

*Adopted by the Town Council on February 23, 2015  
Effective March 25, 2015*

## **Chapter 11**

### **MARINE ACTIVITIES, STRUCTURES AND WAYS\***

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**\*Cross References:** Conservation Commission, § 2-76 *et seq.*; Buildings and Building Regulations, Ch. 5; Fire Prevention and Protection, Ch. 7; Housing, Ch. 8; Solid Waste, Ch. 13; Streets, Sidewalks and Other Public Places, Ch. 14; Discharge of Sewerage Into Surface Waters Prohibited, § 16-26; Zoning and Subdivision of Land, App. A; Marine Construction, App. A, § 407.

**State Law References:** Harbor Masters, 38 M.R.S.A. § 1 *et seq.*, Disposal of Unclaimed, Lost or Stolen Personal Property by Law Enforcement Agencies, 25 M.R.S.A. § 3501 *et seq.*, Law Enforcement Training for Harbor Masters 25 M.R.S.A. § 2804-I.

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**Art. I. Harbor, Coastal, Tidal and Navigable Fresh Waters, §§ 11-1--11-25**

**Art. II. Reserved, §§ 11-26--11-70**

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## **ARTICLE I.**

### **HARBOR, COASTAL, TIDAL AND NAVIGABLE FRESH WATERS**

#### **Sec. 11-0 General.**

- (A) *Purpose.* To establish the boundaries of channels in harbors and to regulate other activities in the harbors, coastal, tidal, and navigable waters within the Town of Brunswick, Maine in order to ensure safety to persons and property, to promote availability, preservation, and use of a valuable public resource, and to create a fair and efficient framework for administration of the resource.
- (B) *Authority.* This article is adopted pursuant to the authority granted by 38 M.R.S.A §§ 1-13, 30-A M.R.S.A § 3001, and the Constitution of Maine, Article VIII, Part 2.

- (C) *Severability.* If any section, subsection, sentence, clause or other portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

(Ord. of 2-23-2015)

**Sec. 11-1 Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them as set forth in this Section, except where the context clearly indicates a different meaning:

*Anchorage.* All navigable waters defined within the municipal boundaries of the Town of Brunswick.

*Association.* An organization of residential property owners, whether in the form of a homeowner association, subdivision association, condominium association, road association, unit owner association, planned unit development, residential real estate management association, or similar ownership arrangement or structure, where the organization assists with maintaining and improving Association property or property that is commonly held by its members.

*Boat Yard.* A place adjacent to coastal waters, where, as a business or gainful occupation, watercraft are hauled, stored, repaired and/or constructed.

*Channels.* Those paths designated by this Chapter for navigation in or access to the harbor, coastal, tidal and navigable fresh waters of Brunswick.

*Commercial mooring.* A mooring used with profit as a primary aim. Commercial moorings require Army Corps of Engineers approval.

*Commercial use.* A use with profit as a primary aim.

*Haul Off Mooring.* A mooring or tether system for a dinghy or watercraft which allows the dinghy or watercraft to be hauled to and from a mooring block or anchor to the shore by a system of lines secured at the shore.

*Houseboat.* A raft, hull, barge or vessel, designed primarily to be used as a commercial establishment or living quarters, rather than for navigation.

*Marina.* An all-tide waterfront facility, whose activities may include sales, storage, and maintenance of watercraft, and which provides slips or moorings for permanent, rental or transient berthing, and sells fuel, and supplies for watercraft and provides vehicle parking.

*Mooring.* A means of securing a single watercraft to a particular location, other than a pier or dock; an underwater device, either helix, granite block, or mushroom, which tethers watercraft. A temporary mooring is one which is constructed to be hauled out of the water seasonally. A permanent mooring is one which is constructed to winter over in the water. A flats mooring is one which is located on the mud flats at low tide.

*Multi-use Mooring.* A registered, non-commercial mooring that hosts more than one watercraft over the course of a season for personal use only. Personal use includes, but is not limited to, use by a visiting family member. Multi-use moorings cannot be rented or leased and owners of multi-use moorings must inform the Harbor Master regarding what watercraft will use the mooring each season. No more than one watercraft may be moored at a time.

*Non-resident.* All persons not residents of the Town of Brunswick are classified as non-residents.

*Private mooring.* Any mooring that is not a commercial mooring or rental mooring.

*Rental mooring.* Rental moorings are considered commercial moorings and require Army Corps of Engineers approval.

