

Planning and Development Committee

May 3, 2016

6:00 PM

Conference Room

AGENDA

1. Approval of April 20, 2016 Minutes

2. Committee Applications:
 - A. Brittany Goetting – Historic Preservation Commission
 - B. Andrew Scott – Planning Board (Alternate)
 - C. Kristen McAlpine – Historic Preservation Commission

3. Updates: Planning Board Review - Fiberight

4. Old Business:
 - A. Shoreland Zoning Amendments
 - B. Harbor Ordinance
 - C. Fees Ordinance Revisited

5. New Business:
 - A. Zoning Ordinance/MUBEC Inconsistency

6. Zoning Considerations/Discussion
7. Citizens Initiatives:
8. Public Comments:
9. Committee Member Comments:
10. Adjourn

Note: Mineral Extraction Pending
Codification Pending
Subdivision Amendments PB
Home Occupation Pending

Flag Lots Pending
Accessory Apartments Pending
Sign Revisions

Planning and Development Committee
April 20, 2016
6:00 PM
Conference Room
DRAFT MINUTES

Attendees:

Committee

Ivan McPike-Chair
Stephen Wilde
Dennis Marble
Terry McAvoy
David Ryder
Mark Cormier

Staff

Angus Jennings, Manager
Dean Bennett, Community Dev Dir (CDD)

1. Approval of April 6, Minutes - Approved
2. Committee Applications: None
3. Updates:
4. Old Business:

A. Marina Sign Design

Manager Jennings indicated he had been in contact with Chip Kelly of the MDOT with regard to the placement of a municipal sign at the entrance to the Marina Road. He indicated he wanted to clarify to MDOT that the sign was primarily a municipal sign, with a minor portion of the sign being mention of the businesses at the marina. Consistently MDOT has responded that although municipal signs are exempt and don't require a permit, an off-premise business sign is not provided for in the statute.

Manager Jennings wanted to continue efforts to determine the status of the road way and explore the potential for the sign being placed that falls under the realm of non-commercial speech. The promotion of the town's assets such as the boat launch and associated amenities enhances the recreational offerings of the community. An amendment to the sign regulations may be necessary to provide for such signs throughout the community.

Committee Action: Motion made and Seconded to draft amendments to the sign regulations that would allow for the placement of municipal signs that promote community assets and related amenities. Vote: 6-0.

B. Fees Ordinance Discussion

The Fee's Ordinance was discussed. Fees associated with the Harbor Ordinance, Zoning Ordinance, Subdivision Ordinance, Earth Moving and Signs were reviewed. Committee disagreed on the necessity of fees, amount of fees, and what costs were covered by tax dollars vs. costs covered by application and inspection fees.

Code Enforcement Officer Block presented recommended increases in various fee categories, noting that Hampden is considerably low compared to many surrounding communities.

Discussion primarily focused on subdivision, zoning, and inspection fees. Code Enforcement Officer noted that the codes require a minimum number of inspections be performed dependent upon the nature of the development. Current fees do not always cover actual costs or repeated inspections as may be necessary.

Committee will continued discussion on specific categories of Fee's at the next meeting.

5. New Business:

A. Shoreland Zoning Update Draft

Community Development Director (CDD) explained that the Draft Shoreland Zoning changes are proposed for consideration consistent with Hampden's obligation to stay current with the State Minimum Guidelines, which have again, been amended by the State of Maine.

CDD to identify and present those specific areas of the Ordinance that exceed the minimum requirements at the next meeting to facilitate Committee review.

B. Accessory Apartment Discussion

Community Development Director presented a list of criteria, for Committee discussion, taken from the Town of Freeport Zoning Ordinance that appeared very clear and concise. CDD asked the Committee for their comment on the criteria.

Committee indicated they were in favor of the concept with Chairperson McPike specifically pointing to the criteria that addressed parking requirements. The Committee agreed in support for the accessory apartment vs. in-law apartment due to the restriction and enforcement issues associated with the in-law apartment.

The Committee, indicating concern for timing of this concept, to the following action:

Committee Action: Motion made and seconded to refer the material to the Town Council for forwarding to the Planning Board for review and comment. Vote: 6-0

6. Citizens Initiatives: None
7. Public Comments: None
8. Committee Member Comments: None
9. Adjourn: 8:05pm



Check One: Initial Application
 Reappointment Application

TOWN OF HAMPDEN
APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: Goetting LAST Brittany FIRST P MI
ADDRESS: 549 Main Road Norm STREET Hampden TOWN 04444 ZIP

MAILING ADDRESS (if different): _____

TELEPHONE: 951-326-0361 HOME _____ WORK _____

EMAIL: Williamsburg6590@gmail.com

OCCUPATION: University of Maine teaching assistant

BOARD OR COMMITTEE PREFERENCE:
FIRST CHOICE: Historic Preservation Committee

SECOND CHOICE (OPTIONAL): _____

How would your experience, education and/or occupation be a benefit to this board or committee? As an academic and historian, I feel that I would be able to provide information about local history

Are there any issues you feel this board or committee should address, or should continue to address? Preserving the historical integrity of buildings

- 3 YEAR
- CONSERVATION COMMITTEE
- BOARD OF ASSESSMENT REVIEW
- PERSONNEL APPEALS BOARD
- LURA HOIT MEMORIAL POOL
- ECONOMIC DEVELOPMENT COMMITTEE
- FRIENDS OF DOROTHEA DIX PARK
- DYER LIBRARY
- RECREATION COMMITTEE
- BOARD OF APPEALS
- HISTORIC PRESERVATION COMMITTEE
- TREE BOARD

5 YEAR
PLANNING BOARD

Town of Hampden
RECEIVED

FOR TOWN USE ONLY		Date Application Received: <u>APR 27 2016</u>
COUNCIL COMMITTEE ACTION: _____	DATE: _____	Office of the Town Clerk
COUNCIL ACTION: _____	DATE: _____	
<input type="checkbox"/> NEW APPT	<input type="checkbox"/> REAPPOINTMENT	DATE APPOINTMENT EXPIRES: _____

Brittany Goetting

549 Main Road North, Hampden, Maine 04444/ (951) 326-0361/ brittany.cathey@maine.edu

Education

University of Maine, Orono

Ph.D. in History

Advisor: Liam Riordan

Expected Completion Date: May 2021

University of Maine, Orono

M.A. in History

Advisor: Liam Riordan

Thesis: "Jonathan Fisher of Blue Hill, Maine- One Thread in the Web of Early American Education, 1780-1830"

Completion Date: August 2015

University of California, San Diego

B.A. in History

Colloquium: "Anti-Colonialism in the Gospels of Mark, Luke and John"

Completion Date: June 2012

Mount San Jacinto Community College

Completion Date: June 2009

Awards

Mildred Thayer Scholarship, 2015-2016

Acadia Centre for Baptist and Anabaptist Studies Travel Grant, 2015

University of Maine Graduate Assistant Tuition Scholarship, 2013-2016

University of California San Diego Grant, 2010-2012

University of California San Diego Stout Scholarship, 2010-2011

University of California San Diego Provost Honors, 2009

Conferences

Concordia University 21st Annual Graduate Conference, History in the Making

Concordia University, March 2016

Paper: "'Bucking the Norm' Challenges to Conventional Educational Works through the Children's Primers of Jonathan Fisher of Blue Hill, Maine and Joseph Emerson of Beverly, Massachusetts"

Constructivist Design Conference on Education Improvement Group Liaison

Saint Lawrence University, July 2014, July 2015

Created online curriculum to be used by the Frederic Remington Art Museum in Ogdensburg, New York, monitored group workshops, and assisted in presentations



Check One: Initial Application Reappointment Application

Her term expired in 2015

TOWN OF HAMPDEN
APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: McAlpine Kristen L
LAST FIRST MI

ADDRESS: 10 Williams St. Hampden 04444
STREET TOWN ZIP

MAILING ADDRESS (if different): Same

TELEPHONE: (207) 852-2692 (207) 974-5001 ext. 4126
HOME WORK

EMAIL: Kristen.mcalpine@thefirst.com

OCCUPATION: Branch manager, First National Bank

BOARD OR COMMITTEE PREFERENCE:

FIRST CHOICE: HPC

SECOND CHOICE (OPTIONAL):

How would your experience, education and/or occupation be a benefit to this board or committee?

Are there any issues you feel this board or committee should address, or should continue to address?

