

AMENDMENTS TO THE BLUE HILL HARBOR ORDINANCE

Administrative Draft
February 16, 2022

PREPARED FOR TOWN MEETING TO BE HELD ON
_____, 2022

*The Town of Blue Hill Harbor Ordinance is proposed to be repealed
and replaced in its entirety by the following text:*

Note: The cover page, table of contents, and pagination of this document are not a part of the officially adopted Town of Blue Hill Harbor Ordinance and are included here for convenience to the reader. They may be updated or changed by the Town at any time.

Town of Blue Hill Harbor Ordinance

Originally Adopted: _____, 2006
Repealed and Replaced Effective: [April 1, 2022]

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TOWN OF BLUE HILL HARBOR ORDINANCE

Section 1. Authority; Purpose

This **Ordinance** shall be known as the “Town of Blue Hill Harbor Ordinance,” and is hereby enacted pursuant to Article VII, Part 2, Section 1 of the Maine Constitution, [30-A M.R.S. § 3001](#) and [38 M.R.S. § 7](#). The purpose of this **Ordinance** is to regulate marine activities in the Town of Blue Hill (the “Town”), including all **Blue Hill waters** (as hereinafter defined) in order to ensure safety to persons and property; to promote availability and use of public resources; to encourage and protect traditional maritime and commercial activities; and to create a fair and efficient framework for the administration of marine resources.

Section 2. Definitions

As used in this **Ordinance**, the following terms have the following meanings:

NOTE: For convenience only, certain defined terms are marked in bold italics where they appear in the text of this **Ordinance** (others, such as “Town,” are not).

Aquaculture: Commercial or scientific marine farming for finfish, shellfish, other marine life or plants, using pens, nets, floats, stakes and other related equipment.

Blue Hill waters: All those waters within the Town’s boundaries which ebb and flow with the tide.

Harbormaster: A Town official appointed pursuant to Section 5 of this **Ordinance**.

Mooring: A device to hold a **watercraft** in a specific location. **Moorings** do not include devices intended to be carried aboard (such as an anchor).

MRC: The Marine Resource Committee established under Section Section 4 of this **Ordinance**.

Non-resident: A **person** who is not a **resident**.

Outhaul: A **mooring** used to attach dinghies or tenders by means of a continuous line attached to the shore.

Person: An individual, partnership, or other legal entity.

Resident: A **person** who occupies a dwelling within the Town for more than 180 days in a calendar year or is a registered voter in the Town.

Rules and Regulations for Blue Hill Waters: The rules and regulations adopted, and amended from time to time, by the Select Board in accordance with Section 3 of this **Ordinance**.

“**Shall**” and “**May**”: “**Shall**” is mandatory, “**may**” is permissive.

Shorefront parcel owner: An owner of a parcel of land greater than 20,000 square feet, with at least 100 linear feet of shore frontage upon **Blue Hill waters**. Parcels with multiple owners, condominiums, townhouses, or any similar multiple ownership parcels of land are considered one parcel for the purpose of allocating **mooring** permits, and as such are entitled to one (1) mooring fronting their land as provided under [38 M.R.S. § 3](#). Additional **moorings** for a **shorefront parcel owner** may be allowed under other provisions of this **Ordinance**.

Specially Designated Areas: Those parts of the rules and regulations adopted, and amended from time to time, by the Select Board in accordance with Section 3 of this **Ordinance** which establish

channels, turning basins, maximum speed or “no wake” zones, anchorages, **mooring** areas, and swimming areas.

Vessel: Any **watercraft** used for, or capable of, transportation over the water, including boats, dinghies, and skiffs.

Watercraft: Any floating apparatus including but not limited to **vessels**, rafts, and floats, but excluding seaplanes and **aquaculture** equipment.

Watercraft, abandoned: Any **watercraft** deemed by the **Select Board** to have been abandoned.

Watercraft, derelict: Any **watercraft** deemed by the **Select Board** to be derelict.

Wharf: Any permanent non-floating structure, normally used as a point of transfer for passengers or goods or for temporary or continuous attachment of a **vessel**.

Section 3. Waters Regulated

3.1. Waters Regulated

This **Ordinance** governs all activities in **Blue Hill waters**.

