

ARTICLE IV. COASTAL WATERS\*

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**\*Cross references:** Buildings and building regulations, Ch. 4; land subdivision, Ch. 7; marine activities, structures and ways, Ch. 9; boat mooring, § 9-81 et seq.; mobile homes and mobile home parks, Ch. 11; streets, sidewalks and other public places, Ch. 14; zoning and site plans and flood prevention and protection regulations, Ch. 19.

**State law references:** Authority for harbor committees, 38 M.R.S.A. § 7.

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Sec. 9-90. General.

(a) *Purpose:* The Coastal Waters Ordinance is hereby established regulating marine activities within the tidal waters of the Town of Falmouth, 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.

(b) *Authority:* This article is adopted pursuant to the authority granted by 38 M.R.S.A. section 2 and 30-A MRSA section 3001.

(c) *Applicability:* The provisions of this article shall apply to all tidal waters located within the boundaries of the Town of Falmouth, Maine.

(d) *Repeal:* All prior harbor regulations including those enacted in December 1977, as amended, are hereby repealed.

(e) *Severance:* If any provision or clause of this article or application thereof to any person or persons is held to be invalid, such invalidity shall not affect the validity of other provisions or application, and to this end provisions of this article are declared to be severable.

(f) *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.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-91. Definitions.

As used in this article IV, the following terms shall have the following meanings, except when the context clearly indicates a different meaning:

*Anchorage:* All tidal waters within the boundaries of the Town of Falmouth.

*Boat:* Any floating object designed and used primarily for self-propelled navigation on the water.

*Boat yard:* A place adjacent to tidal waters, where, as a business or gainful occupation, boats are hauled, stored, repaired and/or constructed.

*Channel/fairway:* An area to be utilized for the safe passage of vessels as defined by channel markers. No vessels will be moored or anchored within channel/fairway.

*Commercial passenger boat:* A boat which carries passengers for hire, on a charter or scheduled service basis or both.

*Floating business:* A building constructed on a raft or hull that is represented as a place of business.

*Houseboats:* A raft, hull, barge or vessel, designed primarily to be used as living quarters, and providing living, sleeping, cooking and sanitary facilities, whether temporarily or permanently.

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

*Marina:* An all-tide waterfront facility, whose activities 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:* Any person, having no fixed place of business in the town, selling or offering for sale or rent tangible commodities from the town wharf or any of the floats attached thereto or from the parking area at the town wharf or from any boat tied up at the town wharf, and where delivery is made at the time of the sale.

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

*Mooring:* All means of securing a vessel to a particular location other than a pier or dock and other than temporarily by anchor for a period of less than one week or by attaching to the shore (including out-hauls). The term includes year-round and seasonal moorings.

*Mooring service:* A business engaged in installing and inspecting moorings and which employs qualified mooring inspectors.

*Insurance:* The owner/operator of a mooring service which uses the town wharf shall maintain liability insurance, workers' compensation and federal longshoreman act insurance with policy limits of no less than one million dollars (\$1,000,000.00) which names the Town of Falmouth as an additional insured.

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

*Non-resident commercial marine enterprise:* A commercial marine enterprise without a fixed place of business within the Town of Falmouth for at least one hundred eighty (180) calendar days in the preceding calendar year.

*Non-resident fisherman:* A non-resident of the Town of Falmouth who derives a majority of his/her annual income from lobstering, clamming or fishing or other marine fishery.

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

*Qualified mooring inspector:* A person who satisfies the harbormaster that he/she is qualified to inspect a mooring tackle as to condition and size. Qualifications shall be judged by past experience in installing and inspecting moorings, familiarity with mooring tackle, including the size and kind of mooring tackle needed for the safe mooring of different size vessels.

*Resident:* Any person who occupies a dwelling for more than one hundred eighty (180) days in a calendar year within the Town of Falmouth, a Falmouth real estate taxpayer or registered voter in the Town of Falmouth.

*Resident commercial marine enterprise:* A business located in the town for more than one hundred eighty (180) calendar days in the preceding calendar year and in business for the purpose of sales, storage, service or maintenance of boats. To be considered a resident commercial marine enterprise the business must prove:

- (1) That a majority of its income is derived from the commercial marine enterprise, and
- (2) That the business has separate business quarters defined by lease or contract.

*Resident fisherman:* A resident of the town who derives a majority of his/her annual income from lobstering, fishing or clamming, or any other marine fishery and who has obtained all necessary permits, licenses and approvals.

*Resident/recreational mooring assignment:* This category of mooring assignment is limited to natural persons who are residents of the town.

*Riparian:* Littoral and/or riparian rights under state law are not affected by this article. Any mooring assignment previously termed riparian will fall into its appropriate category with the adoption of this article.

