

# Harbor Ordinance



## Town of York, Maine

**Most Recently Amended: May 16, 2015**

Dates of Prior Amendment(s): November 4, 2014  
May 17, 2014  
May 22, 2010  
May 19, 2007  
May 21, 2005  
May 18, 2000  
February 10, 1998  
November 4, 1997  
November 5, 1996  
November 8, 1994  
November 2, 1993  
April 10, 1993  
May 9, 1992

Date of Original Enactment: December 6, 1990

### ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to enact/amend this Ordinance: May 16, 2015

Certified by the Town Clerk: May Anne Symons on June 19, 2015  
(signature) (date)

## HARBOR ORDINANCE

Rules and Regulations Pertaining to the Harbors, Ports, Tidal Waters, and Channels within the Town of York, Maine

### **SECTION 1. DEFINITIONS**

**ANCHORAGE**: An area where vessels may be anchored, moored or otherwise berthed at a wharf, dock, slip or pier.

**BATHING AREA**: The area of water within 200 feet of the shoreline of a defined beach in the Town.

**BEACHES, DEFINED**: Primarily includes, but not limited to Long Sands Beach, Short Sands Beach, Harbor Beach and Cape Neddick Beach.

**BERTH**: The place where a vessel lies when at anchor or when made fast at a dock, float, moored float, mooring, pier, slip, wharf, or any other facility used for securing a vessel.

**CHANNELS**:

- a. Defined: Areas of Harbors or Tidal Rivers kept open for navigation or other purpose by this ordinance.
- b. Natural: That part of a tidal river below the low water mark, providing the natural course of flow of water; the thread of a body of running water.

**THE FOLLOWING CHANNELS ARE DEFINED**:

1. **York Harbor Entrance Channel**: An area enclosed in the following boundaries, to wit: A line beginning on the eastern shore of Harris Island at the spindle #9 to the most western point on the shore of Stage Neck; then encompassing all the waters from that line to a starting point at the point on the most south eastern shore of Eastern Point, then on a line to a point on the northeastern shore of Western Point.
2. **York Harbor Navigation Channel**: An area approximately 30 yards wide from the north westerly end of the York Harbor Entrance Channel to the Route 103 Bridge, following the natural channel of the York River and marked Spindle "9", Can "11" and the channel lights and sign on the Route 103 Bridge.
3. **York River Channel**: The natural channel of the York River from the Route 103 Bridge to the source of the York River and all its tidal tributaries.
4. **Cape Neddick Outer Harbor Channel**: An area enclosed by the following boundaries, to wit: A line extending from Bell Buoy "2" southwesterly to Can "1", then northerly to the channel marker spindle east of Shore Road then southeasterly to Bell Buoy "2".

5. Cape Neddick Inner Harbor Channel: The natural channel of the Cape Neddick River from the channel marker spindle east of Shore Road to the source of the Cape Neddick River.

COMMERCIAL FISHERMAN: A fisherman who is licensed by the State of Maine and/or other applicable entities to engage in commercial fishing. Because of York's proud history of fishing, the Harbor Board gives preferences to commercial fisherman in the administration of this Ordinance.

DOCK: A slip extending beside one or more piers or wharves or a waterway cut into the land for the reception of vessels.

FLOAT: A platform that floats and is attached to or associated with a single pier or wharf in such a way that pedestrian movement is afforded between the pier and the float.

HARBORS: Used herein to indicate all the Harbor areas defined below collectively. Defined Harbors of the Town are:

Brave Boat Harbor: That portion of Brave Boat Harbor, as charted on N.O.S. Chart 13283, corrected December 1, 1984, which lies within the geographical limits of the Town.

Cape Neddick Harbor: Cape Neddick Harbor, as charted on N.O.S. chart 13283, corrected to December 1, 1984 including that portion of the Cape Neddick River westerly of the Charted Harbor to the Clark Road Bridge.

a) Outer Harbor: A portion of the Cape Neddick Harbor lying upstream from the mouth of the Cape Neddick River and extending to the Shore Road Bridge.

b) Inner Harbor: A portion of the Cape Neddick River lying upstream from the Shore Road Bridge to Clark Road Bridge.

York Harbor: An area, as charted on N.O.S. Chart 13283, corrected to December 1, 1984, from the mouth of the York River to the Route 103 Bridge.

HARBOR USE: Holding a mooring permit, traversing tidal water areas or rental or occupation of private berths in the Town.

HIGH WATER MARK: The highest elevation of the water during the highest annual tide as published on the tide tables for York Harbor from the National Oceanic and Atmospheric Administration (NOAA), which is also interpreted by the Maine Department of Environmental Protection for the current year.

JURISDICTION: This ordinance shall apply to all tidal waters and to all land areas at an elevation below the High Water Mark as defined above in the Town.

LANDING: A place for receiving or discharging persons or things from a vessel.

**LOW WATER MARK:** The lowest elevation of the water during the low tide immediately following the highest annual tide.

**MARINA:** An establishment providing berths, supplies or services for vessels for a fee.

**MARSH:** A periodically wet or continually flooded land area with the surface not deeply submerged, covered dominantly with sedges, cattails, rushes, and other hydrophytic plants.

**MARSH BANK:** That portion of the coastal wetlands which is covered with marsh grasses. The line, delineated by the change from marsh vegetation to mud, shall be the "marsh bank line."

**MOORED FLOAT:** A platform not attached to or associated with a pier, wharf, or the shore in any way, that floats and is anchored, moored or otherwise secured and is used as a berth or other purpose.

**MOORING:** A semi-permanent, adequate means of securing a vessel to the bottom in an anchorage.

**MOORING FIELD:** One of the eight regions into which the York Harbor and York River are separated, as more particularly depicted in the document entitled York Harbor Mooring Field Chart, which is incorporated into this definition by reference.