*Resident.* A person who occupies a dwelling for more than six (6) months in a calendar year within the Town of Brunswick, a Brunswick real estate tax payer, or a registered voter in the Town of Brunswick.

*Town Wharfs.* Any floats or structures located at town owned or operated boat launches.

*Watercraft.* Any type of vessel, boat, barge, float, or craft used on the water.

*Yacht Club.* A private association, corporation or other legal entity organized to promote recreational boating.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-2 Channels.**

(A) *Establishment of channels.* Two (2) channels are established, described as follows:

(1) Commencing at the Old Bath Road bridge as it crosses the New Meadows River, thence following the high water mark of the New Meadows River southerly to the southerly tip of Howard Point, thence easterly to the town line between Brunswick and West Bath, thence following the town line northerly

to the Bath Road bridge, thence westerly along the Bath Road bridge to the point of beginning.

- (2) Commencing at the mean high water line on the Mere Point Boat Launch ramp surface and extending approximately three hundred fifty (350) feet to the southeast between buoys marking the fifty (50) foot wide approach lane to the ramp.
- (B) *Passage of vessels.* A person shall not use any watercraft or any other device or structure within the described channels so as to interfere with or impede the passage of vessels in the channel in any manner.
- (C) *Mooring.* A person shall not place, anchor, or moor any watercraft within the described channels without the permission of the Harbor Master.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-3 Harbor Master.**

- (A) *Appointment.* The town shall appoint a Harbor Master every three years (or upon vacancy) on May 1<sup>st</sup> for a period of three years. Pursuant to 38 M.R.S.A. § 1-A, a person appointed or reappointed as Harbor Master 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.
- (B) *Duties.* The Harbor Master shall have the following responsibilities and duties:
  - (1) To the extent of jurisdiction, enforce any and all federal, state and local laws, ordinances, codes, rules or regulations relating to the management and control of the Town of Brunswick's harbor, coastal, tidal and navigable fresh waters, shores, coastline, boat launch facilities, and wharfs;
  - (2) Provide information or seek input as appropriate from any source, including the Rivers and Coastal Waters Commission, the Marine Resources Committee, Marine Wardens, Town Manager, Town Council, or Town Attorney;
  - (3) Approve and control the placement of all moorings within the harbor, coastal, tidal, and navigable fresh waters of the Town of Brunswick pursuant to the provisions of this Ordinance.
  - (4) Maintain accurate records of all registered moorings; and
  - (5) Serve as staff to the Rivers and Coastal Waters Commission (the "Commission"), regularly attend Commission meetings, inform the

Commission of his/her activities and provide such information as may be requested by the Commission for the execution of its duties. The Harbor Master shall also report to the Town Council regarding his/her activities and the activities of the Commission.

- (C) *Authority to carry a weapon and make arrests.* Pursuant to 38 M.R.S.A. § 1, 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-I of the Maine Revised Statutes. A harbor master who has completed this training shall be assigned to a division under the Police Department.

(Ord. of 4-4-05; Ord. of 4-7-08(1); Ord. of 2-23-2015)

#### **Sec. 11-4 Moorings.**

- (A) *Mooring Assignments.* Mooring privileges in the Town of Brunswick shall be assigned pursuant to 38 M.R.S.A. §§ 3 and 11. Consequently, mooring assignments are available to individuals who are the owners or masters of a watercraft and who own shore rights to a parcel of land, which is defined as a lot that satisfies applicable minimal buildable lot size requirements and includes at least 100 feet of shoreline frontage. Notwithstanding the foregoing, mooring assignments are also available to individuals who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot. Only one mooring may be assigned to any shorefront parcel of land under this privilege.
- (B) *Grandfathered moorings.* Notwithstanding Section 11-4(A), mooring privileges in lawful existence on the effective date of this Ordinance shall be preserved. Nothing in this subsection shall be construed as a limitation on the authority of the Harbor Master with respect to use and location of the moorings.
- (C) *Transferability of Mooring Assignments.* Pursuant to 38 M.R.S.A. §§ 3 and 3-A, mooring assignments may not be transferred unless the mooring is used for commercial fishing purposes. Transfer of a mooring assignment used for commercial fishing purposes is permitted only at the request or death of the mooring owner, only to a member of the mooring owner's family, and only if the mooring assignment will continue to be used for commercial fishing purposes. A member of the mooring owner's family means a parent, child, or sibling, by birth or adoption, including a relation of the half blood, or the mooring owner's spouse.
- (D) *Registration.* Owners of parcels that qualify under Section 11-4(A) who desire a mooring assignment and owners of grandfathered mooring assignments must submit a mooring registration form to the Harbor Master each year.

