

# CHAPTER 31 COASTAL WATERS ORDINANCE

## ARTICLE I INTRODUCTION

1. **Purpose:** The Coastal Waters Ordinance is hereby established regulating marine activities within the anchorage of the Town of Freeport, Maine, in order to ensure safety to persons and property, to promote availability, preservation and use of valuable public resources, and to create a fair and efficient framework for administration of same.
2. **Authority:** This Ordinance is adopted pursuant to the authority granted by the Town's general police powers, the Home Rule provisions of the Constitution of the State of Maine, 30-A M.R.S.A. section 3001, et seq. and 38 M.R.S.A. section 7.
3. **Applicability:** The provisions of this Ordinance shall apply to all tidal waters located within the boundaries of the Town of Freeport, Maine.
4. **Repeal:** All prior harbor regulations including those enacted in December 1977, as amended, are hereby repealed.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:** Nothing contained herein shall be construed to conflict with the lawful jurisdiction of the United States Government with respect to enforcement of navigation, shipping or anchorage and associated laws of the State of Maine.

## ARTICLE II DEFINITIONS

The “**anchorage**” as used in this Ordinance shall include all tidal waters of the Town of Freeport. Tidal waters extend to the mean high tide line.

The **Harraseeket River anchorage** is that portion of the anchorage upstream from a line drawn between Stockbridge Point and Moore Point running through Pound of Tea Island, including Staples cove and all waters to the north and east thereof to the head of navigation at Porter's Landing and Mast Landing.

**Aggrieved party:** An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Boat:** Boat as used in this Ordinance shall mean any floating object designed and used primarily for self-propelled navigation on the water.

**Boat Launching Facility:** a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Boat Yard:** A place adjacent to tidal waters and located in the Marine Waterfront District, as described in the Town of Freeport Shoreland Zoning Ordinance, where, as a business or gainful occupation, boats are hauled, stored, repaired and/or constructed.

**Channel:** As defined by channel markers.

**Coastal wetland:** All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Commercial Passenger Boat:** "Commercial Passenger Boat" means a boat, which carries passengers for hire, on a charter or scheduled service basis or both. The term does not include the ferry service engaged by the Bustins Island Village Corporation to provide public transportation to Bustins Island.

**Commercial Zone:** That portion of the anchorage which is reserved for the use of commercial fishing vessels and described as bounded on the northeast by a line extending across the river aligned with the current and/or former location of the ice batter pilings at the north end of Brewer's South Freeport Marine (roughly N43 49.299' W070 06.239') and on the southwest by a line extending from the south end of Harraseeket Lobster Company's wharf, to the nearest point of the mudflats which extend into the harbor from Wolf's Neck.

**Frontage-Shore:** The length of a lot bordering on a water body or wetland measured in a straight line, between the intersections of the side lot lines with the shoreline.

**Functionally water-dependent uses** - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

**Houseboat:** A raft, hull, barge or vessel, designed primarily to be used as a commercial establishment or living quarters, rather than navigation.

**Household:** Those persons living in a single dwelling unit.

**Lobster Float:** A float used to store lobsters or related gear.

**Marina:** An all-tide waterfront facility located in the Marine Waterfront District, as described in the Town of Freeport Shoreland Zoning Ordinance, whose activities may include sales, storage and maintenance of boats, and which provides slips for permanent or transient berthing, sells fuel and supplies for boats and provides vehicle parking.

**Marine Vendor:** The word " marine vendor "as used herein shall include any person, having no established or fixed place of business in the Town, selling or offering for sale tangible commodities from the Town Wharf or any of the piers, floats or boats attached thereto and where delivery is made at the time of sale. The word " marine vendor " shall include the words "hawker", "huckster" and " peddler ".

**Marina Mooring:** Mooring assignment used by marinas primarily for rental to transient marine traffic.

**Market value** - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mooring:** A mooring is an underwater device either helix, granite block or mushroom, which tethers boats. A Temporary Mooring is one, which is constructed to be hauled out of the water seasonally. A Permanent Mooring is one, which is constructed to over winter in the water. A Flats Mooring is one, which is located on the mud flats at low tide.

**Non-resident:** All persons not residents of the Town of Freeport are classified as non-resident.

**Non-resident Commercial Marine Enterprise:** A Commercial Marine Enterprise owned by a non-resident of the Town of Freeport.

**Non-resident Commercial Fisherman:** A non-resident of the Town of Freeport who derives a majority of their annual income from lobstering, clamming, or fishing or other marine fishery and who has legally obtained all necessary permits, licenses and approvals.

**Person:** The word "person" as used herein shall include the singular and plural, and shall also mean or include any club, partnership, society or legal entity.

**Piers, docks, wharves and other structures and uses** extending over or beyond the normal high-water line or within a wetland.

**Temporary:** Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

**Permanent:** Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Resident:** Any person who occupied for more than 180 days in the preceding calendar year, real estate which he/she rents, owns or resides within the Town of Freeport.

**Resident Commercial Marine Enterprise:** A Resident Commercial Marine Enterprise is a sole proprietorship, partnership, corporation or other legal entity owned by a resident of the Town of Freeport and located in the Town of Freeport in business for the purpose of sales, storage or maintenance of boats; services to boatyards or marinas or the general public; selling or offering for sale a tangible marine related commodity. To be considered a Resident Commercial Marine Enterprise the principal(s) must prove

- (a) that a majority of their income is derived from the Commercial Marine Enterprise,
- (b) that there is a record of business transactions,
- (c) that the business has separate business quarters defined by lease or contract.

**Resident Commercial Fisherman:** A resident of the Town of Freeport who derives a majority of their annual income from lobstering, fishing or clamming, or any other marine fishery and who has legally obtained all necessary permits, licenses and approvals.

**Resident/Recreational Mooring Assignment:** This category of mooring assignment is limited to persons who are residents of the Town of Freeport.

**Salt marsh:** Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**Salt meadow:** Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**Skiff:** A light rowboat, sometimes called a dinghy, of 14 feet or less in length.

**Slip:** A berthing space at floats or docks.

**Tidal waters:** all waters affected by tidal action during the highest annual tide.

**Upland edge of a wetland:** the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For

purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

**Yacht Club:** A private association, corporation or other legal entity organized to promote recreational boating.

## **ARTICLE III COASTAL WATERS COMMISSION**

### **1 Organization:**

(a) The Coastal Waters Commission shall consist of seven (7) members appointed by the Town Council. Each Commissioner shall be a resident of the Town of Freeport and shall serve without compensation.

(b) Neither a municipal officer nor their spouse may be a member of the Commission.

(c) Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

(d) Commissioners may be removed by the Town Council for cause, after notice and hearing. The Chairperson of the Commission shall notify the Town Council Chairperson of the forfeiture of office by a Commissioner(s).

(e) The term of office of a member shall be three (3) years, except the initial appointments, which shall be as follows: three (3) members for two (2) year terms; and two (2) members for one (1) year term.

(f) The Commission shall annually elect a chairperson, vice - chairperson and secretary from its membership and may create and fill such other offices as it may determine. Officers shall serve one (1) year term and shall be eligible for re-election.