3.2. Specially Designated Areas; Rules and Regulations for Blue Hill Waters

The Select Board may adopt and amend, from time to time, rules and regulations that (i) establish **Specially Designated Areas** and (ii) govern any activities in **Blue Hill waters** and at associated marine facilities, which are not regulated by this **Ordinance** or the Town’s other ordinances, including without limitation: speed and wake restrictions, rules regulating water access facilities such as Town **wharves** and swimming areas, and **mooring** specifications and waiting lists. The Select Board may adopt any such rules and regulations after consultation with the **MRC** and after notice and hearing. Any such adopted rules and regulations, including charts and descriptions of any **Specially Designated Areas** so established, shall be made available to the public at the Town Office and through the office of the **Harbormaster** and shall be carried out and enforced by the **Harbormaster**.

3.3. Adjustments to Specially Designated Areas

The Select Board, upon the request of the **MRC** or upon its own initiative, shall from time to time review **Specially Designated Areas** and make such amendments to existing areas, establish new areas or delete areas no longer deemed necessary, each as the Select Board deems appropriate.

Section 4. Marine Resource Committee

4.1. Establishment of MRC

The Town of Blue Hill Marine Resource Committee is hereby established. It shall consist of seven (7) voting members appointed by the Select Board. A majority of its members shall constitute a quorum. One, or more, members of the Select Board and the **Harbormaster** shall serve as non-voting advisors to the **MRC**.

4.2. Membership

MRC members shall be **residents** of the Town. The membership shall represent diverse interests in the **Blue Hill waters** including, but not limited to: commercial and recreational **vessel** owners,

shorefront parcel owners, water-related business owners and Town board or committee members.

4.3. Terms of MRC Members

The term of an **MRC** member shall be three (3) years. Terms shall commence on the date of appointment. The Select Board may appoint a new member to serve the remainder of the term of a member who is, for whatever reason, unable to complete his/her term.

4.4. Chairperson

The Chairperson of the **MRC** shall be elected annually by a vote of the **MRC** at its first meeting following the Annual Town Meeting.

4.5. Meetings

The **MRC** shall meet on the call of the Select Board or the **MRC** Chairperson. Meetings shall be held at least quarterly. Notices of all meetings shall be transmitted (by post, email, voice, or otherwise) to all members at least five (5) days prior to the meeting, provided, however that in the event a regular monthly meeting date and time is established, notice to members is not required. Notice of all meetings shall be posted on the Town Calendar at least five (5) days prior to the meeting. All meetings shall be open to the public and otherwise conducted in accordance with the Maine Freedom of Access Act to the extent applicable.

4.6. Meeting Attendance

A member of the **MRC** who misses three (3) meetings of the **MRC** in any one-year term, without excuse, shall be considered to have resigned his/her office.

4.7. Duties

The duties of the **MRC** shall be:

- 4.7.1. To recommend to the Select Board qualified candidate(s) for appointment or re-appointment as **Harbormaster**. The **MRC** shall consider the factors set forth in Section 5.4 of this **Ordinance** when considering qualification of candidates.
- 4.7.2. To monitor the duties of the **Harbormaster** and to advise the Select Board in its evaluation of the performance of the **Harbormaster**, as requested by the Select Board.
- 4.7.3. To advise the Select Board on harbor and coastal planning, operation and regulation, except for duties of the **Harbormaster** or deputies which are set forth in [38 M.R.S. § 1](#), *et seq.* and this **Ordinance**. Planning shall include working with the **Harbormaster** to develop proposals for amendments to **Specially Designated Areas** for the Select Board's review and consideration.
- 4.7.4. To review from time to time, but at least annually, the then-current **Specially Designated Areas**, the **Harbormaster's** job description, and the **Rules and Regulations for Blue Hill Waters**, and to make recommendations to the Select Board for any amendments to those documents that the **MRC** deems appropriate.
- 4.7.5. To develop and recommend to the Select Board a proposed annual operating budget for activities covered by this **Ordinance** and to recommend to the Select Board fees and penalties as set forth in Sections 6.2.1 and 9.1 of this **Ordinance**.

