

*Certified by me to be a true copy accepted at Town Meeting, March 14, 2011. (Meredith J. Spence, Clerk)*

## **TOWN OF HARRINGTON**

# **HARBOR MANAGEMENT ORDINANCE**

## **ARTICLE I - Introduction**

### **1. AUTHORITY**

This ordinance is adopted under the authority granted in Titles 12, 17, 30, and 38 (MRSA), as amended, and the Home Rule provisions of the Constitution of the State of Maine. Maine's Constitution, as amended in 1971, grants a Maine municipality the authority to adopt regulations on virtually anything occurring within its jurisdiction. This authority, commonly referred to as "home rule", allows a town to assume only those regulatory powers expressly delegated to it by State law. Local ordinances and regulations cannot conflict with applicable federal or state statutes or regulations.

### **2. PURPOSE**

The purpose of this ordinance is to establish regulations for marine activities occurring within or directly affecting the area(s) within the Town of Harrington in order to ensure safety to persons and property, to promote availability and use of valuable public resource, and to create a fair and efficient framework for the administration of that resource. In addition, this ordinance will establish the rules by which the Town of Harrington will assign mooring privileges to a person or persons who have made application and received a mooring permit.

### **3. JURISDICTION**

The provisions of this Ordinance shall govern all maritime activities on and within the tidal waters located within the boundaries of the Town of Harrington, Maine and to all land areas at an elevation below the normal high water mark and to all piers, parking lots, beaches, and other public facilities serving the maritime resource.

### **4. REPEAL**

All prior HARBOR MANAGEMENT ORDINANCES of the Town of Harrington are hereby repealed.

### **5. SEVERANCE**

If any provision or clause of this Ordinance or application thereof to any person or persons is held to be invalid, such invalidity shall not affect the validity of other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, provisions of this Ordinance are declared to be severable.

## **6. CONFLICT**

This Ordinance shall be subordinate to existing Federal and State laws governing the same matters and is not intended to preempt other laws. It has been designed to meet the specific needs of the Town of Harrington waterfront and coastal waters at present and in the future.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the provision imposing the greater restriction shall control.

## **7. EFFECTIVE DATE**

The effective date of this ordinance is immediately after initial enactment by a properly held Harrington Town Meeting.

## **8. AMENDMENT**

Any amendment to this ordinance shall be adopted by the legislative body.

## **9. TOWN LIABILITY LIMITED**

Any person using the facilities or moorings within the limits covered by this ordinance shall assume all risk of damage or loss to his person or property. The Town of Harrington assumes no risk of liability on account of fire, theft, Act of God, or damage of any kind to vessels within the above stated jurisdiction.

## **ARTICLE II - Harbor Committee**

The Harrington Harbor Committee will serve as appointees of the Selectmen and will oversee Harrington maritime waters, work with the Harbor Master, and report to the Board of Selectmen.

## **ARTICLE III - Harbor Master**

In accordance with Federal and State law the Harbor Master has absolute authority to enforce this ordinance.

The Harbor Master, acting under the direction of the Harrington Board of Selectmen shall have full authority to enforce all regulations affecting the Harbor and coastal waters of Harrington to the fullest extent permitted by law and to promote safety throughout the maritime environment. The geographical area of responsibility includes maritime waters from the mean high water mark seaward to the town line, beaches, piers, launching areas, associated parking areas and waterfront rights of way within the Town of

Harrington.

The Harbor Master works independently and serves as a first responder for Local, State, and Federal agencies. Where applicable, the Harbor Master works with others including, but not limited to, the Harrington Harbor Committee, agencies, and committees.

The Selectmen shall appoint a Harbor Master annually. The Harbor Master will have the duties and powers prescribed by law and this ordinance.

The Selectmen may appoint a Deputy Harbor Master to act in case of the Harbor Master's absence or disability.

## **ARTICLE IV - Prohibited Acts**

### **1. DISRUPTIVE CONDUCT**

It shall be a violation of this ordinance for an person to disrupt the safe and lawful activities, or in any way threaten the public safety, in or around the docks, wharfs, moorings, floats, or tidal waters of the Town of Harrington.

### **2. ANCHORING**

Within Harrington waters anchoring of boats is permitted only if said anchored vessel(s):

- A. Do not interfere with moored boats or moorings.
- B. Do not impede the movement of other water craft.
- C. Do not interfere with or block or obstruct a Channel or Fairway or Clear Zone or Pier or Wharf.
- D. Are not left unattended in Harrington for more than six (6) hours.