3 YEAR

- CONSERVATION COMMITTEE
BOARD OF ASSESSMENT REVIEW
PERSONNEL APPEALS BOARD
LURA HOIT MEMORIAL POOL
ECONOMIC DEVELOPMENT COMMITTEE
FRIENDS OF DOROTHEA DIX PARK

- DYER LIBRARY
RECREATION COMMITTEE
BOARD OF APPEALS
HISTORIC PRESERVATION COMMITTEE
TREE BOARD

5 YEAR
PLANNING BOARD

FOR TOWN USE ONLY
Date Application Received:
COUNCIL COMMITTEE ACTION: DATE:
COUNCIL ACTION: DATE:
NEW APPT REAPPOINTMENT DATE APPOINTMENT EXPIRES:



Check One: Initial Application
 Reappointment Application

TOWN OF HAMPDEN
APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: Scott Andrew J.
LAST FIRST MI

ADDRESS: 5 Town Farm Rd. Hampden 04444
STREET TOWN ZIP

MAILING ADDRESS (if different): _____

TELEPHONE: 207-862-8141 207-299-5381 (cell)
HOME WORK

EMAIL: ASSETTA.ROADRUNNER.COM

OCCUPATION: Contractor & Real Estate Investor

BOARD OR COMMITTEE PREFERENCE:
FIRST CHOICE: Planning Board Alternate

SECOND CHOICE (OPTIONAL): Historical Preservation

How would your experience, education and/or occupation be a benefit to this board or committee? _____

20 years experience as a site work contractor, real estate investor, and distressed real estate rehab

Are there any issues you feel this board or committee should address, or should continue to address? _____

No

- CONSERVATION COMMITTEE
- BOARD OF ASSESSMENT REVIEW
- PERSONNEL APPEALS BOARD
- LURA HOIT MEMORIAL POOL
- ECONOMIC DEVELOPMENT COMMITTEE
- FRIENDS OF DOROTHEA DIX PARK

3 YEAR

DYER LIBRARY
RECREATION COMMITTEE
BOARD OF APPEALS
HISTORIC PRESERVATION COMMITTEE
TREE BOARD
Town of Hampden
RECEIVED
APR 27 2016

5 YEAR
PLANNING BOARD

Office of the
Town Clerk

FOR TOWN USE ONLY		Date Application Received: _____
COUNCIL COMMITTEE ACTION: _____	DATE: _____	
COUNCIL ACTION: _____	DATE: _____	
<input type="checkbox"/> NEW APPT	<input type="checkbox"/> REAPPOINTMENT	DATE APPOINTMENT EXPIRES: _____



To: Planning and Development Committee
From: Dean Bennett, Director of Community Development
Date: April 28, 2016
Subject: State Mandated Shoreland Zoning Guidelines Update

.....

As of January 26, 2015, the Department of Environmental Protection published their most recent legislatively approved minimum Shoreland Zoning Guidelines. We as a community with shoreland, and an adopted Shoreland Zoning Ordinance, are obligated to amend our Shoreland Zoning Ordinance in order to comply with these State established minimum regulations. Once amendments are adopted, we will then submit our amended Shoreland Zoning Ordinance to the Maine Department of Environmental Protection for approval and consistency verification.

The changes in the Guidelines are relatively few and a number of identified issues have been clarified and addressed that have proven to be problematic to the administration/interpretation of the Guidelines since the last update.

The categorical changes are listed below:

- | | |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Timber Harvesting Options: | Guidelines have been revised to make it clear that the Maine Forest Service will not assist those communities that adopt local harvesting standards that are in addition to the State standards. |
| Structures: | Guidelines have clarified the definition of structure and the determination of height of structure. |
| Water Dependent: | Clarified the definition of Water Dependent Uses. |
| Shoreland Stabilization: | Requiring contractors to be certified by the DEP before performing shoreland stabilization. |
| Storm Damaged Trees: | Clarified the definition of storm damaged trees. |

Re-vegetation Standards:	Clarified ground cover, tree and shrub re-vegetation standards.
Construction:	Revised construction, reconstruction and relocation standards.
Non-conforming Expansion:	Revised method of determining percentage of expansion based on distance from high water line.

The red text in the attached draft, are the required changes in the minimum guidelines which need to be incorporated into the current Shoreland Zoning Ordinance. The blue text in the attached draft, are additional minor changes offered by Code Officer Block, in order to clarify text in the interest of interpretation and enforcement.

There are no proposed substantive amendments to the existing Shoreland Zoning Ordinance other than those in the minimum shoreland zoning guidelines as required by Statute. The current Shoreland Zoning Ordinance, once amended, will not exceed the State minimum regulatory requirements.

TOWN OF HAMPDEN

Draft

The Town of Hampden Hereby Ordains
Proposed Amendments to the Harbor Ordinance

Deletions are ~~Strikethrough~~ Additions Double Underlined

**TOWN OF HAMPDEN, MAINE
HARBOR ORDINANCE**

TABLE OF CONTENTS

ARTICLE I	BOUNDARIES AND JURISDICTION.....	2
ARTICLE II	HARBOR MASTER.....	2
ARTICLE III	CHANNELS.....	2
ARTICLE IV	FLOATS.....	2
ARTICLE V	LAUNCHING RAMPS.....	3
ARTICLE VI	MOORINGS.....	3
ARTICLE VII	GENERAL REGULATIONS.....	4
ARTICLE VIII	NUISANCE AND POLLUTION.....	5

ADOPTED: Hampden Town Council: August 20, 1984
Effective date: September 19, 1984

AMENDED: Hampden Town Council April 20, 1992
Effective: May 20, 1992

AMENDED: Hampden Town Council November 17, 2003
Effective: December 17, 2003

~~AMENDED: Hampden Town Council: IDATE1 2016
Effective: IDATE1 2016~~

**TOWN OF HAMPDEN, MAINE
HARBOR ORDINANCE**

**ARTICLE I
BOUNDARIES OF JURISDICTION**

The rules and regulations contained herein shall govern water recreation, navigation, and all boating activities on the Penobscot River and its estuarine tributaries, extending from the Bangor City Line to the Winterport Town Line, to the thread of the river channel. The Hampden Marina area shall include that area on Turtle Head extending from the property line between land now or formerly owned by the City of Bangor and land now or formerly owned by the Lane Construction Corporation, southwest to a point 100 feet downriver from Turtle Head Point, extending to the thread of the river, also including Turtle Head Cove, from Turtle Head to the head of tide.

**ARTICLE II
HARBOR MASTER**

The Harbor Master shall be appointed annually by the Town Council and shall have the authority to enforce the rules and regulations of the Statutes of the State of Maine relating to the operation of vessels, as contained in Title 38 M.R.S.A., Chapter 1, and other rules and regulations as contained herein.

**ARTICLE III
CHANNELS**

The ~~Main~~ main channel at the Hampden Marina shall extend in a southerly direction from the boat launching ramps approximately 400 feet to the main channel of the Penobscot River, to be marked by buoys from May 15th to October 15th of each year. The channel shall be kept clear for the passage of boats to the public landing float and the boat launching ramps.

Comment [AJ1]: Need to determine who will perform this function.

There shall be no anchoring allowed within 100 feet of the channel lines, and tenders or dinghies shall not be allowed to encroach into the area of the channel outlined by the channel buoys.

**ARTICLE IV
FLOATS**

~~A landing float will be maintained at the Hampden Marina by the Town for the use of the public. No persons shall leave a vessel tied to the face of the public float for a period of longer than one hour without the direct permission of the Harbor Master, with the exception of the rowboats, canoes, dinghies, or other un-powered boats, which may be tied to the ends or rear of the float after registration with the Harbor Master. Any person who leaves a vessel moored to the public float beyond the allotted time shall be fined for each violation in the sum of not less than \$25.00 nor more than \$100.00 to be recovered on complaint by the Harbor Master before the District Court. Each day shall be considered a separate violation.~~

~~Boats over 15 feet in length shall not be allowed to be tied up in the dinghy area. (Amended 4/2007)~~

~~Overnight tie up to the public float will be allowed only upon permission from the Harbor Master, with payment of a fee in accordance with the Town of Hampden Fees Ordinance. (Amended 11-17-03)~~

ARTICLE ~~V~~ VI
LAUNCHING RAMPS

The Harbor Master shall have jurisdiction over the public boat launching ramps. Boats and cradles shall not be left on the ramps at any time. Vehicles, trailers, and boats shall be parked or stored in designated areas only. No vehicles or boats shall be left unattended on the approach to the launch ramps.