### **2. Procedure:**

(a) The Chairperson shall call meetings of the commission as required. The Chairperson shall also call meetings of the Commission when requested to do so by a majority of the members or by the Town Council. A quorum of the Commission necessary to conduct an official Commission Meeting shall consist of at least four (4) members. The Chairperson shall preside at all meetings of the Commission and shall be official spokesperson of the Commission.

(b) The Secretary shall maintain a permanent record of all Commission meetings and all correspondence of the Commission. The secretary shall be responsible for maintaining those records which are required as a part of the various proceedings which may be brought before the Commission. All records to be maintained or prepared by the Secretary are deemed public and shall be filed in the Municipal Clerk's office and may be inspected at reasonable times.

(c) The Commission may provide by rule, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chairperson upon good cause shown.

(d) The Commission may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every party shall have the right to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) The transcript of testimony, if any, and exhibits together with all papers and requests filed in the proceeding, shall become part of the record and shall include a statement of findings and conclusions, as well as the reasons and/or basis thereof, upon all the material issues of fact, law or discretion presented in the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his or her representative or agent, the Planning Board, agency or office and the municipal officers within seven (7) days of their decision.

(f) An appeal may be taken from any act or decision of the Coastal Waters Commission by procedure as outlined in Article XI of this Ordinance.

3. **Jurisdiction:** The Coastal Waters Commission shall hear any appeal by any person affected directly or indirectly from any decision, order, rule, act or failure to act of the Harbormaster. In deciding any appeal, the Commission shall hear and approve, approve with modifications or conditions, or disapprove the decision, order, rule, act or failure to act of the Harbormaster, from which the appeal is made.

## ARTICLE IV HARBORMASTER

1. The Harbormaster shall enforce all federal, state and local laws, ordinances, rules and regulations over which he or she has been given jurisdiction, including specifically, but not limited to the Coastal Waters Ordinance of the Town of Freeport and the provisions of 38 M.R.S.A., Sections 1-13.

2. The Harbormaster shall oversee the Town's moorings, floats, gangways, wharves, and channels and ensure their proper maintenance is provided for.

3. The Harbormaster shall regularly attend the Coastal Waters Commission meetings and inform the Commission of their activities as well as provide such available information as may be requested by the Commission for the execution of its duties.

## ARTICLE V MOORING ASSIGNMENTS

1. **Registration:** Persons desiring to place moorings in the Harraseeket River anchorage shall apply for mooring assignments each year. During or before January of each year, the Harbormaster shall notify each person who received a mooring assignment the previous year and in fact used this assignment for its prescribed use, and any other applicants who have asked to receive a mooring application, that completed applications shall be returned to the Harbormaster by the applicant no later than March 1st of that year. Applications shall be made on the electronic form provided by the Harbormaster. Paper applications may be made available upon request. Mooring Applications which are between one (1) and seven (7) days late will be assessed a late fee, as established by the Town Council. Persons may request a waitlist application at any time, however each applicant must renew their application each year between January 1<sup>st</sup> and March 31<sup>st</sup>. Any person who fails to renew their waitlist application will be removed from the list. The burden of proof in determining residence, legitimacy of business usage, principal use of a vessel or any issues of adequacy of design or construction, shall be upon the applicant. There shall be a maximum of three hundred fifty (350) moorings, not including flats moorings, located in the Harraseeket River anchorage. The Harbormaster shall decide on the number of moorings applicable in all Freeport tidal waters taking into consideration the concerns of area residents, the ease of access to moorings and any other applicable factors.

- a. Persons desiring to place moorings anywhere in the anchorage of the Town of Freeport, excluding the Harraseeket River anchorage, shall complete a mooring application. Information relative to the application shall be followed as required by section 1 above,-Registration. This article does not apply to boats eight (8) feet or under that are not on a permanent mooring.

2. **Termination:** All persons who had been assigned a mooring the entire previous year whose mooring assignment is to be terminated by the Harbormaster for reasons of non-compliance with the Coastal Waters Ordinance or any other reason shall receive written notification from the Harbormaster no later than January 31. This notice shall state the fact of termination and the reason for termination, and inform the applicant of his/her right to appeal the decision of the Harbormaster to the Coastal Waters Commission as prescribed in Article XI below.

3. **Mooring Assignment Application:** Each application shall contain the following:

- (a) The applicant's name (or applicants' names in the event the mooring assignment is to be held jointly by spouses), complete address, home telephone number, place of employment and work telephone number;
- (b) The boat name, State or Federal registration number, the vessel identification number, the engine number, name and address of boat owner(s);
- (c) The type of boat, i.e. sail, power, inboard or outboard;
- (d) Length of boat and hull configuration, i.e. deep keel, shallow draft;

(e) If the boat is less than twenty feet (20') in length, the type of mooring desired, temporary or permanent;

(f) Name, address and telephone number of person who will set, service and inspect the mooring;

(g) The signature or electronic signature of the applicant and date of application;

(h) Payment of the appropriate fee.

(i) Consent from the applicant allowing the Harbormaster, at any time the boat is occupied, to board and inspect any tanks, valves, pumps and lines, including but not limited to, "Y" valves and electric systems such as Electra San, to insure such tanks, valves, systems, etc. are not set in a position that would allow the discharge of sanitary wastes into a Freeport anchorage.

**4. Fees:** All fees shall follow the fee schedule established by the Town Council.

The Coastal Waters Commission shall review fees at least once every two years and may make recommendations for adjustments to the Town Council.

**5. Mooring Assignment:** All persons who received and used a mooring assignment in the previous year, and whose mooring application was received in a complete and timely fashion, will receive a mooring assignment for the current year on March 15 of that year, unless a delay is announced due to a change in law, environment, etc. After March 16 the Harbormaster will award any remaining mooring assignments to persons who have been on the waiting list. The Harbormaster and the Coastal Waters Commission will maintain a balance of not less than ten percent (10%) non-resident mooring assignments. At all times the following priority order shall be maintained:

- (1) Resident Commercial Fisherman;
- (2) Resident/Recreational;
- (3) Commercial Passenger Boat
- (4) Resident Commercial Marine Enterprise;
- (5) Non-Resident Commercial Fisherman;
- (6) Non-Resident Commercial Marine Enterprise;
- (7) Non-Resident Recreational;
- (8) Resident Subsequent;
- (9) Non-Resident Subsequent.

In any one year not more than twenty-five percent (25%) of new mooring assignments shall be assigned to non-recreational applicants.

**6. Waiting List:** The Harbormaster shall maintain one chronological waiting list with complete application information of all applicants who have applied for but not received a mooring assignment. Persons desiring a place on the waiting list may apply at any time by making out a

mooring application form and filing it with the Harbormaster. The list shall be in eight sections, each section in chronological order as to when the application was received with recreational applications being limited to natural persons:

- (1) Resident Commercial Fisherman;
- (2) Resident/Recreational;
- (3) Resident Commercial Marine Enterprise;
- (4) Non-Resident Commercial Fisherman;
- (5) Non-Resident Commercial Marine Enterprise;
- (6) Non-Resident Recreational;
- (7) Resident Subsequent;
- (8) Non-Resident Subsequent.

