

Chapter 231: WATERWAYS

[HISTORY: Adopted by the Town of Falmouth Annual Town Meeting 4-9-1980, Art. 57.
Amendments noted where applicable.]

GENERAL REFERENCES

Harbor Master — See Ch. 53, Art. I.

Boats and boating — See Ch. 91.

Noise — See Ch. 150.

Waterways Committee — See Charter, § C7-11.

ARTICLE I General Provisions

§ 231-1. Definitions.

In construing this chapter, the following words shall have the meaning herein given unless contrary intentions clearly appears:

BOAT OR VESSEL — Includes every description of watercraft, including seaplanes when navigating or moored on the water, used or capable of being used as a means of transportation on the water, whether propelled by power, sail or manually, or not.

DIVER — Includes swimmers using fins and/or mask and/or snorkel tubes or self-contained underwater breathing devices, and may include those diving without aids where the circumstances are appropriate.

FALMOUTH WATERWAYS OR WATERWAYS — Includes all of the navigable waters within the boundaries of the Town, which shall include all harbors, rivers, bays or ponds, including "waterways" which from time to time may be temporarily nonnavigable by reason of low tides, drought or seasonal weather and water conditions.

HARBOR MASTER — Chief Harbor Master, duly empowered by the General Laws of the commonwealth.

PERSONS — Includes individuals, corporations, societies, associations, partnerships and trusts.

ARTICLE II Town Wharves

§ 231-2. General restrictions.

- A. Except in an emergency, no boats shall be made fast to any of the Town's wharves, floats or piers without the permission of the Harbor Master.
- B. There shall be no scaling or cleaning of fish or shellfish on any of the Town's wharves, ramps, floats or piers.
- C. No person shall leave any boating or fishing equipment, fish or any other personal property upon Town landing places, floats, wharves or piers for longer than is reasonably necessary in the act of loading or unloading same to and from boats or vehicles.
- D. The Town shall not be responsible for any loss or damage to boats or vessels at the Town wharves, floats, piers or moorings. Owners will be held responsible for damage caused by them or their vessels to structures and pilings and related facilities owned by the Town.
- E. No warp or line shall be passed across the channels or any dock, so as to obstruct or interfere

with vessels navigating in the area.

§ 231-3. Individual bulkheads, landings or floats.

- A. Eastside entrance of Falmouth Inner Harbor (commonly referred to as the "Tides Bulkhead"). This 368 feet of bulkhead shall be reserved for commercial or noncommercial use subject to a fee to be established by the Waterways Committee for such use. The landing at the north end of the bulkhead may be used for transient loading and unloading, subject to a time limit to be established by the Waterways Committee and posted.
- B. Westside near entrance to Falmouth Inner Harbor (commonly known as "Simpson's Landing"). This approximately 55 feet shall be used for commercial and noncommercial use subject to a fee to be established by the Waterways Committee and posted.
- C. Davis Marine Bulkhead. This shall be used for commercial or noncommercial use subject to a fee and/or time limit to be established by the Waterways Committee for such use. The float may be used for transient loading and unloading, subject to a time limit to be established by the Waterways Committee and posted.
- D. Town wharves: Eel Pond, Woods Hole, and Great Harbor, Woods Hole. These wharves shall be used for commercial or noncommercial vessels subject to a fee to be established by the Waterways Committee for such use; time limits for this use to be established by the Waterways Committee and posted. All vessels using these wharves shall obtain permission in advance from the Harbor Master.
- E. Town bulkhead: Quissett. To be used only for transient loading and unloading subject to a time limit to be established by the Waterways Committee and posted.
- F. Town wharf: West Falmouth. To be used only for transient loading and unloading subject to a time limit to be established by the Waterways Committee and posted.
- G. Town bulkhead: Wild Harbor. To be used only for transient loading and unloading subject to a time limit to be established by the Waterways Committee and posted.
- H. Town wharf: Megansett Harbor. To be used only for transient loading and unloading subject to a time limit to be established by the Waterways Committee and posted.