Section 5. Harbormaster

5.1. Appointment

The Select Board shall appoint a **Harbormaster** annually for a one-year term beginning May 1 and ending April 30. In the event that an appointment is not made by April 30, the incumbent shall remain in office until a successor is appointed and sworn. The **Harbormaster** is subject to all the duties and liabilities of that office as prescribed by state law, this **Ordinance**, the **Rules and Regulations for Blue Hill Waters**, and other applicable Town ordinances, rules, and policies. This **Ordinance** does not provide the serving **Harbormaster** any expectation of automatic reappointment to serve successive terms, and no cause need be shown by the Select Board for their failure to reappoint a **Harbormaster** at the end of any term.

5.2. Removal

A **Harbormaster** may be removed from office, or be subject to other disciplinary action, by the Select Board during his/her term of office for cause after notice and hearing. In the event the **Harbormaster** is removed from office, the Select Board shall appoint an interim **Harbormaster** until a permanent appointment is made.

5.3. Compensation

The Select Board shall establish compensation for the **Harbormaster** as the Select Board deems appropriate.

5.4. Qualifications

In addition to the Town's policies applicable to all Town employees, the **Harbormaster** shall meet the following minimum qualifications:

- 5.4.1. Twenty-one (21) years of age;
- 5.4.2. U.S. citizen;
- 5.4.3. Maine resident;
- 5.4.4. High school education or equivalent;
- 5.4.5. Valid driver's license; and
- 5.4.6. Demonstrated skill in small boat handling, basic navigation and fundamentals of seamanship.

5.5. Duties; Authority

Duties of the **Harbormaster** shall include, but are not limited to, the following:

- 5.5.1. Within **Blue Hill waters**, the **Harbormaster** shall have all authority and those certain duties and responsibilities of the office which are prescribed by state law, including without limitation [38 M.R.S. §§ 1](#), *et seq.*, excepting the power to make arrests or the authorization to carry a weapon. The **Harbormaster** shall have the additional duty to administer and enforce the provisions of this **Ordinance** and the **Rules and Regulations for Blue Hill Waters**.

- 5.5.2. The **Harbormaster** shall also have such duties and responsibilities as are described in the **Harbormaster's** job description, as approved by the Select Board and available at the Town Office.
- 5.5.3. The **Harbormaster** shall at all times comply with the minimum training and continuing education requirements set forth in [38 M.R.S. § 1-A](#).

Section 6. Moorings and Outhauls

6.1. Permit Required

- 6.1.1. No **mooring** or **outhaul** shall be placed in **Blue Hill waters** unless:
 - 6.1.1.1. a written application for a **mooring** permit has been filed with the **Harbormaster**, specifying the desired **mooring** or **outhaul** location; size and type; the applicant's residency status; whether the anticipated use is commercial or non-commercial; the maximum size and type of **watercraft** to be moored, as applicable; and any other information reasonably requested by the **Harbormaster**;
 - 6.1.1.2. the **Harbormaster** has approved the **mooring** permit application, with or without modifications or conditions of approval, and identified a **mooring** permit number; and
 - 6.1.1.3. the required fee has been paid.
- 6.1.2. **Moorings** and anchors used solely to secure **outhauls** attached to the shore require a **mooring** permit. In the case of **shorefront parcel owners**, such **moorings** do not count for purposes of their privileges under Section 6.8 of this **Ordinance**.
- 6.1.3. Temporary mooring permits may be issued by the **Harbormaster** for a service craft requiring, by operational necessity, immediate access to a specific location.
- 6.1.4. The **Harbormaster** shall assign the location that a permit holder may occupy for **mooring** purposes in accordance with Sections 6.8 and 6.9 of this **Ordinance**. The **Harbormaster** may change an assigned **mooring** location in accordance with Section 6.11 of this **Ordinance**.
- 6.1.5. **Mooring** permits shall be issued to the applicant and may not be used by or assigned, transferred, leased, rented, or sublet to any other person except as expressly allowed by this **Ordinance** or the **Rules and Regulations for Blue Hill Waters**.

6.2. Permit Applications

- 6.2.1. Application forms for **mooring** permits may be obtained from the **Harbormaster** or at the Town Office.
- 6.2.2. The **Harbormaster** shall act upon a complete **mooring** permit application within two (2) weeks by approving, approving with conditions or modifications, or denying the application.
- 6.2.3. Any denial of a permit application by the **Harbormaster** shall state the reasons on a written notice of rejection, which shall be delivered to the applicant.