A copy of this waiting list, composed of all information required in Article V Section 3 of this Ordinance, shall be posted in the Town Office and shall be provided to all members of the Coastal Waters Commission, and made available for any Commercial Marine Enterprise or any others who request a copy.

**7. Numbers:**

(a) Marinas shall be assigned a total of not more than 15 mooring assignments each. These may not be located in the Commercial zone without approval by the Harbormaster. If any of these moorings shall be rented they shall be considered rental moorings.

(b) Yacht Clubs in existence as of January 1, 1999 shall be allowed not more than 4 (four) mooring assignments each.

(c) All other categories listed in Article V.5 (I)-(II) may apply for one mooring assignment each. Applicants desiring more than one mooring assignment must apply to the Coastal Waters Commission and prove need.

**8. Leasing:** All mooring assignments (with the exception of Marina Rental Moorings) shall be used exclusively for the personal use of the applicant solely for the boat listed in the application. No leasing, subleasing, or assignment of moorings or mooring numbers shall be allowed.

**9. Abandonment of Assignment:** The Harbormaster shall deem abandoned any mooring assignments substantially unused by the applicant for their vessel for a period of more than one season. Subsequent application for a mooring number assignment by that person must be in accordance with the procedure outlined for new applications, including placement in chronological sequence on the waiting list.

**10. Placement:** The Harbormaster shall develop a plan for the placement of moorings in the Harraseeket River anchorage. They shall annually assign locations to each mooring and ensure placement in the correct location. All moorings not located in the correct location shall be moved by the owner at their own expense in accordance with the instructions of the Harbormaster. In the event of the failure of the owner to comply with these instructions, the Harbormaster shall move or remove the improperly located mooring and the cost shall be borne by the owner of the

relocated mooring. Resident commercial fishing vessel owners who request a place in the Commercial zone shall have their moorings assigned there by the Harbormaster as soon as possible.

**11. Construction:**

(a) After April 1, 1987, all moorings in the Harraseeket River anchorage for boats in excess of twenty (20) feet shall be permanent moorings.

(b) Boats under twenty (20) feet in length may be placed upon temporary moorings.

(c) All mooring construction and placement, in the Harraseeket River anchorage of the Town of Freeport, must be approved by the Harbormaster.

**12. Construction Standards in the Harraseeket River Anchorage:** The mooring owner is responsible for the adequacy of all mooring gear, tackle and maintenance.

(a) All permanent moorings shall comply with the following minimum specifications throughout the anchorage.

(1) Each permanent mooring shall consist of a granite block or helix with heavy steel bottom chain attached to a lighter top chain, mooring buoy and a nylon pennant. Nylon or synthetic material as approved by the Harbormaster, may be substituted for the top chain.

(2) All granite blocks shall be constructed of solid granite with steel staples or eyebolt extending completely through the block. Cement blocks, old engines and other miscellaneous weighted objects are unacceptable as mooring anchors in the harbor.

(3) The mooring scope shall be approximately two times the water depth at maximum high water. Total scope shall include bottom chain and top chain together, each of which shall consist of approximately half the total length.

(4) Each mooring must have at least one swivel, which must be placed above the top chain. All swivels and shackles must be larger than the chain diameter. All shackles and swivel pins shall be properly seized. All eyes in the nylon rode shall be fitted with appropriate size thimbles. Pennants connecting the mooring buoy to the moored boat shall be fastened to the lower eye of the mooring buoy and shall consist of nylon line equal to 1 1/2 to 2 times the freeboard at the bow of the boat.

(5) Mooring tackle shall meet the following minimum:

Up to 20' As approved by the Harbormaster.

Registered Boat length (ft)	Granite Block(lb)	Bottom Chain	Chain/Top Rode
Nylon			
20 - 25	2000	1/2	3/8 5/8
25 - 35	2500	1/2	3/8 5/8
35 - 40	3000	3/4	1/2 3/4

40 + As approved by the Harbormaster

(6) Standards for helix moorings are the same as for other types.

(7) Despite dimension standards established herein, any part of a mooring showing excessive wear or any mooring or gear, which does not meet with the Harbormaster's approval, shall not be permitted.

(8) All moorings shall be white in color with a blue horizontal stripe, be at least 18 inches in diameter, and show 2/3 above the water at all times. This device will be marked with owner's name and permit number in a manageable and legible manner.

(9) All moorings shall be of appropriate size and design for the largest size boat likely to be placed thereon.

(10) Wire cable will not be allowed in the anchorage.

(11) Old discarded moorings, mooring chain and related items must be removed from the anchorage.

(b) Temporary Moorings:

(1) The design and construction of all temporary moorings shall be approved by the Harbormaster prior to placement in the water and shall be of either mushroom or Dor-Mor construction.

(2) Hand mixed cement blocks, old engines, and other miscellaneous weighted objects are unacceptable as mooring anchors in the harbor.

(c) Winter:

(1) Wooden spars and hard plastic net buoys may not be used in the Harraseeket River anchorage. Floating rope may be used, but must be counterweighted to prevent excess rope from floating on the surface. Temporary winter mooring items must be approved by the Harbormaster and may not be set before October 15 and must be removed by May 1 each year. Winter hardware remaining in the water after May 1 shall be removed by the Harbormaster at the expense of the owner and an appropriate fine levied in accordance with Article X, Item 3.

(2) Pennants must be removed no later than December 21st.

**13. Setting:**

(a) No temporary mooring shall be set before sunrise on the first working day in April without the express consent of the Harbormaster.

(b) If the applicant who has received a mooring assignment disposes of the boat on that mooring, he or she shall notify the Harbormaster whether the boat will be replaced or the mooring is no longer needed.

**14. Inspection:**

(a) The Harbormaster or their appointed deputy shall inspect and approve or be otherwise satisfied that each mooring is in safe condition before it is placed in the anchorage.

(b) Every second year permanent moorings in the Harraseeket River anchorage shall be inspected at the owner's expense and a report submitted to the Harbormaster. The Harbormaster has the authority to require any necessary maintenance or replacement of parts or the whole mooring, tackle and/or gear.

(c) The Harbormaster shall maintain a file on each mooring, listing the date of the last inspection and the name of the person who last inspected it.

**15. Anchoring:**

(a) Boats may anchor only in those areas and for the length of time permitted in writing by the Harbormaster.

(b) The owner or operator of a boat desiring to anchor must provide a signed consent allowing the Harbormaster, at any time the boat is occupied, to board and inspect any tanks, valves, pumps and lines, including, but not limited to "Y" valves and electric systems such as Electra San, to insure such tanks, valves, systems, etc. are not set in a position that would allow the discharge of sanitary wastes into a Freeport anchorage.

**16. Other Floating Objects:** No mooring in this harbor shall be utilized to secure any floating object other than a single boat without express written permission of the Coastal Waters Commission. The term "boat" as used in this subsection shall include mooring derricks.

