

2015

West Bath Select Town Ordinances

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ORDINANCE

EXEMPTING ELIGIBLE ACTIVE DUTY MILITARY PERSONNEL FROM VEHICLE EXCISE TAX

Section 1. Authority.

This ordinance is enacted pursuant to 36 M.R.S.A. § 1483-A, which expressly authorizes such ordinances.

Section 2. Excise tax exemption; qualifications.

Vehicles owned by a resident of this municipality who is on active duty serving in the United States Armed Forces and who is either permanently stationed at a military or naval post, station or base outside this State or deployed for military service for a period of more than 180 days and who desires to register that resident's vehicle(s) in this State are hereby exempted from the annual excise tax imposed pursuant to 36 M.R.S.A. § 1482.

To qualify for this exemption, the resident must present to the municipal excise tax collector certification from the commander of the resident's post, station or base, or from the commander's designated agent, that the resident is permanently stated at that post, station or base or is deployed for military service for a period of more than 180 days.

For purposes of this section, "United State Armed Forces" includes the National Guard and the Reserves of the United States Armed Forces.

For purposes of this section, "deployed for military service" has the same meaning as in 26 M.R.S.A. § 814(1)(A).

For purposes of this section, "vehicle" has the same meaning as in 36 M.R.S.A. § 1481(5) and does not include any snowmobiles as defined in 12 M.R.S.A. § 13001.

Section 3. Effective date; duration.

This ordinance shall take effect at the adjournment of the Town Meeting at which it is adopted and shall remain in effect until it or 36 M.R.S.A. § 1483-A is repealed.

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Town of West Bath, Maine

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Board of Assessment Review Ordinance

BOARD OF ASSESSMENT REVIEW ORDINANCE

Adopted at Special Town Meeting on March 1, 2005.

Section 1. Establishment.

Pursuant to 30-A M.R.S.A. § 2526(6), a Board of Assessment Review is hereby established for the Town of West Bath, Maine.

Section 2. Composition; qualifications; terms; vacancies.

The Board shall consist of 3 members and 2 alternates who shall be appointed by the Municipal Officers and who shall be registered voters of the Town. No Municipal Officer or Assessor may be a member. Members shall serve for terms of 3 years or until their successors are appointed, except that for transition purposes, initial terms shall be staggered so that as nearly an equal number of terms shall expire annually. Vacancies shall be filled within thirty (30) days by appointment by the Municipal Officers for the unexpired term.

Section 3. Officers; meetings; quorum; procedures.

The Board shall annually elect from its membership a Chairman and a Secretary. The Chairman shall call meetings as necessary, shall preside at all meetings, and shall designate alternates to serve in place of members who are absent or disqualified. The Secretary shall maintain a record of all proceedings including all correspondence of the Board. All meetings and records shall be subject to the Maine Freedom of Access Act, 1 M.R.S.A. § § 401-410, except as otherwise authorized by law. A quorum necessary to conduct business shall consist of at least 2 members. The Board's procedure shall be governed by 30-A M.R.S.A. § 2691(3).

Section 4. Powers and duties.

The Board shall hear and decide all appeals properly taken from the refusal of the Municipal Officers or Assessors to make such property tax abatements as are asked for. The Board may take such evidence and testimony as it deems necessary and may grant such abatements as it thinks proper. If the Board fails to give written notice of its decision within 60 days of the date the appeal is filed, unless the appellant agrees in writing to further delay, the appeal shall be deemed denied. The Board's decisions may be appealed in accordance with 36 M.R.S.A. § 843.

ORDINANCE TO ESTABLISH BOARD OF ROAD COMMISSIONERS

Section 1. Authority and Purpose.

This Ordinance is enacted under General Home Rule Authority granted under the Maine Constitution, Article VIII, Part Second, Section 1, pursuant to the Home Rule Provisions of Title 30-A, Chapter 111, Section 2101 et. seq., pursuant to the authority of municipalities to enact Ordinances in accordance with Title 30-A, Chapter 141, Section 3001 et. seq., and under the specific authority of 30-A M.R.S. Section 2526(7)(C).

The purpose of this Ordinance is to establish a Board of Road Commissioners to carryout road and highway related functions within the Town of West Bath and to set forth the powers and duties of the Board in connection with carrying out these functions.

Section 2. Board Established; Terms.

There is hereby established a three-member Board of Road Commissioners. The Board of Selectmen shall constitute the Board of Road Commissioners. The terms of each member of the Board shall coincide with the terms of each member's service as Selectman.

Section 3. Applicability.

This Ordinance and the powers and duties of the Board of Road Commissioners shall apply to all public ways, bridges, highways, roads, streets, sidewalks, parking areas, and any other areas within the jurisdiction of the Town and pertaining to the passage and travel of motor vehicles.

Section 4. Duties.

The Board of Road Commissioners shall be required to perform the following duties:

A. To open and keep in repair all legally established highways, Town ways and streets within the Town of West Bath so as to be safe and convenient for travelers with motor vehicles, in accordance with the requirements of 23 M.R.S. Section 3607.

B. To provide for all repairs to highways and bridges within the Town as may be necessary and appropriate for the safe passage of motor vehicles and to take such measures as may be appropriate to protect the public and motor vehicle operation, where it is determined that conditions exist that create a hazard and/or render it unsafe to travel with motor vehicles, pursuant to the requirements of 23 M.R.S. Section 2407.

C. To provide for proper maintenance, repairs, renovations, improvements, and construction pertaining to all legally accepted Town ways, in order to maintain public safety.

D. To provide for the reconstruction of Town ways where the Board deems it to be necessary and appropriate to provide or improve safe and convenient motor vehicle travel.

E. To undertake such administrative activities and provide administrative services in order to accomplish the duties outlined above including, but not limited to, the following:

1. Contract with outside agencies and organizations to provide services.
2. Provide for oversight and supervision of all work on Town ways and related road activities.
3. Hire employees to perform road services.
4. Provide for periodic inspections as from time to time may be required to ascertain the condition of Town ways and the necessity for maintenance, repair, improvements, construction or reconstruction work.
5. Plan and schedule road maintenance, repair, improvement, construction or reconstruction activities and to employ the services of engineers or other professionals to develop specifications for these activities.
6. Purchase and/or provide for necessary services, materials, and equipment.
7. Administer funding for all road related activities under their jurisdiction.
8. Administer and approve the expenditures of all funding relating to Town ways.
9. Purchase materials, equipment, and services as may be required by the Town.
10. Create a capital expenditures budget and road maintenance and operation budgets to fund road maintenance, repair, improvement, construction, and reconstruction activities.
11. Provide all winter maintenance of Town roads including, but not limited to, plowing, sanding, salting and snow removal.
12. Provide appropriate road signage where deemed appropriate.
13. Issue and administer any and all permits that may be required with regard to road usage and/or maintenance, repair, improvement, construction and reconstruction activities.

14. Administer and oversee any bid process required for work on Town ways and to reserve the right to reject any and all bids and to award bids under such terms and conditions as the Board deems to be in the best interests of the Town.

F. Provide any and all other services, activities, materials and equipment relating to the administration of Town ways in the Town of West Bath.

Section 5. Powers.

In order to fulfill the duties outlined above, the Board shall have all powers necessary and appropriate to carry out these duties including, but not limited to, the following:

1. Develop policies and guidelines relating to all public ways and appurtenances within the Town of West Bath.
2. Develop and administer operating and capital budgets for the administration and funding of projects and regular road operations.
3. Enter into contracts on behalf of the Town with regard to any and all aspects relating to road services including the authority to hire and/or provide for personnel, supervision, technical and engineering services, and for the purchase of services, materials and equipment where deemed appropriate.
4. Contract, where deemed appropriate, for a period not to exceed three (3) years for all winter maintenance activities including, but not limited to, plowing, sanding, salting, snow removal, and the provision of winter maintenance materials.
5. Conduct and perform administrative details relating to road activities including, but not limited to, the employment of individuals and supervision of those individuals, employment and contracting with outside individuals or entities to provide services relating to road activities.
6. Supervise and oversee all road activities.
7. Plan and schedule all road activities.
8. Provide for equipment, equipment maintenance and operation.
9. Make purchases necessary to administer all road accounts and activities.
10. Have unobstructed access to all public way and conduct road inspections as may be deemed necessary and appropriate.
11. Have full power and authority to perform and exercise any and all duties incumbent upon Road Commissioners under the Laws of the State of Maine or Town Ordinance.

FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN OF WEST BATH, MAINE

ENACTED: _____
Date

EFFECTIVE: _____
Date

CERTIFIED BY: _____
Signature

CERTIFIED BY: _____
Print Name

Title

Affix Seal

FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of West Bath, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of West Bath, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of West Bath, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of West Bath has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of West Bath having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of West Bath, Maine.

The areas of special flood hazard, Zones A and AE, for the Town of West Bath, Sagadahoc County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Sagadahoc County, Maine," dated July 16, 2015 with accompanying "Flood Insurance Rate Map" dated July 16, 2015 with panels: 195F, 211F, 212F, 213F, 214F, 260F, 276F, 277F, 278F, 279F derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Sagadahoc County, Maine," are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Planning Board and Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of West Bath, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;

- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.2 apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones AE, from data contained in the "Flood Insurance Study - Sagadahoc County, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model), including information obtained pursuant to Article VI.K. and IX.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- K. The following certifications as required in Article VI by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 3. a certified statement that bridges will meet the standards of Article VI.M.;
 4. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$50.00 shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Planning Board and Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Planning Board and Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 1. the base flood and floodway data contained in the "Flood Insurance Study - Sagadahoc County, Maine," as described in Article I;
 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Planning Board and Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,

3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
 - D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
 - E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
 - F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
 1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation

Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. All Development - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. Sanitary Sewage Systems - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. On Site Waste Disposal Systems - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. Watercourse Carrying Capacity - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. Residential - New construction or substantial improvement of any residential structure located within:

1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.

G. Non Residential - New construction or substantial improvement of any non-residential structure located within:

1. Zones AE, shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:

- a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D., or
- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

H. Manufactured Homes - New or substantially improved manufactured homes located within:

1. Zones AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
- b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Article VI.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and

- b. meet the anchoring requirements of Article VI.H.1.c.

I. Recreational Vehicles - Recreational Vehicles located within:

- 1. Zones A and AE, shall either:
 - a. be on the site for fewer than 180 consecutive days,
 - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
 - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

J. Accessory Structures - Accessory Structures, as defined in Article XIV, located within Zones A and AE, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

- 1. be 500 square feet or less and have a value less than \$3000;
- 2. have unfinished interiors and not be used for human habitation;
- 3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
- 4. be located outside the floodway;
- 5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
- 6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -

- 1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 2. In Zones A and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that

the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

- a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
3. The enclosed area shall not be used for human habitation; and,
4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. Bridges - New construction or substantial improvement of any bridge in Zones A and AE shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and

2. a registered professional engineer shall certify that:

- a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
- b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A and AE shall:

- a. have the containment wall elevated to at least one foot above the base flood elevation;
- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
- c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A and AE, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

P. **Coastal Floodplains** -

1. All new construction located within Zones A and AE shall be located landward of the reach of mean high tide except as provided in Article VI.P.2.
2. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.

- b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
- c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
- d. The structure shall have unfinished interiors and shall not be used for human habitation.
- e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

- 1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
- 2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
- 3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
- 4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
- 5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the Elevation Certificate and the applicant's written notification; and,
 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be

signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE X - APPEALS AND VARIANCES

The Board of Appeals of the Town of West Bath may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and,
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - 1. other criteria of Article X and Article VI.K. are met; and,
 - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Planning Board and Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board and Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE XI - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
 - 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 - 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 - 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 - 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 - 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XII - VALIDITY AND SEVERABILITY

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

ARTICLE XIV - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - means a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Special Flood Hazard - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

Base Flood - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Building - see **Structure**.

Certificate of Compliance - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Code Enforcement Officer - A person certified under Title 30-A MRSA, Section 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

Conditional Use - means a use that because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

Development - means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

Digital Flood Insurance Rate Map (FIRM) – see **Flood Insurance Rate Map**

Elevated Building - means a non-basement building

- a. built, in the case of a building in Zones A or AE, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L..

Elevation Certificate - An official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

Flood or Flooding - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Flood-prone Area - means any land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this ordinance.

Manufactured Home - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply

facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) - means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

New Construction - means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

North American Vertical Datum (NAVD)- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

100-year flood - see **Base Flood**.

Recreational Vehicle - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

Start of Construction - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it

include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.

Variance - means a grant of relief by a community from the terms of a floodplain management regulation.

Violation - means the failure of a structure or development to comply with a community's floodplain management regulations.

ARTICLE XV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

60.3 (c coastal) Rev. 01/15
Prepared by DACF/JP

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Town of West Bath, Maine

(207) 443-4342 / Fax (207) 443-3256

Amended State Junkyard Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 29-A MRSA §1106-A is enacted to read:

§1106-A. Municipal notification

— The Secretary of State shall provide written notice of all license decisions under section 1106 to the code enforcement officer or municipal designee of the municipality in which the applicant for a recycler license proposed its facilities to be located. If any proposed location is not within an organized municipality, the Secretary of State shall provide written notice to the county commissioners for that location.

Sec. 2. 30-A MRSA §3751, as amended by PL 1993, c. 173, §1, is further amended by adding at the end a new paragraph to read:

Junkyards, automobile graveyards and automobile recycling businesses pose potential risks to the environment, particularly to groundwater and surface water quality if gasoline, oil or other fluids are not managed and disposed of properly. Proper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens. These facilities may create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly. For these reasons, it is declared that these facilities are appropriately subject to certain environmental and operational standards and to appropriate municipal and state regulation.

Sec. 3. 30-A MRSA §3752, sub-§1, as amended by PL 1995, c. 65, Pt. A, §130 and affected by §153 and Pt. C, §15, is repealed and the following enacted in its place:

1. Automobile graveyard. "Automobile graveyard" means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

A. "Automobile graveyard" does not include:

— (1) An area used for temporary storage by an establishment or place of business that is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable. In order for a vehicle's storage to be considered temporary, it must be removed from the site within 180 calendar days of receipt;

— (2) An area used to store, organize, restore or display a motor vehicle or parts of vehicles that are collected by an automobile hobbyist and that are antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities

comply with all applicable federal and state statutes and rules and municipal ordinances. For the purposes of this subparagraph, an automobile hobbyist is a person who is not primarily engaged in the business of selling any of the above vehicle or parts from those vehicles;

(3) An area used for the parking or temporary storage of vehicles or equipment by a municipality, quasi-municipal entity or state or federal agency or by a dealer, equipment dealer, trailer dealer or vehicle auction business as defined in Title 29-A, section 851; or

(4) An area used for the temporary storage of operational farm tractors and related farm equipment, log skidders, logging tractors or other vehicles exempted from registration under Title 29-A, chapter 5.

Sec. 4. 30-A MRSA §3752, sub-§1-A, as enacted by PL 1993, c. 173, §2, is amended to read:

1-A. Automobile recycling business. "Automobile recycling business" means the business premises of a person dealer or a recycler licensed under Title 29-A, sections 851 to 1112 who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, ~~provided that as long as~~ as 80% of the business premises specified in the site plan in section 3755-A, subsection 1, paragraph C is used for automobile recycling operations.

Sec. 5. 30-A MRSA §3752, sub-§4, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

4. Junkyard. "Junkyard" means a yard, field or other outside area used to store, dismantle or otherwise handle:

A. Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances ~~and~~ or furniture;

B. Discarded, scrap and junked lumber; and

C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material, ~~and.~~

~~D. Garbage dumps, waste dumps and sanitary fills.~~

Sec. 6. 30-A MRSA §3752, sub-§6, as enacted by PL 1993, c. 173, §3, is repealed.

Sec. 7. 30-A MRSA §3754, as amended by PL 1999, c. 761, §5, is further amended to read:

§3754. Hearings

Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish, ~~operate or maintain an~~ a new automobile graveyard, automobile recycling business or junkyard and may hold public

hearings annually regarding the relicensing of these facilities. They shall Municipal officers or county commissioners shall require an applicant to provide proof of mailing the notice to abutting property owners of an application. Municipal officers or county commissioners shall also post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. The municipal officers or county commissioners shall give written notice of the application to the Department of Transportation establish a new automobile graveyard or automobile recycling business to the automobile dealer licensing section of the Department of the Secretary of State, Bureau of Motor Vehicles by mailing a copy of the application at least 7 and not more than 14 days before the hearing. The municipal officers or county commissioners shall give written notice of the application to a public water supplier for any automobile graveyard, automobile recycling business or junkyard located within its source water supply area. The notice may be given by mailing a copy of the application at least 7 and not more than 14 days before the hearing.