No unattended tie-up of boats to the grounding floats will be allowed, nor will boats be allowed to tie up in any manner so as to interfere with the launching or retrieval of boats on the launch ramps. Any violation ~~will be subject to the same penalties as described above for the public float, shall be fined for each violation in the sum of not less than \$25.00 nor more than \$100.00 to be recovered on complaint by the Harbor Master before the District Court. Each day shall be considered a separate violation.~~

ARTICLE VII
MOORINGS

A mooring area shall be established on the upriver side of the entrance channel to the boat launch ramps, extending upriver to an extension of the property line between land now or formerly owned by the City of Bangor and land now or formerly owned by the Lane Construction Corporation. The maximum offshore distance for mooring shall be 350 feet from the mean high water line.

Installation of private moorings will be subject to the approval of the Harbor Master upon payment of an annual fee in accordance with the Town of Hampden Fees Ordinance. (Amended: 11-17-03)

Said moorings shall be placed only in the precise areas designated by the Harbor Master. Residents of the Town of Hampden and the City of Bangor will be given priority with regard to the placement of private moorings. (Amended 4/20/92)

The Harbor Master shall register all moorings with the following information:

1. Name and address of the owner, and number of the vessel.
2. Location of the mooring.
3. Size and type of the mooring and chain.

All moorings shall be registered at the Town Office each year before May 1st. Each private mooring shall be assigned a number, which shall be displayed on the buoy in permanent letters at least 2½ inches high.

The maximum mooring scope from staple to bit shall be forty feet. The minimum mooring weight shall be one ton for stone or other bulk moorings, or the equivalent for swing-around moorings. The minimum bottom chain size shall be 3/8 inch. In addition to the foregoing specifications for moorings, the Harbor Master may enforce additional written specifications, to be conveniently available to the public upon request. (Amended: 4-20-92)

No changes in the location of moorings will be allowed without the approval of the Harbor Master. Moorings not registered by May 1st of each year shall become the property of the Town. Ownerships of private moorings are not transferable without the written permission of the Harbor Master. Moorings shall be inspected at least once every ~~five~~ three years at the owner's expense, either by pulling or by underwater investigation. If, upon inspection, the mooring is considered by the Harbor Master to be unsafe, then it shall be repaired or replaced within a period of ten days at the expense of the owner.

Comment [AJ2]: It will be helpful to prepare a map of the offshore area, including depths at low tide, on which mooring locations can be marked.

Comment [AJ3]: The Town Clerk is leading an effort to prepare local forms and protocols to comply with this Ordinance and Statute

Whoever violates any of the above conditions pertaining to moorings shall be liable upon complaint of the Harbor Master in the District Court for a fine of not less than \$25.00 nor more than \$100.00. Whoever willfully destroys any channel marker or buoy shall be liable upon complaint of the Harbor Master for a fine of not less than \$100.00 nor more than \$200.00.

The anchoring of boats will not be allowed within the limits of the entrance channel or the mooring area. All boats shall be anchored downriver from the mooring area. The lower limit of the anchorage area shall be 100 feet downriver from Turtle Head. (Amended: 4-20-92)

Whoever anchors a boat in an improper location or manner shall be liable upon complaint of the Harbor Master in District Court for a fine of not less than \$25.00 nor more than \$100.00.

ARTICLE VIII GENERAL REGULATIONS

Any use of the public facilities mentioned above, i.e., ~~public floats~~, boat launching ramps, parking areas, moorings and ground floats shall be at the user's risk, and the Town of Hampden will not be liable for any damage or injury resulting from the use of said facilities. Boats and/or trailers will not be stored on the premises within the parking area for more than twenty-four (24) hours without the permission of the Harbor Master. (Amended: 4-20-92)

~~A Harbor Committee shall be appointed each year by the Town Council, consisting of five members, each serving three year terms. The initial Committee will have two members serving three years, two members serving two years, and one member serving one year. All new appointments will be for three year terms. The Town Manager and the Harbor Master shall serve as Ex Officio members. The Harbor Committee shall be composed of those persons having an interest in and knowledge of recreational boating, and those persons having a direct connection with the ownership and/or operation of facilities in the Turtle Head area.~~

~~The duties of the Committee shall include:~~

- ~~1. The general surveillance of the operation and maintenance of the Marina area, including shore side activities;~~
- ~~2. The establishment and the annual review of fees for the use of the public facilities;~~
- ~~3. The planning for further development and improvement of the Marina facilities, and~~
- ~~4. The planning and review of boating activities within the overall harbor jurisdiction.~~

~~The Committee shall file an annual report with the Town Council. The Harbor Committee shall be advisory in nature and any complaints, recommendations or requests shall be addressed to the Town Manager for further action.~~

The Harbor Master shall be responsible for carrying out the provisions of this Ordinance as well as the provisions of Title 38 M.R.S.A., Chapter 1. He/she shall keep a log of all activities within the harbor area, and shall collect all fees as hereinafter established to be turned over daily to the Town Clerk. The Harbor Master shall be subject to the authority and direction of the Town Manager.

Comment [A34]: We need to determine whether appointing a Committee may be helpful to the Town in meeting its responsibilities and either retain this language -- and appoint a Committee -- or strike it.

**ARTICLE ~~VIII~~ IX
NUISANCE AND POLLUTION**

No watercraft shall be used or operated within the harbor area so as to cause danger, annoyance, disturbance or inconvenience to the public. Motorboats without suitable mufflers will be prohibited.

All watercraft operating within the Hampden Marina limits shall maintain a speed of not more than five knots.

No person or vessel shall dump or dispose of any refuse or garbage upon the shore of the Penobscot River or its tributaries, or upon the waters of the river. No vessel shall deposit, throw, sweep or cause to be deposited or swept into the waters of the Penobscot River or its tributaries any gasoline, oil, fuel or sewage, or any floating objects which may cause obstruction or danger to navigation.

Any master or owner of any vessel or boat, or any other person who shall violate any of the provisions of any rules or regulation contained herein to which a specific penalty is not annexed or otherwise provided by law, shall forfeit and pay a fine of not less than \$25.00 nor more than \$100.00, to be recovered upon complaint by the Harbor Master before District Court.

Title 38: WATERS AND NAVIGATION

Chapter 1: OPERATION OF VESSELS

Subchapter 1: HARBOR MASTERS

§1. APPOINTMENT; COMPENSATION

The municipal officers of a town that borders or contains territorial waters, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall appoint a harbor master for a term of not less than one year, who is subject to all the duties and liabilities of that office as prescribed by state law, municipal ordinances and regulations adopted by the municipal officers, municipal harbor commissioners, municipal port authorities or other such bodies empowered to regulate municipal harbors. The municipal officers may establish the harbor master's compensation and, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove the harbor master and appoint another one. [2005, c. 492, §4 (AMD).]

The municipal officers may prohibit a harbor master from making arrests or carrying a weapon. A harbor master may not make arrests or carry a firearm unless the harbor master has successfully completed the training requirements prescribed in Title 25, section 2804-1. Any law enforcement officer vested with the authority to carry a weapon and make arrests has the authority to enforce this subchapter. [1999, c. 682, §6 (AMD).]

For purposes of this section, "territorial waters" has the same meaning as provided in Title 12, section 6001, subsection 48-B. [2005, c. 492, §4 (NEW).]

SECTION HISTORY

1977, c. 696, §330 (AMD). 1985, c. 531, §2 (AMD). 1985, c. 692, §§1,4 (RPR). 1987, c. 412, §§1,8 (RPR). 1987, c. 655, §1 (AMD). 1999, c. 682, §6 (AMD). 2005, c. 492, §4 (AMD).

§1-A. TRAINING

The following provisions govern the training of harbor masters and deputy harbor masters appointed pursuant to section 1 or 2. [2005, c. 525, §1 (NEW).]

1. Basic training course. A person appointed or reappointed a harbor master or a deputy harbor master after August 31, 2006 must complete a basic harbor master training course offered by a statewide harbor masters association within one year after being appointed or reappointed unless that person has previously completed such a course. The person appointed or reappointed a harbor master or deputy harbor master shall pay the cost of the training required under this subsection.

[2005, c. 525, §1 (NEW) .]

2. Reimbursement. Nothing in this section may be construed to prohibit a municipality, at its sole discretion, from reimbursing a harbor master or deputy harbor master for the cost of training under this section.

[2005, c. 525, §1 (NEW) .]

3. Additional training. Nothing in this section may be construed to prohibit a municipality from requiring a harbor master or deputy harbor master to obtain training beyond that required by this section.

[2005, c. 525, §1 (NEW) .]

SECTION HISTORY

2005, c. 525, §1 (NEW) .

