



**KITTERY PORT AUTHORITY  
TOWN HALL  
200 ROGERS RD.  
KITTERY, ME 03904**

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**Meeting Agenda  
Board Member Training  
February 2, 2023  
6:00 P.M.**

1. KPA Authority
  - a. Ordinance
  - b. Rules and Regulations
  - c. Bylaws
2. Role of Officers
3. Quorum and Majority
4. Conflict of Interest and Bias
5. Conduct of meetings
  - a. Agenda
  - b. Order of presentations
  - c. Public comment
  - d. Motions and seconds
  - e. Closing of hearing and deliberations
6. Findings of Fact and Decisions
7. Freedom of Access



**PORT AUTHORITY RULES AND REGULATIONS  
PERTAINING TO THE HARBOR, PORT, AND CHANNELS, WITHIN  
THE TOWN OF KITTEY, MAINE  
AMENDED: JANUARY 6, 2022**



**TOWN OF KITTERY PORT AUTHORITY RULES AND REGULATIONS  
PERTAINING TO THE HARBOR, PORT, AND CHANNELS, WITHIN  
THE TOWN OF KITTERY, MAINE**

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**TOWN OF KITTERY PORT AUTHORITY RULES AND REGULATIONS PERTAINING TO THE HARBOR, PORT, AND CHANNELS, WITHIN THE TOWN OF KITTERY, MAINE**

These Rules and Regulations are promulgated by the Port Authority in accordance with Article IX Section 9.02 of the Town of Kittery Charter; and are to be construed as having the force and effect of law as municipal ordinances in accordance with Title 38 Maine Revised Statutes (MRS), as may be amended from time to time. These Rules and Regulations apply to watercraft, boating, and the use of waters, within the Town of Kittery (hereinafter the “Town”) and are applicable to any construction lying within the jurisdiction of the Port Authority.

**1. DEFINITIONS**

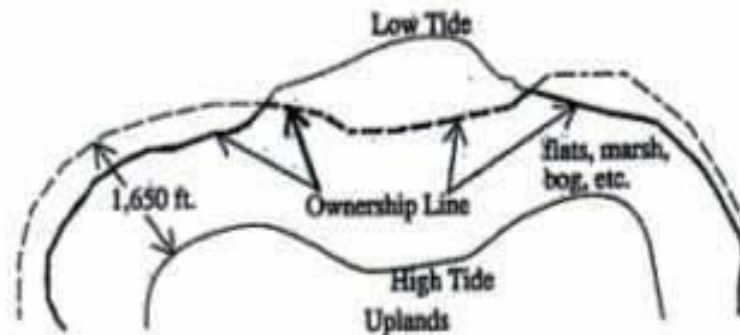
Except where specifically defined in these Rules and Regulations, all words used herein carry their customary dictionary meanings. Words used in the present tense include the future and the plural includes the singular, and singular includes the plural; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the words “shall” or “must” are always mandatory; “occupied” or “used” are considered as though followed by the words “or intended, arranged or designed to be used or occupied”; and, gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

**Anchorage Area** – An area of the harbor set aside for the temporary anchoring of vessels.

**Anchoring** – To secure a vessel to the bottom within a body of water by dropping an anchor(s) or other ground tackle which is carried aboard a vessel when underway as regular equipment.

**Berth** means the place where a vessel lies when at a wharf or pier.

**Boundaries (Along Tidal Water)** means any body of water that is naturally influenced by the ebb and flow of the tide. Tidal waters include rivers from their mouths to the point upstream where the ebb and flow of the tides is negligible. Title to land abutting and below the normal high- water mark of tidal water is determined by the title deed and application of state law and common law presumptions. The common law presumption is that a conveyance of land bounded by tidal water will convey title to the low tide mark or to 1650 feet (100 rods), whichever is closer to the normal high- water mark (see figure, below). This presumption of tidal water boundary applies equally to all lands along the ocean, bays, and rivers affected by the tides, even though the tidal river water may contain fresh rather than brackish or salt water. The line of low tide may fluctuate because of accretion and reliction. An owner’s lands will increase or decrease accordingly. Beyond the low tide or beyond 1650 feet, whichever is closer to high tide, the State has title.



**Channels** means areas of the harbor kept open for navigation or other purpose by rule or regulation of the Port Authority, the Department of Army or other regulatory or legislative body.

**Commercial fishing vessel** means a vessel outfitted and utilized for the taking of any marine species for purposes of sale.

**Commercial Use** means a vessel used for the principal purpose in the pursuit of one's business or trade for the purpose of earning a livelihood. The Harbormaster will determine whether a use is commercial for the purpose of application to Kittery Port Authority Rules and Regulations.

**Dinghy, Tender or Skiff** means a vessel 12'6" or less in length and 5'0" or less in beam associated with a specific larger vessel and principally used for transportation from the larger vessel to a landing or other vessel.

**Dock** means the slip or waterway extending between two (2) piers or projecting wharves or cut into the land for the reception of vessels.

**Float** means a platform that floats and is anchored, moored or secured at or near the shore, used for landing or other purposes.

**Float-In** means when the town-owned floats are put back in the water in the spring.

**Float-Out** means when the town-owned floats are removed and stored for the winter.

**Finger Float** means a float extending from the main float of a pier, ramp and float system that creates slips and/or increases the float or pier edge available for docking vessels.

**In Kind Repair** means the general repair of pilings, decking, railings, footings, and other components of the structures.

**In Kind Replacement** means the replacement of pier structure, float or ramps in the exact same size, location, and footprint of the existing structure.

**Harbor** means the navigable tidal waters within the geographical limits of the Town of Kittery, Maine.

**Industrial Commercial** means any person carrying on any business for gain or profit.

**Kittery Port Authority** means an organization as established by Kittery Town Charter.

**Knot** means one nautical mile per hour, or approximately 1.15 statute mile per hour.

**Landing** means a place for landing or discharging persons or things, as from a vessel.

**Marina** means a business establishment that has compliant frontage on navigable water and that provides, as its principal use, for hire moorings or docking facilities for vessels and yachts or any pier and float system capable of supplying four (4) or more 15' or greater slip spaces in addition to the main float as of July 5, 2007, but not including float systems in existence before

this date. A marina may also provide accessory services such as vessel and related sales, vessel repairs to small craft 19.8 meters (65 feet) or less in length, indoor storage of vessels and marine equipment, vessel and tackle shops, or marine fuel service facilities.

**Mean Low Water Mark** means approximation of mean-low water made by observation of low tide during a 0.0-foot tide (as determined by the National Oceanic and Atmospheric Administration).

**Mooring** means a permanent, adequate means of securing a vessel to the bottom in an anchorage, which is not carried aboard a watercraft when underway as regular equipment.

**Mooring, Commercial** means a mooring utilized by a person in the pursuit of business or trade.

**Mooring, Commercial Service** means a mooring utilized by individuals or marinas to service boats for repair on a temporary basis.

**Mooring, Private** means a mooring utilized by a vessel for private use only.

**Mooring, Rental** means any mooring offered by individuals or marinas for transient or seasonal rental including moorings controlled by private entities.

**Mooring Site** means a specific point on the ocean bottom in a mooring area assigned by the Harbormaster to a primary owner for a specific vessel and use. Approval of the physical mooring tackle (hardware) is covered separately and is approved by the Harbormaster for the location permitted.

**Mooring Site Waiting List** means a list or lists of persons, arranged by application number, requesting a mooring site in the tidal waters of the Town.

**Mooring Site Permit** means the assignment by the Harbormaster of a mooring site. All such mooring site permits are issued by the Harbormaster upon application by the vessel owner according to these Rules and Regulations.

**Mooring, Town Transient** means moorings available for overnight rental through the Harbormaster.

**MRS** means Maine Revised Statutes.

**Navigable Tidal Waters** means all harbors and bays as well as major rivers as far as they can be navigated "continuously" from the sea without obstructions.

**Not-for-profit entity** means any person, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization carrying on any activity within the state consistent with the stated purposes of such organization and operating on a nonprofit basis.

**Normal High-Water Mark** means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominately aquatic and predominantly terrestrial land.

**Outhaul** means an assembly consisting of a submerged pulley and continuous line between a moored vessel and a fixed point on shore for the purpose of boarding a vessel from the shore without the need of a dinghy.

**Person** means an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, firm or, in the case of a corporation or association, any official thereof, or other legal entity.

**Pier** means a structure extending into the water from a shore or bank or along a shore or bank which provides for the transfer of cargo or passengers or the berthing for vessels, and includes but is not limited to, wharves, quays and docks.

**Pier use permit** means an annual pier use permit or a single-use (daily) pier permit

**Pier, Commercial** means any pier that exceeds six (6) feet in width.

**Pier, Residential Development Use, Ramp & Float System** means a pier and/or ramp and float system which is used in common by lot owners or residents of a subdivision or residential planned development. The purpose is to provide waterfront access to the owners of lots in a residential development that has the potential for more than one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting from new development and possible elimination of Riparian Moorings.

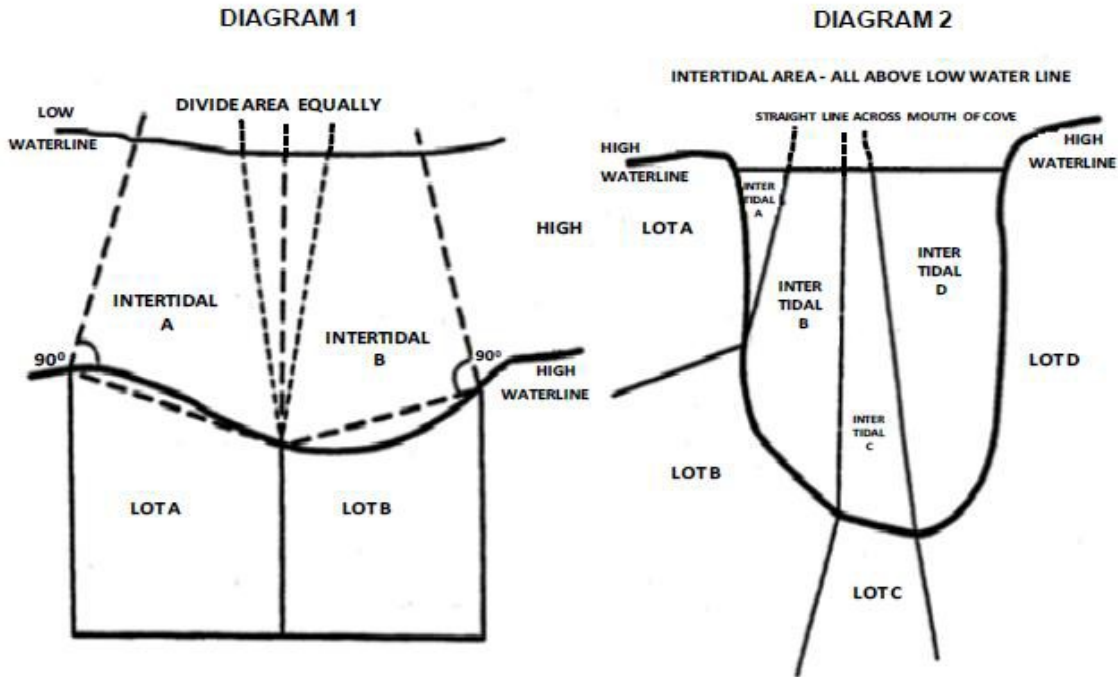
**Primary Owner** means the person that owns the majority of a vessel and is the first person listed on the vessel registration card.