(a) Houseboats whether temporary or permanent are prohibited from mooring or anchoring in the Coastal Waters of the Town of Freeport except at marinas, which 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-back flow 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 Town of Freeport;

(b) All lobster floats in the Harraseeket River shall be subject to the approval of the Harbormaster. Maximum size float size will be six hundred forty (640) Square feet and will required to have no less than two (2) moorings, one fore and aft. Mooring weight and tackle will be determined by the minimum mooring requirements. If boats are tied to these floats, then the mooring requirements will be greater than the minimum standards as determined by the Harbormaster.

17. **Flats mooring:** Vessels drawing less than six inches unladen, and other vessels with the express permission of the Harbormaster, may utilize a flats mooring. Flats moorings shall be located and built of such construction as the Harbormaster may approve. They shall be marked by some system to be determined by the Harbormaster so as to be readily identifiable by him. These moorings shall not be included within the three hundred fifty (350) mooring limitation contained in Article V, Section 1 above.

18. **Ownership:** Nothing in this Chapter conveys any property rights in a mooring assignment in the Harraseeket River anchorage. A transfer of a commercial mooring may be made to family members by request at the death of the person holding the mooring. If unassigned, the mooring assignment reverts to the town and shall be assigned to the next eligible person. If a case should arise where a person holding a resident/recreational mooring assignment requests a change to commercial, and then requests a change back to resident/recreational, the request shall be granted. A husband and wife may hold any mooring in common.

19. **Residency Status and Fees:** If a person who holds a valid mooring assignment changes residency status, whether from resident to non-resident or from non-resident to resident, he/she is expected to notify the Harbormaster immediately. In the case of change from resident to non-resident, the Harbormaster will make a determination about fee increase. In the case of non-resident to resident, there will be no remission of fees. Failure to accurately report resident or non-resident status will be considered fraud, and will be subject to penalties under Article X of this ordinance as well as immediate forfeiture of the mooring assignment after notice and hearing.

## **ARTICLE VI TOWN WHARF AND FLOATS**

### **Town Wharf:**

1. The Town of Freeport owns and operates one public wharf and floats, which provide the only all-tide public access to Harraseeket Harbor in the Town. The purpose of the Wharf and Float System, maintained at the public expense, is to provide access to the water for the residents of the Town of Freeport, including Bustins Island, and to assure the facilities use for the benefit of the residents of the Town and for traditional and historic purposes.

(a) Use of the Town Wharf and Floats: A use of the Town Wharf and floats that fits within the definitions of Commercial fishing, lobstering or clamming, Recreation, Commercial Marine Enterprises, Marine Venders or Marinas consistent with the rules and regulations in the Freeport Coastal Waters Ordinance (formerly, Harbor Rules and Regulations) shall be permitted.

(b) Conduct on the Wharf: No persons shall use the wharf and floats to store fish bait or any other offensive or dangerous material. Persons may store equipment and other items necessary for their business for reasonable periods of time as approved by the Harbormaster.

(c) General Authority of the Harbormaster: In addition to other authority granted to the Harbormaster under this Ordinance and under state, federal and local laws, ordinances, rules and regulations, the Harbormaster shall have the general authority of supervisor and shall control the

use of the wharf and floats by any person. The Harbormaster shall strive to insure that all uses of the wharf and floats are consistent with this Ordinance and that all persons using the wharf and floats do so in a safe manner.

(d) Berthing Zone: A berthing zone is hereby established from the southwest face of the existing Town float system which is thirteen (13) feet from the face of the Town floats for the length of the existing Town floats. Boats may berth along the southwest face of the Town float system only within the berthing zone and not outside of it. No boat shall berth in the berthing zone for more than thirty (30) minutes out of each sixty (60) minute period. All boats berthed on the southwest face of the Town floats shall be attended, meaning that a person capable of operating the boat shall be on the boat. Any boat berthed in the berthing zone shall, upon request of the Harbormaster, be moved to facilitate navigation to and from abutting property. No vessels shall be berthed on the southwest face of the Town wharf in the area between the bulkhead and the end of the Town wharf except that berthing may be allowed in that area upon the mutual consent of the Harbormaster and the owner of the land behind the bulkhead, which consent shall not be reasonably withheld. (Reference is made to an agreement dated April 25, 1989 between the Town of Freeport and John Coffin, Constance Coffin, David Coffin and Regis Coffin). Violations of the berthing zone section of this Ordinance shall be subject to a fine as established by the Town Council.

## **2. Town Hoist:**

(a) No launching or landing of boats using the hoist shall be allowed without the permission of the Harbormaster.

(b) Loads shall not exceed the posted hoist limit.

(c) The Harbormaster may terminate any use that he/she deems, in their sole discretion, to be unsafe.

## **Town Floats:**

1. Unless approved by the Harbormaster, all boats secured at the Town Floats shall be attended, meaning that a person capable of operating the boat shall be on the boat at all times.

2. No boat, attended or unattended, may be tied to the Town Floats overnight without the written consent of the Harbormaster. The owner or operator of a boat desiring to tie to a Town Float overnight must provide a signed consent allowing the Harbormaster, at any time the boat is occupied, to board and inspect any tanks, valves, pumps and lines, including but not limited to "Y" valves and electric systems such as Electra San, to insure such tanks, valves, systems, etc. are not set in a position that would allow the discharge of sanitary wastes into a Freeport anchorage.

3. No person will leave any waste on the Town Wharf or Floats.

4. Skiffs may be secured at the finger floats on the north side of the Town Floats provided they comply with all of the below listed conditions:

(a) Only skiffs owned by residents of the Town of Freeport may be left unattended at the finger floats. Non-residents may leave skiffs unattended at the finger floats only with the written permission of the Harbormaster.

(b) Each skiff shall be marked with the owner's name and a dinghy/skiff permit, which will be assigned by the Harbormaster for purposes of identification. The fee for a dinghy/skiff permit shall follow the fee schedule as established by the Town Council.

(c) No skiffs may be secured on the outer faces of the Town Floats.

(d) All skiffs shall be properly secured and maintained, but shall not be secured with chains or wire, nor padlocked to the float.

(e) Outboard motors of twenty-five (25) H.P. or less may be left on skiffs secured at the Town Floats, with the approval of the Harbormaster.

1. No skiff longer than fourteen (14') feet may be secured on the Town Floats.

5. From June 15 to September 15 of each year, no fishing gear and related items shall be left on the town Wharf and Floats for a period of more than twenty-four (24) hours without permission of the Harbormaster. From September 16 to June 14 fishing gear and related items can remain on the Town Wharf and Floats for up to seventy-two (72) hours. At no time can any fishing gear or related materials be placed in public parking spaces.

## **ARTICLE VII TOWN LANDINGS**

In recognition of the fact that the Town of Freeport owns several boat landing sites including the Dunning Boatyard site and the Cove Road site, the following ordinance provisions enforceable by the Harbormaster are made.

1. The Coastal Waters Commission will have responsibility for setting and administering policy and the Harbormaster will have authority over all of these sites.

