

Appendix D

Town of Wells
Harbor Ordinance

Wells Harbor Ordinance

Chapter 124. HARBOR

[HISTORY: Adopted by the Town of Wells 3-11-1967; amended in its entirety 8-2-2011. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Beaches – See Ch. 86.

Shellfish conservation program – See Ch. 190.

§ 124-1. Purpose.

This Harbor Ordinance is hereby established to regulate marine activities within Wells Harbor of the Town of Wells, Maine, in order to ensure safety to persons and property, promote availability and use of valuable public resources, and to create a fair and efficient framework for the administration of these waters.

§ 124-2. Word usage.

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular. The word "shall" is always mandatory.

§ 124-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANCHORAGE

The area of Wells Harbor where the wake zone is enforced from the green day mark "5" south to the southernmost mooring in the Webhannet River.

COMMERCIAL FISHERMAN

A fisherman who is licensed by the State of Maine and/or other applicable entities to engage in commercial fishing.

MOORING PERMIT

A permit issued annually by the Harbor Master to an applicant, authorizing the applicant to use a specific mooring space for a specific overall length and type of vessel, for a period of one year.

OVERALL LENGTH

Includes all fixed fore and aft extensions.

STRUCTURALLY UNSAFE

A vessel lacking structural integrity due to neglect, design, or damage, thereby creating an unsafe environment for vessels, persons, or property in its vicinity.

UNSANITARY

A vessel discharging or otherwise emitting toxic or environmentally damaging materials above and beyond normal operating standards or promoting the congregation of waterfowl.

WELLS HARBOR

The Webhannet River and all of its tributaries both now and hereafter appearing where the tide ebbs and flows.

§ 124-4. Applicability.

- A. This chapter shall apply to all shores of Wells Harbor as described in the definition of "Wells Harbor" in § 124-3, with the addition of the channel to the outer end of the north and south jetties, all of its access roads and lands adjacent thereto, both now and hereafter created by natural or mechanical erosion, including acreage on all public properties.
- B. This chapter and all applicable state, federal and local regulations shall apply to the jetties, access roads, parking lots and all other public properties adjacent thereto.

§ 124-5. Selectmen to make rules and regulations and set fees.

- A. The Board of Selectmen shall be authorized to make rules and regulations governing the use of Wells Harbor and all areas set forth in § 124-4, by resolution, after a public hearing held at least 10 days before their enactment.
- B. The Board of Selectmen shall be authorized to set fees for the use of all harbor facilities, after a public hearing held at least 10 days before the fees being set.

§ 124-6. Appointment of Harbor Master and Assistant Harbor Master.

The Board of Selectmen shall be authorized to appoint a suitably qualified Harbor Master and Assistant Harbor Master and fix a reasonable compensation for such service.

§ 124-7. Duties of Harbor Master.

The Harbor Master shall enforce all ordinances, rules and regulations and state and federal statutes applicable to Wells Harbor and other public properties as herein described in this chapter.

§ 124-8. Enforcement.

The enforcement of this chapter shall be the duty of the Harbor Master whenever not otherwise provided. The Assistant Harbor Master shall have the powers and duties of the Harbor Master in the Harbor Master's absence.

§ 124-9. Compliance required.

All orders and directions of the Harbor Master shall be complied with.

§ 124-10. Permit for construction required.

No dock, floats or any other type of structure shall be erected in Wells Harbor without first obtaining all necessary permits, including from the Board of Selectmen and the Army Corps of Engineers whenever required.

§ 124-11. Laying out and marking of channel.

The Harbor Master may, after consultation with the Town Manager and subject to the approval of the Board of Selectmen and confirmation and approval by the Coast Guard, lay out a channel through the anchorage and place markers determining such channel if necessary.

§ 124-12. Marking of shoals.

The Harbor Master shall mark for public safety any shoal or other submerged object with the approval of the Coast Guard.

§ 124-13. Tenders.

- A. All tenders using the tender floats shall not be longer than 12 feet.
- B. All tenders shall be properly tied up and shall be pumped or bailed out after each rain.

§ 124-14. Moorings.

- A. Designation of mooring area. The Harbor Master shall plot plan the anchorage area and designate the area where all boats, vessels or any type flotation may be moored in consultation with the Town Manager and subject to the approval of the Board of Selectmen.
 - (1) Placement of moorings. All moorings shall be placed at the discretion of the Harbor Master.
 - (2) Denial of mooring placement. The placement or use of a private mooring within the limits of Wells Harbor is prohibited. The Town may deny use of the Town-owned dock(s), piers, moorings and other float facilities within the limits of Wells Harbor for the following reasons:
 - (a) Boat, vessel or flotation structurally unsafe.