**Riparian Mooring** means a mooring where practicable is issued to individuals that own shorefront rights to a parcel of land that meet the requirement of 38 MRS, §3, Mooring sites.

**Riparian water rights** (or simply riparian rights) is a system for allocating water among those who possess land along its path pursuant to Title 38 MRS, §3, Mooring sites:



**DIAGRAM for DETERMINING OWNERSHIP of INTERTIDAL LAND**



**Swim Float** means a structure that is moored on a temporary basis no earlier than May 15 and no later than October 15 for swimming purposes only.

**Temporary Mooring Site Permit** means a mooring site permit issued or assigned by the Harbormaster on a temporary basis not to exceed one (1) season (May 1st through April 30th) per assignment.

**Tidal Waters** means areas where there are two Low Waters and two High Waters generally every 24 hours and 50 minutes. The average High Water rises 8.7 ft. from Low Water in the Kittery area.

**Title 16** means Kittery Town Code Title 16, Land Use and Development Code.

**Town Resident**, also referred to as "Municipal resident", means any natural person who owns real property in Kittery or resides in the Town for more than one hundred eighty (180) days in a calendar year.

**Town Transient Slip Rental** means the float system of docks on Pepperrell Pier available for overnight rental through the Harbormaster.

**Vessel** means boats of all sizes propelled by sails, machinery or hand; scows, dredges, shellfish cars and watercraft of any kind.

**Wharf** means a structure of timber, masonry, concrete, earth or other material, built on the shore of a harbor, river, canal, or the like, especially one extending parallel to the shore line, so that vessels may lie close alongside to receive and discharge passengers and cargo.

## **2. HARBOR USE REGULATIONS**

### **2.1. Speed of Vessels, Reckless Operation, and Wake of Vessels**

Vessels must be operated in the harbor at a reasonable and prudent speed with due regard to all prevailing circumstances and in such a manner as to not endanger watercraft, persons or property.

Vessels must be operated so they do not create a wake that does or potentially could endanger or damage any person, vessels or property.

Vessels must not exceed the speed of five (5) m.p.h. in the following areas:

#### **2.1.1. Pepperrell Cove including Chauncey Creek**

A. From the entrance to Pepperrell Cove channel (Red Nun Buoy #4) to the Town Pier at Frisbee Wharf including the complete mooring area of Pepperrell Cove.

B. From the entrance of Chauncey Creek channel to the upper end of Chauncey Creek.

#### **2.1.2. Spruce Creek**

The area from Hicks Rocks Inner Channel below Kittery Point Bridge to ¼ mile north of the Kittery Point Bridge in Spruce Creek.

#### **2.1.3. Back Channel**

From Red Nun Buoy #4 at the Southeasterly end of the back channel, up the river to both the North and Southeast sides of Badger's Island terminating at Western end of Badger's Island.

#### **2.1.4. Exception**

Nothing in these speed or wake regulations makes unlawful any action necessary for (a) navigational safety; (b) observance of the rules of the road, and emergency missions by emergency or public safety watercraft. The burden is upon any person asserting the exception provided by this Section as a defense to a prosecution for violation of any speed or wake regulation.

### **2.2. Channels**

Channels for the passage of vessels must be maintained in the area under the jurisdictional limits of the Port Authority and kept clear of any and all obstructions.

#### **2.2.1. Channel A**

A channel is established from Red Nun Buoy #4 (Fishing Island), one hundred fifty (150) feet wide, to the town wharf at Pepperrell Cove; also, a fifty (50) foot wide deep-water channel at the entrance of Chauncey Creek from Red Nun Buoy # 4 to a line from the southern end of Phillip's Island (which is sometimes known as Moore's Island) to the northern end of Gooseberry Island. Chauncey Creek above this line must be maintained as a mooring area with the Harbormaster laying out mooring sites in such a manner as to ensure that the channel is not obstructed. The Harbormaster may require bow and stern moorings, if necessary, to insure clear passage in this area.

### **2.2.2. Channel B**

A fifty (50) foot channel is established from Red Nun Buoy #6, at Hick's rocks, Northwest and Westward up the back channel between Green Can #3 and Red Nun Buoy #4; up the river to both the North and Southeast sides of Badger's Island, terminating at the Western end of Badger's Island. The center of the channel being determined by the deepest water in the unmarked portions.

### **2.3. Anchorage**

**2.3.1.** The Harbormaster may at any time order any vessel at anchor to change position when it is determined that such vessel is so anchored as to impede navigation or to endanger other vessels.

**2.3.2.** Anchoring any vessel or watercraft in all Kittery waters is limited to 14 days maximum, or at the discretion of the Harbormaster.

**2.3.3.** Vessels and watercraft anchoring in Kittery waters must not be left unattended for more than seventy-two (72) consecutive hours.

### **2.4. Buoys other than for Mooring Vessels**

No buoy of this type may be placed in channels leading to wharves, nor may such buoys be placed less than three (3) vessel lengths from a mooring for that vessel. The Harbormaster is empowered, in the interest of public safety, to require the removal of buoys.

### **2.5. Public Wharves and Landings**

#### **2.5.1. Obstruction**

No person may obstruct by any means whatsoever, the free use of public piers, docks, floats and other common landing places. Vessels may not remain tied to the wharf or float for a period longer than thirty (30) minutes except by permission of the Harbormaster. Vessels in violation will be removed or caused to be removed by the Harbormaster and charged storage fees.

#### **2.5.2. Tying to Public Facilities**

A. Any vessel tied to public piers, docks, floats, and other common landing areas causing damage to adjacent watercraft or property will be removed or caused to be removed by order of the Harbormaster.

B. Hourly dockage is permitted on Pepperrell Pier on designated transient slips only. Hourly dockage will be allowed if slips have not been reserved for transient vessels for overnight stays, and will be allowed on a first come first serve basis. Hourly dockage is limited to a maximum of 2 hours per vessel per slip. Charges for hourly dockage are calculated in 60-minute blocks as set forth in Appendix A.

#### **2.5.3. Emergency Repair**

Vessels requiring emergency repair may be tied to public piers, docks, floats, or other common landing areas for a maximum of twenty-four- (24-) hours with approval of the Harbormaster. Extension of time is at the discretion of the Harbormaster.

#### **2.5.4. Public Nuisance**

No person may loiter, create a public nuisance or partake of alcoholic beverages on public piers, docks, floats, or other common landing areas.

**2.5.5. Closure of Facilities**

Public piers, docks, floats, and other common landing areas may be closed for reasons of public safety or threats to natural resources.

**2.5.6. Town Hoist Use**

- A. Town hoists may not be used for launching or landing of vessels.
- B. Loads must not exceed the posted hoist limit.
- C. The Harbormaster may prohibit a user from using the hoist if found to be operating it unsafely or in violation of the Rules and Regulations.

**2.5.7. Swimming**

- A. No person may dive from, swim or skin-dive without permission of the Harbormaster, within thirty (30) feet of Town-owned floats.
- B. Persons swimming in mooring fields, anchorages, and channels must have a safety buoy attached to them.

**2.5.8. Tying of Dinghies to Town Floats**

- A. All dinghies, skiffs, or tenders tied to public floats must allow at least ten (10) feet of line between the float and vessel.
- B. Dinghies more than twelve feet six inches (12' 6") in length may be tied to a public float with written permission of the Harbormaster.
- C. All dinghies tied to public piers, docks, floats and other common landing areas are to be maintained and bailed free of water. Unmaintained dinghies may be removed and charged storage fees.
- D. Dinghies must prominently display the mooring number on the inboard side of the transom using numbers no less than two- (2-) inches in height and in contrasting color.
- E. Except where permitted by the Harbormaster, all dinghies must be removed from public floats before float-out in October of each year. Any unauthorized dinghies remaining after this date will be removed and charged storage fees as set forth in Appendix A.

**2.5.9. Storage of Personal Property on Town Piers, Floats, and Landings**

- A. Personal property, such as cradles, motor vehicles, vessels, and floats may not be stored on town wharves, piers, floats or landings.
- B. A Loading Zone, as designated by the Harbormaster, may be used by mooring holders and Facility Use Permit holders for loading and unloading of gear including but not limited to lobster traps, fishing gear and other items in transit. Items in transit mean items are being actively loaded or unloaded to and from vessels.
- C. Gear may be stored or placed by mooring holders and Facility Use Permit holders in designated areas for no more than twenty-four (24) hours at any given time, unless otherwise

permitted by the Harbormaster. Gear must be placed or stored in a manner that allows safe access to vessels and public piers, docks, floats and common landing areas. Gear must be stacked or stored in an orderly manner. The gear stacked or stored from an individual vessel may not exceed one half of any designated storage area on town wharves, piers, floats, or landings at any time.

**2.5.10. Children on Ramps and Floats**

Children 10 years of age and younger must wear a personal floatation device and be accompanied by an adult on all wharves and floats, at all times.

**2.6. Abandoned Boats, Vessels, Wrecks, Etc.**

**2.6.1. Abandonment Prohibited**

No person may cause to be abandoned any watercraft or related equipment or appurtenances on the shores within the waters of Kittery, whether on a mooring or at anchor. Nor may any person abandon or cause to be abandoned any watercraft, vessel, hull, or any raft at any wharves, docks or permanent floats within the waters of Kittery. No person may abandon any watercraft, vessel, or hull upon any shoreline, dock, pier, wharf, float, mooring, or at anchor except with the express consent and approval of the owner of the dock, pier, wharf, float, mooring, shoreline, or in the case of moored or anchored watercraft, the consent and approval of the Harbormaster.