ARTICLE III Town Marinas

§ 231-4. Power of Waterways Committee.

The Waterways Committee shall have the power to establish standard contracts and contract terms and fees for the rental of wharves, slips and docks at Town marinas.

§ 231-5. Rerenting of allotted spaces.

Whenever space has been allotted to a vessel by the Harbor Master and the fees are paid as required, no other vessel shall be permitted to occupy this space except while such vessel is away on an overnight cruise. The owner or operator shall advise the Harbor Master when leaving for an overnight cruise of one day or more. The Harbor Master may rerent the space during the absence of the craft regularly allotted the space. No credit for rents received for such temporary use of the space will be granted the craft regularly allotted that space.

§ 231-6. Public waiting list. [Amended STM 10-25-1989, Art. 63]

- A. If an individual makes application in writing for dock space and there is no space available, it

shall be the duty of the Harbor Master to so advise the applicant and to receive and file or record his application with the Harbor Master's records and post the name of the applicant and the description of his vehicle in chronological order of filing on a public waiting list. The public waiting list shall expire March 15 annually. **[Amended AFTM 11-15-1999, Art. 64, approved 3-22-2000]**

- B. An individual shall reaffirm his application for dock space in writing and submit a fee of \$10 prior to March 15 each year to remain on the waiting list. **[Amended AFTM 11-15-1999, Art. 64, approved 3-22-2000]**
- C. Dock space, as it becomes available, shall be rented to the person who is first on the waiting list, provided that if that person prefers another location, or is unable to accept the available dock, he/she waives his/her right to that dock space but his/her name will be placed at the bottom of the waiting list, in which case the dock space shall be offered to the next person on the waiting list. **[Amended STM 4-6-1993, Art. 9, approved 7-16-1993]**

§ 231-7. Houseboats prohibited.

Houseboats, meaning boats designed primarily for human habitation but which are not self-propelled, will not be permitted to moor or tie up at any Town-owned marina.

§ 231-8. Certain commercial boats restricted.

Tug boats, cargo boats and any other boats used for commercial purposes (other than charter boats, leases and licenses of the Town) shall not be permitted to moor or tie up at the Falmouth Marinas except by special permission of the Waterways Committee or Harbor Master, as appropriate.

§ 231-9. General health, fire and police regulations.

All boats or vessels using the Town wharves shall observe all police, fire, health and sanitary regulations of the Town, and the owners or operators of such boats shall not permit acts contrary to good order, public safety or public health, including public profanity or obscene language or indecent exposure. Unnecessary noise, loud talking or playing of musical instruments between the hours of 11:00 p.m. and 8:00 a.m. is not permitted. No person upon such boats shall throw or dump garbage, paper, refuse or debris of any kind into the harbor.

§ 231-10. Unseaworthy, dangerous or deteriorated vessels.

No vessel or watercraft of any kind whatsoever which is unseaworthy or in badly deteriorated condition or which is likely to injure persons or damage private or public property, or which might become a menace to navigation, shall be permitted to moor in Town waters or tie up at the Town wharves. The Harbor Master and Waterways Committee may separately or jointly determine whether any watercraft is unseaworthy, dangerous or in badly deteriorated condition and take appropriate steps for removal of same. This shall not be deemed to apply to vessels in immediate distress as a result of current emergencies.

§ 231-11. Charter boat advertising.

Advertising signs on vessels or wharves will be permitted at any Town-owned wharf only by charter boats. Such signs shall be subject to Waterways Committee approval and shall not be over 18 inches by 36 inches in size and shall be displayed only on the charter boat each advertises.

§ 231-12. Repair or remodeling; fueling.