- (b) Boat, vessel or flotation showing neglect where such neglect can be construed as dereliction.
 - (c) Boat, vessel or flotation unsanitary.
 - (d) Boat, vessel or flotation whose overall length does not permit proper moorage or imparts greater than normal strain on hardware, tackle or lines for dock and float facilities.
 - (e) Boat, vessel or flotation whose overall length does not permit proper moorage or imparts greater than normal strain on hardware, tackle or lines for the mooring area.
 - (f) Boat, vessel, houseboat or any other type of flotation being used for living quarters for more than five days.
 - (g) Boat, vessel or flotation that would be dangerous to persons or property, including docks, wharves and floats.
 - (h) Boat, vessel or flotation emanating obnoxious fumes, oils or any other materials detrimental to the safety and comfort of others, including the pollution of its waters, shores and floats.
 - (i) Boat, vessel or flotation moored without permit.
- (3) Unapproved moorings restricted. No moorings shall be placed in Wells Harbor by anyone other than the Harbor Master except by permission of the Harbor Master in case of emergency.
- (4) Tying up to moorings required. No boat, vessel or any type of flotation shall be moored or tied up to any other device in the mooring area or any other part of the river within the limits of Wells Harbor for the purpose of mooring, except at a mooring or float assigned for that purpose by the Harbor Master. This section shall not apply in the event of emergency or by written permit of the Harbor Master.
- B. Mooring standards. All moorings shall conform to the specifications as set forth by the Harbor Master. The Harbor Master shall have the discretion to assign boats, vessels and any type of flotation to a mooring or a float meeting appropriate specifications, but in no event shall there be more than one boat, vessel or any type of flotation per mooring, except permission from the Harbor Master for a short duration.
- (1) Moorings for smaller boats, vessels or any type of flotation. The Harbor Master may develop standards for the placement of boats, vessels or any type of flotation of certain overall length on floats versus moorings.
 - (2) Mooring blocks. All mooring blocks shall be of stone, granite, heavy reinforced concrete or its equivalent or metal Helix-type anchors, but in no event shall a block be more than 14

inches in height nor more than 48 inches in length or width, except with the written permission of the Harbor Master.

- C. Inspection of moorings. All moorings and floats shall be inspected at least once each year by the Harbor Master, who shall direct any repairs necessary for the safety of persons, moored boats, vessels and flotation devices and other property. In addition, the Harbor Master may require additional inspections administered by a licensed and insured company.
- D. Mooring fee schedule. Mooring fees are payable in advance as per the mooring fee schedule.
- (1) All boats, vessels or any type of flotation shall be charged by their overall length.
- E. Mooring space assignment and reassignment. All mooring spaces are under the exclusive control of the Harbor Master and must be assigned annually from established lists maintained by the Harbor Master, of persons either holding or desiring a mooring permit, except for designated mooring spaces which the Harbor Master may assign to transient boats, vessels or any type of flotation.
- (1) Mooring space assignees may change their boat, vessel or type of flotation on their assigned mooring only with the permission of the Harbor Master. In general, assignees will be limited to the same approximate overall length and type of boat, vessel or type of flotation unless, in the judgment of the Harbor Master, a change can be made without adversely affecting the Harbor mooring plan or adjoining mooring space assignees.
 - (2) Moorings will be limited to boats, vessels, and any type of flotation, which do not exceed 42 feet in overall length. Existing mooring permits for boats, vessels and any type of flotation issued before October 1, 2011, which exceed 42 feet shall be allowed.
 - (3) Any change in the overall length of a boat, vessel or any type of flotation must be requested, in writing, and approved by the Harbor Master. In the event that the request to go from a small boat, vessel or flotation mooring to a large boat, vessel or flotation mooring is approved, the mooring holder will be placed on the appropriate mooring waiting list, per policy.
 - (4) Moorings not transferable. Moorings are not transferable to others except to commercial fishermen's next of kin for continued commercial fishing purposes as indicated by Maine State Law. See 38 M.R.S.A. § 3-A, as amended.
 - (5) When a mooring holder does not put a boat, vessel or any type of flotation on the mooring assigned to him/her after the mooring fee is paid, he/she shall have a one-year grace period in which to replace the boat, vessel or flotation with one that is similar in overall length. After the year's grace period, if the same boat, vessel or flotation or a boat, vessel or flotation similar in overall length is not placed back on the leased mooring by July 1, the mooring will be forfeited and opened to the mooring waiting list applicants.