*Skiffs, also known as dinghies:* A light rowboat, of nine (9) feet or less in length.

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

*Town wharf:* The wharf and floats located at end of town landing road in Falmouth.

*Yacht club:* A private association of persons organized to promote recreational boating. (Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-92. Falmouth Harbor/Waterfront Committee.

(a) *Purpose:* The Falmouth Harbor/Waterfront Committee exists for the general purpose of studying and evaluating public use and access to coastal waters; to advise the town council on policy matters and proposed regulations concerning the town's coastal waters; to oversee the maintenance and care of town owned waterfront facilities through the harbormaster and in conjunction with state and federal authorities. The harbor/waterfront committee sits as a board of appeals to hear an appeal from any person aggrieved by any decision, act or failure to act by the harbormaster. The committee 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. The harbor/waterfront committee shall be consulted by the town council before any moratorium on moorings is enacted.

(b) *Organization:*

(1) The Falmouth Harbor/Waterfront Committee shall consist of seven (7) members, with one (1) resident representing handy boat, and one resident representing Portland Yacht Club. All seven (7) members shall be appointed by the town council. Each committee member shall be a resident of the Town of Falmouth and shall serve without compensation.

(2) Neither a municipal officer nor his/her spouse may be a member of the committee.

(3) Any questions 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.

(4) The town council shall have the power to remove any member of the harbor/waterfront committee for cause and shall have the power to replace appointees who leave the committee. The chairman of the committee shall notify the town council chairman of the forfeiture of office by a committee member.

(5) The term of office of a member shall be three (3) years.

(6) The committee shall annually in the month of October elect a chairman, vice-chairman and secretary from its membership and may create and fill such other offices as it may determine. Officers shall serve one (1) year terms and shall be eligible for re-election.

(7) The committee shall conduct its meetings in accordance with Roberts Rules of Order (10th edition).

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 4-24-2006; Ord. of 11-27-2006)

Sec. 9-93. Harbormaster.

(a) The harbormaster shall enforce this article and the provisions of 38 M.R.S.A. sections 1 through 6. The harbormaster may also enforce other state laws and Falmouth ordinances when violations of those laws and ordinances occur within his/her sworn jurisdictional authority. The harbormaster shall be the overseer of the town's moorings, floats, gangways, wharves, and channels and ensure their proper maintenance is provided for.

(b) The harbormaster shall regularly attend the harbor/waterfront committee meetings and inform the committee of his/her activities as well as provide such available information as may be requested by the committee for the execution of its duties.

(c) Upon completion of training and certification by the Maine Criminal Justice Academy, the harbormaster and deputy shall have the authority granted by Title 38 of the Maine Revised Statutes and the authority to carry a weapon and to make arrests.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-94. Mooring assignments.

(a) *Application:* Persons with moorings in the anchorage of the town shall apply for renewal of their mooring assignments each year. By January 1 of each year, the harbormaster shall mail an application to each person who received a mooring assignment the previous year and in fact used this assignment for its prescribed use, and to other applicants who have asked to receive a mooring application. The applicant shall return the completed application to the harbormaster before March 15 that year. Mooring applications which are returned after that date will be assessed a ~~one hundred dollar (\$100.00)~~ late fee as specified in the Falmouth Harbor Fee Schedule. 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.

(b) *Termination:* All persons who had been assigned a mooring and whose mooring assignment is to be terminated by the harbormaster for reasons of non-compliance with this article or any other reason shall receive written notification from the harbormaster. 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 harbor/waterfront committee, as prescribed in section 9-100 below.

(c) *Mooring assignment application:* Each application shall contain the following:

- (1) The applicant's name (or applicants' name in the event the mooring assignment is to be held jointly by adult members of the same household), complete address, home telephone number, place of employment and work telephone number, access point and email address;
- (2) The boat name, state or federal registration number, the vessel identification number, the engine number, name and address of boat owner(s);
- (3) The type of boat, i.e. sail, power, inboard or outboard;
- (4) Length of boat and hull configuration i.e. deep keel, shallow draft;
- (5) Name, address and telephone number of the mooring service who will set, service and inspect the mooring;
- (6) The signature of the applicant and date of application;
- (7) Date of last mooring inspection;

(8) GPS bearings; and

(9) A copy of the current vessel registration, or federal documentation certificate.

The application shall be accompanied by the appropriate fee.

(d) *Incomplete applications:* Each application that fails to provide the above listed information will be deemed incomplete. All applications must include the appropriate fee. Those without the appropriate fee shall be deemed incomplete. Incomplete applications shall be returned to the applicant without further action by the harbormaster. Fraudulent application (which is to include misrepresentation of your access point) is grounds for immediate termination of mooring assignment.

(e) *Mooring fees:* Mooring shall be as set forth in the Falmouth Harbor Fee Scheduled adopted by the Town Council.

