

TOWN OF CUSHING COASTAL WATERS MANAGEMENT ORDINANCE

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SECTION 1: PURPOSE

The purpose of this Ordinance is to manage recreational and commercial maritime activities so as to maintain order and safety in Cushing waters and harbors.

SECTION 2: AUTHORITY

This Ordinance has been prepared under the authority granted to the Town by 38 M.R.S.A. § 1-§13.

SECTION 3: APPLICATION

This Ordinance applies in all coastal and tidal waters of the Town.

SECTION 4: ADMINISTRATION

Pursuant to 38 M.R.S.A. § 2 through 7, the responsibility for administration of this Ordinance shall be as follows:

4.1 Harbor Board authorization:

The Cushing Harbor Board (Board) is authorized to:

- a. define channels and their boundary lines in harbors and waterways,
- b. assign suitable portions of harbors and other coastal and tidal waters for anchorages, mooring districts, and aquaculture sites.
- c. establish regulations for their use,
- d. establish waiting list procedures,
- e. oversee the duties of the Harbor Master, and
- f. hear certain appeals as set forth below.

4.2 Harbor Master duties:

A Cushing Harbor Master appointed annually by the Selectmen is authorized to:

- a. ~~determine the placement of all moorings in Cushing Coastal Waters.~~
- b. enforce and carry out regulations established by the Board,
- c. assign, vacate, move, remove and relocate specific moorings,
- d. Create waiting lists for mooring spaces.
- e. perform other statutory duties and responsibilities as set forth in 38 M.R.S.A. § 1-§13, or mandated by federal statute.

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4.3 Mooring fees

The Selectmen may from time to time, on the recommendation of the Board, establish mooring fees.

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SECTION 5: PLAN

A districting plan for all Cushing waters is hereby established to implement the purposes of this Ordinance. The plan consists of a chart of locations and the regulations governing marine activities within them.

5.1 Chart of districts

A chart or charts shall be maintained of districts, mooring areas, individual moorings, anchorages and aquaculture sites, encompassing all coastal and tidal waters of the Town.

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- a. The Harbor Master and Board shall maintain the digital chart or charts.
- b. The Harbor Master shall keep chart data current.
- c. The Board shall display the chart at the Town Office and update it annually.

5.2 Implementation

The mooring plan shall be implemented with the minimum possible disruption to the location of all current moorings and uses, except where a change would benefit current mooring owners without unduly disrupting others.

SECTION 6: MOORINGS

6.1 Mooring permits

All moorings in Cushing waters shall require a mooring permit. No mooring shall be set or reset except by written permission of the Harbor Master.

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- a. For each commercial fishing vessel, a maximum of one boat mooring and one float used for storing fishing gear, moored in water too shallow for normal moorings, is allowed.
- b. For other vessels, recreational or commercial, a maximum of one mooring is allowed.
- c. For service moorings, rental moorings, and recreational floats as authorized in the following sections or as approved by special request to the Harbor Board.
- d. For an aquaculture site, a Cushing permit is required as well as a state permit.

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6.2 Mooring permit application procedures

a. An application for a mooring location shall be submitted to the Harbor Master on an approved form with any fee set by the Selectmen. The application shall provide a sketch of the proposed mooring location, the type of use requested, the depth of water at Mean Low Water, the length of water frontage of any lot-owner-applicant's waterfront lot, a description of the proposed mooring type and size, and the size and type of any watercraft to be moored.

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b. An Army Corps of Engineers permit application shall accompany an application for a rental or service mooring. A Maine Department of Marine Resources permit application shall accompany an application for an aquaculture site. The Harbor Master shall have the right to approve the rental mooring application pending approval of the ACE. In the case of an aquaculture site, the permit can be approved pending approval of Maine Department of Marine Resources.

c. When the Harbor Master has determined that an application is complete, he/she shall inform the applicant in writing within fourteen days of any required revisions. If no

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revision is required, or on receiving the required revisions, the Harbor Master shall within 30 days either issue a permit or deny the application. If the application is denied, the Harbor Master shall inform the applicant in writing of the reason for the denial. If the application is approved, the Harbor Master shall either assign a mooring location or place the applicant's name on a waiting list for moorings in the area requested.

d. An applicant may appeal a denial to the Board within 30 days.

e. Denial of an application may be appealed to the Cushing Harbor Board within 30 days.

f. The Harbor Master shall not approve mooring applications for himself or any of his wholly owned commercial entities. Such approval shall only be granted by the Board.