## **ARTICLE VIII OPERATIONS**

1. No boat shall be operated within the Harraseeket River anchorage at a speed in excess of five knots or cause a wake. This section shall not apply to operation in those two portions of the anchorage bounded as follows:

(a) The northern portion of the anchorage bounded on the east, north and west by the anchorage limits and on the south by a line drawn from the east end of Sandy Beach, so-called, on Weston Point due east (true) to the Wolf's Neck Shore.

## ARTICLE IX DISRUPTIVE CONDUCT

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

Any persons found in violation of this ordinance shall lose their mooring assignment(s) and all rights to use the Town dock, wharfs and floats.

## ARTICLE X PENALTIES

1. It shall be the primary duty of the Harbormaster to enforce the provisions of this Ordinance. If the Harbormaster shall find any provision of this Ordinance being violated, they shall notify the person responsible for said violation, either verbally or in writing, indicating the nature of the violation and ordering the action necessary to correct it. The Harbormaster shall maintain a written record of said notices. In the event the violation compromises public safety or causes or threatens to cause property damage, then notification of the violation shall be the fastest means available. In this case, if contact with the mooring or boat owner or corrective action cannot be made within twenty-four (24) hours, the Harbormaster is authorized to take whatever corrective action is necessary, the expense and risk for which shall be borne by the mooring or boat owner. If the mooring or boat owner fails to satisfy all financial obligations arising out of this incident prior to January 1st of the succeeding year, he or she shall forfeit their mooring assignment until such obligation is satisfied after proper notice and hearing. This section shall not limit in any way the authority of the Harbormaster to act as provided in 38 M.R.S.A., Section 1.

2. **Legal Action:** When the above action does not result in the abatement or correction of the violation condition, the Harbormaster, on behalf of the Town, is authorized to seek any and all actions, legal or equitable. In addition to seeking civil penalties, the Town of Freeport may enjoin any person from violating or continuing to violate a provision of this ordinance and may seek any other legal or equitable remedies necessary to achieve compliance with the requirements of this ordinance. In any such action, which the Town prevails, the Town shall be awarded reasonable attorney's fees and the cost of suit in addition to any other relief to which it may be entitled.

3. **Civil Penalty:** Violation of any provision of this Ordinance shall be deemed a civil violation. The provisions of this ordinance are enforceable by the Harbormaster, Assistant Harbormaster, or any other law enforcement officer whose jurisdiction includes the Town of Freeport. Any person who violates any provision of this ordinance commits a civil violation punishable by a civil penalty of not less than \$100 nor more than \$2,500. A separate violation occurs each day until the violation is ceased or corrected. Commencement of action may be by service of process by a uniform traffic ticket and complaint as provided in 29-A M.R.S.A. § 2601. All civil penalties shall be payable to the Town of Freeport.

**4. Failure to Obey Order of the Harbormaster:**

i. Offense Defined: As provided by 38 M.R.S.A. 13, a person is guilty of failure to obey an order of the Harbormaster if the person intentionally, knowingly or recklessly fails to obey any lawful order of the Harbormaster authorized pursuant to 38 M.R.S.A. 1 et seq.

ii. Penalty: Failure to obey an order of the Harbormaster is a Class E Crime.

5. The Harbormaster may remove the chain of any mooring with improper number, located in an improper place or improperly constructed, if, two (2) weeks after written notice to the owner thereof, said owner fails to correct the problem. Notice shall be in writing and shall include the action to be taken by the owner and the fact that the mooring is subject to removal, and that the owner is liable for a fine.

**6. Abandonment of watercraft**

No person may abandon any watercraft in the harbor or maintain in the harbor any derelict watercraft or watercraft for salvage. For the purposes of this section, the Harbormaster shall determine the status of a watercraft. Such watercraft may be ordered removed by the Harbormaster at the expense of the registered owner and may be sold at auction.

7. The Harbormaster shall suspend for one year or terminate the mooring assignment of any mooring owner for non-compliance with this Ordinance after proper notice and hearing. After one year, the applicant may reapply for a mooring assignment.

**8. Abandonment of tackle**

Any registered mooring holder who abandons or forfeits a mooring space is responsible for removing and disposing of the tackle. Failure of the registered holder to remove such tackle shall constitute abandonment thereof. Such tackle may be ordered removed by the harbormaster at the expense of the registered mooring holder and may be sold at auction according to Article X, 6.

**ARTICLE XI MENACES TO NAVIGATION**

The Harbormaster is authorized to make the necessary and appropriate determination to remove any menace to navigation within the waters of the Town of Freeport. This shall include, but is not limited to, contracting for removal of the menace by the authorities of the State of Maine, Federal Government, or a private contractor at the expense of either the Town of Freeport, some other governmental entity, or the private entity responsible for the creation of the menace. An appeal may be brought to the coastal Waters Commission.

**1. Un-seaworthy, dangerous or deteriorated vessels, and other objects**

No vessel, watercraft or float of any kind whatsoever which is un-seaworthy or in badly deteriorated condition or which is likely to injure persons or damage private or public property, or which might become a menace to navigation, shall be permitted to moor in the Harraseeket

River anchorage or tie up at the town wharf or floats. The Harbormaster and Coastal Waters Commission may separately or jointly determine whether any watercraft is un-seaworthy, dangerous or in badly deteriorated condition and take appropriate steps for its removal. This paragraph shall not apply to vessels in immediate distress as a result of current emergencies.

## **ARTICLE XII APPEALS**

1. The Freeport Coastal Waters Commission exists for the general purpose of studying and evaluating public usage of and access to coastal waters, to advise the Town Council on proposed regulations concerning the Town's coastal waters, supervise the enforcement of these rules and regulations through the Harbormaster, oversee the maintenance and care of Town owned waterfront facilities through the Harbormaster, and in conjunction with State and Federal authorities. The Coastal Waters Commission sits as a board of appeals to hear an appeal from any person aggrieved by any decision, act or failure to act of the Harbormaster. The Commission shall regularly inform the Town Council, Planning Board, and such other boards, committees, commissions, or officials of the Town of its activities, as is appropriate.
  
2. Any and all persons aggrieved directly or indirectly by a decision, order, rule, act or failure to act of the Harbormaster may appeal said decision, order, rule, act or failure to act to the Coastal Waters Commission. In deciding any appeal, the Commission shall hear and approve, approve with modifications or conditions or disapprove the decision, order, rule, act or failure to act from which the appeal is made in accordance with the provisions of Section 604 of the Freeport Administrative Code.
  
3. Such appeals shall be made in writing to the Coastal Waters Commission within five calendar days of the decision, order, rule, act or failure to act from which the appeal is taken. It must state with specificity the decision, order, rule, act or failure to act from which the appeal is taken and the reason for the appeal. The appeal shall be considered by the Coastal Waters Commission at its next regular meeting.
  
4. Any decision, order, rule, act or failure to act by the Harbormaster concerning the location of moorings or boats, as a result of which location there is immediate danger to lives or property shall not be stayed pending appeal.
  
5. An appeal may be taken by any party from a decision of the Coastal Waters Commission, within thirty days after the decision is rendered, to the Superior Court in accordance with the Maine Rules of Civil Procedure.