~~(1) Residents per mooring . . . \$50.00~~

(including 40 rental moorings--handy boat; 10 guest moorings--Portland Yacht Club)

~~(2) Non-residents . . . \$250.00~~

All non-residents who have moorings in the anchorage and have paid the current fee will be given a permit that will allow them one free launch and retrieval of their boat from the boat ramp.

~~(3) Late fee assessed after March 15 . . . \$100.00~~

(4) All outstanding fees or fines must be paid prior to the issuance of a current mooring sticker.

(f) *Mooring sticker:* A valid mooring registration sticker must be affixed to the boat on the starboard side following the state registration sticker.

~~(g) Boat ramp.--~~

~~(1) Residents Free with proof of residency.~~

~~(2) Non-residents \$10.00 per launch or a seasonal launch permit for \$50.00 (kayaks and jet skis included)~~

~~(3) Commercial launch haulers use \$250.00 yearly.~~

~~(4) Launching or removing a vessel that does not have a Falmouth mooring permit pays \$10.00 per linear foot.~~

(5) Failure to pay appropriate launch fees will result in a violation of this article.

Launch permits shall be available at the Falmouth Town Hall, the harbormasters office and such other convenient locations as the harbormaster may determine. The harbor/waterfront committee shall review fees once bi-annually and may make recommendations for adjustments to the town council.

(h) *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 before June 1 of that year. The harbormaster and the harbor/waterfront committee will endeavor to maintain a balance of not less than ten (10) percent non-resident mooring assignments. At all times the following priority order shall be maintained:

(1) Resident fisherman;

(2) Resident/recreational;

(3) Commercial passenger boat;

(4) Resident commercial marine enterprise;

(5) Resident: additional mooring;

(6) Non-resident recreational;

(7) Rental moorings;

- (8) Non-resident fisherman;
- (9) Non-resident commercial marine enterprise;
- (10) Non-resident; additional mooring.
- (i) *Waiting list:* The harbormaster or town clerk's office 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 fisherman;
  - (2) Resident/recreational;
  - (3) Commercial passenger boat;
  - (4) Resident commercial marine enterprise;
  - (5) Non-resident fisherman;
  - (6) Non-resident commercial marine enterprise;
  - (7) Non-resident recreational;
  - (8) Resident; additional mooring;
  - (9) Non-resident; additional mooring;
  - (10) Rental moorings.

A copy of this waiting list, shall be posted in the town office and shall be provided to all members of the harbor/waterfront committee, and made available for any commercial marine enterprise or any others who request a copy.

- (j) *Numbers:*
  - (1) Marinas shall be assigned a total of not more than forty (40) mooring assignments each. These moorings shall be considered a rental mooring as approved by the U.S. Army Corps of Engineers.
  - (2) Yacht clubs in existence as of January 1, 1999 shall be allowed not more than ten (10) mooring assignments each as approved by the U.S. Army Corps of Engineers.
- (k) *Sole use:* All mooring assignments (with the exception of Army Corps of Engineer Permitted Marina and Yacht Club Moorings) shall be used exclusively for the personal use of the applicant and solely for the boat listed in the application.
  - (l) *Abandonment of assignments:* The harbormaster shall deem abandoned any mooring assignment unused/unpaid by the applicant for his/her vessel for a period of one (1) 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. Extension appeals will be considered on a case by case basis by the harbor master.
  - (m) *Placement.* The harbormaster shall develop a plan for the placement of moorings in the harbor, giving consideration to the size, hull type, construction, windage of boats, and the location of the channel. He/she shall assign/reassign 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 his/her 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. If this is determined to be a hazard or safety issue, the owner must comply within forty-eight (48) hours.

(n) *Mooring construction and placement:* All mooring construction and placement, in the anchorage must be approved by the harbormaster.

(o) All mooring buoys shall be white in color with a blue horizontal stripe and shall have the current permit registration number and owners name in three (3) inch letters painted above the water line in a contrasting color. A letter designation may be placed upon the mooring buoys by marinas, boatyards, yacht clubs and commercial marine enterprises to designate moorings owned by them.

