

CHAPTER 10

COASTAL WATERS and HARBOR ORDINANCE

(Adopted Eff. May 10, 1989, July 13, 2005, August 10, 2005, May 8, 2019)

ARTICLE I

General Provisions

Sec. 10-1-1. Purpose. This Ordinance is to establish regulations for marine activities within the harbors, waterways and tidal waters of the Town of Cape Elizabeth, Maine 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.

Sec. 10-1-2. Harbor Limits.

(a) Seal Cove Harbor Limits. The harbor limits of Seal Cove, sometimes referred to as Kettle Cove, shall include the area of water northerly of the straight line between McKenney Point and East Point, so called, on Richmond Island. The Inner Harbor at Seal Cove (northerly of a line from McKenney Point to can buoy 'C-1' near the harbor entrance and easterly of a straight line from such can buoy through Crow Rock, so called, to the shore) is hereby designated as a mooring area. (eff. 5-8-2019)

(b) Maiden Cove Harbor Limits. The harbor limits of Maiden Cove shall include the area of water located southwesterly of a straight line running approximately 345 magnetic from the point forming the easterly end of Maiden Cove and located southeasterly of the rocks off the cliff at the westerly end of Maiden Cove. The waters within such harbor limits, excepting the swimming area utilized by the Cape Cottage Beach Association, are hereby designated as a mooring area.

(c) Additional Harbors. In addition to the two major harbors listed above, numerous other coves and inlets are used for mooring and anchorage of vessels. This Ordinance shall also apply to these coves and inlets although no harbor limits have been established.

ARTICLE II

Sec. 10-2-1, Definitions.

(a) Anchorage: Shall mean an area of a harbor set aside for the temporary anchoring of vessels.

(b) 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.

(c) Basin: Shall mean a naturally or artificially enclosed or nearly enclosed body of water where small craft may lie (anchor).

(d) Beach: Shall mean a public or private beach area bordering the waters of Cape Elizabeth.

(e) Commercial Vessel: Shall mean any vessel whose primary use is commercial marine activities such as but not limited to fishing, aquaculture, or supportive services. (eff. 5-8-2019)

(f) Distress: Shall mean a state of disability or a present or obviously imminent danger, which, if unduly prolonged, could endanger life or property.

(g) Emergency: Shall mean a state of imminent or proximate danger to life or property in which time is of the essence.

(h) Fairway: Shall mean a navigable channel in a harbor.

(i) Float: Shall mean any floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.

(j) 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. (eff. 5-8-2019)

(k) Mooring: Shall mean any appliance used by a vessel for permanent anchoring purposes and which appliance is not carried aboard such vessel when underway as regular equipment.

(l) Non-Resident: Shall mean a person who does not fall within the definition of Resident.

(m) Out Hall: Shall mean a mooring system for a dinghy or boat that allows the dinghy or boat to be hauled to and from a mooring block or anchor to the shore by a system of lines secured at the shore. (eff. 5-8-2019)

(n) Resident: Shall mean any person whose principal residence is in the Town of Cape Elizabeth; or who owns property and uses that property as a residence for at least 60 days a year. Proof of residency may be established through voter registration, payment of real estate taxes or rental receipts for residential property within the Town of Cape Elizabeth.

(o) Riparian Owner: Shall mean an owner of a parcel of land located in the Town of Cape Elizabeth which borders upon a harbor, cove or inlet commonly used for mooring or anchorage of vessels.

(p) 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.

(q) Shall and May: 'Shall' is mandatory, 'May' is permissive.

(r) State: Shall mean the State of Maine.

(s) Stray Vessel: Shall mean (1) an abandoned vessel, (2) a vessel the owner of which is unknown, or (3) a vessel underway without a competent person in command.

(t) To Anchor: Shall mean to secure a vessel to the bottom within a body of water by dropping an anchor(s) or other ground tackle, which is carried aboard a vessel when underway as regular equipment.

