and approved by the Harbor Committee prior to Harbor Committee project approval. All watercraft must have either an assigned and secure mooring within the Harbor, or it must be able to leave the Harbor prior to extreme weather conditions. All details of this plan will be in written form, reviewed and updated as needed on an annual basis, and submitted to the ~~Harborm~~ HarbormMaster for review and/or ongoing approval. The authority to initiate this plan may be by Marina owners, appropriate government_ or state agencies, or the Harbormaster, based on his discretion.

3. Any marina within the Harbor shall have an adequate and approved breakwater or attenuator on the seaward side (East to Southwest) to prevent potential storm and sea surge loss and/or damage to the Marina and to all other interests within the Harbor which may be affected by such loss or damage to the Marina. The Harbor Committee reserves the right to review and approve any breakwater plan or scheme prior to marina approval. The breakwater must be constructed prior to any marina operation. This may be waived by the Select Board with advice from the Harbor Committee, based on expert testimony that a breakwater or attenuator is not required. All required State and Federal permits shall be acquired and presented to the Harbormaster prior to beginning any construction.

SECTION V. SAFETY REGULATIONS

- A. All recreational boat operators in Southwest Harbor, and using the Harbor waters for ingress and egress out of the Harbor, are expected to make sure that their vessel carries the minimum Federal safety equipment requirements for their vessel (carriage requirements) and are in compliance with federal and state regulations as specified in the Boater's Guide to the Federal Requirements for Recreational Boats and Safety Tips published by the U.S. Department of Homeland Security, U.S. Coast Guard.
- B. Commercial fishing vessels of all types must comply with relevant US Coast Guard requirements for equipment and other safety regulations and standards.
- C. Additional safety information may be found on-line at 1) the Town website; 2) "*Boater's Guide to the Federal Requirements for Recreational Boats and Safety Tips*" published by US Dept. of Homeland Security, US Coast Guard; 3) On-line boater safety courses; 4) Contact Harbormaster, Adam Thurston, 207-244-7913
- D. Vessel owners are solely responsible for the safety and security of their watercraft while underway, at anchor, or on any mooring within Southwest Harbor's jurisdiction. Any safety hazard(s) resulting from neglect of a vessel or its mooring equipment which endangers persons or property shall be subject to the loss of mooring privileges for not less than one year and loss of any assigned moorings until one is available.

SECTION VI-PROHIBITED ACTS

- A. No person shall install, or cause to be installed, any mooring in the Harbor in any location not designated by his/her Mooring Permit.
- B. The transfer of moorings will only be permitted if they are used for commercial fishing vessels under the following circumstances:
 1. Moorings used for commercial fishing may be transferred at the request of, or death of the assignee, only to a member of the assignee's family, and only if the mooring will continue to be used for commercial fishing purposes.
 2. "Members of the assignee's family" means an assignee's parent, child or sibling by birth or adoption, and including a half-blood relation, or spouse.

- C. Any mooring within the limits of the Town of Southwest Harbor whose fee has not been paid by its owner for a period of thirty days after it was due, shall be deemed to have been abandoned, and shall be removed by the owner after he/she has been directed to do so by the Harbormaster. If no owner is forthcoming, the Harbormaster may remove the mooring.
- D. No person shall refuse to obey a lawful order of the ~~Harbormaster~~, Harbormaster
- E. No person shall operate or cause to be operated any aircraft to land or take-off from the Inner Harbor of Southwest Harbor.
- F. No person shall anchor, or cause to be anchored, any craft in the Inner Harbor so as to obstruct a channel or mooring from free passage of boats.
- G. No person shall deposit, throw, sweep or cause to be deposited, thrown or swept into the waters of Southwest Harbor or into waters adjacent thereto any gas, or oil, or bilge water containing sand, ashes, stones, gravel, mud, logs, plank, craft or any other substance tending to obstruct the navigation of said waters of Southwest Harbor or waters adjacent there-to, or to shoal the depth of said waters, or which pollutes harbor or adjacent waters.
- H. No person shall dump or dispose of any refuse, sewage, or garbage upon any shore of the Town of Southwest Harbor, at or between high and low water mark, or upon the waters of the ocean within the Town of Southwest Harbor.
- I. Craft under 12' in length shall be required to tie-up at finger floats and other areas designated for this purpose by the Harbormaster.
- J. No person shall intentionally, knowingly, recklessly, or negligently destroy, damage, disturb, deface, or interfere with any sign, notice, channel marker, buoy, float, life preserver, Harbormaster Boat, or any other municipal property under the jurisdiction of the Town of Southwest Harbor.
- K. No person shall permit or place more than one craft at a mooring unless such craft does not interfere with adjacent moorings and anchorages or other navigational considerations as determined by the Harbor Master. Such interference to be determined by the Harbormaster.
- L. No person shall water ski within the Inner Harbor.
- M. No craft in the Inner Harbor shall exceed a reasonable and prudent speed or cause excessive wake.
- N. No person, including any owner or operator of any craft, shall process, or permit to be processed, any seafood products at any Town float.