(1) All new or replaced permanent moorings shall comply with the following minimum specifications:

a. Each permanent mooring shall consist of a mushroom, granite block or helix, a minimum one-half ( 1/2) inch heavy steel bottom chain attached to a minimum one-half ( 1/2) inch top chain (a single chain is acceptable), mooring buoy and a pennant: polypropelene use is not acceptable. Each mooring must have one (1) top and swivel; all swivels and shackles must be to the appropriate size diameter.

b. All mooring 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.

c. The mooring scope shall be approximately two times the water depth at maximum high water. Total scope shall include bottom chain and top chain and pennant to the bow of the boat and pennant to the bow of the boat.

d. Recommended mooring guidelines:

TABLE INSET:

Under 15'	power/sail	150 lb mushroom
15'--19'	power/sail	200 lb mushroom
20'--27'	power/sail	250 lb mushroom
28'--30'	power/sail	300 lb mushroom
31'--33'	power/sail	400 lb mushroom
34'--38'	power/sail	500 lb mushroom
39'--45'	power/sail	600 lb mushroom
46'--50'	power/sail	1000 lb mushroom
51'--56'	power/sail	1200 lb mushroom
56'--65'	power/sail	1600 lb mushroom

Granite blocks will equal to four (4) times the weight of a mushroom anchor.

For the safety of his/her boat and that of adjacent boats mooring permit holders are responsible for having their moorings set, inspected and making the required or necessary adjustments or repairs.

e. Despite dimension standard established herein, any parts of mooring showing excessive wear or any mooring or gear, which do not meet with the harbormaster's approval, shall not be permitted.

f. All mooring buoys shall be white in color with a blue horizontal stripe and shall have the current permit registration number and the owner's name in three-inch letters painted

above the **water** line in a contrasting color. A letter designation may be placed upon the mooring buoys by marinas, boatyards, yacht clubs and commercial marine enterprises to designate moorings owned by them.

g. All moorings shall be of appropriate size and designed for the largest size boat likely to be placed thereon, and shall be of a construction approved by the harbormaster.

(2) Winter conditions.

a. Winter spars *must* be used to mark moorings and such spars shall be connected to their moorings with non-floating rope (no wire cable permitted). Winter spars may not be set before September 1 and must be installed by December 31 and removed by June 1 each year. By January 1 all moorings shall have mooring balls exchanged for a winter spar. Winter spars remaining in the **water** after June 1 shall have their mooring removed by the harbormaster at the expense of the owner and be subject to a fine as specified in the Falmouth Harbor Fee Schedule as adopted by the Town Council and a one hundred dollar (\$100.00) fine will be imposed in accordance with subsection 9-105(c).

b. No watercraft (exception: working commercial vessels) will be permitted on mooring between November 30 and March 30 inclusive. Any watercraft may be removed from the **water** at the owner's expense after November 30.

(p) *Setting:* If the applicant who has received a mooring assignment sells, transfers, no longer owns or otherwise loses the boat on that mooring during the course of a year, he/she shall notify the harbormaster immediately. The mooring assignment shall not be assigned or sold to the person purchasing that boat without prior approval of the harbormaster.

(q) *Inspection:*

(1) An approved mooring service shall inspect and approve or be otherwise satisfied that each mooring is in safe condition before it is placed in the anchorage.

(2) Moorings must be inspected every two (2) years by a qualified mooring inspector. A list of qualified mooring inspectors may be obtained by contacting the harbormaster. The harbormaster has the authority to require any necessary maintenance or replacement of parts or the whole mooring, tackle and/or gear. Inspection forms shall be complete and legible.

(3) 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.

(r) *Anchoring:*

(1) No boat/barge shall anchor in the channel/fairway or in a manner so that the boat shall lie, at any tide, in the confines of the channel/fairway.

(2) Boats at anchor may anchor only in those areas of the anchorage permitted by the harbormaster and not to exceed fourteen (14) days.

(s) *Other floating objects:* No mooring in the harbor shall be utilized to secure any floating object other than a single boat, mooring derrick, small boat storage float or lobster raft. All floats/rafts shall have permits from the Army Corps of Engineers, and shall be placed at the direction of the harbormaster.

Lobster rafts shall be allowed by Falmouth residents only, need to be permitted by the Army Corps of Engineers, and shall be placed in the anchorage at the discretion of the harbormaster within the confines of the jurisdiction. Any valid permitted lobster raft on January 1, 2007 is grandfathered.



(t) *Ownership*: Nothing in this article creates an ownership interest in a mooring assignment. If a holder of a resident/recreational or commercial mooring assignment dies, the mooring assignment reverts to the next of kin.

(u) *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 immediately notify the harbormaster. In the case of change from resident to non-resident, the fee will increase the year following the residency change. In the case of non-resident to resident, there will be no remission of fees.

(v) *Number of moorings*:

(1) Residents of the town shall be entitled to register two (2) moorings each year and non-residents shall be entitled to register one (1) mooring each year.

(2) Notwithstanding (a) above, persons with moorings in the coastal waters of the town on December 31, 1985, shall be entitled to register the same number of moorings under this section as they had on December 31, 1985. The rights created by this subsection shall be assignable.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Ord. of 12-18-2007; Amd. of 12-22-2008)

Sec. 9-95. Use of town wharf and landings.