### **3. NOISE AND LIGHTING**

It shall be noted that maritime areas within the Harrington working waterfront can generate noise and lights 24 hours per day. Notwithstanding the above, it shall constitute an nuisance to cause noise in an unreasonably loud manner and/or illuminate areas so as to disturb neighboring vessels or watercraft, their occupants, navigation, or land residences.

### **4. OPERATION OF VESSELS**

- A. Speed of Vessels - It shall be unlawful for any person to operate any vessel or watercraft in a manner that will cause excessive wake in Harrington harbors, coves, or inlets that have moorings or anchored vessels, floats, wharves/piers, persons, property, or objects that could be disturbed or damaged by excessive wake or speed or is contrary to the provisions of Title 38, Section 281, MRSA, as amended. In no event shall a vessel exceed a speed of five (5) miles per hour in the above areas.
- B. Reckless Operation - No person shall operate any vessel or watercraft in a reckless or negligent manner or while under the influence of intoxicants or drugs so as to endanger the life, limb, or property of any person, or contrary to the provisions of Title 38, Section 283,

MRSA, as amended.

- C. Infected Vessels - Whenever a vessel arrives in the Town of Harrington having on board any person(s) afflicted with a contagious disease or suspected of being afflicted with such disease, the master, commander, or pilot thereof, and the Health Officer of the Town of Harrington shall comply with the provisions of Title 22, MRSA., as amended.
- D. Abandonment of Vessels - No person shall abandon any boat, vessel, fishing equipment, hulk, cradle, raft, float, lobster car, or any other possible obstruction within the geographic limits covered by his ordinance, including, but not limited to, town owned beaches, parking lots, piers, wharves, and other tidal areas. Any property as herein described left unattended for a period of sixty (60) days, shall be deemed abandoned. The Harbor Master may order the owner to remove the same within fifteen (15) days. In default of removal or in event the Harbor Master is unable to identify the owner or master of the vessel or object after reasonable efforts, the Harbor Master may undertake its removal or destruction at the cost of the owner.

## **5. PUBLIC BEACHES/PUBLIC LANDINGS and CONNECTING PUBLIC PARKING LOTS**

- A. On public beaches, landings, or associated public parking lots the following activities are not permitted:
  - i. Overnight camping.
  - ii. Fueling, except in designated areas.
  - iii. Disposal of litter and trash, except in appropriate trash container. NOTE: If no trash containers are available or those available are full, it is the responsibility of the individual to dispose of his/her trash properly.
  - iv. Disposal of petroleum products, metals, liquids, gases, wood products, traps, fiberglass items.
- B. On public beaches, landings, or associated public parking lots no boat, boat cradle, trailers, lobster car, float, vehicle, fishing gear, or personal items may be:
  - i. Left on public beaches over five (5) days. After the above time period the items will be considered abandoned and may be removed by the town.
  - ii. Repaired, if such repair requires more than 72 hours, without approval by the Harbor Master. The location of any repair work must be such as not to interfere with the normal flow of traffic and use.
- C. On public beaches, landings, or associated public parking lots all boat, boat cradles, trailers, lobster car, float, vehicle, fishing gear, or personal items must be:
  - i. Parked in such a manner as to take up minimum space.
  - ii. Positioned on order to keep boat launching areas clear.
- D. Extenuating circumstances (hazard, weather, etc.) limiting adherence to the above provisions should be reported to the Harbor Master.

## **6. DUMPING OF SEWAGE, OILS, AND HAZARDOUS WASTE**

No person, firm, corporation, or other legal entity shall discharge, spill, or permit to be discharged, sewage, trash, litter, garbage, gas, oil, bilge water containing gas or oil, or other pollutants from a vessel, watercraft, vehicle, or any other source into the tidal waters within the boundaries of the Town of Harrington, beaches, landings, parking lots, or onto the ice or banks thereof in such a manner that the same may fall or be washed into such waters or in such a manner that the drainage therefrom may flow into such waters.