- 6.2.4. Fees for **mooring** permits shall be set annually by the Select Board after consultation with the **MRC**. The current fee schedule shall be made available to the public at the Town Office.
- 6.2.5. A record of all **mooring** applications, showing date of receipt, and **mooring** permit numbers, showing date of issuance, shall be maintained at the Town Office and made available to the public.

6.3. Permit Term

- 6.3.1. **Mooring** permits shall have a term of up to twelve (12) months, expiring on May 31 of each year. **Mooring** permits may be renewed as provided in accordance with Section 6.4 of this **Ordinance**.

6.4. Permit Renewals

- 6.4.1. The **Harbormaster** shall have authority to renew a **mooring** permit upon receipt of a complete renewal application and applicable fee if the **Harbormaster** determines that there is no substantial change in the content of the application as compared to the preceding year's **mooring** permit application, except as provided in Section 6.4.2 of this **Ordinance**. If a permit holder fails to submit a renewal application prior to the expiration of the preceding year's **mooring** permit, the **Harbormaster** may renew the **mooring** permit only if there is no qualified party on any applicable **mooring** permit waiting list established under the **Rules and Regulations for Blue Hill Waters**.
- 6.4.2. A permit holder of a valid **mooring** permit during the preceding year but currently owning no **watercraft** may be granted a one-time renewal of his/her **mooring** permit. The **Harbormaster** may thereafter grant additional **mooring** permit renewals to such a permit holder only if there is no qualified party on any applicable **mooring** permit waiting list established under the **Rules and Regulations for Blue Hill Waters**.

6.5. Transfer of Permits

Mooring permits and location assignments are not transferable or assignable, except for commercial fishing purposes as allowed by [38 M.R.S. § 3-A](#). All other requests for transfer of a permit shall be treated as an application for a new permit.

6.6. Non-renewal of Permits

- 6.6.1. A permit holder no longer qualifying for, or desiring not to renew a **mooring** permit shall so inform the **Harbormaster**. The **Harbormaster** may thereafter assign the non-renewed **mooring** location to the next qualified and suitable applicant. Ground tackle placed at the assigned **mooring** location may be offered for sale or transfer and, if sold or transferred to the new permit holder, may be left in place. Otherwise, its owner must remove all ground tackle within fourteen (14) days of informing the **Harbormaster** of non-renewal.

6.7. Waiting List

- 6.7.1. All **mooring** sites, including but not limited to permanent **moorings**, transient **moorings**, service **moorings**, and private **moorings**, shall be assigned by the **Harbormaster** on a first-come, first-served basis.

- 6.7.2. If the **Harbormaster** receives, in any twelve month period commencing on June 1, more applications for **mooring** permits than there are **mooring** sites available within **Blue Hill waters**, the **Harbormaster** shall create one or more waiting lists and assign **mooring** spaces as they become available from those waiting lists, in accordance with the **Rules and Regulations for Blue Hill Waters** and the statutory requirements for allocating **mooring** sites to non-residents as set forth in [38 M.R.S. § 7-A\(2\)](#).

6.8. Placement of Moorings; Shorefront Privilege

- 6.8.1. Moorings shall be placed at the location indicated in the **mooring** permit application as it may have been modified or conditioned by the **Harbormaster**.
- 6.8.2. The **Harbormaster** shall provide the permit holder with longitude and latitude coordinates of the assigned **mooring** location and a permit number.
- 6.8.3. The permit holder shall provide the **Harbormaster** with the name of the **person** responsible for the inspection and maintenance of the **mooring**.
- 6.8.4. If a **shorefront parcel owner** provides proof of shore rights to a parcel of land as part of a **mooring** permit application and so requests, the Harbormaster shall, whenever practicable, assign a **mooring** location fronting the said parcel of land but not encroaching on any channels established by the Select Board. Not more than one **mooring** privilege may be assigned to any **shorefront parcel owner** under this privilege, but this limitation does not prevent a **shorefront parcel owner** from receiving additional **mooring** assignments as are otherwise allowed under this **Ordinance** and the **Rules and Regulations for Blue Hill Waters**.