- A. Repairing (other than emergency and maintenance repairs of a minor nature), overhauling or remodeling of any watercraft docked or moored at Tides Bulkhead, Falmouth Marina, Davis Park Marina or Green Pond is prohibited.
- B. Fueling with gasoline by tank truck is prohibited at all Town marinas.

§ 231-13. Reimbursement for damages.

All persons liable for injuring or damaging Town-owned wharves and properties shall forthwith reimburse the Town in an amount equal to the cost of repairing (new or old) such damage as determined by the Waterways Committee.

§ 231-14. Use of watercraft for business purposes prohibited; time charter boat restrictions.

- A. No vessel or watercraft of any kind whatsoever moored in Town waters or docked at any Town-owned wharf shall be used as a place from which public business or professional services are conducted.
- B. This shall not apply to commercial time charter fishing or excursion boats. A "time charter boat" shall be defined for the purpose of this regulation as a watercraft holding itself out to the public for rent or charter for a specified time for a specified fee or charter hire with the owner's captain on board or in charge at all times during navigation under such charter. Any such time charter boat shall be available to the public in general upon payment of the specified fee, must be Coast Guard licensed and properly equipped to be legally suitable for the purpose for which offered to be chartered and must be primarily used by its owner for charter or rent.

§ 231-15. Rafting.

Upon occasion, rafting will be permitted by boats to other boats at Town wharves. All reasonable precautions to prevent damage shall be taken by the occupant of the vessel rafting on. The Harbor Master shall have exclusive authority to determine where and when rafting shall or shall not take place.

ARTICLE IV Mooring Regulations

§ 231-15.1. Promulgation of regulations. [Added ASTM 4-7-1997, Art. 24]

- A. After public notice and public hearing, the Board of Selectmen shall promulgate rules and regulations to effectuate the purpose of this article. Notice shall be given at least two weeks prior to the public hearing by publication in a newspaper of general circulation in the Town and by posting with the Town Clerk and posting at the Harbor Master's office.
- B. These regulations shall define key terms and establish procedures of the registration of moorings, assignment of mooring space, establishment and maintenance of a waiting list, inspection of moorings, specifications for moorings, identification of moorings and assignment and collection of fees.
- C. Failure by the Board of Selectmen to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effects of this article.

D. After public notice and public hearing, the Board of Selectmen may amend or otherwise modify these rules and regulations. Notice shall be given at least two weeks prior to the public hearing by publication in a newspaper of general circulation in the Town and by posting with the Town Clerk and posting at the Harbor Master's office.

§ 231-16. (Reserved) Editor's Note: Former § 231-16, which provided mooring regulations, as amended, was repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

§ 231-17. (Reserved) Editor's Note: Former § 231-17, which provided mooring regulations, as amended, was repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

§ 231-18. (Reserved) Editor's Note: Former § 231-18, which provided mooring regulations, as amended, was repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

§ 231-19. (Reserved) Editor's Note: Former § 231-19, which provided mooring regulations, as amended, was repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

§ 231-20. (Reserved) Editor's Note: Former § 231-20, which provided mooring regulations, as amended, was repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

§ 231-21. (Reserved) Editor's Note: Former § 231-21, which provided mooring regulations, as amended, was repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

§ 231-22. (Reserved) Editor's Note: Former §§ 231-22 and 231-23, which provided mooring regulations, as amended, were repealed ASTM 4-13-1998, Art. 24. For current regulations, see Ch. 269, Mooring Regulations.

ARTICLE V General Regulations

§ 231-23. Operations of motorboats. [Added ATM 4-12-2004, Art. 34]

A. Motorboats shall not be operated:

- (1) Within 75 feet of the seaward boundary of a public bathing beach, if designated by markers, floats or otherwise.

B. Motorboats shall not anchor:

- (1) Within 75 feet of the seaward boundary of a public bathing beach, if designated by markers, floats or otherwise.

§ 231-24. Hazards to navigation; removal.