In the year 2015, the Harbor Master shall no later than two weeks after enactment of this Ordinance by the Town Council send via U.S. Mail or email a notice to all registered mooring owners informing them of the June 1<sup>st</sup> deadline for submission of the annual mooring registration form. Each year thereafter, the Harbor Master shall no later than January 31<sup>st</sup> send via U.S. Mail or email a notice to all registered mooring owners informing them of the May 1<sup>st</sup> deadline for submission of the annual registration form. Notice of the registration deadline shall also be posted in the Town Hall and on the Town of Brunswick's website no later than January 31<sup>st</sup>.

Mooring registration forms may be downloaded from the Town of Brunswick's website or obtained from the Town Clerk or the Harbor Master.

Registration forms shall require the following information:

- (1) Description of the watercraft to be moored, including state and/or federal registration numbers, make and model, color, length, propulsion, draft, and weight;
  - (2) The applicant's name (or names, in the event the mooring is to be held jointly by adult members of the same household), residence address or local business address, mailing address (designated by the applicant as the address where the applicant will accept notices under this Ordinance), home or cell phone number, and email address;
  - (3) Type and weight of mooring;
  - (4) Type and size of bottom and top chains;
  - (5) A name, address, and telephone number of an emergency contact, whom the mooring owner authorizes to make decisions surrounding the mooring in his or her absence;
  - (6) GPS location (or proposed location) of the mooring;
  - (7) The signature of the applicant, or the applicant's designee, and the date of the application; and
  - (8) Dates of installation and of the most recent inspection.
- (E) *Fees.* The Rivers and Coastal Waters Commission will recommend mooring registration fees to be adopted by the Brunswick Town Council. Mooring registration fees may be amended from time to time. Mooring registration fee schedules will be available at the Town Clerk's Office and on the Town of Brunswick's website.

- (F) *Mooring Inspection Required.* Every two years, each registered mooring shall be inspected by the mooring owner at the mooring owner's expense and must be determined by the mooring owner to be in a safe condition. The date of inspection must be recorded on the mooring registration form. The mooring owner is responsible for the adequacy and performance of all mooring gear, tackle, and maintenance thereof. The Harbor Master has the authority to inspect at any time any mooring and to require any necessary maintenance or replacement of parts or the whole mooring, tackle and/or gear, for which the mooring owner shall be responsible for all costs incurred.

The Town of Brunswick assumes no liability whatsoever for the actual performance or adequacy of any mooring system employed by a mooring owner.

- (G) *Placement standards.* The Harbor Master shall approve the location of all moorings in the harbor, coastal, and tidal waters of Brunswick. All moorings shall meet the following standards:
- (1) Moorings shall be adequate for the size, weight, and windage of the watercraft.
  - (2) Moorings shall be located in areas that do not interfere with navigation.
  - (3) Moorings shall not encroach into the channels of Brunswick.
  - (4) Moorings shall be located in areas that do not cause unreasonable adverse impacts on natural resources. Conditions that may result in an unreasonable adverse impact on natural resources include, but are not limited to:
    - i. The presence of eel grass or other submerged vegetation;
    - ii. The presence of a significant shellfish habitat, or important recreational or commercial fishing ground;
    - iii. The proposed location is within mapped Significant Shorebird Feeding or Roosting Habitat (based on Maine Department of Inland Fisheries and Wildlife and Maine Department of Environmental Protection Maps);
    - iv. The proposed location is within mapped Tidal Waterfowl and Wadingbird Habitat (based on Maine Department of Inland Fisheries and Wildlife and Maine Department of Environmental Protection Maps);
    - v. The proposed location is within habitat for listed rare, threatened, or endangered species, and regular use of a mooring in that location would unreasonably adversely impact the species; or
    - vi. The proposed location would cause unreasonable adverse impacts to a

saltmarsh.

Nothing in this Subsection shall be construed to limit the authority of the Harbor Master to consider other factors and make determinations on unreasonable adverse impacts to natural resources on a case-by-case basis. Where practicable, the Harbor Master shall work with the mooring owner to evaluate and select placement and tackle alternatives in order to mitigate unreasonable adverse impacts on natural resources.