## **7. PROHIBITED ACTIVITIES WITHIN THE TOWN LANDING MOORING AREA**

Within the Town Landing Mooring Area the following activities are prohibited:

- A. Water skiing or related activities.
- B. Shelling of shellfish unless the shells are removed from the Harbor area and disposed of in a legal and proper manner.
- C. Dragging for shellfish or unauthorized setting of nets.
- D. Mooring of a vessel greater than 50 feet.
- E. Placement of a mooring or moorings for rental purposes.
- F. Operating a personal watercraft, however launching of PWC is allowed.

## **ARTICLE V - MOORINGS**

### **1. MOORING REGISTRATION**

- A. No person shall place a mooring in Harrington without a written permit stating the location of the mooring issued by the Harbor Master.
- B. Persons desiring to place a new mooring in Harrington shall submit applications for mooring permits and assignments to the Harbor Master.
- C. Mooring locations will be determined according to availability of space and size of vessel.
- D. If space is not available the applicant will be placed on a Mooring waiting list.

### **2. MOORING APPLICATION PROCEDURE**

- A. On or before June 1st of each year, all mooring permit fees will be due from all assignees. Also due will be proof of a biennial mooring inspection. Any mooring assignee who does not pay the mooring fee by this deadline:
  - i. Will be charged a 50% surcharge over the regular mooring fee.
  - ii. May forfeit their mooring assignment, at the discretion of the Harbor Master, and it may be reassigned to other applicants who are eligible and have asked to receive a mooring location.
- B. For those who have no mooring permit from the previous year applications may be obtained at the Town Office and all fees paid to the Town of Harrington. In addition to the application and fee the applicant will provide written certification that their mooring is in a safe condition and suitably sized for its intended use. This does not guarantee mooring location. If a mooring application is denied mooring fees will be returned.
- C. All mooring holders will be given:
  - i. A written mooring permit signed by the Harbor Master.
  - ii. A mooring number to attach to their mooring buoy.
  - iii. A mooring location (this may mean moving your mooring)
- D. For those seeking permits the Harbor Master will review the application(s) and issue a decision in writing within fifteen (15) days to the applicant. The Harbor Master will issue no permit for a mooring unless satisfied that the information set forth in the application is adequate to ensure that the mooring and vessel attached to it will not become a danger to persons or property.
- E. FEES - The mooring permit fee is \$30.00 per year for Harrington property tax payers, \$50 for nonresidents and residents that do not pay property tax in Harrington. Fees established by this ordinance may be increased or decreased by the Harrington Board of Selectmen. All fees

accrue to the Town of Harrington for the upkeep and operation of the town pier, floats, launch ramp, and parking area at the Town Landing Mooring Area.

### **3. MOORING ASSIGNMENT**

- A. No moorings will be permitted in Harrington waters without approval of the Harbor Master. Each year the map of all moorings will be updated to show permitted mooring locations.
- i. TOWN LANDING MOORING AREA - The Harbor Master will develop and maintain a map of the Town Landing Mooring Area. The map will show mooring areas occupied, available mooring spaces, and all moorings will be identified by a mooring number. The Harbor Master will identify longitude/latitude locations for each mooring and check those locations annually to ensure proper mooring placements. All moorings not located in the correct locations shall be moved by the mooring owner at his/her own expenses in accordance with the instructions of the Harbor Master. If a crowding problem arises the Harbor Master and the Harbor Committee will develop a mooring plan to address the problem.
  - ii. OTHER HARRINGTON WATERS - At present no crowding problem is foreseen in these areas. The Harbor Master will develop and maintain a map of the permitted moorings and determine when an over populated problem exists and he and the Harbor Committee will develop a mooring plan for that given area.
  - iii. RIPARIAN OWNERS - It is the intent of this ordinance to give priority as per state law(s) under 38 MRSA to shore land owners with 100 feet of frontage or more *and* a lot of 20,000 square feet or more. A qualified owner will be permitted one (1) mooring if space is available, the mooring fits into the mooring plan, and can be located in front of the holders property immediately adjacent to their frontage.

### **4. LOBSTER CARS AND FLOATS**

Lobster cars and floats require federal permits, submission of local mooring applications, payment of all fees, and yearly registration. Lobster car and float mooring applications and mooring permits will be processed and issued as described in section 3 and 4 above.