Sec. 8. 30-A MRSA §3754-A is enacted to read:

§3754-A. Limitations on graveyard, automobile recycling business and junkyard permits

1. Highways; Interstate System and Primary System. A permit may not be granted for an automobile graveyard or junkyard within 1,000 feet of the right-of-way of any highway incorporated in both the Interstate System and Primary System or within 600 feet of the right-of-way of any other highway, except for:

A. Those automobile graveyards or junkyards that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening required by this paragraph must be:

(1) At a height, density and depth sufficient to accomplish complete screening from ordinary view;

(2) Well constructed and properly maintained at a minimum height of 6 feet;

(3) Placed outside of the highway right-of-way; and

(4) Acceptable to the municipal officers or county commissioners; and

B. Those automobile graveyards or junkyards located within areas that have been zoned for industrial use and located more than 600 feet but less than 1,000 feet from the right-of-way of any highway incorporated in both the Interstate System and Primary System.

2. Limitation on new permits. A permit may not be granted for an automobile graveyard or junkyard established after October 3, 1973 and located within 100 feet of any highway.

3. Public facilities. A new permit may not be granted for an automobile graveyard or junkyard that is:

A. Located within 300 feet of a public facility, including, but not limited to, a public park, public playground, public

bathing beach, school, church or cemetery; and

B. Within ordinary view from a public facility under paragraph A.

4. Public and private water supplies. A permit may not be granted for an automobile graveyard, junkyard or automobile recycling business that handles junk, scrap metal, vehicles or other solid waste within 300 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the automobile graveyard, junkyard, automobile recycling business or the owner's or operator's abutting residence. This prohibition does not apply to wells installed after an automobile graveyard, junkyard or automobile recycling business has already received a permit under section 3753.

Automobile graveyards, junkyards and automobile recycling businesses operating under the terms of permits issued prior to the effective date of this subsection and handling junk, scrap metal, vehicles or other solid waste within 300 feet of wells that serve as public or private water supplies may continue to operate in those locations under the terms of those permits. Municipal officers or county commissioners may renew a permit allowing the continued handling of junk, scrap metal, vehicles or other solid waste within 300 feet of a well serving as a public or private water supply as long as no further encroachment toward the well occurs and there is no evidence of contamination of the well.

5. Operating standards. All automobile graveyards and junkyards permitted pursuant to section 3753 are required to comply with the following standards:

A. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, battery acid, engine coolant, gasoline and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;

B. A vehicle containing fluids may not be stored or dismantled:

(1) Within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5;

(2) Within the 100-year floodplain; or

(3) Over a mapped sand and gravel aquifer;

C. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or tidal waters of the State or on the ice of inland waters or tidal waters or on the banks of inland waters or tidal waters in such a manner that they may fall or be washed into these waters; and

D. Junkyard and automobile graveyard owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale, trade or personal use.

6. Rules. A permit, other than a limited-term permit as described in this section, may not be granted for an automobile

graveyard or automobile recycling business that is not in compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of Title 29-A, chapter 9. Municipal officers or county commissioners may award a limited-term permit conditioned upon an automobile graveyard's or automobile recycling business's demonstrating compliance with the provisions of Title 29-A, chapter 9 within 90 calendar days of the issuance of the municipal or county limited-term permit.

7. Local ordinances. This subchapter may not be construed to limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards, automobile recycling businesses and junkyards that the municipality determines reasonable, including, but not limited to, ordinances concerning:

- A. Compliance with state and federal solid waste and hazardous waste regulations;
- B. Fire and traffic safety;
- C. Levels of noise that can be heard outside the premises;
- D. Distance from existing residential or institutional uses;
- E. The effect on groundwater and surface water, as long as municipal ordinances on groundwater are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection; and
- F. Best management practices for automobile graveyards, junkyards and automobile recycling businesses developed by the Department of Environmental Protection.

Municipal officers or county commissioners shall consider compliance with these local ordinances in deciding whether to grant or deny a permit for any automobile graveyard, automobile recycling business or junkyard and in attaching conditions of approval to a permit.

8. Applicability. Municipalities may apply local ordinances adopted previously under subsection 7 pertaining to automobile graveyards and junkyards to an automobile recycling business without amending those ordinances to include automobile recycling businesses. A municipality must provide notice of its intent to apply these ordinances at the time an application for an automobile recycling business permit is filed.

9. Right of entry. Municipal officers or their designees may, to carry out the provisions of this subchapter or to determine compliance with any laws, ordinances, license or permit approvals, decisions or conditions:

- A. Enter any automobile graveyard, junkyard or automobile recycling business property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances set forth in accordance with this subchapter; and
- B. Enter any building on the property with the consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the laws or ordinances set forth in accordance with this subchapter.

A municipal officer's or designee's entry onto property under this subsection is not a trespass.

Sec. 9. 30-A MRSA §3755, as amended by PL 1993, c. 173, §5, is repealed.

Sec. 10. 30-A MRSA §3755-A, sub-§3, ¶¶A, B and F, as enacted by PL 1993, c. 173, §6, are amended to read:

A. The site of the yard must be enclosed by a visual screen ~~at least 6 feet high and built in accordance with rules adopted by the Department of Transportation pursuant to that complies with the screening requirements of section 3759 3754-A.~~

B. A vehicle ~~with an intact engine or motor~~ containing fluids may not be stored within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5.

F. ~~—A Except as provided in subsection 3754-A, subsection 4,~~ a vehicle may not be dismantled or stored within 100 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling business or the owner or operator's abutting residence.

Sec. 11. 30-A MRSA §3756, as amended by PL 1993, c. 173, §7, is further amended to read:

§3756. Permit fees

The municipal officers or county commissioners shall collect, in advance from the applicant for a permit, a fee in accordance with the following schedule:

1. Graveyard or junkyard. Fifty dollars for each ~~permit application for an automobile graveyard or junkyard located more than 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754;~~

~~**2. Graveyard or junkyard within 100 feet from highway.** Two hundred dollars for each permit for an automobile graveyard or junkyard located within 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754; and~~

3. Recycling business. Two hundred fifty dollars for a 5-year permit for an automobile recycling business plus the cost of posting and publishing the notice under section 3754; or

4. Fee. A fee as otherwise established by municipal ordinance or rule.

Sec. 12. 30-A MRSA §3758, as amended by PL 1993, c. 173, §8, is repealed.

Sec. 13. 30-A MRSA §3758-A is enacted to read:

§3758-A. Violations

1. Enforcement. All state, county and local law enforcement officers shall enforce the provisions of this subchapter.

2. Municipal authority. Municipal officers or their designees may enforce the provisions of this subchapter pursuant to:

A. The enforcement of land use laws and ordinances under section 4452;

B. The litter control provisions of Title 17, chapter 80; or

C. The abatement of nuisance provisions of Title 17, chapter 91.

3. Penalties. Violations of this subchapter are subject to the penalty provisions of section 4452; Title 17, sections 2264-A and 2264-B; or Title 17, chapter 91. Each day that the violation continues constitutes a separate offense.

4. Abatement. If the municipality is the prevailing party in an action taken pursuant to the provisions of this Title or Title 17 as outlined in subsection 2 and the violator does not complete any ordered correction or abatement in accordance with the ordered schedule, the municipal officers or designated agent may enter the property and may act to abate the site in compliance with the order. To recover any actual and direct expenses incurred by the municipality in the abatement of the nuisance, the municipality may:

A. File a civil action against the owner to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action;

B. File a lien on real estate where the junkyard, automobile graveyard or automobile recycling business is located; or

C. Assess a special tax on real estate where the junkyard, automobile graveyard or automobile recycling business is located. This amount must be included in the next annual warrant to the tax collector of the municipality, for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505 in the year in which the special tax is assessed accrues on all unpaid balances of the special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest must be added to and becomes a part of the tax.

5. Revocation or suspension of permit. Violation of any condition, restriction or limitation inserted in a permit by the municipal officers or county commissioners is cause for revocation or suspension of the permit by the same authority that issued the permit. A permit may not be revoked or suspended without a hearing and notice to the owner or the operator of the automobile graveyard, automobile recycling business or junkyard. Notice of hearing must be sent to the owner or operator by registered mail at least 7 but not more than 14 days before the hearing. The notice must state the time and the place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations inserted in the permit.