(a) *Tying up*: No vessel other than a permitted skiff shall be made fast to the town wharf except for twenty (20) minutes as required for loading or unloading. There shall be no overnight tie-ups. Exceptions may be made in emergencies only by permission of the harbormaster. No vessel other than the harbormaster's patrol boat shall tie up to the town wharf in the space marked for use by the harbormaster.

(b) *Storage*: Except as provided in subsection (g) below, personal property, including but not limited to lobster traps, motor vehicles, cradles, boats and floats shall not be stored on the town wharf or landing for more than thirty (30) minutes. Any designated loading zone shall be used only for lobster traps, fishing gear and other items in transit.

(c) *Usage*: No person shall loiter, create a public nuisance, or partake of alcoholic beverages on the town wharf or landing.

(d) *Jumping and diving from the town wharf*: Jumping, swimming and diving from, at or near the town wharf is prohibited. Violators may be subject to a fine as specified in the Falmouth Harbor Fee schedule as adopted by the Town Council. ~~not to exceed twenty-five dollars (\$25.00).~~ All fines shall be recovered to the use of the town on complaint or by other appropriate action before a court of competent jurisdiction.

(e) *Obstruction*: It shall be unlawful to obstruct by any means whatsoever the free use of the town 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 harbormaster in case of emergency. The harbormaster 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 shall be responsible for all costs associated with said action.

(f) *Non-commercial/recreational skiffs*: No skiffs, dinghies, or similar vessels shall be allowed on top of the town wharf. Their owners shall maintain such vessels and the owners shall be liable for any damage occurring to the town property or other vessels. Any such vessels maintained in the anchorage and using town facilities for a total [of] or

more than fourteen (14) days per annum shall be registered with the harbormaster by notation on the application or a mooring permit and have the mooring space number and the owner's name visibly displayed on the inside transom of said vessel. Skiffs may be secured at the finger floats on the north side of the floats off the town wharf provided they comply with all of the below conditions:

(1) Effective January 1, 2007 a valid skiff registration sticker must be affixed to any skiff stored at the town wharf or any approved adjacent storage area. Not more than sixty (60) resident skiff registration stickers and thirty (30) non-resident skiff registration stickers shall be issued annually. The registration fee shall be as specified in the Falmouth Harbor Fee Schedule as adopted by the Town Council. ~~fifty dollars (\$50.00) for residents and one hundred dollars (\$100.00) for non-residents.~~ Commercial fishermen shall be exempt from this fee.

Registration stickers shall be available annually on a first come first serve basis the second Saturday in April each year.

(2) Each skiff shall be marked with the owner's name and mooring number for purposes of identification.

(3) No skiffs may be secured on the outer faces of the town floats or under the town landing pier.

(4) All skiffs shall be properly secured and maintained. Skiffs shall not be secured with chains or wire, nor padlocked to the float and will not be left overnight with fuel onboard.

(5) No skiff longer than nine (9) feet may be secured on the town floats.

(6) Skiffs in violation will be impounded and stored at owner's expense.

(7) The town may supply a fleet of municipal dinghies available for public use, in accordance with rules to be established by the harbor master.

(g) *Lobster traps:* The maximum number of traps on floats is forty (40). Traps shall be removed the same day that they are placed on the float and must not obstruct access to floats. No traps or gear shall be permitted on docks or floats on Saturday or Sunday at anytime during the year. No traps are allowed on docks or floats from July 1 until after Labor Day on docks or floats. Traps and bait are not to be dragged down main dock.

(h) *Use of public landing ramp and/or parking area at the town wharf:*

(1) The public landing ramp is intended to be used primarily for noncommercial launching of recreational boats.

(2) The town council may, by order, establish a fee schedule for use of the public landing ramp or parking area or both by non-residents, commercial launchers and venders, which fee schedule shall be kept on file in the town clerk's office. There shall be no fee for resident noncommercial launchers.

a. Upon request by a resident and upon payment of the appropriate fee by non-residents, commercial launchers and venders, the town clerk shall issue a permit authorizing the use of the public landing ramp or parking area or both.

b. Persons launching boats shall have in their possession the required permit and shall display the permit upon request of the harbormaster or his agent.

(3) There will be no parking of trailers in the lower parking lot at any time year round.

(4) The harbormaster shall have the authority to prohibit the use of the public landing ramp and parking area if the harbormaster, in his sole discretion, deems that the activity will interfere with the use of the landing for launching of recreational boats or if the harbormaster deems that use to be unsafe or likely to cause damage to the public landing ramp or parking area or both. Parking for residents only is permitted at the town landing

lower lot as well as the upper lot on Route 88. These resident vehicles must display a current town sticker, which may be purchased for a fee as specified in the Falmouth Harbor Fee Schedule as adopted by the Town Council. ~~three dollars (\$3.00)~~ (good for three (3) years) at the town hall or harbormaster's office upon presenting a current vehicle registration. There is also handicap parking available in the lower and upper lots.