**MOORING PERMIT:** A permit issued annually by the Harbor Master to an applicant, authorizing the applicant to utilize a specific mooring space for a specific size and type of vessel, for a period of one (1) year.

**MOORING SPACE:** A space assigned by the Harbor Master for securing a vessel to a mooring or moored float.

**MOORING SPACE ASSIGNEES:** Vessel owner(s) who have been granted a mooring space permit and whose name(s) has been on the mooring space permit or on the application for the mooring space permit, since a point in time that is the later of five years prior to the current date, or the original date of the application for the mooring space permit, or the effective date of this ordinance.

**MOUTH OF THE CAPE NEDDICK RIVER:** A line in the Cape Neddick River between the easternmost low water out-crops of Weare's Point and Barn Point, passing through #2 Bell Buoy.

**MOUTH OF THE YORK RIVER:** A line projecting due south in the York River projecting due south from Eastern Point to Western Point.

**OIL:** Any and all petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, and crude oil.

**PERSONAL WATERCRAFT**: Any motorized vessel utilized primarily for recreational purposes that is capable of exceeding 20 miles per hour. This term applies only to a vessel that uses an inboard motor powering a jet pump as the vessel's primary source of propulsion and is designed to be operated by a person sitting, standing or kneeling on the vessel rather than the conventional manner of sitting, standing or kneeling inside the vessel. The term includes, but is not limited to, a Jet Ski, Wave Rider, wet bike, surf jet, miniature speedboat, and hovercraft. Personal watercraft also includes any motorized watercraft whose operation is controlled by a water skier. This term does not include dinghies, skiffs, tenders, canoes, kayaks and other like vessels, used primarily for transporting persons and goods at speeds of less than five miles per hour.

**PIER**: A structure extending into a harbor for use as a landing place.

**PORT**: Includes the harbor area, town wharves and public landings and any other public landings or wharves that might be acquired by the Town in any defined Harbor in York.

**RESIDENT**: Any person occupying a dwelling in the town of York for more than 180 days in a calendar year.

**SEASON, BOATING**: Beginning of Memorial Day weekend to end of Columbus Day weekend.

**TENDER**: A vessel 13' 6" or less in length and 6' 0" or less in beam and not more than 15 horse power, associated with a specific larger vessel and principally used for transportation from the larger vessel to a landing or other vessel. Also referred to as a "dinghy", or "skiff". Each mooring permit shall entitle the holder to one tender.

**TOWN**: The Town of York, Maine.

**TRANSIENT VESSEL**: A vessel, the operator or owner of which seeks a temporary place to berth within a defined Harbor, River, or Channel.

**VESSEL**: A watercraft of any kind including but not limited to boats, scows, dredges, and shellfish cars.

**VESSEL, ABANDONED**: A vessel shall be considered "abandoned" if for a period of at least six (6) continuous months, and of the following circumstances exist:

1. The owner of the vessel fails or refuses to pay any applicable license fee, excise tax, harbor usage fee, or any other fee or charge imposed by the Town of York.
2. The owner of the vessel fails or refuses to comply with any lawfully issued order of the Harbor Master.
3. The owner of the vessel fails or refuses to respond to any lawful request for information submitted to him or her by the Harbor Master.

VESSEL, DERELICT: A vessel shall be considered “derelict” if any or all of the following circumstances exist:

1. The vessel is fastened to neither a mooring nor an anchor.
2. The vessel lacks any license or registration, from any authority, the possession of which is a pre-requisite to the operation of such a vessel.
3. The vessel is submerged to a level substantially above its normal water line, and remains so for a period of at least fourteen (14) consecutive days without reasonable explanation.
4. The vessel is damaged to such an extent that it cannot be moved under its own power.

VESSEL OWNER: An individual having at least a 25% interest in and demonstrable right of exclusive use of a vessel, whether or not registered or documented. Proof of ownership interest and demonstrable right of exclusive use shall be a document, currently dated, showing the names of all owners of interest the percentage of their interest in the vessel, and the date they obtained that interest, signed and sworn to by all named owners and filed with the Harbor Master.

WHARF: A structure built on the shore of a harbor, river, channel or the like, including but not limited to, one extending parallel to the shore line, so that vessels may lie close alongside to receive and discharge passengers and cargo.

**SECTION 2. POWERS OF APPOINTMENT AND RESPONSIBILITIES**

**A. Harbor Master:**

1. The Town Manager shall appoint a Harbor Master.
2. The Harbor Master, with oversight by the Town Manager, shall appoint such Deputy Harbor Masters as may be necessary to assist the Harbor Master with all the powers and obligations as granted by Statute.
3. The Harbor Master and Deputies may be removed from office for cause by the Town Manager in a manner prescribed by applicable law.
4. Upon qualification, the Harbor Master and Deputies may be appointed as Reserve Police Officers in the York Police Department having all the powers of arrest as granted thereto by the Statutes of the State of Maine.
5. The Harbor Master shall enforce the Rules and Regulations of the Town and the applicable Statutes of the State of Maine pertaining to any area under the jurisdiction of this ordinance and shall cooperate with other government agencies in enforcing their regulations; preserve and regulate navigation within said areas; assign, relocate, and/or revoke annual and transient mooring permits; require berths and their associated hardware to be kept in safe condition; direct the relocation or removal of vessels if necessity or emergency requires or for reasons

of safety, navigation, improved space utilization, or offense against this ordinance; collect transient mooring fees as required; advise the Harbor Board regarding applications for new construction and for alterations to existing structures; and inquire into and prosecute all offenses occurring within said areas.

6. The Harbor Master shall keep such records as the Town Manager and the Harbor Board may require and shall perform such other duties as the Town Manager and the procedures of the Harbor Board may require in the administration of this ordinance.
7. Qualifications, salary and expenses of the Harbor Master are recommended by the Harbor Board for approval by the Town Manager.
8. The Harbor Master shall attend all Harbor Board Meetings unless excused, and shall act in an advisory capacity to the Board.