**2.6.2. Presumption of Abandonment**

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

**2.6.3. Abandoned Vessels**

When, in the opinion of the Harbormaster, a watercraft, vessel, hull, or raft has been abandoned in Kittery waters, he may take custody and control of such vessel and remove it or cause it to be removed and stored.

The owner will be responsible to pay all removal and storage fees prior to reclaiming the vessel. If the owner fails to claim the vessel the Harbormaster will dispose of it in accordance with MRS 25.

**2.7. Water Skiing, Skin & SCUBA Diving, Aircraft, Sailboards, Jet Skis/Personal Watercraft, and Windsurfing**

**2.7.1.** Water skiing or windsurfing in congested mooring areas, anchorage areas or in speed limited areas in Kittery waters is prohibited. Waterski jumps may be allowed by permit. (with prior permission of the harbormaster)

**2.7.2.** Operators of jet skis/personal watercraft must observe the same Rules and Regulations applicable to other vessels.

**2.7.3.** Aircraft pilots must observe the same mooring and anchorage rules that apply to vessels and are regulated by applicable state and federal rules, regulations and statutes.

**2.8. Environmental Protection of the Harbor and Waters of the Town**

**2.8.1. Waste and Refuse.**

No person may deposit, throw, sweep, pump or otherwise cause to be deposited into the waters of the Town, or into adjacent waters, any sewage waste, gas or oil or bilge water containing same, dirt, stones, gravel, mud, logs, planks, or any other substance tending to obstruct the navigation or pollute the waters of said harbor or waters adjacent thereto.

**2.8.2. Use of Dumpsters**

No trash or refuse may be placed on any town float or pier except in designated containers. Seasonal dumpsters are for waste generated on vessels No household trash or refuse of any kind not generated on a vessel may be placed in the dumpster. Recyclable items must be properly deposited in the containers provided as specified in Town recycling regulations. Littering is prohibited.

**2.8.3. Oils and Hazardous Wastes**

No oil or other hazardous wastes may be deposited in town waste receptacles or left on Town piers, floats, or landings. Such material must be disposed of properly at the Town's designated disposal site as specified in the appropriate waste disposal regulations.

**2.9. Facility Use Permit**

**2.9.1. Kittery-Resident Commercial Vessels**

Commercial vessel owners that are not Kittery mooring holders but have a primary residence in Kittery must obtain a permit to use of the floats, piers, hoists, docks, common landing areas and facilities for commercial use for loading, unloading, and temporary storage and placement of gear.

**2.9.2. Non-Kittery-Resident Commercial Vessels**

Commercial vessel owners that are not Kittery mooring holders and do not have a primary residence in Kittery must obtain a permit to use of the floats, piers, hoists, docks, common landing areas, and facilities for commercial use including loading and unloading, and temporary storage and placement of gear.

**2.9.3. Exemptions**

The following are not required to obtain a Facility Use Permit to use the floats, piers, hoists, docks, common landing areas, and facilities for loading, unloading, and temporary storing and placement of gear:

A. Kittery mooring holders

B. Not-for-profit organizations. This exemption does not apply to for-profit organizations working on behalf of a not-for-profit organization.

**2.9.4 Prohibited Use**

A. The movement of construction equipment, freight, marine construction equipment, and dredging/ oil-boom related equipment across the piers, floats and launch ramps for transport to or from other sites is prohibited at all Town-owned facilities. Mooring blocks and mooring materials for use in Kittery waters are exempt.

**2.10. Fishing from Town Owned Piers, Floats and Wharves**

A valid Saltwater Fishing license is required to fish from Town facilities.

**2.10.1 Town Pier at Frisbee Wharf**

Fishing is permitted on the Frisbee Pier and float systems. Fishermen are cautioned to stay clear of all vessels and dinghies that are made fast to the float systems. Fishermen are required to keep the facility clean, and a carry-in/carry-out policy is in effect.

**2.10.2 Pepperrell Pier**

Fishing from the Pepperrell Pier, the ADA gangway, and transient float system, is prohibited. Violation of this rule is subject to a fine as set forth in Appendix A.

**2.10.3 Traip Launch**

Fishing is permitted at the Traip Launch. Fishermen are cautioned to stay clear of all vessels and dinghies that are made fast to the float systems. Fishermen are required to keep the facility clean, and a carry-in/carry-out policy is in effect.

**2.10.4 Government Street Wharf**

Fishing is permitted on the Government Street Wharf. Fishermen are cautioned to stay clear of all vessels. Fishermen are required to keep the facility clean, and a carry-in/carry-out policy is in effect.

**3. MOORINGS**

These Rules and Regulations are promulgated to meet the requirements of Title 38, Maine Revised Statutes (MRS), Waters and Navigation, Chapter 1, Operation of Vessels, as may be amended from time to time.

**3.1. Assignment of Mooring Sites**

**3.1.1. Mooring Sites Areas**

All mooring sites except as otherwise provided by Title 38 MRS, et. seq. are under the exclusive control of the Harbormaster. When the number of requests for mooring sites exceed the number of sites available, mooring sites must be assigned according to the allocation provisions of this section from established mooring site area waiting lists maintained by the Harbormaster. The mooring site areas are designated by the following letter codes:

- IS = Isles of Shoals (Landowner or Lessee only)
- CC = Chauncey Creek including Gerrish Island

- PC = Pepperrell Cove
- FM = Fort McClary to Kittery Point Bridge
- SC = Spruce Creek above the Kittery Point Bridge
- BC = Kittery Point Bridge to Memorial Bridge
- BI = Badgers Island
- PR = Memorial Bridge to Rt. 95 Bridge
- EL = Rt. 95 Bridge to Eliot Line
- OH = Outhauls

**3.1.2. Assignment of Mooring Site with No Waiting List**

If at the time an individual applies for a mooring site there is no waiting list for that area (except at the Isles of Shoals where the applicant must be a landowner or lessee to be assigned a mooring site) this individual may be assigned a mooring site without regard to allocation provisions of these Rules and Regulations.

**3.2. Maintenance of Mooring Site Waiting List**

The Harbormaster shall maintain a waiting list for each mooring site area for both commercial and recreational applicants.

**3.2.1. Application to the Mooring Site Waiting List**

Person(s) may request their name be added to the mooring site waiting list by filling out a mooring site wait list application and paying the application fee. Such fee is due no later than April 15th, on an annual basis in order to remain on the waiting list. Incomplete applications will not be processed.

**3.2.2.** The applicant must indicate the preferred mooring site area using the area designation codes in Section 3.1.1. An alternative mooring site area may be requested.

**3.2.3.** The applicant must indicate whether the mooring use will be commercial or recreational.

**3.2.4.** Commercial applicants must show credible documentation satisfactory to the Harbormaster that the primary source of income for the vessel to be moored is through the vessel's use and operation.

**3.2.5.** The applicant must be the primary person to whom the vessel will be registered or documented regardless of whether there are multiple owners of the vessel. The name listed on the waiting list may not change excepting in cases of a legal name change of the applicant.

**3.2.6.** An applicant may only be listed once for recreational mooring use and once for a commercial mooring use per mooring site area

**3.2.7.** Waiting list applicants who change their status from recreational to commercial must be assigned to the bottom of the commercial list for area desired.

**3.2.8.** The Harbormaster shall assign a mooring using the Mooring Waiting List as the primary method, however, the Waiting List priority may be waived to place an appropriate vessel on a mooring.



**3.2.9.** Once a mooring site is offered to an applicant on the waiting list, the applicant has ten (10) calendar days to accept the mooring site, provide required documents, and pay the mooring fee. This may be extended upon approval of the Harbormaster. Failure to comply with this section by the deadline will result in forfeiture of the mooring site and the removal of the applicant name from the waiting list.

**3.2.10.** Persons on the waiting lists may decline an offered mooring site on a one-time basis and retain their relative position on the mooring site waiting list. Subsequent refusals of an offered mooring site will result in the person's name moving to the bottom of the list.

### **3.3. Mooring Site Permit Application Information**

#### **3.3.1 Application**

New mooring permit applicants must fill out a mooring site permit application and pay the applicable fees. Such fees are due on an annual basis in order to remain on the mooring. New and renewal mooring site permit application must contain the most current legal address of the mooring site permit applicant. The mooring permit holder is responsible for ensuring the Harbormaster has current and accurate contact information for the permit holder.

#### **3.3.1. Vessel Information**

Mooring site permit applications must include a copy of the vessel registration or documentation and proof of excise tax payment for out-of-state registered vessels or federally-documented vessels.

#### **3.3.2. Mooring Tackle**

Mooring site permit applicants must provide mooring tackle specifications including anchor type and weight, chain size and length, mooring buoy type, and proof of mooring tackle inspection prior to placing a vessel on the mooring. The mooring site permit holder is responsible for the mooring tackle located or to be located in the mooring site regardless of ownership of tackle hardware.

#### **3.3.3. Vessel identification**

The name of the mooring site permit holder recorded on the application and the primary name listed as the vessel owner on the state registration or federal documentation certificate must be the same.

**3.3.4.** All mooring permits begin on May 1 and expire on April 30.

### **3.4. Annual Renewal of Mooring Site Permits**

The mooring site renewal application and permit fees and must be received by April 15.

**3.4.1.** Annual mooring fees will be based on the vessel listed on the mooring record held by the Harbormaster. Mooring fees will be charged whether the mooring will be used during the permit year.

**3.4.2.** The Permit holder must present a copy of their registration each year before the Harbormaster will approval the renewal of the mooring. The permit holder must be the primary owner of the specified vessel in order to renew their permit.

**3.4.3.** Failure to submit the renewal application and pay permit fees by April 15 will result in the assessment of late fees and the possible forfeiture of the mooring site.

**3.5. Forfeiture**

**3.5.1.** If the mooring site renewal application is not received and/or all permit fees and outstanding fines are not paid by May 1, the Harbormaster will initiate revocation of the mooring site.

**3.5.2.** Notice of Revocation will be sent by certified mail and first-class mail to the permit holder at the address on record with the Harbormaster. The permit holder may appeal the revocation in accordance with Section 7.

**3.5.3.** Mooring sites made available due to revocation will be reassigned after the appeal period has ended.

**3.6. Use of Permitted Mooring Sites and Temporary Mooring Site Use Program**

**3.6.1. Use of Permitted Mooring Sites**

A. Title 38 MRS §3, Mooring sites, expressly forbids those who are granted a private mooring site assignment from transferring that privilege to another person, unless the mooring site was initially granted as a rental mooring site. This section of state law specifically says assignment of these mooring privileges does not confer any right, title, or interest in submerged or inter-tidal lands owned by the state and further says assignments must not be rented unless the provision for rental was part of the agreement when the mooring was originally assigned.