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6.3 Mooring assignment

The Harbor Master shall assign mooring sites based on the use permitted, the navigation requirements of the area, the mooring efficiency of the area, the need for access to piers, wharf space and docks, and prescribed priorities.

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6.4 Mooring assignment priorities

Mooring sites shall be assigned by the Harbor Master on a first come, first serve basis to permit holders, subject to the following priority assigned by the Board. Owners of lots with at least 100 feet of water frontage as of July 1, 1987 already have mooring privileges and may apply for additional mooring assignments according to the following allocation system (38 M.R.S.A. §3):

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a. To owners of riparian lots, located as close to the lot as is safe for the watercraft or use requested, as provided by 38 M.R.S.A. §3;

b. To Cushing resident owners of commercial fishing watercraft.

c. To Cushing resident owners of recreational vessels and other commercial vessels, without distinction.

d. To Cushing residents or entities owned by residents for a guest mooring.

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e. To Cushing residents for an aquaculture site.

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f. To non-resident owners of recreational watercraft.

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g. To non-residents or entities owned by non-residents for rental moorings.

h. For an additional mooring or for a mooring site relocation.

i. To non-residents or entities owned by non-residents for an aquaculture site.

j. To non-residents or other entities service moorings, rental moorings or non-commercial floats as approved by the Harbor Board.

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6.5 Nature of permits and assignments

a. Permits are issued for the duration of three years for the use requested and the conditions that support the use – for example, a particular watercraft, good tackle condition, water depth and other specific site conditions unchanged.

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b. Permits and location assignments are not transferable on sale of mooring tackle, or by sale, gift, inheritance or other means.

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c. Permits issued for priorities 6.4.a through 6.4.j must be renewed every three years. Any permit not renewed or unused for a period of three years shall be deemed to be abandoned.

d. Unless a mooring was permitted as a rental mooring, its rental is not permitted.

e. Assignment of a mooring location confers no right, title or interest in submerged lands or intertidal lands owned by the State.

f. Assignees may change watercraft at a mooring only by permission of the Harbor Master. Permission for a larger or different watercraft shall be granted only if, in the judgment of the Harbor Master, the change will not adversely affect the safety of watercraft moored or navigating in the surrounding area.

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6.6 Waiting lists

The Harbor Master shall maintain a list of applicants for moorings in each mooring area where no more watercraft can be safely moored, showing the priority of each applicant.

6.7 Mooring relocations

To improve the efficiency of a mooring area or for the safety of watercraft or other harbor management improvements, the Harbor Master may direct the mooring site of any watercraft or float to be vacated and the mooring tackle moved to a new location at the owner's expense. The Harbor Master's decision may be appealed to the Cushing Harbor Board within 30 days.

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6.8 Mooring tackle

All new and existing mooring blocks shall be of sufficient size and weight and chain or rope of sufficient strength and sound condition, together configured to properly secure the moored watercraft in the conditions and surroundings of the mooring location.

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a. A mooring marker attached to a mooring line shall be of sufficient size and buoyancy to remain afloat when not attached to the watercraft.

b. Mooring owners are responsible for inspecting their moorings annually. Boat and mooring owners may be held liable for damages caused by faulty, inadequate or improperly maintained moorings, chains, lines, bits, etc. The retrieval of mooring tackle that has failed and lies on the bottom is the sole responsibility of the mooring owner.

c. The Harbor Master may, at his/her discretion, direct a mooring to be hauled or may hire a diver to inspect a mooring at any time at the owner's expense if the Harbor Master has reasonable cause to believe the mooring is unsafe.

d. If the master or owner of any watercraft neglects or refuses to remove or replace a mooring when so directed by the Harbor Master, the Harbor Master shall cause the mooring to be removed or shall make such changes as to make the mooring safe as required, at the owner's or master's expense, and shall collect from the master or owner of the watercraft the cost incurred. The owner of the tackle shall be liable for all expenses incurred to comply with the Harbor Master's order, as provided by 38 M.R.S.A. §4.