§2. RULES FOR CHANNEL LINES; ENFORCEMENT

The municipal officers of all maritime towns and plantations, other bodies empowered to regulate municipal harbors and the county commissioners in the case of maritime unorganized townships may make rules and regulations, with suitable provision for enforcement, to keep open convenient channels for the passage of vessels in the harbors and waterways of the towns or townships for which they act, and may establish the boundary lines of those channels and assign suitable portions of their harbors and other coastal and tidal waters within their jurisdiction for anchorages. [1987, c. 655, §2 (AMD) .]

In the event fishing gear is within the boundary lines of a channel in violation of local rules, the harbor master may issue a warning of navigational interference and may commence court action to order removal of that gear. [1987, c. 655, §2 (NEW) .]

Such rules and regulations as may be made by those municipal officers, other bodies empowered to regulate harbors or county commissioners shall be enforced and carried out by the harbor master of that town or unorganized township, or any other law enforcement officer of the State or any political subdivision of the State. [1987, c. 655, §2 (AMD) .]

The harbor master may appoint deputies who, under his direction, shall enforce and carry out the rules and regulations of this section. [1987, c. 412, §§ 2, 8 (NEW) .]

SECTION HISTORY

1965, c. 242, (AMD) . 1987, c. 412, §§2,8 (AMD) . 1987, c. 655, §2 (AMD) .

§3. MOORING SITES

In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other coastal and tidal waters, harbors and great ponds where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location that they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor or great pond, the need to conform to section 7-A or other conditions render the change desirable. [1991, c. 838, §16 (AMD) .]

Unless permitted by an ordinance adopted under section 3-A, mooring assignments may not be transferred. Assignments may not be rented unless the provision for rental was part of the agreement when the mooring was assigned. [1991, c. 685, §1 (AMD) .]

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law that establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency must be resolved in favor of this subchapter. [2003, c. 660, Pt. A, §23 (AMD) .]

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any shorefront parcel of land under this privilege. Notwithstanding section 11, persons who, prior

to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot have mooring privileges assigned according to this section. The limitation of one mooring assigned under this privilege does not prevent the owner of a shorefront parcel from receiving additional mooring assignments under the allocation system for all other residents. [2003, c. 660, Pt. A, §23 (AMD).]

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter. [1987, c. 655, §3 (NEW).]

Municipalities may not charge mooring fees for and do not have jurisdiction over the siting or specifications of structural moorings used to secure aquaculture equipment within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. [2003, c. 660, Pt. A, §23 (NEW).]

Municipalities have jurisdiction over boat and vessel moorings within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. A municipality may not charge a mooring fee for a boat or vessel within the boundaries of a lease that is inconsistent with that municipality's other mooring fees for commercial vessels. [2003, c. 660, Pt. A, §23 (NEW).]

A harbor master, a code enforcement officer or, in the case of a great pond located in an unorganized territory, a board of county commissioners of the county in which the unorganized territory is located may direct the master or owner of a boat or vessel to remove that person's mooring or floating dock from a great pond if the harbor master, code enforcement officer or the board of county commissioners determines that leaving the mooring or floating dock in during ice-in conditions would create a public safety hazard. [2015, c. 105, §1 (NEW).]

SECTION HISTORY

1987, c. 412, §§3,8 (RPR). 1987, c. 655, §3 (RPR). 1991, c. 685, §1 (AMD). 1991, c. 838, §16 (AMD). 2003, c. 660, §A23 (AMD). 2015, c. 105, §1 (AMD).

§3-A. MOORING TRANSFER PERMITTED BY ORDINANCE

A municipality may adopt an ordinance that allows the transfer of a mooring assignment used for commercial fishing purposes. The ordinance may permit a mooring assignment to be transferred only at the request or death of the assignee, only to a member of the assignee's family and only if the mooring assignment will continue to be used for commercial fishing purposes. For the purposes of this section, "member of the assignee's family" means an assignee's parent, child or sibling, by birth or by adoption, including a relation of the half blood, or an assignee's spouse. [1993, c. 66, §1 (AMD).]

SECTION HISTORY

RR 1991, c. 2, §140 (COR). 1991, c. 685, §2 (NEW). 1993, c. 66, §1 (AMD).

§4. NEGLECTING TO REMOVE OR REPLACE MOORINGS

In case of the neglect or refusal of the master or owner of any boat or vessel to remove his mooring or to replace it by one of different character, when so directed by the harbor master, that harbor master shall cause the entire mooring to be removed or the buoy removed and the chain dropped to the bottom or shall make such change in the character of the mooring as required, and collect from the master or owner of that boat or vessel the sum of \$100 for either of those services rendered and the necessary expenses. [1987, c. 412, §§ 4, 8 (RPR).]

Before removing a mooring or a buoy, a harbor master shall notify the master or owner, if ownership can be determined, by mail at his last known address of the action desired of him, the fact that the mooring will be removed and the fine. If the matter is not settled to his satisfaction within 2 weeks, the harbor master may take the action provided for in this section. [1987, c. 412, §§ 4, 8 (NEW).]

SECTION HISTORY

1987, c. 412, §§4,8 (RPR).

§5. REMOVAL OF VESSELS OBSTRUCTING ANCHORAGE

A harbor master, upon receiving complaint from the master, owner or agent of any vessel, shall cause any other vessel or vessels obstructing the free movement or safe anchorage of that vessel to remove to a position to be designated by the harbor master and shall cause, without any complaint being made to the harbor master, any vessels anchoring within the channel lines as established by the municipal authorities, as provided in section 2, to remove to such anchorage as the harbor master may designate. [1987, c. 655, §4 (AMD).]

If that vessel has no crew on board or if the master or other person in charge neglects or refuses to move such vessel as directed by the harbor master, the harbor master may put a suitable crew on board and move that vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners of the vessel and shall charge \$100, to be paid by the master or owner of that vessel, which charge, together with the cost of the crew for removing that vessel the harbor master may collect by civil action. [1987, c. 412, §§ 5, 8 (RPR).]

SECTION HISTORY

1977, c. 696, §331 (AMD). 1987, c. 412, §§5,8 (RPR). 1987, c. 655, §4 (AMD).

§6. POWER TO ARREST FOR ASSAULT

Harbor masters, whose authority is not restricted as described in section 1, may arrest and deliver to the police authorities on shore any person committing an assault upon them or another person acting under their authority. [1985, c. 531, §3 (AMD).]

SECTION HISTORY

1985, c. 531, §3 (AMD).

§7. RELATION TO OTHER LAWS

Nothing in this subchapter may be construed to be a limitation on the authority of municipalities to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors. These ordinances may include, but are not limited to: A process for assigning mooring privileges and determining the location of moorings; a waiting list for the assignment of mooring privileges; a fee schedule; construction standards for moorings; time limits on the mooring of vessels; a process for appeals from decisions of the harbor master; provisions that recognize that mooring privileges in lawful existence on the effective date of an ordinance may be preserved or continued after adoption of that ordinance, the location and use to be determined by the harbor master or other appropriate local authority; and provisions that establish a harbor commission or committee to administer the ordinance or ordinances and oversee the duties of the harbor master. Regulations adopted by the municipal officers under section 2 remain in effect unless the municipality's legislative body enacts an ordinance pertaining to the same matter pursuant to the Constitution of Maine, Article VIII, Part 2, and Title 30-A, section 3001. [1997, c. 89, §1 (AMD).]

SECTION HISTORY

1985, c. 692, §§2,4 (NEW). 1987, c. 412, §§6,8 (AMD). 1987, c. 655, §5 (RPR). 1997, c. 89, §1 (AMD).

§7-A. WAITING LISTS; NONRESIDENT MOORINGS

1. Waiting lists. If a municipality receives more applications for mooring privileges on state-owned lands that are controlled by its rules or ordinances than there are mooring spaces, the municipality shall assign spaces as they become available from a waiting list or lists according to its rules or ordinances, except as provided in this section. Waiting lists in effect at the time that this section becomes law may continue in effect, but persons shall be selected from those lists in accordance with the allocation provisions of this section. If at the time a person applies for a mooring there is no waiting list, this person may be assigned a mooring without regard to the allocation provisions of this section.

[1987, c. 655, §6 (NEW) .]

2. Allocations to nonresidents. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is noncommercial and less than 10% of the moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is commercial and less than 10% of the assigned moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If both nonresident noncommercial and nonresident commercial assignments are below 10% and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest below 10%. The burden of proof in determining residence and the principal use of a vessel shall be upon the applicant.

Each year, persons with mooring assignments shall report to the harbor master their anticipated residency status for the next year and whether they anticipate the principal use of their boats to be commercial or noncommercial. The harbor master shall update the percentage of mooring holders in each category from this data.

It is not a requirement of this section that a person lose a current mooring assignment to meet the objectives of this section.