B. Rental moorings issued before 1968 are considered grandfathered by the Port Authority and the Army Corps of Engineers. The burden of proving through credible and reliable evidence that the mooring was issued as a rental mooring prior to 1968 rests with persons seeking the rental mooring grandfathered. All holders of rental mooring permits issued since 1968, in order to continue as rental moorings, must show proof that the rental mooring was properly documented with the Army Corps of Engineers and the Port Authority.

C. A person who is assigned a private mooring site may not rent, loan, lease, lend, give, bestow, permit, accommodate, allow use of, or give permission to any other person to use the assigned private mooring site (whether or not money or other consideration is exchanged) except as allowed in writing by the Harbormaster on a case by case basis. Mooring sites cannot be transferred between family members except that a mooring site used for commercial fishing purposes may be transferred at the request of, or upon the death of the assignee, only to a member of the assignee's family and only if the mooring site assignment will continue to be used solely for commercial fishing purposes. "Member of the assignee's family" means an assignee's spouse, parent, child or sibling, by birth or by adoption.

D. Mooring balls removed for the winter must be reinstalled by June 1, regardless whether the mooring site will or will not be used for the permit year.

E. Only a vessel which is properly registered or documented in the primary name of the mooring site permit holder may be placed on that person's private mooring. The name of the mooring site permit holder as recorded by the Harbormaster and the name listed as the primary vessel owner on the state registration or federal documentation certificate must be the same.

F. Approved mooring site permits or assignments for the size and type of vessel described on the permit are valid from the date of issuance until April 30. Mooring site assignees may change

vessels on their assigned mooring site only with written permission from the Harbormaster. In general, mooring site permits must be limited to the same approximate size and type of vessel unless, in the judgment of the Harbormaster, a change can be made without adversely affecting the Harbor mooring site plan or adjoining mooring site assignees.

G. The Harbormaster is authorized to seek information from a mooring site permit holder at any time with respect to the use, location, ownership, or any other information relating to the permit application that the Harbormaster deems meaningful. Failure to respond to the Harbormasters inquiry is a basis for the Harbormaster to revoke the mooring site permit.

### **3.6.2. Temporary Mooring Site Use Program**

A. To achieve the most efficient and extensive use of the limited mooring assets in Kittery, the Harbormaster shall administer a program to assign moorings not being used by the mooring site permit holders to other individuals on a temporary basis.

B. A mooring site permit holder must notify the Harbormaster of their intention to place the mooring in the Temporary Mooring program no later than April 1<sup>st</sup> of each year or later with approval of the Harbormaster. Mooring sites placed in the Temporary Program must be for a minimum of one permit year.

C. The mooring permit holder will pay an administrative fee as set forth in Appendix A, to maintain the ownership of their mooring.

D. Any mooring placed in the Temporary Program must meet Mooring Requirements in accordance with Section 3.8.

E. The Harbormaster shall reassign temporary moorings using the Mooring Waiting List as the primary method; however, the Waiting List priority may be waived to place only an appropriate vessel on a mooring in the Temporary Mooring program.

F. A person assigned to a mooring in the Temporary Mooring program must pay to have the mooring inspected in accordance with Section 3.8.1 and pay an administrative fee as set forth in Appendix A.

### **3.7. Mooring Site Resolution of Conflict**

Where mooring site rights of the individuals are claimed to be invaded or pose a danger to property or navigation and protection is sought, the Harbormaster shall assign and indicate to the mooring site permit holder the location which they may occupy for mooring purposes, and shall change the location of those moorings from time to time when crowding or other conditions render the change desirable.

### **3.8. Adequacy of Moorings**

All mooring tackle set in a mooring site must be of sufficient size to hold the vessel for which it is used.

**3.8.1.** All moorings must be inspected at least every other year. Inspection must be performed only by individuals or organizations authorized by the Harbormaster and written reports of all

inspections must be submitted to the Harbormaster. The mooring permit holder is responsible for all costs associated with mooring inspections.

**3.8.2.** All mooring balls must be white and have the assigned mooring number permanently affixed thereon. Such number must be at least three (3) inches high and be clearly visible at all times.

**3.8.3.** The Harbormaster may at any time examine any mooring tackle to determine compliance with this section. Except in cases of emergency, the Harbormaster shall notify the owner of the intention to examine the mooring tackle and request the presence of the owner during such examination.

**3.8.4.** Mooring tackle found to be inadequate with regards to the requirements of this section must be corrected within forty-eight hours of being so notified or be removed forthwith. Any cost of examination or removal resulting therefrom is borne by the holder of the mooring site permit. If a vessel is required to be moved for reasons of the safety of other vessels, the owner is responsible for all associated costs.

**3.8.5.** Registered owners listed on mooring site permit are responsible and liable for any damage caused by their vessel whether such owner is aboard the vessel or not.

**3.9. Vessels Moored so as Not to Impede Navigation or to Endanger Other Vessels**

**3.9.1.** All mooring sites, whether now existing or hereinafter set, must be in such a way that the vessels will not impede navigation within the harbor, nor endanger other vessels.

**3.9.2.** If the Harbormaster finds that any vessel is moored as to impede navigation or to endanger other vessels, the Harbormaster may direct that the owner of the vessel takes corrective action; or in the alternative, may order that the mooring be removed from the site or relocated. In requiring the removal of a mooring because of its danger to other moorings, the mooring last set is to be the first removed.

**3.9.3.** Any person so ordered by the Harbormaster, shall take corrective action as ordered within forty-eight (48) hours; provided, however, that if the Harbormaster finds an emergency requiring immediate action to prevent injury to life or damage to property, the mooring or any vessel attached thereto may be caused to be immediately removed and relocated. Any expense involved is to be borne by the owner of the mooring or vessel being removed.

**3.9.4.** Rafting of vessels on moorings is prohibited, unless permission is granted by the harbormaster, and all vessels are occupied, and the mooring permit holder must be present.

**3.10. Moving or Interfering with Moorings Belonging to Another**

Except by direction of the Harbormaster, and with permission of the owner, no person may move or interfere with any mooring or vessel. If the Harbormaster deems the situation to be an emergency, action may be taken immediately, notifying the owner of the vessel involved that such action has been taken.

**3.11. Transient Moorings, Commercial Service, and Rental Moorings**

**3.11.1. Municipal Transient Moorings**

Municipal Transient Moorings are provided and maintained by the Town for the use of visiting vessels. Such vessels may use these moorings for no more than fourteen (14) consecutive days, or at the discretion of the Harbormaster. A schedule of fees for such usage is set forth in Appendix A.

**3.11.2. Non-Municipal Transient Moorings**

Non-Municipal Transient Mooring Site Assignments are for the use of visiting guest vessels. Such mooring sites may not be rented and must be clearly recognizable and identifiable with distinguishing color or markings as determined by the Harbormaster. No vessels may use these mooring sites for a period longer than twenty-four (24) hours, except under unusual circumstances and only with the express permission of the Harbormaster.

**3.11.3. Commercial Service and Rental Moorings**

Commercial Service and Rental Mooring sites will be allowed only upon the approval of the Port Authority. New and existing Rental and Commercial Service Moorings/Floats shall have a set maximum boat length determined by the Harbormaster. No boat may be placed on the mooring that exceeds the established maximum boat length. The mooring fee will be based on the established maximum boat length.

**3.12. Moored Floats**

**3.12.1. Moored Floats**

- A. Moored floats are authorized only with the expressed permission of the Port Authority and only after receiving an Army Corps of Engineers Permit. Permits are issued in accordance with Section 4 of these Rules and Regulations.
- B. Floats are prohibited in Pepperrell Cove.
- C. Float size may not exceed 10' X 24' dimensions for commercial uses and 8' 24' dimensions for recreational uses, unless otherwise permitted by the Port Authority.
- D. All floats are required to have a minimum of two (2) moorings.
- E. All shackles and fasteners must be hot dipped galvanized steel and structurally sound and proportional in size to the chain use.
- F. All floats must be identified with assigned registration numbers on both ends of the float in contrasting colors and be a minimum of three (3) inches in height.
- G. All floats must be buoyant so as not to become submerged at any time and must remain above water and visible at all times.
- H. All gear, traps, fish and dunnage must be stored or secured so as not to be discharged or fall into the water or to pollute or to create a navigational hazard. All fuel, foul waste, decaying matter and/or hazardous material must be removed promptly from the floats after use and disposed of properly.

**3.12.2. Swim Floats**

- A. Swim floats are permitted from May 15 to October 15.
- B. One (1) swim is allowed per property with approval from the Harbormaster.
- C. Applicants must fill out a Swim Float application and pay the applicable fees. Such fees are due on an annual basis in order to retain the swim float permit.
- D. Swim floats must be placed in the waters adjacent to and within the boundaries of the property owner's shoreline and no further than 100 feet from shore, unless otherwise approved by the Harbormaster.
- E. Swim floats must have no more than 100 square feet of surface area.
- F. Vessel tie up to swim floats is prohibited.
- G. All floats must be buoyant so as not to become submerged at any time and must remain above water and visible at all times.
- H. Swim floats must be secured to the bottom by sufficient size anchor or mooring block.
- I. All floats must be identified with the name and address of the owner, on the landward and seaward sides of the float in contrasting colors and be a minimum of three (3) inches in height.

**3.13. Outhauls**

- A. Outhauls are allowed by permit only, and must be approved by the Harbormaster.
- B. The outhaul is to be permitted to the waterfront property owner only.
- C. Only 1 outhaul may be allowed per waterfront property.
- D. Outhauls must be located as close as possible to the centerline of the property.
- E. Maximum boat size allowed shall be 14 feet unless a larger boat is approved by the Harbormaster.
- F. Overall length of the outhaul seaward of mean high water is at the discretion of the Harbormaster.
- G. The Harbormaster has the authority to revoke any permit if hazards to navigation or recreation occur.

**3.13.1. Outhaul Permit**

Outhaul applicants must fill out the application, provide proof of property ownership, and pay the applicable fees.

**3.14. Spar Mooring Floats**

No new spar mooring floats may be installed.

**3.15. Riparian Rights Mooring Sites**

The Port Authority may permit and assign mooring sites to waterfront property owners demonstrating and claiming such right under the requirements of Title 38 MRS §3, Mooring Sites, under the following conditions:

**3.15.1.** The applicant must show legal interest in the property and in the case of joint ownership of property, that the person has legal authority to act for all owners before the application is accepted by the Port Authority.