- (6) It is the responsibility of the mooring holders to provide proof of ownership of a boat, vessel or any type of flotation assigned to a specific mooring. Ownership is to be proven at the time of application for a mooring permit.
 - (7) All mooring holders must maintain liability insurance (minimum \$100,000) on their boat, vessel or any type of flotation, and proof of insurance must accompany the mooring application. If an insurance policy is not maintained, the mooring holder's permit shall be revoked.
 - (8) A mooring or slip may be held without a boat, vessel or any type of flotation for one year. The Harbor Master shall grant a conditional permit of one year for that mooring or slip to the next eligible person from the mooring or slip waiting list in order to use all available spaces in the harbor. After one year, if the original mooring or slip holder does not place a boat, vessel or any type of flotation on their mooring, the Town will revoke that mooring permit and grant it to the next eligible person on the waiting list.
 - (a) If a mooring holder's mooring or slip will not accommodate his/her boat, vessel or type of flotation due to loss of water depth due to sand encroachment, that person shall be allowed to hold that mooring space until conditions permit placement of that same boat, vessel or type of flotation in the space by paying the base mooring fee of \$250 as a holding fee. During such time, conditional use of that mooring or slip will be granted to the next eligible person from the mooring or slip waiting list in order to use all available spaces in the harbor.
 - (b) All persons who accept a conditional permit do so with the understanding that it is a conditional permit for one season and all fees must be paid and documentation provided prior to use of said berth.
- F. Mooring permit holder. The application for a mooring permit shall include the overall length, draft, and type of boat, vessel or flotation proposed for the mooring space, the application fee, and other pertinent information requested on the application form. It is the responsibility of the applicant to fill out the application and submit it to the Town of Wells. An application shall not be considered received until the application and fees, taxes and accrued interest and penalties are received by the Town of Wells. The Harbor Master shall review the application, approve it, and issue the mooring permit or deny the application.
- G. Waiting list: All new mooring assignments shall be made on a first-come-first-served basis from established waiting lists maintained by the Harbor Master, except as provided by statute. See 38 M.R.S.A. § 7-A, as amended. Applicants will be listed chronologically according to the overall length of their boat, vessel or type of flotation. The Harbor Master shall review mooring applications with regard to space available for the overall length, draft and type of boat, vessel or flotation indicated, as evaluated by the Harbor Master. Applicants on a waiting list may refuse an offered mooring space and retain their relative position on the list only twice before

being stricken from their respective list. Applicants will have 14 days to respond to mooring assignment offers. Applications shall be good for one year and must be renewed annually on or before April 1 in order to retain the applicant's relative position on the list. The waiting lists shall be available for inspection by the public during regular business hours at the office of the Harbor Master and at Wells Town Hall.

[Amended 7-3-2012]

- H. Any person with special circumstances needing special accommodations may submit a written letter to the Harbor Master to be considered for special placement. If such needs are deemed valid, special placement may be granted to mooring or slip holders if such space is available.
- I. Mooring prohibitions.
 - (1) Except for emergencies or when approved by the Harbor Master, no boat, vessel or any type of flotation shall be tied alongside any municipal float for more than 30 minutes at any one time, except that commercial boats, vessels or any type of flotation having an assigned mooring are allowed a maximum of 45 minutes upon return. Upon violation of this regulation, the boat, vessel or any type of flotation will be subject to a fine of \$50 and must be moved. The Harbor Master may extend these time limits for vessel repairs.

§ 124-15. Boats, vessels and flotations.

- A. Boats, vessels or any type of flotation shall not be left tied up unattended at the Town piers system, except by permission of the Harbor Master.
- B. No boat, vessel or any type of flotation shall be abandoned or left to disintegrate in Wells Harbor.
- C. The Harbor Master shall notify the owner, owners or agents of any boat, vessel or any type of flotation he deems abandoned or left to disintegrate after consultation with the Town Manager and subject to the approval of the Board of Selectmen. The owner, owners or agents shall remove the boat, vessel or type of flotation within a reasonable length of time. If the boat, vessel or type of flotation is not removed within a reasonable length of time by the owner, owners or agents, the Harbor Master shall remove the abandoned boat, vessel or flotation, the cost of which removal shall be levied upon its owner, owners or agents.
- D. Any boat, vessel or any type of flotation which sinks at a mooring, dock or float in Wells Harbor shall be subject to **§ 124-15C**.
- E. All boats, vessels or any type of flotation using the anchorage and facilities shall be liable for all damages to moorings, floats, docks, and other Town-owned equipment unless caused by the material failure of Town-owned equipment.

§ 124-16. *Fishing gear.*

- A. The Harbor Master shall be authorized to make reasonable rules and regulations as to the storage of bait, bait barrels and all types of fishing gear, including skiffs, punts and tenders, applicable to all for the purpose of safety, cleanliness and to prevent facility deterioration.
- B. From June 1 to October 31 of each year, no person or persons shall place or cause to be placed any type of fishing gear, such as lobster traps, pots, nets, trawls or the like, in the areas depicted in Wells Harbor, except in areas as approved by the Harbor Master.