Shorefront property owners shall be assigned mooring privileges as established in section 3.

If the mooring fee charged to nonresidents exceeds \$20 a year, the fee charged shall be reasonable in relation to the costs involved in providing that mooring and shall not exceed 5 times the amount charged to residents.

This subsection shall be construed broadly in order to accomplish the distribution of moorings to nonresidents as specified in this section.

[1987, c. 655, §6 (NEW) .]

SECTION HISTORY

1987, c. 655, §6 (NEW) .

§8. WAITING LIST

Whenever there are more applicants for a mooring assignment than there are mooring spaces available, the harbor master or other town official shall create a waiting list. The town officials shall work out a reasonable procedure for persons to add their names to this list. The procedure shall be posted in a public place. The list shall be considered a public document under the freedom of access law. [1987, c. 412, §§ 7, 8 (NEW) .]

SECTION HISTORY

1987, c. 412, §§7,8 (NEW) .

§9. ABANDONMENT OF WATERCRAFT

No person may bring into or maintain in the harbor any derelict watercraft, watercraft for salvage, or abandon any watercraft in the harbor without a permit from the harbor master or, if there is no harbor master, the appropriate municipal official. Whoever does so without permit is guilty of a Class E crime. Watercraft which are to be salvaged by firms licensed by the State to do salvage work shall be excluded from this section. The municipal board or commission entrusted with harbor management shall be the sole determiner as to what constitutes a watercraft that is derelict and what constitutes a watercraft that is abandoned. [1987, c. 412, §§ 7, 8 (NEW).]

SECTION HISTORY

1987, c. 412, §§7,8 (NEW).

§10. HARBOR MASTER LIABILITY

In addition to the immunities from liability and the limitations and defenses provided under the Maine Tort Claims Act, Title 14, sections 8103, 8111 and 8112, a harbor master who, in the performance of statutory duties as set forth in sections 4 and 5, causes any damage to property or any injury to a person shall not be liable for damage or injury, unless the damage or injury is a direct result of the gross negligence, gross recklessness or bad faith intentional misconduct of the harbor master. [1987, c. 655, §7 (AMD).]

SECTION HISTORY

1987, c. 412, §§7,8 (NEW). 1987, c. 655, §7 (AMD).

§11. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 548, Pt. D, §9 (AMD).]

1. Municipal resident. "Municipal resident" means any person who occupies a dwelling within the municipality for more than 180 days in a calendar year. A municipality may by ordinance include other persons in the definition of resident.

[1987, c. 412, §§ 7, 8 (NEW) .]

2. Parcel of land. "Parcel of land" means the larger of the minimal buildable lot size in the municipality or 20,000 square feet and, in either case, including 100 feet of shoreline frontage.

[1987, c. 412, §§ 7, 8 (NEW) .]

3. 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.

[1987, c. 412, §§ 7, 8 (NEW) .]

SECTION HISTORY

1987, c. 412, §§7,8 (NEW). 1991, c. 548, §D9 (AMD).

§12. VIOLATION OF SUBCHAPTER

Except as provided in section 13, a violation of this subchapter or any harbor ordinance may be prosecuted and relief, fees, fines and penalties granted and assessed pursuant to the provisions of Title 30-A, section 4452. [1991, c. 262, §1 (AMD).]

SECTION HISTORY

1987, c. 655, §8 (NEW). 1989, c. 287, §5 (RPR). 1991, c. 262, §1 (AMD).

§13. FAILURE TO OBEY ORDERS OF HARBORMASTERS

1. Offense defined. A person is guilty of failure to obey an order of a harbormaster if the person intentionally, knowingly or recklessly fails to obey any lawful order of a harbormaster authorized pursuant to this subchapter.

[1991, c. 262, §2 (NEW) .]

2. Penalty. Failure to obey an order of a harbormaster is a Class E crime.

[1991, c. 262, §2 (NEW) .]

SECTION HISTORY

1991, c. 262, §2 (NEW) .

Subchapter 2: PORT WARDENS

§41. ELECTION; QUALIFICATIONS; TERM; REMOVAL; VACANCIES; RECORDS

Port wardens shall be elected in any city or town situated on navigable waters upon the petition of 10 or more citizens engaged in commercial pursuits therein.

If in such city or town there is a board of trade duly incorporated, said board shall annually elect the port warden. Otherwise the municipal officers thereof shall annually elect him.

Port wardens shall be men of commercial or nautical experience and shall hold office one year from each election and until others are qualified in their stead, except when removed for cause or when elected to serve out an unexpired term. They shall be sworn faithfully to perform their duties.

Said boards of trade, by their managers, or said municipal officers shall forthwith on complaint of any person aggrieved, after hearing, remove for cause any port warden by them elected, and all vacancies shall be filled by said authorities.

Port wardens shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein.

§42. DUTIES; VESSELS ARRIVING

When requested by any person interested, port wardens shall proceed on board of any vessel on her arrival in port and survey her hatches and notice if they are properly caulked and secured, and if they have been opened by some person not a port warden, that fact shall be noticed, and all the facts in relation to the hatches of said vessel shall be entered in the official record. They shall examine the condition and stowage of the cargo of any vessel, and if any portion of it is found to be damaged, they shall inquire into and ascertain the cause thereof, and make a memorandum of the same, noting particularly the marks and numbers of each damaged package, and shall enter the same in full in the records of their office. For the purpose of ascertaining the extent of said damage, they shall examine goods, wares or merchandise of any description in any warehouse or store, or on any wharf or at any place where the same are, provided said goods, wares or merchandise are part of the cargo and are claimed to be damaged. They shall note particularly the marks and numbers of every package examined by them and the extent of the damage received, and all the facts in relation thereto shall be entered in the records of their office.

Date Payment Rec. _____
Mooring Fee _____

Town of Hampden, Maine
106 Western Ave. 04444
207-862-3034

Permit Number _____
New _____ Renewal _____

MOORING PERMIT / APPLICATION

MOORING PERMIT HOLDER: _____

Resident Address: _____ City _____ State _____ Zip _____

Seasonal Address _____ City _____ State _____ Zip _____

Home Phone _____ Work Phone _____ Cell _____

Email _____ Emergency Contact _____ Phone _____

VESSEL: Name _____ Length _____ Draft _____ Tender Name _____

Home Port _____ Tender Make _____

Vessel Type/Make _____ Tender Serial # _____

Hull Color/Markings _____ Outboard Make _____

Sails Color (if applicable) _____ Outboard Serial # _____

Engine Make _____ HP _____ Gas _____ Diesel _____ (Please check one)

REGISTRATION/DOCUMENT NUMBER of vessel registered to this permit: _____

Registration/Excise Tax Paid: Date _____ Town/State _____

Note: Hampden residents and out of state residents must provide current Town of Hampden excise tax payment receipt.

MOORING: DUE FOR INSPECTION _____ Mooring Anchor: Granite _____ Concrete _____ Mushroom _____