**3.15.2.** A Riparian mooring site may be located only in waters immediately in front of the intertidal land associated with the property as defined in Title 16, Chapter 2, Figure 1. Once a Riparian Mooring has been assigned to a property, it stays with the property and is not subject to the three-year rule.

**3.15.3.** A Riparian mooring site may be used solely by the owner of the property for personal use. Such mooring site cannot be used by a third party, either temporarily or permanently, except under the Temporary Mooring Site Use Program.

**3.15.4.** A Riparian mooring site may be assigned only if the proposed location of said mooring site has been determined by the Port Authority to be practicable and safe and not impede free navigation or infringe on the rights of others.

**3.15.5.** Number of moorings. Only one Riparian mooring site per qualifying waterfront lot may be granted, regardless of the amount of shorefront in excess of the 100-foot minimum requirement and 20,000 sq. ft. minimum lot size, except persons owning shore rights prior to January 1, 1987, are required only to have a 100-foot minimum shore frontage as established by state law.

**3.15.6.** Riparian mooring site permits are subject to Section 3.3 through 3.5 inclusive of application and renewal processes, fees, and forfeiture, excepting riparian moorings may not be reassigned.

**3.15.7. Exceptions**

A. An exception to the mooring site location may be granted by the Port Authority if the waterfront property is adjacent to an established mooring field or area and an additional mooring site would result in an unsafe condition. In such cases, the Port Authority may either reassign existing mooring site locations, or, at its discretion, assign the riparian right mooring site to another location. The simple unsuitability of the property location for mooring a particular type of vessel does not justify this exception.

B. For the purpose of these regulations, in the case where a property owner's existing mooring fronts their qualifying waterfront lot, it is considered that property owner's riparian mooring site for as long as the person owns the property.

C. In the case where a non-qualifying lot has been legally assigned a riparian mooring prior to the adoption of these Regulations, that mooring may continue as a riparian mooring associated

with that lot until such time the mooring has either been revoked or abandoned. Should a transfer of ownership of the non-qualifying lot occur, the new owner may continue the use of the riparian mooring subject to the provisions of these Regulations, providing the mooring had not been revoked or abandoned by any previous owner.

### **3.16. Abandoned Mooring Sites**

A mooring site is deemed to be abandoned and the mooring site permit holder's mooring privileges terminated under the following conditions:

**3.16.1.** Mooring permit holder fails to renew their mooring site permit in accordance with Section 3.4.

**3.16.2.** Mooring permit holder does not maintain their mooring in accordance with Section 3.

**3.16.3.** Mooring permit holder whose mooring remains unused for three (3) consecutive years. A mooring is considered unused if the vessel listed on the permit is placed on the mooring for less than thirty days between May 1 and October 15. Placement of the mooring in the Temporary Mooring Site Use Program is considered "unused" for the purpose of this section

### **3.17. Revocation of Mooring Site Permit**

**3.17.1.** The Harbormaster has the authority to revoke a person's mooring site permit for any violation of these rules and regulations. Upon revocation, the Harbormaster shall promptly notify the person that the mooring site permit has been revoked and the reasons for revocation by certified and first-class mail.

**3.17.2.** Mooring site revocation may be appealed to the Port Authority as specified in Section 7.

**3.17.3.** Any mooring holder who has had their mooring privilege revoked will forfeit any fees paid up to the time of revocation and be subject to any fines that may apply as set forth in Appendix A.

### **3.18. Disposal of Mooring Tackle**

Upon the abandonment or revocation of a mooring site permit, the mooring tackle must be disposed of as follows:

Note: For the purpose of this section the term mooring site permit holder includes the mooring tackle owner if the tackle (hardware) is owned by another person.

#### **3.18.1. Order to Remove by Harbormaster**

The Harbormaster must notify the mooring site permit holder by certified and first-class mail of an Order to Remove a Mooring and include the provision of the Rules and Regulations that serves as the basis for removal and the deadline to remove the mooring. Mooring tackle not removed on or before the date set forth in the notice for removal, shall be removed or caused to be removed by the Harbormaster.



**3.18.2.** The Harbormaster, at the expense of the mooring site permit holder, shall take whatever action is deemed appropriate, including the removal and storage of the mooring tackle pending sale or other disposition by the Harbormaster.

**3.18.3.** An order to remove mooring tackle issued by the Harbormaster may be appealed in accordance with Section 7. An appeal in process does not stay any provisions of this section except that no sale of mooring tackle may occur until an appeal is finally determined.

**3.18.4. Unclaimed Mooring Tackle**

The owner will be responsible to pay all removal and storage fees of mooring tackle caused to be removed by the Harbormaster prior to reclaiming the tackle. If the owner fails to claim the tackle the Harbormaster will dispose of it in accordance with Title 25 MRS. Nothing in this section prevents the Harbormaster from retaining and reusing the unclaimed mooring tackle in lieu of selling it.

**3.19 Kayaks**

**3.19.1. Kayak and Paddle Board Storage**

A. All storage sites on Town property are under the exclusive control of the harbormaster. The harbormaster may establish requirements and procedures for the safe and orderly storage of kayaks and paddle boards on Town property.

B. Only permitted kayaks and paddle boards may be stored on Town property.

C. Failure to follow the requirements and procedures established by the harbormaster will result in forfeiture of the storage permit.

**3.19.2. Assignment of Storage with No Waiting List**

Vacant storage sites will be assigned to resident applicants first, then non-resident applicants.

**3.19.3. Assignment of Storage with Waiting List**

A. The harbormaster shall maintain a waiting list for each storage site area.

B. Person(s) may request their name be added to the storage waiting list by filing out a storage wait list application and paying the application fee. Such fee is due no later than April 15<sup>th</sup>, on an annual basis in order to remain on the waiting list. Incomplete applications will not be processed.

C. The waiting list will be organized by resident and non-resident status. Vacant storage sites will be offered to residents on the waiting list first. If no resident accepts the vacant storage site, then it will be offered to non-residents on the waiting list.

D. Once a storage site is offered to an applicant on the waiting list, the applicant has ten (10) calendar days to accept the storage, provide required documents, and pay the fee. This may be extended upon approval of the harbormaster. Failure to comply with this section by the deadline will result in forfeiture of the storage and removal of the applicant from the waiting list.

**3.19.4. Storage Permits**

- A. Only kayaks and paddle boards may be stored on Town property.
- B. All storage permits begin on May 1 and expire on April 30.
- C. The storage permit renewal application and permit fee must be received by April 15. Failure to submit the renewal application and pay the permit fees by April 15 will result in assessment of late fees and the possible forfeiture of the storage permit.
- D. All kayaks, paddle boards, and other personal property stored on the Town property must be removed upon notice of the harbormaster. Items not removed will be deemed to be abandoned, and removed in accordance with Section 2.6.

#### **4. PIERS WHARVES, FLOATS, AND OTHER MARINE-RELATED STRUCTURES**

##### **4.1. Authority**

The Port Authority is the approving body for all marine-related structures to be built in the Town below the normal high-water mark. The Port Authority is also the approving authority for any integral infrastructure for water-dependent use which falls within one hundred feet above the normal high-water mark. In those cases, the requirements of the Town Code Title 16, apply in addition to the requirements of these Rules and Regulations, the Maine Mandatory Shoreland Zoning Act and applicable Federal regulations.

##### **4.2. Permits**

**4.2.1.** No wharf, pier, float, or any other marine-related structure may be erected, moved, or otherwise altered without a Building Permit therefor, issued by the Code Enforcement Officer after plan approval is obtained from the Port Authority, as required by these Rules and Regulations and Title 16, and in compliance with all requirements of the applicable local, State and Federal requirements.

**4.2.2.** A permit for which no substantial work has commenced within one year from date of issue expires. A permit for which work is not substantially complete within two years from date of issue expires. Expired permits may be renewed by the Code Enforcement Officer upon application and payment of a fee, provided that such renewal is sought prior to expiration under these provisions and provided that such renewal meets all relevant rules, regulations, ordinances, statutes and codes in effect on the date that the renewal of the expired permit is requested.

##### **4.3. Application Requirements**

**4.3.1.** All applications for permits must be filed with the Town of Kittery using the form provided for that purpose. Applications should also include:

- A. Plans showing the actual dimensions and shape of the lot to be built upon; the exact size and locations and dimensions of the proposed structures or alterations to existing structures.
- B. Any other such information as the Port Authority may deem necessary to determine conformance with these Rules and Regulations; Title 16, Chapter 16.11; the Maine Mandatory Shoreland Zoning Act; and applicable Federal regulations.

**4.3.2.** The Port Authority may grant a waiver from the specifications of these regulations provided that the Port Authority finds that, due to special circumstances of the specific application, the

granting of a waiver will not adversely impair the public health, safety and general welfare, the use of public waters, navigation, or harm the environment. All such waivers must be supported by sufficient findings of fact.

**4.3.3.** The application must be accompanied by an application fee as set forth in Appendix A. No application may be deemed complete by the Port Authority until payment of the proper fees.

The applicant may be required to pay direct expenses associated with the hearing of the application in accordance with the Town Code Title 16.

**4.3.4.** Applications for in-kind repair or replacement must submit two (2) sets of all submissions. All other applications must submit ten (10) sets of all submissions.

**4.3.5.** The Town will issue a receipt upon receiving a complete application.

#### **4.4. Application Process**

**4.4.1.** The Chairman shall place the application on the Authority's agenda for a Scheduling Hearing no more than 45 days from the date of receipt.

**4.4.2.** For in-kind repair or replacement, the Chairman or designated agent may waive the application process Sections 4.4.3 – 4.4.8, and issue an approval of the application upon determining it is complete.

**4.4.3.** Where a project contains upland development as an integral part of the application, the Port Authority decision will be forwarded to the Planning Board or Board of Appeals as required in the Town Code Title 16.

#### **4.4.4. Scheduling Hearing**

A. At the Scheduling Hearing, the Port Authority shall accept or deny the application in accordance with the following:

(1) the applicant has legal standing by virtue of vested interest (right, title, or interest) in all properties under consideration;

(2) the application is complete in accordance with these regulations and Title 16 (if Appropriate), or the Authority accepts and approves any requests for waivers of submission contents.

B. If the Authority accepts the plan, it shall determine if additional information is required prior to Public Hearing, (in which case it may require the applicant to provide such information) and schedule the date for Public Hearing.

C. The Chairman shall arrange a mutually agreeable time for a site walk by the Authority prior to Public Hearing.

#### **4.4.5. Public Notice**

The Chairman shall cause public notice of such hearing to be placed at least seven and not more than fourteen days prior to the scheduled hearing date. The notice must set forth the general

nature of the requested approval and be posted at the Municipal Offices and forwarded to the Town Clerks of York and Eliot, in the case of a plan located within five hundred feet of their municipal boundaries, at least ten days prior to the hearing. Placing of public notices is at the expense of the applicant.