(u) Transient vessel: Shall mean a vessel using a mooring for which someone else holds the permit and seeking a temporary harbor of refuge, or a vessel dropping anchor for a temporary period not to exceed 14 days. (eff. 5-8-2019)

(v) Underway: Shall mean the condition of a vessel not at anchor, without moorings, and not made fast to the shore nor aground.

(w) Vessel: Shall mean a floating object, boat or craft of any size designed for self-propelled travel on water.

(x) Wash: Shall mean a surge of water, wave.

(y) 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 Harbor Master

Sec. 10-3-1. Harbor Master Appointment. A Harbor Master for the Town of Cape Elizabeth shall be appointed and may be removed by the Chief of Police subject to the approval of the Town Manager and shall be subject to all the provisions of Title 38, Maine Revised Statutes Annotated Section 1 et seq. as amended.

In addition, the Harbor Master for the Town of Cape Elizabeth shall also be subject to the following local provisions:

Sec. 10-3-2. Maritime Agent. The Harbor Master is to be considered the maritime agent of the Cape Elizabeth Town Council and shall have full authority for the interpretation and enforcement of all regulations affecting the harbors, waterways and tidal waters of the Town of Cape Elizabeth.

Sec. 10-3-3. Appeals. The Town Manager shall serve as the appeal authority for any person (s) aggrieved by any decision, act or failure to act by the Harbor Master. Any party aggrieved by a decision of the Town Manager may seek review of such decision pursuant to Rule 80 of the Maine Rules of Civil Procedure, as may be amended.

Sec. 10-3-4. Responsibility for Equipment. The Harbor Master shall be the municipal overseer of all town owned marine oriented equipment not specifically included within the purview of any other Town Board or Department.

Sec. 10-3-5. Mooring Records. The Harbor Master shall maintain copies of all mooring records as well as any waiting list for mooring location assignment.

ARTICLE IV Anchoring of Vessels

Sec. 10-4-1. Anchoring Only With Permission. There shall be no anchoring of vessels in the designated mooring areas of the Town of Cape Elizabeth without the permission of the Harbor Master except under emergency conditions. (eff. 5-8-2019)

Sec. 10-4-2 Shifting Berths of Anchored Vessels. Anchoring will be permitted within all other tidal waters of the Town of Cape Elizabeth at the discretion of the vessel's operator. Anchored vessels may be required to shift their berth at the direction of the Harbor Master if they are the subject of noise or other complaints, or for the safety of the vessel or the safety of others. Vessels anchoring outside mooring areas for more than 72 hours shall notify the Harbor Master. (eff. 5-8-2019)

Sec. 10-4-3 Anchored Vessels to Abide by Regulations. All anchored vessels shall abide by all Federal Regulations for anchored vessels including but not limited to Day Signals and/or lights for signals, etc.

ARTICLE V

Moorings

Sec. 10-5-1. Mooring Location Assignments. All mooring locations shall be assigned by the Harbor Master. No mooring shall be placed without a written permit from the Harbor Master authorizing placement of a mooring at a specific location. Moorings shall be placed within thirty (30) days of obtaining a permit or July first (1) of the year the permit is obtained, whichever is later.

Sec. 10-5-2. Mooring Permit. All permits issued hereunder shall be for a period of one (1) year, and shall be subject to renewal annually. Permit holders who elect not to renew must notify the Harbor Master and remove their mooring. The mooring permit of any person who violates any of the provisions of these regulations may be revoked by written notice to that effect signed by the Harbor Master.

Sec. 10-5-3. Moorings to be Registered and Numbered. Moorings shall be registered and numbered at all times. Mooring numbers shall be issued by the Harbor Master at the time a mooring permit is issued.

Sec. 10-5-4. Mooring Locations Subject to Change. All moorings shall be subject to change in location at the owner's expense if such change is deemed by the Harbor Master to be in the best interest of the Town.