WILL BE INSPECTED/SET NEW BY _____ Other _____

Last inspected by: _____ Year _____ Anchor Weight: _____ lbs

Inspection Notes: _____ Top chain: _____ ft/size

Current Position on waiting list: _____ Bottom chain: _____ ft/size

Current Position on Relocation list: _____

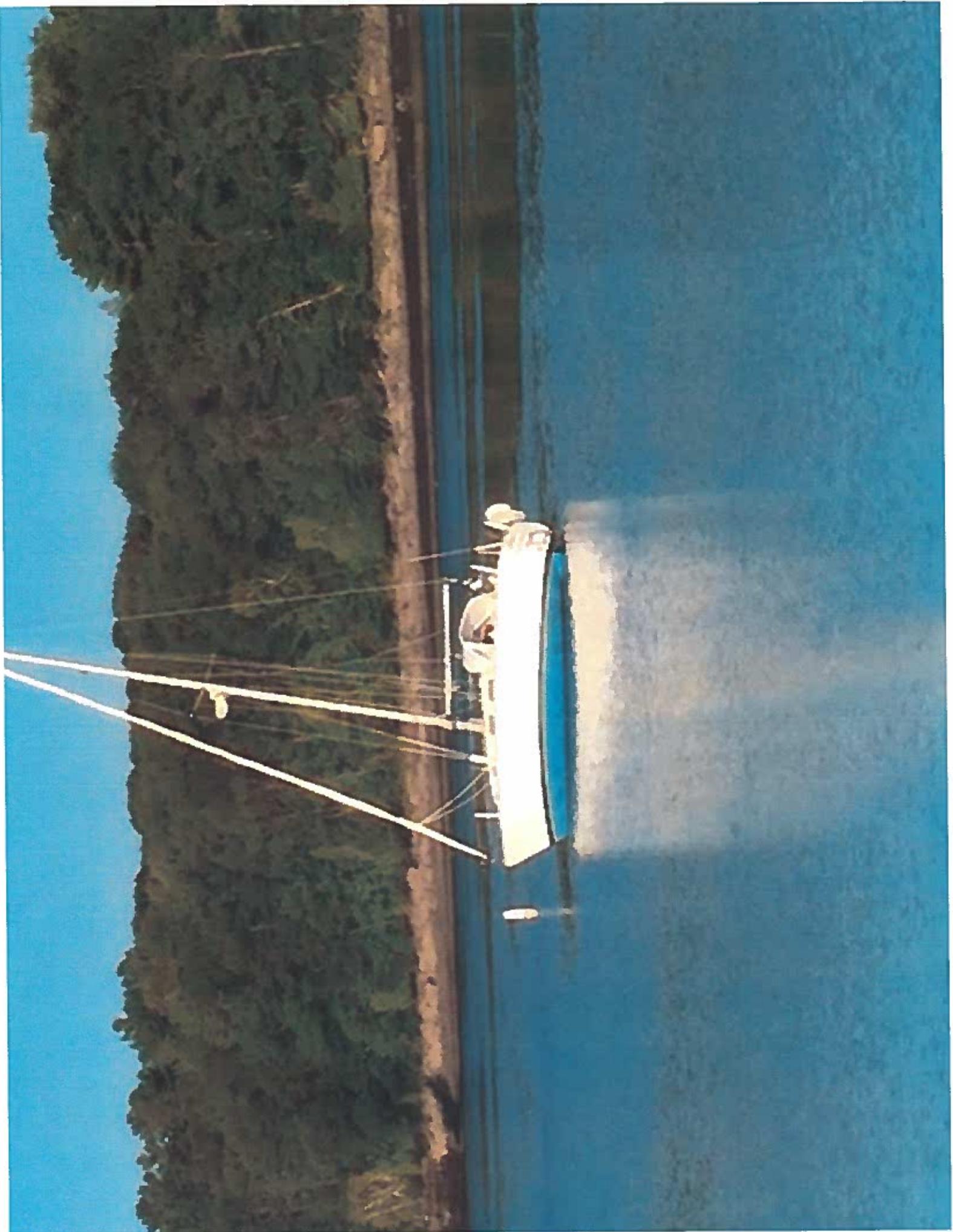
\$ _____ MOORING PERMIT FEE \$25.00 Individual

\$ _____ OVERNIGHT FEE \$.40 Per foot of boat hull length

I understand all mooring fees must be paid by May 1st of each year with no second notice being mailed and if payment is not received by May 31st, the owner will lose their privilege and the mooring will be pulled at the owner's expense. I have read the Town of Hampden Maine Harbor Ordinance and agree to comply with its provisions. I declare the information provided is correct to the best of my knowledge.

SIGNATURE of PERMIT HOLDER: _____ Date: _____







To: Planning and Development Committee
From: Dean Bennett, Director of Community Development
Date: April 28, 2016
Subject: Zoning Ordinance/MUBEC Conflict

.....

It's come to our attention that our Zoning Ordinance, at Sec. 5.3.1.1, has no stated size threshold for a building permit requirement (whereas MUBEC has a min. of 200 SF), so effectively sets a threshold of zero. This creates a conflict between the Zoning Ordinance and the Residential Building Code.

Zoning Ordinance:

5.3. Permits - Application for a building permit and a certificate of compliance shall be made concurrently with the initial application.

5.3.1. Building Permits

5.3.1.1. Building Permit Required - An application shall be submitted to the Code Enforcement Officer for the following activities, and these activities **shall not** commence in the Town of Hampden without a permit being issued.

1. Construct or alter a structure.
2. Change of exterior dimensions of an existing structure;
3. Construct a sign or change the exterior dimensions of a sign;
4. Reconstruction of a disaster-damaged or disaster-destroyed structure.

MUBEC Code:
Section R105

R105.2 Work exempt from permit – Permits **shall not** be required for the following. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

1. One story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 200 square feet.

10. Decks not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling and not serve as an exit door required by Section R311.4.

See attached.

Part I—Administrative

CHAPTER 1

SCOPE AND ADMINISTRATION

PART I—SCOPE AND APPLICATION

SECTION R101 GENERAL

R101.1 Title. These provisions shall be known as the *Residential Code for One- and Two-family Dwellings* of [NAME OF JURISDICTION], and shall be cited as such and will be referred to herein as "this code."

R101.2 Scope. The provisions of the *International Residential Code for One- and Two-family Dwellings* shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above *grade plane* in height with a separate means of egress and their *accessory structures*.

Exception: Live/work units complying with the requirements of Section 419 of the *International Building Code* shall be permitted to be built as one- and two-family dwellings or townhouses. Fire suppression required by Section 419.5 of the *International Building Code* when constructed under the *International Residential Code for One- and Two-family Dwellings* shall conform to Section 903.3.1.3 of the *International Building Code*.

R101.3 Intent. The purpose of this code is to establish minimum requirements to safeguard the public safety, health and general welfare through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

SECTION R102 APPLICABILITY

R102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

R102.2 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

R102.3 Application of references. References to chapter or section numbers, or to provisions not specifically identified by

number, shall be construed to refer to such chapter, section or provision of this code.

R102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

Exception: Where enforcement of a code provision would violate the conditions of the *listing* of the *equipment* or *appliance*, the conditions of the *listing* and manufacturer's instructions shall apply.

R102.5 Appendices. Provisions in the appendices shall not apply unless specifically referenced in the adopting ordinance.

R102.6 Partial invalidity. In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions.

R102.7 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the *International Property Maintenance Code* or the *International Fire Code*, or as is deemed necessary by the *building official* for the general safety and welfare of the occupants and the public.

R102.7.1 Additions, alterations or repairs. *Additions, alterations* or repairs to any structure shall conform to the requirements for a new structure without requiring the existing structure to comply with all of the requirements of this code, unless otherwise stated. *Additions, alterations* or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building.

PART II—ADMINISTRATION AND ENFORCEMENT

SECTION R103 DEPARTMENT OF BUILDING SAFETY

R103.1 Creation of enforcement agency. The department of building safety is hereby created and the official in charge thereof shall be known as the *building official*.

R103.2 Appointment. The *building official* shall be appointed by the chief appointing authority of the *jurisdiction*.

R103.3 Deputies. In accordance with the prescribed procedures of this *jurisdiction* and with the concurrence of the appointing authority, the *building official* shall have the author-

alternative materials or methods, the *building official* shall have the authority to require tests as evidence of compliance to be made at no expense to the *jurisdiction*. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the *building official* shall approve the testing procedures. Tests shall be performed by an *approved agency*. Reports of such tests shall be retained by the *building official* for the period required for retention of public records.

SECTION R105 PERMITS

R105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the *building official* and obtain the required *permit*.

R105.2 Work exempt from permit. *Permits* shall not be required for the following. Exemption from *permit* requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this *jurisdiction*.

Building:

1. One-story detached *accessory structures* used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 200 square feet (18.58 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
4. Water tanks supported directly upon *grade* if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2 to 1.
5. Sidewalks and driveways.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.
8. Swings and other playground equipment.
9. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.
10. Decks not exceeding 200 square feet (18.58 m²) in area, that are not more than 30 inches (762 mm) above *grade* at any point, are not attached to a *dwelling* and do not serve the exit door required by Section R311.4.

Electrical:

1. *Listed* cord-and-plug connected temporary decorative lighting.
2. Reinstallation of attachment plug receptacles but not the outlets therefor.
3. Replacement of branch circuit overcurrent devices of the required capacity in the same location.
4. Electrical wiring, devices, *appliances*, apparatus or *equipment* operating at less than 25 volts and not capable of supplying more than 50 watts of energy.
5. Minor repair work, including the replacement of lamps or the connection of *approved* portable electrical *equipment* to *approved* permanently installed receptacles.

Gas:

1. Portable heating, cooking or clothes drying *appliances*.
2. Replacement of any minor part that does not alter approval of *equipment* or make such *equipment* unsafe.
3. Portable-fuel-cell *appliances* that are not connected to a fixed piping system and are not interconnected to a power grid.

Mechanical:

1. Portable heating *appliances*.
2. Portable ventilation *appliances*.
3. Portable cooling units.
4. Steam, hot- or chilled-water piping within any heating or cooling *equipment* regulated by this code.
5. Replacement of any minor part that does not alter approval of *equipment* or make such *equipment* unsafe.
6. Portable evaporative coolers.
7. Self-contained refrigeration systems containing 10 pounds (4.54 kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.
8. Portable-fuel-cell *appliances* that are not connected to a fixed piping system and are not interconnected to a power grid.