- (5) The Harbor Master's authority under this Section shall not be inconsistent with Army Corps of Engineers and Maine Department of Environmental Protection approvals governing existing commercial moorings in mooring fields.
- (6) Where practicable, the Harbor Master shall, if so requested, locate the mooring within reasonable proximity of the mooring owner's property.

All moorings that meet the above standards but are not placed in the location approved by the Harbor Master shall be moved by the owner at his or her own expense in accordance with the instructions of the Harbor Master. In the event of a mooring owner's failure to comply with the relocation and/or removal instructions of the Harbor Master, the Harbor Master shall move or remove the improperly located mooring and the cost shall be borne by the owner of the mooring. Before removing a mooring, the Harbor Master shall notify the owner, if ownership can be determined, by mail at the owner's last known address, or by email. The notice shall inform the owner of the desired action and of the fact that the mooring will be removed at the expense of the owner if the owner does not comply. If the matter is not settled to the Harbor Master's satisfaction within two (2) weeks after notice was given, the Harbor Master may then move or remove the mooring.

- (H) *Identifying Numbers.* Identifying numbers shall be issued to mooring owners, and mooring balls and buoys must be clearly marked with the issued number. Numbers shall be a minimum of four (4) inches and visible at all times. Replacement mooring balls and buoys shall maintain the originally assigned number. An annual mooring registration sticker, issued by the Harbor Master upon completion and approval of the mooring registration, shall be affixed to the top of the mooring buoy for which it was assigned.
- (I) *Ownership of Moorings.* All mooring assignments (with the exception of marina moorings) shall be used exclusively for the use of the mooring owner and solely for the watercraft (or in the case of a multi-use mooring, multiple watercraft) listed in the application.
- (J) *Termination.* All persons who had been assigned a mooring and whose mooring assignment is to be terminated by the Harbor Master for reasons of non-

compliance with this article or any other reason shall receive written notification from the Harbor Master. This notice shall state the fact of the termination and the reason for termination, and list the appeal procedures designated in Section 11-14 of this Chapter.

(K) *Associations.* Associations may establish and manage moorings plans on behalf of Association members, subject to input and approval by the Harbor Master. Mooring areas controlled by Associations shall be subject to the following requirements:

- (1) The Association manages moorings in designated areas;
- (2) The Association provides oversight of member mooring use, including inspections; and
- (3) The Association is registered with the Harbor Master and provides member/mooring holder rosters and mooring location plans.

Nothing in this Subsection shall be construed as a limitation on the ability of the Harbor Master to carry out his responsibilities and duties as set forth in this Chapter.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-5 Operation of watercraft.**

No watercraft shall be operated within two-hundred (200) feet of shore and within established mooring fields or moorings placed in a designated area in accordance with Section 11-4 (K) of this Chapter at a speed in excess of five knots or that causes a wash, wake or waves that disturbs or damages any wharf, float or anchored or moored dock, or watercraft or that endangers any person or property.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-6 Town launch facilities.**

- (A) Use of town launch facilities consistent with the provisions of this article shall be permitted.
  - (1) Commercial uses of town launch facilities require a special activity permit from the Town Clerk.
- (B) The following activities are prohibited at town launch facilities:
  - (1) Storage of bait or catch for unreasonable periods of time, as determined by the Harbor Master.

- (2) Processing of seafood products. For the purposes of this Section, "processing" does not include washing clams by repeated submersion of bushel bags in the water.
- (3) Anchoring or mooring.
- (4) Tying up to wharfs for more than thirty (30) minutes.
- (5) Swimming or fishing except in designated areas.
- (6) Power loading or unloading, watercraft washing, watercraft painting, and bilge draining.

(Ord. of 4-4-05; Ord. of 4-7-08(2); Ord. of 2-23-2015)

**Sec. 11-7 Disruptive conduct.**

No person shall disrupt safe and lawful activities, or in any way threaten the public safety, in or around town launch facilities, wharfs, and harbors, coastal, tidal and navigable waters of the Town of Brunswick.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-8 Menaces to navigation.**

The Harbor Master is authorized to take whatever action is necessary and appropriate to remove any menace to navigation within the harbor, coastal, tidal and navigable fresh waters of the Town of Brunswick. This shall include, but is not limited to, contracting for removal of the menace by the authorities of the State of Maine, Federal Government, or a private contractor at the expense of either the Town of Brunswick, some other governmental entity, or the private entity or individual responsible for the creation of the menace.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-9 Dumping of sewage prohibited.**

No person may discharge, spill or permit to be discharged sewage, garbage, or other pollutants from any watercraft into the harbor, coastal, tidal and navigable fresh waters of the Town of Brunswick or onto the ice or banks thereof in such a manner that the same may fall or be washed into such waters or in such a manner that the drainage may flow into such waters.