**4.4.6. Abutter Notice**

A. The Chairman shall cause notice of Public Hearing to be sent to all shorefront landowners whose shorefront property line abuts the same waterbody and is located within 150 feet of the applicant's shorefront property line. Notices sent may be at the expense of the applicant. Proof of mailing to the address shown in the Town Assessor's property cards satisfies the notice requirement.

B. Notice must also be sent to the Code Enforcement Officer, Town Planner, and where applicable, the Board of Appeals, Planning Board, and Conservation Commission, at least seven days prior to the Public Hearing.

C. Failure to receive said notices does not invalidate any Port Authority action.

**4.4.7. Public Hearing**

A. An accepted application will normally be scheduled for review and public hearing at the next regularly scheduled meeting of the Port Authority, but no earlier than fifteen days nor later than thirty-five days from the date of Port Authority acceptance. With the concurrence of the applicant, this deadline may be modified.

B. The following rules apply to the hearing:

- (1) The Chairman or acting Chairman shall serve as the presiding officer.
- (2) The Port Authority may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial, or unduly repetitious.
- (3) The Chairman shall determine the order of presentation by parties represented at the hearing. Each party has the right to proceed without interruption, except that rulings by the Chair prevail.
- (4) Any party may be represented by agent or attorney.
- (5) Any Town official having an interest in the application may present into evidence a written summary of findings and recommendations.
- (6) The Port Authority may continue the hearing to another time and location, including the site of the project, as it deems necessary.

**4.4.8. Port Authority Action**

A. The Port Authority shall act to approve, approve with conditions, disapprove, or continue plans within thirty-five days of plan acceptance unless the applicant agrees in writing to extend the period (not to exceed 120 days).

B. In the case of an extension such plan must automatically be scheduled for the agenda of the next regularly scheduled meeting after the extended period and action completed whether the applicant has accomplished the purposes for which the continuance was granted or not.

C. An applicant or interested party may request reconsideration of any decision by the Port Authority as outlined in Section 7 of these Rules and Regulations.

#### **4.5. Findings of Fact**

**4.5.1.** Action by the Port Authority must be based on sufficient findings of fact which support compliance with all required standards of these Rules and Regulations, (or grant waivers for those things requested) and applicable requirements contained in the Town Code Title 16.

**4.5.2.** If it is mutually agreeable to the Port Authority and the Applicant, the official, approved minutes of the meeting may be accepted as the written findings of fact.

#### **4.6. Conditions of Approval**

An approval by the Port Authority is a form of an agreement between the Town and the applicant, incorporating as elements the application, the findings of fact, and such conditions as the Port Authority may impose upon approval.

#### **4.7. Performance Standards**

**4.7.1.** All applications for permits under this section must comply with Town Code Title 16 and any other applicable federal or state requirements. These requirements apply to all development within 250 feet, horizontal distance, of the normal high-water mark of any river or saltwater body. These requirements also apply to any structure built on, over, or abutting a dock wharf or pier, or any other structure extending beyond the normal high- water mark of a water body or within a coastal wetland shown on the Official Shoreland Zoning Map.

**4.7.2.** The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high-water mark of a water body or within a wetland must comply with all applicable requirements of Town Code Title 16.

**4.7.3.** Non-commercial private piers may have a maximum width of 6 feet as measured parallel to the shoreline and be limited to the minimum size necessary to accomplish their purpose. Except for temporary ramps and floats, the total length of a ramp, pier and float structure may not extend more than 150 feet beyond the normal high-water mark and piers not extend more than 100 feet beyond the normal high-water mark nor extend below the mean low water mark, whichever is shorter.

**4.7.4.** The maximum height of the pier deck may not exceed six (6) feet above the normal high-water mark, and the handrails not exceed 42" without the specific approval of the Port Authority.

**4.7.5.** Commercial piers are limited to the minimum size necessary to accomplish their purpose. They may not extend beyond the mean low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck may not exceed six (6) feet above mean high water mark and the handrails not

exceed 42", without a showing of necessity and specific approval of the Port Authority. Documentation required for an application for a commercial pier, in addition to all other requirements of these Rules and Regulations, must set forth credible proof of the commercial usage and include at least the following:

- A. Written documentation as to the nature of the commercial enterprise and why the applicant is requesting a pier that does not meet the non-commercial private pier standards noted above;
- B. Written proof of a valid commercial enterprise, such as commercial fishing license, articles or organization/incorporation for the business;
- C. Documentation of their ownership in the commercial business or enterprise;
- D. Any additional documentation required by the Port Authority for determining the commercial use and operation of the commercial pier.

**4.7.6.** Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high- water mark and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town .

#### **4.8. Administration and Enforcement**

**4.8.1.** Once Port Authority approval is granted, an applicant must apply, within one year of the date of approval, to the Code Enforcement Officer for a Building Permit prior to commencement of any work on the site or the approval terminates. When circumstances are such that a plan that has received Port Authority approval is required to be reviewed by another agency (e.g. DEP, Planning Board, BOA), then the one-year time period for obtaining a building permit from the Code Enforcement Officer is stayed while:

- A. The plan is pending before that agency, from time of submission to time of decision inclusive, verified by documentation from that agency and
- B. The decision of such agency is being reviewed by any appellate board or judicial court, from the time an appeal is filed to the time when an appellate board or judicial court renders the last, un-appealed decision necessary to allow the applicant to obtain a building permit from the Code Enforcement Officer, verified by documentation from that appellate board or judicial court.
- C. In all cases, the Port Authority may extend the effective date of its approval for up to one additional year provided the renewal is sought before the initial approval terminates and the permit meets all Port Authority requirements in effect on the date that the request for the renewal is sought.

**4.8.2.** The Code Enforcement Officer shall revoke any Building Permit issued if, after due investigation, it is determined the Permit holder has violated any of the provisions of the Port Authority approval, Title 16, or any applicable code, law, or statute.

## **5. HARBORMASTER DUTIES AND AUTHORITY**

### **5.1. Duties**

In addition to, and concurrent with the authority authorized by state statute, the Harbormaster shall enforce all provisions of these Rules and Regulations pertaining to harbors and tidal waters under the jurisdiction of the Port Authority and the State of Maine and shall cooperate with other Governmental agencies in enforcing their regulations. Under the supervision of the Port Authority, the Harbormaster shall:

- A. Preserve and regulate navigation within the waters defined in these Rules and Regulations
- B. Assign mooring sites, ensuring that the mooring tackle is kept in safe condition, and maintain an accurate plot of the location of all mooring sites in the Town.
- C. Direct the removal of vessels, if necessity or emergency requires.
- D. Regulate the use of town owned wharves, piers, docks, landings or floats
- E. Inquire into and prosecute all offenses occurring within the Port Authority's jurisdiction.
- F. Keep such records as the Port Authority may require.
- G. Enforce State and Federal marine safety laws and regulations and promote safe boating practices.

## **6. PENALTY**

### **6.1. Violations**

Whoever violates any of these rules or regulations or refuses or neglects to obey lawful and reasonable orders of a Harbormaster, duly authorized deputy, or other law enforcement officer, given pursuant to these Rules and Regulations or State statute, or obstructs a Harbormaster in the execution of duties, may result in the loss of facility use privileges, mooring site privileges in the Town, and pay a fine as set forth in Appendix A.

### **6.2. Enforcement by Harbormaster**

The Harbormaster, duly authorized Assistant Harbormaster, or any other law enforcement officer authorized to enforce laws within the Town, is authorized to enforce all provisions of these Rules and Regulations as well as all applicable State statutes. The Harbormaster is authorized to take all necessary proceedings to seek the recovery of fines authorized thereunder and all such fines and penalties recovered inure to the Town.

### **6.3. Additional Enforcement Authority for Violations of State Statute**

In addition to the civil penalties imposed hereunder for violations of these Rules and Regulations, Title 38 MRS, as may be amended from time to time, provides additional sanctions for violations of statutes that may be enforced by the Harbormaster as provided by law. Among these statutes and sanctions are the following:

A. 38 MRS §13, Failure to obey orders of Harbormaster: “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. Failure to obey an order of a Harbormaster is a Class E Crime.”

B. 38 MRS §281, Speed restrictions: “Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing shall be guilty of a Class E Crime.”

C. 38 MRS §282, Endangering persons or property: “Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State in a manner which endangers any person or property shall be guilty of a Class E Crime.”

D. 38 MRS §283, Operating Recklessly: “Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State recklessly shall be guilty of a Class E Crime.”

E. 38 MRS §284, Operation under influence of drugs and liquor: “Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana shall be guilty of a Class E Crime.”

#### **6.4. Responsibility of Owner**

A. The owner(s) of a vessel are held equally responsible together with the operator of said vessel for any administrative violation of these rules and regulations by said operator.

B. The owner(s) of the vessel are not liable for moving violations which are the fault of the operator of the vessel whether permission to operate the vessel was granted unless they have contributed to the fault by neglect or knowledge.

C. If the Harbormaster removes a vessel as set forth in these rules and regulations, such removal is at the cost and risk of the owner of the vessel in addition to any storage fees.

### **7. APPEALS**

#### **7.1. Appeal of Decisions of the Harbormaster**

A. Any person aggrieved by a decision of the Harbormaster under these Rules and Regulations (other than a decision to pursue a violation of these rules and regulations and/or state statute in a court of competent jurisdiction) may appeal such decision to the Port Authority within thirty (30) calendar days from the date said decision is rendered in writing by the Harbormaster.



- B. Such appeal must be filed in writing with the Town Clerk setting forth the reasons for the appeal. The filing will be stamped as received by the Clerk. The Clerk shall deliver the appeal to the Chairman of the Port Authority for the purpose of scheduling a hearing of the appeal.
- C. The Port Authority shall hold a hearing within forty-five (45) days of stamped receipt by the Town Clerk of such appeal (Normally the next scheduled meeting).
- D. The Port Authority shall hear all relevant evidence presented to it during the hearing by the Harbormaster and appealing party. Either side may present witnesses or evidence in support of their respective positions. The Chairman of the Port Authority shall serve as the presiding officer and determine the admissibility of testimony in evidence. This hearing is held on an informal basis with strict rules of evidence not applying.
- E. After hearing the Port Authority shall decide the appeal with a minimum of five like votes and render a decision which may affirm, reverse or modify the decision under review, or may remand the matter to the Harbormaster for further proceedings in accordance with the terms of these rules and regulations. The decision of the Port Authority, which must be recorded in the minutes of the meeting, must set forth sufficient findings of fact as appropriate. The Chairman shall provide the appellant written notification of the decision of the Port Authority outlining the findings of fact within 10 days of the decision.