6.9. Use of Moorings; Identification and Inspection

- 6.9.1. No **person** shall use a **mooring** without the express permission of the permit holder.
- 6.9.2. **Moorings** shall be identified, maintained, and inspected in accordance with the **Rules and Regulations for Blue Hill Waters**. The **Harbormaster** may, at any time, request information from the permit holder or inspect any **mooring** to evaluate the safety and fitness of a **mooring** for its intended use.

6.10. Liability

- 6.10.1. The permit holder has the responsibility to maintain his/her assigned **mooring** in a safe condition and to use the **mooring** in a manner suitable to the size, configuration, and displacement of any **watercraft** tied up to the **mooring**. Holding a **mooring** permit does not absolve the permit holder from liability or damages resulting from the failure of a **mooring**.
- 6.10.2. Any **person** using any **moorings** or other facilities within **Blue Hill waters** assumes all risk of damage or loss to property. The Town assumes no risk on account of fire, theft, acts of God, or damages of any kind to **persons** or **watercraft** within **Blue Hill waters**.

6.11. Movement of Moorings

- 6.11.1. Movement of a **mooring** from its assigned location by any **person** is prohibited without prior written approval from the **Harbormaster**.
- 6.11.2. The **Harbormaster** may direct that a **mooring** location be vacated and the permit holder's ground tackle be moved to another location within **Blue Hill waters** at any time when, in

the *Harbormaster's* judgment, conditions render movement of a *mooring* necessary or desirable (including without limitation for the safety of one or more *watercraft*, the efficiency of a *mooring* area or anchorage, the maintenance of a designated channel, the implementation of harbor management improvements, or the implementation of a Harbor Plan approved by the Select Board).

- 6.11.3. Except as provided in Section 6.11.4 of this *Ordinance*, any order of the *Harbormaster* to move a *mooring* shall be in writing and shall provide not less than fourteen (14) days' notice to the permit holder by mail at the permit holder's last known address. If the *mooring* is not moved to the *Harbormaster's* satisfaction within the timeframe stated in the notice, the *Harbormaster* may cause the entire *mooring* to be removed or the buoy removed and the chain dropped to the bottom or make such change in the character of the *mooring* as required, all at the expense of the permit holder in accordance with [38 M.R.S. § 4](#).
- 6.11.4. Notwithstanding anything to the contrary in this *Ordinance*, the *Harbormaster* may cause a *mooring* to be removed or relocated without advance notice to the permit holder if, in the *Harbormaster's* judgment, such action must be taken to prevent injury or damage to persons or property.

6.12. Removal of Moorings

The *Harbormaster* may cause a *mooring* to be removed at the expense of the permit holder and revoke the *mooring* permit for any of the following reasons:

- 6.12.1. Non-payment of fees, fines, or lack of inspection within the prescribed period.
- 6.12.2. Abandonment of *mooring*. Any *mooring* whose permit has not been renewed in accordance with Section 6.4 of this *Ordinance* shall, after one (1) year, be deemed abandoned. The Town may dispose of an abandoned *mooring*, including ground tackle, in accordance with [30-A M.R.S. § 3106](#).
- 6.12.3. Neglect to remove or replace *moorings*. In case of the neglect or refusal of a permit holder to remove a *mooring* or to replace it by one of different character, when so directed by the *Harbormaster*, the *Harbormaster* shall take such actions as prescribed by [38 M.R.S. § 4](#).

Section 7. Abandoned and Derelict Watercraft

7.1. General Prohibition

No *person* may bring into or maintain in *Blue Hill waters* any derelict *watercraft* or *watercraft* for salvage, nor may any *person* abandon any *watercraft* in *Blue Hill waters*. This subsection shall also apply to abandoned floats, fishing gear, seaplanes, or *aquaculture*-related materials.

7.2. Effect of Abandonment

If the Select Board determines that a *watercraft* has been abandoned, the *Harbormaster* shall order the *watercraft* owner (if known) to remove it from *Blue Hill waters* within ten (10) days of the order. If the *watercraft* owner refuses to do so, or if the *watercraft* owner cannot be identified after reasonable search, the *Harbormaster* may cause its removal, with the costs to be paid or reimbursed by the *watercraft* owner. This subsection shall also apply to floats, fishing gear,

seaplanes, or *aquaculture*-related material determined by the Select Board to have been abandoned.