The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.

The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

R105.2.1 Emergency repairs. Where *equipment* replacements and repairs must be performed in an emergency situation, the *permit* application shall be submitted within the next working business day to the *building official*.

ARTICLE 5 - ENFORCEMENT

(Amended: 6/ 3/02)

5.1. Administrative Officer - This Ordinance shall be enforced by a Code Enforcement Officer appointed by the Town Manager with confirmation by the Town Council.

5.2. Duties - The Code Enforcement Officer, in enforcing this Ordinance, shall be responsible for establishing reasonable procedures for enforcement, keeping all activities within the jurisdiction of this Ordinance under surveillance, issuing building and/or use permits where applicable, keeping public records of his proceeding and instituting or causing to be instituted any or all actions that might be appropriate for the enforcement of this Ordinance.

5.3. Permits - Application for a building permit and a certificate of compliance shall be made concurrently with the initial application.

5.3.1. Building Permits

5.3.1.1. Building Permit Required - An application shall be submitted to the Code Enforcement Officer for the following activities, and these activities shall not commence in the Town of Hampden without a permit being issued.

1. Construct or alter a structure.
2. Change of exterior dimensions of a existing structure;
3. Construct a sign or change the exterior dimensions of a sign;
4. Reconstruction of a disaster-damaged or disaster-destroyed structure.

5.3.1.2. No building permit shall be issued except in conformity with the provisions of this Ordinance.

5.3.1.3. Within fourteen (14) days of the filing of an application for a building permit, the Code Enforcement Officer shall approve or deny such application or shall refer the applicant to the planning board or the Board of Appeals. The decision shall be in writing and communicated directly to the applicant. In the case of a denial of an application, the decision shall include reasons for such. One (1) copy of the Code Enforcement Officer's decision shall be filed in the municipal office. *(Amended:09-18-06)*

5.3.1.4. No building permit for a building or structure on any lot shall be issued except to the owner of record thereof, or his authorized agent. The Code Enforcement Officer may require that any application for such a permit shall be accompanied by a plan, accurately drawn to scale, showing the actual shape and dimensions of the lot to be built upon, an on site soils survey, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings and structures are to be constructed, the existing and intended use of each building or structure, and other such information as may be necessary to provide for the execution and enforcement of this Ordinance.

**IN THE TOWN OF ORONO, ORDINANCES REQUIRE PERMITS FOR
THE FOLLOWING TYPES OF WORK:**

BUILDING
ROAD OPENING
ADDING FILL TO A PROPERTY

ELECTRICAL
CURB CUTS

HEATING
HOME OCCUPATIONS
HOOING INTO THE TOWN SEWER

PLUMBING

BUILDING:

Building permits are required for all new construction, including homes, garages and additions to existing structures (decks, porches, etc.). Permits are also required for certain structural repairs, for structural alterations such as the addition of doors or windows, and for demolition work.

Building permits are not required for the construction or placement of sheds that are less than 200 sq. feet in size, for fences under 6 feet in height, for the re-shingling of roofs, for interior or exterior painting, for replacement of sheetrock, or for cosmetic changes to structures including new siding.

Homeowners may take out building permits themselves or have their contractors do it for them.

Plans need to be submitted to the Code Enforcement Office for review before any work can begin.

If you are unsure if you need a permit, please check with us before proceeding.

ELECTRICAL:

Electrical permits are required for any changes to service entrances, for adding wiring to a structure, and for repairs or upgrades to existing services.

HEATING:

Heating permits are required when installing or replacing a heating unit, and when adding additional heating units including gas or wood burning stoves.

PLUMBING:

Plumbing permits are required for two types of work –

1. For interior plumbing, new installations of plumbing fixtures require permits.
A permit is not required when replacing a plumbing fixture, provided that the replacement fixture goes into the same place without any new plumbing lines.
2. For exterior plumbing, a permit is required when installing or replacing a septic system. A permit is not required for minor repairs or for septic tank pumping.

SEWER HOOKUPS:

A permit is required when connecting to the town sewer lines. These permits are obtained at the Town Code Office.

ROAD OPENINGS:

A permit is required to open up a road for the hooking up of utilities (water, sewer, electricity, gas, etc.). These permits can only be obtained by a licensed contractor

CURB CUTS:

A permit is required to cut an entrance (driveway) onto a town road. Applications for these permits can be obtained at the Town Code Office, but must be approved by the Town Road Commissioner.

A Maine D.O.T. permit is required to cut an entrance onto a state road. Applications and approvals for those permits must be obtained from the Maine D.O.T. Please note that state law prohibits the Town from issuing any local permits until this D.O.T. approval is obtained.

HOME OCCUPATIONS:

A permit is required to operate a business in your home. Applications for these permits can be obtained from the Code Office, and then must be reviewed for approval by the Orono Planning Board. The Land Use Ordinance has specific standards and requirements that apply to home occupations. Copies of these are available in the Code Enforcement Office.

ADDING FILL:

A permit is required when adding more than 20 cubic yards of fill to a property. Applications for these permits can be obtained from the Code Office.

All work requiring a permit must be inspected by the appropriate Town Inspector both during construction and when construction is completed.

Signs of trouble: Your ordinance could be unconstitutional

A recent ruling by the U.S. Supreme Court shows how quickly municipalities encounter problems when they try to regulate what signs say, rather than factors like size and location.

By Agnieszka A. Pinette,
Drummond Woodsum Attorneys at Law

This past June, in a relatively brief and seemingly mundane opinion, the U.S. Supreme Court invalidated a municipal sign ordinance that gave less favorable treatment to signs that advertised church services than signs promoting other messages. The case may not appear remarkable at first glance, but its implications are far-reaching: By many accounts, the opinion calls into question the constitutionality of virtually every municipal sign ordinance in the country.

In *Reed v. Town of Gilbert*, the Supreme Court considered a sign ordinance that allowed the display of temporary outdoor signs without a permit, so long as the signs met certain restrictions enumerated in the ordinance. Not unlike many sign codes, the town's sign ordinance imposed different size, quantity and length-of-display requirements on different types of signs. Under the town's ordinance, "ideological signs" that communicated a message or idea could be up to 20 square feet in size, whereas "political signs" designed to influence the outcome of an election could be up to 32 square feet in size – although political signs could only be displayed during an election season. In contrast, "temporary directional signs" that directed the public to assemblies, gatherings, or meetings sponsored by religious or non-profit organizations were limited to a maximum of four signs per advertised

event, each of which could not exceed six square feet in size and could not be displayed more than 12 hours before the event or one hour after the event.

The case arose when the Good News Community Church displayed a dozen or so temporary directional signs bearing the church's name and the time and location of the next service. Members of the church would install the signs around town on Saturday morning and would remove them around midday Sunday. The town cited the church for exceeding the time limits for displaying temporary directional signs and for failing to include the date of the event on the signs. In turn, the church challenged the constitutionality of the Town's sign ordinance, contending that the ordinance unlawfully allowed some groups wide latitude to communicate messages through signage while stymying the ability of other groups to do so. In other words, the church argued that because the ordinance established rules for temporary directional signs that were more restrictive than the rules for other categories of temporary signs, the ordinance abridged the church's right of free speech guaranteed under the First Amendment.

Protecting free expression

Under the First Amendment, a government may not restrict expression because of its message, its ideas, its subject matter or its content. When a regulation singles out specific subject matter for differential treatment, courts will therefore presume that the regulation is unconstitutional. So-called content-based laws are justified only if they satisfy the most rigorous judicial test called strict scrutiny – that

is, the law must further a compelling governmental interest using the least restrictive means possible. This is a steep judicial hurdle. As Adam Liptak succinctly explained in a recent New York Times article discussing the case: "Strict scrutiny, like a Civil War stomach wound, is generally fatal."

In *Reed*, the Supreme Court determined that because the town's sign ordinance defined the categories of directional, political, and ideological signs on the basis of their messages and then subjected each category to different restrictions, those restrictions "depend[ed] entirely on the sign's communicative content" and were therefore content-based. Although the town offered two long-recognized compelling governmental interests in support of its sign ordinance – preserving the town's aesthetic appeal and traffic safety – it could not explain why temporary directional signs posed a greater threat to aesthetics or safety than other types of temporary signs. Because the town failed to justify its more restrictive rules for directional signs, the court concluded that the sign ordinance failed the strict scrutiny test and was unconstitutional.