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6.9 Mooring markings

Moorings shall be marked as set forth below.

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a. Each mooring marker shall bear the number of its permit or vessel identification, AND the watercraft or owner's name or initials.

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b. Guest moorings shall be marked by a white ball bearing the permit number or owner name or initials, AND the word GUEST.

c. Service moorings shall be marked by a white ball bearing the permit number or owner name or initials, AND the word PRIVATE.

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d. Rental moorings shall be marked by a white ball bearing the permit number or owner name or initials, AND the word RENTAL.

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e. Aquaculture moorings shall be marked by a white ball bearing the permit number issued by Maine Department of Marine Resources.

f. A float that is not attached to a wharf by traditional means shall display reflective tape.

6.10 Non-compliance

In response to non-compliance with any provision of this section, the Harbor Master may deny a permit application, revoke a permit, or direct mooring tackle to be removed from Cushing waters at an owner's expense. The Harbor Master's decision may be appealed to the Board within 30 days.

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SECTION 7: MOORING DISTRICTS

7.1 Mooring district A: Hornbarn Cove and Meduncook River

a. Location. This district includes all waters north of a line starting at the north end of Crotch Island, 43-58.36N X 69-18.589W and extending east to the mainland.

b. Area off Hornbarn Cove. Small boats shall be moored in shallower waters preserving deeper waters for larger boats. At the Harbor Master's discretion, floats may be required to increase usable mooring space. Mooring permit holders shall share the cost of the floats.

c. Meduncook River mooring field configuration

1. Mooring placement shall not encroach on the Meduncook River channel or hinder its use by commercial and recreational boaters.

2. Floats anchored at both ends shall be used for the majority of moorings.

a. The Harbor Master shall designate the type of float, its placement and anchoring method. Standard type moorings may be allowed on a case by case basis.

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b. Where floats are allowed to be attached to one another to increase the mooring capacity of a mooring area, they shall have anchoring devices between them to limit movement.

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c. Where floats accommodate more than one boat, boats shall be assigned a designated docking location alongside the float. Docking locations shall enable each boat to dock and un-dock under conditions of strong river current.

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3. No anchoring shall be permitted in the Meduncook River.

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7.2 Mooring district B: Davis Cove, west side of Gay Island.

a. Location. All waters extending south of the north end of Crotch Island, including Davis Cove.

b. Mooring placement shall not encroach on the narrow channel.

c. Anchorage shall be allowed clear of moorings and channels.

7.3 Mooring district C: Pleasant Point gut, inner and outer harbors.

a. The inner harbor includes all waters inside the line from near the Mark Ames property 43-57.506N X 69-17.640W extending to the north end of Gay Island 43-57.388N X 69-17.535W.

b. A waiting list for moorings in this harbor shall be maintained by the Harbor Master.

c. The outer harbor includes all waters outside the inner harbor to green can #5.

d. Small boats shall be moored in shallower waters preserving deeper waters for larger boats.

e. A "No Wake" speed limit shall be posted in these areas.

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7.4 Mooring district D: Maple Juice Cove.

a. Maple Juice Cove includes all waters inside the line from the tip of Stones Point to the tip of Bird Point.

b. Small boats shall be moored in shallower waters preserving deeper waters for larger boats.

c. An anchorage is provided in the middle of the Cove where no permanent moorings shall be permitted, defined by:

North point 43-58.627N X 69-16.615W

SW point 43-58.535N X 69-16.768W

South point 43-58.423N X 69-16.467W

East point 43-58.533N X 69-16.332W.

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7.5 Mooring district E: St. George River except Maple Juice Cove and the Pleasant Point gut harbor.

a. As the river narrows, care shall be taken in designating moorings to keep the channel open north of Broad Cove.

b. Anchorage shall be allowed clear of moorings and channels.