§ 124-17. *Speed limit.*

- A. No boat, vessel or any type of flotation shall travel at more than bare steerage when approaching the anchorage, through the anchorage or near its docks or floats.
- B. Upon all tidal waters within the Town it shall be unlawful to operate a boat, vessel or any type of flotation at a speed that is not safe and prudent, including, but not limited to, damaging any wharf, float, or anchored or moored boat, vessel or any type of flotation, or endangering any person or property, or impairing another boat's, vessel's or flotation's ability to maneuver or proceed safely. Operating a boat, vessel or any type of flotation at more than bare steerage speed within 10 feet of a person in the water or within a defined bathing area when persons are in the water shall be considered endangering a person, and is unlawful.
- C. The speed of any boat, vessel or flotation from the anchorage to the outer end of the jetties shall be reasonable so as not to endanger others.

§ 124-18. *Diving and swimming.*

- A. All scuba divers using the anchorage or channel shall display a float with the proper flag.
- B. There shall be no diving or swimming from floats or docks. Swimming or surfing is prohibited at all times within the confines of the mooring basin and in the area between the jetties.

§ 124-19. *Prohibitions.*

- A. It shall be unlawful to throw rocks or any hard objects at boats, vessels or any type of flotation or in the water of Wells Harbor.
- B. No aircraft or airboat shall be operated in the area as set forth in Wells Harbor without written permission from the Harbor Master.
- C. All children under 12 years of age going onto the floats in Wells Harbor area must be accompanied by an adult at least 18 years of age.

§ 124-20. Violations and penalties.

Whoever violates or fails to comply with any section of this chapter or rules or regulations may be punished by a civil penalty of not less than \$50 plus the costs for each offense, and where a hazard or defiance exists, a civil penalty of not less than \$50 per day may be levied, and all moneys derived from such violations shall be retained by the Town of Wells for enforcement purposes, subject to costs and other charges by the court.

§ 124-21. Appeal procedure.

- A. In all cases, a person aggrieved by a decision of the Harbor Master as it relates to the implementation of this Ordinance must file an appeal to the Board of Selectmen within 31 days after the issuance of the decision from the Harbor Master. The appeal shall be filed with the Town Manager. A filing fee as established by the Board of Selectmen shall accompany any appeal. The Town shall also be reimbursed for the costs of notification and advertisements concerning an appeal.
- B. Before taking action on any appeal, the Board of Selectmen shall schedule a public hearing within 31 days of the filing of an appeal. Notice of the public hearing shall be made by the Board of Selectmen to the appellant by certified mail, and notification shall include the nature of the appeal and the time and place of the public hearing. Notice of all appeals shall be mailed, published in a newspaper of general circulation, and posted in at least three public places within the Town at least 10 days before the specified date of such hearing.
- C. The Harbor Master, or the Assistant Harbor Master, shall attend all hearings, and shall present to the Board of Selectmen all plans, photographs or other material deemed appropriate for an understanding of the appeal and upon which they relied in making the decision appealed from. The appellant's case shall be heard first. The aggrieved party may appear by agent or attorney. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chairperson. All persons at the hearing shall abide by the order of the Chairperson. Hearings may be continued to other times.
- D. Written notice of the decision of the Board of Selectmen shall contain a statement of findings and conclusions, as well as reasons or basis therefor, and shall be sent to the appellant, the Harbor Master and the Town Manager within seven business days of the decision. Written notices of decision shall be mailed to the appellant via certified mail. The concurring vote of a majority of the members of the Board of Selectmen present and voting shall be required to reverse an order, requirement, decision, or determination of the Harbor Master. The appellant shall have the burden of proof. The standard of review to be applied by the Board of Selectmen is appellate, not de novo, review, and the Board of Selectmen may modify or reverse a decision of the Harbor Master only if it finds that the decision was contrary to specific provisions of law, this Code, or the facts presented to the Harbor Master. If the Board of Selectmen modifies or

reverses a decision of the Harbor Master, the Board of Selectmen shall remand with instructions for such further action as may be necessary.

- E. If the Board of Selectmen shall deny an appeal, a second appeal of a similar nature shall not be brought before the Board of Selectmen within one year from the date of denial of the first appeal by the Board, unless in the opinion of a majority of the Board substantial new evidence shall be brought forward or unless the Board finds that an error, mistake or misunderstanding of facts has occurred.
- F. Any decision of the Board of Selectmen may be appealed to Superior Court within 45 days after the decision is rendered according to the Maine Rules of Civil Procedure, Rule 80B.

§ 124-22. *Separability.*

If any section, subsection, sentence, clause, phrase or portion of this ordinance or application thereof to any person(s) or circumstance(s) is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision or application and such holding shall not affect the validity of the remaining portions or applications thereof.