6. Removal of all materials after permit denial or revocation. The owner or operator of a junkyard, automobile graveyard or automobile recycling business for which a permit has been denied or revoked shall, not later than 90 days after all appeals have been denied, begin the removal of all vehicles, vehicle parts and materials associated with the operation of that junkyard, automobile graveyard or automobile recycling business. The property must be free of all scrapped or junked vehicles and materials not later than 180 days after denial of all appeals. An alternative schedule for removal of junk or vehicles may be employed if specifically approved by the municipal officers or county commissioners.

Sec. 14. 30-A MRSA §3759, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is repealed.

Sec. 15. 30-A MRSA §3760, sub-§1, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

1. Acquisition of land. If the Department of Transportation determines that the topography of the land adjacent to any portion of a highway incorporated in the Interstate or Primary Systems ~~will~~ does not permit adequate screening, ~~as required in sections 3751 to 3760, under section 3754-A, subsection 1~~ or that adequate screening ~~would~~ is not ~~be~~ economically feasible, it may acquire by gift, purchase or condemnation any interests in property that are necessary to secure the relocation, removal or disposal of the automobile graveyards or junkyards.

SUMMARY

This bill amends the State's junkyard statutes in several ways for the purpose of improving the ability of municipalities to appropriately license junkyards, automobile recycling businesses and automobile graveyards.

The bill changes the standard that defines an automobile graveyard from 3 or more "unserviceable" motor vehicles to 3 or more uninspected or unregistered motor vehicles and provides exemptions from regulation for automobile hobbyists, areas used for temporary storage and areas used for temporary storage of operational farm tractors.

The bill also establishes basic operational standards for all junkyards, automobile graveyards and automobile recycling businesses to provide minimal environmental protection. The bill creates a 100-foot setback from bodies of water for the placement of junked automobiles that contain fluids and increases from 100 feet to 300 feet the setback of newly licensed facilities from public or private drinking water supplies.

The bill also establishes a process to notify abutters of the public hearing held prior to the issuance of any new junkyard's, automobile graveyard's or automobile recycling business's first license and incorporates into statute fencing and screening standards previously located in the Department of Transportation regulations.

The bill also clarifies the ability of municipalities to enforce the provisions of the State's junkyard law and effect the abatement of junkyard nuisances. The bill specifies that a municipality has 3 available methods to recover the costs of prosecuting a junkyard violation: a civil action, a lien on the real estate or a special tax assessment as municipalities are currently authorized to recover the costs of abating a failed septic system.



219 Fosters Point Road
West Bath, ME 04530

MARINE RESOURCE CONSERVATION ORDINANCE

As Amended Through the Annual Town Meeting May 30, 2017

(Revised text is underlined>

Section 1. AUTHORITY: This Ordinance is enacted in accordance with 12 M.R.S.A. Section 6671, and repeals and replaces in its entirety "SHELLFISH CONSERVATION ORDINANCE, TOWN OF WEST BATH."

Section 2. PREAMBLE: It is determined that:

- The clam flats of the Town are a valuable shellfish resource which is important to the local economy.
- These flats are not an inexhaustible resource, and, therefore, they must be prudently managed.
- As part of the management process, it is deemed necessary to restrict the number of shellfish licenses, to restrict the size and quantity of shellfish which may be harvested, and to take other measures as outlined in this Ordinance.

Section 3. PURPOSE: To provide for and support a shellfish conservation program for the Town of West Bath which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- Licensing.
- Limiting the number of shellfish harvesters.
- Restricting the time and area where shellfish harvesting is permitted.
- Limiting the minimum size of clams taken.
- Limiting the amount of clams taken daily.
- Establish management plan(s) in West Bath for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.

Section 4. WEST BATH MARINE RESOURCE BOARD: The Shellfish Conservation Program for the Town of West Bath will be administered by the West Bath Marine Resource

Board consisting of members appointed by the Selectmen. A member of the Marine Resource Board serves at the request of the Selectmen.

- A. Establishment and Appointment: There is hereby established the West Bath Marine Resource Board. The Board shall consist of an appropriate number of members as determined by the Selectmen. The members shall be appointed by the Selectmen and shall serve at the pleasure of the Selectmen.
- B. Board Responsibilities:
 - (1) Administer the West Bath Marine Resource Conservation Ordinance and the shellfish conservation program.
 - (2) Establishing, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
 - (3) Surveying each clam producing area periodically to establish size distribution and density and annually estimating the status of the Town's shellfish resources.
 - (4) Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
 - (5) Keeping this Ordinance under review and making recommendation for its amendment.
 - (6) Securing and maintaining records of shellfish harvested from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
 - (7) Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
 - (8) Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.
 - (9) Identifying conservation work, which may include water testing by certified water testers, which will qualify an applicant for "Renewal" or "New License" status under section 7. The Town Shellfish Warden and/or The West Bath Marine Resource Board members shall record the names and hours worked by individuals on these projects and submit them to the West Bath Marine Resource Board monthly.
 - (10) Maintain a water quality testing program on the New Meadows River flats so as to enable harvesting. Water testing by a certified water tester may qualify for conservation work under Paragraph (9) above.

- C. Removal: The membership of any member may be terminated at any time by majority vote of the Board of Selectmen with just cause and due process. In addition, if any member of the Marine Resources Board misses three consecutive scheduled meetings of the Board without the approval of the Selectmen, his/her position may be considered vacant and the Board of Selectmen shall appoint a replacement. At least a two week notice must be given for a meeting to be considered a “scheduled meeting” for the purpose of this section.

Section 5. DEFINITIONS:

- A. Resident (Commercial Licensee) – a person who has been domiciled in the Town of West Bath for a period of at least one (1) year prior to the time of submission of application for a commercial shellfish harvesting license.
- B. Resident (Recreational Licensee) – a person who is presently domiciled within the Town of West Bath as a taxpayer or as a renter of a home, apartment, cottage or camping space for at least one (1) year prior to application.
- C. Non-resident – anyone not qualified as a resident under this Ordinance.
- D. Conservation Work – work which is approved by the Marine Resource Board, such as reseedling, which will qualify an applicant for “Renewal” or “New License” status.
- E. Shellfish or Clams – when used in the context of this Ordinance means:
- Soft Shell Clams (*Mya Arenaria*)
 - Quahog (*Mercenaria Mercenaria*)
 - Razor Clam (*Ensis Directus*)
 - Eastern Oyster (*Crassostrea Virginica*)
 - European Oyster (*Ostrea Edulis*)
 - Surf Clam (*Spisula Solidissima*)
- F. Municipality – refers to the Town of West Bath.
- G. Clam flats – means the shore area between high and extreme low water marks.
- H. Harvest – means to dig or take by any means.
- I. Take – to remove or attempt to remove a marine organism from its natural habitat.
- J. Possession – to have in one’s custody or control, either personally or by another person who is under one’s control.
- K. Possess – is to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale.

- L. Student – an individual actively enrolled in grades 7 through 12 as of the date of application and who continues to be actively enrolled to maintain student status. Student status shall terminate upon graduation or leaving school.

Section 6. LICENSING:

- A. License Required: A West Bath shellfish harvesting license is required for any person to harvest or take shellfish in any area of this municipality. A commercial harvester must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources before harvesting or taking shellfish in West Bath.
- B. Categories of Licenses:
 - (1) Resident, Commercial Shellfish Harvesting License – License available to a resident, commercial harvester entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
 - (2) Non-resident, Commercial Shellfish Harvesting License – License available to a non-resident, commercial harvester entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
 - (3) Recreational Shellfish Harvesting License – License available to any resident or non-resident for the purpose of harvesting shellfish solely for non-commercial purposes. Pursuant to 12 M.R.S.A. §6671(3-A)(G) at least 10% of these licenses shall be made available to non-residents.
 - (4) Restrictions on Recreational Licenses – Recreational licenses issued by the Town of West Bath are subject to the following restrictions:
 - (1) The residential license is valid only during the period the holder is actually in residence in the Town of West Bath.
 - (2) The license entitles the holder to harvest and take no more than one (1) peck of shellfish in any one (1) day.
 - (3) Shellfish harvested by the holder of a recreational license is for personal use and shall not be sold.
 - (4) Individuals holding commercial licenses shall not be entitled to recreational licenses.
 - (5) Resident Student Shellfish Harvesting License – License available to a resident student to enable the student to harvest or take shellfish from the municipality when and where it is lawful to do so.
 - (6) Non-resident Student Shellfish Harvesting License – License available to a non-resident student to enable the student to harvest or take shellfish from the municipality when and where it is lawful to do so.