**B. Harbor Board:**

1. The Board of Selectmen shall appoint a Harbor Board, being a board of Town residents, to serve without compensation and to include five regular members who serve staggered terms of three years and two alternate members who each serve a term of three years. The duties and responsibilities of the Harbors Board shall be:
  2. To oversee and plan the general operation of the Harbors and Tidal Waters of the Town.
  3. To hear appeals from decisions of the Harbor Master in accordance with the procedure established in Section III, Paragraph 8 of this ordinance.
  4. To consider applications for both new and existing structures within the jurisdictional limits of this ordinance and to determine whether such applications should be granted, in accordance with the procedure established in Section 3 of this ordinance.
  5. To advise as to the Board of Selectmen regarding applications for wharves and weir fish licenses pursuant to 38 M.R.S.A. § 1022.
  6. To advise the Harbor Master in the implementation of the provisions of this ordinance, including mooring space assignments.
  7. To annually submit a budget request to the Selectmen through the Town Manager, and to administer the budget as approved.
  8. To adopt written policies, procedures, and application forms to facilitate the administration of the Ordinance.
  9. To make recommendations to the Board of Selectmen through the Town Manager for the enhancement of harbor facilities for the long range benefit of users and the Town.

10. To make recommendations as needed to the Board of Selectmen through the Town Manager for the revision and updating of this Ordinance.
11. To hold public informational meetings as necessary to assure adequate public participation in deliberations and recommendations of the Board.
12. To report periodically to the Town Manager on the activities of the Board.

### **SECTION 3. HARBOR USE REGULATIONS**

#### **A. Vessel Owner Responsibility**

The owner(s) of a vessel shall be co-equally and severally responsible with an operator of said vessel for any infraction of this ordinance by said operator if:

1. Said owner of a vessel permits another person to operate said vessel and said operation is in violation of any section of this ordinance.
2. Boat owners are responsible for adequate maintenance, care, and upkeep of their boats, skiffs and dinghies. Failure to do so will result in forfeiture of the mooring.
3. Said owner is the parent guardian responsible for the care of a minor under 18 years of age and the minor operates said vessel in violation of any section of this ordinance.

#### **B. Speed of Vessels**

1. Upon all tidal waters within the Town it shall be unlawful to operate a vessel at a speed that is not safe and prudent including, but not limited to damaging any wharf, float, or anchored or moored vessel, or endangering any person or property, or impairing another vessel's ability to maneuver or proceed safely. Operating a vessel at more than headway speed within 10 feet of a person in the water or within a defined bathing area when persons are in the water shall be considered endangering a person, and is unlawful.
2. Upon the York River and all its tributaries within the Town, from Can #7 in the York River Channel and Sewall's Bridge and between the Brickyard Marker Buoy and the U.S. Route 1 Bridge, and between Scotland Bridge and the source of the York River, it shall be unlawful to operate a vessel at a speed exceeding five miles per hour over the bottom or in such a manner that causes a wash, wake, or waves that visibly and unnecessarily disturbs an anchored or moored vessel or float, or endangers a person or the banks of a harbor or river.
3. Upon the Cape Neddick River and all its tributaries within the Town, within an area between a speed marker 200 yards east of the Shore Road Bridge and the source of the Cape Neddick River, it shall be unlawful to operate a vessel at a speed exceeding five miles per hour over the bottom or in such a manner that

causes a wash, wake or waves that visibly and unnecessarily disturbs an anchored or moored vessel or float, or endangers a person or the banks of a harbor or river.

#### C. Personal Watercraft

It shall be unlawful to operate a personal watercraft upon the tidal waters within the Town within an area encompassed by the mouth and the source of the York River; and upon the Cape Neddick River and all its tributaries within the Town within an area encompassed by a speed marker buoy 200 yards east of the Shore Road Bridge and the source of the Cape Neddick River; within Brave Boat Harbor; and within any bathing area at a defined beach.

#### D. Towing

Upon the York River and all its tributaries in the Town, York Harbor, Cape Neddick Harbor, Cape Neddick River and Brave Boat Harbor, it shall be unlawful for any operator of a vessel to have in tow any device, such as skis, sleds, boards, etc., intended primarily for recreational purposes.

#### E. Channels

It shall be unlawful to place any materials in defined channels in the jurisdictional limits of the Town in such a manner as to obstruct the channel. Such materials shall include, but are not limited to, buoys and floating line.

#### F. Fishing Equipment

Except for eel pots and hand held gear such as fishing rods or lines, it shall be unlawful to set fishing equipment in the York River Channel.

#### G. Anchorage

The defined Harbors and the Tidal Rivers of the Town are hereby assigned as anchorage areas, provided, however, that no anchor, mooring, or other device for securing a vessel shall be set, established, or maintained without permission of the Harbor Master, who shall grant such permission with due regard to maintaining channels for passage of vessels and in a manner as described herein. The Harbor Master may order any vessel in this area to change position when, in the Harbor Master's opinion, said vessel may impede navigation or endanger other vessels.

#### H. Mooring Spaces

These regulations are promulgated to meet the U.S. Army Corps of Engineers requirements for Federal Anchorages and its permit number ME-YORK-85-1361, as amended; the requirements of the Town of York Interim Harbor Management Plan dated May 28, 1985; and the Statutes of the State of Maine, as such regulations and statutes may from time to time be modified.

1. Current Permit Holder: Mooring space applications prepared by the Harbor Board, shall be mailed annually to the current mooring permit holder. The application shall include the length, draft, and type of vessel approved for the mooring space, the application fee, and other pertinent information requested on the application form. It is the responsibility of the applicant to fill out the application and submit it to the Town Clerk together with all fees, taxes and accrued interest, fines and penalties due. An application shall not be considered received until the application and fees, taxes and accrued interest and penalties are received. The Town Clerk receipts the mooring application, fees, and taxes and accrued interest, fines and penalties and forwards the application to the Harbor Master, who after reviewing the application, approves it and issues the mooring permit or denies the application. In so far as it shall be consistent with Statute, the Harbor Master shall give preference in approving mooring permits to persons holding permits during the past calendar year and to Shorefront Property Owners.