Sec. 10-5-5. Harbor Master Empowered to Remove Moorings. If a mooring owner refuses to move his mooring after receiving written notice to do so, the Harbor Master is authorized, after a fourteen (14) day waiting period to remove the mooring float, mark the mooring chain with an identifying tag and drop the chain to the bottom. If the Harbor Master determines that the anchor and chain could pose a fouling hazard to anchoring vessels or there is other reason for removal, the mooring gear may be pulled and the permit holder billed for the cost. The Harbor Master shall store any removed mooring gear up to six (6) months. During that period of time, the owner may reclaim the equipment after payment of any expenses or fines as provided under Title 38 M.R.S.A. §4.

Sec. 10-5-6. Location and Waiting Lists. Within the limitations of Sections 3 and 6 of Title 38, the Harbor Master shall assign mooring locations and maintain a waiting list for mooring locations.

Sec. 10-5-7. Standards. All moorings shall be of sufficient size and weight with chain and rope in sound condition to properly secure the moored vessel and the float attached to the mooring line shall be of sufficient size and buoyancy to remain afloat when not attached to the vessel.

Moorings shall be comply with the Mooring Standards as set by the Harbor Master. The adequacy of each mooring set remains the responsibility of the individual boat owner. Standards set by the Town are minimum standards. (eff. 5-8-2019)

Sec. 10-5-8. Fees. The Town Council shall establish mooring permit fees.

Sec. 10-5-9. Renewals and Abandoned Moorings. Any mooring not used by the vessel(s) named on the permit application for at least seven (7) days during the previous year may be refused a permit renewal if its presence is preventing applications for that mooring area from being approved or requiring new mooring installations to be placed in more exposed locations. All mooring gear is to be removed by the owner within two (2) weeks of permit expiration. Moorings without current permits may be removed by the Harbor Master as provided in Sec.10-5-5 of this Ordinance.

Sec. 10-5-10. Inspection. All moorings shall be inspected according to a schedule and procedures to be posted by the Harbor Master. Inspection shall be performed only by individuals or organizations authorized by the Harbor Master and written reports of all inspections must be submitted to the Harbor Master. The mooring permit holder shall be responsible for all costs associated with mooring inspections.

Sec. 10-5-11. Buoys. Mooring marker buoys shall be visible at all tides. Buoys shall be white with a blue stripe.

Sec. 10-5-12. Town Moorings. Any moorings placed by the Town of Cape Elizabeth in any harbor under the jurisdiction of the Town shall not be used for a period longer than twelve (12) hours by any vessel, except by permission of the Harbor Master.

Sec. 10-5-13. Subletting of Mooring Space. The owner of any vessel having mooring space shall not sublet said mooring or mooring space to another user or vessel owner; however, another vessel owner may use the mooring, provided the original owner pays the fee or fees and has received permission from the Harbor Master to moor such vessel.

Sec. 10-5-14. Dinghies. Dinghies may not be tied astern of moored vessels for more than 24 hours.

Sec. 10-5-15. Mooring Limitations. Lobster crate or lobster car moorings are not to be used for vessel moorings.

Sec. 10-5-16. Houseboat. Notwithstanding any other provision of this article to the contrary, houseboats, not including transient vessels as defined herein, are prohibited from mooring or anchoring in the anchorage except at marinas that 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) Parking as required by the codes and ordinances of the municipality where the marina is located; and
- (6) Compliance with the applicable land use codes. (eff. 5-8-2019)

Sec. 10-5-17. Out Haul. Any vessel that is less than fourteen feet in length may be outhauled provided the Out Haul does not hinder navigation. All Out Hauls must obtain a permit from the Harbor Master. The Harbor Master shall review the permit for compliance with the Out Hall Standards. (eff. 5-8-2019)

ARTICLE VI Channels

Sec. 10-6-1. Channel Designations and Restrictions. The Town Council may from time to time establish channels for the passage of vessels in the harbors and waterways of the Town after due consideration of the recommendations of the Harbor Master. There shall be no anchoring or mooring in any channels designated as such.