Mooring buoys, lobster pots, crab pots, eel pots and other obstacles that will cause or create a hazard to navigation shall not be placed in areas usually used as channels for navigation. In case of doubt, the Harbor Master shall be consulted in advance before setting them in place.

§ 231-25. Abandoned vessels, moorings and other objects.

- A. Except in a maritime emergency currently affecting those aboard or others in the immediate vicinity, no vessel, mooring or other object shall be deliberately abandoned, sunk or otherwise placed in the waters within the Town of Falmouth where it may constitute a hazard. Any abandoned, sunk or improperly placed vessel, mooring or object so found and any vessel otherwise improperly secured, swamped, sunk, washed ashore or found in a restricted area

may be ordered by the Harbor Master to be removed or relocated. If corrective action is not taken after seventy-two (72) hours' notice to the owner, or if the owner is not known after notice has been posted for the same period at the Town Hall and the Harbor Master's office, the Harbor Master shall have authority to remove or relocate it; and the expense of such removal or relocation shall be charged to the vessel and its owner.

- B. Nothing in the above shall be deemed to prevent emergency action by the Harbor Master with or without notice to the owner if, in his judgment, such action is necessary.
- C. The Harbor Master shall have the authority to sell at public auction all abandoned vessels, moorings or other objects, where the owner is unknown, that falls within his purview. All recovered abandoned property shall be held in custody of the Harbor Master for a period of no less than six (6) months, at which time it may be auctioned to the highest bidder if in the best interest of the town. The Harbor Master shall have the right to establish the minimum acceptable bid. Public notice of the time, place and type of items involved shall be made in the local newspaper, one (1) time each week for three (3) consecutive weeks prior to the auction. All moneys received from the auction shall be turned into the town's treasury. **[Added ATM 4-7-1982, Art. 44]**

§ 231-26. Swimming; diving from piers prohibited.

- A. In the interest of safety, no swimming will be permitted in the following harbors: Inner Wild Harbor (Silver Beach), Quissett Inner Harbor, Eel Pond (Woods Hole), Great Harbor (Woods Hole), Little Harbor, Falmouth Inner Harbor, Green Pond and Megansett Inner Harbor, except in areas specifically designated and marked by the Harbor Master.
- B. There shall be no diving from any public wharves, piers, bridges or from any bulkhead abutting any waterways of town.

§ 231-27. Divers and diving.

- A. Divers using fins and/or masks and/or snorkel tubes, or self-contained underwater breathing devices, except within designated areas, shall:
 - (1) While diving display a rigid replica of the international code flag "A" not less than one (1) meter in height. Measures shall be taken to ensure its all-around visibility. **[Amended ATM 4-4-1984, Art. 45]**
 - (2) Display such flag prominently on a float or other similar device which shall hold such flag upright and shall extend vertically a minimum distance of three (3) feet from the surface of the water so as to be visible to passing boats.
 - (3) Stay within one hundred (100) feet of the aforementioned flag or move the flag on said float or device with him while he is submerged and return to the surface within one hundred (100) feet of said flag.
- B. No diver shall operate in properly marked or customary boat channels unless, for special purposes, permission is granted in advance by the Harbor Master. The diver shall have the responsibility to inquire of the Harbor Master about the location of customary boat channels if he is in doubt about the situation.
- C. Divers operating at night shall be equipped with and use appropriate underwater lights, in addition to displaying the aforementioned diver's flag.
- D. On approaching a diver's flag, all boats must proceed with caution and shall remain outside a one-hundred-foot radius from said diver's flag.
- E. Diving in Falmouth Inner Harbor will be permitted only for the purpose of maintenance of

boats, moorings, floats, piers, ground tackle, channel markers, rescue and research operations.

§ 231-28. Town launching ramps.

- A. The usage of town launching ramps shall be controlled from time to time by rules established by the Waterways Committee and posted. These rules may include control of temporary parking of boat trailers and motor vehicles at or near the approach to each ramp.
- B. Persons using town ramps for hauling of larger boats requiring cradles shall do so only with permission in advance in writing from the Harbor Master. Cradles and/or boats shall not remain on the town ramps for more than twelve (12) hours.