#### I. Construction and Alteration of Structures

1. It shall be unlawful to either construct a new structure or to make any addition, alteration, or change to an existing structure without prior application to the Harbor Board. For the purposes of this provision, the term “structure” shall include, but shall not be limited to, any dock, float, moored float, pier, wharf, or landing located or to be located within the jurisdictional limits of this ordinance.
2. This provision shall not apply to routine repairs and maintenance to existing structures. The requirements of this provision shall be in addition to any other applicable local, state, or federal requirements.
3. The following procedure shall be applied by the Harbor Board when reviewing applications for new structures and for additions, alterations, or changes to existing structures:
  - a. Any person wishing to construct a new structure and/or make additions, alterations, or changes to an existing structure:
    1. File an application on the form provided by the Harbor Board;
    2. Provide a plan that shows the proposal in plan view which meets the following requirements:
      - a. is prepared and certified by a Maine-licensed Professional Engineer;
      - b. has a signature block with a title, “Approval of the Town of York, Maine”, has signature and date lines for the Chair of the Harbor Board, the Code Enforcement Officer and the Chair of the Board of Selectmen, and concludes with the sentence, “All 3 signatures shall be required before the plan is considered approved and construction may commence.”

- c. shows all information necessary to demonstrate compliance with all applicable codes; and
3. Pay a non-refundable application fee of \$50.
- b. The Harbor Board shall hold a public hearing on the application within thirty days (30) of the filing date.
- c. Notice of the public hearing shall be posted at the Town Hall and shall also be published in a newspaper of general circulation at least seven (7) business days prior to the public hearing.
- d. The Harbor Master shall attend the hearing and shall present all information deemed appropriate for the Harbor Board's understanding of the application.
- e. The Harbor Board shall not approve the application unless a majority of members present and voting finds that the new structure, or the addition, alteration, or change to the existing structure will neither impede navigation nor endanger vessels. In addition to this general standard, the following shall also apply:
  1. New wharves, piers and floats shall not extend closer than 100 feet from the opposite marsh bank. All measurements shall be made perpendicular to the high water mark of the natural shoreline. No measurements shall be made from any man-made structure.
  2. To avoid interference with navigation, no pier or float combination shall extend into the channel a distance greater than 10% of the width of the channel at low tide.
  3. Wharves, piers, and docks will be permitted on the York River, west (upstream) of Sewall's Bridge, only in areas where the low water channel is 50 feet or less from the high water mark. Wharves, piers, and docks will be permitted on the York River, east (downstream) of Sewall's Bridge, only in areas where the low water channel is 84 feet or less from the high water mark. No wharves, piers or docks will be permitted in Barrells Mill Pond. All measurements shall be made perpendicular to the high water mark of the natural shoreline at the location of the proposed structure. No measurements may be made from any man-made structure.
  4. To be repaired in kind, the structure (in this context to include wharf, pier, dock and/or float) must have been in place and functioning as intended, in the opinion of the Harbor Master, within 24 months of the Town's receipt of an application. When repaired, all reasonable measures shall be taken to bring the structure into conformance with current standards to the greatest extent possible and only upon issuance of a permit by the Harbor Board. A structure that has not been functioning as intended for longer than 24 months, in the opinion of the Harbor Master, may be repaired or

replaced only in full compliance with all current local and State permitting requirements. Shoreland and Building permits from the Code Enforcement Officer may also be required. See also – Zoning Ordinance §8.3.6.10.

- f. The Harbor Board shall advise the Board of Selectmen regarding applications for wharves and weir fish licenses pursuant to 38 M.R.S.A. §1022.
  - g. Notice of the Harbor Board’s decision shall be sent to the applicant within thirty (30) days of the date of the public hearing and within seven (7) business days of the decision. Decisions shall be in writing, shall contain a statement of findings and conclusions, and shall state the reasons for the decision.
  - h. Appeals from the Harbor Board’s decision shall be made in accordance with Maine law.
4. Immediately following completion of any construction work approved under Section 3, above, and before lawful use commences, a Maine-licensed Professional Engineer shall provide certified written documentation that all work was completed in full compliance with the approved plan. Failure to provide such certification of full compliance shall be treated as a violation of this Ordinance as of the date of completion of construction. See Section 10 for penalties. Additionally, the Harbor Board may ask the Code Enforcement Officer to check for zoning violations.

#### **SECTION 4. MOORING SPACE ASSIGNMENTS**

- A. All mooring spaces are under the exclusive control of the Harbor Master and must be assigned annually from established lists maintained by the Harbor Master, of persons either holding or desiring a mooring permit, except for designated mooring spaces which the Harbor Master may assign to transient vessels.
- B. No vessel of greater than 50 feet in length overall shall be assigned a free-swinging or Bow & Stern mooring space in York Harbor. Vessels over 50 feet in length overall which have been assigned mooring space prior to adoption of this amendment are excepted, so long as their application for annual permit renewal is otherwise in good standing. Bow sprits, Pulpits, Booms, Outboard swim platforms, all shall be considered in the assignment of a mooring.
- C. Mooring Space Application: Any person seeking a mooring space shall file an application with the Office of the Harbor Board . Upon payment of an application fee, the applicant’s name shall be added to the waiting list maintained by the Harbor Master in the order the application fee was received. All applicants are responsible for giving notice of any change of address. An annual fee for each mooring application will be billed on December 1<sup>st</sup> and be due by January 2<sup>nd</sup> of the following year. Failure to pay the annual fee will result in applicant’s name being purged from their respective lists.
  1. Applicants will indicate a range of vessel size, provided that when they receive a space assignment they must utilize it for a vessel of the size and type indicated on the mooring permit by the end of the first full boating season after receipt of the