Sec. 10-6-2. Interference with Channel Markers. Whoever moors a vessel, boat, raft or scow to any buoy or beacon placed by the Town of Cape Elizabeth in any waters subject to its jurisdiction to define the channels for vessels, or in any manner make the same fast thereto, or willfully destroys any such buoy or beacon shall be in violation of this Ordinance and liable upon complaint of the Harbor Master as provided in Sec. 10-8-1 of this Ordinance.

Sec. 10-6-3. Obstruction of Channels and Removal of Sunken Vessels.

(a) It shall be unlawful to tie up or anchor a vessel in a Cape Elizabeth harbor in such a manner as to obstruct the fairways, launch ramps or channels or to prevent or obstruct the passage of other vessels; or to voluntarily or carelessly sink or allow to be sunk any vessel in any channel, fairway, berthing space; or to float loose timbers, debris, logs or piles in any channel, fairway or berthing space in such manner as to impede navigation or cause damage to vessels therein. It is understood that wrecked or sunken vessels within a harbor are subject to the published rules and regulations of the United States Coast Guard and any applicable state law, rules or regulations.

(b) Whenever the navigation of any waters within a Cape Elizabeth harbor or maritime facility, including anchorages and berths herein, shall be obstructed or endangered by any sunken vessel or other obstruction or danger which has existed for a period of more than ten (10) days, the vessel or obstruction shall be subject to removal, sale or other disposition. The owner(s) of such vessel or other property causing said obstruction or danger shall be liable to the Town of Cape Elizabeth for all costs incident to said removal and disposition, and the Town of Cape Elizabeth, its employees, agents and officers shall not be liable for damages of any nature whatsoever originating out of or in any way connected with removal, sale or disposition of such vessel or other property.

ARTICLE VII

General Boating and Traffic Control Regulations

Sec. 10-7-1. Traffic Control Authority. The Harbor Master shall have the authority to control water borne traffic in any portion of the waters of a harbor or maritime facility under the Town's jurisdiction by use of authorized State regulatory markers, signals, orders or directions at any time preceding, during and after any race, regattas, parade or other special event held in any portion of the waters of a harbor or maritime facility or at any time when the Harbor Master 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 Harbor Master, or with any signal, orders or directions of the Harbor Master.

Sec. 10-7-2. Basic Speed Law. The operation of any vessel within the harbor 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 to conduct and engage in water sports and regattas in specific designated areas.

Sec. 10-7-3. Discharge of Refuse and Sewage. It shall be a violation of this Ordinance to discharge into the waters of the harbor any sewage, refuse, garbage or waste matter, petroleum or petroleum matter, paint, varnish, timber or any other foreign matter, including dead animals, fish and bait.

Sec. 10-7-4. Responsibility for Sanitation of Facilities. The owner, captain, lessee, agent, manager or person in charge of a vessel, facility or water area adjacent to or within a Cape Elizabeth harbor shall, at all times, maintain the premises under their charge in a clean, sanitary condition, free from malodorous materials and accumulations of garbage, refuse, debris and other waste materials. Should the Harbor Master find that any vessel, facility or water area is not so maintained, the Harbor Master shall, in writing, notify said owner, captain, lessee, agent, manager or other person in charge of said vessel, facility or area to immediately commence and diligently prosecute to completion of the necessary correction of the unsanitary condition to the satisfaction of the Harbor Master. Failure to do so with reasonable dispatch shall be a violation of this Article, and the Harbor Master may then cause the condition to be corrected and charged to said owner, captain, lessee, agent, manager or person in charge.

Sec. 10-7-5. Buoys. No person shall place buoys of any type, other than lobster pot buoys and marker buoys, within the boundaries of the mooring areas established by these regulations without written permission of the Harbor Master.

Sec. 10-7-6. Water Skiing. There shall be no water skiing within established mooring areas.

Sec. 10-7-7. Launch Ramps. Motor vehicles are not to be left unattended on or near launch ramps. All motor vehicles are to be parked only in designated areas and motor vehicle operators are to comply with all parking regulations as posted by the Town of Cape Elizabeth or the State of Maine.