(5) In addition to other penalties set forth in this article, any person who violates this section shall be responsible for the cost of repair or reconstruction should damage to the public landing ramp or parking area or both result from the violation.  
(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Ord. of 12-18-2007; Amd. of 12-22-2008; Amd. of 5-26-2009)

#### Sec. 9-96. Town landings.

The Falmouth Harbor/Waterfront Committee has responsibility for setting and administering policy and the harbormaster has authority over these sites.  
(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-97. Operations.

No boat shall be operated within the anchorage at a speed in excess of five (5) knots, or so as to cause excessive wake.  
(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-98. Disruptive conduct.

It shall be a violation of this article for any person to disrupt the safe and lawful activities, or to threaten the public safety, in or around the docks, wharfs, floats or tidal waters of the town.  
(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-99. Floats; anchorage; menaces to navigation.

The harbormaster is authorized to take whatever action is necessary and appropriate to remove any menace to navigation within the waters of the town. This shall include, but is not limited to, contracting for removal of the menace at the expense of the town, another governmental entity, or the person responsible for the creation of the menace.  
(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-100. Appeals.

(a) 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 harbor/waterfront committee. In deciding any appeal, the committee shall hold a hearing and approve, approve with modifications or conditions or disapprove the decision, order, rule, act or failure to act from which the appeal is made.  
(b) Such appeals shall be made in writing to the committee within five (5) 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 harbor/waterfront committee at its next regular meeting shall consider the appeal.

(c) 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.

(d) Any party may take an appeal from a decision of the harbor/waterfront committee within thirty (30) days after the decision is rendered to the Superior Court in accordance with the Maine Rules of Civil Procedure.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-101. Wharf permits.

Any person who has at the date of enactment of this article, a legal wharf and/or dock system, may expand that wharf and/or dock system only in accordance with the following. An application consisting of scale drawings of the proposed project should be made to the Falmouth Harbor/Waterfront Committee. The applicant shall appear at a harbor/waterfront committee meeting to answer questions. 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 diminish the availability of services and facilities necessary for commercial marine activities; or unreasonably interfere with ingress and egress of riparian owners. The harbor/waterfront committee must approve any changes or amendments to the original application before construction shall begin. Receipt of approval under this section does not relieve the applicant from the responsibility of obtaining approval from other town, state and federal agencies with jurisdiction over the proposed expansion.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-102. Dumping of sewage prohibited.

No person may discharge, spill or permit to be discharged sewage, garbage, or other pollutants from any boat into the tidal waters within the boundaries of the town 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.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-103. Licensing for commercial passenger boats using town wharf and floats.

(a) *Purposes.* The purposes of this section are to fairly allocate the scarce public resources of berthing space and tie-up time at the Falmouth Town Wharf and to protect the health, safety and welfare of users of the town wharf and passengers on commercial passenger boats which may utilize the town wharf. The town wharf is public property which the town manages for the benefit of all the residents of Falmouth and mooring owners and it is not the intent of this article to create any private property rights or interests in the use of that public property.

(b) *Definition and interpretation.* Terms used in this section shall have the same meanings as terms, which are defined in section 9-91. In addition, the following terms have the following meanings.

*Commercial passenger boat* means a boat, which carries passengers for hire, on a charter or scheduled service basis or both.

*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 October 31 next preceding the date on in which the application is made.

*Operator* means the owner, lessee or other person with the legal right to possession and control of a boat.

*Parking* means off-street parking, which complies with the requirements of the Falmouth Zoning Ordinance.

*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 October 31 next preceding the date on which the application is made. The applicant must produce documentation that he/she has transported commercial passengers within the Town of Falmouth within the previous twelve (12) months.

(c) *Regulations.*

(1) License required: No commercial passenger boat shall use the town wharf without first obtaining and maintaining a license under this article.

(2) Performance standards: Notwithstanding anything to the contrary in this article, commercial passenger boats using the town wharf shall comply with the following standards:

- a. Commercial passenger boats shall use only those portions of the town wharf which has been designated for such use by the harbormaster;
- b. No commercial passenger boat shall be tied up or berthed at the town wharf for longer than thirty (30) minutes per hour or more than once per hour;
- c. Boarding areas shall be kept clean and free of litter. Passengers shall be advised to carry out what they carry in;
- d. No signs advertising the service shall be allowed on public property with the exception of a schedule of times and description of service posted on the public bulletin board;
- e. Amplified sound shall not exceed fifty-five (55) decibels during the day and forty-five (45) decibels at night;
- f. The operators of commercial passenger boats shall work together on scheduling their services, so that the town wharf is used most efficiently;
- g. The operators of commercial passenger boats shall be flexible and accommodate other users of the town wharf; and
- h. Each commercial passenger boat shall pass necessary U.S. Coast Guard inspection for that vessel's type and class.