- space assignment, and in no case shall ever utilize it for a vessel of different size class than approved for the space assignment without written approval of the Harbor Master.
2. The Town shall develop a procedure to purge the waiting list of applicants that no longer desire a mooring or who cannot be contacted by Registered mail. Said procedure shall be approved by the Harbor Board and the Board of Selectmen.
- D. **Waiting List:** All new mooring space assignments shall be made on a “first come, first served” basis from established waiting lists maintained by the Harbor Master, except as provided by statute, following the procedure provided in Section III. Applicants will be listed chronologically according to the size range of their sail or powerboat and declare their choice(s) of mooring location within the Mooring Field Plan shown on the last page of this document. Applicants may change to a different size range list and/or location field as long as they maintain position on the list chronologically from the time of application. The Harbor Master shall review mooring space applications with regard to space available for the length, draft and type of vessel indicated and as evaluated by the Harbor Master. Upon approval by the Harbor Master, it is the responsibility of the applicant to submit the approved mooring space application to the Town Clerk, together with all fees, fines and penalties due. The applicant will then present the mooring space application to the Harbor Master, who will issue a permit and location for such mooring space and advise the applicant concerning the requirements of these rules and regulations. Priority will be given to commercial fishermen (lobster, dragger, gillnet, & charter, etc.). Upstream of the Route 103 bridge on the York River, which is above the Federal Navigation Project (federally funded dredging), priority will be given to commercial fishermen who are York residents.
1. Applicants on a Waiting List may refuse an offered mooring space and retain their relative position on the List only twice before being moved to the end of their respective list. Applicants will have 14 days to respond to mooring assignment offers by mail. The Waiting Lists shall be available for inspection by the public during regular business hours at the office of the Harbor Board and online at <http://www.yorkmaine.org/Committees/HarborBoard/tabid/65/Default.aspx>.
- E. **New Assignments Procedures:** The Harbor Master shall create a list of available mooring spaces, specifying the length, type, and location of vessel to be accommodated at each mooring space. The Harbor Master shall send the list by mail to all persons on the waiting list whose applications are for the location(s) and space for a vessel of approximately the same length, draft, and type as those previously assigned to one or more of the available mooring spaces. Applicants shall then make known to the Harbor Master their interest in specific available mooring spaces. The Harbor Master shall assign each of the available spaces to the highest ranked qualified applicant asking for that specific space. Failure to respond to two notifications of an available mooring, or notice returned two times “unable to deliver” will result in name being removed from the Mooring Waiting list.
1. Mooring space assignees may change vessels on their assigned mooring only with the permission of the Harbor Master. In general they will be limited to the same approximate size and type of vessel unless, in the judgment of the Harbor Master,

a change can be made without adversely affecting the Harbor mooring plan or adjoining mooring space assignees.

2. An approved mooring space assignee has the responsibility of providing and maintaining his own mooring hardware or moored float and its associated hardware.
  3. Mooring assignments may not be transferred, except that a mooring assignment used for commercial fishing purposes may be transferred only at the request or death of the assignee, only to a member of the assignee's family and only if the mooring assignment will continue to be used for commercial fishing purposes. For the purpose of this subsection, "member of the assignee's family" means an assignee's spouse, parent, child, or sibling, by birth or by adoption, including a relation of the half blood. Mooring assignments may not be rented.
  4. Marinas and individuals shall not control or assign any berth space except at their own privately owned piers, docks, and floats attached to private property. A vessel without a mooring permit shall not be permitted to remain on a mooring unless assigned by the Harbor Master in accordance with the provisions of this Ordinance. Vessels occupying a mooring without a valid permit may be removed by the Harbor Master following a hearing conducted by the Harbor Board. Notice and procedures for any such hearing shall be as set forth in Section III of this Ordinance, except that the Harbor Master need only demonstrate by a preponderance of the evidence that the vessel does not possess a valid permit for the mooring in question. Should the Harbor Board affirm the Harbor Master's determination that a vessel does not possess a valid permit, the owner of the vessel shall have ten (10) days in which to remove such vessel, or it may be removed thereafter by the Harbor Master at the owner's expense. Mooring permit holders may, upon receipt of written approval of the Harbor Master, permit guest usage of their mooring space for not more than 14 days per season.
  5. The Harbor Master shall, whenever practicable, assign mooring space where owners of a shorefront parcel of land as defined in 38 MRSA Section 11, with one hundred feet or more of shore rights are applicants, and shall locate one suitable mooring space fronting their lands for them, but not encroaching upon the natural channel or channels established by law, and not interfering with the mooring, passage, and navigation of other vessels. The Harbor Master shall, insofar as the same may be done consistently with these rules and regulations and with due regard for the safety of other vessels and of navigation, give consideration to the choice of mooring space of an assignee. However, where berth privileges of other assignees are claimed to be invaded or where protection is sought of the Harbor Master, the Harbor Master shall assign and indicate to assignees the locations which they may occupy for the assigned berth. Outhauls shall conform to the same provisions as a shorefront mooring.
- F. Winter Moorings: All vessels assigned a permanent mooring space and left over the winter must be moored on a float or a bow and stern mooring. Vessels not assigned a permanent mooring space in the Harbors of the Town may receive a permit to use the

moorings of assignees, with the written permission of the assignee and the Harbor Master upon presentation of proof of payment of Harbor Usage Fee during the period of November 15 to April 30. Failure to remove a vessel with a winter permit by April 30 will be considered a refusal of an order of the Harbor Master.