**7.2. Request for Reconsideration of Decisions of the Port Authority**

- A. An applicant requesting reconsideration of a Port Authority decision or other aggrieved person(s) who appear and participate in the hearing before the Port Authority may request a rehearing of such decision provided it is made within fifteen (15) calendar days from the date of said decision is rendered and providing the request contains new or substantially expanded information which provides sufficient grounds for reconsideration of the decision.
- B. Any such request for reconsideration must be filed in writing with the Town Clerk setting forth the reasons for the request. The filing will be stamped as received by the Town Clerk. The Clerk shall deliver the request for reconsideration to the Chairman of the Port Authority for the purpose of scheduling a hearing on the request for reconsideration
- C. The Port Authority shall hold a hearing within forty-five (45) days of receipt by the Town Clerk of such request. (Normally the next scheduled meeting).
- D. During the hearing either the applicant requesting reconsideration, or other aggrieved person(s) who are in opposition to the decision may present witnesses or evidence in support of their respective positions.
- E. After the hearing the Port Authority shall take the request for reconsideration under advisement and must issue a decision agreed to by voting minimum of five like votes which may affirm, reverse or modify the decision under review. Failure to achieve a five-like vote majority will reaffirm the original decision.
- F. The decision of the Port Authority must be recorded in the minutes of the meeting and set forth findings of fact as appropriate. The Chairman shall provide the requester written notification of the decision of the Port Authority within ten (10) days of the decision.

**7.3. Appeal of Decisions of the Port Authority**

Applicants or other aggrieved parties may appeal the decision of the Port Authority directly to the Superior Court, within forty-five (45) calendar days pursuant to the rules and procedures established for M.R.C.P. 80(B) Appeals.

**8. FEDERAL REGULATIONS**

Nothing herein may be considered as interfering with Federal laws applicable to the coastal waters, tidal waters, tidal rivers and harbors of the state. Where the requirements of these Rules and Regulations conflict with other laws or rules, the more restrictive, or that imposing the higher standard, governs.

**9. CITIZEN COMPLAINTS**

**9.1. Complaint Procedure**

Persons aggrieved by a violation of any regulation contained herein may file a complaint with the Harbormaster giving the following information:

- A. Date and time of violation;
- B. Vessel causing violation, including description and if possible, name and identifying number;
- C. Owner, if known;

- D. Operator or master of vessel, if known;
- E. Nature of violation;
- F. Damage or injuries cause, if any; and
- G. Witnesses, including name, address and telephone number

**9.2. Action of the Harbormaster**

If the Harbormaster determines, based on the complaint and any other investigation undertaken, that probable cause exists to believe that a violation of any regulation has occurred, the Harbormaster shall either:

- A. Issue a written warning to the alleged offender; or
- B. Issue a citation and proceed to enforce any violation of these regulations as provided herein in a court of competent jurisdiction; or
- C. Take other such action as authorized by these regulations or other applicable local, state, or federal laws

**10. FEES – GENERAL PROVISIONS**

The schedule of fees for such fines, permits, and applications, established by the Port Authority in accordance with Title 38 MRS et. seq. is set forth in Appendix A, Fee Schedule. (Note: Government and military vessels are exempt from all fees outlined in this section.)

**11. SEVERABILITY**

If any section, subsection or any portion of these Regulations is declared by any court of competent jurisdiction to be invalid for any reason, such decision is not deemed affect the validity of any other section, subsection or any other portion of these Regulations; to this end, the provisions of these Regulations are hereby declared to be severable.

**12. EFFECTIVE DATE and RECORD OF CHANGES**

These Rules and Regulations are effective 30 days from the date of approval noted in the document header as found in Regular meeting minutes and remain in effect until altered or repealed by the Port Authority. The record compendium of all Port Authority Rules and Regulation changes is shown in Appendix B.

**Appendix A – Fee Schedule**

**Appendix B - Record of Changes Compendium**

## [Maine Freedom of Access Act: Your Right to Know](#)

[Home](#) → [Frequently Asked Questions](#)

# Frequently Asked Questions (FAQ)

[General Questions](#) | [Public Records](#) | [Public Proceedings](#)

## GENERAL QUESTIONS

### **What is the Freedom of Access Act?**

The [Freedom of Access Act](#) (FOAA) is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

### **Are federal agencies covered by the Freedom of Access Act?**

No. The FOAA does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the Freedom of Information Act (FOIA) applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

For more general information on the Freedom of Information Act go to:

[FOIA.gov](http://FOIA.gov) - [Freedom of Information Act](#)

### **Who enforces the Freedom of Access Act?**

Any aggrieved person may appeal to any [Superior Court](#) in the state to seek relief for an alleged violation of the FOAA. [1 M.R.S. § 409\(1\)](#)

Relief can be in the form of an order issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. [1 M.R.S. § 410](#)

### **What are the penalties for failure to comply with the Freedom of Access Act?**

A state government agency or local government entity whose officer or employee commits a willful violation is subject to a fine of not more than \$500 for the first violation; a fine of not more than \$1,000 for a civil violation that was committed not more than 4 years after a previous adjudication of a violation by an officer or employee of the same state government agency or local government entity; or a fine of not more than \$2,000 for a civil violation committed not more than 4 years after 2 or more previous adjudications of a civil violation by an officer or employee of the same state government agency or local government entity. [1 M.R.S. § 410](#) Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. [1 M.R.S. § 452](#)

## **What is the Public Access Ombudsman?**

The Legislature created a public access ombudsman position to review complaints about compliance with the FOAA and attempt to mediate their resolution, as well as answer calls from the public, media, public agencies and officials about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law.

## **How do I contact the Public Access Ombudsman?**

Call the Office of the Attorney General at (207) 626-8577 or get more information online at:

[Your Right to Know: Maine's Freedom of Access Act](#)

## **Who is required to take training on the Freedom of Access Act?**

Public access officers and certain officials subject to this section must complete a [course of training](#) on the requirements of the FOAA. [1 M.R.S. § 412](#)

## **Which officials are required to take Freedom of Access training?**

Officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators
- Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of any county

- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school administrative units
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts
- Public access officers.

**As of October 18, 2021** the list of officials required to complete the training also includes:

- Municipal managers or administrators
- Municipal code enforcement officers
- Deputies for municipal clerks, treasurers, managers or administrators, assessors, and code enforcement officers
- Municipal planning board members
- Officials of school administrative units includes superintendents, assistant superintendents and school board members

### **What is a public access officer?**

A public access officer must be designated to serve as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within five working days of receiving the request and that a good faith estimate of when the response to the request will be complete is provided.

### **What does the training include?**

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Officials and public access officers can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.

### **Do training courses need to be certified by the Right to Know Advisory Committee?**

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

### **When must the training be completed?**

The training requirement must be completed not later than the 120<sup>th</sup> day after the date the official assumes the person's duties as an official or the person is designated as a public access officer.

### **How do officials and public access officers certify they have completed the training?**

After completing the training, officials and public access officers are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the official or filed with the public entity to which the official was elected or appointed. A public access officer must file the record with the agency or official that designated the public access officer. A [sample training completion form is available \(PDF\)](#) (This file requires the free [Adobe Reader](#)).

## **PUBLIC RECORDS**

### **What is a public record?**

The FOAA defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below.) [1 M.R.S. § 402\(3\)](#)

### **Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?**

No. The FOAA provides that "a person" has the right to inspect and copy public records. [1 M.R.S. § 408-A](#)

### **How do I make a Freedom of Access Act request for a public record?**

See the [How to Make a Request](#) page on this site.

## **Is there a form that must be used to make a Freedom of Access Act request?**

No. There are no required forms.

## **Does my Freedom of Access Act request have to be in writing?**

No. The FOAA does not require that requests for public records be in writing. However, most governmental bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

## **What should I say in my request?**

In order for the governmental body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely-preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

## **Does an agency have to acknowledge receipt of my request?**

Yes. An agency or official must acknowledge receipt of a request within 5 working days of receipt of the request. [1 M.R.S. § 408-A\(3\)](#)

## **How does an agency determine the date a request for public records was received?**



The date a request for public records was received is the date a sufficient description of the record is received by the agency or official at the office responsible for maintaining the record. [1 M.R.S. § 408-A\(3\)](#)

### **Does an agency have to forward my request if I sent it to an office within the agency that does not maintain the record?**

A request for records that are maintained by the agency but not by the office of the agency that received the request must be forwarded to the appropriate office or official within the agency without willful delay. [1 M.R.S. § 408-A\(3\)](#)

### **Can an agency ask me for clarification concerning my request?**

Yes. An agency or official may request clarification concerning which public record or public records are being requested. [1 M.R.S. § 408-A\(3\)](#)

### **Does an agency have to estimate how long it will take to respond to my request?**

Yes. An agency or official must provide a good faith, nonbinding estimate of how long it will take to comply with the request within a reasonable time of receiving the request. The agency or official shall make a good faith effort to fully respond within the estimated time. [1 M.R.S. § 408-A\(3\)](#)

### **When does the agency or official have to make the records available?**

The records must be made available "within a reasonable period of time" after the request was made. [1 M.R.S. § 408-A](#) The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. [1 M.R.S. § 408-A\(5\)](#)

### **Can an agency or official delay responding if my request was not directed to the agency public access officer?**

No. An agency that receives a request to inspect or copy a public record must acknowledge and respond regardless of whether the request was directed to the public access officer. The unavailability of a public access officer may not be reason for a delay. [1 M.R.S. § 413\(3\)](#)

### **What if the agency or official does not have regular office hours?**

If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's

records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. [1 M.R.S. § 408-A\(5\)](#)

### **Does an agency have to produce records within 5 days of my request?**

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. [1 M.R.S. § 408-A](#) Agencies must acknowledge the request within 5 working days of receipt.

### **Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?**

A person may inspect or copy any public record in the office of the agency or official during reasonable office hours. The agency or official shall mail the copy upon request. The agency may charge a reasonable fee to cover the cost of making the copies for you, as well as actual mailing costs. [1 M.R.S. § 408-A\(1\), \(2\), \(8\)\(E\)](#)

### **When may a governmental body refuse to release the records I request?**

The FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records.

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the [Statutory Exceptions List](#). While this listing may not be totally complete, it contains the vast majority of exceptions to the FOAA.