- C. Limitation on Shellfish Harvesting Licenses: Because the shellfish resources are limited and because a harvester can be expected to harvest a certain volume of clams per year, the number of harvesters must be controlled. This number may vary from year to year, depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The West Bath Marine Resource Board, with the approval of the Commissioner of Marine Resources, at least thirty (30) days prior to the first date of license issuance, will establish the number of commercial licenses to be permitted for that license year. A number of licenses not less than ten percent (10%) of the total number of commercial licenses provided for residents shall be reserved and provided for non-residents. The total number of resident and non-resident commercial licenses, once determined, shall be made known to the Town Clerk in order to facilitate issuance of licenses.

D. Licensure Requirements:

- (1) Commercial Renewal License – In order for an applicant to be eligible for a commercial renewal license, the applicant must:
 - (a) Have no outstanding fines in violation of this Ordinance.
 - (b) Have submitted a completed application during the month of February.
 - (c) Have been licensed for the previous year.
 - (d) Having completed a minimum of twelve (12) hours of conservation work between March 1st of the previous year and the last day of February as determined and directed by the West Bath Marine Resource Board. At least five (5) of the twelve (12) hours must be contributed to enhancement and propagation efforts. If these requirements are not met, a new license will not be issued the following year and will no longer be available to the applicant.
 - (e) Have no more than two (2) convictions for violation of this Ordinance during the preceding licensure year.
- (2) Commercial New License – Where commercial licenses are available within the current year's quota, then the applicant must:
 - (a) Have no outstanding fines in violation of this Ordinance.
 - (b) Have submitted a completed application during the month of February.
 - (c) Have no more than two (2) previous convictions for violations of this Ordinance during the preceding year.

- (3) Student License – Student licenses shall meet the requirements and issuance procedures (Sec.7) of the renewal license except that:
1. The conservation time for students 17 years and older shall be a minimum of six (6) hours
 2. The applicants must submit a completed application during the month of April
 3. The student license shall be available on normal municipal business days to qualified applicants for the period beginning May 16th and ending May 31st.
- (4) Senior Citizen License – Senior Citizen Licenses will be issued to Commercial License holders **65 years of age and older**. The number of licenses available are determined each year by the Marine Resources Committee and the Board of Selectman. Senior Citizen Licenses shall meet the requirements and issuance procedures of Section seven (7) of the renewal license except that:
1. The conservation time shall be a minimum of six (6) hours
 2. The applicants must submit a completed application during the month of April
 3. The senior citizen license shall be available on normal municipal business days to qualified applicants for the period beginning May 16th and ending May 31st.

E. Application procedure:

- (1) Notice - Notice of the number of licenses and the procedure for application shall be published in a trade or industry publication or in a newspaper or combination of newspapers with general circulation which the municipal officers consider effective in reaching persons affected, once the determination of the number of licenses has been provided to the Administrative Assistance, but not less than ten (10) days prior to the period of issuance of the licenses. In addition, the number and procedure shall be posted in the municipal offices until the conclusion of the issuance period.
- (2) Application –
 - (a) Submission Schedule – All commercial applications must be submitted during the month of February and prior to the close of business on the last scheduled business day at the Selectmen's Office. All student applications must be submitted during the month of April and prior to the close of business on the last scheduled business day at the Selectmen's Office. Any applications received

after this date will be considered only as licenses become available because of surrender or other reasons. Recreational license applications may be submitted at any time.

- (b) Contents – The application must be in the form of an Affidavit and must contain the applicants name, category of license sought, current address and duration there, birth date, height, weight, signature, and whatever other information the Town may require. The application shall be on a form provided by the Town and shall be made available at the Town Office beginning on February 1st, or the first business day after February 1st, of each year.
- (c) Misrepresentation – If upon complaint or otherwise, the Town Clerk becomes aware of circumstances which suggest a licensee has given false information on a license application, the Selectmen shall be notified and they shall request the Shellfish Warden or his designee to investigate those circumstances and any other circumstances related to the license application.

If the results of the investigation continue to suggest a licensee has given false information on a license application, the Selectmen shall give the licensee a minimum of seven (7) days notice of a hearing to determine whether or not the licensee has given false information on the license application. The Shellfish Warden shall present the evidence suggesting that false information has been given. The licensee shall have the right to present evidence to show that false information has not been given. If, after the hearing, the Selectmen determine that false information has been given, which materially affects the license, the Selectmen shall give the licensee written Notice of Revocation of the license. Any licensee aggrieved by the decision of the Selectmen may appeal to Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

- F. License Fees: The fees for licenses shall be determined by a concurring majority vote of both the Marine Resource Board and the Board of Selectmen and will be paid to the Treasurer in full upon issuance of the license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, enforcement, and other shellfish related matters. All license fees shall be paid on or before June 30th of each year. No license shall be issued until full payment is made. If full payment is not received by June 30th of that same year, the license will be considered a non-renewal and will become available as a new license.
- G. Licensure Period Expiration: Each license shall run from April 1st or the date of issue if after April 1st through March 31st of the following year at midnight; as of midnight, March 31st each license shall expire; excepting student commercial licenses which licenses shall run for one (1) year beginning on June 1st of that

year and running through May 31st of the following year at midnight; as of midnight, May 31st each license shall expire.

Section 7. ISSUANCE OF LICENSES:

- A. **Commercial Renewal Licenses:** This commercial category of license shall be available on normal municipal business days to qualified applicants **beginning March 16th**. In the event that the number of qualifying applications exceeds the number of licenses available licenses shall be awarded according to seniority in terms of the number of years that each applicant has held a valid West Bath Commercial Shellfish Harvesting License over the last five (5) years. This seniority claim must be verifiable. Verification will be determined by reference to Town records of licenses awarded in previous years. The applicant who has held a West Bath Commercial Shellfish License the greatest number of years shall be awarded the first license, the second longest West Bath Commercial Shellfish License holder shall be awarded the second, and so on until all licenses in this category are have been sold to those applicants fulfilling the above qualifications. Years where a student held a student license shall not qualify as prior years for the purpose of awarding commercial shellfish licenses. If there are non-residents who purchased any unsold resident licenses the previous year(s), they shall not be eligible to purchase renewal licenses until residents have had an opportunity to purchase them in accordance with the provisions of this Ordinance. In the event there is a seniority tie for the last license(s) to be awarded, the remaining license(s) shall be awarded pursuant to the procedure set forth in Section 7(D) of this Ordinance. Any license not issued by the end of business on June 30th or the last business day in June of each year shall be considered a new license.
- B. **Commercial New Licenses:** If any commercial licenses are still available under this year's quota, this category shall be available to residents and non-residents on normal business days to qualified applicants for a period beginning April 1st and ending June 30th. Priority, however, will be given to a West Bath resident if he has met the minimum requirements, unless the license is a license required to be reserved as a non-resident commercial license. In the event that the number of qualifying applications exceeds the number of available licenses, they shall be awarded according to the priority list below. Conservation hours are counted between the preceding March 1st to the last day of the following February. In the event of a tie in any of the following categories the issuance of the license shall be determined by lottery as per Section 7(D) of this Ordinance.

Consideration #1 – Twelve hours of Conservation Time and held a license for Five of the last Five years.

Consideration #2 – Twelve hours of Conservation Time and held a license for Four of the last Five years.

Consideration #3 – Twelve hours of Conservation Time and held a license for Three of the last Five years.

Consideration #4 – Twelve hours of Conservation Time and held a license for Two of the last Five years.

Consideration #5 – Twelve hours of Conservation Time and held a license for One of the last Five years.

Consideration #6 – Twelve hours of Conservation Time and has not held a license, but has met the conservation time requirement and that is kept on the books until such time that the person is offered a license.

Consideration #7 – Less then Twelve hours of Conservation Time (issued to the applicant with the most hours).