- G. Temporary (One Season) Mooring List: Mooring holders (except for holders of shorefront property owners' moorings granted in accordance with this ordinance) who know that they will not be occupying their mooring for a season are urged to place their mooring on the Temporary Mooring List so that it can be used. The Application for Harbor Permit Renewal has provisions to list moorings on the Temporary List. A Mooring Holder who is not using their mooring and pays their Harbor Usage Fees annually may retain rights to a mooring for up to 3 years while listing it on the Temporary Mooring List even if no one from the List uses it. Mooring riggings will be inspected and maintained by the temporary assignees during their occupancy. Applicants already on the Mooring Waiting List and wishing to be included on the Temporary Mooring List shall be listed in the same chronological order as described in Paragraph D. of this section.
- H. Final Notification Procedure: Mooring permit holders failing to reapply for their permit by the last business day in April shall be notified by the Harbor Master by a single final notice by Certified Mail with a return receipt requested that they shall reapply for a mooring permit within fifteen days of the date of the final notice or risk forfeiture of their mooring space. Assignees so notified will be assessed an additional Administrative Late Fee.
1. Upon termination of the assignment of any mooring space to an assignee, the associated hardware must be removed unless a new assignee has assumed the responsibility for the hardware from the former assignee. Any cost for removal of hardware is the responsibility of the terminating assignee. When the mooring space is on a moored float, the new assignee has the responsibility to negotiate a purchase price for his share of the float with the previous assignee.
- I. Mooring Space Abandonment: Failure by mooring permit holders to comply with the Annual Renewal Procedure for any reason, including but not limited to non-deliverability for the final notice, will constitute an abandonment of the assignment. Accordingly, the Harbor Master may reassign the mooring space in a manner as provided for herein, except, however that this reassignment provision shall not apply to a mooring space mandated by State Statute.
1. Abandoned Mooring Space Removal Costs: Mooring space assignees abandoning their assignments are liable for all costs for the removal, if necessary, or any associated hardware.
- J. Unused Mooring Space Assignments: Mooring space assignments unused for one calendar year shall be reviewed by the Harbor Board and may be revoked and reassigned by the Harbor Master. A vessel owned by the Permit Holder and assigned to the mooring space by the Harbor Master, except for holders of shorefront property owners' moorings granted in accordance with this ordinance, must be on the mooring for at least fourteen (14) days during the season and the Permit Holder shall be

responsible for ensuring that the Harbor Master is aware that the vessel is on the mooring during the fourteen days. Failure to use the mooring as specified in this subsection except under the provisions of the Temporary One Season Mooring List for at least fourteen (14) days shall constitute non-use of the mooring.

- K. **Mooring Specifications:** Moorings shall be maintained in a safe condition by the owner. Any Mooring existing, or hereinafter to be set shall be of sufficient size to hold the vessel for which it is used and shall conform to or exceed the Mooring and Float Rig Specifications sheet available at the office of the Harbor Board.
1. All moorings shall have the mooring number assigned by the Harbor Master permanently affixed on the mooring buoy. Said mooring number shall be at least three inches high and shall be clearly visible at all times. The Harbor Master may, after due notice of deficiency to a mooring permit holder, place the mooring number on a buoy and charge the holder for the cost of so doing, plus an Administrative Fee.
  2. The Harbor Master or other agent of the town may at any time examine any mooring to determine compliance with this ordinance. Except in cases of emergency, the Harbor Master shall notify the owner of intention to examine the mooring and request the presence of the owner during such examination. After examination, the Harbor Master shall provide a written report of the mooring's condition to the owner, along with a statement of corrective action required if any. Moorings determined by the Harbor Master to be inadequate shall be corrected by the assignee within two weeks or be removed. Any cost of examination or removal resulting there from shall be borne by the assignee of the mooring. By assigning a mooring space, the Town is not accepting responsibility for the condition of the mooring hardware.

## **SECTION 5: HARBOR MANAGEMENT**

- A. **Berthed Vessels that Impede Navigation or Endanger Other Vessels:** All berths now existing or herein after approved shall be located so that the vessels secured therein will not impede navigation or endanger other vessels. If the Harbor Master shall find that any vessel is so located, it may be required that the owner or assignee of the berth, or of the vessel secured therein, take such steps as will prevent such impeding of navigation or endangering to other vessels, or the Harbor Master may order that the berth hardware or the vessel attached thereto be removed or relocated in a manner as described herein. In requiring said removal or relocation under this provision, the berth last assigned shall be the first ordered to be removed or relocated. Any persons so ordered by the Harbor Master acting under this provision shall remove or relocate the same within 48 hours after being so ordered, provided however, that if the Harbor Master shall find an emergency requiring immediate action to prevent injury to life or damage to property, the Harbor Master may cause said action. Any expense incurred shall be borne by the berth owner, assignee and/or the owner of the vessel being removed or relocated.

- B. Moving Berths: Except by direction of the Harbor Master or with permission of the assignee/owner and approval by the Harbor Master, no person shall move or interfere with any berth or vessel in any defined Harbor or Tidal River.
- C. Transient Berths: The Town owns and maintains moorings for the use of transient vessels in York Harbor. In addition, mooring permit holders may, from time to time, authorize the Harbor Master to assign their berths to transient vessels.
1. The Harbor Master is empowered to assign available berths for use by transient or other vessels on a “first come, first served” basis.
  2. Except as permitted by the Harbor Master, transient vessels may use an assigned berth for no longer than 24 hours.
  3. The Town will assess a fee for transient vessel use of berths as indicated in Section IV. Said fee will be collected in advance by the Harbor Master, Harbor Master’s Deputies or agents of the Town.
- D. Public Floats, Piers, Wharves and Landings Limitations: No vessel other than a tender shall be made fast to a Town float, pier, wharf, or landing except for a reasonable time required for loading or unloading. Exceptions may be made in emergencies only by written permission of the Harbor Master.
1. Storage: Personal property, including but not limited to lobster traps, motor vehicles, cradles, boats and floats shall not be stored on a Town float, pier, wharf, or landing. Any designated loading zone shall be used only for lobster traps, fishing gear and other items in transit.
  2. Usage: No person shall loiter, create a public nuisance, or partake of alcoholic beverages on a Town float, pier, wharf, or landing.
  3. Swimming: No person shall dive, swim, skin dive, or SCUBA dive within 30 feet of a Town owned structure without permission of the Harbor Master, except in cases of emergencies.
  4. Tenders: No skiffs, dinghies, tenders, or similar vessels shall be allowed on top of a Town float, pier, wharf or landing. Such vessels shall be maintained by their owners and the owners shall be liable for any damage occurring to Town property or other vessels. Any such vessels maintained in the harbors of the Town and using Town facilities for a total of more than 14 days per annum shall be registered with the Harbor Master by notation on the application for a mooring permit and have the mooring space number or the owner’s name visibly displayed on the inside transom of said vessel. The Harbor Master may, after due notice of deficiency to the owner, place the mooring number on a tender and charge the owner for the cost thereof plus an administrative fee.
  5. Obstruction: It shall be unlawful to obstruct by any means whatsoever the free use of a Town float, pier, wharf or landing, or any other common landing place. Said areas shall be used only for loading and unloading. Vessels shall not remain tied up at said structures for a period longer than is reasonably necessary for this