### **What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?**

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the FOAA. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

### **Must an agency have computer technology resources that allow for maximum accessibility to public records while protecting confidential information?**

When purchasing and contracting for computer software and other information technology resources, an agency shall consider the extent to which it will maximize accessibility and exportability while protecting confidential information that may be contained in the public records. [1 M.R.S. §414](#)

### **Does an agency have to explain why it denies access to a public record?**

Yes. An agency has 5 working days after the receipt of a request to deny the request and state the reason for the denial or state that some or all of the responsive records may be denied once they are located and reviewed. [1 M.R.S. § 408-A\(4\)](#)

### **What can I do if an agency fails to provide a written denial?**

If an agency does not provide a written denial or a statement that the request may be denied in full or in part following a review within 5 working days of the receipt of the request, this is considered a failure to allow inspection or copying and is subject to appeal. [1 M.R.S. § 408-A\(4\)](#)

### **What can I do if I believe an agency has unlawfully withheld a public record?**

If you are not satisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 30 calendar days of your receipt of the written notice of denial, to any [Superior Court](#) within the state. [1 M.R.S. § 409\(1\)](#)

### **Can an agency deny a request because it is unduly burdensome?**

An agency may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action in the Superior Court for the county where the request was made within 30 days of receipt. The agency must document the terms of the request, the good faith estimate and efforts to clarify or modify the request. Notice must be provided to the requester at least 10 days before the agency files for an order of protection. Upon a showing of good cause, the court can establish the terms of production and limit or deny the request. [1 M.R.S. § 408-A\(4-A\)](#) **As of October 18, 2021**, a reasonable fee to cover the cost of copying is no more than 10 cents per page for a standard 8 1/2 by 11 inch black and white copy. A per page fee may not be charged for records provided electronically.

### **May a governmental body ask me why I want a certain record?**

The FOAA does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason

itself. An agency or official may request clarification concerning which public record or public records are being requested. [1 M.R.S. § 408-A\(3\)](#)

### **Can I ask that public reports or other documents be created, summarized or put in a particular format for me?**

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request. [1 M.R.S. § 408-A\(6\)](#)

If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file. [1 M.R.S. § 408-A\(7\)](#)

### **Must the agency or official provide me with access to a computer terminal to inspect electronically stored public records?**

No. The agency or official is not required to provide access to a computer terminal. [1 M.R.S. § 408-A\(7\)\(B\)](#)

### **I asked a public official a question about a record, but he/she didn't answer. Is the official required to answer my question?**

No. A public officer or agency is not required to explain or answer questions about public records. The FOAA only requires officials and agencies to make public records available for inspection and copying.

### **Are an agency's or official's e-mails public records?**

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the FOAA, it constitutes a "public record". [1 M.R.S. § 402\(3\)](#)

An agency or official must provide access to electronically stored public records, including e-mails, as a printed document or in the medium it is stored at the discretion of the requestor. If an agency or official does not have the ability to separate or prevent the

disclosure of confidential information contained in an e-mail, the agency is not required to provide the records in an electronic format. [1 M.R.S. § 408-A\(7\)](#)

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages.

### **Is information contained in a communication between a constituent and an elected official a public record?**

Information of a personal nature consisting of an individual's medical information, credit or financial information, character, misconduct or disciplinary action, social security number, or that would be confidential if it were in the possession of another public agency or official is not a public record. However, other parts of the communication are public. [1 M.R.S. § 402\(3\)\(C-1\)](#)

### **Can an agency charge for public records?**

There is no initial fee for submitting a FOAA request and agencies cannot charge an individual to inspect records unless the public record cannot be inspected without being compiled or converted. [1 M.R.S. § 408-A\(8\)\(D\)](#) However, agencies can and normally do charge for copying records. Although the FOAA does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". [1 M.R.S. § 408-A\(8\)\(A\)](#)

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The FOAA authorizes agencies or officials to charge \$15 per hour after the first hour of staff time per request. **As of October 18, 2021**, an agency or official may charge \$25 per hour after the first two hours of staff time per request. [1 M.R.S. § 408-A\(8\)\(B\)](#) Where conversion of a record is necessary, the agency or official may also charge a fee to cover the actual cost of conversion. [1 M.R.S. § 408-A\(8\)\(C\)](#)

**As of October 18, 2021**, an agency may retain any fees or costs charged for responding to a FOAA request.

The agency or official must prepare an estimate of the time and cost required to complete a request within a reasonable amount of time of receipt of the request. If the estimate is greater than \$30, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the FOAA. [1 M.R.S. § 408-A\(9\), \(10\)](#)

### **I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?**

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if the agency or official considers release of the public record to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [1 M.R.S. § 408-A\(11\)](#)

### **Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?**

No. A public agency or official is required to make available for inspection and copying, subject to any applicable exemptions, only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

## **PUBLIC PROCEEDINGS**

### **What is a public proceeding?**

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. [1 M.R.S. § 402 \(2\)](#)

### **What does the law require with regard to public proceedings?**

The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. [1 M.R.S. § 403](#)

### **When does a meeting or gathering of members of a public body or agency require public notice?**

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

### **What kind of notice of public proceedings does the Freedom of Access Act require?**

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. [1 M.R.S. § 406](#)

### **Can a public body or agency hold an emergency meeting?**

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same or faster means used to notify the members of the public body or agency conducting the public proceeding. [1 M.R.S. § 406](#) The requirements that the meeting be open to the public, that any person be permitted to attend and that a record of the meeting be made and open for public inspection still apply. [1 M.R.S. § 403](#)

### **Can public bodies or agencies hold a closed-door discussion?**

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. [1 M.R.S. § 405\(1\)-\(5\)](#)

### **Can the body or agency conduct all of its business during an executive session?**

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the FOAA, such as the following: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to the FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. [1 M.R.S. § 405\(2\), \(6\)](#)

### **What if I believe a public body or agency conducted improper business during an executive session?**

Upon learning of any such action, any person may appeal to any [Superior Court](#) in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. [1 M.R.S. § 409\(2\)](#)

### **Can members of a body communicate with one another by e-mail outside of a public proceeding?**

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the FOAA. [1 M.R.S. § 401](#)

E-mail or other communication among the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." [1 M.R.S. § 402](#) The underlying purpose of the FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. [1 M.R.S. § 401](#) Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. [1 M.R.S. § 403](#) In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record. [1 M.R.S. § 402\(3\)](#) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.

### **Can I record a public proceeding?**

Yes. The FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the FOAA. [1 M.R.S. § 404](#)

### **Do members of the public have a right to speak at public meetings under the Freedom of Access Act?**

The FOAA does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation.

### **Is a public body or agency required to make a record of a public proceeding?**



Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.

The FOAA also requires that public bodies and agencies make a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. [1 M.R.S. § 407\(1\), \(2\)](#)

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. [5 M.R.S. § 8002\(1\)](#); [5 M.R.S. § 9059](#)

### **Is the agency or body required to make the record or minutes of a public proceeding available to the public?**

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, [1 M.R.S. § 403 , 407](#); [5 M.R.S. § 9059 \(3\)](#)

### **Can a public body or agency meet remotely?**

Yes, but only under the conditions set forth in P.L. 2021, ch. 290, codified at [1 M.R.S. § 403-B](#). The body must adopt a written policy on remote participation after notice and public hearing. The body may then allow members to participate by remote means if in-person presence is not "practicable" and the body complies with the other requirements of the law, including allowing for remote attendance by members of the public.

### **Can a public body hold a remote hearing on a proposed written policy?**

No. A body that does not have a remote participation policy in place must have an in-person hearing on a proposed remote participation policy. After a policy is adopted the body may conduct meetings by remote means as permitted by law and the policy.

### **What is the procedure for adopting the written remote meeting policy?**

The law requires public notice and a hearing prior to adopting the written policy. The body should give notice to the public in the same way it would give notice of any other public proceeding under [1 M.R.S. § 406](#). The notice should include the time and location

of the public hearing and may be held as a separate meeting or as part of a regular meeting of the body.

### **When is it permissible for a member to participate remotely?**

After adopting a policy to allow for remote participation, a member can attend remotely if it is not “practicable” to attend in person. The law gives four non-exclusive examples of when in-person attendance may not be practicable:

1. The existence of an emergency or urgent issue that requires the public body meet by remote means;
2. Illness, other physical condition or temporary absence from the jurisdiction of the body that causes a member to face significant difficulties traveling to and attending in-person at the physical location of the meeting;
3. With respect to a public body with statewide membership, significant distance a member must travel to be physically present at the location of the meeting; and
4. The area of the public body’s jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges.

### **What notice is required for a meeting being conducted remotely?**

Notice must be given in ample time to allow the public to attend remotely and given in a manner reasonably calculated to notify the public of the time, date, location and method to be used to conduct the meeting. If any members of the body participate remotely, the notice must include the means by which members of the public may access the meeting. The notice must also provide the physical location where members of the public may participate in person, if applicable.

### **What methods of remote participation may be used?**

Remote participation in a public proceeding is through either telephonic or video technology. Members of the public shall be provided with a meaningful opportunity to attend by remote means when any members of the body are participating remotely. Other means may be used when necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means of communication, such as email, text message or chat functions.

### **What if a member of the public wants to provide public comment?**

The body must provide an effective means of communication between members of the body and members of the public when public comment is allowed.

**Do members of a body who are participating remotely count toward a quorum?**

Yes, a member who participates remotely pursuant to the adopted policy is considered present for purposes of determining a quorum.

**Is a roll call vote required for action taken during remote meetings?**

Yes, all votes must be taken by roll call in a manner that can be seen and heard if using video technology, and heard if using only audio technology, by all members of the body and the public.

**Do members of the public who attend remotely have access to meeting documents and materials?**

All documents and other materials must be made available to members of the public participating remotely to the same extent customarily available to the public attending in person.

**Credits**

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CERTIFICATION OF COMPLETION OF  
FREEDOM OF ACCESS TRAINING REQUIRED BY 1 M.R.S.A. § 412

I, \_\_\_\_\_, hereby certify that I have met the training  
*(Name)*

requirements set forth in 1 M.R.S.A. § 412 on \_\_\_\_\_ by  
*(date of training)*

completing the following training:

- A thorough review of all of the information made available on the Frequently Asked Questions portion of the State website, [www.maine.gov/foaa/faq](http://www.maine.gov/foaa/faq).
- Another training course that includes this information, identified as follows:

\_\_\_\_\_  
*(Title of Course)*

\_\_\_\_\_  
*(Name of Course Provider)*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title or Elected Office*

**Note:** Training must be completed within 120 days after an elected official takes the oath of office.