

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

APPROVED 05/03/88

AMENDED THRU 11/04/2014

Attested True Copy:

Marilyn J. Lowell, Town Clerk

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SECTION I. GENERAL REGULATIONS

A. Purpose

This Ordinance is to establish regulations for marine activities occurring within or directly affecting the area within the Harbor and coastal waters of the Town of Southwest Harbor in order to ensure safety to 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 other valid laws.

B. Jurisdiction

1. "Inner Harbor" shall include all navigable waters which ebb and flow between Clark Point spindle and Kings Point.
2. "Coastal Water" shall include all navigable waters which ebb and flow outside the inner Harbor but within the limits of Southwest Harbor between Valley Cove and Ship Harbor.

C. Fairways and Anchorage

Anchorage in the inner Harbor will be limited to the open area SouthEast of Clark Point , and North of the designated major fairway. The anchorage will be considered first come first serve and will be limited to one overnight stay per visit to Southwest Harbor. Recommended Anchorage will begin north of the Clark Point spindle to the Southwest Harbor Town Line at the entrance to Somes Sound.

D. Harbormaster

1. The Selectmen shall annually appoint a Harbormaster upon the advice of the Town Manager and Harbor Committee.
2. The Harbormaster, acting under the orders of the Town Manager, shall have full authority in the interpretation and the enforcement of all regulations affecting the Harbor and the Coastal Waters 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 damage to others.

E. Harbor Committee

1. There shall be a Harbor Committee consisting of not less than five (5) nor more than twelve (12) citizens of Southwest Harbor at large appointed by the Board of Selectmen for a three year term. A quorum shall consist of a majority of the current members.
2. Said Committee, under the general direction of the Board of Selectmen, shall advise in the custody, care and management of the Harbor and its facilities, and the Coastal Waters, not inconsistent with the duties of the Harbormaster as set forth in the Ordinance or by the Maine Revised Statutes.
3. The Committee shall serve without compensation.

F. Public Notice

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

SECTION II. DESIGNATED MOORING AREA

A. The project areas A, B, and C within the Inner Harbor are considered a commercial mooring area. These areas are as designated on the Harbor Mooring Plan in the Town Office.

B. Commercial boats, scows, lobster cars and floats may be moored in this area. Marine builders and repair facilities may own moorings for customer service-repair on a temporary basis only. More than one commercial mooring may be owned and used for year round purposes as deemed necessary by the Harbor Master.

C. Restrictions/requirements:

1. No watercraft will anchor or raft up in this area.
2. Absolutely no moorings will be leased or rented within these project areas A, B, C; all other mooring areas leased or rented require approval of the Army Corp of Engineers and the Harbormaster.
3. Fixed water objects such as lobster cars, floats, scows etc. will be equipped with reflective tape a minimum of four (4) inches in diameter or width, visible from all angles, installed and maintained at least four (4) feet above the water line on at least both ends of the moored contraption. Name and license number of owner will be carved or burned into a main structural member.
4. If Project areas A, B, C become filled to capacity, the Harbormaster may displace non-commercial vessels, giving priority to commercial fishing vessels, provided the Harbormaster has a mooring for the displaced vessel.
5. Houseboats are prohibited from mooring or anchoring in any coastal waters of Southwest Harbor except at marinas which provide the following:
 - (a) A permanent float, dock or slip from which the houseboat may be directly boarded from land;
 - (b) Connection to a public water supply by means of an individual anti-backflow valve;
 - (c) A sewer connection to a public sewage system;
 - (d) A year-round, all weather supply of electricity;
 - (e) Parking as required by the codes and ordinances of the municipality where the marina is located;
 - (f) Compliance with the applicable land use codes
6. Floating businesses shall be assigned moorings in limited numbers and in specific areas designated by the Harbormaster.

SECTION III. REGULATIONS CONCERNING MOORINGS, DOCKS, & MARINAS

A. Mooring Registration Procedure

1. 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 lost of berth.

A. Any Mooring(s) which 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 Harbor Master if no use is evident. The Harbor Master may request proof of mooring use for the registrant if the mooring is in question.

2. 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 or the Harbormaster. The Applicant shall pay an annual fee set by the Selectmen to remain on a waiting list until approved or denied by the Harbor Master.

3. The Harbormaster shall use the Mooring Plan and shall grant, deny, or defer each application. The Harbor Master may deny an application because of insufficient information on the Mooring Registration Application or because of other reasons as specified by the Harbor Master. The Harbor Master may defer an application because of insufficient space for the desired mooring location or because of other reasons as specified by the Harbor Master. The Harbor Master 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.

4. 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 Harbor Master 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.

5. 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.

6. Each owner of a Mooring Permit shall be responsible for procurement, installation, and maintenance of their mooring.

7. 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.

8. Defective/unregistered/abandoned moorings shall be removed from the Harbor 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.

9. 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 Harbor Master will determine this status.

10. 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.

11. All boat excise taxes must be paid to the Town of Southwest Harbor each year to obtain mooring owner status.

B. Docks/floats

1. Docking time at all Town floats 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 Harbor Master 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, 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.

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 which 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.

No present dock or pier may be extended by any means if its length presently meets or exceeds this six foot (MLW) rule unless it meets the same criteria.