purpose, except by permission of the Harbor Master in case of emergency. The Harbor Master shall remove or cause to be removed, any unattended vessel obstructing free use of said areas after due effort has been made to notify the Master or owner of said vessel of the above violation. The vessel owner shall be responsible for all costs associated with said action.

- E. Waste and Refuse: No person or vessel shall deposit, throw, sweep or cause to be deposited or swept into the tidal waters of the Town, or into waters adjacent thereto, any human waste, gas or oil or bilge water containing same, ashes, dirt, stones, gravel, mud, logs, planks, brush or any other substance tending to obstruct the navigation of said waters, or to shoal the depth of said waters, or to pollute said waters. No trash or refuse shall be placed on any Town float or pier except in designated containers. No person shall deposit, on or in proximity to any town dock or harbor parking area either waste oil or oil containers or oil-contaminated materials.
- F. Regulations: Nothing herein shall be considered as conflicting with Federal or State laws applicable to the tidal waters of the state.

#### **SECTION 6: DERELICT AND ABANDONED VESSELS**

Authority of the Harbor Master : The Harbor Master shall be responsible for ensuring that all vessels utilizing the Harbor are properly maintained and registered with all applicable local, state, and federal authorities. Toward that end, the Harbor Master shall have authority to remove from the harbor any and all derelict and/or abandoned vessels. In enforcing this section, it shall be unnecessary for the Harbor Master to establish any subjective intent by the vessel owner actually to abandon the vessel.

#### **SECTION 7: PROCEDURES FOR IMPOUNDING VESSELS**

- A. Post-Seizure Hearings In Emergencies: If the Harbor Master concludes that an abandoned or derelict vessel poses an immediate threat to the health, safety, or welfare of persons using either the Harbor or lands adjoining the Harbor, the Harbor Master shall be authorized to seize control of such vessel, to remove such vessel to another location, and/or to secure such vessel in whatever manner the Harbor Master shall determine is reasonable and appropriate.
1. Within twenty-four hours of such action, the Harbor Master shall notify the Harbor Board of such action and request the Board to conduct a hearing to review the Harbor Master's action. At such hearing it shall be the burden of the Harbor Master to prove by a preponderance of the evidence that the vessel was in fact abandoned or derelict. No later than seven (7) days prior to the hearing, the Harbor Master shall provide the owner of such vessel with notice of the hearing by the manner best calculated to provide him or her with actual knowledge of the hearing.
- B. Pre-Seizure Hearings In All Other Cases: In all other cases, should the Harbor Master conclude that a vessel is abandoned or derelict, the Harbor Master shall in writing: simultaneously notify the Harbor Board and the owner of the vessel of such

conclusion and; request the Board to conduct a hearing to review the Harbor Master's action. Such hearing shall be held no later than thirty (30) days after the Harbor Master so notifies the Board. At such hearing, it shall be the burden of the Harbor Master to prove by a preponderance of the evidence, that the vessel was in fact abandoned or derelict. The Harbor Master shall provide the owner of such vessel with at least seven (7) days' notice of the hearing by the manner best calculated to provide him or her with actual knowledge of the hearing.

- C. Harbor Master Actions Following Harbor Board Hearing: Should the Harbor Board affirm the Harbor Master's determination that a vessel is abandoned or derelict, the owner of such vessel shall have thirty (30) days in which to claim said vessel. The Harbor Master shall not release any such vessel unless and until the owner of said vessel shall have paid all expenses incurred by the Town of York in connection with the matter; including, but not limited to, and all expenses of securing the vessels in emergency situations. If the owner of the vessel does not so claim the vessel, the vessel shall be forfeited to the Town and may be disposed of by the Town in any commercially reasonable manner. Should the Harbor Board find that the Harbor Master erred in finding that the vessel was abandoned and/or derelict, then: in the case of an emergency seizure; the Harbor Master shall return the vessel to its original location; and in all other cases, take such other action as may be lawful.

## **SECTION 8: HARBOR USAGE FEES & SCHEDULES**

- A. Vessel owners with an annually assigned mooring space in the waters of the Town or vessel owners whose vessels are berthed or operated in said waters for a total of more than 14 days per annum shall pay an annual Harbor Usage Fee to the Town either at the time of their annual mooring space assignment renewal or when indicated below, whichever is sooner. Vessel owners with Town owned float system assignments shall pay their float fees in addition to the Harbor Usage Fee. Commercial fishermen shall pay winch fees, both current and/or past due in addition to Harbor Usage Fee.
1. Any person receiving a new mooring space assignment must pay the Harbor Usage Fee within 30 days of notification of the assignment or risk forfeiture of the assignment.
  2. Vessel owners who are not annual mooring space assignees and whose vessels are berthed or operated in the waters of the Town for a total of more than 14 days per annum shall pay Harbor Usage fee at the same time as they pay excise tax and registration fees or within 30 days of notification by the Harbor Master and upon presentation to the Harbor Master of proof of payment will receive a Harbor Usage Decal to be affixed on a port side of the transom.
  3. Marina operators shall inform all berth renters whose vessels are not included in (2) above and who are berthed at their facility for more than 14 days of the need to remit said fees to the Town. Marina owners shall upon request of the Harbor Master provide a list of persons occupying berths at their facility and a description of their vessels.