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SECTION 8: ABANDONED WATERCRAFT

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8.1 Prohibition

No person shall abandon or cause to be abandoned any watercraft, or related equipment or appurtenances within the waters of Cushing, whether on a mooring or at anchor. Nor shall any person abandon or cause to be abandoned any watercraft, vessel or hull upon any shoreline, dock, pier, wharf, float, mooring, or at anchor except with the express consent and approval of the owner of the dock, pier, wharf, float, mooring, shoreline, or in the case of anchored watercraft, the consent and approval of the Harbor Master.

8.2 Presumption

Any watercraft, vessel, hulk or raft left within the waters of Cushing which has been unattended for a period of seven (7) days without the express consent and approval of the owner of the dock, float, mooring, shoreline or in the case of anchored watercraft, the consent and approval of the Harbor Master shall be declared abandoned.

8.3 Procedures

When, in the opinion of the Harbor Master, a vessel has been abandoned, he/she shall take possession of such vessel and shall make reasonable efforts to identify and notify the owner. If the Harbor Master deems an abandoned watercraft to be a nuisance, a threat to navigation or a safety hazard, he/she may impound the watercraft until such time as all procedures pursuant to 25 M.R.S.A. §3501-3507 have been complied with. All expenses and fines pursuant to 38 M.R.S.A. §12, and the net proceeds of any auction, shall accrue to the Town.

SECTION 9: OPERATING RESTRICTIONS

9.1 Operator restrictions

Whoever operates any watercraft, vessel, water ski, surfboard, personal watercraft or similar device, however propelled, on or in waters of Cushing

- a. recklessly, or
- b. in a manner which endangers any person or property, or
- c. while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana

shall be guilty of a Class E crime as provided in M.R.S.A. 38.

9.2 Excessive noise is regulated by State statute.

SECTION 10: SAFE OPERATING SPEEDS

The speed limit in Cushing harbors shall be headway only. It shall be unlawful to operate a vessel in such a manner as to cause a wash, wake, or waves that damage, endanger or unreasonably disturb any person, wharf, float, or vessel anchored, moored, or tied up to any pier, float, dock or wharf while within an area of one hundred (100) yards from any float or mooring or within two hundred (200) feet of an anchored boat or vessel. The Harbor Master shall place 'No Wake' buoys to protect shoreline from erosion as necessary.

SECTION 11: APPEALS

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11.1 The Board, acting as a Board of appeals pursuant to 30-A M.R.S.A. §2691, shall hear an appeal by any aggrieved person affected directly or indirectly by a decision, order, rule, act or failure to act by the Harbor Master or his or her deputies. In its decision, the Board shall grant or deny relief from any order, rule, act or failure to act by the Harbor Master or his or her deputies, except that in no instance shall its decision violate State or Federal regulations, or this Ordinance.

11.2 An appeal shall be submitted to the Town Clerk on a form provided by the Board, and shall describe the complaint and the relief sought. The original appeal form shall be kept on file at the Town Office. A copy shall be forwarded to the Chairman of the Board.

11.3 The Board shall act on any appeal within forty-five (45) days of its receipt by the Town. An extension of the forty-five (45) day requirement may be mutually agreed in writing between the applicant and the Town. The Board shall set a hearing date, taking into consideration the schedules of the applicant and Board members. Notice of the hearing shall be posted at the Town Office not less than seven (7) days prior to the hearing.

11.4 At the hearing, the Board shall hear any oral or documentary evidence that is relevant and material. Appellants, defendants or their agents shall have the right to present oral and documentary evidence, to submit rebuttal evidence, and to conduct reasonable cross examinations.

11.5 The minutes of the hearing, together with all documentary evidence presented in the proceeding, shall constitute the official record of the appeal. The record shall include a written statement of the Board's findings and conclusions and its decision, and shall be filed at the Town Office. Notice of the decision shall be mailed or hand delivered to appellants and defendants or their agents within seven (7) days of a decision, and copied to the Harbor Master.

11.6 An appeal to Superior Court may be made within forty five (45) days from any act or decision of the Board.

SECTION 12: VIOLATIONS

12.1 Any person who orders or conducts any activity in violation of this ordinance shall be guilty of a misdemeanor subject to a minimum fine of \$250 up to a maximum of \$2500 for each violation in accordance with 30-A M.R.S.A. §4452.