Sec. 10-7-8. Liability.

(a) Vessel Owner: Any person using the facilities within the limit of a harbor or maritime facility shall assume all risk of damage or loss to his property and the Town of Cape Elizabeth assumes no risk on account of fire, theft, Act of God or damages of any kind to vessels within harbors or maritime facility.

(b) Secure Berthing and Anchoring of Vessels. The owner of any vessel moored or anchored within Cape Elizabeth harbors or maritime facilities shall be responsible for causing such vessel to be tied and secured or anchored with proper care and equipment and in such manner as may be required to prevent breakaway and resulting damage, and shall, thereafter, provide for periodic inspection maintenance, replacement and adjustment of anchor, mooring or tie lines at reasonable intervals.

Sec. 10-7-9. Unseaworthy Vessels Prohibited in Harbor. A person shall not moor or permit to be moored, in any harbor, a vessel of any kind whatsoever which is unseaworthy or in a badly deteriorated condition or which is likely to sink or to damage docks, wharves, floats or other vessels or which may become a menace to navigation, except in cases of emergency.

Sec. 10-7-10. Correcting an Unsafe Berthing. If any vessel shall be found, in the judgment of the Harbor Master, to be anchored or moored with any harbor or maritime facility in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels, persons or property, the Harbor Master shall order and direct necessary measures to eliminate such unsafe or dangerous condition. Primary responsibility for 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 and in the absence of any such responsible person, the Harbor Master 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 Town of Cape Elizabeth in effecting such correction.

Sec. 10-7-11. Removal and Custody of Illegally Berthed or Abandoned Vessels. If any unattended vessel shall be found to be anchored or moored illegally within a harbor or maritime facility, or if the Harbor Master has reasonable grounds to believe that a vessel has been abandoned within a Cape Elizabeth harbor or maritime facility, the Harbor Master may assume custody of such vessel and cause it to be removed and held or placed in storage. The Town of Cape Elizabeth or its officials shall not be held liable for any damage or loss to such vessel or its contents nor liable to its owner before or after assuming custody. Vessels so taken into custody shall be released to the owner by the Town Manager only after satisfactory proof of ownership has been presented and full reimbursement made to the Town for all costs incident to recovery, movement and storage.

Sec. 10-7-12. Damage to Harbor or Other Property. It shall be unlawful to willfully or carelessly destroy, damage, disturb or interfere with any public or private property in the harbor area.

Sec. 10-7-13. Tampering With or Boarding Vessels Without Permission. It shall be a violation of this Ordinance for any person willfully to board, break in, enter, damage, 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 hereinabove provided for violations of this Ordinance and to additional penalties not to exceed the aggregate \$1,000 and six months imprisonment for each offense. Any person violating this provision shall, in addition, be responsible to the rightful

owner of any such vessel for any damages caused by such violation and to the reasonable costs incurred as a result thereof including any attorney's fees.

Sec. 10-7-14. Obstruction of facilities. It shall be a violation of this Ordinance for any person to willfully prevent any other person from the use and enjoyment of the harbor facilities.

ARTICLE VIII Enforcement and Invalidity

Sec. 10-8-1. Enforcement. Except as enumerated elsewhere in this Ordinance or as stated by the Maine Revised Statutes Annotated, violation of this Ordinance shall be punishable as follows:

a) Any person who shall violate any provision of this Ordinance shall be punished upon conviction, by a fine of not less than twenty-five (\$25.00) and not more than one hundred (\$100.00) dollars. All fines shall be paid to the Town of Cape Elizabeth.

b) Each day that such violation continues to exist shall constitute a separate offense. Any law enforcement officer vested with the authority to carry a weapon and make arrests shall have the authority to enforce this Ordinance.

Sec. 10-8-2. Invalidity Provisions. If any provision of this Ordinance is held invalid or inoperative, the remainder shall continue in full force and affect as though such invalid or inoperative provisions had not been made.

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