(3) Insurance: The operator of each commercial passenger boat which uses the town wharf shall maintain liability insurance with policy limits of no less than one million dollars (\$1,000,000.00) which names the Town of Falmouth as an additional insured.

(d) *Limits on size of boats, number of license, categories.*

(1) Size limited: No license shall be issued for a commercial passenger boat, which exceeds forty (40) feet in length, or twelve (12) feet in beam. The beam may increase to sixteen (16) feet with the permission of the harbormaster.

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

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

(4) Licenses per category: No more than six (6) licenses for commercial passenger boats shall be issued or shall be in effect at any time.

(5) 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.

(e) *License fees.* The annual fees for license under this section shall be as specified in the Falmouth Harbor Fee schedule as approved by the Town Council.

~~(1) One hundred dollars (\$100.00) for a commercial passenger boat.~~

(f) *License application filing period.* Application for licenses under this article must be received in the office of the town clerk on a regular town office business day during the following periods of each year:

- (1) November 1 through March 1.

(g) *Application requirements.* Applications for a license under this section 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:

- (1) Name of the applicant;
- (2) 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.;
- (3) The applicant's residence address or local business address;
- (4) The applicant's mailing address, designated by the applicant as the address where the applicant will accept any notices served under this article;
- (5) 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 two (2) inches by two (2) inches at minimum;
- (6) A brief description of the types of charter/passenger/for-hire activities to be operated;
- (7) A statement of the maximum number of passengers the applicant will transport in the commercial passenger boat;
- (8) A copy of certificate of insurance complying with the requirements of subsection (c)(3);
- (9) Copies of all United States Coast Guard licenses held by the operator;
- (10) A copy of the most recent United States Coast Guard Inspection Certificate for the commercial passenger boat if applicable;
- (11) A statement that the applicant has not committed any violations of this article within the year prior to the date of application; and
- (12) A statement that the applicant has not, within 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.

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.

(h) *Award of license of harbor/waterfront committee.* The town clerk shall forward all timely applications to the Falmouth Harbor/Waterfront Committee, which shall act on the applications as follows:

(1) Resident applicants. At its first meeting after November 7 of each year, the harbor/waterfront committee 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.

(2) Non-resident applicants. At its first meeting after November 15 of each year, if all available licenses have not been awarded under subsection (h)(1) above, the harbor/waterfront committee shall award the remaining license 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 (1).

(i) *Qualifications for license.* Before awarding a license under subsection (h), the harbor/waterfront committee must find that the applicant qualifies by meeting the following standards:

(1) 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;

(2) The applicant has provided evidence of the insurance required by subsection (c)(3);

(3) The applicant has been issued all licenses required by the United States Coast Guard for the operation of the commercial passenger boat;

(4) The applicant has not committed any violations of this article within the year prior to the date of application;

(5) The applicant has not 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.

(j) *Issuance of license by clerk.* After the harbor/waterfront committee has awarded the licenses under subsection (h), the town clerk shall issue the licenses to the successful applicants, to become valid on January 1 at 12:01 a.m.

(k) *Term of licenses.* All licenses issued under this section shall take effect on the date of issuance by the town clerk under subsection (j) and shall expire on the following December 31 at 11:59 p.m.

(l) *Effect of licenses.* Licenses issued under this section 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 harbor/waterfront committee upon application made by the license holder.

(m) *Revocation of licenses.* The harbor/waterfront committee may revoke a license, after hearing, for any of the following causes:

(1) Failure of the operator to comply with the qualification standards of subsection (i);

(2) Fraud, misrepresentation, or false statement contained in the application license;

(3) Fraud, misrepresentation, or false statement made in the course of carrying on the operator's business or any commercial passenger boat;

(4) Any violation of this article;

(5) Conducting the commercial passenger boat business in any unlawful manner.

Before revoking a license, the Falmouth Harbor/Waterfront Committee shall provide the operator with notice and the opportunity to be heard. The Falmouth Harbor/Waterfront Committee 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 seven (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.

(n) *Interim provisions for issuance of licenses.* Notwithstanding the provisions of subsections (f) and (h), license applications for licenses under this section shall be accepted for a period of seven (7) days prior to the effective date of this section. On the first town office business day after the effective date, the town clerk shall forward the applications to the harbor/waterfront committee. At its first meeting after the effective date, the harbor/waterfront committee shall award the licenses to qualified applicants in each capacity category, first to resident applicants and then to non-resident applicants. (Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-104. Commercial marine ventures.