§ 231-29. Pollution prohibited.

The dumping or discharge of oil, raw sewage, dead fish, garbage, waste, rubbish or debris of any kind anywhere so as to pollute the waters, shores or beaches of the town is prohibited.

§ 231-30. Waterskiing, sailboards and jet skis.

- A. Waterskiing is prohibited on all waterways of the town except outside of navigation channels and swimming and mooring areas on the western side of Waquoit Bay and outside of swimming and mooring areas on Vineyard and Nantucket Sounds or Buzzards Bay. Waterskiers and boats towing them shall not operate in or across navigation channels at any time.
- B. Waterskiing as hereinbefore permitted is subject to the provisions of the General Laws of the Commonwealth of Massachusetts and the further restriction that there shall be no waterskiing within one hundred fifty (150) feet of bathers, divers, piers, wharves, floats, other boats or of any shore. "Waterskiing" shall include motor-propelled surfboards and waterbikes and the towing or manipulation of a surfboard or similar device behind a motorboat. Waterskiing in approved areas shall only be done during the daylight hours.
- C. Sail-propelled surfboards may navigate along regular channels of navigation to reach and return from open waters where they are permitted to operate but shall not interfere with the operation of other vessels.
- D. The use of jet ski watercraft, surf jet watercraft, wet bike watercraft and other so-called personal watercraft which are motor boats is prohibited on Ashumet Pond. **[Added ATM 4-5-1989, Art. 22]**

§ 231-31. Outhauls, floats and rafts.

The placement of outhauls, temporary floats and/or rafts held by anchors or bottom moorings shall be subject to written approval of the Harbor Master. All such outhauls, floats or rafts will be identified with registration numbers assigned by the Harbor Master. Numbers assigned shall be permanently affixed to the land and seaward side of the float or raft in contrasting color and shall be a minimum of three (3) inches in size.

§ 231-32. Occupancy of vessels.

No vessel, while said vessel is used as a residence, unless equipped with legally approved waste and sewage treatment equipment or holding tanks, may remain overnight or be used as a residence in any Falmouth harbor. This shall not prevent any vessel from seeking a haven from a

storm in such harbors during the period immediately before, during and after such storm, but such vessels shall not make any discharge of waste, garbage or other pollution into said harbors during said stay and shall move on as soon as weather permits.

§ 231-33. Fish cars and stakes.

All fish cars in navigable waters of the town shall be subject to the approval of the Harbor Master and shall be plainly marked according to law so that they shall be visible at all times. Stakes shall not be driven to be used for mooring any vessel or boat, or for tying up any fish car, unless in the judgment of the Harbor Master their use will not be an obstruction. The Harbor Master may terminate any permission previously granted where, in his judgment, such termination is appropriate.

§ 231-34. Speed.

Within the outermost end of entrance jetties and throughout the entire inner harbors, rivers, bays and ponds of the waterways of the town, with the exception of designated areas for waterskiing, vessels shall be operated at the speed at which they can maintain steerage way and create minimum wake, and in no case shall they be operated at more than posted speed limits. This rule shall not apply to vessels engaged in emergency operations.

§ 231-35. Compatibility with other regulations.

- A. Nothing contained herein shall be held or construed to supersede or conflict with or interfere with or limit jurisdiction of the United States government or limit or conflict with the laws and regulations of the Commonwealth of Massachusetts, except that in case of concurrent laws or regulations in any case, it shall be intended that the stricter, more restrictive rules or regulations shall apply.
- B. The Harbormaster and Assistant Harbormaster shall, at all times, and under all circumstances in the exercise of their authority, recognize and observe MGL C. 91, § 10A, and 33 U.S.C. § 403 (Rivers and Harbors Act 1899). **[Added ASTM 4-7-1992, Art. 64]**

§ 231-36. Violations and penalties.