- C. Un-issued Commercial Licenses: If any licenses still remain un-issued, this category is available on the first municipal business day in July for resident and non-resident members of the general public. In the event that the number of applications exceeds the number of available licenses, licenses shall be awarded on a first come first issued basis.
- D. Lottery Procedures: If, in any of the Renewal or New Commercial categories of licenses described in Paragraph 7(A) and (B), the number of qualifying applications exceeds the number of available licenses on issuance dates, and the provisions of those sections do not determine who shall be awarded the licenses, licenses in those categories shall be issued according to the following procedure:
 - (1) The Town Clerk shall designate an assistant, who may be any appointed municipal official or municipal employee who is disinterested in the outcome of the procedure. “Disinterested” means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure. No elected municipal official and no member of the Marine Resource Board shall serve as the assistant in carrying out this procedure.
 - (2) The Town Clerk shall prepare a list of the names of the qualifying applicants. The list need not be in any particular order. Next to each name on the list, the Town Clerk shall enter a unique three digit number, selected at random, and shall write each such number on an index card. All the index cards shall be of uniform size, color, texture, and thickness.
 - (3) The Town Clerk’s assistant shall then place all the numbered index cards in a box or other container capable of being closed and sufficiently large that the index cards can be mixed by shaking the container.
 - (4) The Town Clerk’s assistant shall shake the container in order to mix the contents, and shall then place or hold the container at a location above the Town Clerk’s eye level, so that the Town Clerk can reach into the container and withdraw cards without seeing the numbers on the cards.
 - (5) The Town Clerk shall withdraw the cards one-by-one, reading each number drawn out loud. The Town Clerk’s assistant shall make a list of each of the numbers drawn in the order in which they are drawn.

Then, using the list prepared under subparagraph (2) above, the Town Clerk shall place the corresponding applicant's name next to each number.

- (6) The Town Clerk shall issue the available licenses to the qualifying applicants, first to residents and then to non-residents, in the order to which their names appear on the list prepared under subparagraph (5). That list shall establish the order of priority for the issuance of any licenses in that license category until the next annual licensing procedure under this Ordinance.
- (7) The procedure set forth in this Section 7(D) shall be a public proceeding open to the public pursuant to 1 M.R.S.A. Section 403, but no applicant or any member of the public has any right to participate in the procedure. Applicants are not required to be present at the time the licenses are issued. The procedure shall be conducted at the West Bath Town Office on the dates designated for each category of license, at a time to be set by the Town Clerk. The Town Clerk shall announce the exact time for the procedure by posting a notice in the West Bath Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide such a notice shall not invalidate the results of the procedure.

E. Signature and Exhibition of License; Search and Inspection:

- (1) Validity of License. No license shall become valid until signed by the license holder.
- (2) Exhibiting License. When any person is engaged in an activity which is licensed under this Ordinance, he or she shall, upon the request of a certified municipal officer, exhibit his or her license. Failure to exhibit a license within a reasonable time when requested shall be prima-fascia evidence that the person is not licensed.
- (3) Search and Inspection. Accepting an issued shellfish license shall constitute consent to search and inspection by the Shellfish Warden or any authorized law enforcement officer of any equipment, watercraft or vehicles used in connection with the license activity and to seize evidence of a violation of this Ordinance.

F. Suspension/Revocation:

- (1) Suspension Optional. The West Bath Board of Selectmen shall be empowered to suspend for up to 60 days, after public hearing, the license of any person it finds in violation of this Ordinance. The Selectmen may also suspend the right to purchase a license for up to 60 days, of person found to be harvesting without a license in violation of the terms of this Ordinance. Persons suspended may not be issued another license until the suspension period ends. Persons aggrieved by this suspension may appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

- (2) Suspension Mandatory. Any shellfish licensee having two convictions for violation of this Ordinance shall have his/her shellfish license automatically suspended for a period of 60 days or the remainder of the license year whichever is shorter. The suspension shall be effective from the date of mailing of a notice of suspension by the Board of Selectmen, said suspension being subject to the same appeals procedure as F(1) above.
- (3) Revocation. Where the license holder has been subject to suspension of his license on three or more occasions, within the current licensure year and the previous licensure year, then the Board of Selectmen may, if the licensee is determined to have committed the violation, revoke the license and prevent re-issuance of any license to that licensee for a period to be determined by the Board.

G. Re-issuance of License: A surrendered license may be reissued if it is determined by the Board that the re-issuance of that particular license(s) is consistent with good management practices and appropriate management of the resource. Procedures for re-issuance of a license shall be in accordance with the applicable provisions of this Section.

Section 8. OPENING AND CLOSING FLATS: Selectmen, with the approval of the Commissioner of Marine Resources, may open and close areas for the shellfish harvest. Upon recommendation of the West Bath Marine Resources Board and concurrence of the Department of Marine Resources that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Selectmen may call a public hearing on 10 calendar days notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing and shall send a copy of the notice to the Department of Marine Resources. The decision of the Selectmen made after the hearing shall be based on findings of fact or upon the formal minutes of the hearing.

Section 9. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS: It is unlawful for any person to possess soft shell claims within the Town of West Bath, Sagadahoc County, which are less than two (2) inches in the longest diameter except as provided by subsection (A) of this section.

- A. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10 percent of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks take at random from various parts of the lot or by count of the entire lot if it contains less than one peck.

Section 10. VIOLATIONS: Any failure to comply with the terms and conditions set forth in this Marine Resource Conservation Ordinance shall be considered in violation of the Ordinance. Specific violations include, but are not limited to:

- A. Material misrepresentation of fact on the application.
- B. Possession of soft shell clams that do not meet the minimum size requirement.

- C. Harvesting without license.
- D. Harvesting from a closed area – It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the town of West Bath in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MRSA Title 12 §6671.
- E. Harvesting shellfish during the nighttime hours between sunset (as defined in 12 M.R.S.A. § 6001(46)) and sunrise (as defined in 12 M.R.S.A. § 6001 (45)).

Section 11. PENALTIES: Penalties for violation of Section 9(A) above relating to minimum of soft-shell clams shall be in accordance with the provisions of 12 M.R.S.A. Section 6681 (6-A). All other violations shall be punished as provided by 12 M.R.S.A. Section 6671(1).

Section 12. EFFECTIVE DATE: This Ordinance shall become effective after its adoption at a Town Meeting provided a certified copy of the Ordinance is filed with the Commissioner within 20 days of its adoption.

Section 13. SEPARABILITY: If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

Section 14. REPEAL: Any Ordinance regulating the harvesting and conservation of shellfish in the Town and any provision of any Town Ordinance, which is consistent with this Ordinance, is hereby repealed.



ORDINANCE

AN ORDINANCE REGULATING BOAT RAMP FACILITY NEW MEADOWS LAKE

Enacted June 8, 2011

Section 1. Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VII, Part II, Section 1, of the Maine Constitution, the provisions of 30-A M.R.S.A. Section 301 (Home Rule), and 30-A M.R.S.A. Section 3001 (Ordinance Power).

Section 2. Applicability

This Ordinance shall apply to the boat launching facility and all property adjacent thereto, owned by the Town of West Bath and to the portions of New Meadows Lake under the jurisdiction of the Town.

Section 3. Purpose

The purpose of this Ordinance is to regulate the parking of any motor vehicle, boat and/or trailer on the public landing and Town property located at the north end of the New Meadows Lake on the south side of the Old Brunswick Road. It is the further purpose to restrict the mooring, anchorage or beaching of watercraft on New Meadows Lake or along the shore of the New Meadows Lake on land owned by the Town of West Bath.

Section 4. Prohibitions

A. **Parking.** The parking of any motor vehicle, boat and/or trailer on Town of West Bath property on or in the vicinity of the launch ramp is hereby prohibited. This shall not prevent the parking of motor vehicles as is currently allowed along the shoulder along the south side of the Old Brunswick Road. Any vehicles or trailers may only be on Town of West Bath property for the purpose of launching or retrieving watercraft.

B. Mooring/Anchorage. No boat may be anchored or moored within the portion of New Meadows Lake under the jurisdiction of the Town of West Bath. Watercraft may not be grounded on property of the Town of West Bath.

Section 5. Violation

Any person who violates the prohibitions in Section 4 above, shall be considered in violation of this Ordinance.

Section 6. Remedies

If a person is found in violation of any of the provisions of this Ordinance, then the following remedies may be utilized by the Town of West Bath:

1. Any motor vehicle/boat/trailer that is found parked on or near the boat ramp facility on Town of West Bath property, may be removed by the Town of West Bath at the owner's expense. If a motor vehicle/boat/trailer is unattended, it shall be considered in violation of this Ordinance.
2. If a watercraft is found moored or anchored or pulled up on shore on Town of West Bath property and is unattended, then the Town of West Bath may remove the watercraft at the expense of the owner.
3. A penalty may be assessed against the owner by the Town in the amount of Two Hundred Dollars (\$200.00) for the first violation, Three Hundred Dollars (\$300.00) for the second violation, and Five Hundred Dollars (\$500.00) for the third or subsequent violation. All such penalties shall enure to the Town of West Bath.
4. These remedies are cumulative.