7.3. Protection of Free Movement and Safe Anchorage

The *Harbormaster* shall cause any *vessels* obstructing the free movement or safe anchorage of another *vessel* or anchoring within any channel lines established by the Select Board to remove to another position as provided by [38 M.R.S. § 5](#).

Section 8. Marine Resource Reserve Fund

Revenues generated by fees and civil penalties under this *Ordinance*, to the extent they are in excess of actual annual expenditures for the execution and enforcement of this *Ordinance*, shall be placed in a continuing account to be carried forward for future expenditures under this *Ordinance* or used to maintain and improve municipally-owned water-related facilities.

Section 9. Fees, Violations, and Enforcement

9.1. Fees

The Select Board, in consultation with the *MRC*, shall set such fees and penalties for mooring permits, municipally-owned facilities associated with Blue Hill waters, and other activities within *Blue Hill waters*, as it deems reasonable and appropriate. All such fees and civil penalties shall be used by the Town solely for the maintenance of municipally-owned maritime facilities and for the administration of this resource and this *Ordinance*, with any remaining amounts to be managed pursuant to 7.1 of this *Ordinance*.

9.2. Violations

A *person*, who violates any provision of this *Ordinance* or the terms or conditions of a permit issued under this *Ordinance*, commits a civil violation for which the Town may seek penalties and relief in accordance with [30-A M.R.S. § 4452](#). The *Harbormaster* shall serve the violator, in person or by mail, with a Notice of Violation stating (i) the date and place of the violation, (ii) the nature of the violation and the *Ordinance* provision violated, and (iii) steps the violator must take and the schedule within which those steps must be taken in order to correct the violation. The Select Board may enter into a consent agreement to remedy any violation of this *Ordinance*. In the event that the violator fails to correct the violation in compliance with the Notice of Violation, the Select Board may commence an enforcement action, pursuant to [30-A M.R.S. § 4452](#), in which the Town may seek from the violator attorney's fees, expert witness fees, costs and injunctive relief.

9.3. Harbormaster Enforcement

The *Harbormaster*, upon finding that any provision of this *Ordinance* or the terms or conditions of a permit issued under this *Ordinance* is being violated, is authorized to issue Notices of Violation, orders to correct, or schedules to correct and, upon authorization by the Select Board, to initiate legal proceedings to enjoin violations and to recover fines and costs associated with such violations.

9.4. Appeals

9.4.1. Except as provided in Section 9.4.1.1 of this **Ordinance**, a **person** aggrieved by any decision, act, or failure to act of the **Harbormaster** under this **Ordinance** may appeal that decision in writing to the Select Board within seven (7) days of the **Harbormaster's** decision. The appeal must state with specificity the decision, act, or failure to act from which the appeal is taken and the reason for the appeal.

9.4.1.1. Notices of Violation, enforcement orders, suspensions or revocations of permits or approvals, written determinations of no violation, or any other enforcement decisions of the **Harbormaster** are advisory only and may not be appealed.

9.4.1.2. Any decision or act by the **Harbormaster** where the **Harbormaster** has determined that there is an imminent danger to life or property shall not be stayed pending appeal.

9.4.2. The Select Board, sitting as a board of appeals, shall hear appeals *de novo*. In deciding any appeal, the Select Board shall hear and approve, approve with conditions, or disapprove the decision, act or failure to act from which the appeal is made in accordance with the procedures set forth in [30-A M.R.S. § 2961\(3\)\(A\) – \(F\)](#).

9.4.3. Any party may take an appeal to the Superior Court from any order, relief, or denial of the Select Board under this Section 9.4 within thirty (30) days of the date of the Select Board's vote on the final decision in accordance with the Maine Rules of Civil Procedure.

Section 10. General Provisions

10.1. Effective Date

This **Ordinance** shall take effect immediately upon its adoption at a Town Meeting.

10.2. Conflicts

Whenever the requirements of this **Ordinance** are in conflict with the requirements of any lawfully adopted rule, regulation, ordinance or statute which also governs any activity regulated by this **Ordinance**, the requirement imposing the more restrictive standard shall govern.

10.3. Severability

If any provision of this **Ordinance** is held to be invalid by a court of competent jurisdiction, the remainder shall continue in full force and effect as though such invalid or inoperative provision had not been made.