- A. Whoever violates any of the provisions of this chapter or refuses or neglects to obey the lawful and reasonable orders of those empowered to enforce the same, or resists them in the discharge of their duties, shall be fined not less than fifty dollars (\$50.) for the first violation and not more than two hundred dollars (\$200.) for each violation thereafter within the same calendar year. For penalty, see Chapter 1, General Provisions, Article I, Penalties.
- B. Where a vessel is or has been operated in violation of any provision of this chapter and the owner, operator or other responsible person cannot be found within a twenty-four-hour period, or where it appears that the vessel and the person in violation will depart from the town in order to avoid the enforcement of the penalties of this chapter, the Harbor Master may seize and hold said vessel as security and may move it to a safe place of storage (including dry land storage) until the violation has been disposed of administratively or judicially, and, if a violation has been found, the cost of seizing and holding said vessel shall be assessed against the vessel, and the vessel shall be sold at auction to pay such penalties and costs if not otherwise paid. If said auction produces surplus proceeds after payment of penalties and costs, said surplus shall be held in a separate account and be paid over to the owner of the vessel upon proof of such ownership. If no one appears to claim such funds within one (1) year, they shall be forfeited and be paid into the treasury of the town.

§ 231-37. Complaints.

All complaints concerning the use of moorings and movements of vessels on the waterways of the town shall be submitted in writing to the Chief Harbor Master for his action. All complaints concerning waterways facilities, wharves, docks, ramps, dredging and related matters shall be submitted in writing to the Waterways Committee. Neither the Harbor Master nor the Waterways Committee shall be required to hold a hearing or take action on any matter not first submitted in writing.

§ 231-38. Enforcement by Harbor Master.

These rules and regulations shall be enforced by the Harbor Master.

ARTICLE VI Miscellaneous Provisions

§ 231-39. Severability.

In the event that any provisions, section or clause of this chapter is hereafter found to be invalid, such invalidity shall not affect the validity of the remaining portions of this chapter.

§ 231-40. Supersession of previous laws.

This chapter supersedes all bylaws of the Town regarding wharves and waterways previously enforced. This shall be the only bylaw regarding the wharves and waterways of the Town.

ARTICLE VII Noise Restriction [Added ATM 4-8-2003, Art. 38]

§ 231-41. Motorboard noise.

- A. Every motorboat operated on the waters of Falmouth shall be equipped at all times with a muffler on the exhaust of its engine or an underwater exhaust as required by Chapter 90B, Section 6 of the General Laws.
- B. No person shall operate a motorboat on the waters of Falmouth in a manner to permit the production of sound from its engine that equals or exceeds;
 - (1) Ninety decibels on the "A" scale when subjected to a stationary sound level measurement at a distance greater than three feet from the stern with its engine at idle speed, or
 - (2) Seventy-five decibels on the "A" scale when subjected to the stationary sound level measurement from the shoreline or edges of the harbors.
- C. The Harbor Master, Assistant Harbor Master or police officer who has reason to believe that a motorboat is not in compliance with noise levels established in this section may direct the operator of the motorboat to submit it to an on-site test to measure the level of the sound emitted by the motorboat's engine. The operator shall comply with that direction. The Harbor Master, Assistant Harbor Master, or police officer may remain aboard the motorboat during the test at his discretion. If the level of sound emitted by the motorboat's engines exceeds the sound levels established in this section, the Harbor Master, Assistant Harbor Master, or police officer may direct the operator to take immediate and reasonable measures to correct the

violation, including returning the motorboat to a mooring or dock, stopping the motor and keeping the boat there until the violation is corrected or ceases.

- D. This section shall not apply to the operations of dredges, commercial vessels engaged in construction or demolition work, tugboats, or to auxiliary engines on commercial vessels that do not propel the vessel through water.