## **ARTICLE XIII PIERS, DOCKS, WHARVES, BRIDGES AND OTHER STRUCTURES AND USES EXTENDING OVER OR BELOW THE NORMAL HIGH-WATER LINE OF A WATER BODY OR WITHIN A WETLAND**

1. **Authority.** Pursuant to Section 306(C) of the Town of Freeport, Maine Shoreland Zoning Ordinance, the Coastal Waters Commission shall be the reviewing authority for any proposed tidal piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland. For non-tidal waters, the Codes Enforcement Officer and/or the Project Review Board shall be the reviewing authority.
2. **Amendments.** Any amendments to this Article XIII shall be made pursuant to the procedures set forth in Section 203 of the Town of Freeport, Maine Shoreland Zoning Ordinance.
3. **Non-conformance.** The lawful use of any building, structure, or land which is made nonconforming by reason of the enactment of this Ordinance, or which shall be made nonconforming by reason of a subsequent amendment, may be continued, subject to the applicable provisions contained in Section 202 of the Town of Freeport, Maine Shoreland Zoning Ordinance, except that the Coastal Waters Commission shall be the reviewing authority.
4. **Definitions.** Notwithstanding Article II of this Ordinance, the definitions applicable to this Article XIII shall be those found in Section 107 of the Town of Freeport, Maine Shoreland Zoning Ordinance.
5. **Availability.** A certified copy of this Article XIII shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.
6. **Conflicts.** Whenever a provision of this Article XIII conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.
7. **Permit Application.**
  - a. Any organization, person or business seeking to build (or modify) any piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland (are all considered structures and referred to as the “project” in this ordinance) shall receive, as a first step in the municipal review and permitting process, approval from the Freeport Coastal Waters Commission. A letter requesting consideration at a regular meeting of the Coastal Waters Commission must be submitted thirty (30) days in advance to gain access to the next month’s agenda. Written applications shall include the following in duplicate copies of seven (7):
    - i. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent,

representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct;

- ii. Proof that certified letter(s) have been sent to abutters within two-hundred and fifty feet (250') of the proposed project;
  - iii. Scale drawings of the proposed project;
  - iv. Confirmation of the application fee received by the Town of Freeport, as established by the Town Council;
  - v. Visual Map/LAT-LON of proposed wharf;
  - vi. Photographs of proposed site including, if available, aerial photos;
  - vii. Description of highest annual tide and mean low water marks in relation to proposed project.
- b. Applicant or representative shall be available at the Coastal Waters Commission meeting to answer questions which may include the following:
- i. How and where will the permanent and/or temporary project be stored in the winter months? Projects shall not be stored on salt marsh.
  - ii. When will the structure be built?
  - iii. Will abutters be allowed access?
  - iv. Who will build, store and maintain the project?
  - v. Are there future plans for expansion?
  - vi. Have there been any objections from abutters that you are aware of?
- c. Coastal Waters reserves the right to request a site walk during the application process.

## **8. Approval.**

**a. Standards.** The following standards are applicable to all projects.

- i. The project shall be no larger in dimension than is necessary to carry on the activity and is consistent with the conditions, uses and character of the surrounding area; and it shall not adversely affect water use by adjacent properties.

- ii. The total length of a project from the highest annual tide line shall not exceed one hundred twenty-five (125) feet, and no part of the project (*e.g.*, walkway, dock, wharf, platform, ramp or float) may extend more than one-fourth of the way across the width of a water body or wetland, as measured by the total straight line distance from the highest annual tide of the shoreline on which the project would be placed to the highest annual tide mark of an opposing shoreline.
- iii. The property for which the project will be constructed shall have a minimum of sixty (60) feet of shore frontage. No more than one pier, dock, wharf, float or similar structure extending or located below the normal high water line of a water body or within a wetland is allowed on a single lot.
- iv. For projects in non-tidal areas, all portions of a non-residential project shall not be wider than six (6) feet.
- v. New permanent projects on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Codes Enforcement Officer and/or the Project Review Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- vi. Construction of the project must be completed within two (2) years of final approval.
- vii. The project must not unreasonably interfere with customary or traditional public access ways to, or public trust rights (fishing, fowling, and navigation) in, on, or over the submerged lands; unreasonably interfere with fishing or other existing marine uses of the area; unreasonably interfere with existing developed or natural beach areas; unreasonably diminish the availability of services and facilities necessary for commercial marine activities; and unreasonably interfere with ingress and egress of riparian owners. No project located on a river, stream, or brook shall obstruct public access to navigable portions of such water body upstream or downstream of the project. The project may require accommodations such as steps or pier elevations allowing passage over or beneath the structure.
- viii. The project will not pose hazard to navigational channels, nor pose a hazard to navigation by obscuring visibility or by the display of distracting lights or reflective material. If appropriate the project will display appropriate warning lights to aid in navigation and public safety at the discretion of the Harbor Master, the US Coast Guard, or the Army Corps of Engineers.

- ix. The project will not encroach into, interfere with, or pose a hazard to: municipal or federal navigational channels; existing mooring or berthing areas (commercial and recreational); public access, public rights of way, public and private launching ramps in any Freeport Coastal Waters.
  - x. The project will be developed on soils appropriate for such use and construction so as to control erosion.
  
  - xi. The project will not cause water quality or other coastal resources to be degraded including developed or natural beach areas, marshes, grasses and wildlife habitats.
  
  - xii. The project shall be located so as to minimize adverse effects on fisheries, and shall not significantly impact fisheries or shellfish harvesting. Prior to approval applications may be reviewed by the Shellfish Commission.
  
  - xiii. Registration and Identification will be required on all ramps and floats.
  
  - xiv. No new structure shall be built on, over or abutting a float, pier, wharf, dock or other portion of the project unless the structure requires direct access to the water body or wetland as an operational necessity. No existing structure built on, over or abutting a float, pier, wharf, dock or other portion of a project shall be converted to a dwelling unit - residential.
  
  - xv. Structures built on, over or abutting a project, or other structure extending beyond the normal high-water line of a water body or wetland shall not exceed twenty (20) feet in height above the project or other structure.
- b. **Additional Standards.** The Coastal Waters Commission must also determine that the project meets the criteria established in Section 404 of the Town of Freeport, Maine Shoreland Zoning Ordinance.
- c. Once the Coastal Waters Commission grants approval, and before any construction or site preparation begins, the applicant must obtain all Federal, State and local permits, as required, including but not limited to a building permit from Codes Enforcement Officer, permits from the Department of Environmental Protection under the Natural Resources Protection Act, 38 M.R.S.A. § 480-C as subsequently amended, the Army Corps of Engineers. The Coastal Waters Commission must approve any changes or amendments to the original application before construction shall begin.
- d. The Coastal Waters Commission may require that an expert review an application to determine compliance with this Ordinance or to advise how an application may be improved so that it is in compliance. The total cost of any experts shall be paid for by the

applicant. All outside fees shall be paid in full before a Permit required under this Ordinance is issued.