Town of West Bath
219 Fosters Point Road
West Bath, ME 04530
Tel: 207.443.4342
Fax: 207.443.3256
Website: www.westbath.org

PARKING ORDINANCE
SABINO LANDING
(As Amended Through December 27, 2011)

A. Authority. This Ordinance is enacted by the Municipal Officers of the Town of West Bath pursuant to their exclusive authority to enact municipal parking ordinances in accordance with the provisions of 30-A M.R.S.A. Section 3009(1)(C).

B. Purpose. The purpose of this Ordinance is to regulate and restrict parking on the public ways, parking areas, and public property adjacent to the Sabino Landing and to allow parking in that area only by permit.

C. Permits.

1. Required. Parking on all public ways, parking areas, and other public property adjacent to the Sabino Landing shall be restricted to permit parking only.

2. Issuance. Permits shall be issued at the Town Office. Permits are only available to residents of the Town of West Bath and non-resident property owners and their occupants or holders of non-resident commercial clam licenses. The issuing official shall have the right to require proof of residency from any resident applicant or proof of ownership from any non-resident owner or occupant. The applicant shall provide contact information to include the name and address of applicant, a description by make, model and license plate number of the vehicle for which the permit has been requested, and current contact information including name, address, telephone number and/or e-mail address. If there is any change in the contact information, then that permittee will provide updated contact information with the Town Office.

3. Display. The permit issued under this Ordinance shall be affixed on the vehicle to which it is assigned in a conspicuous place that can be observed from outside the vehicle. Permits shall be specific to an individual vehicle.

4. Duration. Each permit issued by the Town Office shall be for a period of one (1) year from the date of issuance. Permits may be renewed on a year to year basis.

5. Limitation on Permits. Should the demand for permits and conditions so warrant, the Selectmen shall have the right to limit the number of permits authorized to utilize the parking area. Should such a limitation in the number of permits be required, the Selectmen shall adopt a methodology that will fairly allocate the permits allowed.

6. Fees. The fee for a permit shall be established by Resolution of the Board of Selectmen and may from time to time be adjusted by the Board.

D. Violations. The following shall be considered violations of this ordinance:

1. Parking or causing to be parked a vehicle without the requisite permit.
2. Parking or causing to be parked a vehicle with an expired permit.
3. Parking or causing to be parked a vehicle overnight (between the hours of 10:00 P.M. and 4:00 A.M.)
4. Parking of any vehicle that blocks, interferes with, or obstructs normal traffic movement and other parking, or creates a safety hazard.

At the discretion of the issuing enforcement officer, persons violating the offenses listed in Section D, Subsections 1, 2 and 3, may receive a warning notice rather than a civil violation notice.

E. Enforcement.

1. Civil Violation. In accordance with the provisions of 36 M.R.S.A. Section 3009(1)(C) this Ordinance shall be enforced as a civil violation.

2. Enforcement Agency. This Ordinance shall be enforced by the Sagadahoc County Sheriff's Office or any duly authorized Police Officer, Deputy or Agency, including the Town of West Bath Clam Warden.

3. Penalties. Any person, firm, corporation or entity who shall violate the provisions of this Parking Ordinance shall, upon conviction thereof, and in addition to any other remedies provided herein, or unless another penalty is expressly provided by law, be subject to the following penalties:

For violation of Sections D. 1, 2 or 3:

- A Penalty of not less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for the first offense.
- A penalty of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for a second offense within a Six (6) month period.
- A penalty of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for three or more violations within a Six (6) month period.

For violation of Section D.4:

- A penalty of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00) for the first offense.

- A penalty of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) for the second offense.
- A penalty of not less than Three Hundred (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for three or more violations.

Penalties assessed under this provision shall be payable to and for the exclusive use and benefit of the Town of West Bath. The Town shall also recover in addition to any penalty its costs of prosecution, including reasonable attorney's fees.

4. Waiver. Any person, firm, corporation or entity accused of a violation of the provisions of the regulations in this Ordinance may voluntarily waive his right to appear and defend that matter before any Court or judicial tribunal, by paying the Town in accordance with the following penalty schedule:

For violation of Sections D 1, 2 or 3:

- First violation – Twenty Five Dollars (\$25.00).
- Second violation within a Six (6) month period - Fifty Dollars (\$50.00)
- Third or more violation(s) within a Six (6) month period - One Hundred Dollars (\$100.00).

For violation of Section D 4:

- First violation – One Hundred Dollars (\$100.00)
- Second violation – Two Hundred Dollars (\$200.00)
- Third violation(s) – Three Hundred Dollars (\$300.00)

5. Conditions for Removal. A vehicle may be removed by Order of the Enforcement Officer where the vehicle is parked illegally for the fourth time within a six (6) month period, where it is blocking or interfering with other parking or traffic movement, or where it creates a safety hazard.

6. Removal Procedure. Since the Town of West Bath does not have the resources or equipment to effect the removal of vehicles from the Sabino Landing area when required, removal of vehicles shall be initiated and processed through the Sagadahoc County Sheriff's Office. Protocols established by the Sagadahoc County Sheriff's Office shall apply to the removal of vehicles from the Sabino Landing area.

7. Notice. Where a vehicle is caused to be removed, a record shall be generated showing the make, model and registration number of the vehicle, owner, the owner's address and the date and hour of tow and the location to which the vehicles has been towed. This Notice shall be given orally to the owner of the vehicle in accordance with the registration information as soon as may be practicable. The Town shall not be responsible for inaccuracies in registration information.

8. Costs. The owner of any vehicle removed from the Sabino Landing area pursuant to this Ordinance shall be responsible for all towing costs, and costs related to the towing including storage, if necessary.

F. Effective Date. This Ordinance shall become effective on January 1, 2012.

Town of West Bath
219 Fosters Point Road
West Bath, ME 04530
Tel: 207-443-4342
Fax: 207-443-3256
Website: www.westbath.org

TOWN OF WEST BATH
WATERWAYS AND HARBORS ORDINANCE



Changes effective January 1, 2016

Amended as of June 17, 2015

I. PURPOSE

The purpose of this ordinance is to establish the Waterways & Harbors Ordinance Committee to provide for the just and orderly operation of marine activities on West Bath waterways. It is intended to promote safety, enjoyment, convenience, effective use and control of mooring areas and public facilities pertinent thereto.

I A. REFERENCES

- 1) This Document references the Maine State Title 38: Waters and Navigation, Chapter 1, Operation of Vessels document and is used to reinforce the Town of West Bath "Waterways and Harbors Ordinance".
- 2) A list of local area pump out stations for sewage can be obtained from the West Bath Town Office.
- 3) Boater Safety: The Town of West Bath recommends all boaters be familiar with boater safety and boating rules and regulation. The Coast Guard Auxiliary provides Boater Safety Courses and Vessel Safety Checks.
- 4) The Power Squadron also offers boating courses.

II. DEFINITIONS

- A. **Resident:** The word "resident" shall have its ordinary meaning and shall include persons owning or renting residential property in West Bath who use that property for their year-round or seasonal homes (with a minimum of six weeks continuous annual occupancy).
- B. **Mooring:** "Mooring" shall mean any equipment used by a craft for anchoring purposes and which equipment is not carried aboard such craft when under way.
- C. **Channel:** A "channel" shall be defined as a clear area for navigation of a width and location to be determined by the Harbormaster Title 38, Chapter 1 §2
- D. **Watercraft:** "Watercraft" means any type of vessel, boat, barge, float or craft used or capable of being used as a means of transportation on water other than a seaplane.
- E. **Commercial Vessel:** A "commercial vessel" is any vessel from which the owner obtains a substantial portion of his earned income.

- F. **Waterways:** "Waterways" shall include all of the navigable waters and all harbors, rivers, and bays within the boundaries of the town. As used in this ordinance, "harbor" and "harbors" shall include all waterways unless the context indicates otherwise.