Notably, the Supreme Court struck down a previously applied judicial rule that might have saved the town's sign ordinance from its unconstitutional fate. Before *Reed*, a rule restricting "who" is speaking (say, a Realtor versus a political candidate) or "what event" is occurring (say, a community supper versus a mattress sale) was usually deemed content-neutral so long as the rule paid no regard to the message itself. Content-neutral laws are constitutional if they further an important governmental interest by means that are

Agnieszka A. Pinette is an attorney who focuses her legal work on municipal and land use matter, public and bond counsel work. Before joining Drummond Woodsum, she was a senior planner with the Maine Land Use Regulation Commission, where she coordinated comprehensive planning projects, rulemaking initiatives and regulatory reviews of significant projects. Reach her via email at: APinette@dwmlaw.com.

substantially related to that interest – a judicial test far less demanding than strict scrutiny. The Supreme Court rejected this analytical approach, however, and instead adopted a novel theory: Whenever a law treats different categories of public expression differently, the law discriminates against those *entire categories* of speech and only passes constitutional muster if it survives strict scrutiny. Consequently, a sign code based on who is speaking about what event, without regard to the substance of the message, is no longer safe from a free speech challenge.

Effective sign laws still OK

Even though the Supreme Court clearly raised the bar on constitutionally permissive sign regulations, the Court stressed that its decision would not prevent governments from enacting effective sign laws. The Court noted that sign regulations might well survive strict scrutiny if they are “narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers – such as warning signs

POST-REED POINTERS

The *Reed* decision implicitly calls on municipal officials to reexamine their sign ordinances in light of the Court’s expansion of what constitutes a content-based sign regulation. This is not a simple task. Determining whether a rule is content-based involves complex legal analysis, even with the guidance provided in the concurring opinion. But municipal officials can quickly spot whether their sign ordinance is at risk based on a relatively straightforward question:

Does your code enforcement officer need to classify a sign in order to figure out if it violates your sign ordinance?

Put another way, does your sign ordinance make reference to *types* of signs (for example, real estate signs, political signs, business relocation signs, construction signs, open house signs, farm stand signs or community events signs) and does the ordinance establish rules (such as dimensional requirements, quantity limits or restrictions on the time of year or duration when a sign may be displayed) that *vary* based on those sign types? If so, then your ordinance is probably content-based.

Just because an ordinance is content-based does not mean it is per se unconstitutional. But a municipal official who answers the above question in the affirmative should not wait to take action. There are many ways to fix a sign ordinance so that it does not run up against *Reed*, and towns do not necessarily need to abandon the common practice of regulating signs based on categories to be on the right side of the First Amendment. The key to avoiding a legal challenge is to spot the issue early and consult with a qualified legal professional on ways to safely enforce your existing sign ordinance while making revisions that pass constitutional muster.



Meet Our Attorneys Andrew Hamilton

Andy brings many years of experience to counseling municipalities. He has served as General Counsel for a number of Maine towns, and provides advice on economic development initiatives and environmental/land use matters.

Andy is committed to improving Maine communities through public and private investment, and has served in many leadership roles in the Bangor region and eastern Maine.

Eaton
Peabody
Attorneys at Law

1-800-564-0111 | eatonpeabody.com
Augusta | Bangor | Brunswick | Ellsworth | Portland

marking hazards on private property, signs directing traffic, or street numbers associated with private houses.” The Court also acknowledged that governments have “ample content-neutral options available to resolve problems with safety and aesthetics” by regulating aspects of signs – such as size, building materials, lighting, moving parts and portability – that have nothing to do with a sign’s message.

Indeed, in a concurring opinion, three of the Supreme Court Justices enumerated the following rules that would likely be lawful:

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be placed, including rules that distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the

placement of signs on commercial and residential property.

- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on temporary signs.

While a concurring opinion is not binding on courts, it does signal that a sign ordinance is keeping with these

rules would likely satisfy the heightened *Reed* test – at least in the view of three Supreme Court Justices.

In sum, while the *Reed* decision instructs courts to be highly skeptical of codes that impose different standards for different categories of signs, the ruling is not intended to prevent governments from regulating signs in a way that protects public safety and serves other legitimate governmental objectives. ■

ENGINEERING HEALTHY COMMUNITIES

INFRASTRUCTURE | ENVIRONMENT | ENERGY | RESILIENCY | RECREATION

Residents shouldn't worry about living in a healthy community. We help you address your financial, environmental, infrastructure, and emergency preparedness challenges, so they don't have to.

COMMITMENT & INTEGRITY DRIVE RESULTS
woodardcurran.com

WOODARD & CURRAN

**EASY
WEB DEVELOPMENT
AHEAD
WWW.GOVOFFICE.COM**

gov office

Serving over 1,000 local governments | Sponsored by the Maine Municipal Association
The Easy - Affordable Municipal Web Development System

Additional thoughts on signs, after *Reed v. Town of Gilbert*

By Breana Behrens, Staff Attorney
Maine Municipal Association Legal Services

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* (135 S.Ct. 2218 (2015)) clarifies what constitutes a content-neutral sign regulation by establishing a new black and white rule: If you have to read the sign's message or determine who is "speaking" through the sign to apply your sign ordinance, it is probably unconstitutional. Because the Court has established this stricter test for determining what is a content-based restriction, many regulations that were previously thought to be content-neutral may now be content-based and an unconstitutional restriction on free speech.

The Court found that ordinances that distinguish between the size and location of signs, and number of signs per mile of roadway are still likely permissible. In addition, ordinances that distinguish between certain types of signs may be permissible, such as between lighted and unlighted signs. However, municipalities will need to prove that when an ordinance distinguishes between different types of signs it is to further a compelling governmental interest and the ordinance is narrowly tailored to that end, such as for traffic safety or aesthetic purposes.

This decision will not likely affect municipalities' ability to regulate commercial speech. Commercial speech is still less protected than non-commercial speech and there is little reason to believe the *Reed* decision intended to prohibit this distinction. However, some courts across the country are finding that on-site and off-site distinctions in sign regulations could be an unconstitutional content-based distinction. This is happening despite the fact that a concurring opinion in the *Reed* decision postulated that this distinction would not be subject to strict scrutiny. We will need to stay tuned as this issue develops.

As municipalities across the state, and nation, work to comply with this more stringent test for content-neutral sign regulations, discussion with local

legal counsel and the public will be necessary. Municipalities will have to find a "Goldilocks" balance where regulations are not so fine-tuned as to treat different types of signs differently, but also not so general that the rules become overly broad. This may be especially difficult when adopting regulations that address temporary signs, such as political and event signs, and regulations that address issues of local concern, such as panhandling and roadside solicitation.

Outright bans problematic

It is important to note that outright bans on all types of speech can be problematic as well. For example, the City of Portland recently adopted an ordinance restricting all people from standing, sitting, staying, driving or parking on the median strip to address the safety concerns with panhandling and other activities in the median. The U.S. Court of Appeals found that the ordinance was not content-based since it prohibited all types of speech, but declared the ordinance unconstitutional because it was not narrowly tailored to serve a significant government interest (*Cutting v. City of Portland*, Docket No. 14-1421, 2015 (1st Cir. Sept. 11, 2015)). Even when the court applied this low level of judicial scrutiny, the city was not able to show that the ordinance restricted only enough speech to meet the government's interest in promoting public safety in the medians. Therefore, the ordinance was found to be unconstitutional.

The Court's decision further reminds municipalities that a traditional public forum, or place that is tradition-

ally used by the public to assemble, communicate thoughts and discuss matters of public concern is treated differently than private and other municipally owned property. A traditional public forum generally includes sidewalks and parks, and as in the *Cutting* decision, medians. A content-based regulation that restricts speech in a public forum raises serious concern that the government is using its power to tilt public debate in a direction of its choosing, which means that Courts will apply strict scrutiny.

So what do you do now? First, carefully review your sign ordinance to make sure all parts are truly content-neutral. Your ordinance should contain a strong purpose statement that complies with the new content-neutral test and legislative findings on why the regulation furthers a governmental interest. We highly encourage municipalities to contact local legal counsel for review as well.

At MMA, we are working to develop guidance on these issues and sample provisions for sign regulations for Maine municipalities. In addition, if you are in a position where you may need to enforce your current sign regulation, contact local legal counsel before taking any action.

We will monitor any changes that may be made to the Maine Traveler Information Services Act, or what is commonly known as the State's billboard law (23 M.R.S.A. sections 1901-1925). If the state law is amended to better comply with current court decisions, this may affect how municipalities regulate signs as well. ■

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

MMA's services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.

For more information visit the MMA website: www.memun.org