All commercial marine activities (rafts, pens, lobster buyers, bait dealers, etc.) within the tidal waters of the town require prior approval from the harbormaster subject to location, navigational safety, area and compatibility and to alleviate any problems regarding commercial or recreational fishing and/or navigation. Such structures associated with marine activities shall be maintained in good and serviceable condition.

All commercial marine activities shall be in full compliance with town ordinances and rules and regulations.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

#### Sec. 9-105. Penalties.

(a) *Enforcement:* It shall be the primary duty of the harbormaster to enforce the provisions of this article. If the harbormaster shall find any provision of this article being violated, he/she 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 that the violation 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 1 of the succeeding year, he/she shall forfeit his/her mooring assignment until such obligation is satisfied. 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.

(b) *Legal action:* When the above action does not result in the abatement or correction of the violation condition, the harbormaster is authorized to seek any all actions, legal or equitable. In addition to seeking civil penalties, the town may enjoin any person from violating or continuing to violate a provision of this article and may seek any other legal or equitable remedies necessary to achieve compliance with the requirements of this article. 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.

(c) *Civil penalty:* Violation of any provision of this article shall be prosecuted and relief, fees and penalties granted and assessed pursuant to the provisions of 30-A M.R.S.A. section 4452.



(d) *Failure to obey order of the harbormaster:*

(1) Offense defined: As provided by 38 M.R.S.A. section 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.

(2) Penalty: Failure to obey an order of the harbormaster is a Class E Crime.

(e) *Forfeiture:* Moorings and skiffs abandoned by their owners shall be impounded by the harbormaster. Said abandoned property shall be disposed of according to the procedures outlined established by the harbormaster. Any mooring company whom assists the town in removing said property may petition the harbormaster to obtain the property if, after six (6) months, the owner fails to claim the property. Any skiff left tied to the town float without proper identification or left sunk or awash for a period exceeding forty-eight (48) hours shall be deemed abandoned for the purposes of this section. The town shall not be liable for any damage sustained by an impounded skiff or mooring.

(f) *Removal of moorings:* The harbormaster may remove any mooring with improper number or without a number, or 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.

(g) *Termination and suspension:* The harbormaster shall suspend or terminate for a period of one (1) year both the right to use the town wharf and the mooring assignment of any mooring owner for non-compliance with this article, or failure to comply with any order of the harbormaster given according to the provisions of this article. After one (1) year, the applicant may reapply for a mooring assignment.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-106. Houseboats.

Notwithstanding any other provision of this article to the contrary, houseboats are prohibited from mooring or anchoring in the anchorage 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-backflow valve;
- (3) A sewer connection to a public sewage system;
- (4) A year-round, all weather supply of electricity;
- (5) Parking as required by the codes and ordinances of the municipality where the marina is located; and
- (6) Compliance with the applicable land use codes.

(Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-107. Aquaculture ventures.

All aquaculture ventures (mussel rafts, oyster farming, salmon pens etc.) must be brought before the harbor/waterfront committee and the harbormaster, who shall hold a public hearing on the proposed venture. No aquaculture venture involving the use of rafts, pens or other structures in the anchorage may proceed without the approval of the harbormaster. The harbormaster shall approve or deny the proposed venture based upon the effects of the proposal on public safety and navigation. The harbormaster may require

that the person proposing the aquaculture venture to have all applicable state and federal permits before the harbormaster grants his/her approval.

(Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-108. Mooring services rules and regulations.

(a) No person shall install or inspect moorings or offer to install or inspect moorings for hire within the anchorage without first registering the mooring service with the harbormaster.

(b) Mooring services operating within the anchorage shall adhere to the following rules:

(1) Mooring buoys shall comply with the requirements of subsection 9-94(o)(1)(f) before being set or re-set.

(2) A certificate of insurance indicating the coverages set forth in subsection 9-91 as listed under the definition (mooring service) shall be provided to the harbormaster annually.

(3) Approval of the harbormaster shall be obtained at least two (2) days prior to setting, hauling out, relocating or adjusting any mooring. The service shall provide to the harbormaster the location, by site and section, of such mooring before and after the action for which approval is sought.

(4) Moorings for which the service is responsible shall be readjusted within two (2) days after notification by the harbormaster.

(5) All new moorings being set must be registered and have had a complete mooring inspection.

(6) Mooring services shall inspect moorings for which they are responsible at least once every two (2) years. Failure to perform such inspections may result in rejection of any mooring renewal application for that mooring; the harbormaster's causing the mooring to be inspected at the owner's expense; and/or an order to remove the mooring tackle at the owner's expense.

(c) Any mooring service which fails to comply with the rules in this section is subject to having its privilege to operate in the anchorage suspended by the harbormaster.

(Ord. of 1-27-2003; Ord. of 11-27-2006)