- O. No personal property shall be left on the Town docks for more than 24 hours. Any personal property left longer than 24 hours will be subject to a penalty of \$150 per day.
- P. At dinghy floats, vessels may not exceed 14 feet in length or 6 feet in beam.
- Q. No Vessel larger than 150 feet may enter Southwest Harbor coastal waters without notifying the Harbormaster of an approved float plan. The Harbormaster will allow or deny entry based on navigation safety, and appropriate mooring options.
- R. No personal property/gear shall be left on the Town docks when winds are predicted to reach in excess 40 kts or when high tide is predicted to be greater than 15 ft above Mean Low Water. All personal property/gear shall be removed no less than six hours prior to these predicted conditions.

SECTION VII. FEES

Fees shall be set from time to time, as proposed by the Harbor Committee and approved by the Select Board, for the following:

- 1. All mooring permit applications
- 2. Seasonal Tender Tie-ups at Town Docks
- 3. Daily Transient Guest Moorings
- 4. ~~Seasonal Leased Floats~~
- 5. Commercial fish buyers
- 6. ~~Tour boats, ferries, barges, and other privately run water commerce~~
- 7. Dock user fees
- 8. ~~Hoist Fee~~
- 9. All other Harbor facilities

SECTION VIII. PENALTIES AND ENFORCEMENT

- A. Any person who shall violate any provision of this Ordinance shall be punished upon conviction by revocation of the owner's mooring permit or by a fine of not less than \$100.00 and not more than \$500.00 to be recovered upon complaint by the Harbormaster before the District Court. All fines shall inure to the Town of Southwest Harbor. Each day that such violation continues to exist shall constitute a separate offense.
- B. Boat docking fines shall be \$150.00 for an illegal overnight stay and \$150.00 for an illegal daytime stay. Non-payment shall constitute a violation of this Ordinance with a fine is \$150.00. ~~increased to \$150.00 from \$25.00~~
- C. It shall be illegal to bring in, to retain in, or abandon in the Harbor of the Town of Southwest Harbor, including on any town docks or property, and/or on private docks or property, any derelict craft, float,

lobster car or craft to be salvaged, without first obtaining permission from the Harbor Committee or the Harbormaster, or the property owner. Non-compliance with this regulation will constitute a violation and shall be subject to the maximum fine of \$500.00 and the cost of clean-up.

- D. Permission for short-term salvage work may be requested from the Harbormaster. It is illegal to abandon derelicts, boats, floats, watercraft, lobster cars or other debris, on town or private property.
- E. Violations of the terms of permits for use of dock and floats may lead to the loss or suspension of the privilege to use docks and floats.
- F. The penalty for any personal property left longer than 24 hours will be subject to a penalty of \$150 per day.
- G. Any unpaid user fees will result in the loss of harbor privileges.

SECTION IX. APPEAL

- A. Any person adversely affected by a decision of the Harbormaster, other than law enforcement situations, may appeal to the Town of Southwest Harbor's Board of Appeals. Law enforcement actions are handled directly through the Criminal Justice system. Law enforcement includes, but is not limited to, state laws, local ordinance enforcement, warnings, summons, and citations. The Board of Appeals may seek a recommendation from the Harbor Committee when such appeals relate to harbor usage and/or harbor water activities.

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