III. **HARBORMASTER**

- A. The Harbormaster shall be appointed by the Board of Selectmen
- B. The Harbormaster shall serve at the pleasure of the Board of Selectmen for a one-year term.
- C. The town will cover any additional insurance costs such as a rider for the performance of the Harbormaster's duties.
- D. Duties - The Harbormaster shall:
1. Enforce the West Bath Waterways and Harbors Ordinance and exercise those powers granted by state law, including, but not limited to, the provisions of Title 38 Chapter 1 §§1 through 13.
 2. Carry out responsibilities delegated by State and Federal requirements, including, but not limited to, the enforcement of the Operating Restrictions prescribed by Title 38 Chapter 1 §§ 281 through 285.
 3. Remove or cause to be removed obstructions to navigation in West Bath waterways and harbors
 4. Place and maintain or cause to be placed and maintained, either on land or water, such signs, notices, signals, buoys, waterway markers, or control devices as he deems necessary to carry out the provisions of this ordinance or to secure public safety and the orderly and efficient use of the waterways, harbors, or maritime facilities.
 5. Be alert to any pollution in the harbor, investigating and reporting to the Maine Department of Environmental Protection and the U.S. Coast Guard as required. Monitor cleanup and assist as practicable.
 6. Respond to request from citizens and vessels for information or assistance to resolve problems.
 7. Maintain a Mooring Site Plan:
 - a) Review/Approve/Document Moorings
 - b) Assignment
 - c) Location
 - d) Mooring per area
 - e) Channels
 - f) Traveled ways
 - g) Tidal

E. Support

1. Harbormasters Resources and Support

- a) Town Board
- b) Marine Patrol
- c) Coast Guard
- d) Sheriff
- e) State Police
- f) Game Warden
- g) Army Corps of Engineers

2. Assistant Harbormaster

At the request of the Harbormaster the Town of West Bath Selectman can appoint an assistant person.

IV. RULES AND REGULATIONS

I Mooring(s) Rights

The intent is to support the ability of landowners and others to possess a mooring(s) for personal use. Below provides the guidelines to treat all fairly. Mooring assignment and location are reviewed and approved by the Harbormaster. Existing Moorings are allowed to stay in their present location unless the location infringes upon others rights to place new moorings or unless they infringe upon navigation, etc. prescribed in Title 38 Chapter 1.

Neglect of moorings and failure to obey orders by the Harbormaster can/will result in loss of the mooring and a \$100 fine as stated in Title 38, Chapter 1 §4.

Any outstanding fines or fees are grounds for the Harbormaster not to issue or revoke a mooring as stated in Title 38, Chapter 1 §3.

The Board of Selectman will be the arbitrators of any grievances and unresolved issues with persons who feel they can not with good faith resolve such problems with the Harbormaster.

1. The town will (through the Harbormaster) assign locations for parties requesting moorings in available areas in the following priority order to the best of the towns ability. The town will not guarantee any party a mooring or a mooring location.

A. Shore Front Property Owners: (as measured at the High Water Mark)

- 1) More than 100' Shoreline ownership
- 2) Less than 100' shoreline ownership

B. Deeded right of way to water

C. Town Resident, non Shore Front Owner

D. Non Resident of West Bath

E. Waiting Lists will be maintained according to Title 38 MRSA § 7-A and 8.

F. Mooring transferring is permitted for private and commercial use in accordance with title 38 MRSA §3-A

2) Moorings

a) Identification: The owners last name and an ID number (assigned by the Harbormaster/Town Office) are to be shown on your mooring ball. All moorings will be clearly marked by owner using 3" lettering. The lettering, which is not provided by the town, is to be placed on the topside of mooring ball. Registration will be yearly and the Town will provide a sticker of compliance that is to be placed on the mooring ball.

b) Setup: The owner is personally responsible for the adequacy of their mooring to suit the moored watercraft. General guidelines for moorings can be found in **Chapman Piloting Seamanship & Small Boat Handling**. The Harbormaster will review setup to ensure proper scope and may request changes to facilitate a particular area's need. The Harbormaster will assign the location for the mooring.

c) Inspections: It is recommended that the mooring be inspected each year. The mooring owners are responsible for maintaining their own moorings. The town will ask that the mooring owner verify that the mooring has been inspected once every three years. The owner is legally responsible for his/her mooring.

d) Mooring Winter Storage: When using objects such as logs to support your mooring lines during winter the objects must be painted fluorescent orange. This must be done as consideration for boaters who use our river all winter long.

3. Each applicant for a mooring location, other than those locations grandfathered under Section I above, will be limited to two (2) moorings. For just cause shown, an applicant may apply to the Harbor Master to exceed the two (2) mooring limit. The applicant will be required to show a need for the additional mooring and that the mooring will not interfere with other existing mooring locations

4. Fees for moorings will be assessed according to the Town of West Bath's Mooring Registration Application. All transactions will be handled at the Town Office. The mooring registration fees and agent processing fees may be amended from time to time by action of the Board of Selectman after a public hearing.

Fees and fines imposed by this ordinance will be used to support the requirements of the Harbors and Waterways directives. If additional moneys are required to fulfill Harbors and Waterways obligations they will come from the boat excise tax portion of the boat registration fees.

- II. No person shall anchor or cause to be anchored any craft in West Bath so as to obstruct a channel or mooring from free passage of boats.
- III. No person shall deposit, throw, sweep or cause to be deposited, thrown or swept into the waters of West Bath or into waters adjacent thereto any gas or oil or bilge water containing same, ashes, stones, gravel, mud, logs, planks, craft or any other substance tending to obstruct the navigation of said waters of West Bath or waters adjacent thereto, or to shoal the depth of said waters or pollute said waters.
- IV. No person shall dump or dispose of any refuse or garbage upon any shore of the Town of West Bath, at or between high and low water mark, or upon the waters of the ocean within the Town of West Bath.
- V. No person shall intentionally, knowingly, recklessly, or negligently destroy, damage, disturb, deface, or interfere with any sign, notice, channel marker, buoy, float, life preserver, Harbor Master boat, or any other municipal property under the jurisdiction of the Town of West Bath.
- VI. All Town launching ramps will be used for launch and haul purposes **only**. All obstructions will immediately be removed from ramp.
- VII. The operation of any vessel within West Bath waters within any anchorage or mooring area, or by a float or wharf, in **excess of five knots**, or in a manner to create a wake, shall constitute a violation of this ordinance. Reference Title 38 Chapter 1, Subchapter 7 "operating restrictions §281 through §285.
- VIII. Docks & Floats
For new construction of docks and floats or revisions to old docks and floats the Planning Board "or designee" and the Harbormaster will require review. There may also be a review required by the Army Corps of Engineers for final approval.
- IX. Boat Registration
All boats are required to be registered yearly with the West Bath Town Office. Out of State registered boats are required to re-register in West Bath if they will occupy these waters for more than 60 days.

V. **ABANDONED VESSELS**

When, in the opinion of the Selectmen, a vessel has been abandoned in the waterways or harbors, they may, after giving such notice as practicable, take custody and control of such vessel and remove it, store it, or otherwise dispose of it, all at the expense and sole risk of the vessel owner. Reasonable notice of such disposal shall be given publicly.

VI. **PENALTY**

Except where specifically provided by Maine State Law, the penalty for a violation of the West Bath Waterways and Harbors Ordinance shall be a fine not less than

\$25.00 nor more than \$200.00 to be recovered in District Court on complaint of the Harbormaster. Each day the violation occurs may be treated as a separate offense. If Court finds a violation, the Town may be allowed attorneys' fees.



Mooring Registration Application

Date of Application: _____

Permit Number: _____

Name: _____

Residence Address: _____

West Bath Address (if different): _____

Telephone Number: _____

Mooring Use: ☐ Resident ☐ Non-Resident ☐ Commercial ☐ Rental

Vessel Name: _____

Vessel Length: _____

Vessel Registration/Documentation #: _____

Mooring Location: Map-Lot: _____

GPS Coordinates: _____

Type of Mooring: _____

Estimated Weight: _____

Chain/Rope Length: _____

Type of Marker: _____

Chain/Rope Size: _____

Date Installed: _____

Applicant's Signature: _____

By Signing the Applicant acknowledges that the mooring is in good working condition.

(See "Waterways and Harbors Ordinance May 2003" Section IV "Rules & Regulations", SubSection I "Mooring Rights", Item 2) "Moorings", Paragraphs a) through c).)

Mooring Fees

The mooring registration fee is \$50.00 for the first registration and \$25.00 each year thereafter. **These fees are waived for residents and persons who have paid property taxes to the Town during the prior 12 months.** All persons are required to pay a \$5 sticker fee.