**9. Penalties.**

- a. It shall be the duty of the Codes Enforcement Officer of the Town of Freeport to enforce the provisions of this Ordinance. If the Codes Enforcement Officer shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of any structures, removal of any illegal structures; or the discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. The Codes Enforcement Officer may employ an independent, recognized consultant, if necessary, at the expense of the applicant, to assure compliance with performance standards of this Ordinance and abatement of nuisances.
  
- b. Legal Action and Violation: When any violation of any provision of this Ordinance shall be found to exist, including failure to comply with any provision of this Ordinance, the Codes Enforcement Officer shall notify the Town Manager who shall then initiate any and all actions to be brought in the name of the Town. The Town Manager shall notify the Town Council before any formal action begins.
  
- c. Fines: Any person, firm or corporation being the owner of or having control or use of any building or premises who violates any of the provisions hereof commits a civil violation and is subject to such fines as the Town Council shall have established for violations of this Ordinance and in accordance with 30-A M.R.S.A. section 4452. Each day such a violation is permitted to exist after notification thereof shall constitute a separate offense. All fines collected hereunder shall inure to the Town of Freeport.

**ARTICLE XIV DUMPING OF SEWAGE, OILS AND HAZARDOUS  
WASTE PROHIBITED**

No person may discharge, spill or permit to be discharged sewage, garbage, or other pollutants from any source into the tidal waters within the boundaries of the Town of Freeport 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 there from may flow into such waters.

No oil or other hazardous wastes shall be deposited in town dumpsters, waters or left on Town piers, floats or landings under any circumstances. Such material must be disposed of properly at the Town's designated disposal site as specified in the appropriate waste disposal regulations.

## **ARTICLE XV LICENSING FOR COMMERCIAL PASSENGER BOATS USING TOWN WHARF AND FLOATS**

### **1. PURPOSES**

The purposes of the Article are to fairly allocate the scarce public resources of berthing space and tie-up time at the Freeport Town Wharf and Floats and to protect the health, safety and welfare of users of the Town Wharf and Floats and passengers on Commercial Passenger Boats, which utilize the Town Wharf, and Floats. The Town Wharf and Floats are public property, which the Town manages for the benefit of all the residents of Freeport and it is not the intent of this ordinance to create any private property rights or interests in the use of that public property.

### **2. DEFINITIONS AND INTERPRETATION**

Terms used in this ordinance shall have the same meanings as terms, which are defined in Article II of the Coastal Waters Ordinance. In addition, the following terms have the following meanings.

- a. "Commercial Passenger Boat" means a boat, which carries passengers for hire, on a charter or scheduled service basis or both. The term does not include the ferry service engaged by the Bustins Island Village Corporation (BIVC) to provide public transportation to Bustins Island.
- b. "Resident Applicant" means an applicant for a license under this ordinance who has rented or owned (or resided with a blood relative who has rented or owned) real estate in Freeport and has occupied that real estate, both for at least 6 months during the calendar year in which the application is made.
- c. "Non-resident Applicant" means any applicant for a license under this ordinance who is not a Freeport Applicant.
- d. "New License" means a license issued to an applicant who did not hold a valid license for a Commercial Passenger Boat of the same capacity category on November 30th of the year in which the application is made.
- e. "Operator" means the owner, lessee or other person with the legal right to possession and control of a boat.
- f. "Parking" means off-street parking, which complies with the requirements of the Freeport Zoning Ordinance.
- g. "Renewal License" means a license issued to an applicant who held a valid license for a Commercial Passenger Boat of the same capacity category on November 30th of the year in which the application is made. The applicant must produce documentation that he/she has transported commercial passengers within the Town of Freeport within the previous twelve (12) months.

### 3. REGULATIONS

a. License Required: No Commercial Passenger Boat shall use the Town Wharf and Floats without first obtaining and maintaining a license under this ordinance.

b. Performance Standards: Notwithstanding anything to the contrary in the Coastal Waters Ordinance, Commercial Passenger Boats using the Town Wharf and Floats shall comply with the following standards:

(i) Commercial Passenger Boats shall use only those portions of the Town Wharf and Floats, which have been designated for such use by the Harbormaster;

(ii) No Commercial Passenger Boat shall be tied up or berthed at the Town Wharf and Floats for longer than 30 minutes per hour or more than once per hour;

(iii) Boarding areas shall be kept clean and free of litter. Passengers shall be advised to carry out what they carry in;

(iv) No signs advertising the service shall be allowed on town/public property with the exception of a schedule of times and description of service posted on the public bulletin board;

(v) Amplified sound from commercial passenger boats shall not exceed fifty-five (55) decibels during the day and forty-five (45) decibels at night;

(vi) The operators of Commercial Passenger Boats shall work together on scheduling their services, so that the Town Wharf and Floats are used most efficiently;

(vii) The operators of Commercial Passenger Boats shall be flexible and accommodate other users of the Town Wharf and Floats;

(viii) Advertising on a Commercial Passenger Boat, which uses the Town Wharf and Floats, shall be limited to two (2) signs of sixteen (16) square feet each. A sign with two faces shall be considered two signs; and

(ix) Each Commercial Passenger Boat shall pass necessary U.S. Coast Guard inspection for that vessel's type and class.

c. Parking: The Operator of each Commercial Passenger Boat which utilizes the Town Wharf and Floats shall provide Parking on land which the Operator either (1) owns or (2) leases or otherwise legally controls for a term which equals or exceeds the term of the license under this ordinance. The number of off-street parking spaces shall equal or exceed fifty (50) percent of the sum obtained by adding together the number of passengers the boat is licensed to transport under this ordinance and the number of crew members who operate the boat. This parking requirement does not apply to the ferry service engaged by the Bustins Island Village Corporation when providing public transportation.

d. Insurance: The operator of each Commercial Passenger Boat which uses the Town Wharf and Floats shall maintain liability insurance with policy limits of no less than \$1,000,000 which names the Town of Freeport as an additional insured.

#### **4. LIMITS ON SIZE OF BOATS, NUMBER OF LICENSES, CATEGORIES**

a. Size Limited: No license shall be issued for a Commercial Passenger Boat, which exceeds forty-eight (48) feet in length, or fifteen (15) feet in beam. The beam may increase with the permission of the Harbormaster.

b. Large capacity vessel: a boat which is USCG licensed to transport more than six (6) passengers.

c. Small capacity vessel: a boat which is USCG licensed to transport a maximum of six (6) passengers.

d. Licenses per Category. No more than six (6) licenses for Commercial Passenger Boats shall be issued or shall be in effect at any time.

e. Waiting List: The Harbormaster shall maintain a waiting list of all applicants who have not been issued a commercial passenger license. A copy of the list shall be posted in the office of the Harbormaster. Applications shall be dated upon receipt at the Town Office and shall be considered in chronological sequence (regardless of year received) in accordance with the following priority:

- a. Resident
- b. Non-Resident

#### **5. LICENSE FEES**

The annual fees for a license under the Article shall follow the fee schedule as established by the Town Council.