C. Use of Docks and Floats

1. In order to more efficiently regulate the use of the Docks and Floats, each user is required to comply with all Rules and Regulations of the Harbor Ordinance. Violations may lead to loss or suspension of all Harbor privileges.

A. If a user has acquired 3 or more tickets during the calendar year, for any violations of violations of the Harbor Ordinance, the users harbor privileges will be suspended for a time period of 90 days from the time of the last violation.

B. Any ticket that is unpaid after 14 days will result in suspension of harbor privileges until all fines are paid.

The Lower Town dock, the Upper Town dock, and the Manset Town dock shall give priority of use in the order as follows:

- a. Commercial full-time resident fishermen
- b. Commercial part-time resident fishermen
- c. Other marine related resident businesses
- d. Non-resident full-time fishermen
- e. Non-resident part-time fishermen
- f. Other marine related businesses uses

2. Leased Floats

A. Lessee will 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, 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 May first (1). Public dock user fees will be determined by the Board of Selectmen after referral from the Harbor Committee.

3. Commercial Use of Town docks, piers

A. The point of embarkation at the Manset Town Pier, the Lower Town Dock or the Upper Town Dock or any floats for passengers to any vessel for hire such as a tour boat, day sailor or a charter

vessel shall not be permitted. Such vessels shall not originate or operate 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.

B. Ferry service on a regular schedule may be permitted with approval from Selectmen however it 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.

D. 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. has 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 need be on an annual basis, and submitted to the Harbor Master for review and/or ongoing approval. The authority to initiate this plan may be by Marina owners, appropriate government or state agency or the Harbor Master 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 Selectmen with advice by the Harbor Committee, based on expert testimony that a breakwater or attenuator is not required.

SECTION IV. PROHIBITED ACTS

A. No person shall install or cause to be installed any mooring in the Inner Harbor in any location not designated by his/her Mooring Permit.

B. No person shall assign or otherwise transfer a Mooring Permit.

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 Harbor Master. If no owner is forthcoming, the Harbor Master may remove the mooring.

D. No person shall refuse to obey a lawful order of the Harbor Master.

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 same, ashes, stones, gravel, mud, logs, planks, craft or any other substance tending to obstruct the navigation of said waters of Southwest Harbor or waters adjacent thereto, or to shoal the depth of said waters or pollutes said waters.

H. No person shall dump or dispose of any refuse 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 not be tied up at Town floats. They shall be required to tie-up at finger floats designated for this purpose.

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, Harbor Master 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.

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 processor 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.

P. At dinghy floats, vessels may not exceed 14 feet in length or 6 feet in beam.

SECTION V. FEES

Fees shall be set from time to time by the Board of Selectmen 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. Dock user fees
6. Hoist Fee
7. All other Harbor facilities.

SECTION VI. PENALTIES AND ENFORCEMENT

A. Any person who shall violate any provision of this Ordinance shall be punished upon conviction by revocation of their 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 Harbor Master 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 tickets shall be \$25.00 for an illegal overnight stay and \$15.00 for an illegal daytime stay. Non-payment shall constitute a violation of this Ordinance.

C. It shall be illegal to bring in, to retain in, or abandon in the Harbor of the Town of Southwest Harbor, any derelict craft, float, lobster car or craft to be salvage, without first obtaining permission from the Harbor Committee or the Harbor Master. Non-compliance with this regulation will constitute a violation and shall be subject to the maximum fine of \$500.00 and the cost of cleanup.

D. 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.

SECTION VII. APPEAL

A. Any person adversely affected by a decision of the Harbor Master, other than law enforcement situations may appeal to the 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.

SECTION VIII. DEFINITIONS

ACCESSORY CHANNEL - Those channels which commence from the Navigational Channel and are designated in the Mooring Plan for Southwest Harbor.

ANCHOR - Any appliance used by a craft for anchoring purposes and which appliance is carried aboard such craft when under way as regular equipment.

BREAKWATER - Any structure that would create a safe haven for craft.

CHANNEL - An area of movement which shall be determined by the Harbor Committee, marked by the standard Coast Guard colors and maintained by the Town of Southwest Harbor.

CRAFT - Every description of watercraft including boats of all kinds, seaplanes, floats, scows and lobster cars used or capable of being used for any purpose on water.

FLOAT - Any floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.

FLOATING BUSINESS - Any building constructed on a raft, barge, or hull, which is represented as a place of business, including but not limited to waterborne hotels, restaurants, marinas or marina-related businesses.

HOUSEBOAT - 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.

INNER HARBOR - All of the tidal water inside and west of a line drawn from Clark Point to Kings Point.

MARINA - A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat repair, indoor and outdoor storage of boats and marine equipment, boat and tackle shops, and marine fuel service facilities.

MOORING - Any appliance used by a craft for anchoring purposes and which appliance is not carried aboard such craft when under way as regular equipment.

RESIDENT - Any person who occupies a dwelling within the Town of Southwest Harbor for more than 183 days or pays Real Estate Taxes to the Town of Southwest Harbor.

RIPARIAN OWNER - The owner of the land or an interest in land in Southwest Harbor to high water mark or low water mark.