4. Mooring assignees that do not own a vessel or do not use their mooring at any time during the year will be required to pay the minimum Harbor Usage Fee in order to maintain their assignments.
  5. Failure to remit the Harbor Usage Fee to the Town within prescribed time limits may result in forfeiture of a mooring assignment.
  6. Use of said waters solely for effecting transient vessel repairs shall not subject the owner or vessel to the aforesaid fees.
  7. The Harbor Board, with the approval of the Board of Selectmen, shall have the authority to assess user fees necessary to manage, maintain and operate the Harbors, Ports, Tidal Waters and Channels within the Town of York, including but not limited to harbor usage fees, transient boat fees, winch fees and administrative and legal fees. Annual fees are due no later than the earlier of the last business day in April or within 30 days of assessment. All fees collected under this section shall be placed in a reserve account and may only be used for improvements to the harbors, ports, tidal waters and channels within the Town of York, including capital improvements, wharf construction and repair, dredging equipment and land acquisitions.
- B. Liability for Costs Vessel owners are liable for all legal and administrative costs incurred in any attempt to collect fees due or to enforce the provisions of this ordinance.

#### **SECTION 9: EFFECTIVE DATE**

This ordinance shall take effect upon adoption by the Legislative Body, and shall remain in effect until amended by the Legislative Body.

#### **SECTION 10: PENALTIES**

Any person who violates this ordinance shall be subject to a civil penalty of \$100.00 for the first offense, \$150.00 for the second offense, and \$200.00 for the third and subsequent offenses, except when said violation shall be a violation of a State or Federal statute providing for additional penalties which will be applicable. Each day that any person shall be found in violation of any of said provisions shall constitute a separate and distinct offense.

#### **SECTION 11: WAIVER/PAYMENT OF FINES**

Any person charged with a violation of this section, shall be allowed to waive such violation and tender to the Town of York the fine amount if paid within 20 days of issuance of the summons. If the waiver fine is paid, no appearance before a District Court Judge or other judicial officer shall be required. If the offender pays the waiver fine, the matter will be closed in the York Police Records system and listed as a subsequent offense for future violations.

If the offender chooses not to pay the waiver fine, he/she shall appear in court on the specified date to answer for the ordinance violation. If the offender is found to have committed the offense in court, fines, applicable court fees, attorney's fees, and prosecution costs may apply.

### **SECTION 12: SEPARABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance or application thereof to any person(s) or circumstance(s) is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision or application and such holding shall not effect the validity of the remaining portions or applications thereof.

### **SECTION 13: APPEAL PROCESS**

- A. Right of Appeal The Harbor Board shall hear the appeal of any person aggrieved by any decision, act, or failure to act of the Harbor Master as it relates to the implementation of this Ordinance.
- B. Power and Duties Appeals shall go forward from the decision of the Harbor Master to the Harbor Board, from the Harbor Board to the Superior Court in accordance with Maine Law. The Harbor Board shall have the following powers and duties: To hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made, or not made, by the Harbor Master in the enforcement of this Ordinance. The Board may affirm, modify or deny the action of the Harbor Master, or may remand the matter to the Harbor Master for further proceedings in accordance with the terms of these Rules and Regulations, by majority vote of those present and voting. In case of a clear conflict of interest a voting member shall withdraw from the case and the Chairman shall designate an alternate member to be a voting member for the hearing.
- C. Appeal Procedure In all cases, a person aggrieved by a decision of the Harbor Master shall file his appeal within thirty (30) days after receipt of a written decision from the Harbor Master. The appeal shall be filed with the Harbor Board on forms to be approved by the Harbor Board, and the aggrieved person shall specifically set forth on said form the grounds for said appeal. Following the filing of an appeal, the Harbor Board shall notify forthwith the Harbor Master and the Town Manager. The appeal shall then be in order for a public hearing within thirty (30) days of the filing date.
- D. The Harbor Board shall hold a public hearing prior to making a decision on an appeal, notice of which shall be made by the Harbor Board, by certified mail to the appellant. Notification shall include the nature of the appeal, and the time and place of the public hearing. Notice of all appeals shall also be published in a newspaper of general circulation and posted in at least three (3) public places within the Town. All notifications must precede the public hearing by at least seven (7) business days.
- E. The Harbor Master, or his designated deputy, shall attend all hearings, and shall present to the Harbor Board all plans, photographs or other material deemed

appropriate for an understanding of the appeal. The appellant's case shall be heard first. The aggrieved party may appear by agent or attorney. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman. Hearings may be continued to other times.

- F. Written notices of the decision of the Harbor Board shall be sent to the appellant, the Harbor Master, the Town Manager and the Municipal Officers within thirty (30) days of the date of the hearing of the appeal, and within seven (7) business days of the decision. Decisions shall be in writing, and shall contain a statement of findings and conclusions, as well as the reasons or basis therefore. Decisions shall be sent to the appellant via Certified Mail.
- G. Appeals granted under the provision of this Section by the Harbor Board shall expire if the work or change involved is not affected within one year of the date on which such appeal is granted, unless as otherwise provided for in the appeal.
- H. If the Harbor Board shall deny an appeal, another appeal of a similar nature shall not be brought before the Board within one year from the date of the denial, unless in the opinion of a majority of the Board, substantial new evidence shall be brought forward or unless the Board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of facts shall have been made.
- I. The appellant shall pay a fee to the Town of York to cover the costs of notification and advertisements concerning an appeal.