#### **6. LICENSE APPLICATION FILING PERIOD**

Application for licenses under this ordinance must be received in the office of the Town Clerk on a regular town office business day during the following periods of each year:

- (a) December 1 through December 7 for applications from Freeport Applicants; and
- (b) December 8 through December 15 for applications from Non-resident Applicants.

## 7. APPLICATION REQUIREMENTS

Application for a license under this ordinance shall be made by the Operator of the Commercial Passenger Boat in writing and under oath on a form provided by the Town Clerk. The application shall contain the following information and/or submissions:

- (a) Name of the applicant;
- (b) A brief description of the form of the applicant's business--i.e., sole proprietor, sole proprietor doing business under a trade name, corporation, limited liability company, partnership, etc.;
- (c) The applicant's residence address or local business address;
- (d) The applicant's mailing address, designated by the applicant as the address where the applicant will accept any notices served under this ordinance;
- (e) A photograph of the Commercial Passenger Boat taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be 4" by 6" at minimum;
- (f) A brief description of the types of charter/passenger/for-hire activities to be operated;
- (g) A statement of the maximum number of passengers the applicant will transport in the Commercial Passenger Boat.
- (h) A copy of a certificate of insurance policies complying with the requirements of Section 3.d;
- (i) A description of the parking spaces provided to comply with Section 3.c and a copy of the deed, lease or other instrument, which gives the Operator the legal right to utilize the parking spaces;
- (j) Copies of all United States Coast Guard licenses held by the Operator;
- (k) A copy of the most recent United States Coast Guard Inspection Certificate for the Commercial Passenger Boat if applicable;
- (l) A statement that the applicant has not committed any violations of this ordinance within the year prior to the date of application;
- (m) A statement that the applicant has not, with the year prior to the date of application, operated a Commercial Passenger Boat in an unlawful manner or in any manner so as to constitute a threat to the public health, safety or welfare; and from the date of filing the application until the expiration or surrender of any license issued as a result of the application, the applicant is required to notify the Clerk in writing of any changes in any of the information contained in the application.

(n) A signed consent from the applicant attached to the application allowing the Harbormaster, at any time the boat is occupied, to board and inspect any tanks, valves, pumps and lines, including but not limited to “Y” valves and electric systems such as Electra San, to insure such tanks, valves, systems, etc. are not set in a position that would allow the discharge of sanitary wastes into a Freeport anchorage.

## **8. AWARD OF LICENSES BY COASTAL WATERS COMMISSION**

The Town Clerk shall forward all timely applications to the Coastal Waters Commission, which shall act on the applications as follows:

a. Resident Applicants. At its first meeting in December of each year, the Coastal Waters Commission shall award available licenses to Resident Applicants who qualify, first to applicants for Renewal Licenses, and then to applicants for New Licenses, awarded by drawing lots if there is more than one.

b. Non-resident Applicants. At its first meeting in January of the succeeding year, if all available licenses have not been awarded under paragraph 8(a) above, the Coastal Waters Commission shall award the remaining licenses to Non-resident Applicants who qualify, first to applicants for Renewal Licenses, and then to applicants for New Licenses, awarded by drawing lots if there is more than one.

## **9. QUALIFICATIONS FOR LICENSE**

Before awarding a license under Section 8, the Coastal Waters Commission must find that the applicant qualifies by meeting the following standards:

- (a) the applicant has proven that he/she has either a mooring or other adequate berthing for his/her vessel within the tidal waters of the Town of Freeport;
- (b) the applicant will provide the parking required under section 3.c;
- (c) the applicant has provided evidence of the insurance required by Section 3.d;
- (d) the applicant has been issued all licenses required by the United States Coast Guard for the operation of the Commercial Passenger Boat;
- (e) the applicant has not committed any violations of this ordinance within the year prior to the date of application;
- (f) the applicant has not operated a Commercial Passenger Boat in an unlawful manner or in any manner to constitute a threat to the public health, safety or welfare.
- (g) Notwithstanding the foregoing, if the Commission finds that the applicant does not meet the above standard(s), and provided that the Commission specifically finds that the violation or violations in question did not constitute a threat to the public health, safety or welfare, the

Commission may issue a probationary license conditioned upon the licensee avoiding any further violations for a specified period of time.

## **10. ISSUANCE OF LICENSE BY CLERK**

After the Coastal Waters Commission has awarded the licenses under Section 8, the Town Clerk shall issue the licenses to the successful applicants, to become valid at the date of issuance.

## **11. TERM OF LICENSES**

All licenses issued under this ordinance shall take effect on the date of issuance by the Town Clerk under Section 10 and shall expire one year from the date of issuance.

## **12. EFFECT OF LICENSES**

Licenses issued under this ordinance are valid only for the Commercial Passenger Boat and the Operator identified on the application. Any change in the status of any of those factors must be reviewed and approved by the Coastal Waters Commission upon application made by the license holder.

## **13. REVOCATION OF LICENSES**

The Coastal Waters Commission may revoke a license issued under this ordinance for any of the following causes:

- (a) Failure of the Operator to comply with the qualification standards of Section 9;
- (b) Fraud, misrepresentation, or false statement contained in the application for license;
- (c) Fraud, misrepresentation, or false statement made in the course of carrying on the Operator's business or any Commercial Passenger Boat;
- (d) Any violation of this ordinance;
- (e) Conducting the Commercial Passenger Boat business in any unlawful manner.

Before revoking a license, the Coastal Waters Commission shall provide the Operator with notice and the opportunity to be heard. The Coastal Waters Commission shall give the Operator written notice of the grounds for revocation and of the date, time and place of the hearing, mailed to the Operator at the mailing address designated in the Operator's license application at least 7 days before the scheduled hearing date. If the Operator chooses to waive a hearing, the Operator may surrender the license to the Town Clerk at any time prior to the scheduled hearing.

#### **14. INTERIM PROVISIONS FOR ISSUANCE OF LICENSES**

Notwithstanding the provisions of sections 6 and 8, license applications for the six licenses under this Article shall be accepted for a period of seven days prior to the effective date of this ordinance. On the first town office business day after the effective date, the Town Clerk shall forward the applications to the Coastal Waters Commission. At its first meeting after the effective date, the Coastal Waters Commission shall award the licenses to qualified applicants in each capacity category, first to Freeport Applicants and then to Non-resident Applicants.

#### **ARTICLE XVI BUSTINS ISLAND**

The Bustins Island Village Corporation (BIVC) Ferry shall tie-up for no longer than thirty (30) minutes in any hour at the Town Floats at a Ferry location designated by the Harbormaster for the purposes of boarding and discharging passengers to and from Bustins Island and other Freeport Islands. The Bustins Island Ferry shall have access to the Ferry location on a first priority basis for the above purposes. The BIVC Ferry captain shall coordinate the ferry's docking schedule with the Harbormaster before each season and report any changes during the season. The BIVC Ferry will not have priority over Town float usage for unscheduled trips to Freeport's Islands. The BIVC Ferry shall be attended at all times when at the Town Floats.

*Amended September 7, 2010*

*Amended January 8, 2019, Article V*

*Amended 05/03/22 Shoreland Zoning, Article XIII, misc general*