- A. The size of a lobster car is not to exceed x feet long by x feet wide by x feet deep or be larger than is legally permitted to be transported over town and state roads, whichever is less. All cars must include a 4 foot vertical x" by x" stanchion on each corner with x" reflectors. Plans for construction of the car are to be submitted to the Harbor Master for approval.
- B. The size of a float is not to exceed x feet long by x feet wide or be larger than is legally permitted to be transported over town and state roads, whichever is less. All cars must include a 4 foot vertical x" by x" stanchion on each corner with x" reflectors. Plans for construction of the car are to be submitted to the Harbor Master for approval.
- C. Each lobster car or float must be moored fore and aft.
- D. No additional lobster car or float may be attached, ganged, or attached in tandem unless approved by the Harbor Master and with requisite federal permits.
- E. No boat or watercraft may be left attached to a lobster car or float unattended overnight or for an extended period of time.
- F. Floats that ground out with each tide must be marked like any other float, registered and moored fore and aft, but may be ganged or attached or placed in tandem with other flats floats.
- G. Floats that ground out with each tide will not be subject to permit fees but will be subject to a one time application fee.
- H. Placement of all lobster cars and float must comply with colonial law.

## **5. MOORING INSPECTIONS**

It is the responsibility of the mooring holder to check, or have checked, and certify in writing to the Harbor Master, that his/her mooring is in a safe condition and suitably sized for its intended use. All moorings shall be inspected by the mooring holder every two (2) years. Proof and a summary of the inspection shall be submitted to the Harbor Master.

## **6. APPEALS OF DECISIONS OF THE HARBOR MASTER**

Any person may appeal a decision of the Harbor Master to the Harrington Board of Selectmen. Any such appeal shall be made within ten (10) days after the date upon which the person is notified of the decision of the Harbor Master.

Appeals shall be in writing, and shall state in detail (1) the intended conduct of the appellant; (2) the decision of the Harbor Master; and (3) a statement setting forth the reasons why the decision of the Harbor Master is not consistent with this ordinance or with state or federal law. The applicant or the Harbor Master may request a hearing, when he or she will appear in person or with witnesses, and state their case through oral testimony or other evidence. An appeal of the decision of the Selectmen may be taken pursuant to Rule 80B of the Maine Rules of Civil Procedure.

## **ARTICLE VI - MARITIME FACILITY USE PERMITS**

Commercial shellfish buyers and fuel dealers wishing to conduct business at the Harrington Town Landing must apply for and be issued a Maritime Facility Use Permit before doing so.

- A. Maritime Facility Use Permit applications may be obtained at the Town Office and all fees paid to the Town of Harrington. In addition to the application and fee the applicant will provide proof of liability insurance. If the application is denied the permit fees will be returned.
- B. For those seeking permits the Harbor Master will review the application(s) and issue a decision in writing within fifteen (15) days to the applicant.
- C. If approved the applicant will be issued a business use permit signed by the Harbor Master. The permits will be valid for one (1) year, June 1st to May 31st.
- D. FEES - The annual Maritime Facility Use Permit fees for commercial shellfish buyers are \$400 for resident commercial buyers and \$1000 for nonresident commercial buyers. The annual Maritime Facility Use Permit fees for fuel dealers are \$200 for resident fuel dealers and \$500 for nonresident fuel dealers. Fees established by this ordinance may be increased or decreased by the Harrington Board of Selectmen. All fees accrue to the Town of Harrington for the upkeep and operation of the town pier, floats, launch ramp, and parking area at the Town Landing Mooring Area.

## **ARTICLE VII - PENALTIES**

Any person who violates any part of this ordinance shall be liable to the Town of Harrington for the following penalties:

- A. The minimum penalty for a specific violation shall be \$25.00 and the maximum penalty shall

- be \$2,500.00. Each day that the penalty exists shall be a separate violation.
- B. In addition, the offender shall pay the Town of Harrington an amount equal to reasonable attorneys fees, expert witness fees, and other expenses of any proceeding to enforce the provisions of this ordinance, including proceedings in equity to abate any nuisance or other condition in violation of this ordinance.

## ARTICLE VIII - APPROVAL

EFFETIVE DATE: This Ordinance was voted upon and approved at a Town Meeting dated March 14, 2011 and this Ordinance shall take effect on that date.

Michael W. Cummins  
Selectman

Alvin G. Smith  
Selectman

Paul E. Smith  
Selectman

CERTIFIED BY: Sharon M. Haines  
Town Clerk

April 21, 2011  
Date

(Affix Seal)