(Ord. of 4-4-05)

**Sec. 11-10 Failure to obey order of the Harbor Master.**

As provided by 38 M.R.S.A. § 13, a person is guilty of failure to obey an order of the Harbor Master if the person intentionally, knowingly or recklessly fails to obey any lawful order of the Harbor Master authorized pursuant to 38 M.R.S.A. § 1 *et seq.* Failure to obey an order of the Harbor Master is a Class E Crime.

(Ord. of 4-4-05)

**Sec. 11-11 Forfeiture.**

Any watercraft, skiff, float, dock, fishing gear, or wharf left tied to a town wharf without proper identification, or left sunk or awash, for a period exceeding forty-eight (48) hours shall be deemed abandoned for the purposes of this Section. Any abandoned property shall be impounded by the Harbor Master and disposed of according to the procedure outlined in Title 25, Chapter 401. The Town shall not be liable for any damage to abandoned property that is impounded in accordance with this Section.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-12 Enforcement.**

This Chapter shall be enforced pursuant to the provisions of 38 M.R.S.A § 1 *et seq.* and 30-A M.R.S.A. § 4452. Any person found in violation of this article shall, after notice and hearing, lose his or her mooring privileges and all rights to use the town launch facilities and wharfs. In addition, the town shall have available all other remedies provided by law.

(Ord. of 4-4-05; Ord. of 2-23-2015)

**Sec. 11-13 Boat storage.**

No boat, vessel, raft, barge, or other watercraft shall be stored overnight in or on any navigable waters within the town without being licensed or permitted to do so. A person found in violation will be subjected to the cost of removing the vessel, boat, raft, barge, or watercraft and be fined one hundred and fifty dollars (\$150.00).

(Ord. of 06-20-11(1))

**Sec. 11-14 Appeals.**

- (A) Any person directly aggrieved by a decision, order, rule, or action by the Harbor Master may appeal said decision, order, rule or action to the Rivers and Coastal Waters Commission.
- (B) Such appeal shall be made in writing within 30 calendar days of the decision, order, rule, or act from which the appeal is taken. It must state with specificity the

decision, order, rule, or act from which the appeal is taken and the reason for the appeal. The Commission at its next regular meeting, or pursuant to a specially called meeting, shall consider the appeal. The decision on appeal by the Commission shall be written and state the reasons and basis for the decision.

- (C) Any decision, order, rule, or act by the Harbor Master concerning the location of moorings, as a result of which location there is an immediate danger to life or property, shall not be stayed pending the appeal.
- (D) Any party directly aggrieved by the decision of the Commission may appeal within thirty (30) days to the superior court in accordance with the Maine Rules of Civil Procedure.

(Ord. of 2-23-2015)

**Sec. 11-15 Rivers and Coastal Waters Commission.**

- (A) *Purpose.* The Rivers and Coastal Waters Commission works toward harbor improvement and management, consistent with the objectives and priorities of the Town's Harbor Management Plan ("HMP"). The Commission will bring recommendations for policy, oversight and/or action(s) to the Town Council, as appropriate. The Town Council will have ultimate authority over adopting the Commission's recommendations.
- (B) *Administrative Matters.* The Commission will meet bimonthly, quarterly, or other frequency as determined by the Commissioners and Staff. The Commission will elect its slate of officers, at an interval deemed most appropriate to its membership.
- (C) *Appeals.* The Rivers and Coastal Waters Commission also sits as a board of appeals to hear appeals from any person aggrieved by any order, rule, or action by the Harbor Master as set forth in Section 11-14 of this Chapter.
- (D) *Staffing and Membership.* The primary staff to the Commission shall be the Harbor Master. The Commission will be composed of seven (7) Voting Members; Two (2) Ex-Officio Non-Voting Members; Two (2) Alternates; and One (1) Non-Voting Primary Staff Member, as described in the Town Council charge adopted April 28, 2014, as amended from time to time.

(Ord. of 2-23-2015)

**11-16--11-25 Reserved.**