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The fine amount shall follow this schedule based upon previous offenses regardless of nature:

1. A written or warning shall be issued and a record kept of the date, time and nature of offense.
2. First fineable offense - \$250
3. Second fineable offense - \$500
4. Third fineable offense - \$1,000
5. Fourth fineable offense - \$2,000
6. Further fineable offenses - \$2,500

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Unpaid fines shall double in amount for each calendar month outstanding until the maximum of \$2,500 is applied.

12.2 A person is guilty of failure to obey an order of the Harbor Master if the person intentionally, knowingly, and recklessly fails to obey any lawful order of the Harbor Master

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authorized by this Ordinance pursuant to 38 M.R.S.A. Chapter 1. Failure to obey an order of a Harbor Master is a Class E crime, subject to a penalty of a maximum of six (6) months imprisonment and/or a five hundred dollar (\$500) fine to be recovered on complaint by the Harbor Master before the District Court.

SECTION 13: CONFLICT OF REGULATIONS

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance, or of any other Ordinance, regulation or statute administered by the municipality or state, the more restrictive provision shall control.

SECTION 14: SEVERABILITY

If any section, subsection, clause, phrase or word of these Regulations is for any reason held to be invalid, such a decision shall not affect the validity of any other section, subsection, paragraph, sentence, clause, phrase or word of this Ordinance.

SECTION 15: EFFECTIVE DATE AND POSTING

15.1 On the date of its approval by the voters of the Town of Cushing, this Ordinance shall become effective, and the Coastal Waters Management Ordinance adopted in 2003 shall be deemed repealed.

15.2 A copy of this Ordinance certified by the Town Clerk shall be retained in Town files. Its accessibility to any member of the public shall be posted in a public place. Copies of this Ordinance shall be made available to the public at a reasonable cost at the expense of the person making the request. The mooring waiting list and the procedure for adding names to it shall be posted in traditional public posting places.

SECTION 16: AMENDMENT

This Ordinance may be amended by majority vote of the registered voters of the Town of Cushing.

SECTION 17: DEFINITIONS

In general, all words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, certain words and terms are defined below as they are used in this Ordinance.

Anchorage. Location where watercraft may be anchored, moored or otherwise berthed at a dock.

Aquaculture. The culture and husbandry of sea plants and animals.

Army Corps of Engineers (A. C. E.) Permit. Permit issued by the Army Corps of Engineers that is required for floats, rental moorings and service moorings.

Berth. Place where a watercraft lies when at anchor or made fast to a dock, float, slip, mooring, or other facility that secures watercraft.

Commercial Watercraft. Watercraft that generate income by their use and operation.

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Dinghy. Small watercraft. Skiff, punt, tender.

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Dock. Pier or wharf. A permanent platform contiguous with the shoreline used to berth, load and unload vessels.

Float. Floating platform used for storage, staging and transport of goods, or for berthing of vessels.

Headway. The minimum speed necessary to maintain steerage.

Mooring. Term including all equipment and methods used to secure a watercraft to a specific location on the water, other than those that are connected to the shore.

Mooring permit. Permit issued by the Harbor Master to an applicant, authorizing the applicant to use a specific location for a specific purpose in a specific manner.

M.R.S.A. Maine Revised Statutes Annotated.

Recreational watercraft. Watercraft used primarily for recreational purposes.

Rental mooring. Mooring site assigned to an individual or business, the use of which is rented or leased.

Resident. A person who is an owner of Cushing property, or who is a registered Cushing voter, or who resides in Cushing for at least 180 days a year.

Service mooring. Mooring site assigned to a business or individual conducting business within the Town of Cushing, used to moor watercraft owned by the business, used to moor watercraft which are serviced by the business, or used as a maneuvering device for leaving or entering a berth.

Storm mooring. Mooring used when seeking shelter in emergencies or severe weather.

Vessel. Any watercraft used or capable of being used for transportation.

Watercraft. Any mobile floating apparatus, without distinction as to method of propulsion, including vessels, skiffs, boats, rafts, floats, and airplanes.

Wharf. See Dock.

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